As filed with the Securities and Exchange Commission on February 4, 2015

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

PACIFIC ETHANOL, INC.
(Exact name of Registrant as specified in its charter)

Delaware	**2860**	**41-2170618**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

400 Capitol Mall, Suite 2060
Sacramento, California 95814
(916) 403-2123
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Neil M. Koehler
President and Chief Executive Officer
Pacific Ethanol, Inc.
400 Capitol Mall, Suite 2060
Sacramento, California 95814
(916) 403-2123
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies of all correspondence to:

Larry A. Cerutti, Esq. **Rushika Kumararatne de Silva, Esq.** **Troutman Sanders LLP** **5 Park Plaza, 14th Floor** **Irvine, California 92614** **(949) 622-2700 / (949) 622-2739 (fax)**	**Mark Beemer** **President and Chief Executive Officer** **Aventine Renewable Energy Holdings, Inc.** **1300 South 2nd Street** **Pekin, Illinois 61554** **(309) 347-9200**	**Ackneil M. Muldrow, Esq.** **Steve Kahn, Esq.** **Akin Gump Strauss Hauer & Feld LLP** **One Bryant Park** **New York, New York 10036** **(212) 872-1000 / (212) 872-1002 (fax)**

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the effectiveness of this registration statement and the satisfaction or waiver of all other conditions under the merger agreement described herein.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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 the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company	Smaller reporting company ☒

If applicable, please an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:
Exchange Act Rule 13c-4(i) (Cross-Border Issuer Tender Offer) ☐
Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer) ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	**Amount to be Registered(1)**	**Proposed Maximum Offering Price per Share**	**Proposed Maximum Aggregate Offering Price(2)**	**Amount of Registration Fee**
Common Stock, Par Value $0.001	18,744,044	N/A	$161,761,100	$18,797
Non-Voting Common Stock, Par Value				

$0.001	18,744,044	N/A	$161,761,100	$18,797
Total	37,488,088	N/A	$323,522,200	$37,594

(1) This registration statement relates to shares of common stock and shares of non-voting common stock that may be issued to the securityholders of Aventine Renewable Energy Holdings, Inc. in connection with the merger agreement described herein. The amount of common stock to be registered is based on the estimated number of shares of common stock that is expected to be issued in the merger if the securityholders of Aventine do not elect to receive any shares of non-voting common stock and the amount of non-voting common stock to be registered is based on the estimated number of shares of non-voting common stock that is expected to be issued in the merger if the securityholders of Aventine do not elect to receive any shares of common stock, assuming in each case an exchange ratio of 1.25 shares of Registrant's common stock for each outstanding share and for each option and warrant exercisable for shares of Aventine common stock. The amount of common stock registered includes shares of common stock into which any issued shares of non-voting common stock may be converted. In addition, this registration statement relates to an indeterminate amount of shares of common stock that may be issued as a result of stock splits, stock dividends or similar transactions in accordance with Rule 416 under the Securities Act of 1933, as amended ("Securities Act").

(2) Estimated solely for purposes of calculation of the registration fee in accordance with Rules 457 (c) and (f) of the Securities Act based upon the product of: (A) 14,995,235, the estimated maximum number of shares of Aventine common stock that may be exchanged in the merger (the sum of (i) 14,204,240, shares of Aventine common stock issued and outstanding as of January 30, 2015, (ii) 3,140, shares of Aventine common stock issuable upon the exercise of outstanding options as of January 30, 2015, and (iii) 787,855, shares of Aventine common stock issuable upon the exercise of outstanding warrants as of January 30, 2015, multiplied by (B) $8.63, the average of the high and low prices for shares of Pacific Ethanol common stock as reported on The NASDAQ Capital Market on January 30, 2015.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this joint proxy statement/prospectus is not complete and may be changed. Pacific Ethanol may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This joint proxy statement/prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer, solicitation or sale is not permitted.

Subject to completion, dated February 4, 2015

[●], 2015

Dear Pacific Ethanol, Inc. and Aventine Renewable Energy Holdings, Inc. Stockholders,

We are pleased to enclose the joint proxy statement/prospectus relating to the merger of a wholly-owned subsidiary of Pacific Ethanol, Inc. (sometimes referred to as Pacific Ethanol) with and into Aventine Renewable Energy Holdings, Inc. (sometimes referred to as Aventine), with Aventine continuing as a wholly-owned subsidiary of Pacific Ethanol. We believe this merger will allow Pacific Ethanol and Aventine to be better positioned to compete in the ethanol production and marketing industry.

In the merger, each issued and outstanding share of Aventine common stock (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive, at the election of the holder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder. Shares of Pacific Ethanol non-voting common stock are the same in all respects to shares of Pacific Ethanol's common stock, except that holders of shares of non-voting common stock are not entitled to vote on matters submitted to Pacific Ethanol stockholders and shares of non-voting common stock are convertible into shares of common stock on a one-for-one basis no earlier than sixty-one days after such holder provides a notice of conversion to Pacific Ethanol. The stockholders of Pacific Ethanol will continue to own their existing shares and the rights and privileges of their existing shares will not be affected by the merger.

The value of the consideration to be received in exchange for each share of Aventine common stock will fluctuate with the market price of Pacific Ethanol common stock. Based on the closing sale price for Pacific Ethanol common stock on December 30, 2014, the last trading day before public announcement of the merger, the 1.25 exchange ratio represented approximately $13.39 in value for each share of Aventine common stock (assuming only shares of Pacific Ethanol common stock are issued in the merger). Based on the closing price for Pacific Ethanol common stock on [●], 2015, the latest practicable date before the printing of this joint proxy statement/prospectus, the 1.25 exchange ratio represented approximately $[●] in value for each share of Aventine common stock (assuming only shares of Pacific Ethanol common stock are issued in the merger). The value of the consideration to be received by Aventine stockholders will fluctuate with changes in the price of Pacific Ethanol common stock.

We estimate that Pacific Ethanol may issue up to an aggregate of approximately 17,755,300 shares of its common stock and non-voting common stock to Aventine stockholders as contemplated by the merger agreement. Immediately following completion of the merger, Pacific Ethanol stockholders immediately prior to the merger will own approximately 58% of Pacific Ethanol's outstanding common stock and non-voting common stock and former Aventine stockholders will own approximately 42% of Pacific Ethanol's outstanding common stock and non-voting common stock, in each case assuming no exercise or conversion of outstanding options and warrants. Pacific Ethanol's common stock will continue to be listed on The NASDAQ Capital Market under the symbol "PEIX." Pacific Ethanol's non-voting common stock will not be listed on any stock exchange.

Pacific Ethanol stockholders are cordially invited to attend a special meeting of the stockholders to be held at [●] on [●], 2015 at [●] a.m., local time, at which time the holders of Pacific Ethanol common stock and Series B Preferred Stock, voting together as a single class, will be asked to consider and vote upon (i) a proposal to approve the issuance of Pacific Ethanol common stock and non-voting common stock in connection with the proposed merger, (ii) a proposal to amend Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock, and (iii) a proposal to adjourn Pacific Ethanol's special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve the above matters. The holders of Pacific Ethanol Series B Preferred Stock, voting as a separate class, will be asked to consider and vote on (x) a proposal to approve the issuance of Pacific Ethanol common stock and non-voting common stock in connection with the proposed merger, (y) a proposal to amend Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock, and (z) the agreement by the holders of Pacific Ethanol Series B Preferred Stock not to treat the merger as a liquidation, dissolution or winding up within the meaning of Pacific Ethanol's Certificate of Designations, Powers, Preferences and Rights relating to its Series B Preferred Stock.

Aventine stockholders are cordially invited to attend a special meeting of the stockholders to be held at [●] on [●], 2015 at [●], a.m., local time, at which time the stockholders of Aventine will be asked to consider and vote upon (i) a proposal to adopt the merger agreement and approve the merger and (ii) a proposal to adjourn Aventine's special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt the merger agreement and approve the merger. It is important to note that certain holders of outstanding shares of Aventine common stock have entered into stockholders agreements with Pacific Ethanol, pursuant to which they have agreed to vote their pro-rata share of 51% of the issued and outstanding shares of common stock of Aventine in favor of the merger and adoption of the merger agreement, subject to the terms of the stockholder agreements.

We urge you to read the enclosed joint proxy statement/prospectus, which includes important information about the merger and our special meetings. **In particular, see "Risk Factors" beginning on page 32 of the joint proxy statement/prospectus for a description of the risks that you should consider in evaluating the merger.**

Pacific Ethanol's board of directors unanimously recommends that Pacific Ethanol stockholders vote "FOR" the issuance of the shares of common stock and/or non-voting common stock, the charter amendment, and the agreement not to treat the merger as a liquidation, dissolution or winding up and "FOR" the other matters to be considered at the Pacific Ethanol special meeting.

Aventine's board of directors unanimously recommends that Aventine stockholders vote "FOR" the adoption of the merger agreement and "FOR" the other matters to be considered at the Aventine special meeting.

Your vote is very important. Whether or not you plan to attend your respective company's meeting of stockholders, please submit your proxy as soon as possible to make sure that your shares are represented at that meeting. Information about these meetings, the merger and the other business to be considered by stockholders is contained in this joint proxy statement/prospectus. We urge you to read this joint proxy statement/prospectus carefully.

Sincerely,

/s/ Neil M. Koehler
Neil M. Koehler
President and Chief Executive Officer
Pacific Ethanol, Inc.

Sincerely,

/s/ Mark Beemer
Mark Beemer
Chief Executive Officer
Aventine Renewable Energy Holdings, Inc.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities to be issued in connection with the merger or determined if this joint proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

The enclosed joint proxy statement/prospectus is dated [●], 2015, and is first being mailed or otherwise delivered to stockholders of Pacific Ethanol and Aventine on or about [●], 2015.

Pacific Ethanol, Inc.
400 Capitol Mall, Suite 2060
Sacramento, CA 95814
(916) 403-2123

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD [●], 2015

To the Stockholders of Pacific Ethanol, Inc.:

A special meeting of all stockholders of Pacific Ethanol, Inc. will be held at [●] on [●], 2015 at [●] a.m., local time, for the following purposes:

1. To approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock pursuant to the Agreement and Plan of Merger, dated as of December 30, 2014, by and among Pacific Ethanol, Inc., AVR Merger Sub, Inc., and Aventine Renewable Energy Holdings, Inc. (as the same may be amended from time to time, sometimes referred to as the merger agreement). A copy of the merger agreement has been included as *Annex A* to this joint proxy statement/prospectus. In the merger, each issued and outstanding share of Aventine common stock (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive, at the election of the holder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder.

2. To approve an amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock. A copy of the amendment to Pacific Ethanol's Certificate of Incorporation has been included as *Annex B* to this joint proxy statement/prospectus.

3. For holders of Pacific Ethanol Series B Preferred Stock only, to obtain the agreement of such holders not to treat the merger as a liquidation, dissolution or winding up within the meaning of Pacific Ethanol's Certificate of Designations, Powers, Preferences and Rights relating to its Series B Preferred Stock.

4. To adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve (i) the issuance of shares described in Proposal 1, (ii) the proposed amendment to Pacific Ethanol's Certificate of Incorporation described in Proposal 2, and/or (iii) the agreement by the holders of Pacific Ethanol Series B Preferred Stock not to treat the merger as a liquidation, dissolution or winding up described in Proposal 3.

5. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

If you held shares of Pacific Ethanol common stock or Series B Preferred Stock at the close of business on [●], 2015, you are entitled to notice of and to vote at the special meeting and any adjournments or postponements thereof. If a new record date is set, you will be entitled to vote at the special meeting if you held shares in Pacific Ethanol as of such record date.

The Pacific Ethanol board of directors unanimously recommends that you vote FOR all of these proposals, which are described in detail in the accompanying joint proxy statement/prospectus. Your attention is directed to the accompanying joint proxy statement/prospectus for a discussion of the merger and the merger agreement, as well as the other matters that will be considered at the meeting.

Your vote is very important. The conditions to the merger include that the Pacific Ethanol stockholders approve the issuance of the common stock and/or non-voting common stock, the charter amendment, and the agreement of the holders of Series B Preferred Stock not to treat the merger as a liquidation, dissolution or winding up within the meaning of Pacific Ethanol's Certificate of Designations, Powers, Preferences and Rights relating to its Series B Preferred Stock. If you do not submit your proxy by telephone, the Internet, or return your signed proxy card(s) by mail or vote in person at your special meeting, it will be more difficult for Pacific Ethanol to obtain the necessary quorum to hold its special meeting.

Whether or not you plan to attend the special meeting in person, please complete, sign, date and return the enclosed proxy in the accompanying self-addressed postage pre-paid envelope or complete your proxy by following the instructions supplied on the proxy card for voting by telephone or via the Internet (or, if your shares are held in "street name" by a broker, nominee, fiduciary or other custodian, follow the directions given by the broker, nominee, fiduciary or other custodian regarding how to instruct it to vote your shares) as soon as possible. If you attend the special meeting, you may withdraw your proxy and vote in person.

By Order of the Board of Directors,

/s/ William L. Jones
William L. Jones
Chairman of the Board

Sacramento, CA
[●], 2015

PLEASE VOTE YOUR SHARES PROMPTLY. YOU CAN FIND INSTRUCTIONS FOR VOTING ON THE ENCLOSED PROXY CARD. IF YOU HAVE QUESTIONS ABOUT THE PROPOSALS OR ABOUT VOTING YOUR SHARES, PLEASE CALL PACIFIC ETHANOL'S PROXY SOLICITOR, GEORGESON INC., AT [●].

Aventine Renewable Energy Holdings, Inc.
1300 South 2nd Street
Pekin, IL 61554
(309) 347-9200

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [●], 2015

To the Stockholders of Aventine Renewable Energy Holdings, Inc.:

A special meeting of stockholders of Aventine Renewable Energy Holdings, Inc. will be held at **[●]**, on [●], 2015 at [●] a.m., local time, for the following purposes:

1. To adopt the Agreement and Plan of Merger, dated as of December 30, 2014, by and among Pacific Ethanol, Inc., AVR Merger Sub, Inc., and Aventine Renewable Energy Holdings, Inc. (as the same may be amended from time to time, sometimes referred to as the merger agreement) and thereby approve the merger. A copy of the merger agreement has been included as *Annex A* to this joint proxy statement/prospectus. In the merger, each issued and outstanding share of Aventine common stock (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive, at the election of the holder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder.

2. To adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt the merger agreement and approve the merger.

3. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

If you held shares of Aventine common stock at the close of business on [●], 2015, you are entitled to notice of and to vote at the special meeting and any adjournments or postponements thereof. If a new record date is set, you will be entitled to vote at the special meeting if you held shares in Aventine as of such record date.

The Aventine Board has unanimously approved the merger agreement, has determined that the merger agreement and the transactions contemplated thereby, including the merger, are advisable and in the best interests of Aventine and its stockholders, and unanimously recommends that Aventine stockholders vote "FOR" the Aventine merger proposal and "FOR" the Aventine adjournment proposal.

Your vote is very important. The conditions to the merger include that the Aventine stockholders approve the adoption of the merger agreement. If you do not submit your proxy by telephone, the Internet, or return your signed proxy card(s) by mail or vote in person at your special meeting, it will be more difficult for Aventine to obtain the necessary quorum to hold its special meeting.

Whether or not you plan to attend the special meeting in person, please complete, sign, date and return the enclosed proxy in the accompanying self-addressed postage pre-paid envelope or complete your proxy by following the instructions supplied on the proxy card for voting by telephone or via the Internet (or, if your shares are held in "street name" by a broker, nominee, fiduciary or other custodian, follow the directions given by the broker, nominee, fiduciary or other custodian regarding how to instruct it to vote your shares) as soon as possible. If you attend the special meeting, you may withdraw your proxy and vote in person.

By Order of the Board of Directors,

/s/ Mark Beemer
Mark Beemer
Chief Executive Officer

Pekin, IL
[●], 2015

PLEASE VOTE YOUR SHARES PROMPTLY. YOU CAN FIND INSTRUCTIONS FOR VOTING ON THE ENCLOSED PROXY CARD. IF YOU HAVE QUESTIONS ABOUT THE PROPOSALS OR ABOUT VOTING YOUR SHARES, PLEASE CALL AVENTINE'S CORPORATE SECRETARY, CHRISTOPHER A. NICHOLS AT 1-800-384-2665 (TOLL FREE) OR VIA EMAIL AT CHRIS.NICHOLS@AVENTINEREI.COM.

ADDITIONAL INFORMATION

This joint proxy statement/prospectus incorporates important business and financial information about Pacific Ethanol that is not included in or being delivered with this joint proxy statement/prospectus. The incorporated information that is not included in or being delivered with this joint proxy statement/prospectus is available to you without charge upon your written or oral request. You can obtain any document that is incorporated by reference in this joint proxy statement/prospectus, excluding all exhibits that have not been specifically incorporated by reference, on the investor relations page of Pacific Ethanol's website at www.pacificethanol.com or by requesting it in writing or by telephone from Pacific Ethanol at the following address or telephone number:

400 Capitol Mall, Suite 2060
Sacramento, CA 95814
(916) 403-2123
Attn.: Corporate Secretary
Website: www.pacificethanol.com

If you would like to request any documents, please do so by [●], 2015 in order to receive them before the Pacific Ethanol special meeting. See "Where You Can Find More Information."

You should rely only on the information contained in, or incorporated by reference into, this document. No one has been authorized to provide you with information that is different from that contained in, or incorporated by reference into, this document. This document is dated [●], 2015, and you should assume that the information in this document is accurate only as of such date. You should assume that the information incorporated by reference into this document is accurate as of the date of such document. Neither the mailing of this document to Aventine stockholders nor the issuance by Pacific Ethanol of shares of Pacific Ethanol common stock and/or non-voting common stock in connection with the merger will create any implication to the contrary.

This document does not constitute an offer to sell, or a solicitation of an offer to buy, any securities, or the solicitation of a proxy, in any jurisdiction to or from any person to whom it is unlawful to make any such offer or solicitation in such jurisdiction. Except where the context otherwise indicates, information contained in this document regarding Aventine has been provided by Aventine and information contained in this document regarding Pacific Ethanol has been provided by Pacific Ethanol.

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QUESTIONS AND ANSWERS ABOUT THE MERGER

Q: Why am I receiving this document?

A: This document is being delivered to you because you are either a stockholder of Pacific Ethanol, Inc. (sometimes referred to as Pacific Ethanol), a stockholder of Aventine Renewable Energy Holdings, Inc. (sometimes referred to as Aventine), or both. Pacific Ethanol and Aventine are each holding a special meeting in connection with the proposed merger of a wholly owned subsidiary of Pacific Ethanol with and into Aventine (sometimes referred to as the merger).

Holders of Pacific Ethanol common stock and Series B Cumulative Redeemable Convertible Preferred Stock (sometimes referred to as Series B Preferred Stock), voting together as a single class, are being asked to approve at a special meeting: (i) a proposal to approve the issuance of Pacific Ethanol common stock and non-voting common stock as contemplated by the Agreement and Plan of Merger (as it may be amended from time to time, sometimes referred to as the merger agreement), dated as of December 30, 2014, by and among Pacific Ethanol, AVR Merger Sub, Inc. (sometimes referred to as Merger Sub) and Aventine, (ii) a proposal to amend Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock as contemplated by the merger agreement, and (iii) a proposal to adjourn Pacific Ethanol's special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve the above matters. Holders of Pacific Ethanol Series B Preferred Stock, voting as a separate class, are being asked to approve at a special meeting: (x) a proposal to approve the issuance of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement, (y) a proposal to amend Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock as contemplated by the merger agreement, and (z) the agreement by the holders of Pacific Ethanol Series B Preferred Stock not to treat the merger as a liquidation, dissolution or winding up within the meaning of Pacific Ethanol's Certificate of Designations, Powers, Preferences and Rights relating to its Series B Preferred Stock (sometimes referred to as the Pacific Ethanol Series B Certificate of Designations).

Aventine stockholders are being asked to adopt at a special meeting the merger agreement, and thereby approve the merger; and a proposal to adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt the merger agreement and approve the merger.

This document is serving as both a joint proxy statement of Pacific Ethanol and Aventine and a prospectus of Pacific Ethanol. It is a joint proxy statement because it is being used by each of the boards of directors of Pacific Ethanol and Aventine to solicit proxies from their respective stockholders. It is a prospectus because Pacific Ethanol is offering shares of its common stock and non-voting common stock in exchange for shares of Aventine common stock if the merger is completed. A copy of the merger agreement is attached as *Annex A* to this joint proxy statement/prospectus.

Q: What will happen in the merger?

A: In the merger, Merger Sub will merge with and into Aventine. Aventine will be the surviving entity in the merger as a wholly-owned subsidiary of Pacific Ethanol.

Q: What will Aventine stockholders receive in the merger for their shares?

A: When the merger is completed, each share of Aventine common stock issued and outstanding immediately prior to the merger (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted automatically into the right to receive (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of the two, resulting in the Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder, subject to certain limitations to maintain the tax free treatment of the merger. Shares of Pacific Ethanol non-voting common stock are the same in all respects to shares of Pacific Ethanol's common stock except that holders of shares of non-voting common stock are not entitled to vote on matters submitted to Pacific Ethanol stockholders and shares of non-voting common stock are convertible into shares of common stock on a one-for-one basis no earlier than sixty-one days after such holder provides a notice of conversion to Pacific Ethanol. The stockholders of Pacific Ethanol will continue to own their existing shares and the rights and privileges of their existing shares will not be affected by the merger.

The exchange ratio to be used in connection with the merger is fixed and will not be adjusted to reflect changes in the price of Pacific Ethanol or Aventine common stock prior to the closing of the merger.

Q: Will any fractional shares be issued in connection with the merger?

A: No fractional shares of Pacific Ethanol common stock will be issued. Holders of Aventine common stock to whom fractional shares would have otherwise been issued will be entitled to receive, subject to applicable withholding, a cash payment in lieu of such fraction based on the volume-weighted average price per share of Pacific Ethanol common stock over the five trading day period immediately preceding the effective time of the merger. See "Risk Factors" beginning on page 32 of this joint proxy statement/prospectus.

Q: When must an Aventine stockholder elect the type of merger consideration that such stockholder would prefer to receive?

A: If you are an Aventine stockholder and wish to elect the type of merger consideration you receive in the merger, you should carefully review and follow the instructions set forth in the election form, which is being separately mailed to Aventine stockholders following the mailing of this proxy statement/prospectus. The election form will be mailed no more than 40 business days and no less than 20 days prior to the anticipated consummation of the merger. Election forms will be mailed to each holder of record of Aventine common stock as of five business days prior to the mailing date. You will need to sign, date and complete the election form and transmittal materials and return them, along with your Aventine stock certificates (or customary affidavits and indemnification regarding the loss or destruction of such certificates or the guaranteed delivery of such certificates), to the exchange agent, at the address and pursuant to the instructions given in the materials. The election deadline is 5:00 p.m. pacific time on the 20th day following the mailing date of the election form. If you do not submit a properly completed and signed election form to the exchange agent by the election deadline, you will not have the option to select the type of merger consideration you may receive, and consequently, you will only receive shares of Pacific Ethanol common stock. If you hold shares in "street name," you will have to follow your broker's instructions to make an election.

Q: What do I need to do now?

A: After you carefully read this joint proxy statement/prospectus, please respond by submitting your proxy by telephone, by the Internet or by completing, signing, dating and returning your signed proxy card(s) in the enclosed prepaid return envelope(s), as soon as possible, so that your shares may be represented at your special meeting. If you hold your shares in "street name" through a broker, nominee, fiduciary or other custodian, follow the directions given by the broker, nominee, fiduciary or other custodian regarding how to instruct them to vote your shares. In order to ensure that your vote is recorded, please submit your proxy as instructed on your proxy card(s) even if you currently plan to attend your special meeting in person.

Q: Who is entitled to vote at Pacific Ethanol's special meeting?

A: All holders of Pacific Ethanol common stock and Series B Preferred Stock, who held shares at the record date for the Pacific Ethanol special meeting (the close of business on [●], 2015) are entitled to receive notice of, and to vote at, the Pacific Ethanol special meeting provided that those shares remain outstanding on the date of the Pacific Ethanol special meeting. As of the close of business on [●], 2015, there were [●] shares of Pacific Ethanol common stock issued and outstanding and 926,942 shares of Pacific Ethanol Series B Preferred Stock issued and outstanding. Each holder of Pacific Ethanol outstanding common stock is entitled to one vote for each share of Pacific Ethanol common stock owned at the record date. When voting on matters with holders of Pacific Ethanol common stock together as a single class, each holder of Pacific Ethanol Series B Preferred Stock is entitled to approximately 0.03 votes per share held (sometimes referred to as the Preferred Voting Ratio). As a result, a total of [●] votes may be cast at the special meeting, of which holders of Pacific Ethanol common stock will be entitled to cast [●] votes and holders of Pacific Ethanol Series B Preferred Stock will be entitled to cast [●] votes. When voting as a separate class, each holder of Pacific Ethanol Series B Preferred Stock is entitled to one vote for each share of Pacific Ethanol Series B Preferred Stock owned at the record date.

Q: Who is entitled to vote at the Aventine special meeting?

A: All holders of Aventine common stock who held shares at the record date for the Aventine special meeting (the close of business on [●], 2015) are entitled to receive notice of, and to vote at, the Aventine special meeting provided that those shares remain outstanding on the date of the Aventine special meeting. As of the close of business on [●], 2015, there were [●] shares of Aventine common stock issued and outstanding. Each holder of Aventine common stock is entitled to one vote for each share of Aventine common stock owned at the record date.

Q: What constitutes a quorum for the Pacific Ethanol special meeting?

A: A quorum is the number of shares that must be represented at a meeting to lawfully conduct business. The presence at the special meeting, in person or by proxy, of the holders of a majority of the shares of Pacific Ethanol common stock and Series B Preferred Stock (giving effect to the Preferred Voting Ratio) issued and outstanding and entitled to vote at the special meeting constitutes a quorum for the transaction of business. Abstentions and broker non-votes, if any, will be included in the calculation of the number of shares considered to be present at the Pacific Ethanol special meeting for purposes of determining a quorum.

Q: What constitutes a quorum for the Aventine special meeting?

A: A quorum is the number of shares that must be represented at a meeting to lawfully conduct business. The presence at the special meeting, in person or by proxy, of the holders of a majority of the shares of Aventine common stock issued and outstanding and entitled to vote at the special meeting constitutes a quorum for the transaction of business. Abstentions and broker non-votes, if any, will be included in the calculation of the number of shares considered to be present at the meeting for quorum purposes.

Q: Why is my vote important?

A: If you do not submit your proxy by telephone, the Internet, or return your signed proxy card(s) by mail or vote in person at your special meeting, it will be more difficult for Pacific Ethanol and Aventine to obtain the necessary quorum to hold their respective special meetings and to obtain the stockholder approvals necessary for the completion of the merger. If a quorum is not present at the Pacific Ethanol special meeting or the Aventine special meeting, the stockholders of that company will not be able to take action on any of the proposals at that meeting.

While a failure to submit a proxy or vote in person at the special meeting, or a failure to provide your broker, nominee, fiduciary or other custodian, as applicable, with instructions on how to vote your shares will not affect the outcome of the vote on the proposal to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock (Proposal 1), a failure to submit a proxy or vote in person at the special meeting will make it more difficult to meet the requirement under Pacific Ethanol's bylaws that the holders of a majority of the shares of Pacific Ethanol common stock and Series B Preferred Stock (giving effect to the Preferred Voting Ratio) and entitled to vote at the special meeting be present in person or by proxy to constitute a quorum at the special meeting, except that a majority of the shares of outstanding Series B Preferred Stock, voting as a separate class and entitled to vote, must also approve Proposal 1 and thus if you are a Series B Preferred Stock stockholder, a failure to submit a proxy or vote in person on the special meeting, or a failure to provide your broker, nominee, fiduciary or other custodian as applicable with instructions on how to vote your shares will have the same effect as a vote **"AGAINST"** the proposal for the purposes of the separate class vote of the Series B Preferred Stock.

For the proposal to amend Pacific Ethanol's Certificate of Incorporation (Proposal 2), (i) a majority of the outstanding shares of Pacific Ethanol common stock and Series B Preferred Stock (giving effect to the Preferred Voting Ratio) entitled to vote on such matter and (ii) a majority of the outstanding shares of Series B Preferred Stock, voting as a separate class and entitled to vote, must approve such proposal; thus an abstention from voting, a failure to submit a proxy or vote in person at the special meeting, or a failure to provide your broker, nominee, fiduciary or other custodian, as applicable, with instructions on how to vote your shares will have the same effect as a vote **"AGAINST"** the proposal.

For the proposal to not treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations (Proposal 3), holders of 66-2/3% of the outstanding shares of Series B Preferred Stock must approve such proposal; thus an abstention from voting, a failure to submit a proxy or vote in person at the special meeting, or a failure to provide your broker, nominee, fiduciary or other custodian, as applicable, with instructions on how to vote your shares will have the same effect as a vote **"AGAINST"** the proposal.

For the Aventine stockholders to adopt the merger agreement and approve the merger, a majority of the outstanding shares of common stock entitled to vote on such matter must approve such proposal; thus an abstention from voting, a failure to submit a proxy or vote in person at the special meeting, or a failure to provide your broker, nominee, fiduciary or other custodian, as applicable, with instructions on how to vote your shares could have the same effect as a vote **"AGAINST"** the proposal.

Your vote is very important. Pacific Ethanol and Aventine cannot complete the merger unless (i) holders of Pacific Ethanol common stock and Series B Preferred Stock approve the share issuance, voting together as a single class (giving effect to the Preferred Voting Ratio) (ii) holders of Pacific Ethanol Series B Preferred Stock approve the share issuance, voting as a separate class, (iii) holders of Pacific Ethanol common stock and Series B Preferred Stock approve the amendment to Pacific Ethanol's Certificate of Incorporation, voting together as a single class (giving effect to the Preferred Voting Ratio), (iv) holders of Pacific Ethanol Series B Preferred Stock approve the amendment to Pacific Ethanol's Certificate of Incorporation, voting as a separate class, (v) holders of Pacific Ethanol Series B Preferred Stock agree not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations, voting as a separate class, and (vi) Aventine stockholders adopt the merger agreement and approve the merger.

Q: Why have Pacific Ethanol and Aventine agreed to the merger?

A: Pacific Ethanol and Aventine expect the merger to provide substantial strategic and financial benefits to their stockholders, customers and other stakeholders, including, among others:

- marketing advantages derived from expanded access to customers and new markets and an expanded co-product mix;
- greater combined financial strength, enabling new investment in plant assets, pursuit of strategic initiatives, and improved financing arrangements, as well as an improved ability to withstand cyclical downturns;
- diversified geographical footprint, which will mitigate logistical constraints and price volatility while creating marketing efficiencies and new hedging opportunities;
- expected improvement in financial performance arising from the recent restarting of idled plants and investments in plant and logistical assets;
- expected synergies through the combination of the corporate management, commodities marketing and administrative support functions;
- greater liquidity to Aventine's stockholders through the exchange of their current equity interests into the publicly-traded common stock of Pacific Ethanol; and
- the ability of Aventine stockholders to participate in any appreciation of Pacific Ethanol common stock.

Additional information on the reasons for the merger can be found below, beginning on page 103 of this joint proxy statement/prospectus for Pacific Ethanol and beginning on page 114 of this joint proxy statement/prospectus for Aventine.

Q: Why is Pacific Ethanol asking to amend its Certificate of Incorporation to create a class of non-voting common stock?

A: Approval of an amendment to Pacific Ethanol's Certificate of Incorporation to create a class of non-voting common stock (which is the subject of Pacific Ethanol Proposal No. 2) is one of the conditions to the consummation of the merger. Pacific Ethanol non-voting common stock is a type of merger consideration Aventine stockholders may elect; thus, Pacific Ethanol must amend its Certificate of Incorporation to create this class of non-voting common stock. Shares of Pacific Ethanol non-voting common stock are the same in all respects to shares of Pacific Ethanol's common stock except that holders of shares of non-voting common stock are not entitled to vote on matters submitted to Pacific Ethanol stockholders and shares of non-voting common stock are convertible into shares of common stock on a one-for-one basis no earlier than sixty-one days after such holder provides a notice of conversion to Pacific Ethanol.

Q: When do you expect the merger to be completed?

A: Pacific Ethanol and Aventine hope to complete the merger as soon as reasonably practicable, subject to receipt of stockholder approvals, which are the subject of the Pacific Ethanol and Aventine special meetings, and necessary regulatory approvals. Pacific Ethanol and Aventine currently expect that the transaction will be completed in the second quarter of 2015. However, Pacific Ethanol and Aventine cannot predict when regulatory review will be completed, whether or when regulatory or stockholder approval will be received or the potential terms and conditions of any regulatory approval that is received. In addition, certain other conditions to the merger, some of which are outside of the control of Pacific Ethanol and Aventine, may not be satisfied until later in 2015 or at all. For a discussion of the conditions to the completion of the merger and of the risks associated with obtaining regulatory approvals in connection with the merger, see "The Merger Agreement and Related Agreements—Conditions to Completion of the Merger" beginning on page 145 of this joint proxy statement/prospectus and "The Proposed Merger—Regulatory Matters Relating to the Merger" beginning on page 126 of this joint proxy statement/prospectus.

Q: Will the merger be taxable to stockholders of Aventine?

A: Pacific Ethanol and Aventine expect, and it is a condition to the consummation of the merger, that each of Pacific Ethanol and Aventine will receive an opinion from its legal counsel to the effect that the merger will qualify as a "reorganization" for United States federal income tax purposes within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (sometimes referred to as the Code), and that each of Pacific Ethanol and Aventine will be a party to the "reorganization." Assuming the merger does qualify as a reorganization, Aventine stockholders generally will not recognize gain or loss for United States federal income tax purposes upon the receipt of Pacific Ethanol common stock and/or non-voting common stock in the merger, except that an Aventine stockholder will recognize gain or loss with respect to any cash received in lieu of a fractional share of Pacific Ethanol common stock and/or non-voting common stock. Aventine stockholders who exercise their appraisal rights will recognize gain or loss with respect to cash received in exchange for Aventine common stock. In order to maintain the tax free treatment of the merger, Pacific Ethanol is limited in the amount of Pacific Ethanol non-voting common stock that may be issued to Aventine common stockholders as merger consideration.

Aventine stockholders are urged to read the discussion in the section entitled "The Proposed Merger—Material United States Federal Income Tax Consequences of the Merger" beginning on page 122 of this joint proxy statement/prospectus and to consult their tax advisors as to the United States federal income tax consequences of the transaction, as well as the effects of state, local and non-United States tax laws.

Q: How will my proxy be voted?

A: If you submit your proxy by telephone, by the Internet or by completing, signing, dating and returning your signed proxy card(s), your proxy will be voted in accordance with your instructions. If other matters are properly brought before the special meetings, or any adjournments of the meetings, your proxy includes discretionary authority on the part of the individuals appointed to vote your shares to act on those matters according to their best judgment.

Q: May I vote in person?

A: Yes. If you hold shares directly in your name as a stockholder of record of Pacific Ethanol stock as of the close of business on [●], 2015, or of Aventine common stock as of the close of business on [●], 2015, you may attend your special meeting and vote your shares in person, instead of submitting your proxy by telephone, by the Internet or returning your signed proxy card(s) by mail. If you hold shares of Pacific Ethanol common stock or Aventine common stock in "street name," meaning through a broker, nominee, fiduciary or other custodian, you must obtain a legal proxy from that institution and present it to the inspector of election with your ballot to be able to vote in person at the Pacific Ethanol or Aventine special meeting. To request a legal proxy, please contact your broker, nominee, fiduciary or other custodian. Pacific Ethanol and Aventine highly recommend that you vote in advance by submitting your proxy by telephone, by the Internet or by mail, even if you plan to attend the special meeting of your company.

Q: What are the voting requirements to approve each of the proposals that will be voted on at the Pacific Ethanol special meeting?

A:

	Proposal		**Vote Required**
1.	Approval of the issuance of shares of Pacific Ethanol common stock and non-voting common stock pursuant to the merger agreement	–	If a quorum is present, a majority of the shares of Pacific Ethanol common stock and Series B Preferred Stock, represented at the special meeting, voting together as a single class and entitled to vote (giving effect to the Preferred Voting Ratio); and
		–	Affirmative vote of a majority of the outstanding shares of Series B Preferred Stock, voting as a separate class and entitled to vote
2.	Approval of amendment to Pacific Ethanol's Certificate of Incorporation to create Pacific Ethanol non-voting common stock	–	Affirmative vote of a majority of the outstanding shares of Pacific Ethanol common stock and Series B Preferred Stock, voting together as a single class and entitled to vote (giving effect to the Preferred Voting Ratio); and
		–	Affirmative vote of a majority of the outstanding shares of Series B Preferred Stock, voting as a separate class and entitled to vote
3.	Approval not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations	–	Affirmative vote of 66-2/3% of the outstanding shares of Series B Preferred Stock, voting as a separate class and entitled to vote
4.	Approval of adjournment of the Pacific Ethanol special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to approve the first three proposals	–	Affirmative vote of a majority of the outstanding shares of Pacific Ethanol common stock and Series B Preferred Stock, represented at the meeting, voting together as a single class, and entitled to vote if a quorum is present or a majority of the voting stock represented in person or by proxy if a quorum is not present

Q: What are the voting requirements to approve each of the proposals that will be voted on at the Aventine special meeting?

A:

Proposal		Vote Required
1. Adopt the merger agreement and approve the merger	–	Affirmative vote of a majority of the outstanding shares of Aventine common stock, voting together as a single class, and entitled to vote
2. Approval of adjournment of the Aventine special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to approve the first three proposals	–	Affirmative vote of a majority of the shares of Aventine common stock, represented at the special meeting, voting together as a single class, and entitled to vote if a quorum is present or a majority of the voting stock represented in person or by proxy if a quorum is not present

Q: Does Pacific Ethanol's board of directors recommend that Pacific Ethanol stockholders approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock, the amendment of Pacific Ethanol's Certificate of Incorporation and the treatment of the merger not as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations?

A: Yes. The board of directors of Pacific Ethanol (sometimes referred to as the Pacific Ethanol Board) has unanimously approved the merger agreement and the transactions contemplated thereby, including the merger, and determined that the issuance of shares of Pacific Ethanol common stock and non-voting common stock and the Certificate of Amendment of Pacific Ethanol's Certificate of Incorporation as contemplated by the merger agreement is in the best interests of Pacific Ethanol. Therefore, the Pacific Ethanol Board unanimously recommends that you vote **"FOR"** the proposal respecting the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement at the Pacific Ethanol special meeting, that you vote **"FOR"** the proposal respecting the Certificate of Amendment of Pacific Ethanol's Certificate of Incorporation and that you vote **"FOR"** the proposal not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations. See "The Proposed Merger—Recommendation of the Pacific Ethanol Board and its Reasons for the Merger" beginning on page 103 of this joint proxy statement/prospectus.

Q: Does Aventine's board of directors recommend that Aventine stockholders adopt the merger agreement and the transactions contemplated thereby?

A: Yes. The board of directors of Aventine (sometimes referred to as the Aventine Board) has unanimously approved the merger agreement and the transactions contemplated thereby, including the merger, and determined that these transactions are advisable and in the best interests of Aventine and its stockholders. Therefore, the Aventine Board unanimously recommends that you vote **"FOR"** the proposal to adopt the merger agreement and the transactions contemplated thereby at the Aventine special meeting. See "The Proposed Merger—Recommendation of the Aventine Board and its Reasons for the Merger" beginning on page 114 of this joint proxy statement/prospectus. In considering the recommendation of the board of directors of Aventine with respect to the merger agreement and the transactions contemplated thereby, including the merger, you should be aware that certain directors and executive officers of Aventine are parties to agreements or are participants in other arrangements that give them interests that may be different from, or in addition to, your interests as a stockholder of Aventine. You should consider these interests in voting on this proposal. These different interests are described under "Additional Interests of Certain of Aventine's Directors and Executive Officers in the Merger" beginning on page 130 of this joint proxy statement/prospectus.

Q: Will there be any changes to the Pacific Ethanol Board if the merger becomes effective?

A: Yes. The merger agreement provides that the holders of a majority of shares of Aventine common stock will be entitled to nominate two individuals to the Pacific Ethanol Board. Pacific Ethanol currently has seven directors. After the merger, the number of directors will be increased to nine. As of the date of this joint proxy statement/prospectus, the nominees have not been identified. For more information, please see the section entitled "Summary—Directors and Executive Management of Pacific Ethanol Following the Merger" beginning on page 16 of this joint proxy statement/prospectus.

Q: Are there any Pacific Ethanol or Aventine stockholders already committed to vote in favor of the merger-related proposals?

A: Yes. Pacific Ethanol has entered into stockholders agreements with certain significant stockholders of Aventine pursuant to which each such significant stockholder has agreed to vote a portion of the number of shares of Aventine common stock beneficially owned by them as of the record date in favor of the adoption of the merger agreement and against any alternative transaction with respect to Aventine. Pursuant to the stockholders agreements, certain stockholders have agreed to vote their pro-rata share of 51% of Aventine's issued and outstanding common stock in favor of the merger-related proposals. For more information, please see copies of the stockholders agreements attached as *Annex C-1* and *Annex C-2* to this joint proxy statement/prospectus and the section titled "The Merger Agreement and Related Agreements—Stockholders Agreements" beginning on page 150 of this joint proxy statement/prospectus. In connection with entry into the stockholders agreements, the significant stockholders agreed to exercise any drag-along rights with respect to Aventine stockholders held by such significant stockholders. The drag-along right applies to certain stockholders of Aventine who are party to that certain Stockholder Agreement, dated September 24, 2012, by and among Aventine and the investors and the stockholders party thereto (sometimes referred to as the Aventine Stockholders Agreement).

Q: What happens if Pacific Ethanol stockholders fail to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock, the amendment to Pacific Ethanol's Certificate of Incorporation as contemplated by the merger agreement or the treatment of the merger by the holders of Pacific Ethanol Series B Preferred Stock as contemplated by the merger agreement?

A: In this circumstance, either party is permitted to terminate the merger agreement and, in the event of such termination, Pacific Ethanol is required to pay Aventine's transaction expenses, up to a maximum amount of $1,994,000, to Aventine. See "The Merger Agreement and Related Agreements—Termination" and "—Termination Fee and Expenses" beginning on pages 148 and 149, respectively, of this joint proxy statement/prospectus.

Q: What happens if Aventine stockholders fail to adopt the merger agreement and the transactions contemplated thereby?

A: In this circumstance, either party is permitted to terminate the merger agreement. However, no termination fee is payable by Aventine if the merger agreement is terminated upon the occurrence of this event. See "The Merger Agreement and Related Agreements—Termination" and "—Termination Fee and Expenses" beginning on pages 148 and 149, respectively, of this joint proxy statement/prospectus.

Q: If I am a record holder of my shares, what happens if I abstain from voting (whether by returning my proxy card or submitting my proxy by telephone or via the Internet) or I don't submit a proxy?

A: *Pacific Ethanol.*

- For the proposal to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement, if you abstain on the proposal, your shares will be counted as a vote cast, and, therefore, will have the same effect as a vote **"AGAINST"** such proposal with respect to the vote by Pacific Ethanol common stock and Series B Preferred Stock, voting as a single class. A failure to submit a proxy is not counted as a vote cast, and as such, will not otherwise have an effect on the outcome of the vote for the proposal, but it will make it more difficult to meet the requirement under Pacific Ethanol's bylaws that the holders of a majority of the Pacific Ethanol common stock and Series B Preferred Stock (giving effect to the Preferred Voting Ratio) issued and outstanding and entitled to vote at the special meeting be present in person or by proxy to constitute a quorum at the special meeting.

- For the proposal to approve the amendment to Pacific Ethanol's Certificate of Incorporation as contemplated by the merger agreement, an abstention or a failure to submit a proxy will have the same effect as a vote **"AGAINST"** such proposal with respect to the vote by Pacific Ethanol common stock and Series B Preferred Stock, voting as a single class.

- For the proposal to approve not treating the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations, an abstention or a failure to submit a proxy will have the same effect as a vote **"AGAINST"** such proposal.

- For the proposal to adjourn the Pacific Ethanol special meeting, if necessary or advisable, an abstention will have the same effect as a vote cast **"AGAINST"** such proposal. A failure to submit a proxy will not have an effect on the outcome of the vote for the proposal.

- For the separate class vote of the Series B Preferred Stock regarding the proposal to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock and the amendment to Pacific Ethanol's Certificate of Incorporation, as contemplated by the merger agreement, an abstention or a failure to submit a proxy by any holder of Series B Preferred Stock will have the same effect as a vote **"AGAINST"** such proposal.

Aventine.

- For the proposal to adopt the merger agreement, an abstention or a failure to submit a proxy will have the same effect as a vote **"AGAINST"** such proposal.

- For the proposal to adjourn the Aventine special meeting, if necessary or advisable, an abstention will have the same effect as a vote cast **"AGAINST"** such proposal. A failure to submit a proxy will not have an effect on the outcome of the vote for the proposal.

Q: What will happen if I return my proxy card without indicating how to vote?

- A: If you are a Pacific Ethanol stockholder of record and submit your proxy but do not make specific choices, your proxy will follow the Pacific Ethanol Board's recommendations and your shares will be voted **"FOR"** the proposal to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement; **"FOR"** the proposal to approve the Certificate of Amendment of Pacific Ethanol's Certificate of Incorporation as contemplated by the merger agreement; if you are holder of Pacific Ethanol Series B Preferred Stock, **"FOR"** the proposal to not treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations; and **"FOR"** the proposal to adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve the above matters.

- If you are an Aventine stockholder of record and submit your proxy but do not make specific choices with respect to the proposals, your proxy will follow the Aventine's board of directors recommendations and your shares will be voted **"FOR"** the proposal to adopt the merger agreement (under such circumstances, your proxy will constitute a waiver of your right of appraisal under Section 262 of the of the General Corporation Law of the State of Delaware (sometimes referred to as Section 262) and will nullify any previously delivered written demand for appraisal under Section 262), and **"FOR"** the proposal to adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt the merger agreement and approve the merger.

Q: What if my shares are held in "street name"?

A: If some or all of your shares of Pacific Ethanol and/or Aventine are held in "street name" by your broker, nominee, fiduciary or other custodian, you must provide your broker, nominee, fiduciary or other custodian with instructions on how to vote your shares; otherwise, your broker, nominee, fiduciary or other custodian will not be able to vote your shares on any of the proposals before your company's special meeting.

As a result of the foregoing, please be sure to provide your broker, nominee, fiduciary or other custodian with instructions on how to vote your shares. Please check the voting form used by your broker, nominee, fiduciary or other custodian to see if it offers telephone or Internet submission of proxies.

Q: What happens if I sell my shares after the record date but before the special meeting?

A: The record date for the Pacific Ethanol special meeting (the close of business on [●], 2015) is earlier than the date of the Pacific Ethanol special meeting and earlier than the date that the merger is expected to be completed. If you sell or otherwise transfer shares of Pacific Ethanol stock after the record date but before the date of the Pacific Ethanol special meeting, you will retain your right to vote those shares at the Pacific Ethanol special meeting.

The record date for the Aventine special meeting (the close of business on [●], 2015) is earlier than the date of the Aventine special meeting and earlier than the date that the merger is expected to be completed. If you sell or otherwise transfer shares of Aventine common stock after the record date but before the date of the Aventine special meeting, you will retain your right to vote those shares at the Aventine special meeting. However, you will not have the right to receive the merger consideration in respect of those shares. In order to receive the merger consideration, you must hold your shares through completion of the merger.

Q: What does it mean if I receive more than one set of materials?

A: This means you own shares of both Pacific Ethanol and Aventine, or you own shares of Pacific Ethanol common stock and Series B Preferred Stock, or you own shares of Pacific Ethanol or Aventine that are registered under different names or held in different brokerage accounts. For example, you may own some shares directly as a stockholder of record and other shares through a broker or you may own shares through more than one broker. In these situations, you may receive multiple sets of proxy materials. It is necessary for you to vote, sign and return all of the proxy cards or follow the instructions for any alternative voting procedure on each of the proxy cards you receive in order to vote all of the shares you own. Each proxy card you receive will come with its own prepaid return envelope; if you submit your proxy by mail; make sure you return each proxy card in the return envelope which accompanied that proxy card.

Q: Can I revoke my proxy and change my vote?

A: Yes. You have the right to revoke your proxy at any time prior to the time your shares are voted at your special meeting. If you are a stockholder of record, your proxy can be revoked in several ways:

- by notifying your company's Corporate Secretary prior to the special meeting that you are revoking your proxy;
- by executing and delivering a later dated proxy card or submitting a later dated vote by telephone or by the Internet; or
- by attending your special meeting and voting your shares in person.

However, if your shares are held in "street name" through a broker, nominee, fiduciary or other custodian, you must check with your broker, nominee, fiduciary or other custodian to determine how to revoke your proxy.

Q: When and where are the special meetings?

A: The Pacific Ethanol special meeting will take place on [●], 2015, at [●] a.m., local time, at [●]. The Aventine special meeting will take place on [●], 2015, at [●] a.m., local time, at [●].

Q: Who can attend the special meetings? What must I bring to attend the special meetings?

A: Admittance to the Pacific Ethanol special meeting will require a valid photo identification, such as a driver's license or passport. Attendance at the meeting will be limited to stockholders of record as of the record date and one guest per stockholder. Stockholders whose shares are held in "street name" by a broker, nominee, fiduciary or other custodian should bring with them a copy of a brokerage statement reflecting stock ownership as of the record date, together with a valid photo identification. If you want to vote your shares of Pacific Ethanol common stock held in "street name" in person at the Pacific Ethanol special meeting, you will have to obtain a legal proxy in your name from the broker, nominee, fiduciary or other custodian who holds your shares.

Admittance to the Aventine special meeting will require a valid photo identification, such as a driver's license or passport. Attendance at the meeting will be limited to stockholders of record as of the record date. Stockholders whose shares are held in "street name" by a broker, nominee, fiduciary or other custodian should bring with them a copy of a brokerage statement reflecting stock ownership as of the record date, together with a valid photo identification. If you want to vote your shares of Aventine common stock held in "street name" in person at the Aventine special meeting, you will have to obtain a legal proxy in your name from the broker, nominee, fiduciary or other custodian who holds your shares.

Q: Am I entitled to exercise appraisal rights instead of receiving the per share merger consideration for my shares of Aventine common stock?

A: Aventine stockholders are entitled to appraisal rights under Section 262, provided they fully comply with and follow the procedures and satisfy the conditions set forth in Section 262. For more information regarding appraisal rights, see the section entitled "Appraisal Rights" beginning on page 178 of this joint proxy statement/prospectus. In addition, a copy of Section 262 is attached as *Annex F* to this joint proxy statement/prospectus. Failure to comply with Section 262 will result in your waiver of, or inability to exercise, appraisal rights. To the extent the drag-along is exercised pursuant to the Aventine Stockholders Agreement, the Aventine stockholders subject to the drag-along right have waived their respective appraisal rights with respect to the merger, which constitutes a drag-along transaction.

Q: Should I send in my Aventine stock certificates now?

A: No. Simultaneously with the mailing of the election form discussed above, the exchange agent will provide each Aventine stockholder with a transmittal letter and instructions for surrendering each share of Aventine common stock to the exchange agent in exchange for the merger consideration elected by such Aventine stockholder. See "The Merger Agreement and Related Agreements – Conversion of Shares; Exchange of Certificates" beginning on page 135 of this joint proxy statement/prospectus for more information regarding the procedure for exchanging your Aventine stock certificates for the merger consideration. Pacific Ethanol stockholders will keep their existing stock certificates.

Q: Are there risks that I, as a Pacific Ethanol stockholder, should consider in deciding to vote on the issuance of shares of Pacific Ethanol common stock and non-voting common stock, the amendment to Pacific Ethanol's Certificate of Incorporation, as contemplated by the merger agreement and the agreement not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations or, as an Aventine stockholder, should consider in deciding to vote on the adoption of the merger agreement?

A: Yes. In evaluating the issuance of shares of Pacific Ethanol common stock and non-voting common stock and the amendment to Pacific Ethanol's Certificate of Incorporation as contemplated by the merger agreement, or the adoption of the merger agreement and approval of the merger, you should carefully read this joint proxy statement/prospectus, including the risk factors discussed in the section entitled "Risk Factors" beginning on page 32 of this joint proxy statement/prospectus.

Q: Who can answer any questions I may have about the special meetings or the merger?

A: Pacific Ethanol stockholders may call Georgeson Inc., Pacific Ethanol's proxy solicitors for the special meeting, toll-free at [●]. Aventine stockholders may call Aventine's Corporate Secretary, Christopher A. Nichols at 1-800-384-2665 toll-free or email chris.nichols@aventinerei.com.

SUMMARY

This summary highlights selected information contained in this joint proxy statement/prospectus and does not contain all the information that may be important to you. Pacific Ethanol and Aventine urge you to read carefully this joint proxy statement/prospectus in its entirety, including the annexes. Unless stated otherwise, all references in this joint proxy statement/prospectus to Pacific Ethanol refer to Pacific Ethanol, Inc., a Delaware corporation, all references to Aventine refer to Aventine Renewable Energy Holdings, Inc., a Delaware corporation, all references to Merger Sub refer to AVR Merger Sub, Inc., a Delaware corporation, and all references to the merger agreement refer to the Agreement and Plan of Merger, dated as of December 30, 2014, by and among Pacific Ethanol, Merger Sub, and Aventine, a copy of which is attached as Annex A to this joint proxy statement/prospectus and is incorporated by reference into this joint proxy statement/prospectus. See "Where you Can Find More Information" beginning on page 183.

The Companies Involved in the Merger

Pacific Ethanol

Pacific Ethanol, Inc.
400 Capitol Mall, Suite 2060
Sacramento, CA 95814
(916) 403-2123

Pacific Ethanol is the leading producer and marketer of low-carbon renewable fuels in the Western United States. Pacific Ethanol produces and markets all the ethanol produced by four ethanol production facilities located in California, Idaho and Oregon (sometimes referred to as the Pacific Ethanol Plants), markets all the ethanol produced by two other ethanol producers in California and markets ethanol purchased from other third-party suppliers throughout the United States. Pacific Ethanol markets ethanol through its subsidiary, Kinergy Marketing LLC, and ethanol co-products, including wet distillers grains (sometimes referred to as WDG), a nutritious animal feed, and corn oil, for the Pacific Ethanol Plants.

Additional information about Pacific Ethanol and its subsidiaries is included in documents incorporated by reference in this joint proxy statement/prospectus. See "Where You Can Find More Information" beginning on page 183.

Aventine

Aventine Renewable Energy Holdings, Inc.
1300 S. 2nd Street
Pekin, IL 61554
(309) 347-9200

Aventine has been engaged in the production and marketing of corn-based fuel-grade ethanol in the United States since 1981. Aventine markets and distributes ethanol to many of the leading energy and trading companies in the United States Aventine's facilities also produce several co-products while producing ethanol, such as distillers grain, corn gluten meal and feed, corn oil, corn germ and grain distillers dried yeast. Aventine markets these co-products primarily to livestock producers and other end users as a substitute for corn and other sources of starch and protein.

For additional information about Aventine and its subsidiaries, see "The Companies—Aventine Renewable Energy Holdings, Inc." beginning on page 50.

Merger Sub

Merger Sub, a wholly-owned subsidiary of Pacific Ethanol, is a Delaware corporation formed on December 29, 2014 for the sole purpose of effecting the merger. Upon completion of the merger, Merger Sub will merge with and into Aventine, with Aventine surviving as a wholly-owned subsidiary of Pacific Ethanol after the merger.

The Proposed Merger

Each of the boards of directors of Pacific Ethanol and Aventine has approved the merger of Pacific Ethanol and Aventine. Pacific Ethanol and Aventine have entered into an Agreement and Plan of Merger pursuant to which Aventine will merge with Merger Sub, a newly formed, wholly-owned subsidiary of Pacific Ethanol, with Aventine surviving the merger as a wholly-owned subsidiary of Pacific Ethanol. In the merger, each issued and outstanding share of Aventine common stock (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive, at the election of the holder (pursuant to certain limitations in order to maintain the tax free status of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder. This exchange ratio is fixed and will not be adjusted to reflect stock price changes prior to the closing. The stockholders of Pacific Ethanol will continue to own their existing shares and the rights and privileges of existing shares will not be affected by the merger.

Pacific Ethanol non-voting common stock are the same in all respects to shares of Pacific Ethanol's common stock, except that holders of shares of non-voting common stock are not entitled to vote on matters submitted to Pacific Ethanol stockholders and shares of non-voting common stock are convertible into shares of common stock on a one-for-one basis no earlier than sixty-one days after such holder provides a notice of conversion to Pacific Ethanol. The stockholders of Pacific Ethanol will continue to own their existing shares and the rights and privileges of their existing shares will not be affected by the merger.

A copy of the merger agreement is attached as *Annex A* to this joint proxy statement/prospectus. Pacific Ethanol and Aventine encourage you to read the entire merger agreement carefully because it is the principal document governing the merger. For more information on the merger agreement, see "The Merger Agreement and Related Agreements" beginning on page 132.

The merger is expected to be completed during the second quarter of 2015, subject to the satisfaction or waiver of the closing conditions.

Merger Consideration

In the merger, each issued and outstanding share of Aventine common stock (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive, at the election of the holder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder. Based upon the current number of issued and outstanding shares of Aventine common stock, an aggregate of approximately 17,755,300 shares of Pacific Ethanol common stock and non-voting common stock will be issued upon the closing of the merger, assuming no exercise or conversion of outstanding options and warrants. Pacific Ethanol will not issue any fractional shares in the merger. Instead, Aventine stockholders will receive cash (without interest) in lieu of such fractional share, after aggregating all fractional shares of Pacific Ethanol common stock issuable to that holder, determined by multiplying such fraction by the volume weighted average price of Pacific Ethanol common stock for the five trading days immediately prior to the closing date.

For a more complete description of the merger consideration, see "The Merger Agreement and Related Agreements—The Merger" beginning on page 132.

Treatment of Stock Options and Warrants

Pacific Ethanol will assume outstanding options and warrants to purchase shares of Aventine common stock in the merger. Each outstanding option and warrant to acquire Aventine common stock will be converted automatically at the effective time of the merger into an option or warrant to acquire Pacific Ethanol common stock and/or non-voting common stock, and will continue to be governed by the terms of the relevant Aventine stock plan and/or related agreements under which it was granted, except that the number of shares of Pacific Ethanol common stock for which each option or warrant is exercisable and the exercise price of each option or warrant will be adjusted based on the exchange ratio in the merger. In addition, the holder of an option or warrant to acquire Aventine common stock may elect to receive Pacific Ethanol common stock, non-voting common stock or a combination thereof upon the exercise of such option or warrant. As of January 30, 2015, there were outstanding warrants to purchase up to 787,855 shares of Aventine common stock, at an exercise price of $61.75, expiring on September 24, 2017 and outstanding options to purchase up to 3,140 shares of Aventine common stock at an exercise price of $3.55 expiring on February 24, 2022. For a more complete discussion of the treatment of Aventine options and other stock-based awards, see "The Merger Agreement and Related Agreements—Treatment of Aventine Stock Options" beginning on page 134 and "The Merger Agreement and Related Agreements—Treatment of Aventine Warrants" beginning on page 134.

Directors and Executive Management of Pacific Ethanol Following the Merger

As of the effective time of the merger, the board of directors of Pacific Ethanol will be comprised of the members of the Pacific Ethanol Board (currently seven members) and two designees nominated by holders of the majority of shares of Aventine common stock and who must be independent with respect to Pacific Ethanol. The current executive management of Pacific Ethanol will remain unchanged following the merger.

For a more complete discussion of the directors and management of Pacific Ethanol after the merger, see "Additional Interests of Certain of Aventine's Directors and Executive Officers in the Merger—Leadership of the Combined Company" beginning on page 130.

Recommendation of the Pacific Ethanol Board

After careful consideration, the Pacific Ethanol Board unanimously recommends that holders of Pacific Ethanol common stock and Series B Preferred Stock vote **"FOR"** the issuance of Pacific Ethanol common stock and non-voting common stock in connection with the merger; vote **"FOR"** the amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock and vote **"FOR"** the adjournment of the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve all matters brought before the meeting; and that holders of Pacific Ethanol Series B Preferred Stock, vote **"FOR"** the agreement not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations.

For a more complete description of Pacific Ethanol's reasons for the merger and the recommendations of the Pacific Ethanol board of directors, see "The Proposed Merger—Recommendation of the Pacific Ethanol Board and its Reasons for the Merger" beginning on page 103.

Recommendation of the Aventine Board

After careful consideration, the Aventine Board unanimously recommends that holders of Aventine common stock vote **"FOR"** the adoption of the merger agreement and approval of the merger and vote **"FOR"** the adjournment of the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt the merger agreement and approve the merger.

For a more complete description of Aventine's reasons for the merger and the recommendation of the Aventine Board, see "The Proposed Merger—Recommendation of the Aventine Board and its Reasons for the Merger" beginning on page 114.

Opinion of Craig-Hallum Capital Group LLC

In connection with the transaction, the Pacific Ethanol Board received a written opinion from Craig-Hallum Capital Group LLC (sometimes referred to as Craig-Hallum), as to the fairness, from a financial point of view and as of the date of its opinion, of the exchange ratio in the transaction to Pacific Ethanol. The full text of Craig-Hallum's written opinion, dated December 29, 2014, is attached to this proxy statement as *Annex D*. Holders of Pacific Ethanol common stock and Series B Preferred Stock are encouraged to read this opinion carefully in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken. Craig-Hallum did not act as a financial advisor to any party to the transaction. **Craig-Hallum's opinion was provided to the Pacific Ethanol Board in connection with, and for the purposes of, its evaluation of the exchange ratio in the transaction from a financial point of view, does not address the merits of the underlying decision by Pacific Ethanol to engage in the transaction or the relative merits of any alternatives discussed by the Pacific Ethanol Board, does not constitute an opinion with respect to Pacific Ethanol's underlying business decision to effect the transaction, any legal, tax or accounting issues concerning the transaction, or any terms of the transaction (other than the exchange ratio) and does not constitute a recommendation as to any action Pacific Ethanol or any holder of Pacific Ethanol common stock or Series B Preferred Stock should take in connection with the transaction or any aspect thereof.**

For a more complete description of Craig-Hallum's opinion, see "The Proposed Merger—Opinion of Craig-Hallum Capital Group LLC" beginning on page 105. See also *Annex D* to this joint proxy statement/prospectus.

Opinion of Aventine Financial Advisor

Duff & Phelps, LLC (sometimes referred to as Duff & Phelps), delivered an opinion to Aventine's board of directors that, subject to and based upon the assumptions and limiting conditions set forth therein, as of the date of its opinion, the exchange ratio payable to Aventine's stockholders electing Pacific Ethanol common stock in the merger was fair from a financial point of view to such stockholders of Aventine. The full text of Duff & Phelps' written opinion, dated December 30, 2014, is attached as *Annex E* to this joint proxy statement/prospectus. Holders of shares of Aventine common stock are urged to read the opinion carefully and in its entirety. Duff & Phelps' opinion does not and shall not constitute a recommendation to any holders of shares of Aventine common stock as to how they should vote in connection with the merger. This summary of Duff & Phelps' opinion contained in this joint proxy statement/prospectus is qualified in its entirety by reference to the full text of the opinion.

For a more complete description of the Duff & Phelps opinion, see "The Proposed Merger—Opinion of Financial Advisor to the Aventine Board" beginning on page 117. See also *Annex E* to this joint proxy statement/prospectus.

Interests of Certain Aventine Directors and Executive Officers in the Merger

You should be aware that some Aventine directors and executive officers may have interests in the transaction that may be different from, or in addition to, the interests of stockholders of Aventine.

For a further discussion of interests of certain directors and executive officers in the merger, see "Additional Interests of Certain of Aventine Directors and Executive Officers in the Merger" beginning on page 130.

Material United States Federal Income Tax Consequences of the Merger

Pacific Ethanol and Aventine intend for the merger to qualify as a reorganization within the meaning of Section 368(a) of the Code for United States federal income tax purposes. Assuming the merger does qualify as a reorganization, Aventine stockholders generally will not recognize gain or loss for United States federal income tax purposes upon the receipt of Pacific Ethanol common stock and/or non-voting common stock in the merger, except that an Aventine stockholder will recognize gain or loss with respect to any cash received in lieu of a fractional share of Pacific Ethanol common stock and/or non-voting common stock. In order to maintain the tax free treatment of the merger, Pacific Ethanol is limited in the amount of Pacific Ethanol non-voting common stock that may be issued to Aventine common stockholders as merger consideration. Aventine stockholders who exercise their appraisal rights will recognize gain or loss with respect to cash received in exchange for their Aventine common stock.

Tax matters are very complicated and the tax consequences of the merger to you, if you are an Aventine stockholder, will depend upon the facts of your situation. In addition, you may be subject to state, local or foreign tax laws that are not addressed in this joint proxy statement/prospectus. You are urged to consult with your own tax advisors for a full understanding of the tax consequences of the merger to you.

For a more complete description of the material United States federal income tax consequences of the merger, see "The Proposed Merger—Material United States Federal Income Tax Consequences of the Merger" beginning on page 122.

Forward-Looking Financial Information

Pacific Ethanol prepared forward-looking financial information for years 2015 through 2019 for each of Pacific Ethanol and Aventine. Aventine also prepared forward-looking financial information for years 2015 through 2019 for each of Pacific Ethanol and Aventine. The forward-looking financial information prepared by each of the companies is on a stand-alone basis and is not intended to be added together, and adding together the forward-looking financial information for the two companies would not represent the results the combined company will achieve if the merger is completed and does not represent forward-looking financial information for the combined company. The following forward-looking financial information was not prepared with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to forward-looking financial information.

Pacific Ethanol Forward-Looking Financial Information

Pacific Ethanol does not as a matter of course make public projections as to future earnings or other results of operations (other than providing estimates for certain financial items on a near-term basis in its regular earnings press releases and other communications with investors) or detailed business plans or strategies. However, for internal purposes and in connection with the process leading to the merger agreement, the management of Pacific Ethanol prepared certain projections of future financial and operating performance for each of Pacific Ethanol and Aventine and for the combined company for the years 2015 through 2019.

Pacific Ethanol and Aventine prepared projections that are included in this joint proxy statement/prospectus because these projections were provided to Craig-Hallum in connection with Craig-Hallum's opinion as to the fairness of the exchange ratio in the transaction to Pacific Ethanol. In preparing the projections for Craig Hallum, management of both Pacific Ethanol and Aventine used assumptions for crush margins (the differential between the price per gallon of ethanol and the price per gallon equivalent for corn) generally consistent with industry averages for 2014 in order that Craig-Hallum could evaluate the relative projected performance of both companies on a common basis. Pacific Ethanol viewed those assumptions made in preparing these projections as being reasonable for the purposes they were being used. Further, both Pacific Ethanol's and Aventine's projections took into account the respective management's views of the likely future operating results of their respective plants, given recent results and expected effects of substantial recent capital investments in the plants.

The projections provided to Craig-Hallum were not prepared with a view toward public disclosure and the inclusion of summary projections herein should not be regarded as an indication that either Pacific Ethanol or Aventine considered, or now considers, these projections to be predictive of actual future results and readers of this joint proxy statement/prospectus are cautioned not to rely on this forward-looking financial information.

Neither Pacific Ethanol's nor Aventine's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the forward-looking financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the forward-looking financial information.

The following table presents a summary of the projections for Pacific Ethanol that were provided to Craig-Hallum:

	Pacific Ethanol ***(In millions)***				
	2015E	2016E	2017E	2018E	2019E
Adjusted EBITDA(1)	$ 116.9	$ 122.4	$ 129.1	$ 131.3	$ 134.2
Net income available to common stockholders	$ 66.8	$ 66.5	$ 70.2	$ 70.4	$ 70.9

(1) Adjusted EBITDA is defined as earnings before interest, provision for income taxes, depreciation and amortization, and fair value adjustments. Adjusted EBITDA is a non-GAAP financial measure, as it excludes amounts, or is subject to adjustments that effectively exclude amounts, included in the most directly comparable measure calculated and presented in accordance with GAAP in financial statements. Adjusted EBITDA was used by management to provide additional information in order to provide them with an alternative method for assessing Pacific Ethanol's and Aventine's financial condition and operating results. These measures are not in accordance with, or a substitute for, GAAP, and may be different from or inconsistent with non-GAAP financial measures used by other companies.

Management of Pacific Ethanol also prepared certain projections for its own internal use and for the use of the Pacific Ethanol Board (sometimes referred to as the Pacific Ethanol Board Projections). The Pacific Ethanol Board Projections forecasted performance of Pacific Ethanol on a stand-alone basis, Aventine on a stand-alone basis, and the performance of the combined company following the merger. In preparing the Pacific Ethanol Board Projections, management of Pacific Ethanol used assumptions based on average crush margins for the period beginning January 1, 2012 and ending November 30, 2014, which covered a period of time that included both historically high and low crush margins. These crush margin assumptions were approximately $0.35 per gallon lower than the crush margin assumptions used in the projections for Craig-Hallum summarized above. Management elected to use these lower crush margin assumptions because the Pacific Ethanol Board Projections were used for different purposes than the projections provided to Craig-Hallum. To better assess potential liquidity needs of the combined company, management of Pacific Ethanol believed that it was important to make conservative crush margin assumptions based on multi-year historical averages. These assumptions were viewed by Pacific Ethanol as being reasonable for the purposes they were being used.

In preparing the projections for Aventine on a stand-alone basis and for the combined company, Pacific Ethanol's management also took into account their view of the likely future operating results of Aventine's ethanol plants, given recent results and expected effects of substantial recent capital investments in the plants. In preparing the projections for the combined company, Pacific Ethanol's management also took into account significant planned and potential capital expenditures in 2015 and certain cost synergies expected to be realized following the closing of the merger.

The Pacific Ethanol Board Projections were not prepared with a view toward public disclosure and the inclusion of summary projections herein should not be regarded as an indication that Pacific Ethanol considered, or now considers, these projections to be predictive of actual future results and readers of this joint proxy statement/prospectus are cautioned not to rely on this forward-looking financial information.

Neither Pacific Ethanol's nor Aventine's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the forward-looking financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the forward-looking financial information.

The following table presents a summary of the projections for Pacific Ethanol on a stand-alone basis, for Aventine on a stand-along basis, and for the combined company that were prepared by the management of Pacific Ethanol and provided to the Pacific Ethanol Board:

	Pacific Ethanol (In millions)				
	2015E	2016E	2017E	2018E	2019E
Adjusted EBITDA(1)	$ 44.3	$ 49.3	$ 56.0	$ 58.2	$ 61.0
Net income available to common stockholders	$ 17.0	$ 16.2	$ 21.1	$ 22.1	$ 23.3
Free cash flow(2)	$ (11.8)	$ 25.5	$ 39.3	$ 40.3	$ 41.1

	Aventine (In millions)				
	2015E	2016E	2017E	2018E	2019E
Adjusted EBITDA(1)	$ 48.0	$ 60.4	$ 65.2	$ 68.6	$ 70.8
Net income	$ 16.2	$ 24.3	$ 27.6	$ 29.9	$ 31.2
Free cash flow(2)	$ (2.2)	$ 40.9	$ 44.3	$ 46.7	$ 48.2

	Combined (In millions)				
	2015E	2016E	2017E	2018E	2019E
Adjusted EBITDA(1)	$ 95.2	$ 119.4	$ 130.8	$ 136.5	$ 141.4
Net income	$ 40.7	$ 54.9	$ 63.0	$ 66.3	$ 68.9
Free cash flow(2)	$ (12.0)	$ 73.2	$ 90.3	$ 93.7	$ 96.1

(1) Adjusted EBITDA is defined as earnings before interest, provision for income taxes, depreciation and amortization, and fair value adjustments. Adjusted EBITDA is a non-GAAP financial measure, as it excludes amounts, or is subject to adjustments that effectively exclude amounts, included in the most directly comparable measure calculated and presented in accordance with GAAP in financial statements. Adjusted EBITDA was used by management to provide additional information in order to provide them with an alternative method for assessing Pacific Ethanol's and Aventine's financial condition and operating results. These measures are not in accordance with, or a substitute for, GAAP, and may be different from or inconsistent with non-GAAP financial measures used by other companies.

(2) Free cash flow is defined as earnings before interest and depreciation and amortization, less projected capital expenditures plus adjustment for increase (decrease) in working capital. Free cash flow is a non-GAAP liquidity measure, as it includes/excludes certain items from GAAP cash flows from operations, investing and financing activities. Free cash flow was used by management to provide additional information with respect to available cash and liquidity to the company. These measures are not in accordance with, or a substitute for, GAAP, and may be different from or inconsistent with non-GAAP financial measures used by other companies.

The assumptions and estimates underlying forward-looking information for Pacific Ethanol and Aventine are inherently uncertain and, though considered reasonable by Pacific Ethanol's management as of the date of their preparation, are subject to a wide variety of significant business, economic, and competitive risks and uncertainties that could cause actual results to differ materially from those contained therein, chief among them being the price of corn and other feedstocks and the price of ethanol and co-products. Other factors include, among others, the following: the ultimate timing, outcome and results of integrating the operations of Pacific Ethanol and Aventine and the degree to which Pacific Ethanol's operating efficiencies are applied to Aventine products and services; changes in the demand for or price of oil and/or natural gas; changes in government regulations and regulatory requirements, particularly those matters described in the sections entitled "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 49, "Risk Factors" beginning on page 32,Part I, Item IA in Pacific Ethanol's 2013 Annual Report on Form 10-K and Part II, Item 1A in Pacific Ethanol's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014. The Pacific Ethanol projections for Pacific Ethanol, the Pacific Ethanol projections for Aventine and the Pacific Ethanol projections for the combined company also reflect assumptions as to certain business decisions that are subject to change. Accordingly, there can be no assurance that the forward-looking results are indicative of the future performance of Pacific Ethanol or Aventine or that actual results will not differ materially from those presented in the Pacific Ethanol projections for Pacific Ethanol, the Pacific Ethanol projections for Aventine or the Pacific Ethanol projections for the combined company. Inclusion of the Pacific Ethanol projections for Pacific Ethanol, the Pacific Ethanol projections for Aventine and the Pacific Ethanol projections for the combined company in this joint proxy statement/prospectus should not be regarded as a representation by any person that the results contained in the forward-looking financial information will be achieved.

Pacific Ethanol does not intend to update or otherwise revise the forward-looking financial information to reflect circumstances existing since their preparation or to reflect the occurrence of unanticipated events, even in the event that any or all of the underlying assumptions are shown to be in error. Furthermore, Pacific Ethanol does not intend to update or revise the forward-looking financial information in this joint proxy statement/prospectus to reflect changes in general economic or industry conditions.

The information concerning forward-looking financial information provided by Pacific Ethanol is not included in this joint proxy statement/prospectus in order to induce any stockholder to vote in favor of the stock issuance or to acquire securities of Pacific Ethanol.

Aventine Forward-Looking Financial Information

Aventine does not as a matter of course make public projections as to future earnings or other results of operations other than providing estimates for certain financial items on a near-term basis on its regular earnings calls. However, for internal purposes and in connection with the process leading to the merger agreement, the management of Aventine prepared certain projections of future financial and operating performance of each of Aventine and Pacific Ethanol for the years 2015 through 2019. Aventine prepared its Pacific Ethanol projections based on publicly available information. These projections are included in this joint proxy statement/prospectus because Aventine provided such projections to its financial advisor, Duff & Phelps, in connection with the merger. Aventine discussed these projections with the Aventine Board in connection with Duff & Phelps' presentation during the special meetings of the Aventine Board held on December 30, 2014.

The following prospective financial information was not prepared with a view toward public disclosure or with a view toward complying with GAAP with respect to prospective financial information. In the view of Aventine's management, the information was prepared on a reasonable basis and reflected the best then currently available estimates and judgments at the time of its preparation, and presented at the time of its preparation, to the best of Aventine management's knowledge and belief, reasonable projections of the future financial performance of Aventine and Pacific Ethanol. However, these projections have not been updated, are not fact and should not be relied upon as being indicative of future results, and readers of this joint proxy statement/prospectus are cautioned not to rely on this forward-looking financial information.

Neither Aventine's nor Pacific Ethanol's independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the forward-looking financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the forward looking financial information.

The following tables present a summary of the Aventine projections and the Aventine projections for Pacific Ethanol.

Aventine Renewable Energy Holdings, Inc.

(In millions)

	Year Ended December 31,				
	2015E	2016E	2017E	2018E	2019E
Revenue	$ 680	$ 720	$ 721	$ 724	$ 727
EBITDA(1)	$ 34	$ 55	$ 60	$ 61	$ 62

Pacific Ethanol, Inc.

(In millions)

	Year Ended December 31,				
	2015E	2016E	2017E	2018E	2019E
Revenue	$ 904	$ 1,039	$ 1,146	$ 1,277	$ 1,436
EBITDA(1)	$ 14	$ 36	$ 43	$ 45	$ 48

(1) EBITDA is defined as earnings before interest, provision for income taxes and depreciation and amortization. EBITDA is a non-GAAP financial measure, as it excludes amounts, or is subject to adjustments that effectively exclude amounts, included in the most directly comparable measure calculated and presented in accordance with GAAP in financial statements. EBITDA was used by management to provide additional information in order to provide them with an alternative method for assessing Aventine's and Pacific Ethanol's financial condition and operating results. These measures are not in accordance with, or a substitute for, GAAP, and may be different from or inconsistent with non-GAAP financial measures used by other companies.

The assumptions and estimates underlying forward-looking information for Aventine are inherently uncertain and, though considered reasonable by Aventine's management as of the date of their preparation, are subject to a wide variety of significant business, economic, and competitive risks and uncertainties that could cause actual results to differ materially from those contained therein, chief among them being the price of corn and other feedstocks and the price of ethanol and co-products. Other factors include, among others, the following: changes in the demand for or price of oil and/or natural gas; changes in government regulations and regulatory requirements, particularly those matters described in the sections entitled "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 49 and "Risk Factors" beginning on page 32. The Aventine projections also reflect assumptions as to certain business decisions that are subject to change. Accordingly, there can be no assurance that the forward-looking results are indicative of the future performance of Aventine or that actual results will not differ materially from those presented in the Aventine projections. Inclusion of the Aventine projections in this joint proxy statement/prospectus should not be regarded as a representation by any person that the results contained in the forward-looking financial information will be achieved.

Aventine does not intend to update or otherwise revise the forward-looking financial information to reflect circumstances existing since their preparation or to reflect the occurrence of unanticipated events, even in the event that any or all of the underlying assumptions are shown to be in error. Furthermore, Aventine does not intend to update or revise the forward-looking financial information to reflect changes in general economic or industry conditions.

The information concerning forward-looking financial information provided by Aventine is not included in this joint proxy statement/prospectus in order to induce any stockholder to vote in favor of the merger agreement.

Accounting Treatment of the Merger

The merger will be accounted for as an acquisition by Pacific Ethanol of Aventine under the acquisition method of accounting according to United States generally accepted accounting principles.

Regulatory Matters

Under the Hart-Scott-Rodino Antitrust Improvements Act (sometimes referred to as the HSR Act), and the rules promulgated thereunder by the Federal Trade Commission (sometimes referred to as the FTC), the merger cannot be completed until each of Pacific Ethanol and Aventine files a notification and report form with the FTC and the Antitrust Division of the Department of Justice (sometimes referred to as the DOJ) under the HSR Act and the applicable waiting period has expired or been terminated. Each of Pacific Ethanol and Aventine filed an initial notification and report form with the FTC and the DOJ on February 3, 2015.

These filings and approvals are more fully described in "The Proposed Merger—Regulatory Matters Relating to the Merger" beginning on page 126.

Conditions to Completion of the Merger

Pacific Ethanol and Aventine expect to complete the merger after all the conditions to the merger in the merger agreement are satisfied or waived, including after the receipt of stockholder approvals at their respective stockholder meetings. In addition to obtaining such stockholder approvals, each of the other closing conditions set forth in the merger agreement must be satisfied. Pacific Ethanol and Aventine currently expect to complete the merger during the second quarter of 2015. However, it is possible that factors outside of either company's control could cause the merger to be completed at a later time or not at all.

The merger agreement provides that certain of these conditions may be waived, in whole or in part, by Pacific Ethanol or Aventine, to the extent legally allowed. Neither Pacific Ethanol nor Aventine currently expects to waive any material condition to the completion of the merger. If either Pacific Ethanol or Aventine determines to waive any condition to the merger that would result in a material and adverse change in the terms of the merger to Pacific Ethanol or Aventine stockholders (including any change in the tax consequences of the transaction to Aventine stockholders), proxies would be resolicited from the Pacific Ethanol or Aventine stockholders, as applicable.

For a more complete discussion of the conditions to the merger, see "The Merger Agreement and Related Agreements—Conditions to Completion of the Merger" beginning on page 145.

No Solicitation of Other Offers

The merger agreement contains certain restrictions on the ability of Aventine to solicit or engage in discussions or negotiations with a third party with respect to a proposal to acquire Aventine's equity or assets. Notwithstanding these restrictions, the merger agreement provides that under specified circumstances, if Aventine receives an unsolicited bona fide proposal from a third party to acquire a significant interest in it that its board of directors determines in good faith is reasonably likely to lead to a proposal that is superior to the merger, Aventine may furnish nonpublic information to that third party and engage in negotiations regarding an acquisition proposal with that third party.

For a discussion of the prohibition on solicitation of acquisition proposals from third parties, see "The Merger Agreement and Related Agreements—Non-Solicitation; Change in Recommendation" beginning on page 143.

Termination

Pacific Ethanol and Aventine may mutually agree at any time prior to the completion of the merger (including after stockholder approval) to terminate the merger agreement and abandon the merger. In addition, the agreement may be terminated by either Pacific Ethanol or Aventine under certain circumstances or upon the occurrence of certain events.

For a discussion of termination provisions of the merger agreement, see "The Merger Agreement and Related Agreements—Termination" beginning on page 148.

Termination Fees and Expenses

Aventine is required to pay a termination fee of $5,982,000 to Pacific Ethanol in the event the merger agreement is terminated by Aventine in connection with the entry into an agreement for a superior proposal or in the event the merger agreement is terminated by Pacific Ethanol if prior to the time that the Aventine stockholder vote approving the merger has been obtained (i) Aventine's board of directors makes a change in recommendation in favor of the merger with Pacific Ethanol, (ii) Aventine's board of directors approves or recommends to its stockholders a takeover proposal from someone other than Pacific Ethanol, (iii) a tender offer or exchange offer for shares of Aventine's common stock that constitutes a takeover proposal is commenced by someone other than Pacific Ethanol and the board of directors of Aventine recommends that holders of Aventine common stock tender their shares in such tender offer or exchange offer or the board of directors of Aventine fails to recommend that holders of Aventine common stock reject such tender offer or exchange offer, or (iv) there has been a material breach by Aventine of its obligations under the merger agreement to call a special meeting of the Aventine stockholders for the purpose of adopting the merger agreement and recommending that all Aventine stockholders vote to approve the merger or the non-solicitation provisions of the merger agreement.

Pacific Ethanol is required to pay a termination fee of $5,982,000 to Aventine if there shall occur an event, or Pacific Ethanol becomes aware of information not known by Pacific Ethanol as of December 28, 2014 which, upon the occurrence of such event or upon Pacific Ethanol learning of such information, that would be reasonably viewed as either resulting in, or substantially increasing the likelihood of, a material adverse result in any litigation matter between Aventine and Aurora Cooperative Elevator Company (sometimes referred to as the Aurora Coop) existing as of December 28, 2014 (sometimes referred to as the Aurora Coop Litigation).

In the event the merger agreement is terminated by Aventine or Pacific Ethanol as a result of the failure of Pacific Ethanol's stockholders to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock, the amendment of Pacific Ethanol's Certificate of Incorporation, and the agreement by the holders of Pacific Ethanol Series B Preferred Stock not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations, Pacific Ethanol must reimburse Aventine for fees or expenses incurred by Aventine in connection with the proposed merger up to a maximum amount of $1,994,000.

See "The Merger Agreement and Related Agreements—Termination Fee and Expenses" and "—Effect of Termination," beginning on pages 149 and 150, respectively.

Stockholders Agreements

In order to induce Pacific Ethanol to enter into the merger agreement, certain holders of outstanding shares of Aventine common stock have entered into stockholders agreements with Pacific Ethanol, pursuant to which they have agreed, solely in their capacity as stockholders of Aventine, to vote their pro-rata share of 51% of Aventine's issued and outstanding common stock in favor of the merger and adoption of the merger agreement and, with respect to all other proposals submitted to the Aventine stockholders, which would reasonably be expected to prevent or materially delay the consummation of the merger, in such a manner as directed by Pacific Ethanol. The stockholders agreements also subject the stockholders to certain market stand-off restrictions with respect to the shares of Pacific Ethanol common stock and/or non-voting common stock received in the merger. In connection with entry into the stockholders agreements, the significant stockholders agreed to exercise any drag-along rights with respect to Aventine stockholders held by such significant stockholders. Copies of the stockholders agreements are attached to this joint proxy statement/prospectus as *Annex C-1* and *Annex C-2*. See "The Merger Agreement and Related Agreements—Stockholders Agreements" beginning on page 150.

Shares Beneficially Owned by Directors and Executive Officers of Pacific Ethanol and Aventine

Pacific Ethanol's directors and executive officers beneficially owned [●] shares of Pacific Ethanol common stock on [●], 2015, the record date for the special meeting. These shares represent in total [●]% of the total voting power of Pacific Ethanol's voting securities outstanding and entitled to vote as of the record date. Pacific Ethanol currently expects that Pacific Ethanol's directors and executive officers will vote their shares **"FOR"** all the proposals to be voted on at the special meeting, although none of them has entered into any agreements obligating them to do so.

Aventine's directors and executive officers did not beneficially own any shares of Aventine common stock on [●], 2015, the record date for the special meeting.

Appraisal Rights

Under Delaware law, Pacific Ethanol stockholders are not entitled to appraisal rights in connection with the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement. Aventine stockholders of record have appraisal rights under the Delaware General Corporation Law (sometimes referred to as the DGCL) in connection with the merger. To the extent the drag-along is exercised pursuant to the Aventine Stockholders Agreement, the Aventine stockholders subject to the drag-along right have waived their respective appraisal rights arising out of a drag-along transaction. For further discussion of appraisal rights, see "The Proposed Merger—Appraisal Rights" beginning on page 125.

Comparison of the Rights of Pacific Ethanol and Aventine Stockholders

The rights of Aventine stockholders as Pacific Ethanol stockholders after the merger will be governed by Pacific Ethanol's Certificate of Incorporation and bylaws, each as amended, and the laws of the State of Delaware. Those rights differ from the rights of Aventine stockholders under Aventine's Certificate of Incorporation and bylaws. See "Comparison of Rights of Pacific Ethanol and Aventine Stockholders" beginning on page 169.

SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA OF PACIFIC ETHANOL

The selected historical consolidated financial data of Pacific Ethanol for each of the years ended December 31, 2013 and 2012, and as of December 31, 2013 and 2012 have been derived from Pacific Ethanol's audited consolidated financial statements and related notes contained in its Annual Report on Form 10-K for the year ended December 31, 2013, which is incorporated by reference in this joint proxy statement/prospectus. The selected historical consolidated financial data for the years ended December 31, 2011, 2010 and 2009 and as of December 31, 2012, 2011, 2010, and 2009 have been derived from Pacific Ethanol's audited consolidated financial statements and related notes, which have not been incorporated by reference in this joint proxy statement/prospectus. The selected historical consolidated financial data of Pacific Ethanol for the nine months ended September 30, 2014 and 2013 and as of September 30, 2014 have been derived from Pacific Ethanol's unaudited consolidated financial statements and related notes contained in its Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014, which is incorporated by reference in this joint proxy statement/prospectus. The information set forth below is only a summary and is not necessarily indicative of the results of future operations of Pacific Ethanol or the combined company, and you should read the following information together with Pacific Ethanol's audited consolidated financial statements, the related notes and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in Pacific Ethanol's Annual Report on Form 10-K for the year ended December 31, 2013, and Pacific Ethanol's unaudited consolidated financial statements, the related notes and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in Pacific Ethanol's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014, which are incorporated by reference in this joint proxy statement/prospectus. For more information, see the section entitled "Where You Can Find More Information" beginning on page 183.

	As of and for the Nine Months Ended September 30,		As of and for the Years Ended December 31,				
	2014	**2013**	**2013**	**2012**	**2011**	**2010**	**2009**
In thousands, except per share data							
Consolidated Statements of Operations Data:							
Net Sales	$ 851,260	$ 693,147	$ 908,437	$ 816,044	$ 901,188	$ 328,332	$ 316,560
Cost of goods sold	$ 761,153	$ 681,813	$ 875,507	$ 835,568	$ 881,789	$ 329,143	$ 338,607
Operating Income (loss)	$ 90,107	$ 11,334	$ 32,930	$ (19,524)	$ 19,399	$ (811)	$ (22,047)
Gain from bankruptcy exit	$ –	$ –	$ –	$ –	$ –	$ 119,408	$ –
Asset impairments	$ –	$ –	$ –	$ –	$ –	$ –	$ (252,388)
Consolidated net income (loss)	$ 12,897	$ (10,907)	$ (1,162)	$ (43,355)	$ (4,023)	$ 69,483	$ (308,705)
Noncontrolling interests	$ (4,126)	$ 1,533	$ 381	$ 24,298	$ 7,097	$ 4,409	$ 552
Income (loss) attributed to PEI	$ 8,771	$ (9,374)	$ (781)	$ (19,057)	$ 3,074	$ 73,892	$ (308,153)
Preferred stock dividends	$ (946)	$ (946)	$ (1,265)	$ (1,268)	$ (1,265)	$ (2,847)	$ (3,202)
Income (loss) available to common stockholders	$ 7,825	$ (10,320)	$ (2,046)	$ (20,325)	$ 1,809	$ 71,045	$ (311,355)
Net income (loss) per share Basic	$ 0.40	$ (0.91)	$ (0.17)	$ (2.81)	$ 0.80	$ 101.35	$ (572.34)
Net income (loss) per share Diluted	$ 0.35	$ (0.91)	$ (0.17)	$ (2.81)	$ 0.80	$ 83.48	$ (572.34)
Shares used in per share calculation							
Basic	19,713	11,380	12,264	7,224	2,249	701	544
Diluted	22,073	11,380	12,264	7,224	2,266	893	544
Dividends per share Declared and Paid	$ –	$ –	$ –	$ –	$ –	$ –	$ –
Consolidated Balance Sheet Data							
Cash and equivalents	$ 56,256	$ 9,175	$ 5,151	$ 7,586	$ 8,914	$ 8,736	$ 17,545
Total assets	$ 280,132	$ 226,469	$ 241,049	$ 214,963	$ 232,476	$ 234,083	$ 298,819
Long-term debt (current and noncurrent)	$ 30,475	$ 110,967	$ 99,158	$ 121,282	$ 94,439	$ 123,089	$ 90,103
Total liabilities	$ 67,949	$ 146,314	$ 146,148	$ 142,056	$ 113,212	$ 146,268	$ 356,617
Total Stockholders' equity	$ 212,183	$ 80,155	$ 94,901	$ 72,907	$ 119,264	$ 87,815	$ (57,798)

SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA OF AVENTINE

The selected historical consolidated financial data of Aventine for each of the years ended December 31, 2013, 2012 and 2011 have been derived from Aventine's 2013, 2012 and 2011 audited consolidated financial statements and related notes, included herein, which are incorporated by reference in this joint proxy statement/prospectus. The selected historical consolidated financial data for the years ended December 31, 2010 and 2009 have been derived from Aventine's unaudited consolidated financial statements for such periods. The selected historical consolidated financial data of Aventine for the nine months ended September 30, 2014 and 2013 and as of September 30, 2014 have been derived from Aventine's unaudited condensed consolidated financial statements and related notes. The information set forth below is only a summary and is not necessarily indicative of the results of future operations of Aventine or the combined company, and you should read the following information together with Aventine's audited consolidated financial statements, the related notes and the section entitled "The Companies—Aventine Renewable Energy Holdings, Inc.—Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in this joint proxy statement/prospectus.

	Nine Months Ended September 30,		Year Ended December 31,				
	2014	2013	2013	2012	2011	2010	2009
	(in thousands of dollars, other than price per gallon sold)						
Statement of Operations data:							
Total sales	$ 416,593	$ 364,373	$ 480,266	$ 479,710	$ 639,798	$ 446,442	$ 594,623
Costs and expenses	370,421	375,779	483,628	530,716	630,333	452,980	612,277
Operating income (loss)	46,172	(11,406)	(3,362)	(51,006)	9,465	(6,538)	(17,654)
Interest expense	11,342	8,537	12,942	21,136	24,040	9,651	14,697
Loss (gain) on derivatives	13,298	869	5,454	(681)	4,424	(633)	(1,216)
Reorganization costs	–	–	–	–	–	267,722	32,433
Other expense (income)	2,087	(6,058)	(6,296)	(6,878)	8,474	920	(10,857)
Income tax expense (benefit)	–	–	–	9	536	(655)	(8,956)
Net income (loss) – continuing operations	19,445	(14,754)	(15,462)	(64,592)	(28,009)	(283,543)	(43,755)
Net loss - discontinued operations	(607)	(11,186)	(58,843)	(19,268)	(8,419)	(8,214)	(2,505)
Net income (loss)	$ 18,838	$ (25,940)	$ (74,305)	$ (83,860)	$ (36,428)	$ (291,757)	$ (46,260)
Basic Earnings per Share: (unaudited)							
Income (loss) – continuing operations per share	$ 8.26	$ (6.26)	$ (6.57)	$ (90.34)	$ (154.80)	$ (985.43)	$ (50.92)
Income (loss) – discontinued operations per share	(0.26)	(4.75)	(24.99)	(26.95)	(46.53)	(28.55)	(2.91)
Net Income (loss) per share - Basic	$ 8.00	$ (11.01)	$ (31.55)	$ (117.29)	$ (201.33)	$ (1,013.97)	$ (53.83)
Diluted Earnings per Share: (unaudited)							
Income (loss) – continuing operations per share	$ 1.37	$ (6.26)	$ (6.57)	$ (90.34)	$ (154.80)	$ (985.43)	$ (50.92)
Income (loss) – discontinued operations per share	(0.04)	(4.75)	(24.99)	(26.95)	(46.53)	(28.55)	(2.91)
Net Income (loss) per share - Diluted	$ 1.33	$ (11.01)	$ (31.55)	$ (117.29)	$ (201.33)	$ (1,013.97)	$ (53.83)
Shares used in Earnings per Share calculation:							
Basic (1)	2,355	2,355	2,355	715	181	288	859
Diluted (1)	14,208	2,355	2,355	715	181	288	859
Balance Sheet data:							
Current assets	$ 96,256	$ 86,324	$ 128,111	$ 59,381	$ 103,379	$ 270,187	$ 100,888
Current liabilities	25,576	23,394	27,757	20,508	33,335	197,313	62,752
Working capital	70,680	62,930	100,354	38,873	70,044	72,874	38,136
Total assets	313,017	383,422	344,210	367,167	421,200	593,978	712,696
Total liabilities	261,507	298,934	307,563	259,557	255,557	392,320	445,164
Total equity	$ 51,510	$ 84,488	$ 36,647	$ 107,610	$ 165,643	$ 201,658	$ 267,532

(1) Weighted average shares outstanding have been adjusted to reflect the 50 for 1 reverse stock split that occurred as part of the Company's capital restructuring in September of 2012.

SELECTED UNAUDITED PRO FORMA COMBINED CONDENSED FINANCIAL INFORMATION

The following selected unaudited pro forma combined condensed financial information has been prepared to illustrate the effect of the merger. The unaudited pro forma combined condensed balance sheet information gives effect to the merger as if it occurred on September 30, 2014. The unaudited pro forma combined condensed statements of operations information for the nine months ended September 30, 2014 and the year ended December 31, 2013 gives effect to the merger as if it occurred on January 1, 2013.

This unaudited pro forma combined condensed financial information is for informational purposes only. It does not purport to indicate the results that would actually have been obtained had the merger been completed on the assumed date or for the periods presented. A final determination of the fair value of Aventine's assets and liabilities will be based on the actual net tangible and intangible assets and liabilities that exist as of the date of closing of the merger and, therefore, cannot be made prior to that date. Additionally, the value of the portion of the merger consideration to be paid in shares of Pacific Ethanol common stock will be determined based on the trading price of Pacific Ethanol's common stock at the time of the closing of the merger.

This unaudited pro forma combined condensed financial information should not be considered predictive of results that may be realized in the future. During the periods covered by the pro forma financial statements, Pacific Ethanol had one and Aventine had two idled plants. In addition, Aventine has made recent improvements in plant and logistical assets, the full impact of which was not realized during the periods covered. For a discussion of the factors the Pacific Ethanol Board of Directors considered in evaluating the Aventine's historical financial information, see "The Proposed Merger—Recommendation of the Pacific Ethanol Board and its Reasons for the Merger" beginning on page 103.

	Nine Months Ended September 30, 2014	Year Ended December 31, 2013
Pro Forma Statements of Operations Information (in thousands, except per share amounts)		
Revenue	$ 1,267,853	$ 1,388,703
Operating income	109,766	6,198
Net income (loss) attributed to Pacific Ethanol	9,237	(31,510)
Net income (loss) attributable to common stockholders	8,291	(32,415)
Net income (loss) attributable to common stockholders per share—basic	$ 0.22	$ (1.08)
Net income (loss) attributable to common stockholders per share—diluted	$ 0.21	$ (1.08)

	September 30, 2014
Pro Forma Balance Sheet Information (in thousands)	
Total current assets	$ 216,027
Property and equipment, net	462,571
Total assets	687,189
Total liabilities	295,045
Total stockholders' equity	$ 392,144

EQUIVALENT AND COMPARATIVE PER SHARE INFORMATION

The tables below reflect:

- the historical net income (loss) from continuing operations, book value per share and cash dividends per share of Pacific Ethanol common stock and the historical net income (loss) from continuing operations, book value per share and cash dividends per share of Aventine common stock;

- the unaudited pro forma combined Pacific Ethanol and Aventine net income (loss) from continuing operations after giving effect to the merger on a purchase basis if the merger had been consummated on January 1, 2013; book value per share, and cash dividends after giving effect to the merger on a purchase basis if the merger had been consummated on September 30, 2014; and

- the unaudited pro forma combined per Aventine equivalent share data net income (loss) from continuing operations, book value per share and cash dividends per share calculated by multiplying the unaudited pro forma combined data by the exchange ratio of 1.25, which is the Pacific Ethanol share which would be received for each share of Aventine common stock pursuant to the merger agreement.

The following tables should be read in conjunction with the historical audited consolidated financial statements and accompanying notes of each of Pacific Ethanol and Aventine which are included elsewhere in this joint proxy statement/prospectus.

The unaudited pro forma data are presented for illustrative purposes only and are not necessarily indicative of actual or future financial position or results of operation that would have been realized if the proposed mergers had been completed as of the date indicated or will be realized upon completion of the proposed mergers. See the section entitled "Unaudited Pro Forma Combined Condensed Financial Statements" beginning on page 152 of this joint proxy statement/prospectus.

	As of and for the year ended December 31, 2013	As of and for the nine month period ended September 30, 2014
Pacific Ethanol—Historical		
Basic income (loss) per share	$ (0.17)	$ 0.40
Diluted income (loss) per share	$ (0.17)	$ 0.35
Book value per share	$ 5.89	$ 8.72
Cash dividends per share	–	–
Aventine—Historical		
Basic income (loss) per share	$ (31.55)	$ 8.00
Book value per share	$ 15.56	$ 21.88
Cash dividends per share	–	–
Unaudited Pro Forma Combined		
Basic income (loss) per share	$ (1.08)	$ 0.22
Diluted income (loss) per share	$ (1.08)	$ 0.21
Book value per common share	N/A	$ 9.32
Cash dividends per share	–	–
Unaudited Pro Forma Combined Aventine Equivalents		
Basic income (loss) per share	$ (1.35)	$ 0.28
Diluted income (loss) per share	$ (1.35)	$ 0.26
Book value per common share	N/A	$ 11.65
Cash dividends per share	–	–

The above tables show only historical comparisons. Because the market prices of Pacific Ethanol and Aventine common stock will likely fluctuate prior to the merger, these comparisons may not provide meaningful information to Pacific Ethanol stockholders in determining whether to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock in the merger or to Aventine stockholders in determining whether to adopt the merger agreement and approve the merger. Pacific Ethanol and Aventine stockholders are encouraged to obtain current market quotations for Pacific Ethanol and Aventine common stock and to review carefully the other information contained in this joint proxy statement/prospectus in considering whether to approve the respective proposals before them.

The following table presents:

- the last reported price of a share of Pacific Ethanol common stock, as reported on The NASDAQ Capital Market;
- the last reported price of a share of Aventine common stock, as reported on the OTC Bulletin Board ("OTCBB") under the symbol "AVRW";
- the pro forma equivalent per share value of Aventine common stock based on the exchange ratio (i.e., 1.25 shares of Pacific Ethanol common stock and/or non-voting common stock for each outstanding share of Aventine common stock) and the closing price of Pacific Ethanol common stock; and
- in each case, on December 30, 2014, the last full trading day prior to the public announcement of the proposed merger, and on January 30, 2015, the last practicable trading day prior to the date of this joint proxy statement/prospectus.

Date	Pacific Ethanol Common Stock	Aventine Common Stock	Equivalent Price per Share
December 30, 2014	$ 10.71	$ 9.00	$ 13.39
January 30, 2015	$ 8.59	$ 12.96	$ 10.74

Pacific Ethanol and Aventine stockholders are advised to obtain current market quotations for Pacific Ethanol common stock and Aventine common stock. The market price of Pacific Ethanol common stock and Aventine common stock may fluctuate between the date of this joint proxy statement/prospectus and the date of completion of the merger. No assurance can be given concerning the market price of Pacific Ethanol or Aventine common stock before the effective time of the merger or the market price of Pacific Ethanol common stock after the effective time of the merger. Changes in the market price of Pacific Ethanol common stock prior to the completion of the merger will affect the market value of the stock portion of the merger consideration that Aventine stockholders will receive upon completion of the merger.

No cash dividends have been paid on either Pacific Ethanol or Aventine common stock during the two most recent fiscal years, and neither company intends to pay cash dividends on its common stock in the immediate future.

It should be noted that Aventine common stock is not listed on any exchanges and the daily trading volume of its common shares is very low in relation to the total number of shares issued and outstanding (as reported by The Bloomberg Professional service, the average daily trade volume for every quarter since Q1 2013 has been less than 1.5% of total shares issued and outstanding). Based on the stock transfer procedures outlined in Aventine's Stockholders Agreement, Aventine is notified from time to time when shares subject to the terms of the Aventine Stockholders Agreement have traded in transactions that are not reported on the OTCBB. The actual transaction price of the shares and the actual average daily trading volume in these transactions are not provided to Aventine. As a result, trade information on the OTCBB may be unreliable and may not be indicative of the value of Aventine's common stock at any particular point in time. Aventine stockholders should not solely rely on the trade information provided on the OTCBB in making a determination of the fair value of Aventine's stock price and should review carefully the other information contained in this joint proxy statement/prospectus in considering whether to approve the respective proposals before them.

RISK FACTORS

In addition to the other information included or incorporated by reference in this joint proxy statement/prospectus, including the matters addressed in the section entitled "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 49,you should carefully consider the following risks before deciding how to vote. In addition, you should read and consider the risk factors associated with the businesses of Pacific Ethanol and Aventine because those risks will also affect the combined company. Risks associated with the business of Pacific Ethanol can be found under the caption, "Risk Factors" in Part I, Item 1A of Pacific Ethanol's Annual Report on Form 10-K for the fiscal year ended December 31, 2013, filed with the Securities and Exchange Commission on March 31, 2014, as such risks may be updated or supplemented in Pacific Ethanol's subsequently filed Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, which are incorporated by reference into this joint proxy statement/prospectus. Risks associated with the business of Aventine can be found below. You should also read and consider the other information in this joint proxy statement/prospectus and the other documents incorporated by reference in this joint proxy statement/prospectus. See the section entitled "Where You Can Find More Information" beginning on page 183.

Risks Related to the Merger

Because the market price of Pacific Ethanol common stock will fluctuate, Aventine stockholders cannot be sure of the market value of the Pacific Ethanol common stock that they will receive in the merger.

When we complete the merger, each share of Aventine common stock will be converted into the right to receive 1.25 shares of Pacific Ethanol common stock or non-voting common stock subject to certain limitations necessary to maintain the tax free treatment of the merger. The exchange ratio is fixed and will not be adjusted for changes in the market price of either Pacific Ethanol common stock or Aventine common stock. The merger agreement does not provide for any price-based termination right for either party, although the merger agreement does have a closing condition that Pacific Ethanol's volume-weighted average closing price per share for the 20 trading days immediately preceding the closing of the merger must equal or exceed $10.00 (sometimes referred to as the Minimum Price Closing Condition). Accordingly, the market value of the shares of Pacific Ethanol common stock that Pacific Ethanol issues and Aventine stockholders will be entitled to receive when the parties complete the merger will depend on the market value of shares of Pacific Ethanol common stock at the time that the parties complete the merger and could vary significantly from the market value on the date of this proxy statement/prospectus or the date of the Pacific Ethanol special meeting and the Aventine special meeting.

The market value of Pacific Ethanol common stock will continue to fluctuate after the completion of the merger. For example, during the fourth calendar quarter of 2014, the closing sales price of Pacific Ethanol common stock ranged from a low of $9.10 to a high of $15.57, as reported on The NASDAQ Capital Market. On January 30, 2015 the closing sales price of Pacific Ethanol common stock was $8.59. Accordingly, at the time of Pacific Ethanol's special meeting or Aventine's special meeting, as the case may be, neither the Pacific Ethanol stockholders nor the Aventine stockholders, as the case may be, will know or be able to calculate the exact market value of the consideration the Aventine stockholders will receive upon completion of the merger. If Pacific Ethanol's volume-weighted average closing price per share for the 20 trading days immediately preceding the closing of the merger does not equal or exceed the Minimum Price Closing Condition, the merger may not be consummated. In such a case, in order for the merger to be consummated, both parties would have to mutually agree to waive the Minimum Price Closing Condition.

The announcement and pendency of the merger could have an adverse effect on Pacific Ethanol's and Aventine's stock prices, business, financial condition, results of operations or business prospects.

While neither Pacific Ethanol nor Aventine is aware of any significant adverse effects to date, the announcement and pendency of the merger could disrupt Pacific Ethanol's and/or Aventine's businesses in the following ways, among others:

- customers and other third-party business partners of Pacific Ethanol or Aventine may seek to terminate and/or renegotiate their relationships with Pacific Ethanol or Aventine as a result of the merger, whether pursuant to the terms of their existing agreements with Pacific Ethanol or Aventine or otherwise;

- the attention of Pacific Ethanol and/or Aventine management may be directed toward the completion of the merger and related matters and may be diverted from the day-to-day business operations of their respective companies, including from other opportunities that might otherwise be beneficial to Pacific Ethanol or Aventine; and

- current and prospective employees may experience uncertainty regarding their future roles with the combined company, which might adversely affect Pacific Ethanol's and/or Aventine's ability to retain, recruit and motivate key personnel.

Should they occur, any of these matters could adversely affect the stock prices of, or harm the financial condition, results of operations or business prospects of, Pacific Ethanol and/or Aventine.

The market price of Pacific Ethanol common stock and non-voting common stock after the merger may be affected by factors different from those affecting the shares of Aventine or Pacific Ethanol currently.

Upon completion of the merger, holders of Aventine common stock will become holders of Pacific Ethanol common stock and/or non-voting common stock. Pacific Ethanol's business differs in important respects from that of Aventine, and, accordingly, the results of operations of the combined company and the market price of Pacific Ethanol common stock after the completion of the merger may be affected by factors different from those currently affecting the independent results of operations of each of Pacific Ethanol and Aventine. For a discussion of the businesses of Pacific Ethanol and Aventine and of certain factors to consider in connection with those businesses, see the risk factors included in this joint proxy statement/prospectus under the section entitled "Risk Factors—Related to Aventine's Business" beginning on page 37, the documents incorporated by reference by Pacific Ethanol into this joint proxy statement/prospectus referred to under the section entitled "Where You Can Find More Information" beginning on page 183 and the description of Aventine's business under the section entitled "The Companies—Aventine Renewable Energy Holdings, Inc." beginning on page 50.

The issuance of shares of Pacific Ethanol common stock and non-voting common stock to Aventine stockholders in the merger will substantially dilute the interest in Pacific Ethanol held by Pacific Ethanol stockholders prior to the merger.

If the merger is completed, it is estimated that Pacific Ethanol will issue up to approximately 17,755,300 shares of Pacific Ethanol common stock and non-voting common stock upon the closing of the merger, assuming no exercise or conversion of outstanding options and warrants. Based on the number of shares of Pacific Ethanol and Aventine common stock issued and outstanding on the Pacific Ethanol and Aventine record dates, Aventine stockholders before the merger will own, in the aggregate, approximately 42% of the aggregate number of shares of Pacific Ethanol common stock and non-voting common stock issued and outstanding immediately after the merger. The issuance of shares of Pacific Ethanol common stock and/or non-voting common stock to Aventine stockholders in the merger will cause a significant reduction in the relative percentage interest of current Pacific Ethanol stockholders in the earnings, voting rights, liquidation value and book and market value of Pacific Ethanol.

The unaudited pro forma combined condensed financial statements included in this document are preliminary and the actual financial condition and results of operations after the merger may differ materially.

The unaudited pro forma combined condensed financial statements in this joint proxy statement/prospectus are presented for illustrative purposes only and are not necessarily indicative of what Pacific Ethanol's actual financial condition or results of operations would have been had the merger been completed on the dates indicated. The unaudited pro forma combined condensed financial statements reflect adjustments to illustrate the effect of the merger had it been completed on the dates indicated, which are based upon preliminary estimates, to record the Aventine identifiable assets acquired and liabilities assumed at fair value and the resulting goodwill recognized. The purchase price allocation for the merger reflected in this joint proxy statement/prospectus is preliminary, and final allocation of the purchase price will be based upon the actual purchase price and the fair value of the assets and liabilities of Aventine as of the date of the completion of the merger. Accordingly, the final acquisition accounting adjustments may differ materially from the pro forma adjustments reflected in this document. For more information, see "Unaudited Pro Forma Combined Condensed Financial Statements" beginning on page 152.

Failure to complete the merger could adversely affect Pacific Ethanol's and Aventine's stock prices and their future business and financial results.

Completion of the merger is subject to a number of conditions, including among other things, the receipt of approval of the Pacific Ethanol and Aventine stockholders. There is no assurance that the parties will receive the necessary approvals or satisfy the other conditions to the completion of the merger, including, among others, the condition that Pacific Ethanol's volume-weighted average closing price per share for the 20 trading days immediately preceding the closing of the merger must equal or exceed $10.00. Failure to complete the proposed merger will prevent Pacific Ethanol and Aventine from realizing the anticipated benefits of the merger. Each company will also remain liable for significant transaction costs, including legal, accounting and financial advisory fees, unless provided otherwise by the merger agreement. In addition, the market price of each company's common stock may reflect various market assumptions as to whether the merger will occur. Consequently, the failure to complete the merger could result in a significant change in the market price of the common stock of Pacific Ethanol and Aventine.

Because certain directors and executive officers of Aventine are parties to agreements or are participants in other arrangements that give them interests that may be different from, or in addition to, your interests as a stockholder of Aventine, these persons may have conflicts of interest in recommending that Aventine stockholders vote to adopt the merger agreement and approve the merger.

Certain directors and executive officers of Aventine are parties to agreements or are participants in other arrangements that give them interests that may be different from, or in addition to, your interests as a stockholder of Aventine. This difference of interests stems from the equity and equity-linked securities held by such persons, the retention agreements covering named Aventine's executive officers under which such officers are entitled to severance payments, change of control payments and other benefits related to their employment resulting from the merger, and the Pacific Ethanol obligation under the merger agreement to indemnify Aventine's directors and executive officers following the merger. These and other material interests of the directors and executive officers of Aventine in the merger that are different than those of the Aventine stockholders are described under "Additional Interests of Certain of Aventine's Directors and Executive Officers in the Merger" beginning on page 130.

Termination of the merger agreement could negatively impact Aventine or Pacific Ethanol.

If the merger agreement is terminated, there may be various consequences. For example, Aventine's or Pacific Ethanol's businesses may have been impacted adversely by the failure to pursue other beneficial opportunities due to the focus of management on the merger, without realizing any of the anticipated benefits of completing the merger. Additionally, if the merger agreement is terminated, the market price of Aventine's or Pacific Ethanol's common stock could decline to the extent that the current market prices reflect a market assumption that the merger will be completed. If the merger agreement is terminated under certain circumstances, Aventine or Pacific Ethanol may be required to pay to the other party a termination fee of $5,982,000 or an expense reimbursement amount of up to $1,994,000. The termination rights and related fees are described under "The Merger Agreement and Related Agreements—Termination Fee and Expenses" beginning on page 149.

The merger agreement contains provisions that could discourage a potential alternative acquirer that might be willing to pay more to acquire Aventine.

The merger agreement contains "no shop" provisions that restrict Aventine's ability to solicit or facilitate proposals regarding a merger or similar transaction with another party. Further, there are only limited exceptions to Aventine's agreement that its board of directors will not withdraw or adversely qualify its recommendation regarding the merger agreement. Under certain circumstances, Aventine's board of directors is permitted to terminate the merger agreement in response to an unsolicited third party proposal to acquire Aventine, which Aventine's board of directors determines to be more favorable than the merger with Pacific Ethanol. However, if Aventine or Pacific Ethanol terminates the merger agreement because Aventine has received and accepted an acquisition proposal that is deemed more favorable by its board of directors, Pacific Ethanol will be entitled to collect a $5,982,000 termination fee from Aventine. We describe these provisions under "The Merger Agreement and Related Agreements—Termination" and "—Termination Fee and Expenses" beginning on pages 148 and 149, respectively.

These provisions could discourage a potential third party acquirer from considering or proposing an alternative acquisition, even if it were prepared to pay consideration with a higher value than that proposed to be paid in the merger, or might result in a potential third party acquirer proposing to pay a lower per share price than it might otherwise have proposed to pay because of the added expense of the termination fee.

Obtaining required approvals necessary to satisfy the conditions to the completion of the merger may delay or prevent completion of the merger.

To complete the merger, Pacific Ethanol stockholders must approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock and the amendment of its Certificate of Incorporation and holders of at least 66-2/3% of Pacific Ethanol Series B Preferred Stock must agree not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations, each as contemplated by the merger agreement, and Aventine stockholders must adopt the merger agreement and approve the merger. In addition, the completion of the merger is conditioned upon the receipt of certain governmental authorizations, consents, orders or other approvals, including the expiration or termination of the waiting period under the HSR Act. Pacific Ethanol and Aventine intend to pursue all required approvals in accordance with the merger agreement. No assurance can be given that the required approvals will be obtained and, even if all such approvals are obtained, no assurance can be given as to the terms, conditions and timing of the approvals or that they will satisfy the terms of the merger agreement. See the sections entitled "The Merger Agreement and Related Agreements—Conditions to the Completion of the Merger" and "The Proposed Merger—Regulatory Matter Relating to the Merger" beginning on pages 145 and 126, respectively, for a discussion of the conditions to the completion of the merger.

The shares of Pacific Ethanol common stock and non-voting common stock to be received by Aventine stockholders receiving the stock consideration as a result of the merger will have different rights from shares of Aventine common stock.

Following completion of the merger, Aventine stockholders will no longer be stockholders of Aventine but will instead be stockholders of Pacific Ethanol. Although Aventine and Pacific Ethanol are each incorporated under Delaware law, there will be important differences between the current rights of Aventine stockholders and the rights of Pacific Ethanol stockholders, including the rights of holders of Pacific Ethanol non-voting common stock that may be important to Aventine stockholders. See "Comparison of Rights of Pacific Ethanol and Aventine Stockholders" beginning on page 169 for a discussion of the material differences between the rights associated with Aventine common stock and Pacific Ethanol common stock and non-voting common stock.

The fairness opinion received by the Pacific Ethanol Board from Craig-Hallum does not reflect changes in circumstances subsequent to the date of the fairness opinion.

Craig-Hallum delivered to the Pacific Ethanol Board its opinion dated December 29, 2014. The opinion does not speak as of the time the merger will be completed or any date other than the date of such opinion. The opinion does not reflect changes that may occur or may have occurred after the date of the opinion, including changes to the operations and prospects of Aventine or Pacific Ethanol, changes in general market and economic conditions or regulatory or other factors including, among others, any adverse result in the Aurora Coop Litigation. Any such changes may materially alter or affect the relative values of Aventine and Pacific Ethanol.

The fairness opinion received by the Aventine Board from Duff & Phelps, Aventine's financial advisor, does not reflect changes in circumstances subsequent to the date of the fairness opinion.

Duff & Phelps, Aventine's financial advisor in connection with the merger, delivered to the board of directors of Pacific Ethanol its opinion dated December 30, 2014. The opinion does not speak as of the time the merger will be completed or any date other than the date of such opinion. The opinion does not reflect changes that may occur or may have occurred after the date of the opinion, including changes to the operations and prospects of Aventine or Pacific Ethanol, changes in general market and economic conditions or regulatory or other factors including, among others, any adverse result in the Aurora Coop Litigation. Any such changes may materially alter or affect the relative values of Aventine and Pacific Ethanol.

If the IRS (or a court, in the event of an IRS challenge) determines that the merger does not qualify as a "reorganization" under Section 368(a) of the Code, Aventine stockholders would be fully taxed on the merger.

If the merger is not treated as a "reorganization" under Section 368(a) of the Code, then the merger will be a fully taxable transaction, and Aventine stockholders would be required to recognize all of the gain or loss on their exchange of Aventine shares for the consideration received in the merger. See the section entitled "The Proposed Merger—Material United States Federal Income Tax Consequences of the Merger" beginning on page 122 for a discussion of the tax treatment of Aventine stockholders.

Risks Related to Aventine's Business

Aventine has significant indebtedness under a term loan facility. Aventine's term loan facility and the revolving facility have substantial restrictions and affirmative covenants and Aventine may have difficulty obtaining additional credit (if needed), which could adversely affect Aventine's operations.

As of September 30, 2014, Aventine had an aggregate of approximately $161 million in debt outstanding due primarily to a $135 million term loan facility (as amended, and as may be amended, supplemented or otherwise modified from time to time, sometimes referred to as the Term Loan Facility) with Citibank N.A., as administrative and collateral agent (sometimes referred to as the Term Loan Agreement). In addition, Aventine has a $40 million revolving credit facility with Alostar Bank of Commerce as administrative agent (as amended, and as may be amended, supplemented or otherwise modified from time to time, sometimes referred to as the Revolving Facility), and has borrowed approximately $23 million as of September 30, 2014 under that facility. As a result of Aventine's indebtedness, Aventine will use a portion of cash flow to pay interest and principal when due, which will reduce the cash available to finance Aventine's operations and other business activities and could limit Aventine's flexibility in planning for, or reacting to, changes in Aventine's business and the industry in which Aventine operates.

Aventine's indebtedness under the Term Loan Facility and the Revolving Facility restricts Aventine's ability to engage in certain debt, dividend and equity activities

Aventine is also required to comply with certain affirmative covenants. Aventine's ability to comply with these restrictions and covenants in the future is uncertain and will be affected by the levels of its cash flow from Aventine's operations and events or circumstances beyond Aventine's control. Aventine's failure to comply with any of the restrictions and covenants could result in an event of default, which, if it continues beyond any applicable cure periods, could cause all of Aventine's existing indebtedness to be immediately due and payable.

Aventine is currently engaged in litigation stemming from contractual obligations to complete certain capacity expansions in Aurora, Nebraska.

Among other filed legal claims, the Aurora Coop has filed legal claims against Aventine asserting that it has the right pursuant to an agreement between Aventine and the Aurora Coop, dated March 23, 2010, to acquire the land on which Aventine's Aurora West Facility is located for a purchase price of $16,500 per acre. It is the Aurora Coop's assertion that this option arose on July 1, 2012. Aventine does not agree with the positions asserted by the Aurora Coop with respect to the scope and/or availability of this real estate purchase option. Aventine has asserted in its legal filings that it has satisfied its contractual obligations with respect to the completion of the plant as provided under the March 23, 2010 agreement. Aventine will continue to vigorously defend against any assertion that the Aurora Coop has any right to repurchase the land or any improvements on the land. The action is currently pending in the United States District Court, Nebraska (Case No. 4:12-cv-0230), and there is no certainty that this disagreement will not result in a decision adverse to Aventine's interest that could have a material adverse effect on Aventine's business, results of operations and financial condition.

Aventine may be unable to secure additional financing.

Aventine's ability to arrange (in addition to the Revolving Facility and the Term Loan Facility) financing (including any extension or refinancing), and the cost of additional financing, are dependent upon numerous factors. Other factors affecting Aventine's access to financing include:

- general economic and capital market conditions;
- conditions in biofuels markets;
- regulatory developments;
- credit availability from banks or other lenders for Aventine and Aventine's industry peers, as well as the economy in general;
- investor confidence in the biofuels industry and in Aventine;
- the continued reliable operation of Aventine's ethanol production facilities; and
- provisions of tax and securities laws that are conducive to raising capital.

Aventine may not be able to generate enough cash flow to meet its debt obligations.

Aventine expects its earnings and cash flow to vary significantly from year to year due to the volatile nature of its industry. As a result, the amount of debt Aventine can manage in some periods may not be appropriate for Aventine in other periods. Additionally, Aventine's future cash flow may be insufficient to meet its debt obligations and commitments. Any insufficiency could negatively impact Aventine's business. A range of economic, competitive, business and industry factors will affect Aventine's future financial performance, and, as a result, Aventine's ability to generate cash flow from operations, and to pay its debt. Many of these factors, such as ethanol prices, corn prices, economic and financial conditions in Aventine's industry and the global economy or competitive initiatives of Aventine's competitors are beyond Aventine's control.

If Aventine does not generate enough cash flow from operations to satisfy its debt obligations, Aventine may have to undertake alternative financing plans, such as refinancing or restructuring its debt, selling assets, reducing or delaying capital investments or raising additional capital.

Aventine cannot make any assurances that undertaking alternative financing plans, if necessary, would allow Aventine to meet its debt obligations. Aventine's inability to generate sufficient cash flow to satisfy debt obligations, or to obtain alternative financing, could materially and adversely affect Aventine's business, financial condition, and results of operations.

Aventine's business is dependent upon the availability and price of corn. Significant disruptions in the supply of corn will materially affect Aventine's operating results. In addition, since Aventine cannot always pass on increases in corn prices to its customers, continued periods of historically high corn prices could also materially adversely affect its operating results.

The principal raw material Aventine uses to produce ethanol and ethanol by-products is corn. In general, higher corn prices produce lower profit margins and, therefore, represent unfavorable market conditions. This is especially true when market conditions do not allow Aventine to pass along increased corn costs to its customers.

The price of corn is influenced by general economic, market, and regulatory factors. These factors include weather conditions, farmer planting decisions, government policies, and subsidies with respect to agriculture and international trade and global demand and supply. The significance and relative impact of these factors on the price of corn is difficult to predict. Factors such as severe weather or crop disease could have an adverse impact on Aventine's business because Aventine may be unable to pass on higher corn costs to its customers. Any event that tends to negatively impact the supply of corn will tend to increase prices and potentially harm Aventine's business. The increasing ethanol capacity could boost demand for corn and result in increased prices for corn.

The market for natural gas is subject to market conditions that create uncertainty in the price and availability of the natural gas that Aventine utilizes in its manufacturing process.

Aventine relies upon third parties for its supply of natural gas which is consumed in the production 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 Aventine's 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 temporarily impair Aventine's ability to produce ethanol for its customers. Increases in natural gas prices or changes in Aventine's natural gas costs relative to natural gas costs paid by competitors may adversely affect Aventine's results of operations and financial condition.

Fixed price and gasoline related contracts for ethanol may be at a price level lower than the prevailing price.

At any given time, contract prices for ethanol may be at a price level different from the current prevailing price, and such a difference could materially adversely affect Aventine's results of operations and financial condition.

Aventine may engage in hedging or derivative transactions which involve risks that can harm Aventine's business.

In an attempt to minimize the effects of the volatility of the price of corn, natural gas, electricity and ethanol (sometimes referred to as commodities), Aventine may take economic hedging positions in the commodities. Economic hedging arrangements also expose Aventine to the risk of financial loss in situations where the other party to the hedging contract defaults on its contract or there is a change in the expected differential between the underlying price in the hedging agreement and the actual price of the commodities. Although Aventine attempts to link its economic hedging activities to sales plans and pricing activities, occasionally such hedging activities can themselves result in losses. As a result, Aventine's results of operations may be adversely affected during periods in which corn and/or natural gas prices increase.

Changes in ethanol prices can affect the value of Aventine's inventory which may significantly affect Aventine's profitability.

Aventine's inventory is valued based upon a weighted average of Aventine's cost to produce ethanol and the price it pays for ethanol that it purchases from other producers. Changes, either upward or downward, in Aventine's purchased cost of ethanol or Aventine's production costs, will cause the inventory value to fluctuate from period to period, perhaps significantly. These changes in value flow through Aventine's statement of operations as the inventory is sold and can significantly increase or decrease Aventine's profitability.

The relationship between the sales price of Aventine's by-products and the price it pays for corn can fluctuate significantly which may affect Aventine's results of operations and profitability.

Aventine sells co-products and by-products from the ethanol production process in order to offset corn costs and increase profitability. Historically, sales prices for these co-products have tracked along with the price of corn. However, there have been occasions when the value of these co-products and by-products has lagged behind increases in corn prices. As a result, Aventine may occasionally generate less revenue from the sale of these co-products and by-products relative to the price of corn. In addition, several of Aventine's co-products compete with similar products made from other plant feedstock. The cost of these other feedstocks may not rise as corn prices increase. Consequently, the price Aventine may receive for these products may not rise as corn prices rise, thereby lowering Aventine's cost recovery percentage relative to corn.

Fluctuations in the demand for gasoline may reduce demand for ethanol.

Ethanol is marketed as an oxygenate to reduce vehicle emissions from gasoline, as an octane enhancer to improve the octane rating of gasoline with which it is blended, and as a fuel extender. As a result, ethanol demand has historically been influenced by the supply of and demand for gasoline. If gasoline demand decreases, Aventine's ability to sell its product and Aventine's results of operations and financial condition may be materially adversely affected.

Aventine sells ethanol primarily to the major oil companies and traders and therefore Aventine can from time to time be subject to a high degree of concentration of sales and accounts receivable.

Aventine sells ethanol to most of the major integrated oil companies and a significant number of large, independent refiners and petroleum wholesalers. Aventine's trade receivables result primarily from Aventine's ethanol marketing operations. As a general policy, collateral is not required for receivables, but customers' financial condition and creditworthiness are evaluated regularly. If Aventine were to suddenly lose a major customer and not be able to replace that demand for product very quickly, it could have a material impact on Aventine's sales and profitability.

Aventine is substantially dependent on its operational facilities and any operational disruption could result in a reduction of sales volumes and could cause Aventine to incur substantial expenditures.

As of December 31, 2014, the substantial majority of Aventine's income was derived from the sale of ethanol and the related co-products/by-products that were produced at Aventine's facilities. Aventine's operations may be subject to significant interruption if any of Aventine's facilities experiences a major accident or is damaged by severe weather or other natural disaster. In addition, Aventine's operations may be subject to labor disruptions and unscheduled downtime, or other hazards inherent in Aventine's industry. Some of those hazards may cause personal injury and loss of life, severe damage to or destruction of property, natural resources and equipment, pollution and environmental damage, clean-up responsibilities, and repairs to resume operations and may result in suspension or termination of operations and the imposition of civil or criminal penalties. As protection against these hazards, Aventine maintains property, business interruption and casualty insurance which Aventine believes is in accordance with customary industry practices, but Aventine cannot provide any assurance that this insurance will be adequate to fully cover the potential hazards described above or that Aventine will be able to renew this insurance on commercially reasonable terms or at all.

Risks associated with the operation of Aventine's production facilities may have a material adverse effect on Aventine's business.

Aventine's revenue is dependent on the continued operation of Aventine's various production facilities. The operation of production plants involves many risks including:

- the breakdown, failure or substandard performance of equipment or processes;
- inclement weather and natural disasters;
- the need to comply with directives of, and obtain and maintain all necessary permits from, governmental agencies;
- raw material supply disruptions;
- labor force shortages, work stoppages, or other labor difficulties; and
- transportation disruptions.

The occurrence of material operational problems, including but not limited to the above events, may have an adverse effect on the productivity and profitability of a particular facility, or to Aventine as a whole.

Aventine is attempting to establish a rail connection in conjunction with Burlington Northern Santa Fe Railroad Company.

Aventine is using its commercially reasonable efforts to complete all necessary arrangements, including engineering, design and contracting with the Burlington Northern Santa Fe Railroad Company (sometimes referred to as the BNSF) as promptly as practicable, in order to establish a new connection through the rail facilities of its subsidiary, Nebraska Energy, L.L.C. (sometimes referred to as NELLC), to the inner rail loop track belonging to Aventine's Aurora West Facility along with the associated "diamond switch" crossing the outer rail loop, along a path that lies entirely on land owned by NELLC or Aventine's subsidiary, Aventine Renewable Energy – Aurora West, LLC, such that the Aurora West Facility will be able to ship ethanol by rail in unit trains and single cars. However, there are no guarantees that Aventine will be able to complete the rail connection on a certain schedule (or at all). If such connection is not obtained it could have an adverse effect on Aventine's business, results of operations and financial condition.

The use and demand for ethanol and its supply are highly dependent on various federal and state legislation and regulation, and any changes in legislation or regulation could cause the demand for ethanol to decline or its supply to increase, which could have a material adverse effect on Aventine's business, results of operations and financial condition.

Various federal and state laws, regulations and programs have led to increased use of ethanol in fuel. Among these regulations are the renewable fuel standard (sometimes referred to as the RFS), which requires an increasing amount of renewable fuels to be used in the United States each year and the federal "farm bill," which establishes federal subsidies for agricultural commodities including corn, Aventine's primary feedstock. These laws, regulations, and programs are regularly changing, and sections of the RFS currently are the subject of legal and political challenges. Federal and state legislators and environmental regulators could adopt or modify laws, regulations, or programs that could affect adversely the use of ethanol. For example, California's Low Carbon Fuel Standard Program makes it difficult for corn-based ethanol produced in many Midwestern states to be used as a fuel in California.

Aventine may be adversely affected by environmental, health and safety laws, regulations and liabilities.

Aventine is subject to extensive federal, state and local environmental, health and safety laws, regulations and permit conditions (and interpretations thereof), including, among other things, those relating to the discharge of hazardous and other waste materials into the air, water, and ground, the generation, storage, handling, use, transportation and/or disposal of hazardous materials, and the health and safety of its employees. Compliance with these laws, regulations, and permits requires Aventine to incur significant capital and other costs, including costs to obtain and maintain expensive pollution control equipment. These regulations may also require Aventine to make operational changes to limit actual or potential impacts to the environment. A violation of these laws, regulations, or permit conditions can result in substantial administrative and civil fines and penalties, criminal sanctions, imposition of clean-up and site restoration costs and liens, suspension or revocation of necessary permits, licenses and authorizations and/or the issuance of orders enjoining or limiting Aventine's current or future operations. In addition, environmental laws and regulations (and interpretations thereof) change over time, and any such changes, more vigorous enforcement policies or the discovery of currently unknown conditions may require substantial additional environmental expenditures.

In addition, the hazards and risks associated with producing and transporting Aventine's products (such as fires, natural disasters, explosions, abnormal pressures, and spills) may result in releases of hazardous substances and other waste materials, and may result in claims from governmental authorities or third parties relating to actual or alleged personal injury, property damage, or damages to natural resources. Aventine maintains insurance coverage against some, but not all, potential losses associated with its operations. Aventine believes that its insurance is adequate for the industry, but losses could occur for uninsurable or uninsured risks or in amounts in excess of existing insurance coverage. The occurrence of events which result in significant personal injury or damage to Aventine's property, natural resources or third parties that is not covered by insurance could have a material adverse impact on Aventine's results of operations and financial condition.

Aventine depends on rail, truck, and barge transportation for delivery of corn to it and the distribution of ethanol to its customers.

Aventine depends on rail, truck, and barge transportation for delivery of corn to it and/or the distribution of ethanol and co-products to its customers. Ethanol is not currently distributed by pipeline. Disruption to the timely supply of these transportation services or increases in the cost of these services for any reason, including the availability or cost of fuel or railcars to serve Aventine's facilities, regulations affecting the industry, or labor stoppages in the transportation industry, could have an adverse effect on its ability to distribute ethanol or other products to its customers, and could have a material adverse effect on Aventine's financial performance.

Aventine, and some of its major customers, have unionized employees and could be adversely affected by labor disputes.

Some of Aventine's employees and some employees of Aventine's major customers are unionized. At December 31, 2014, Aventine's Pekin, Illinois wet mill production employees were unionized. The unionized employees are covered by a collective bargaining agreement between Aventine's subsidiary, Aventine Renewable Energy, Inc., and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International Union, on behalf of Local 7-662 (sometimes referred to as the Union). The collective bargaining agreement may not prevent a strike or work stoppage in the future, and any such work stoppage could have a material adverse effect on Aventine's business, financial condition, and results of operations. There is no certainty that the current collective bargaining agreement will be extended or that a new collective bargaining agreement will be reached.

If Aventine is unable to attract and retain key personnel, its ability to operate effectively may be impaired.

Aventine's ability to operate its business and implement strategies depends, in part, on the efforts of its executive officers and other key employees. Aventine's management philosophy of cost-control means that it operates with a limited number of corporate personnel, and its commitment to a less centralized organization also places greater emphasis on the strength of local management. Aventine's future success will depend on, among other factors, its ability to attract and retain qualified personnel, particularly executive and senior plant management. The loss of the services of any of Aventine's key employees or the failure to attract or retain other qualified personnel could have a material adverse effect on its business or business prospects.

If Aventine's internal computer network and applications suffer disruptions or fail to operate as designed, Aventine's operations will be disrupted and its business may be harmed.

Aventine relies on network infrastructure and enterprise applications, and internal technology systems for its operational, marketing support and sales, and product development activities. The hardware and software systems related to such activities are subject to damage from earthquakes, floods, lightning, tornadoes, fire, power loss, telecommunication failures, and other similar events. They are also subject to acts such as computer viruses, physical or electronic vandalism or other similar disruptions that could cause system interruptions and loss of critical data, and could prevent Aventine from fulfilling its customers' orders. Aventine has developed disaster recovery plans and backup systems to reduce the potentially adverse effects of such events, but there are no assurances such plans and systems would be sufficient. Any event that causes failures or interruption in Aventine's hardware or software systems could result in disruption of its business operations, have a negative impact on its operating results, and damage Aventine's reputation.

Aventine's results of operations may be adversely affected by technological advances.

The development and implementation of new technologies may result in a significant reduction in the costs of ethanol production. Aventine cannot predict when new technologies may become available, the rate of acceptance of new technologies by its competitors or the costs associated with such new technologies. In addition, advances in the development of alternatives to ethanol, or corn ethanol in particular, could significantly reduce demand for or eliminate the need for ethanol, or corn ethanol in particular, as a fuel oxygenate or octane enhancer.

Any advances in technology which require significant capital expenditures for Aventine to remain competitive or which otherwise reduce demand for ethanol will have a material adverse effect on Aventine's results of operations and financial condition.

Risks Related to the Combined Company if the Merger is Completed

The failure to integrate successfully the businesses of Pacific Ethanol and Aventine in the expected timeframe would adversely affect the combined company's future results following the completion of the merger.

The success of the merger will depend, in large part, on the ability of the combined company following the completion of the merger to realize the anticipated benefits from combining the businesses of Pacific Ethanol and Aventine. To realize these anticipated benefits, the combined company must successfully integrate the businesses of Pacific Ethanol and Aventine. This integration will be complex and time-consuming.

The failure to integrate successfully and to manage successfully the challenges presented by the integration process may result in the combined company's failure to achieve some or all of the anticipated benefits of the merger.

Potential difficulties that may be encountered in the integration process include the following:

- lost sales and customers as a result of customers of either of the two companies deciding not to do business with the combined company;
- complexities associated with managing the larger, more complex, combined business;
- integrating personnel from the two companies;
- potential unknown liabilities and unforeseen expenses, delays or regulatory conditions associated with the merger; and
- performance shortfalls at one or both of the companies as a result of the diversion of management's attention caused by completing the merger and integrating the companies' operations.

The combined company's future results will suffer if the combined company does not effectively manage its expanded operations following the merger.

Following the merger, the size of the combined company's business will be significantly larger than the current businesses of Pacific Ethanol and Aventine. The combined company's future success depends, in part, upon its ability to manage this expanded business, which will pose substantial challenges for the combined company's management, including challenges related to the management and monitoring of new operations and associated increased costs and complexity. Neither Pacific Ethanol nor Aventine can assure you that the combined company will be successful or that the combined company will realize the expected operating efficiencies, annual net operating synergies, revenue enhancements and other benefits currently anticipated to result from the merger.

The loss of key personnel could have a material adverse effect on the combined company's business, financial condition or results of operations.

The success of the merger will depend in part on the combined company's ability to retain key Pacific Ethanol and Aventine employees who continue employment with the combined company after the merger is completed. It is possible that these employees might decide not to remain with the combined company after the merger is completed. If these key employees terminate their employment, the combined company's business activities might be adversely affected, management's attention might be diverted from integrating Pacific Ethanol and Aventine to recruiting suitable replacements and the combined company's business, financial condition or results of operations could be adversely affected. In addition, the combined company might not be able to locate suitable replacements for any such key employees who leave the combined company or offer employment to potential replacements on reasonable terms.

The success of the combined company will also depend on relationships with third parties and pre-existing customers of Pacific Ethanol and Aventine, which relationships may be affected by customer preferences or public attitudes about the merger. Any adverse changes in these relationships could adversely affect the combined company's business, financial condition or results of operations.

The combined company's success will be dependent on the ability to maintain and renew business relationships, including relationships with pre-existing customers of both Pacific Ethanol and Aventine, and to establish new business relationships. There can be no assurance that the business of the combined company will be able to maintain pre-existing customer contracts and other business relationships, or enter into or maintain new customer contracts and other business relationships, on acceptable terms, if at all. The failure to maintain important business relationships could have a material adverse effect on the business, financial condition or results of operations of the combined company.

The combined company will incur significant transaction and merger-related costs in connection with the merger.

Pacific Ethanol and Aventine expect to incur significant costs associated with completing the merger and combining the operations of the two companies. The exact magnitude of these costs is not yet known. In addition, there may be unanticipated costs associated with the integration. Although Pacific Ethanol and Aventine expect that the elimination of duplicative costs and other efficiencies may offset incremental transaction and merger-related costs over time, these benefits may not be achieved in the near term or at all.

The combined company will record goodwill that could become impaired and adversely affect the combined company's operating results.

The merger will be accounted for as an acquisition by Pacific Ethanol in accordance with accounting principles generally accepted in the United States. Under the acquisition method of accounting, the assets and liabilities of Aventine will be recorded, as of completion, at their respective fair values and added to those of Pacific Ethanol. The reported financial condition and results of operations of Pacific Ethanol issued after completion of the merger will reflect Aventine balances and results after completion of the merger, but will not be restated retroactively to reflect the historical financial position or results of operations of Aventine for periods prior to the merger. Following completion of the merger, the earnings of the combined company will reflect acquisition accounting adjustments. See "Unaudited Pro Forma Combined Condensed Financial Statements" beginning on page 152.

Under the acquisition method of accounting, the total purchase price will be allocated to Aventine's tangible assets and liabilities and identifiable intangible assets based on their fair values as of the date of completion of the merger. The excess of the purchase price over those fair values will be recorded as goodwill. Pacific Ethanol and Aventine expect that the merger will result in the creation of goodwill based upon the application of the acquisition method of accounting. To the extent the value of goodwill or intangibles becomes impaired, the combined company may be required to incur material charges relating to such impairment. Such a potential impairment charge could have a material impact on the combined company's operating results.

Pacific Ethanol's ability to utilize net operating loss carryforwards and certain other tax attributes may be limited.

Federal and state income tax laws impose restrictions on the utilization of net operating loss (sometimes referred to as NOL) and tax credit carryforwards in the event that an "ownership change" occurs for tax purposes, as defined by Section 382 of the Code. In general, an ownership change occurs when stockholders owning 5% or more of a "loss corporation" (a corporation entitled to use NOL or other loss carryovers) have increased their ownership of stock in such corporation by more than 50 percentage points during any three-year period. The annual base limitation under Section 382 of the Code is calculated by multiplying the loss corporation's value at the time of the ownership change by the greater of the long-term tax-exempt rate determined by the IRS in the month of the ownership change or the two preceding months.

As a result of the merger, it is possible that either or both Pacific Ethanol and Aventine will be deemed to have undergone an "ownership change" for purposes of Section 382 of the Code. Accordingly, the combined company's ability to utilize Pacific Ethanol's and Aventine's net operating loss carryforwards may be substantially limited. These limitations could in turn result in increased future tax payments for the combined company, which could have a material adverse effect on the business, financial condition or results of operations of the combined company.

The combined company's indebtedness following the merger will be greater than Pacific Ethanol's existing indebtedness. Therefore, it may be more difficult for the combined company to pay or refinance its debts and the combined company may need to divert its cash flow from operations to debt service payments. The additional indebtedness could limit the combined company's ability to pursue other strategic opportunities and increase its vulnerability to adverse economic and industry conditions.

In connection with the merger, the combined company will also be responsible for Aventine's outstanding debt. Pacific Ethanol's total indebtedness as of September 30, 2014 was approximately $30.5 million. Pacific Ethanol's pro forma total consolidated indebtedness as of September 30, 2014, after giving effect to the merger, would have been approximately $189.0 million (all of which would be non-current). The combined company's debt service obligations with respect to this increased indebtedness could have an adverse impact on its earnings and cash flows, which after the merger would include the earnings and cash flows of Aventine, for as long as the indebtedness is outstanding.

The combined company's increased indebtedness could also have important consequences to holders of Pacific Ethanol common stock. For example, it could:

- make it more difficult for the combined company to pay or refinance its debts as they become due during adverse economic and industry conditions because any decrease in revenues could cause the combined company to not have sufficient cash flows from operations to make its scheduled debt payments;

- limit the combined company's flexibility to pursue other strategic opportunities or react to changes in its business and the industry in which it operates and, consequently, place the combined company at a competitive disadvantage to its competitors with less debt; or

- require a substantial portion of the combined company's cash flows from operations to be used for debt service payments, thereby reducing the availability of its cash flow to fund working capital, capital expenditures, acquisitions, dividend payments and other general corporate purposes.

Based upon current levels of operations, management of Pacific Ethanol and Aventine expect the combined company to be able to generate sufficient cash on a consolidated basis to make all of the principal and interest payments when such payments are due under its existing credit facilities, indentures and other instruments governing their outstanding indebtedness, and the indebtedness of Aventine that may remain outstanding after the merger, but there can be no assurance that the combined company will be able to repay or refinance such borrowings and obligations.

The merger may not be accretive, and may be dilutive, to Pacific Ethanol's earnings per share, which may negatively affect the market price of Pacific Ethanol common stock.

Although the merger is expected to be accretive to earnings per share, the merger may not be accretive, and may be dilutive, to Pacific Ethanol's earnings per share. The expectation that the merger will be accretive is based on preliminary estimates that may materially change. In addition, future events and conditions could decrease or delay any accretion, result in dilution or cause greater dilution than may be expected, including:

- adverse changes in market conditions;
- commodity prices for corn, ethanol, gasoline and crude oil;
- production levels;
- operating results;
- competitive conditions;
- laws and regulations affecting the ethanol business;
- capital expenditure obligations; and
- general economic conditions.

Any dilution of, or decrease or delay of any accretion to, Pacific Ethanol's earnings per share could cause the price of Pacific Ethanol's common stock to decline.

Business issues currently faced by one company may be imputed to the operations of the other company or the combined company.

To the extent that either Pacific Ethanol or Aventine currently has or is perceived by customers to have operational challenges, those challenges may raise concerns by existing customers of the other company following the merger which may limit or impede Pacific Ethanol's future ability to maintain relationships with those customers.

Resales of shares of Pacific Ethanol common stock following the merger and additional obligations to issue shares of Pacific Ethanol common stock may cause the market price of Pacific Ethanol common stock to decrease.

As of January 30, 2015, Pacific Ethanol had 24,499,534 shares of common stock issued and outstanding and approximately 1,731,629 shares of common stock subject to outstanding options, warrants and other rights to purchase or acquire its shares, including the rights of holders of Pacific Ethanol Series B Preferred Stock to convert shares of Series B Preferred Stock into shares of Pacific Ethanol common stock. Pacific Ethanol currently estimates that it will issue up to an aggregate of approximately 17,755,300 shares of Pacific Ethanol common stock and non-voting common stock upon the closing of the merger, assuming no exercise or conversion of outstanding options and warrants. A majority of the newly issued shares are subject to stockholders agreements entered into by Pacific Ethanol and certain stockholders of Aventine prohibiting the sale of the shares of Pacific Ethanol issued in connection with the merger for various periods of time. The issuance of these new shares of Pacific Ethanol common stock and non-voting common stock, and the sale of these new shares of common stock (including shares of common stock issuable upon conversion of shares of non-voting common stock issued in the merger) by current Aventine stockholders (i) after the merger, for those Aventine stockholders not subject to the stockholders agreements, or (ii) after applicable restrictive periods have passed for those Aventine stockholders subject to the stockholders agreements, could have the effect of depressing the market price for shares of Pacific Ethanol common stock. In addition, the issuance of Pacific Ethanol common stock upon exercise of outstanding Pacific Ethanol options and warrants or upon conversion of Pacific Ethanol Series B Preferred Stock could also have the effect of depressing the market price for shares of Pacific Ethanol common stock.

If NASDAQ determines that the merger will result in a change of control of Pacific Ethanol, Pacific Ethanol will be required to submit an initial listing application and meet all initial NASDAQ Stock Market inclusion criteria.

In connection with the proposed merger, NASDAQ will review the terms and anticipated effect of the merger to determine if a "change of control" will be deemed to occur under its rules. If NASDAQ determines that the merger will result in a change of control of Pacific Ethanol, Pacific Ethanol will be required to submit an initial listing application and meet all initial NASDAQ inclusion criteria as set forth in the NASDAQ Marketplace Rules, and pay all applicable fees, before consummation of the transaction. If Pacific Ethanol is required to submit an initial listing application, NASDAQ's review of such application may take several weeks, which could cause a delay in the consummation of the merger. There is also a risk that Pacific Ethanol will not meet NASDAQ's listing requirements and that NASDAQ may not approve the initial listing application without substantial revision or delay, or at all.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

The statements in this joint proxy statement/prospectus and the documents incorporated by reference herein that are not historical statements, including statements regarding the expected timetable for completing the merger, benefits and synergies of the merger, future opportunities for the combined company and products, future financial performance and any other statements regarding Pacific Ethanol's and Aventine's future expectations, beliefs, plans, objectives, financial conditions, assumptions or future events or performance that are not historical facts, are forward-looking statements within the meaning of the federal securities laws. These statements are subject to numerous risks and uncertainties, many of which are beyond the companies' control, which could cause actual results to differ materially from the results expressed or implied by the statements. These risks and uncertainties include, but are not limited to: failure to obtain the required votes of Pacific Ethanol's or Aventine's stockholders; the timing to consummate the merger; the risk that conditions to closing of the merger may not be satisfied or the closing of the merger may otherwise not occur; the risk that a regulatory approval that may be required for the merger is not obtained or is obtained subject to conditions that are not anticipated; the diversion of management time on transaction-related issues; the ultimate timing, outcome and results of integrating the operations of Pacific Ethanol and Aventine and the ultimate outcome of Pacific Ethanol's operating efficiencies applied to Aventine's products and services; the effects of the business combination of Pacific Ethanol and Aventine, including the combined company's future financial condition, results of operations, strategy and plans; expected synergies and other benefits from the merger and the ability of Pacific Ethanol to realize such synergies and other benefits; expectations regarding regulatory approval of the transaction; the possibility that Pacific Ethanol and Aventine may not be able to maintain relationships with their employees, suppliers or customers as a result of the uncertainty surrounding the merger; direct or indirect effects on the combined company's business, financial condition or liquidity resulting from a change in its credit rating or the credit ratings of its counterparties or competitors; results of litigation, settlements and investigations; actions by third parties, including governmental agencies; changes in the demand for or price of ethanol can be significantly impacted by weakness in the worldwide economy; consequences of audits and investigations by government agencies and legislative bodies and related publicity and potential adverse proceedings by such agencies; protection of intellectual property rights and against cyber attacks; compliance with environmental laws; changes in government regulations and regulatory requirements, particularly those related to the production of ethanol; compliance with laws related to income taxes and assumptions regarding the generation of future taxable income; structural changes in the ethanol industry; maintaining a highly skilled workforce; availability and cost of raw materials; and integration of acquired businesses and operations of joint ventures.

Any forward-looking statements should be considered in light of such important factors. Pacific Ethanol and Aventine undertake no obligation to revise or update publicly any forward-looking statements for any reason. Readers are cautioned not to place undue reliance on any forward-looking statement, which speaks only as of the date on which such statement is made or in the case of documents incorporated by reference, as of the date of the document incorporated by reference.

All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this joint proxy statement/prospectus and attributable to Pacific Ethanol, Aventine or any person acting on their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this joint proxy statement/prospectus.

THE COMPANIES

Pacific Ethanol, Inc.

Pacific Ethanol is the leading producer and marketer of low-carbon renewable fuels in the Western United States. Pacific Ethanol produces and markets all the ethanol produced by four ethanol production facilities located in California, Idaho and Oregon (sometimes referred to as the Pacific Ethanol Plants), markets all the ethanol produced by two other ethanol producers in California and markets ethanol purchased from other third-party suppliers throughout the United States. Pacific Ethanol markets ethanol through its subsidiary, Kinergy Marketing LLC, and ethanol co-products, including WDG, a nutritious animal feed, and corn oil, for the Pacific Ethanol Plants.

Pacific Ethanol has extensive customer relationships throughout the Western United States. Its ethanol customers are integrated oil companies and gasoline marketers who blend ethanol into gasoline. Pacific Ethanol arranges for transportation, storage and delivery of ethanol purchased by its customers through its agreements with third-party service providers in the Western United States, primarily in California, Arizona, Nevada, Utah, Oregon, Colorado, Idaho and Washington. WDG customers are dairies and feedlots located near the Pacific Ethanol Plants. Corn oil is sold to poultry and biodiesel customers.

Pacific Ethanol has extensive supplier relationships throughout the Western and Midwestern United States. In some cases, it has marketing agreements with suppliers to market all of the output of their facilities.

Pacific Ethanol was founded in February 2005, is incorporated under the laws of the State of Delaware and is headquartered in Sacramento, California. Pacific Ethanol has ethanol production facilities located in Stockton, California, Madera, California, Burley, Idaho and Boardman, Oregon.

Additional information about Pacific Ethanol and its subsidiaries is included in documents incorporated by reference in this joint proxy statement/prospectus. See “Where You Can Find More Information” beginning on page 183.

AVR Merger Sub, Inc.

Merger Sub, a wholly-owned subsidiary of Pacific Ethanol, is a Delaware corporation formed on December 29, 2014 for the sole purpose of effecting the merger. Upon completion of the merger, Merger Sub will merge with and into Aventine, with Aventine surviving as a wholly-owned subsidiary of Pacific Ethanol after the merger.

Aventine Renewable Energy Holdings, Inc.

Aventine has been engaged in the production and marketing of corn-based fuel-grade ethanol in the United States since 1981. Aventine markets and distributes ethanol to many of the leading energy and trading companies in the United States. Aventine’s facilities also produce several co-products while producing ethanol, such as distillers grain, corn gluten meal and feed, corn oil, corn germ and grain distillers dried yeast. Aventine markets these co-products primarily to livestock producers and other end users as a substitute for corn and other sources of starch and protein.

Founded in 2003, Aventine is incorporated in Delaware. Its main office is located in Pekin, Illinois and it has operations in Pekin, Illinois and Aurora, Nebraska.

Aventine owns and operates a corn wet milling plant in Pekin, Illinois, that produces approximately 100 million gallons of ethanol on an annual basis. In addition, Aventine owns and operates a dry milling plant in Pekin, Illinois, that produces approximately 60 million gallons of ethanol on an annualized basis. In addition, Aventine owns and operates two dry milling plants in Aurora, Nebraska, that produce approximately 155 million gallons of ethanol annually. Aventine also owns a dry milling facility in Canton, Illinois, that has a nameplate capacity of 38 million gallons of ethanol per year, but is currently idled.

Business Overview

Today, Aventine derives its revenue primarily from the sale of ethanol and co-products produced at its plants.

Ethanol Production

Aventine owns and operates a corn wet milling plant in Pekin, Illinois (sometimes referred to as the Pekin wet mill). The Pekin wet mill produces approximately 100 million gallons of ethanol on an annual basis. In addition, Aventine owns and operates a dry milling plant in Pekin, Illinois (sometimes referred to as the Pekin dry mill). The Pekin dry mill produces approximately 60 million gallons of ethanol on an annualized basis. Together, the Pekin wet mill and Pekin dry mill are sometimes collectively referred to as the Pekin facilities. In addition, Aventine owns and operates two dry milling plants in Aurora, Nebraska (sometimes referred to as the Aurora facilities). These facilities produce approximately 155 million gallons of ethanol annually. Aventine also owns a dry milling facility in Canton, Illinois (sometimes referred to as the Canton facility). The Canton facility has a nameplate capacity of 38 million gallons of ethanol per year, but is currently idled.

As typical in Aventine's industry, Aventine's ethanol plants are set up to operate 24 hours per day, every day of the fiscal year. Occasionally, Aventine's ethanol facilities experience outages (both planned and unplanned) in order to perform routine maintenance (on average, approximately one week per plant each year). Aventine's ethanol plants may also experience unplanned outages for various reasons. Unplanned outages are generally short-term in nature due to the negative impacts unplanned outages have on Aventine's production efficiencies and related profits.

Products

Aventine generates revenue from the following products:

	Nine Months Ended September 30, 2014	Percentage of Total Revenue	Year Ended December 31, 2013	Percentage of Total Revenue	Year Ended December 31, 2012	Percentage of Total Revenue
	(In millions, except for percentages)					
Ethanol	$ 303.9	72.9%	$ 339.9	69.5%	$ 327.7	68.3%
Co-Products	112.7	27.1%	146.4	30.5%	152.0	31.7%
Total	$ 416.6	100%	$ 480.3	100.%	$ 479.7	100.0%

Ethanol

Aventine's principal product is fuel-grade ethanol, an alcohol which is derived principally from corn. Ethanol is sold primarily for blending with gasoline to meet mandates for the required consumption and use of biofuels, as an octane enhancer, as an oxygenate additive for the purpose of meeting fuel emission standards, and as a fuel extender.

Co-Products

Additional revenue is generated through the sale of co-products. The volume and portfolio of co-products produced varies with the level of ethanol production achieved and production process used. In addition, the mix of these co-products can be shifted to increase revenues. Co-product revenue is driven by both the quantity of by-products produced and the market price received for co-products.

In the wet milling process, the remaining parts of the grain are processed into a number of different forms of protein used to feed livestock. The multiple co-products from Aventine's Pekin wet mill generates a higher level of cost recovery from corn than the principal co-product (dried distillers grains with solubles (sometimes referred to as DDGS)) at Aventine's dry milling facilities in Illinois and Nebraska.

The Pekin wet mill co-product portfolio includes several products that are used in animal feed ingredients, such as corn gluten feed (both wet and dry), corn gluten meal, and corn distillers with solubles (sometimes referred to as CCDS). Corn germ is produced and sold at the Pekin wet mill as corn oil for human consumption. Aventine's Pekin wet mill also produces grain distillers dried yeast which is sold primarily as a protein additive in the animal and pet food industry, and a Kosher and Chametz free grain distillers dried yeast, which is processed into a growing variety of products for use in animal and human food and fermentation applications. Carbon dioxide produced by the Pekin Wet mill is used in beverage carbonation and dry ice production.

The dry mill facilities in Pekin, Illinois and Aurora, Nebraska produce DDGS, wet distillers grains with soluble (sometimes referred to as WDGS), and corn oil as co-products. These are sold for various consumer uses into large commodity markets. DDGS and WDGS are sold as a feed product to be included in livestock feed rations. Corn oil is produced at Aventine's Pekin dry mill and used in the biodiesel industry.

Customers

Some of Aventine's customer base has purchased ethanol from Aventine for over ten years. For the nine months ended September 30, 2014, Aventine's ten largest customers accounted for approximately 55% of Aventine's consolidated revenue.

Pricing

Ethanol is generally sold through short-term contracts based upon indexed or fixed prices. Co-products are generally sold through short-term contracts based upon fixed prices.

Raw Materials and Suppliers

Aventine's principal raw material is #2 yellow corn. Corn requirements are contracted through a variety of sources, including farmers, grain elevators, and gain cooperatives. Due to the Midwest location of Aventine's ethanol facilities, Aventine has ample access to various corn markets and suppliers.

The key elements of Aventine's corn procurement strategies are the assurance of a stable supply and the avoidance, where possible, of significant exposures to corn price fluctuations. Corn prices fluctuate daily, typically using the Chicago Board of Trade price as a benchmark. Corn is delivered to the facilities via truck and railcars through local distribution networks.

Utilities

The production of ethanol requires the use of natural gas and coal at Aventine's facilities. From time to time, Aventine uses a combination of forward purchases and financial hedge positions to minimize the effects of the volatility of the price of natural gas. Aventine's Pekin wet mill employs steam turbines to produce Aventine's own electricity. Due to new air quality standards, Aventine is in the process of replacing its coal equipment with natural gas. The result of this conversion will decrease Aventine's energy consumption and increase Aventine's operating efficiency.

Employees

At September 30, 2014, Aventine had a total of 280 full-time equivalent employees. Approximately 50% of the current full-time employees (comprised of the hourly employees at the Pekin, Illinois facilities) are represented by the Union. The unionized employees are covered by a collective bargaining agreement between Aventine's subsidiary, Aventine Renewable Energy, Inc., and the Union. The contract with the Union is scheduled to expire on October 31, 2015.

Competitive Strengths

Aventine's competitive strengths include the following:

- *Strong Market Position.* Aventine is a leading producer and marketer of ethanol in the United States based on both gallons of ethanol produced and sold. For the nine months ended September 30, 2014, Aventine produced and sold 137.5 million and 134.3 million gallons of ethanol, respectively.
- *Strategic Diversification.* Aventine's facilities are diversified across geography, fuel source, transportation capability, product lines and technology, allowing Aventine to capitalize on market opportunities and limit its exposure to any one input or consumer market. Aventine's Pekin, Illinois facilities are located approximately two hours south of Chicago on the Illinois River, which provides us with low cost eastern corn-belt corn and access to the Midwest rail and truck markets, as well as the East Coast rail market. Being located on the Illinois River also gives Aventine the ability to export its ethanol and co-products internationally. Aventine's Aurora, Nebraska location further diversifies Aventine with access to low cost western cornbelt corn, strong local feed demand from livestock producers, and the ability to market ethanol to the West Coast and Southwest ethanol markets.
- *Co-located facilities reduce costs.* Both of Aventine's sites in Pekin, Illinois and Aurora, Nebraska have multiple ethanol production facilities in one location. Dual ethanol plant locations provide Aventine several advantages and synergies. Aventine effectively reduces it overall costs and maximized the efficiency of its equipment with the ability to share grain handling, ethanol storage, rail, barge and truck loading buildings and equipment, labor force and overhead compared to single ethanol plants built on greenfield sites.

Competition

Aventine operates in a highly competitive ethanol marketing and production industry. The top ten producers, of which Aventine is one, accounted for approximately 50.0% of total industry capacity. All of the top ten producers have annual production capacity exceeding 200 million gallons per year. The largest ethanol producer's share of domestic capacity was approximately 10% in 2013. According to the Renewable Fuels Association (sometimes referred to as the RFA), the United States leads the world in ethanol production with 210 bio-refineries in 28 states across the country as of December 2014.

Historically, the world's ethanol producers have competed primarily on a regional basis. Imports into the United States were generally limited by an import tariff (other than from Caribbean basin countries which were exempt from this tariff up to specified limits). This tariff expired on December 31, 2011. In recent years, Aventine has faced competition from foreign producers. Brazil is the world's second largest ethanol producer. Brazil makes ethanol primarily from sugarcane, a process which has historically been lower in cost than producing ethanol from corn. Several large companies produce ethanol in Brazil.

Business and Growth Strategies

Aventine has been pursuing the following business and growth strategies:

- *Capitalize on Current and Changing Regulation.* Through continued investment in increasing production capacity and efficiency, Aventine is well positioned to take advantage of the current and changing regulatory environment in the ethanol industry. The original RFS program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012. Under the EISA, the RFS program was expanded to increase the volume of renewable fuel required to be blended into transportation fuel to 36.0 billion gallons by 2022, of which 15.0 billion gallons relates to corn based ethanol.
- *Entry into new and diversified markets.* Aventine is continually negotiating additional sales agreements. Aventine strives to enhance and optimize multiple modes of transportation and sources of production. In addition, numerous countries in Europe, Asia, and South America have increased the mandated use of renewable fuels, creating export opportunities for Aventine's ethanol and co-products.

Management's Discussion and Analysis of Financial Condition and Results of Operations

Business Summary

Aventine is a leading producer and marketer of ethanol. Through Aventine's production facilities, it markets and distributes ethanol to many of the leading energy companies in the United States. Aventine's revenues are principally derived from the sale of ethanol and from the sale of other grain related co-products that are produced during the production of ethanol at Aventine's plants.

Recent Developments

In March of 2014, Aventine sold its ethanol facility located in Mount Vernon, Indiana, which had been idled since 2012 due to negative operating margins at that location. The proceeds from the sale of those assets were used to pay down debt and fund the working capital needed for restarting Aventine's ethanol facilities located in Aurora, Nebraska. The operating results of Aventine's Mount Vernon ethanol facility have been classified as discontinued operations for the nine months ended September 30, 2014 and 2013, respectively.

In 2014, Aventine restarted its 110 million gallon ethanol facility located in Aurora, Nebraska, which had been idled since 2012 due to negative operating margins at that location. In July of 2014, Aventine restarted its 45 million gallon ethanol facility located in Aurora, Nebraska, which had been idled since 2012 due to negative operating margins at that location.

Business Environment

The following discussion includes trends and factors that may affect future operating results.

Commodity Pricing

Aventine's operations are highly dependent on commodity prices, especially prices for ethanol and corn.

Ethanol. During the first nine months of 2014, Midwest spot ethanol prices averaged approximately $2.25 per gallon compared to an average price of $2.47 per gallon during the first nine months of 2013. At September 30, 2014, we had contracts for delivery of ethanol totaling 26.9 million gallons through December 31, 2014, of which 24.6 million gallons were based on fixed-price contracts and 2.3 million were at spot prices using Platts and Oil Price Information Service ("OPIS") indices.

Corn. For the nine month period ending September 30, 2014, Midwest spot corn prices averaged approximately $4.30 per bushel compared to an average price of $6.29 per bushel during the first nine months of 2013, a decrease of approximately 32%.

Aventine continuously purchases corn for physical delivery from suppliers using forward purchase contracts in order to assure supply. As Aventine does this, it may sell a like amount of Chicago Board of Trade ("CBOT") corn futures with similar dates to lock in the basis differential. On occasion, Aventine uses CBOT futures contracts to lock in the price of corn by taking long purchase positions in CBOT contracts in order to reduce Aventine's risk of price increases. Exchange traded forward contracts for commodities are marked to market each period. Aventine's forward physical purchases of corn are not marked to market. At September 30, 2014, Aventine had fixed-price contracts for the delivery of 3.7 million bushels of corn through January 31, 2015.

Results of Operations

The following discussion summarizes the significant factors affecting Aventine's consolidated operating results for the nine months ended, September 30, 2014 and 2013, the years ended December 31, 2013 and 2012, and the years ended December 31, 2012 and 2011. This discussion should be read in conjunction with Aventine's condensed consolidated financial statements and notes to Aventine's condensed consolidated financial statements contained herein and the consolidated financial statements and related notes for the years ended December 31, 2013 and 2012 also contained herein.

The Nine Months Ended September 30, 2014 Compared With the Nine Months Ended September 30, 2013

Overview

For the nine months ended September 30, 2014 and 2013, Aventine recognized net income of $18.8 million and a net loss of $25.9 million, respectively. The $44.7 million increase in income in the nine months ended September 30, 2014 is primarily due to the increase in the spread between ethanol prices and corn costs, an increase in Aventine's operating performance and efficiency at its Pekin facilities, the sale of Aventine's idled ethanol facility located in Mount Vernon, Indiana, and the restart of Aventine's Aurora facilities.

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In millions)	
Net sales	$ 416.6	$ 364.4
Cost of goods sold	355.5	365.3
Gross profit (loss)	61.1	(0.9)
Selling, general and administrative expenses	12.2	10.8
Other operating expense (income), net	2.7	(0.3)
Operating income (loss)	46.2	(11.4)
Other income (expense):		
Interest expense	(11.3)	(8.5)
Loss on derivative transactions, net	(13.3)	(0.9)
Other non-operating income (expense)	(2.2)	6.1
Income tax expense	–	–
Net income (loss) – continuing operations	$ 19.4	$ (14.7)
Net loss – discontinued operations	(0.6)	(11.2)
Net income (loss)	$ 18.8	$ (25.9)

Sales were generated from the following products:

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In millions)	
Ethanol	$ 303.9	$ 253.9
Co-products	112.7	110.5
Total sales	$ 416.6	$ 364.4

Ethanol sales increased in the nine months ended September 30, 2014 compared to the nine months ended September 30, 2013 primarily due to an increase in ethanol gallons sold partially offset by a decrease in average price per gallon sold. During the first nine months of 2014, Aventine produced 137.5 million gallons of ethanol compared to 102.5 million gallons produced during the nine months ended September 30, 2013. The 35 million gallon increase in ethanol production was the result of process improvements and efficiencies at Aventine's Pekin facilities and the restart of Aventine's Aurora facilities. Aventine sold 135.3 million gallons of ethanol during the nine months ended September 30, 2014 at an average sales price of $2.25 per gallon compared to 102.1 million gallons sold at an average sales price of $2.49 per gallon during the nine months ended September 30, 2013.

Co-product revenues increased primarily as a result of an increase in volume sold as well as the addition of corn oil extraction at Aventine's Pekin facilities. Co-product revenues, as a percentage of corn costs, rose to 47.1% during the nine months ended September 30, 2014 from 37.0% during the nine months ended September 30, 2013. This increase was primarily due to strong international demand for Aventine's feed products and a decrease in corn prices.

Cost of goods sold consists of corn costs, conversion costs (the cost to produce ethanol at Aventine's facilities), freight and logistics costs and depreciation expense. Cost of goods sold was $355.5 million and $365.3 million during the nine months ended September 30, 2014 and 2013, respectively. The $9.8 million decrease in cost of goods sold from 2013 to 2014 is principally the result of the reduction in corn costs, partially offset by the restart of the Aurora facilities in the second and third quarter of 2014.

Corn costs for the nine months ended September 30, 2014 and 2013 were $205.2 million and $277.4 million, respectively. The decrease in Aventine's costs is primarily due to the decrease in corn prices. Aventine used 46.4 million bushels of corn in production during the nine months ended September 30, 2014 compared to 38.8 million bushels during the nine months ended September 30, 2013. During the nine months ended September 30, 2014, corn used in production cost approximately $4.43 per bushel compared to $7.14 per bushel for the nine months ended September 30, 2013.

Due to high corn prices in 2013, Aventine decided to participate in the USDA CCC Sugar program as a means for supplementing, and in some cases, substituting corn needs at Aventine's ethanol facilities. Aventine began receiving sugar at its ethanol facilities in the fourth quarter of 2013. For the nine months ended September 30 2014, Aventine used 203.3 million pounds of sugar at a delivered cost of $0.07 per pound. Aventine did not use any sugar in the nine month period ended September 30, 2013.

A summary of Aventine commodity prices for the nine months ended September 30, 2014 and 2013 has been provided below:

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
Average sales price per gallon of ethanol	$ 2.25	$ 2.49
Average cost per bushel of corn	$ 4.43	$ 7.14
Co-product revenue as a percentage of corn costs	47.1%	37.0%

Conversion costs for the nine months ended September 30, 2014 and 2013 are as follows:

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In millions)	
Utilities	$ 36.8	$ 24.1
Salary and benefits	16.6	14.9
Maintenance and supplies	18.3	7.3
Denaturant and chemicals	19.5	13.9
General overhead and other	9.9	5.9
	$ 101.1	$ 66.1

Conversion costs increased by $35.0 million in the first nine months of 2014 as a result of restarting of Aventine's Aurora facilities and additional maintenance incurred at Aventine's Pekin facilities that had been previously delayed due to negative margins in the past.

Freight and logistics costs for the nine months ended September 30, 2014 and 2013 were $21.4 million and $12.5 million, respectively. The primary reason for the increase in freight and logistics cost in the first nine months of 2014 was the restart of the Aurora facilities. On a per gallon sold basis, freight and logistics costs were $0.16 per ethanol gallon sold and $0.12 per ethanol gallon sold the nine months ended September 30, 2014 and 2013, respectively. The $0.04 per gallon sold increase in cost is primarily driven by the change in the mix of delivery points and an increase in railcar expenses at Aventine's Aurora facilities.

Depreciation and amortization expense for the nine months ended September 30, 2014 and 2013 was $9.8 million and $7.8 million, respectively. The increase in depreciation expense is primarily related to Aventine's Aurora facilities.

Selling, general and administrative expenses increased to $12.2 million for the nine months ended September 30, 2014 as compared to $10.8 million for the nine months ended September 30, 2013. The $1.4 million increase is primarily related to increased legal and consulting costs related to the retirement of the Term Loan A and Term Loan A-1 debt, on-going litigation and the restart of the Aurora facilities.

Interest expense for the nine months ended September 30, 2014 and 2013 was $11.3 million and $8.5 million, respectively. Interest expense for the nine months ended September 30, 2014 included $11.1 million related to the Term Loan Facility (net of debt forgiveness income), $1.6 million of amortization of debt issuance costs and $0.2 million of other interest expense, partially offset by $1.6 million of capitalized interest. Interest expense for the nine months ended September 30, 2013 includes $6.8 million related to the Term Loan Facility (net of debt forgiveness income), $1.5 million of amortization of debt issuance costs, and $0.2 million of other interest expense. The $2.8 million increase in interest was primarily due to the issuance of the Term Loan A-1, offset in part by an increase capitalized interest.

Gain (loss) on derivative transactions, net for the nine months ended September 30, 2014 includes $13.3 million of net realized and unrealized losses on corn and ethanol derivative contracts versus net realized and unrealized losses in the nine months ended September 30, 2013 of $0.8 million. The reason for the $12.5 million increase in losses on derivative transactions is that Aventine maintains a disciplined approach to locking in positive forward margins rather than focusing on the price movements of individual commodities. In a period like 2014 when margins expand, Aventine experiences losses in its hedging account. Aventine does not mark to market forward physical contracts to purchase corn or sell ethanol as Aventine accounts for these transactions as normal purchases and sales under GAAP.

Other non-operating income (expense) for the nine months ended September 30, 2014 and 2013 was $2.2 million of expense and $6.0 million of income, respectively. The $2.2 million of expense in the first nine months of 2014 primarily related to costs associated with the retirement of Term Loan A and Term Loan A-1. The $6.0 million of income in the nine months ended, September 30, 2013 primarily related to the settlement of litigation.

Facility Operating Data

The following table provides selected key operating statistics for Aventine's operating facilities.

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In millions)	
Pekin, Illinois:		
Ethanol gallons produced	115.9	102.5
Corn consumed (bushels)	41.6	38.8
Sugar consumed (pounds)	76.7	–
Aurora, Nebraska:		
Ethanol gallons produced	21.6	–
Corn consumed (bushels)	4.8	–
Sugar consumed (pounds)	126.6	–

In mid-2014, Aventine restarted its 110 million gallon ethanol facility located in Aurora, Nebraska, and in the third quarter Aventine restarted its other 45 million gallon ethanol facility in Aurora, Nebraska. Previously, both of these facilities were idled due to negative operating margins at that location.

Change in Working Capital and Cash Flows

Cash provided by operating activities of $32.9 million was primarily due to consolidated net income of $18.8 million resulting from higher production volumes and improved margins. In addition, Aventine had non-cash adjustments of $5.3 million, related to a $3.3 million loss on the sale of certain coal-fired equipment, the $2.1 million write-off of Aventine's unamortized loan acquisition costs related to the retirement of the Term Loan A and A-1, and depreciation and amortization expense of $11.5 million. Cash used in operating activities of $2.7 million was primarily the result of the $25.9 million net loss recognized in the nine months ended September 30, 2013.

Cash provided by Aventine's investing activities of $18.0 million for the nine months ended September 30, 2014 was the result of the sale of Aventine's ethanol facility located in Mount Vernon, Indiana partially offset by $16.1 million of additions to property and equipment primarily attributable to the installation of Aventine's natural gas fired boilers in Pekin, Illinois and other investments in enhancing Aventine's ethanol facilities performance. Cash used in investing activities of $4.3 million for the nine months ended September 30, 2013 consisted of additions to property and equipment primarily including the purchase of corn oil extraction equipment at Aventine's ethanol facilities located in Pekin, Illinois and other investments in enhancing Aventine's ethanol facilities performance in 2013.

Cash used in financing activities of $56.3 million resulted from $78.6 million of repayments of Aventine's Term Loan A and Term Loan A-1 debt, partially offset by advances on Aventine's loan and security agreement of $23.4 million. Cash provided by financing activities of $34.2 million resulted from the receipt of proceeds from the issuance of the Term Loan A-1 debt in June of 2013.

The Year Ended December 31, 2013 Compared With the Year Ended December 31, 2012

Overview

For the year ended December 31, 2013, Aventine recognized a net loss from continuing operations of $15.5 million and a net loss of $58.8 million from discontinued operations for a total net loss of $74.3 million. For the year ended December 31, 2012, Aventine recognized a net loss from continuing operations of $64.6 million and a net loss of $19.3 million from discontinued operations for a total net loss of $83.9 million. The 2013 net loss of $74.3 million net loss includes impairment charges of $44.2 million related to Aventine's ethanol facilities located in Mount Vernon, Indiana and Canton, Illinois. Excluding the nonrecurring impairment charges, Aventine's 2013 net loss would have been $30.1 million for the year ended, December 31, 2013.

	2013	2012
	(In millions)	
Net sales	$ 480.2	$ 479.7
Cost of goods sold	469.2	503.9
Gross profit (loss)	11.0	(24.2)
Selling, general and administrative expenses	13.6	25.2
Other operating expense, net	0.8	1.6
Operating loss	(3.4)	(51.0)
Other income (expense):		
Interest expense	(12.9)	(21.1)
Gain (loss) on derivative transactions, net	(5.5)	0.7
Other non-operating income	6.3	6.8
Income tax expense	–	–
Net income (loss) – continuing operations	$ (15.5)	$ (64.6)
Net loss – discontinued operations	(58.8)	(19.3)
Net loss	$ (74.3)	$ (83.9)

Aventine's total revenue was higher for its 2013 fiscal year compared to the same period of 2012, primarily due to increased ethanol revenue. For 2013, Aventine sold 140.4 million gallons of ethanol at an average price of $2.38 per gallon within Aventine's continuing operations. In 2012, Aventine sold 143.5 million gallons at an average price of $2.28 per gallon within continuing operations. In total, ethanol sales from continuing operations were $333.8 million and $327.7 million in 2013 and 2012, respectively. Aventine's average price per gall on of ethanol sold increased by 4% in 2013 compared to 2012 primarily due to increases in commodity prices and an increase in domestic demand due to lower imports of ethanol into the U.S. in 2013. Sales volume was 3.1 million gallons lower in 2013 compared to 2012 due to the idling of Aventine's Aurora ethanol facilities in third quarter of 2012.

Co-product sales in 2013 were $146.4 million compared to $152.0 million in 2012. The primary reason for the $5.6 million decrease in co-product revenue was due to the idling of Aventine's Aurora ethanol facilities in third quarter of 2012. Offsetting lower volumes sold was the addition of corn oil extraction at Aventine's Pekin ethanol facilities in the second quarter of 2013. Aventine sells its corn oil to the biodiesel industry, and demand for corn oil in the biodiesel industry has weakened due to adequate supplies, which had a negative impact on Aventine's prices in 2013. In total, Aventine sold $2.5 million in 2013, and did not produce corn oil in 2012.

Cost of goods sold consists of corn costs, conversion costs (the cost to produce ethanol at Aventine's facilities), freight and logistics costs and depreciation expense. Total cost of goods sold was lower in 2013 compared to the same period of 2012 due primarily to lower corn costs. For the year ended December 31, 2013, Aventine's corn costs were $345.0 million, which was $40.1 million lower than Aventine's corn costs in 2012 of $385.1 million. Aventine's average cost per bushel of corn from continuing operations was $6.43 in 2013, which was 9% lower than Aventine's average cost per bushel in 2012 of $7.04 delivered. This decrease in Aventine's cost was primarily related to a decrease in the market price for corn, especially during the last half of 2013. The amount of corn harvested in the fall of 2012 was lower due to drought conditions. As a result, corn prices were higher in the first half of 2013 and Aventine also at times had to pay higher basis prices than Aventine has paid in the past in order to secure enough corn to operate. However, the record corn crop harvested in the fall of 2013 lowered the market price of corn as well as corn basis for the remainder of 2013. Aventine consumed approximately the same amount of corn in 2013 and 2012.

Due to the high corn prices in the first half of 2013, Aventine decided to participate in the USDA CCC Sugar program as a means for supplementing, and in some cases, substituting Aventine's corn needs at Aventine's ethanol facilities. Aventine began receiving sugar at its ethanol facilities in the fourth quarter of 2013. For the year ended December 31 2013, Aventine's sugar costs were $1.7 million. Aventine did not use any sugar in 2012.

Conversion costs from continuing operations increased by 7% in 2013 to $90.2 million from $84.1 million in the previous year. The $6.1 million increase was primarily due to additional maintenance incurred at Aventine's Pekin facilities in 2013 that had been previously delayed due to negative margins in the past and slightly higher utility and chemical costs.

Freight and logistics costs from continuing operations for the years ended December 31, 2013 and 2012 were $17.8 million and $21.1 million, respectively. On a per ethanol gallon sold basis, freight and logistics costs were $0.13 and $0.15 per gallon for 2013 and 2012, respectively. The $0.02 per gallon sold decrease in cost is primarily driven by the change in the mix of delivery points due to the idling of the Mount Vernon and Aurora ethanol facilities, and the close proximity of the Pekin ethanol facilities location to Midwest ethanol market hub in Chicago, Illinois.

Depreciation expense from continuing operations for the years ended December 31, 2013 and 2012 was $10.2 million and $10.0 million, respectively.

Selling, general and administrative expenses from continuing operations decreased to $13.6 million for the year ended December 31, 2013 as compared to $25.2 million for the year ended December 31, 2012. In 2012, Aventine had increased legal and consulting costs related to the debt restructuring , the reverse stock split, Aventine's decision to cease voluntarily reporting with the Securities and Exchange Commission, and on-going litigation as well as separation payments to departing senior executives in 2012.

Interest expense from continuing operations for the years ended 2013 and 2012 was $12.9 million and $21.1 million, respectively. Interest expense for the year ended December 31, 2013 included $10.5 million related to the Term Loan Facility (net of debt forgiveness income), $2.1 million of amortization of debt issuance costs and $0.5 million of other interest expense, partially offset by $0.2 million of capitalized interest. Interest expense for the year ended December 31, 2012 includes $19.5 million related to the Term Loan Facility (net of debt forgiveness income), $3.3 million of amortization of both debt issuance costs and original issue discount costs, and $0.6 million of other interest expense, partially offset by $2.3 million of capitalized interest. The $8.2 million decrease in interest was primarily due to the debt forgiveness from the troubled debt restructuring.

Gain (loss) on derivative transactions, net for 2013 includes $5.5 million of net realized and unrealized losses on corn and ethanol derivative contracts versus net realized and unrealized gains in the year ended December 31, 2012 of $0.7 million. In 2013, Aventine entered into derivative transactions to lock in positive forward margins rather than focusing on the price movements of individual commodities. When margins expand like they did in the last six months of 2013, Aventine experienced losses in Aventine's hedging account. Aventine does not mark to market forward physical contracts to purchase corn or sell ethanol as Aventine accounts for these transactions as normal purchases and sales under GAAP.

Net loss – discontinued operations totaled $58.8 million and $19.3 million for the years ended December 31, 2013 and 2012, respectively. Net loss - discontinued operations includes the results of Aventine's ethanol facilities located in Mount Vernon, Indiana and Canton, Illinois. Both of these ethanol facilities were idle in 2013, and the ethanol facility located in Canton, Illinois was idle for all of 2012. The $39.5 million increase in Net loss – discontinued operations is due to a $22.8 million impairment charge related to Aventine's ethanol facility in Mount Vernon, Indiana and a $21.3 million impairment charge related to Aventine's ethanol facility located in Canton, Illinois. Excluding the $22.8 million impairment charge, the net loss at Mount Vernon improved by $3.0 million from a $17.1 million loss in 2012 to $14.1 million loss in 2013. This primarily resulted from the decision to cold idle the facility in 2013 in order to minimize the impact of negative margins at that location. The net loss at Aventine's Canton ethanol facility decreased from $2.2 million in 2012 to $0.6 million in 2013 after excluding the $21.3 million impairment charge. This improvement was the result of continued cost cutting measures at that location.

Facility Operating Data

The following table provides selected key operating statistics for Aventine's operating facilities.

	2013	2012
	(In millions)	
Pekin, Illinois:		
Ethanol gallons produced	142.8	123.2
Corn consumed (bushels)	53.7	48.2
Sugar consumed (pounds)	13.3	–
Aurora, Nebraska:		
Ethanol gallons produced	–	18.1
Corn consumed (bushels)	–	6.5
Sugar consumed (pounds)	–	–

Change in Working Capital and Cash Flows

Working capital increased to $61.5 million for the year ended December 31, 2013 to $100.4 million from $38.9 million at December 31, 2012 as a result of the proceeds from the issuance of the Term Loan A-1 loans, the sale of Aventine's ethanol facility located in Mount Vernon, Indiana and operating margin improvements.

Cash used in operating activities was $3.3 million and $36.2 million, for the years ended December 31, 2013 and 2012, respectively. The $32.9 million change in cash used in operating activities was due to a lower net loss primarily from continuing operations in 2013 compared to 2012.

Cash used in investing activities of $7.5 million related to additions to property and equipment primarily attributable to the purchase of corn oil extraction equipment at Aventine's ethanol facilities located in Pekin, Illinois and other investments in enhancing Aventine's ethanol facilities' performance in 2013. Cash used in investing activities of $10.6 million in 2012 also related to capital improvements primarily at Aventine's ethanol facilities located in Aurora, Nebraska.

Cash provided by financing activities of $34.4 million was the result of the receipt of proceeds from the issuance of the Term Loan A-1 debt in June of 2013. In 2012, Aventine had $27.6 million of cash provided by financing activities related to the debt restructuring in September of 2012 which included receiving proceeds from the issuance of the Term Loan A debt.

The Year Ended December 31, 2012 Compared With the Year Ended December 31, 2011

Overview

For the year ended December 31, 2012, Aventine recognized a net loss from continuing operations of $64.5 million and a net loss of $19.3 million from discontinued operations for a total net loss of $83.9 million. For the year ended December 31, 2011, Aventine recognized a net loss from continuing operations of $28.0 million and a net loss of $8.4 million from discontinued operations for a total net loss of $36.4 million.

	2012	2011
	(In millions)	
Net sales	$ 479.7	$ 639.8
Cost of goods sold	503.9	598.8
Gross profit (loss)	(24.2)	41.0
Selling, general and administrative expenses	25.2	30.2
Other operating expense, net	1.6	1.4
Operating income (loss)	(51.0)	9.4
Other income (expense):		
Interest expense	(21.1)	(24.0)
Gain (loss) on derivative transactions, net	0.7	(4.4)
Loss on early extinguishment of debt	–	(10.0)
Other non-operating income	6.8	1.5
Income tax expense	–	(0.5)
Net income (loss) – continuing operations	$ (64.6)	$ (28.0)
Net loss – discontinued operations	(19.3)	(8.4)
Net loss	$ (83.9)	$ (36.4)

Aventine's total revenue was lower for its 2012 fiscal year compared to the same period of 2011, primarily due to decreased ethanol revenue. For 2012, Aventine sold 143.5 million gallons of ethanol at an average price of $2.28 per gallon within Aventine's continuing operations. In 2011, Aventine sold 182.0 million gallons at an average price of $2.64 per gallon within continuing operations. In total, ethanol sales from continuing operations were $327.7 million and $480.4 million in 2012 and 2011, respectively. Aventine's average price per gallon of ethanol sold decreased by 13% in 2012 compared to 2011. Sales volume was 38.5 million gallons lower in 2012 compared to 2011 due to the idling of Aventine's ethanol facilities in Mount Vernon, Indiana in first quarter of 2012 and Aurora ethanol facilities in third quarter of 2012.

Co-product sales from continuing operations were $152.0 million in 2012 compared to $159.4 million in 2011. The primary reason for the $7.4 million decrease in co-product revenue was due to the idling of Aventine's ethanol facilities in Mount Vernon, Indiana in first quarter of 2012 and Aurora ethanol facilities in third quarter of 2012.

Cost of goods sold consists of corn costs, conversion costs (the cost to produce ethanol at Aventine's facilities), freight and logistics costs and depreciation expense. Total cost of goods sold was lower in 2012 compared to the same period of 2011 due primarily to lower corn costs. For the year ended December 31, 2012, Aventine's corn costs were $385.1 million, which was $67.2 million lower than Aventine's corn costs in 2011 of $452.3 million. Aventine's average cost per bushel of corn from continuing operations was $7.04 in 2012, which was 4% higher than its average cost per bushel in 2011 of $6.78 delivered. The increase in Aventine's corn cost in 2012 was primarily related to drought conditions experienced in 2012 that impacted the 2012 corn harvest and raised market corn prices. Aventine also at times had to pay higher basis prices than Aventine has paid in the past in order to secure enough corn to operate in 2012. Corn consumption by Aventine's continuing operations was 12.0 million bushels lower in 2012 compared to 2011 due to the idling of the Mount Vernon and Aurora facilities in the first and third quarters of 2012, respectively.

Conversion costs from continuing operations decreased by 3% in 2012 to $84.1 million from $86.7 million in 2011. Even though ethanol production decreased in 2012 compared to 2011 as a result of idling the ethanol facilities located in Mount Vernon, Indiana and Aurora, Nebraska, some of Aventine's conversion costs are more fixed in nature including utilities expense, labor charges, and property taxes. As Aventine continued to maintain its facilities in a "warm" idle status, Aventine did not make permanent staffing reductions until 2013. The idling process and other operational challenges also negatively impacted Aventine's production efficiencies in 2012 compared to 2011. As a result, Aventine's 2012 conversion costs were relatively consistent with Aventine's 2011 conversion costs.

Freight and logistics costs from continuing operations for the years ended December 31, 2012 and 2011 were $21.1 million and $26.5 million, respectively. On a per gallon sold basis, freight and logistics costs were consistent at $0.15 per ethanol gallon sold in 2012 and 2011, respectively.

Depreciation expense from continuing operations for the years ended December 31, 2012 and 2011 was $10.0 million and $11.7 million, respectively.

Selling, general and administrative expenses from continuing operations decreased to $25.2 million for the year ended December 31, 2012 as compared to $30.2 million for the year ended December 31, 2011. In 2012, Aventine had increased legal and consulting costs related to the debt restructuring, the reverse stock split, Aventine's decision to cease voluntarily reporting with the Securities and Exchange Commission, and on-going litigation as well as separation payments to departing senior executives in 2012. In 2011, selling general and administrative expenses from continuing operations consisted of $9.1 million of salary and benefits expense, $5.4 million of stock compensation expense, $6.4 million of outside services expenses, $1.9 million of depreciation expense, $1.5 million of expense related to materials, and $5.9 million of other expenses. Included in the year ended December 31, 2011, totals are carrying costs related to Aventine's Canton and Aurora West facilities of $4.2 million.

Interest expense from continuing operations for the years ended 2012 and 2011 was $21.1 million and $24.0 million, respectively. Interest expense for the year ended December 31, 2012 included $19.5 million related to the Term Loan Facility (net of debt forgiveness income), $3.3 million of both debt issuance and original issue discount costs and $0.6 million of other interest expense, partially offset by $2.3 million of capitalized interest. Interest expense for the year ended December 31, 2011 includes $23.1 million related to the Term Loan Facility, $3.1 million of amortization of debt issuance costs, and $2.0 million of other interest expense, partially offset by $4.2 million of capitalized interest. The $2.9 million decrease in interest in 2012 was primarily due to the impact of the debt forgiveness associated with the debt restructuring transaction in 2012.

Gain (loss) on derivative transactions, net for 2012 includes $0.7 million of net realized and unrealized gains on corn and ethanol derivative contracts versus net realized and unrealized losses in the year ended December 31, 2011 of $4.4 million. In 2012, Aventine did not have an adequate amount of liquidity to lock in Aventine's forward margins using derivative contracts and margins in the forward market were generally inversed to negative for the period. As a result, Aventine stayed in the spot market for most of the fiscal year of 2012.

Net loss – discontinued operations totaled $19.3 million and $8.4 million for the years ended December 31, 2012 and 2011, respectively. Net loss - discontinued operations includes the results of Aventine's ethanol facilities located in Mount Vernon, Indiana and Canton, Illinois. The ethanol facility located in Canton, Illinois was idle for all of 2012, and the Mount Vernon facility was idled in the first quarter of 2012. The $10.9 million increase in Net loss – discontinued operations is due to the timing of the "warm" idle of the Canton and Mount Vernon facilities.

Facility Operating Data

The following table provides selected key operating statistics for Aventine's operating facilities.

	2012	2011
	(In millions)	
Pekin, Illinois:		
Ethanol gallons produced	123.2	144.6
Corn consumed (bushels)	48.2	55.3
Sugar consumed (pounds)	–	–
Aurora, Nebraska:		
Ethanol gallons produced	18.1	30.8
Corn consumed (bushels)	6.5	11.4
Sugar consumed (pounds)	–	–

Change in Working Capital and Cash Flows

Working capital decreased to $38.9 million for the year ended December 30, 2012 from $63.1 million at December 31, 2011 as a result lower operating margins, which increased Aventine's year ended December 31, 2012 net loss compared to 2011.

Liquidity and Capital Resources

The following table sets forth selected information concerning Aventine's financial condition:

	September 30, 2014	December 31, 2013
	(In millions)	
Cash and cash equivalents	$ 35.1	$ 40.5
Current assets	96.3	128.1
Current liabilities	25.6	27.8
Debt and capital leases, current portion of stated principal (1)	2.2	2.0
Debt and capital leases, noncurrent portion of stated principal (1)	$ 158.5	$ 193.9

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(1) The actual debt pay-off is $67,325 lower than carrying value of our debt on balance sheet at September 30, 2014. This is due to the accounting treatment of the troubled debt restructuring transaction that occurred in 2012, which required Aventine to account for the impact of the debt that was forgiven prospectively instead of taking an immediate write-down at the time of the transaction.

On September 30, 2014, Aventine had $35.1 million in cash and equivalents. During the nine months ended September 30, 2014, Aventine funded its operations primarily from cash on hand, cash flow from operations, proceeds and borrowings under Aventine's loan and security agreement. Funds generated from these sources were also used to make debt payments, including prepayments, in the amount of $78.6 million, retiring all of Aventine's Term Loan A and Term Loan A-1 debt and reducing the pay-off of its total debt to $160.7 million at September 30, 2014.

Aventine is in compliance with its debt covenants at September 30, 2014. Aventine believes that current and future available capital resources, revenues generated from operations, and other existing sources of liquidity, will be adequate to meet its anticipated working capital and capital expenditure requirements for at least the next twelve months.

Change in Working Capital and Cash Flows

Working capital decreased to $70.7 million at September 30, 2014 from $100.4 million at December 31, 2013 as a result of using Aventine's existing cash on hand and an advance on Aventine's loan security agreement to fully retire the Term Loan A and Term Loan A-1 loans.

Cash provided by operating activities of $32.9 million was primarily due to consolidated net income of $18.8 million resulting from higher production volumes and improved margins. In addition, Aventine had non-cash adjustments of $5.4 million, related to a $3.3 million loss on the sale of certain coal-fired equipment, the $2.1 million write-off of Aventine's unamortized loan acquisition costs related to the retirement of the Term Loan A and A-1, and total depreciation and amortization expense of $11.5 million.

Cash provided by Aventine's investing activities of $18.0 million for the nine months ended September 30, 2013 was the result of the sale of Aventine's ethanol facility located in Mount Vernon, Indiana partially offset by $16.1 million of additions to property and equipment primarily attributable to the installation of Aventine's natural gas fired boilers in Pekin, Illinois and other investments in enhancing Aventine's ethanol facilities performance.

Cash used in financing activities of $56.3 million resulted from $78.6 million of repayments of Aventine's Term Loan A and Term Loan A-1 debt, partially offset by advances on Aventine's loan and security agreement of $23.4 million.

Loan and Security Agreement

Aventine maintains a revolving line of credit with an availability maximum of $40.0 million. The credit facility expires on July 27, 2017. Interest accrues under the credit facility at a rate equal to LIBOR plus 6%. The credit facility's monthly unused line fee is 0.50% of the amount by which the maximum credit under the facility exceeds the average daily balance. The loan agreement contains customary affirmative and negative covenants including but not limited to, meeting certain financial covenants including but not limited to maintaining a cash balance of $5 million and a fixed charge coverage ratio of at least 1.1 to 1.0. At September 30, 2014, Aventine had $23.4 million of loan advances and $6.0 million in letters of credit outstanding under the agreement.

Term Loan Debt

The payoff amount of Aventine's Term Loan B debt as of September 30, 2014 is $135 million. Interest on Term Loan B may be paid in cash at a 10.5% rate or paid-in-kind at a 15% interest rate. If Aventine elects paid-in-kind interest, the interest is capitalized at the end of each quarter. The maturity date for Term Loan B is September 24, 2017. Aventine has always elected paid-in-kind interest on its Term Loan B debt, and elected paid-in-kind interest for amounts due on December 31, 2014. The Term Loan B is secured with substantially all of the Company's fixed assets. The term loan agreement contains customary affirmative and negative covenants including but not limited to, meeting certain financial covenants including but not limited to maintaining a cash balance of $5 million.

Contractual Cash Obligations

In addition to Aventine's long-term debt obligations, Aventine has certain other contractual cash obligations and commitments. The following table provides information regarding Aventine's consolidated contractual obligations and approximate commitments as of September 30, 2014:

	Payment Due By Period				
Contractual Cash Obligations	**Total**	**Less than One Year**	**One to Three Years**	**Three to Five Years**	**After Five Years**
Long-Term Debt Obligations (1)	$ 160.7	$ 2.2	$ 158.5	$ –	$ –
Operating Lease Obligations	33.9	9.4	14.1	9.3	1.1
Grain Purchase Obligations	6.0	6.0	–	–	–
Total Contractual Cash Obligations	$ 200.6	$ 17.6	$ 172.6	$ 9.3	$ 1.1

(1) Maturities of long term debt include the actual cash pay-off amount of the Term Loan B of $135.1 million at September 30, 2014. The actual debt pay-off amount is lower than the carrying value of Aventine's debt at September 30, 2014 due to the troubled debt restructuring transaction that occurred in 2012, which required us to account for the impact of debt forgiveness prospectively instead of taking an immediate write-down.

Critical Accounting Policies

Aventine uses estimates and assumptions in preparing its financial statements in accordance with U.S. generally accepted accounting principles. These estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Of the significant accounting policies described in the notes to Aventine's financial statements, Aventine believes that the following are the most critical:

Revenue Recognition

Revenue from the sale of Aventine's products is recognized at the time title to the product and all risks of ownership transfer to the customers. The time of transfer is defined in the specific sales agreement; however, it generally occurs upon shipment, loading of the products or when the customer picks up Aventine's products. Collectability of revenue is reasonably assured based on historical evidence of collectability between Aventine and its customers. Interest income is recognized as earned.

The majority of sales are reported gross, inclusive of freight costs being paid to Aventine. Aventine recognizes freight costs in its cost of goods sold. When product is sold F.O.B plant and freight is paid by Aventine's customer, Aventine excludes these costs from its financial statements.

Commodities Contracts, Derivative Instruments and Hedging Activities

We evaluate contracts to determine whether the contracts are derivative instruments. Certain contracts that meet the definition of a derivative may be exempted from derivative accounting and treated as normal purchases or normal sales if documented as such. 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 physical quantities expected to be used or sold over a reasonable period in the normal course of business.

Aventine enters into short-term cash, option and futures contracts as a means of securing corn and natural gas for its ethanol plants and managing exposure to changes in commodity and energy prices. Aventine also enters into derivative contracts to hedge its exposure to price risk as it relates to ethanol sales. As part of Aventine's risk management process, Aventine uses futures and option contracts through regulated commodity exchanges or through over-the-counter markets to manage Aventine's risk. All of Aventine's derivatives, other than those excluded under the normal purchases and sales exclusion, are designated derivatives, with changes in fair value recognized in net income. Although these contracts are economic hedges of specified risks, they are not designated or accounted for as hedging instruments.

Realized and unrealized gains and losses related to derivative contracts related to corn, ethanol and natural gas are included as gain (loss) on derivative transactions in the accompanying financial statements. The fair values of these contracts are presented on the accompanying balance sheet as derivative financial instruments.

Off-Balance Sheet Arrangements

Aventine currently has no off-balance sheet arrangements.

Effects of Inflation

The impact of inflation was not significant to Aventine's financial condition or results of operations for the nine months ended September 30, 2014 and 2013.

Market Prices of and Dividends on Aventine Common Stock

Aventine common stock trades from time to time on the OTCBB under the symbol "AVRW" and in unreported transactions. As of January 30, 2015, Aventine common stock was held by approximately 53 stockholders of record. No cash dividends have been paid on Aventine common stock during the two most recent fiscal years, and Aventine does not intend to pay cash dividends on its common stock in the immediate future.

The following table sets forth the reported high and low sales prices of shares of Aventine common stock on the OTCBB. The high and low sales prices are based on intraday sales for the periods reported. There is a limited historic public trading market for Aventine's common stock. This information has been obtained from the Bloomberg Professional service. The over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

	Price Range*	
	High	**Low**
Year Ended December 31, 2014:		
First Quarter (January 1 – March 31)	$ 30.00*	$ 10.10*
Second Quarter (April 1 – June 30)	$ 18.00*	$ 13.00*
Third Quarter (July 1 – September 30)	$ 14.00*	$ 8.75*
Fourth Quarter (October 1 – December 31)	$ 15.00*	$ 9.00*
Year Ended December 31, 2013:		
First Quarter	$ 25.00*	$ 21.00*
Second Quarter	$ 21.00*	$ 21.00*
Third Quarter	$ 21.25*	$ 16.00*
Fourth Quarter	$ 12.00*	$ 7.50*

*** It should be noted that Aventine common stock is not listed on any exchanges and the daily trading volume of its common shares is very low in relation to the total number of shares issued and outstanding (as reported by The Bloomberg Professional service, the average daily trade volume for every quarter since Q1 2013 has been less than 1.5% of total shares issued and outstanding). Based on the stock transfer procedures outlined in Aventine's Stockholders Agreement, Aventine is notified from time to time when shares subject to the terms of the Aventine Stockholders Agreement have traded that are not reported on the OTCBB. The actual transaction price of the shares and the actual average daily trading volume in these transactions are not provided to Aventine. As a result, trade information on the OTCBB may be unreliable and may not be indicative of the value of Aventine's common stock at any particular point in time. Aventine stockholders should not solely rely on the trade information provided on the OTCBB in making a determination of the fair value of Aventine's stock price and should review carefully the other information contained in this joint proxy statement/prospectus in considering whether to approve the respective proposals before them.**

Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table sets forth information with respect to the beneficial ownership of Aventine's voting securities as of January 30, 2015, the date of the table, by:

- each person known by Aventine to beneficially own more than 5% of the outstanding shares of its common stock;
- each of Aventine's directors;
- each of Aventine's current executive officers; and
- all of Aventine's directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission, and includes voting or investment power with respect to the securities. To Aventine's knowledge, except as indicated by footnote, and subject to community property laws where applicable, the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. Shares of common stock underlying derivative securities, if any, that currently are exercisable or convertible or are scheduled to become exercisable or convertible for or into shares of common stock within 60 days after the date of the table are deemed to be outstanding in calculating the percentage ownership of each listed person or group but are not deemed to be outstanding as to any other person or group. Except as indicated by footnote, percentage of beneficial ownership is based on 14,204,240 shares of common stock issued and outstanding as of the date of the table. Except as otherwise indicated, the address of the stockholder is: c/o Aventine Renewable Energy Holdings, Inc., 1300 S. 2nd Street, Pekin, IL, 61554.

Name and Address of Beneficial Owner	Title of Class	Amount and Nature of Beneficial Ownership	Percent of Class
Candlewood Investment Group, LP(1) (4)	Common	8,439,978	59.42%
Credit Suisse Securities (USA) LLC(2) (4)	Common	1,862,023	13.11%
Midtown Acquisitions LP(3)	Common	929,101	6.54%
James Continenza	Common	0	0%
Kip Horton	Common	0	0%
Dennis Alt	Common	0	0%
Eric Hakmiller	Common	0	0%
Mark Beemer	Common	0	0%
Christopher A. Nichols	Common	0	0%
Brian Steenhard	Common	0	0%
John Valenti	Common	0	0%
Directors and Officers (8) as a Group	Common	0	0%

(1) Amount represents the shares of common stock held by each of Candlewood Financial Opportunities Master Fund, LP, Candlewood Financial Opportunities Fund, LLC, Candlewood Special Situations Master Fund, Ltd., CWD OC 522 Master Fund, Ltd., Flagler Master Fund SPC Ltd. – Class A Segregated Portfolio, Flagler Master Fund SPC Ltd. – Class B Segregated Portfolio and Candlewood Special Situations Fund, L.P. (collectively, the "Candlewood Funds"). Candlewood Investment Group, LP is the investment advisor to each of the Candlewood Funds and has voting and dispositive power with respect to the shares held by the Candlewood Funds. The address for Candlewood Investment Group, LP and each of the Candlewood Funds is c/o Candlewood Investment Group, 777 Third Avenue, Suite 19B, New York, New York 10017.
(2) The address of Credit Suisse Securities (USA) LLC is 11 Madison Ave, 5th Floor, New York, NY 10010.
(3) The address of Midtown Acquisitions LP is 65 East 55th Street, 19th Floor, New York, NY 10022.
(4) Pacific Ethanol has entered into stockholders agreements with each of the Candlewood Funds and Credit Suisse Securities (USA) pursuant to which each such stockholder has agreed to vote their pro-rata share of 51% of Aventine's issued and outstanding common stock in favor of the merger-related proposals.

Equity Compensation Plan Information

The following table shows our stockholders approved and non-stockholders approved equity compensation plans as of December 31, 2014:

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	–	–	–
Equity compensation plans not approved by security holders	**3,140**	**$ 3.55**	**1,583**
Total	**3,140**	**$ 3.55**	**N/A**

At December 31, 2014, Aventine maintained one stock-based compensation plan, the Aventine Renewable Energy Holdings, Inc. 2010 Equity Incentive Plan (sometimes referred to as the Aventine Plan). The amount shown in the first column consists of 3,140 stock options.

The Aventine Plan was adopted by the Aventine Board effective March 15, 2010, and has been deemed to satisfy all applicable federal and state law requirements and all listing standards of any securities exchange and no additional stockholder approval of the Aventine Plan has been obtained.

The Aventine Plan provides for the grant of awards in the form of stock options, restricted stock or units, stock appreciation rights and other equity-based awards to directors, officers, employees and consultants or advisors (and prospective directors, officers, employees and consultants or advisors) of Aventine or its affiliates at the discretion of the Aventine Board (or the compensation committee of the Aventine Board (sometimes referred to as the Aventine Compensation Committee). The term of awards granted under the Aventine Plan is determined by the Aventine Board or by the Aventine Compensation Committee of the Board, and cannot exceed ten years from the date of the grant. Unless terminated sooner, the Aventine Plan will continue in effect until March 15, 2020.

Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

On October 4, 2012, Aventine ceased voluntarily reporting with the Securities and Exchange Commission and became a private entity. On November 1, 2013 Aventine decided to change it auditing firms from Ernst & Young LLP to McGladrey LLP. Aventine did not have any disagreements with either auditing firm in 2013 or 2012.

Quantitative and Qualitative Disclosures About Market Risk

Aventine has adopted a Risk Management Policy to serve as the guideline for capturing, measuring, and reporting risk and enabling management to control the market risk exposure of Aventine. Under the policy, Aventine's risk committee is responsible for identifying, considering and managing all of Aventine's business risks, including agricultural and non-agricultural commodity price risk (procurement and selling prices); financial risk (interest rates), and other business risks.

Aventine will be subject to ongoing market risks concerning long-term debt, the market price of corn, natural gas, ethanol and by-products. Aventine is currently exposed to the impact of market fluctuations associated with interest rates and commodity prices as discussed below. From time to time, Aventine may purchase or sell corn, ethanol and natural gas futures and options to hedge a portion of the corn it anticipates it will need. In addition, Aventine has contracted for future physical delivery of corn and sale of ethanol. At this time, Aventine does not expect to have exposure to foreign currency risk as it expects to conduct all of its business in U.S. dollars.

Commodity Price Risk

Aventine produces ethanol and by-products, including distillers grain, corn gluten meal and feed, corn germ and grain distillers dried yeast, from corn and its business is sensitive to changes in the prices of each of these commodities. In the ordinary course of business, Aventine may enter into various types of transactions involving financial instruments to manage and reduce the impact of changes in commodity prices, including price risk on anticipated purchases of corn, natural gas and the sale of ethanol. Aventine does not enter into derivatives or other financial instruments for trading or speculative purposes.

Aventine is subject to market risk with respect to the price and availability of corn, the principal raw material used to produce ethanol and ethanol by-products. The availability and price of corn is subject to wide fluctuations due to unpredictable factors such as weather conditions, farmer planting decisions, governmental policies with respect to agriculture and international trade, and global demand and supply. Aventine has firm-price purchase commitments with some of its corn suppliers under which it agrees to buy corn at a stated price set in advance of the actual delivery of that corn. Under these arrangements, Aventine assumes the risk of a decrease in the market price of corn between the time this price is fixed and the time the corn is delivered.

Aventine is also subject to market risk with respect to ethanol pricing. Ethanol prices are sensitive to global and domestic ethanol supply, crude-oil supply and demand; crude-oil refining capacity and utilization; government regulation; and consumer demand for alternative fuels. Aventine's ethanol sales are priced using contracts that can either be based upon a fixed price, the price of wholesale gasoline plus or minus a fixed amount or a market price at the time of shipment. Aventine sometimes fixes the price at which it sells ethanol using fixed price physical delivery contracts. Under these arrangements, Aventine assumes the risk of an increase in the market price of ethanol between the time this price is fixed and the time the ethanol is sold.

Distillers grain and other by-product prices are sensitive to various demand factors such as numbers of livestock on feed, prices for feed alternatives, and supply factors, primarily production by ethanol plants and other sources.

Aventine's ethanol plants use natural gas in the ethanol production process and, as a result, the business is also sensitive to changes in the price of natural gas. The price of natural gas is influenced by such weather factors as extreme heat or cold in the summer and winter, or other natural events like hurricanes in the spring, summer and fall. Other natural gas price factors include North American exploration and production, and the amount of natural gas in underground storage during both the injection and withdrawal seasons.

Aventine attempts to reduce the market risk associated with fluctuations in the price of ethanol, corn and natural gas by employing a variety of risk management and hedging strategies. Strategies include the use of derivative financial instruments such as futures and options executed on the CBOT and/or the NYMEX, as well as the daily management of physical corn and natural gas procurement relative to each plants' requirements for each commodity. The management of Aventine's physical corn procurement and ethanol production may incorporate the use of forward fixed-price contracts and basis contracts.

Recently, a sensitivity analysis was prepared to estimate Aventine's exposure to ethanol, corn, distillers grain and natural gas price risk. Market risk related to these factors was estimated as the potential change in pre-tax income resulting from a hypothetical 10% adverse changes in prices of its expected corn and natural gas requirements, and ethanol and distillers grains output for a one-year period. This analysis excluded the impact of risk management activities that result from the use of fixed-price purchase and sale contracts and derivatives. The results of this analysis as of December 2014, which may differ from actual results, are as follows (in thousands):

Commodity	Estimated Total Volume for the Next 12 Months	Unit of Measure	Approximate Adverse Change to Income
Ethanol	308,126	Gallons	$ 65,349
Corn	111,679	Bushels	$ 47,287
Distillers grain	635,837	Tons*	$ 7,100
Natural Gas	10,512	MMBTU	$ 4,684

* Distillers grain quantities are stated on an equivalent dried-ton basis.

Interest Rate Risk

Aventine is exposed to market risk from changes in interest rates. Exposure to interest rate risk results primarily from holding revolving loans that bear variable interest rates. Specifically, Aventine had $160.7 million outstanding in long-term debt as of September 30, 2014, of which $23.4 million was variable-rate in nature. Aventine estimates that a one percent (1%) change in the interest rate on the variable portion of its long-term debt would impact Aventine's annual pre-tax earnings by approximately $0.2 million. The specifics of each note are discussed in greater detail in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" beginning on page 65 of this joint proxy statement/prospectus.

Supplemental Quarterly Information

The following table represents an unaudited review of the significant items for the results of operations on a quarterly basis for the nine months ended September 30, 2014 and the years ended December 31, 2013 and 2012:

(Dollars in thousands, except per share data)	Three Months Ended March 31, 2014	Three Months Ended June 30, 2014	Three Months Ended September 30, 2014
Revenues	$ 117,333	$ 145,455	$ 153,805
Gross profit	15,536	23,807	21,709
Selling, general, and administrative and other expenses	3,426	7,313	4,141
Income (loss) from operations	12,110	16,494	17,568
Net income (loss)	(5,820)	14,748	9,910
Net income (loss) per share attributable to common stockholders - basic	$ (2.47)	$ 6.26	$ 4.20

(Dollars in thousands, except per share data)	Three Months Ended March 31, 2013	Three Months Ended June 30, 2013	Three Months Ended September 30, 2013	Three Months Ended December 31, 2013
Revenues	$ 121,393	$ 132,517	$ 110,463	$ 115,893
Gross profit (loss)	(1,768)	3,874	(3,043)	11,972
Selling, general, and administrative and other expenses	3,806	3,623	3,039	3,929
Income (loss) from operations	(5,574)	251	(6,082)	8,043
Net income (loss)	(10,291)	(1,881)	(13,768)	(48,365)
Net income (loss) per share attributable to common stockholders - basic	$ (4.37)	$ (0.80)	$ (5.85)	$ (20.54)

(Dollars in thousands, except per share data)	Three Months Ended March 31, 2012	Three Months Ended June 30, 2012	Three Months Ended September 30, 2012	Three Months Ended December 31, 2012
Revenues	$ 155,310	$ 131,563	$ 87,145	$ 105,692
Gross profit (loss)	(2,146)	(8,501)	(7,270)	(6,253)
Selling, general, and administrative and other expenses	6,224	5,501	5,063	10,048
Income (loss) from operations	(8,370)	(14,002)	(12,333)	(16,301)
Net income (loss)	(22,499)	(22,099)	(22,559)	(16,703)
Net income (loss) per share attributable to common stockholders - basic	$ (133.92)	$ (131.54)	$ (9.60)	$ (7.09)

INFORMATION ABOUT THE PACIFIC ETHANOL SPECIAL MEETING AND VOTE

Date, Time and Place of the Special Meeting

These proxy materials are delivered in connection with the solicitation by the Pacific Ethanol Board of proxies to be voted at the Pacific Ethanol special meeting, which is to be held at [●], at [●], a.m., local time, on [●], 2015. On or about [●], 2015 Pacific Ethanol commenced mailing this joint proxy statement/prospectus and the enclosed form of proxy to its stockholders entitled to vote at the meeting.

Purpose of the Pacific Ethanol Special Meeting

Pacific Ethanol stockholders will be asked to vote on the following proposals:

1. To approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock pursuant to the Agreement and Plan of Merger, dated as of December 30, 2014, by and among Pacific Ethanol, Inc., AVR Merger Sub, Inc., and Aventine Renewable Energy Holdings, Inc. (as the same may be amended from time to time, sometimes referred to as the merger agreement). A copy of the merger agreement has been included as *Annex A* to this joint proxy statement/prospectus. In the merger, each share of Aventine common stock issued and outstanding immediately preceding the completion of the merger (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive , at the election of each Aventine stockholder, (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder.

2. To approve an amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock. A copy of the amendment to Pacific Ethanol's Certificate of Incorporation has been included as *Annex B* to this joint proxy statement/prospectus.

3. For holders of Pacific Ethanol Series B Preferred Stock only, to obtain the agreement of such holders not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations.

4. To adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve (i) the issuance of shares described in Proposal 1, (ii) the proposed amendment to Pacific Ethanol's Certificate of Incorporation described in Proposal 2, and/or (iii) the agreement by the holders of Pacific Ethanol Series B Preferred Stock not to treat the merger as a liquidation, dissolution or winding up described in Proposal 3.

5. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

It is a condition to completion of the merger that (i) holders of Pacific Ethanol common stock and holders of Pacific Ethanol Series B Preferred Stock approve Proposal 1 and Proposal 2, voting together as a single class (giving effect to the Preferred Voting Ratio), (ii) holders of Pacific Ethanol Series B Preferred Stock approve Proposal 1 and Proposal 2 voting as a separate class and (iii) holders of Pacific Ethanol Series B Preferred Stock agree to the matters described in Proposal 3.

In the merger, each issued and outstanding share of Aventine common stock (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive, at the election of the holder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder subject to certain limitations to maintain the tax free treatment of the merger. This exchange ratio is fixed and will not be adjusted to reflect stock price changes prior to the closing. The stockholders of Pacific Ethanol will continue to own their existing shares and the rights and privileges of their existing shares will not be affected by the merger.

Under NASDAQ Marketplace Rule 5635(a), a company listed on The NASDAQ Capital Market is required to obtain stockholder approval in connection with a merger with another company if the number of shares of common stock or securities convertible into common stock to be issued is in excess of 20% of the number of shares of common stock then outstanding. In addition, the issuance of Pacific Ethanol common stock and non-voting common stock in the merger may constitute a "change of control" for purposes of NASDAQ Marketplace Rule 5635(b). Whether a "change of control" exists under NASDAQ Marketplace Rule 5635(b) is a facts and circumstances determination that will be undertaken by NASDAQ based on an evaluation of certain factors, such as changes in Pacific Ethanol's management, board of directors, voting power, ownership and financial structure as a result of the merger. If NASDAQ determines that the merger constitute a change of control of Pacific Ethanol, Pacific Ethanol will be required to submit a new original listing application with NASDAQ and comply with The NASDAQ Capital Market initial listing requirements.

Based upon the current number of issued and outstanding shares of Aventine common stock, if the merger is completed, it is estimated that an aggregate of approximately 17,755,300 shares of Pacific Ethanol common stock and non-voting common stock will be issued upon the closing of the merger, assuming no exercise or conversion of outstanding options and warrants. On an as converted basis, the aggregate number of shares of Pacific Ethanol common stock and non-voting common stock to be issued and issuable in connection with the merger will (i) exceed 20% of the shares of Pacific Ethanol common stock issued and outstanding on the record date for the Pacific Ethanol special meeting, and (ii) may result in a "change of control" under NASDAQ Marketplace Rule 5635(b). For these reasons Pacific Ethanol must obtain the approval of Pacific Ethanol stockholders for the issuance of these securities to Aventine stockholders in the merger.

Record Date and Voting Power

Only stockholders of record as of the close of business on [●], 2015 will be entitled to notice of and to vote at the special meeting or at any subsequent meeting due to an adjournment of the original meeting.

On the record date, Pacific Ethanol had two classes of voting stock, common stock and preferred stock, of which [●] shares of common stock were issued and outstanding and 926,942 shares of Series B Preferred Stock were issued and outstanding. Each outstanding share of common stock entitles the holder to one vote on all matters to be voted upon at the special meeting (other than Proposal No. 3) and each outstanding share of Series B Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which each share of Series B Preferred Stock is convertible to, on matters at the special meeting voted on with the common stock, voting together as a single class, and one vote on matters at the special meeting voted on with only the Series B Preferred Stock, voting as a separate class.

A complete list of stockholders entitled to vote at the Pacific Ethanol special meeting will be available for examination by any Pacific Ethanol stockholder at Pacific Ethanol's headquarters, 400 Capitol Mall, Suite 2060, Sacramento, CA 95814, for purposes pertaining to the Pacific Ethanol special meeting, during normal business hours for a period of ten days before the Pacific Ethanol special meeting, and at the time and place of the Pacific Ethanol special meeting.

Quorum and Voting Rights

A quorum is the number of shares that must be represented at a meeting to lawfully conduct business. The presence, in person or by proxy, of holders of a majority of the Pacific Ethanol common stock and Series B Preferred Stock (giving effect to the Preferred Voting Ratio) issued and outstanding and entitled to vote at the special meeting constitutes a quorum for the transaction of business. Proxies received but marked as abstentions, if any, and broker non-votes, if any, will be included in the calculation of the number of shares considered to be present at the Pacific Ethanol special meeting for purposes of determining a quorum. As of the record date, a total of [●] shares of common stock and 926,942 shares of Series B Preferred Stock were outstanding and eligible to vote at the Pacific Ethanol special meeting. The presence of [●] shares, consisting of outstanding common stock and Series B Preferred Stock (giving effect to the Preferred Voting Ratio) will constitute a quorum.

Required Vote

To approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock in the merger (Proposal 1), the affirmative vote of (i) if a quorum is present at the special meeting, the holders of a majority of shares of Pacific Ethanol common stock and Series B Preferred Stock, present in person or represented by proxy at the special meeting, voting together as a single class and entitled to vote (giving effect to the Preferred Voting Ratio) and (ii) the holders of a majority of the outstanding shares of Series B Preferred Stock voting as a separate class and entitled to vote, is required. Although failure to submit a proxy or vote in person at the special meeting, or a failure to provide your broker, nominee, fiduciary or other custodian, as applicable, with instructions on how to vote your shares will not affect the outcome of the vote on the proposal to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock with respect to the vote of the shares of Pacific Ethanol common stock and Series B Preferred Stock voting together as a single class (giving effect to the Preferred Voting Ratio), the failure to submit a proxy or vote in person at the special meeting will make it more difficult to meet the requirement under Pacific Ethanol's bylaws that the holders of a majority of the Pacific Ethanol capital stock issued and outstanding and entitled to vote at the special meeting be present in person or by proxy to constitute a quorum at the special meeting. Because the Series B Preferred Stock approval is based on the affirmative vote of a majority of the outstanding Pacific Ethanol Series B Preferred Stock entitled to vote, a Pacific Ethanol Series B Preferred Stock stockholder's failure to vote in person or by proxy at the special meeting, or an abstention from voting, or the failure of a Pacific Ethanol Series B Preferred Stock stockholder who holds his or her shares in "street name" through a broker or other nominee to give voting instructions to such broker or other nominee, will have the same effect as a vote **"AGAINST"** adoption of this proposal.

To approve the amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock (Proposal 2), the affirmative vote of a majority of the outstanding shares of Pacific Ethanol common stock and Series B Preferred Stock, voting together as a single class and entitled to vote (giving effect to the Preferred Voting Ratio) and (ii) the holders of a majority of the outstanding shares of Series B Preferred Stock, voting as a separate class and entitled to vote, is required for such proposal. Because approval is based on the affirmative vote of a majority of the outstanding shares of Pacific Ethanol common stock and Series B Preferred Stock entitled to vote, a Pacific Ethanol stockholder's failure to vote in person or by proxy at the special meeting, or an abstention from voting, or the failure of an Pacific Ethanol stockholder who holds his or her shares in "street name" through a broker or other nominee to give voting instructions to such broker or other nominee, will have the same effect as a vote **"AGAINST"** adoption of this proposal.

For the holders of Pacific Ethanol Series B Preferred stock to agree not to treat the merger as a liquidation, dissolution or winding up within the meaning of Pacific Ethanol's Certificate of Designations, Powers, Preferences and Rights relating to its Series B Preferred Stock (Proposal 3), the affirmative vote of holders of at least 66-2/3% of the outstanding shares of Series B Preferred Stock, entitled to vote thereon, is required for such treatment. Holders of Pacific Ethanol common stock are not entitled to vote on this proposal.

To approve the adjournment of the special meeting, if necessary or advisable to solicit additional proxies if there are not sufficient votes to adopt the merger agreement at the time of the special meeting (Proposal 4), the affirmative vote of the holders of a majority of shares of Pacific Ethanol common stock and Series B Preferred Stock voting together as a single class, entitled to vote thereon (giving effect to the Preferred Voting Ratio), if a quorum is present, is required. The chairman of the meeting may also (regardless of the outcome of the stockholder vote on adjournment) adjourn the meeting to another place, date and time. If a quorum is not present, a majority of the voting stock represented in person or by proxy, or the chairman of the meeting, may adjourn the meeting until a quorum is present. Shares held by stockholders who are not present at the special meeting in person or by proxy will have no effect on the outcome of any vote to adjourn the special meeting. Broker non-votes will have no effect on the outcome of any vote to adjourn the special meeting if a quorum is present but will have the same effect as a vote **"AGAINST"** if no quorum is present. Abstentions from voting will have the same effect as a vote **"AGAINST"** adjourning the special meeting.

Broker Non-Votes

If you are a beneficial owner of shares held in street name and do not provide the organization that holds your shares with specific voting instructions, under the rules of various national and regional securities exchanges, the organization that holds your shares may generally vote on routine matters but cannot vote on non-routine matters. If the organization that holds your shares does not receive instructions from you on how to vote your shares on a non-routine matter, the organization that holds your shares does not have the authority to vote on the matter with respect to those shares. This is generally referred to as a "broker non-vote." Broker non-votes, if any, will be counted as being present at the special meeting for purposes of determining a quorum, but will not be voted on those matters for which specific authorization is required. Under the current rules of The NASDAQ Stock Market, brokers do not have discretionary authority to vote on the proposal to issue the Pacific Ethanol common stock and non-voting common stock, the proposal to amend Pacific Ethanol's Certificate of Incorporation, the proposal to approve not treating the merger as a liquidation, dissolution or winding up, or the proposal to adjourn the special meeting. Therefore, if you do not provide voting instruction to your broker, your shares will not be voted on the proposal to issue the Pacific Ethanol common stock and non-voting common stock, the proposal to adopt the Certificate of Amendment, the proposal to approve not treating the merger as a liquidation, dissolution or winding up, or the proposal to adjourn the special meeting. A broker non-vote will have no effect on the outcome of the proposal to issue the Pacific Ethanol common stock and non-voting common stock, except that a broker non-vote for a Series B Preferred Stock will have the same effect as a vote **"AGAINST"** the proposal for the purposes of the separate class vote of the Series B Preferred Stock. A broker non-vote will have the same effect as a vote **"AGAINST"** the amendment to Pacific Ethanol's Certificate of Incorporation. A broker non-vote will have the same effect as a vote **"AGAINST"** the proposal not to treat the merger as a liquidation, dissolution or winding up. A broker non-vote will have no effect on the outcome of any vote on the proposal to adjourn the special meeting if a quorum is present but will have the same effect as a vote **"AGAINST"** if no quorum is present.

Abstentions: Non-Voting

For the proposal to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement, if you abstain on the proposal, your shares will be counted as a vote cast, and, therefore, will have the same effect as a vote **"AGAINST"** such proposal. With respect to the vote of Pacific Ethanol common stock and Series B Preferred Stock voting together as a single class (giving effect to the Preferred Voting Ratio), a failure to submit a proxy is not counted as a vote cast, and as such, will not otherwise have an effect on the outcome of the vote for the proposal, but it will make it more difficult to meet the requirement under Pacific Ethanol's bylaws that the holders of a majority of the Pacific Ethanol capital stock issued and outstanding and entitled to vote at the special meeting be present in person or by proxy to constitute a quorum at the special meeting.

For Series B Preferred Stock, for the proposal to approve the issuance of the Pacific Ethanol common stock and non-voting common stock, an abstention on the proposal or failure to submit a proxy will have the same effect as a vote **"AGAINST"** such proposal only with respect to the separate class vote of the Series B Preferred Stock.

For the proposal to approve the amendment to Pacific Ethanol's Certificate of Incorporation as contemplated by the merger agreement, an abstention on the proposal or failure to submit a proxy will have the same effect as a vote **"AGAINST"** such proposal.

For the proposal to approve not treating the merger as a liquidation, dissolution or winding up within the meaning of the Certificate of Designations, Powers, Preferences and Rights relating to the Series B Preferred Stock, an abstention or a failure to submit a proxy will have the same effect as a vote **"AGAINST"** such proposal.

For the proposal to adjourn the Pacific Ethanol special meeting, if necessary or advisable, an abstention will have the same effect as a vote cast **"AGAINST"** such proposal. A failure to submit a proxy or vote in person at the special meeting will not have an effect on the outcome of the vote on the proposal.

Appraisal Rights; Trading of Shares

Under Delaware law, Pacific Ethanol stockholders are not entitled to appraisal rights in connection with the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement. It is anticipated that shares of Pacific Ethanol common stock will continue to be traded on The NASDAQ Capital Market during the pendency of and following the effectiveness of the merger. Shares of Pacific Ethanol non-voting common stock will not trade on any stock exchange. Pacific Ethanol's corporate status will not change because the merger is being consummated between one of its subsidiaries and Aventine.

Shares Beneficially Owned by Pacific Ethanol Directors and Executive Officers

Pacific Ethanol's directors and executive officers beneficially owned [●] shares of Pacific Ethanol common stock on [●], 2015, the record date for the special meeting. These shares represent in total [●]% of the total voting power of Pacific Ethanol's voting securities outstanding and entitled to vote as of the record date. Pacific Ethanol currently expects that Pacific Ethanol's directors and executive officers will vote their shares **"FOR"** all the proposals to be voted on at the special meeting, although none of them has entered into any agreements obligating them to do so.

Voting of Shares; Proxies

Stockholders of record may vote in person by ballot at the special meeting or by submitting their proxies:

- by telephone, by calling the toll-free number (800) ___-____ and following the recorded instructions;
- by accessing the Internet website www.proxyvote.com and following the instructions on the website; or
- by mail, by indicating your vote on each proxy card you receive, signing and dating each proxy card returning each proxy card in the prepaid envelope that accompanied that proxy card.

The internet and telephone proxy submission procedures are designed to authenticate stockholders and to allow them to confirm that their instructions have been properly recorded.

Stockholders of Pacific Ethanol who hold their shares in "street name" by a broker, nominee, fiduciary or other custodian should refer to the proxy card or other information forwarded by their broker, nominee, fiduciary or other custodian for instructions on how to vote their shares.

Pacific Ethanol recommends you submit your proxy even if you plan to attend the special meeting. If you properly give your proxy and submit it to Pacific Ethanol in time to vote, one of the individuals named as your proxy will vote your shares as you have directed. If you attend the special meeting, you may vote by ballot, thereby cancelling any proxy previously submitted. If you hold your shares in "street name," you will have to obtain a legal proxy in your name from the broker, nominee, fiduciary or other custodian who holds your shares in order to vote in person at the special meeting. You may vote for or against the proposals or abstain from voting.

If you are a stockholder of record and submit your proxy but do not make specific choices, your proxy will follow the Pacific Ethanol Board's recommendations and your shares will be voted:

- **"FOR"** the proposal to approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement.
- **"FOR**" the proposal to amend Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock.
- **"TO AGREE"** not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations.
- **"FOR"** the proposal to adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to approve the above matters.

Revocability of Proxies and Changes to a Pacific Ethanol Stockholder's Vote

A Pacific Ethanol stockholder has the power to change its vote at any time before its shares are voted at the special meeting by:

- notifying Pacific Ethanol's Corporate Secretary, Christopher W. Wright, Esq., in writing at 400 Capitol Mall, Sacramento, CA 95814, prior to the Pacific Ethanol special meeting that you are revoking your proxy;
- executing and delivering a later dated proxy card or submitting a later dated vote by telephone or on the Internet; or
- by attending the Pacific Ethanol special meeting and voting your shares in person.

However, if your shares held in "street name" through a brokerage firm, bank, nominee, fiduciary or other custodian, you must check with your brokerage firm, bank, nominee, fiduciary or other custodian to determine how to revoke your proxy.

Solicitation of Proxies

The solicitation of proxies from Pacific Ethanol stockholders is made on behalf of the Pacific Ethanol Board. Pacific Ethanol will be responsible for all fees paid to the Securities and Exchange Commission and the costs of soliciting Pacific Ethanol stockholders and obtaining these proxies, including the cost of reimbursing brokers, banks and other financial institutions for forwarding proxy materials to their customers. Proxies may be solicited, without extra compensation, by Pacific Ethanol officers and employees by mail, telephone, fax, personal interviews or other methods of communication. Pacific Ethanol has engaged the firm of Georgeson Inc. to assist Pacific Ethanol in the distribution and solicitation of proxies from Pacific Ethanol stockholders and will pay Georgeson Inc. an estimated fee of $12,500 plus out-of-pocket expenses for its services. Aventine will pay the costs of soliciting and obtaining its proxies and all other expenses related to the Aventine special meeting.

Other Business; Adjournments

Pacific Ethanol is not currently aware of any other business to be acted upon at the Pacific Ethanol special meeting. If, however, other matters are properly brought before the special meeting, your proxies include discretionary authority on the part of the individuals appointed to vote your shares to act on those matters according to their best judgment.

Any adjournment may be made from time to time by the affirmative vote of the holders of a majority of the shares represented at the Pacific Ethanol special meeting in person or by proxy and entitled to vote thereat and, whether or not a quorum is present, without further notice other than by announcement at the meeting.

If the special meeting is adjourned to a different place, date or time, Pacific Ethanol need not give notice of the new place, date or time if the new place, date or time is announced at the meeting before adjournment, unless a new record date is set for the meeting. The Pacific Ethanol Board may fix a new record date if the meeting is adjourned. Proxies submitted by Pacific Ethanol stockholders for use at the special meeting will be used at any adjournment or postponement of the meeting. Unless the context otherwise requires, references to the Pacific Ethanol special meeting in this joint proxy statement/prospectus are to such special meeting as adjourned or postponed.

Attending the Meeting

Subject to space availability, all stockholders as of the record date, or their duly appointed proxies, may attend the meeting. Since seating is limited, admission to the meeting will be on a first-come, first-served basis. Registration and seating will begin at [●] a.m., local time.

INFORMATION ABOUT THE AVENTINE SPECIAL MEETING AND VOTE

Date, Time and Place of the Special Meeting

These proxy materials are delivered in connection with the solicitation by the Aventine Board of proxies to be voted at the Aventine special meeting, which is to be held at [●], at [●] a.m., local time, on [●], 2015. On or about [●], 2015, Aventine commenced mailing this joint proxy statement/prospectus and the enclosed form of proxy to its stockholders entitled to vote at the meeting.

Purpose of the Aventine Special Meeting

Aventine stockholders will be asked to vote on the following proposals:

1. To adopt the Agreement and Plan of Merger, dated as of December 30, 2014, by and among Pacific Ethanol, Inc., AVR Merger Sub, Inc., and Aventine Renewable Energy Holdings, Inc. (as the same may be amended from time to time, sometimes referred to as the merger agreement), and thereby approve the merger. A copy of the merger agreement has been included as *Annex A* to this joint proxy statement/prospectus. In the merger, each share of Aventine common stock issued and outstanding immediately preceding the completion of the merger (other than dissenting shares and shares held by Pacific Ethanol or Aventine) will be converted into the right to receive, at the election of each Aventine stockholder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder.

2. To adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt the merger agreement.

3. To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof.

Record Date and Voting Power

Only stockholders of record as of the close of business on [●], 2015 will be entitled to notice of and to vote at the special meeting or at any subsequent meeting due to an adjournment of the original meeting.

On the record date, [●], 2015, Aventine had one class of voting stock outstanding. On that date, [●] shares of Aventine common stock were issued and outstanding. Each outstanding share of common stock entitles the holder to one vote on all matters to be voted upon at the special meeting.

A complete list of stockholders entitled to vote at the Aventine special meeting will be available for examination by any Aventine stockholder at Aventine's headquarters, 1300 S. 2nd Street, Pekin, IL, 61554, for purposes pertaining to the Aventine special meeting, during normal business hours for a period of ten days before the Aventine special meeting, and at the time and place of the Aventine special meeting.

Quorum and Voting Rights

In order to carry on the business of the meeting, Aventine must have a quorum. A quorum requires the presence, in person or by proxy, of the holders of a majority of the votes entitled to be cast at the meeting. Proxies received but marked as abstentions, if any, and broker non-votes, if any, will be included in the calculation of the number of shares considered to be present at the meeting for quorum purposes. The affirmative vote of a majority of the outstanding shares of Aventine common stock entitle to vote thereon is required to adopt the merger agreement and approve the merger.

Required Vote

To adopt the merger agreement, holders of a majority of the shares of Aventine common stock issued and outstanding and entitled to vote thereon must vote in favor of adoption of the merger agreement. Because approval is based on the affirmative vote of a majority of the outstanding shares of Aventine common stock entitled to vote, an Aventine stockholder's failure to vote in person or by proxy at the special meeting, or an abstention from voting, or the failure of an Aventine stockholder who holds his or her shares in "street name" through a broker or other nominee to give voting instructions to such broker or other nominee, will have the same effect as a vote **"AGAINST"** adoption of the merger agreement.

To approve the adjournment of the special meeting, if necessary or advisable to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and approve the merger at the time of the special meeting, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote thereon is required, if a quorum is present. The chairman of the meeting may also (regardless of the outcome of the stockholder vote on adjournment) adjourn the meeting to another place, date and time. If a quorum is not present, a majority of the voting stock represented in person or by proxy, or the chairman of the meeting, may adjourn the meeting until a quorum is present. Shares held by stockholders who are not present at the special meeting in person or by proxy will have no effect on the outcome of any vote to adjourn the special meeting. Broker non-votes will have no effect on the outcome of any vote to adjourn the special meeting if a quorum is present but will have the same effect as a vote **"AGAINST"** if no quorum is present. Abstentions from voting will have the same effect as a vote **"AGAINST"** adjourning the special meeting.

Broker Non-Votes

If your shares are held in an account at a broker or through another nominee, you must instruct the broker or other nominee on how to vote your shares. If you do not provide voting instructions to your broker or other nominee, your shares will not be voted on any proposal on which your broker or other nominee does not have discretionary authority to vote. Broker non-votes, if any, will be counted as being present at the special meeting for purposes of determining a quorum, but will not be voted on those matters for which specific authorization is required. Brokers do not have discretionary authority to vote on the proposal to adopt the merger agreement and approve the merger, or the proposal to adjourn the special meeting. Therefore, if you do not provide voting instructions to your broker, your shares will not be voted on the proposal to adopt the merger agreement, or the proposal to adjourn the special meeting. A broker non-vote will have the same effect as a vote **"AGAINST"** adoption of the merger agreement. A broker non-vote will have no effect on the outcome of any vote on the proposal to adjourn the special meeting if a quorum is present but will have the same effect as a vote **"AGAINST"** if no quorum is present.

Abstentions; Non-Voting

For the proposal to adopt the merger agreement and approve the merger, an abstention or a failure to vote will have the same effect as a vote **"AGAINST"** the proposal.

For the proposal to adjourn the Aventine special meeting, if necessary or advisable, an abstention will have the same effect as a vote **"AGAINST"** adjourning the special meeting. A failure to submit a proxy or vote in person at the special meeting will not have an effect on the outcome of the vote on the proposal.

Appraisal Rights

Aventine stockholders of record have appraisal rights under the DGCL in connection with the merger. Aventine stockholders who do not vote in favor of the adoption of the merger agreement and who otherwise fully comply with and follow the applicable provisions of Section 262 will be entitled to exercise appraisal rights thereunder. Through an appraisal, the Court of Chancery of the State of Delaware will determine the "fair value" of Aventine shares, which amount may be greater than, less than, or equal to the merger consideration. To exercise appraisal rights, Aventine stockholders must (i) not vote in favor of the adoption of the merger agreement, (ii) deliver in the manner set forth below a written demand for appraisal of the stockholder's shares to the Corporate Secretary of Aventine before the vote on the adoption of the merger agreement at the special meeting at which the proposal to adopt the merger agreement and approve the merger will be submitted to Aventine's stockholders, (iii) continuously hold the shares of record from the date of making the demand through the effective time of the merger, and (iv) otherwise fully comply with and follow the requirements of Section 262. If, after the consummation of the merger, such holder of Aventine common stock fails to perfect, withdraws or otherwise loses his, her or its appraisal rights, each such share will be treated as if it had been converted as of the consummation of the merger into a right to receive the merger consideration.

The relevant provisions of Section 262 are included as *Annex F* to this joint proxy statement/prospectus. You are encouraged to read these provisions carefully and in their entirety. Due to the complexity of the procedures for exercising your appraisal rights, Aventine stockholders who are considering exercising such rights are encouraged to seek the advice of legal counsel. Failure to comply with these provisions will result in the loss of appraisal rights. See the section entitled "Appraisal Rights" beginning on page 178 for additional information and the full text of Section 262 reproduced in its entirety as *Annex F* to this joint proxy statement/prospectus. To the extent the drag-along is exercised pursuant to the Aventine Stockholders Agreement, the Aventine stockholders subject to the drag-along right have waived their respective appraisal rights arising out of a drag-along transaction.

Shares Beneficially Owned by Aventine Directors and Executive Officers

Aventine's directors and executive officers did not beneficially own any shares of Aventine common stock on [●], 2015, the record date for the special meeting.

Voting of Shares; Proxies

Stockholders of record may vote in person by ballot at the special meeting or by submitting their proxies by mail, by indicating your vote on each proxy card you receive, signing and dating each proxy card returning each proxy card in the prepaid envelope that accompanied that proxy card.

The internet and telephone proxy submission procedures are designed to authenticate stockholders and to allow them to confirm that their instructions have been properly recorded.

Stockholders of Aventine who hold their shares in "street name" by a broker, nominee, fiduciary or other custodian should refer to the proxy card or other information forwarded by their broker, nominee, fiduciary or other custodian for instructions on how to vote their shares.

Aventine recommends you submit your proxy even if you plan to attend the special meeting. If you properly give your proxy and submit it to Aventine in time to vote, one of the individuals named as your proxy will vote your shares as you have directed. If you attend the special meeting, you may vote by ballot, thereby cancelling any proxy previously submitted. If you hold your shares in "street name," you will have to obtain a legal proxy in your name from the broker, nominee, fiduciary or other custodian who holds your shares in order to vote in person at the special meeting. You may vote for or against the proposals or abstain from voting.

If you are a stockholder of record and submit your proxy but do not make specific choices, your proxy will follow the Aventine's board of directors recommendations and your shares will be voted:

1. **"FOR"** the proposal to adopt the merger agreement and approve the merger.

2. **"FOR"** the proposal to adjourn the special meeting if necessary or advisable to permit further solicitation of proxies in the event there are not sufficient votes at the time of the special meeting to adopt the merger agreement.

Under such circumstances, your proxy will constitute a waiver of your right of appraisal under Section 262 and will nullify any previously delivered written demand for appraisal under Section 262.

Revocability of Proxies and Changes to an Aventine Stockholder's Vote

An Aventine stockholder has the power to change its vote at any time before its shares are voted at the special meeting by:

- notifying Aventine's Corporate Secretary, Christopher A. Nichols, in writing at 1300 S. 2nd Street, Pekin, IL 61554, prior to the Aventine special meeting that you are revoking your proxy;

- executing and delivering a later dated proxy card or submitting a later dated vote by telephone or in the internet; or

- by attending the Aventine special meeting and voting your shares in person.

However, if your shares held in "street name" through a brokerage firm, bank, nominee, fiduciary or other custodian, you must check with your brokerage firm, bank, nominee, fiduciary or other custodian to determine how to revoke your proxy.

Solicitation of Proxies

The solicitation of proxies from Aventine stockholders is made on behalf of the Aventine Board. Aventine will pay the costs of soliciting Aventine stockholders and obtaining these proxies, including the cost of reimbursing brokers, banks and other financial institutions for forwarding proxy materials to their customers. Proxies may be solicited, without extra compensation, by Aventine officers and employees by mail, telephone, fax, personal interviews or other methods of communication. Aventine does not expect to engage a proxy solicitation firm to assist Aventine in soliciting proxies for the special meeting.

Other Business; Adjournments

Aventine is not currently aware of any other business to be acted upon at the Aventine special meeting. If, however, other matters are properly brought before the special meeting, your proxies include discretionary authority on the part of the individuals appointed to vote your shares to act on those matters according to their best judgment.

Any adjournment may be made from time to time by the affirmative vote of the holders of a majority of the shares represented at the Aventine special meeting in person or by proxy and entitled to vote thereat and, whether or not a quorum is present, without further notice other than by announcement at the meeting.

If the special meeting is adjourned to a different place, date or time, Aventine need not give notice of the new place, date or time if the new place, date or time is announced at the meeting before adjournment, unless a new record date is set for the meeting. The Aventine Board may fix a new record date if the meeting is adjourned. Proxies submitted by Aventine stockholders for use at the special meeting will be used at any adjournment or postponement of the meeting. Unless the context otherwise requires, references to the Aventine special meeting in this joint proxy statement/prospectus are to such special meeting as adjourned or postponed.

Attending the Meeting

Subject to space availability, all stockholders as of the record date, or their duly appointed proxies, may attend the meeting. Since seating is limited, admission to the meeting will be on a first-come, first-served basis. Registration and seating will begin at [●] a.m., local time.

If you are a registered stockholder (that is, if you hold your stock in certificate form), an admission ticket is enclosed with your proxy card. If you wish to attend the special meeting, please vote your proxy but keep the admission ticket and bring it with you to the special meeting.

THE PROPOSED MERGER

The following is a discussion of the merger and the material terms of the merger agreement between Pacific Ethanol and Aventine. You are urged to read carefully the merger agreement in its entirety, a copy of which is attached as Annex A to this joint proxy statement/prospectus and incorporated by reference herein.

General

Pacific Ethanol and Aventine agreed to the acquisition of Aventine by Pacific Ethanol under the terms of the merger agreement that is described in this joint proxy statement/prospectus. Under the terms of the merger agreement, Merger Sub will merge with and into Aventine. As a result, Aventine will survive the merger and will continue to exist as a wholly-owned subsidiary of Pacific Ethanol.

The Pacific Ethanol Board is using this joint proxy statement/prospectus to solicit proxies from the holders of Pacific Ethanol common stock and Series B Preferred Stock for use at the Pacific Ethanol special meeting. The Aventine Board is using this joint proxy statement/prospectus to solicit proxies from the holders of Aventine common stock for use at the Aventine special meeting. This joint proxy statement/prospectus also forms a part of the registration statement which will be used by Pacific Ethanol in connection with the offering of Pacific Ethanol common stock and non-voting common stock if the merger is completed.

Pacific Ethanol Merger Proposal

At the Pacific Ethanol special meeting, holders of shares of Pacific Ethanol common stock and Series B Preferred Stock will be asked to vote on (i) the issuance of shares of Pacific Ethanol common stock and non-voting common stock as contemplated by the merger agreement, and (ii) an amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock. In addition, voting as a separate class, the holders of Pacific Ethanol Series B Preferred Stock will be asked to agree not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations.

The merger will not be completed unless (i) holders of Pacific Ethanol common stock and Pacific Ethanol Series B Preferred Stock approve the share issuance, voting together as a single class (giving effect to the Preferred Voting Ratio), (ii) holders of Pacific Ethanol Series B Preferred Stock approve the share issuance, voting as a separate class, (iii) holders of Pacific Ethanol common stock and Pacific Ethanol Series B Preferred Stock approve the amendment to Pacific Ethanol's Certificate of Incorporation (giving effect to the Preferred Voting Ratio), (iv) holders of Pacific Ethanol Series B Preferred Stock approve the amendment to Pacific Ethanol's Certificate of Incorporation, voting as a separate class, (v) holders of Pacific Ethanol Series B Preferred Stock agree not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations.

A separate vote by the holders of Pacific Ethanol common stock or Series B Preferred Stock on the merger agreement or the merger itself is not required under Delaware law.

Aventine Merger Proposal

At the Aventine special meeting, holders of shares of Aventine common stock will be asked to vote on, among other things, the adoption of the merger agreement and thereby approve the merger.

The merger will not be completed unless Aventine stockholders adopt the merger agreement and thereby approve the merger.

Merger Consideration

Common Stock and Non-Voting Common Stock

Subject to the terms and conditions of the merger agreement, at the effective time of the merger, each share of Aventine common stock issued and outstanding immediately prior to the effective time of the merger (other than dissenting shares as described in "Appraisal Rights" beginning on page 178 and other than shares held in Aventine's treasury or owned by Pacific Ethanol or any subsidiary of Aventine or Pacific Ethanol, which will be cancelled for no consideration) will be converted into the right to receive, at the election of the holder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder.

Based on the exchange ratio contemplated by the merger agreement and the number of shares of Aventine common stock issued and outstanding as of January 30, 2015, a total of an aggregate of approximately 17,755,300 shares of Pacific Ethanol common stock and non-voting common stock will be issued upon the closing of the merger, assuming no exercise or conversion of outstanding options and warrants, which will represent approximately 42% of the total Pacific Ethanol common stock and non-voting common stock issued and outstanding immediately following the merger. The exact number of shares of Pacific Ethanol common stock and non-voting common stock to be issued in the merger will not be determined until such time as the holders of Aventine common stock deliver an election form to Pacific Ethanol indicting the number of shares of Pacific Ethanol common stock and/or non-voting common stock to be issued to such stockholder. The aggregate number of shares of Pacific Ethanol common stock and non-voting common stock to be issued to Aventine stockholders will represent, assuming no exercise or conversion of outstanding options and warrants, approximately 42% of the shares of Pacific Ethanol common stock and non-voting common stock issued and outstanding immediately after the merger. Those amounts will be adjusted depending on the actual number of shares of Aventine common stock, options and warrants outstanding at the effective time of the merger.

Fractional shares of Pacific Ethanol common stock will not be delivered pursuant to the merger. Instead, each holder of shares of Aventine common stock who would otherwise be entitled to receive a fractional share of Pacific Ethanol common stock pursuant to the merger will be entitled to receive a cash payment, in lieu thereof, in an amount that will represent such fraction multiplied by the market price of a share of Pacific Ethanol common stock rounded to the nearest whole cent, calculated based on the volume-weighted average price per share of Pacific Ethanol common stock on The NASDAQ Capital Market for the five trading days immediately preceding the closing of the merger.

The value of the consideration to be received by Aventine stockholders will fluctuate with changes in the price of Pacific Ethanol common stock. The estimated merger consideration is approximately $10.74 based on Pacific Ethanol's closing share price of $8.59 on January 30, 2015 (assuming all holders of Aventine common stock elect to receive only shares of Pacific Ethanol common stock in the merger); provided, however, if the Minimum Price Closing Condition is not satisfied, in order for the merger to be consummated both parties would have to mutually agree to waive the Minimum Price Closing Condition. Pacific Ethanol and Aventine urge you to obtain current market quotations for Pacific Ethanol and Aventine common stock.

Adjustments

The merger consideration will be equitably adjusted to provide holders of shares of Aventine common stock with the same economic effect contemplated by the merger agreement if, at any time between the signing and the effective time of the merger, there is any change in the outstanding shares of capital stock of Aventine or Pacific Ethanol by reason of any reclassification, recapitalization, split-up, combination, exchange of shares or similar readjustment within such period, or a stock dividend with a record date during such period.

Treasury Shares; Shares Owned by Pacific Ethanol

At the effective time of the merger, each share of Aventine common stock (i) held as a treasury share by Aventine, (ii) owned of record by any subsidiary of Aventine, or (iii) owned of record by Pacific Ethanol or any of its subsidiaries will, in each case, be cancelled, and no consideration will be delivered in exchange for those shares.

Background of the Merger

The board of directors and senior management of Pacific Ethanol and Aventine regularly review and assess their respective company's operations, performance, prospects and strategic direction. In connection therewith, they consider potential strategic alternatives, including potential business combinations, to strengthen their respective businesses and maximize stockholder value. In furtherance of Pacific Ethanol's goals, the Pacific Ethanol Board appointed a strategic transactions committee (sometimes referred to as the Strategic Transactions Committee), consisting of members of the Pacific Ethanol Board and senior management, to investigate, pursue and take the primary lead on identifying, pursuing and consummating strategic acquisitions.

In June 2014, the senior management of Pacific Ethanol presented its annual strategic plan to the Pacific Ethanol Board, which included a strategy of expansion by means of one or more acquisitions. During a joint meeting of the Pacific Ethanol Board and the Strategic Transactions Committee held on June 17 and 18, 2014, the senior management suggested an initial list of ten potential merger or acquisition candidates. This list included, among other companies, Aventine. At that meeting, the Pacific Ethanol Board approved the overall strategy of expansion of Pacific Ethanol by means of one or more acquisitions and directed senior management to work with the Strategic Transactions Committee to further evaluate acquisition candidates, including those on the list, and focus on the most promising targets.

At the July 2014 meeting of the Pacific Ethanol Board, Pacific Ethanol's senior management presented further information on a list of eight potential acquisition candidates. Aventine was not on this list as, at this time, management had inadequate information upon which to base an evaluation and because Aventine's larger size would make its acquisition a larger step. At this meeting, the senior management suggested that they should continue to develop information on the identified acquisition targets as well as other potential acquisition targets and the Pacific Ethanol Board approved this course of action.

In August 2014, Jim Sneed, Pacific Ethanol's Vice President of Supply and Marketing, contacted Eric Hakmiller, a member of the Board of Directors of Aventine with whom he had a prior acquaintance. With Mr. Hakmiller's help, Mr. Sneed arranged a teleconference on August 21, 2014 that included Mr. Sneed, Mr. Hakmiller, Neil Koehler, Pacific Ethanol's President and Chief Executive Officer, and Jim Continenza, Chairman of the Board of Aventine. During the call, Mr. Koehler provided an update on Pacific Ethanol and suggested that Aventine and Pacific Ethanol explore possible synergies between the two companies. The potential for a business combination was discussed in general terms only. Specific financial terms of a potential transaction were not discussed and the conference call ended with Aventine's representatives stating that they would advise Pacific Ethanol if they had any interest in pursuing the matter.

Later on August 21, 2014, Mr. Koehler sent an email to Messrs. Continenza and Hakmiller following up on their conversation earlier that day. Mr. Koehler attached a recent press release of Pacific Ethanol to his email. Aventine did not respond to Mr. Koehler's email or otherwise contact Pacific Ethanol in relation to the August 21, 2014 communications. Pacific Ethanol and Aventine had no further direct communications until November 13, 2014.

Pacific Ethanol and Candlewood Investment Group, LP (sometimes referred to as Candlewood), a significant stockholder in Aventine, have had a long standing business relationship. In the past, in addition to holding equity interests in Pacific Ethanol, Candlewood has provided significant debt financing to Pacific Ethanol and its subsidiaries. As a result of this relationship, over the years Neil Koehler and David Koenig, Managing Partner of Candlewood, have had numerous and regular conversations about Pacific Ethanol and the ethanol industry in general.

During the months of June, July and August 2014, Aventine's executive officers and Aventine's board of directors (sometimes referred to as the Aventine Board) were made aware of a number of trades in Aventine's common equity and warrants that were issued in connection with a financing transaction completed in July 2013 (sometimes referred to as the 2013 Warrants). Aventine, along with its transfer agent and outside counsel processed the trading transactions on a prompt basis and kept the Aventine Board apprised of the changes in Aventine's equity and 2013 Warrants ownership. In connection with the issuance of the Term Loan A-1 debt on June 18, 2013, the participating debt holders received warrants allowing for the purchase of 11.8 million shares of Aventine's common stock at an exercise price of $0.01 per share, upon the occurrence of a change of control of Aventine, as defined in the warrant agreement governing the 2013 Warrants.

On September 18, 2014, while Mr. Koehler was attending the 5th Annual Alpha Select Conference, Mr. Koehler met with Mr. Koenig and his colleague, Mike Lau, at Candlewood's offices in New York. At the meeting, Mr. Koenig advised Mr. Koehler that Candlewood owned 30% of Aventine and that there were two other stockholders of Aventine holding another 28% of Aventine's common stock and expressed his belief that a combination of Pacific Ethanol and Aventine would be beneficial to the stockholders of both companies because of what he believed to be strategic synergies between the two companies. At the meeting and during several telephone conferences between Mr. Koenig and Mr. Koehler that occurred between September 18, 2014 and October 3, 2014, Mr. Koenig and Mr. Koehler discussed Aventine's debt, capital structure, potential valuation and the possibility for an equity exchange transaction between Pacific Ethanol and Aventine. Mr. Koehler kept the senior management of Pacific Ethanol apprised of the details of his telephone conferences with Mr. Koenig. Based upon review of Aventine's stockholder position listing and correspondence received from Candlewood, Aventine's management determined on September 29, 2014, a change of control event occurred under the warrant agreement governing the 2013 Warrants. As a result, the 2013 Warrants became exercisable. Notice was given on October 14, 2014 and the 2013 Warrant holders were given 30 days to exercise their warrants. Upon completion of the exercise period, Aventine had 14,204,240 shares issued and outstanding, of which 33.4% were owned by funds affiliated with Candlewood.

During a telephone conference between Mr. Koenig and Mr. Koehler on the morning of October 3, 2014, Mr. Koehler requested that Mr. Koenig send him an email outlining the structure of the transaction being proposed by Candlewood. In the afternoon of October 3, 2014, Mr. Koehler received an email from Mr. Koenig which briefly outlined Aventine's capital structure and Candlewood's proposal regarding the transaction, including a discussion of a proposed exchange ratio. In the email, Mr. Koenig proposed a merger transaction between Aventine and Pacific Ethanol where one share of Aventine's common stock would be exchanged for $20.00 in consideration, consisting of $5.00 in cash and a number of shares of Pacific Ethanol's common stock obtained by dividing $15.00 by Pacific Ethanol's stock price at a predetermined time. Mr. Koenig discussed in the email that after the consummation of the transaction, the combined company would retain Aventine's debt, and have over 500 million gallons of annual ethanol production capacity. Mr. Koenig also pointed out in his email that Candlewood owned 30% of Aventine and that there were two other stockholders of Aventine, holding another 28% of Aventine's common stock, that would likely support the transaction. The text of the email is as follows:

"Neil,

It was a pleasure talking to you today as always. You asked that I sketch out the framework for the equity exchange we discussed on the phone so here it is:

Aventine currently has the following capital structure in place:
$40 Revolver undrawn @ L+400; Executed Sept 2014
$140 mm TLB Term loan that is 15% PIK or 10.5% Cash pay at the company's option. The bullet maturity is 9/2017 and callable at Par at any time.
Equity (2.35mm) and Penny Warrants (11.85mm) for a combined share count of 14.208mm shares on a fully diluted basis.

*Each Aventine Energy share would be exchanged with PEI for $20 in consideration. The consideration is a split of cash and shares of PEIX. We are proposing that the cash amount be $ 5.0 per share with the balance a floating number of PEIX shares. Therefore, for 100% of the equity of Aventine, PEIX will pay $5 x 14.2mm or $71mm in cash. In addition, for the other $15 of consideration, PEIX will issue a floating number of shares based on the current per for PEIX. If PEIX were trading at $15 then it would be a 1 for 1 basis, PEIX issues 14.2mm additional shares. At a price of 12 on PEIX, 1.25x shares would be issued. Conversely, at a price of $20 for PEIX shares only .75x shares would need to be issued (15/20 * 14.2). The settlement of the exchange ratio would be set at a specific date to be decided in advance.*

After this exchange, Aventine would retain its plant specific debt, PEHoldco would retain their balance sheet and Post-PEI would have 500+mm gallons of production. Current PEIX shareholders would experience a 150% increase in production gallons and own roughly 64% of the newly merged entity (assuming $15 PEIX closing price). The Aventine equity holders would own 36% of Post-PEI. All of the debt could then be consolidated across all the assets of the company at a lower rate or left in place.

I will let you come to your own conclusions of valuation for each enterprise but I believe this would be very accretive to PEI. The new enterprise company would have debt per gallon of $.36 and interest expense of .043 per gallon per year without any assumed refinancing.

Candlewood directly owns over 30% of Aventine equity and with two other holders are above 51%. There are two other large equity holders (20+% and 8%) that would likely support a transaction but we have not approached them. That group also owns a significant portion of the TLB.

As I mentioned on the phone, I think this is a highly accretive deal in terms of the earning power, diversification of location and diversification of assets technology. While I cannot speak for anyone else in the group, I think that a merger with a strategic is a far better outcome than an outright sale. We believe that these assets currently have tremendous earning power and as a combined entity offer a significant platform for growth.

If you have any questions or need an explanation of anything above, please to not hesitate to call me. I look forward to Hearing from you."

In the following weeks and through the signing of the merger agreement, Mr. Koehler, Christopher Wright, General Counsel of Pacific Ethanol, and Bryon McGregor, the Chief Financial Officer of Pacific Ethanol, continually updated the Pacific Ethanol Board and members of the Strategic Transactions Committee with respect to material developments regarding the proposed merger with Aventine.

Between October 3, 2014 and October 15, 2014, Mr. Koehler and the rest of Pacific Ethanol's senior management team discussed the potential transaction. In particular, Pacific Ethanol's senior management team met on October 7 and 8, 2014 to discuss the proposed transaction. At these meetings, Pacific Ethanol's senior management discussed Aventine's contractual relationships, Aventine's management and operations teams, and potential risks and other issues related to the potential transaction. On October 11, 2014, Mr. McGregor sent a draft memorandum containing a preliminary analysis of Aventine and the transaction proposed by Candlewood to Mr. Douglas Kieta, a member of the Pacific Ethanol Board and Chair of the Strategic Transactions Committee. On October 15, 2014, Pacific Ethanol's senior management team had a telephone conference with members of the Strategic Transactions Committee during which management and members of the Strategic Transactions Committee discussed material concerns of the proposed transaction, including the falling prices of oil and competitive value of ethanol, and also discussed the need to further question and analyze the strategic value of the proposed transaction to Pacific Ethanol.

On October 21, 2014, at a meeting of the Pacific Ethanol Board, Mr. Kieta reported on the October 15, 2014 meeting of the Strategic Transactions Committee. The Pacific Ethanol Board then discussed in detail the strategic reasons for acquiring Aventine and certain issues related to the proposed transaction. During the meeting Mr. Koehler updated the board on his most recent discussions with Mr. Koenig during which Mr. Koehler reported that Candlewood had stated that it would favor an all stock transaction and an exchange ratio of 1.5 shares of Pacific Ethanol common stock for each share of Aventine common stock. Mr. Koehler also advised the Pacific Ethanol Board that Mr. Koenig had indicated that Candlewood expected to have control of Aventine within a week or so and desired to discuss a term sheet in the meantime. The discussion led to a consensus among the Pacific Ethanol Board that the proposed transaction was strategically meritorious and should be pursued. The Pacific Ethanol Board also gave management direction to, among other things, provide it with a financing plan for the combined company which demonstrated that adequate liquidity could be maintained after the transaction and to analyze staffing and integration issues for the combined company.

On the morning of October 28, 2014, Pacific Ethanol received a draft non-binding term sheet from Mr. Koenig and a further modified version of the term sheet that evening. The term sheet proposed an acquisition of Aventine by Pacific Ethanol in which Aventine's stockholders would exchange their shares of Aventine common stock for shares of Pacific Ethanol common stock. The term sheet, which referred to Aventine as Atom and Pacific Ethanol as PubCo, proposed the following two options for the exchange ratio:

> "[**Option 1 - Fixed Exchange with Collar]** [Atom shareholders will be entitled to elect to receive, for each share of Atom common stock, 1.50 shares of Pubco common stock (such amount, as it may be adjusted as set forth below, the "Exchange Ratio"), provided that the Pubco Measurement Price is at least $[x] but not greater than $[y]. If the Pubco Measurement Price is less than $[x], the Exchange Ratio shall be $[_____] divided by the Pubco Measurement Price. [In the event the foregoing calculation results in an Exchange Ratio greater than [w], the Exchange Ratio shall be fixed at [w].] If the Pubco Measurement Price is greater than $[y], the Exchange Ratio shall be $[_____] divided by the PubCo Measurement Price. [In the event that the foregoing calculation results in an Exchange Ratio less than [z], the Exchange Ratio shall be fixed at [z].]

"Pubco Measurement Price" shall mean the volume weighted average price per share of Pubco Common Stock on the New York Stock Exchange only as reported by Bloomberg LP for the ten (10) consecutive trading days ending on and including the third (3rd) trading day prior to, but not including, the closing date of the merger.]

[**Option 2 – Fixed Exchange]** [Atom shareholders will be entitled to elect to receive, for each share of Atom common stock, 1.5 shares of Pubco common stock (the "Exchange Ratio").]"

Based on the proposed exchange ratios, assuming the exchange ratio was not subject to adjustment, Pacific Ethanol's and Aventine's stockholders would hold approximately 55% and 45%, respectively, of the combined company on a post transaction basis. In addition, the term sheet provided that any Aventine stockholder who would acquire beneficial ownership of more than 4.99% of Pacific Ethanol's common stock would have the option to receive securities convertible into Pacific Ethanol's common stock, which convertible securities would contain a customary limitation on conversion. The term sheet also provided for customary "no-shop" and "go-shop" restrictions as well as termination and reverse termination fees, although no dollar amount for either termination fee was proposed. The reverse termination fee would apply if the transaction was not consummated within 60 days from the execution of the term sheet. Under the terms proposed, the Pacific Ethanol Board would be increased by two members with the two vacancies to be initially filled by persons nominated by Aventine. The term sheet also proposed certain closing conditions, including receiving stockholder approval of both Pacific Ethanol and Aventine and obtaining applicable regulatory approvals.

After discussing the term sheet with Pacific Ethanol's senior management team and Troutman Sanders, LLC (sometimes referred to as Troutman Sanders), Pacific Ethanol's outside counsel, Mr. Koehler and Mr. McGregor had a telephone conference with Mr. Koenig on October 29, 2014, to discuss the term sheet proposed by Candlewood during which Mr. Koehler and Mr. McGregor stated that Pacific Ethanol preferred "Option 2" for the exchange ratio, and would propose a range of fixed exchange ratios rather than a set fixed exchange ratio of 1.5 and that it believed that including termination fees in the term sheet was premature. Mr. Koehler and Mr. McGregor also advised Mr. Koenig that while Pacific Ethanol was committed to completing due diligence and closing the merger in an expeditious manner, it was unable to commit to a 60 day timeline for the completion of due diligence and the drafting, negotiation and execution of a definitive merger agreement. Mr. Koehler and Mr. McGregor also advised Mr. Koenig that Pacific Ethanol would include as a further condition to closing that none of Aventine's stockholders would dissent and exercise their appraisal rights under Delaware law.

On October 30, 2014, Bryon McGregor sent Mr. Koenig a revised draft of the term sheet which included Pacific Ethanol's preliminary comments to the term sheet, including those comments that Mr. McGregor discussed with Mr. Koenig on October 29, 2014 and proposing an exchange ratio of between 1.25 and 1.50 shares of Pacific Ethanol common stock for each share of Aventine common stock. Mr. McGregor also included a draft of a confidentiality agreement as an additional attachment to the email.

On November 3, 2014, Mr. Koenig sent an email to Mr. McGregor and Mr. Koehler describing Candlewood's high level questions on and comments to the draft term sheet provided by Pacific Ethanol on October 30, 2014. Mr. Koenig's comments included objecting to the range proposed by Pacific Ethanol for the exchange ratio, questioning why Pacific Ethanol objected to the acceptable percentage of dissenting stockholders and explaining that Aventine was opposed to a "no-shop" provision if termination fees were not included in the merger agreement.

On November 4, 2014, Mr. McGregor replied to Mr. Koenig's November 3, 2014 email. In his email, Mr. McGregor agreed that the parties would need to agree on an exchange ratio prior to the execution of the term sheet. Mr. McGregor also explained that Pacific Ethanol was under the impression that Aventine wouldn't have any dissenting stockholders and that the transaction may prove unfavorable to Pacific Ethanol if Aventine had a significant number of dissenting stockholders given that such stockholders would need to be cashed out. Mr. McGregor agreed that a termination fee would only be appropriate in the merger agreement, and explained that Pacific Ethanol would want both parties to agree to a "no-shop" while engaging in due diligence and suggested that Pacific Ethanol could pay Aventine's out of pocket expenses if a definitive merger agreement was not executed. Mr. McGregor also attached a revised version of the confidentiality agreement to his email.

On November 6, 2014, Mr. McGregor sent Mr. Koenig a due diligence request. On the same day, Mr. Koenig sent Mr. McGregor a revised draft of the term sheet which proposed that Pacific Ethanol would pay Aventine's actual expenses up to a certain amount (which amount was not included in the draft), if Pacific Ethanol's stockholders did not approve the transaction. The draft term sheet deleted the requirement that Aventine have no dissenting stockholders and included a footnote explaining that Aventine's stockholders would be subject to a drag-along requirement. The term sheet also included new exclusivity provisions requiring that each of Pacific Ethanol and Aventine not solicit or initiate a transaction in which another party would acquire control of 20% or more of the respective company for a period of time that was not set forth in the term sheet and specified that Pacific Ethanol would reimburse Aventine for all out-of-pocket expenses incurred in connection with the transaction if a definitive agreement was not entered into between the parties by the end of the exclusivity period.

Later on November 6, 2014, Mr. McGregor sent Mr. Koenig a revised draft of the term sheet in which Pacific Ethanol selected "Option 2" for the exchange ratio, where one share of Aventine's common stock would be exchanged for 1.5 shares of Pacific Ethanol common stock. The exchange ratio of 1.5, however, remained in brackets indicating that it was subject to further negotiation. Pacific Ethanol revised the termination fee provision to provide that Pacific Ethanol would pay Aventine's reasonable expenses up to a certain amount (which amount was not included in the draft) if Pacific Ethanol's stockholders did not approve the transaction and also included a provision mandating that Aventine would pay a termination fee if Aventine terminated the transaction if it accepted a proposal by a third party that Aventine believed was superior to Pacific Ethanol's offer. Pacific Ethanol also moved the exclusivity provisions included in the draft term sheet provided by Mr. Koenig on November 6, 2014 to a separate exclusivity agreement. Mr. McGregor also attached a timetable for the transaction, suggesting how quickly the transaction might proceed assuming that the merger agreement would be signed on December 1, 2014.

On November 7, 2014, Mr. Wright and Mr. McGregor had a telephone conference with Mr. Koenig during which Pacific Ethanol's changes to the term sheet were discussed. Mr. Koenig noted that Candlewood desired to change the 20% threshold for an adverse transaction in the exclusivity agreement to 24.99%. The parties also discussed timing and regulatory requirements surrounding the potential transaction. Mr. Koenig also clarified that approximately 3% of Aventine's stockholders were not subject to drag-along rights, and thus could potentially dissent and exercise their appraisal rights. The parties then discussed when Aventine would be presented with the term sheet, which up until that point in time, had been negotiated solely between Candlewood and Pacific Ethanol. Mr. Koenig stated that Candlewood planned to exercise warrants to purchase shares of Aventine common stock on November 10, 2014, after which, assuming the term sheet was finalized between Candlewood and Pacific Ethanol, he intended on calling Aventine's management to introduce Aventine to Pacific Ethanol and advise Aventine that Candlewood, which would at that point own over 50% of Aventine's issued and outstanding common stock, supported the transaction. Mr. Koenig stated that Candlewood would then turn it over to Pacific Ethanol to submit the term sheet to Aventine.

On November 10, 2014, the Strategic Transactions Committee sent an update on the transaction and a current draft of the term sheet to the Pacific Ethanol Board. The update included a valuation analysis of Pacific Ethanol and Aventine and an update as to Candlewood's ownership of Aventine. The update noted that Candlewood will likely discuss the transaction with Aventine in the coming days and that due diligence on Aventine would follow.

During the week of November 10, 2014, David Koenig and members of Pacific Ethanol's senior management had several conversations and email exchanges with respect to the terms and timing of the transaction. In particular, on November 10, 2014, Mr. Koenig sent Pacific Ethanol a revised draft of the exclusivity agreement under which Pacific Ethanol and Aventine would agree that each company would not solicit or initiate a transaction in which another party would acquire control of 24.99%, as opposed to the 20% proposed in the initial draft, or more of the respective company. Further, on November 11, 2014, Mr. McGregor provided Mr. Koenig with a comparative valuation model comparing Aventine and Pacific Ethanol. This valuation model was based on existing information about Pacific Ethanol and information about Aventine, including its capital structure, outstanding indebtedness, production capacities, assets and liabilities, which was provided to Pacific Ethanol by Mr. Koenig.

On November 11, 2014, Aventine received notice from funds affiliated with Castlelake, LP that owned shares of Aventine common stock that it was transferring shares of common stock in the amount of approximately 3.7 million shares to a fund affiliated with Candlewood. After giving effect to such transfer, the funds affiliated with Candlewood would then own in excess of 50% of the then issued and outstanding Aventine common stock.

On November 12, 2014, Mr. Koenig sent a slightly revised draft of the term sheet to Mr. McGregor, with the exchange ratio and the corresponding post-merger calculations left blank. Later on November 12, 2014, Mr. Koenig and Mr. Lau of Candlewood had a telephone conference with members of Pacific Ethanol's senior management during which Mr. Koenig advised that earlier that day, Mr. Koenig, on behalf of Candlewood, had a conversation with Mr. Continenza, the chairman of Aventine's board of directors, and Kip Horton, another member of Aventine's board of directors, during which Mr. Koenig advised Mr. Continenza and Mr. Horton for the first time of the proposed transaction between Aventine and Pacific Ethanol and requested that the board of Aventine pursue the proposed transaction. Mr. Koenig also advised Pacific Ethanol's senior management that Aventine's representatives had indicated to Candlewood that Aventine had a received an all-cash offer to purchase one of its assets. Mr. Koenig advised Pacific Ethanol's senior management that he had informed Aventine that Candlewood was not interested in a partial sale of Aventine and that Candlewood fully supported the proposed transaction between Pacific Ethanol and Aventine. On the call, Pacific Ethanol and Candlewood agreed that the term sheet that would be provided to Aventine would not include a proposed exchange ratio, but instead would agree that the exchange ratio would be determined at a later date.

Later on November 12, 2014, after an email exchange with Mr. Wright, Mr. Koenig agreed to the exclusivity agreement stating that Pacific Ethanol and Aventine would not solicit or initiate a transaction in which another party would acquire control of 20%, as opposed to the 24.99% proposed in a previous draft, or more of their respective companies. Later on November 12, 2014, Mr. McGregor sent an email to Mr. Koenig and attached a revised version of the exclusivity agreement including a date of December 1, 2014 for the end of the exclusivity period to be covered by the exclusivity agreement and a maximum of $50,000 for Aventine's out-of-pocket expenses to be paid by Pacific Ethanol if a definitive agreement was not entered into by 5 p.m. Pacific Time on December 1, 2014. In Mr. McGregor's email, Mr. McGregor advised Mr. Koenig that Pacific Ethanol would like to send the term sheet, confidentiality agreement and signed exclusivity agreement to Aventine's board on November 13, 2014 and asked if Mr. Koenig had any objections. Mr. Koenig advised Mr. McGregor that he did not have any objections to sending the materials to Aventine and Mr. McGregor advised Mr. Koenig that Mr. Koehler would call Mr. Continenza after sending the documents to Aventine to initiate a direct dialog with Aventine.

On November 12, 2014, the Pacific Ethanol Board held a telephonic meeting during which the senior management of Pacific Ethanol provided the Pacific Ethanol Board with an update on the progress made on the proposed transaction, including that Mr. Koenig had discussed the transaction with Aventine and that management intended to contact Aventine about the transaction on November 13, 2014. After lengthy discussion, the Pacific Ethanol Board approved senior management further pursuing the transaction directly with Aventine.

On the morning of November 13, 2014, Mr. Koehler called Mr. Continenza to discuss the proposed transaction, including a high level discussion of the terms of the transaction as proposed in the term sheet, confidentiality agreement and exclusivity agreement which Pacific Ethanol and Candlewood had previously negotiated. Later on November 13, 2014, Mr. Koehler forwarded drafts of the term sheet, the confidentiality agreement and the exclusivity agreement to Mr. Continenza. This initial draft of the term sheet provided for a maximum of $75,000 for Aventine's out-of-pocket expenses to be paid by Pacific Ethanol if a definitive agreement was not entered into by 5 p.m. Pacific Time on December 1, 2014.

On November 13, Mr. Continenza spoke with Mr. Koenig regarding the interest of Candlewood in supporting a transaction with Pacific Ethanol.

On November 14, Mr. Continenza and Mr. Horton had a further conversation with Mr. Koenig to discuss the Aventine Board's next steps with regard to the review of the Pacific Ethanol offer.

At a meeting of the Aventine Board held on November 14, 2014, Mr. Continenza advised the Aventine Board and a representative of Akin Gump Strauss Hauer & Feld LLP (sometimes referred to as Akin Gump), counsel to Aventine on this transaction, of Mr. Koehler's email dated November 13, 2014, including the terms proposed in the term sheet and exclusivity agreement. Mr. Continenza notified the Aventine Board that the Company will enter into a confidentiality agreement with Pacific Ethanol. For the benefit of the Aventine Board, Mr. Continenza noted his knowledge of the historical relationship between Pacific Ethanol and Candlewood. Following extensive discussion regarding the proposal, the Aventine Board resolved to form a special committee consisting of Mr. Continenza and Mr. Horton (sometimes referred to as the Aventine Special Committee) to assist in the evaluation, negotiation and determination with respect to the recommendation of a proposed transaction with Pacific Ethanol.

Later on November 14, 2014, a representative of Akin Gump exchanged email correspondence with Pacific Ethanol to provide comments to the drafts of the term sheet and limited comments to the confidentiality agreement and exclusivity agreement. Later on November 14, 2014, both Pacific Ethanol and Aventine executed the confidentiality agreement. Aventine's comments to the exclusivity agreement included clarification that this agreement would not prohibit any trading of Pacific Ethanol or Aventine securities. Aventine's comments to the term sheet included clarifications to make clear that the post-merger entity would assume all of Aventine's outstanding debt, establishing that the exchange ratio would be determined prior to the execution of a definitive agreement and not included in the term sheet, and proposing the following: (i) a minimum value at which Pacific Ethanol's stock would need to trade for the transaction to proceed (which value was not included), (ii) that Aventine's stockholders who would acquire beneficial ownership of more than 4.99% of Pacific Ethanol's common stock would have the option to receive a warrant containing customary limitations on conversion, (iii) that Pacific Ethanol pay Aventine a termination fee of 1% of the aggregate consideration to be paid by Pacific Ethanol if Pacific Ethanol's stockholders do not approve the transaction, proposing that Aventine pay Pacific Ethanol a termination fee of 3% of the aggregate consideration to be paid by Pacific Ethanol if Aventine terminated the transaction if it accepted a proposal by a third party that Aventine believed was superior to Pacific Ethanol's offer, and (iv) an increase to the number of directors of the Pacific Ethanol Board to provide for Aventine's stockholders having the ability to nominate a number of directors proportional to their ownership interest in Pacific Ethanol.

On November 15, 2014, Pacific Ethanol was granted access to a data room populated with some due diligence documentation with respect to Aventine. Starting November 15, 2014 through the signing of the merger agreement on December 30, 2014, Pacific Ethanol, Troutman Sanders and other advisors retained by Pacific Ethanol conducted an extensive due diligence review of Aventine, including reviewing materials provided by Aventine in the data room and by email, conducting site visits at Aventine's plants, conducting numerous telephone conferences both internally between Pacific Ethanol and its various advisors and between Pacific Ethanol and Aventine and its advisors to discuss Pacific Ethanol's findings and ask follow-up questions. Throughout the process, Mr. Koehler, Mr. Wright and Mr. McGregor continually updated the Pacific Ethanol Board and members of the Strategic Transactions Committee on the results of the due diligence investigation that was being conducted.

From November 14, 2014 through November 16, 2014, Pacific Ethanol's senior management discussed the term sheet and exclusivity agreement with Troutman Sanders. On November 16, 2014, Mr. Wright sent a revised version of the term sheet containing Pacific Ethanol's comments to Mr. Koenig. On the same day, Mr. Wright also introduced a representative of Akin Gump to a representative of Troutman Sanders and proposed a telephone conference on November 17, 2014 to discuss the term sheet and exclusivity agreement.

Not having received any comments from Mr. Koenig, on November 17, 2014, Mr. Wright sent the draft term sheet to a representative of Akin Gump, copying Mr. Koenig. Pacific Ethanol's comments included rejecting Aventine's proposal with respect to a minimum value at which Pacific Ethanol's stock would need to trade for the transaction to proceed, clarifying that after the transaction Aventine would be a wholly owned subsidiary of Pacific Ethanol, and rejecting Aventine's proposal with respect to increasing the number of directors on the Pacific Ethanol Board by more than two.

On November 17, 2014, Aventine entered into an agreement with RPA Advisors LLC (sometimes referred to as RPA Advisors) to assist Aventine with financial due diligence conducted by potential purchasers, including Pacific Ethanol. RPA Advisors is a financial advisory firm. RPA Advisors, due to Mr. Horton's position as a principal of RPA Advisors, was disqualified to serve as financial advisor or the provider of fairness opinion in connection with any transaction.

On November 17 and 18, 2014, a representative from Troutman Sanders and Mr. Wright had several telephone conferences with a representative of Akin Gump during which the term sheet and details related to Aventine's history and capitalization were discussed. On November 18, 2014, Pacific Ethanol and Aventine executed the exclusivity agreement and the term sheet.

On November 23, 2014, Mr. Wright sent an email to a representative of Akin Gump providing an update with respect to Pacific Ethanol's progress on its due diligence review, the necessity for Aventine's data room to be further populated with the requested diligence materials and noting that signing a definitive agreement by December 1, 2014 was unlikely.

On November 23, 2014, Mr. McGregor sent the Pacific Ethanol Board a written report advising that the term sheet and exclusivity agreements had been executed by Pacific Ethanol and updating the Pacific Ethanol Board of the progress being made on the due diligence review of Aventine. The report discussed in detail the site visit conducted by members of senior management of Pacific Ethanol of Aventine's ethanol facilities located in Pekin, Illinois and Aurora, Nebraska, details regarding Aventine's capital expenditures, personnel and labor, operating costs and EBITDA performance and an analysis of the strengths, weaknesses, opportunities and threats associated with each of Aventine's plants.

On or about November 23, 2014, Mr. McGregor had a conversation with Mr. Koenig whereby Mr. McGregor provided Mr. Koenig with an update on the status of the transaction and noted that Pacific Ethanol would need additional time to complete its due diligence review of Aventine and, as a result, suggested that the exclusivity period under the exclusivity agreement be extended to December 31, 2014.

On November 25, 2014, the Aventine Board met to discuss, among other things, the request by Pacific Ethanol that the exclusivity period be extended from December 1, 2014 to December 31, 2014. The Aventine Board authorized the Aventine Special Committee to engage with Candlewood and discuss such extension. During the course of the meeting, the Aventine Board learned that the anticipated share transfer to Candlewood would be completed on November 26, 2014.

On November 26, 2014, Pacific Ethanol and Aventine entered into an amendment to the exclusivity agreement to extend the exclusivity period to December 31, 2014. Also, on November 26, 2014, transactions involving a then current shareholder of Aventine and Candlewood were settled, with Candlewood becoming the owner of 59.42% of Aventine's issued and outstanding shares of common stock as of such date, resulting in a change in control of Aventine. It was reported to Aventine that the purchase price per share was $9.00.

At a meeting of the Pacific Ethanol Board held on November 27, 2014, Mr. McGregor made a presentation on the status of Pacific Ethanol's diligence review of Aventine and he lead a discussion about the results of the due diligence review. The Pacific Ethanol Board and members of the Strategic Transactions Committee, who were also present at the meeting, discussed, among other things, Aventine's historical and projected capital expenditures, considerations related to Aventine's unionized workforce, and the progress made on a number of legal due diligence items including the Aurora Coop Litigation matters.

From November 18, 2014 to December 28, 2014, members of Aventine's management team, Akin Gump and RPA Advisors conducted due diligence on Pacific Ethanol.

On December 5, 2014, the Pacific Ethanol Board held a meeting to review the terms of the proposed merger with Aventine. At the invitation of the Pacific Ethanol Board, members of the Strategic Transactions Committee and a representative of Troutman Sanders also were present. Members of the Strategic Transaction Committee provided the Pacific Ethanol Board with a further update on Pacific Ethanol's operational and legal due diligence review of Aventine. At the meeting, the Pacific Ethanol Board also discussed the valuation of the transaction, including a discussion of projected future capital expenditures at Aventine's plants and cash payouts anticipated to be made to Aventine's management at the closing of the transaction.

On December 8, 2014, a representative of Troutman Sanders provided an initial draft of the merger agreement to representatives of Aventine and Akin Gump.

On December 9, 2014, a representative of Akin Gump conducted a telephone conference call with David Koenig, the general counsel of Candlewood and a representative of Proskauer Rose to discuss certain elements of the merger agreement. In particular, the inclusion of Pacific Ethanol non-voting common stock as a component of the merger consideration instead of a warrant was discussed.

On December 10, 2015, members of Pacific Ethanol's senior management and a representative of Troutman Sanders participated in a telephone conference with representatives of Craig-Hallum to discuss the fairness opinion process.

On December 12, 2014, Akin Gump distributed a revised draft of the merger agreement to the various interested parties. The revisions to the merger agreement included, among other things, (i) changes to the merger consideration to include an option for Aventine stockholders to elect to receive shares of non-voting common stock issued by Pacific Ethanol; (ii) changes to the Change in Recommendations section by Aventine's board; (iii) changes to the definition of a Company Takeover Proposal; (iv) changes to the employee benefits matters section relating to Aventine employees after the merger; (v) the deletion of a requirement for Aventine to maintain pollution liability insurance; (vi) changes to certain closing conditions, including but not limited to, (A) the deletion of the condition that the parties receive bring down fairness opinions, (B) changes to the condition related to the Aurora Coop Litigation, and (C) the addition of a condition that Pacific Ethanol appoint two individuals to the Pacific Ethanol Board, nominated by Candlewood; and (vii) changes to the outside termination date.

On December 15, 2014, Pacific Ethanol and Craig-Hallum entered into an engagement letter with respect to the delivery by Craig-Hallum to Pacific Ethanol of a fairness opinion in connection with the proposed merger with Aventine.

During the negotiation of the transaction between Pacific Ethanol and Aventine, Mr. Koenig and Mr. Koehler continued to be in communication about the terms of transaction. In particular, on December 15, 2014, Mr. Koehler sent Mr. Koenig an issues list prepared by Troutman Sanders which outlined the significant issues in Aventine's December 12, 2014 draft of the merger agreement for the purpose of discussing the material issues with senior management of Pacific Ethanol. Mr. Koehler requested that Mr. Koenig provide any input with respect to the issues prior to Pacific Ethanol's internal discussion. Later on December 15, 2014, Mr. Koenig replied to Mr. Koehler's email responding to certain of the issues including noting that Candlewood could not commit to a voting agreement in which it would agree to vote in favor of the merger between Pacific Ethanol and Aventine.

In addition, on December 17, 2014, Mr. Koehler had several telephone conferences with Mr. Koenig and Mr. Lau regarding the pricing of the proposed transaction. Mr. Koehler proposed a sliding scale for the exchange ratio of between 1.00 and 1.5 shares of Pacific Ethanol common stock for each share of Aventine common stock. After discussing the matter several times, Pacific Ethanol and Candlewood settled on an exchange ratio of 1.25 shares of Pacific Ethanol's common stock for each share of Aventine's common stock and determined that either Pacific Ethanol or Aventine could decide not to consummate the transaction if Pacific Ethanol's common stock was trading at less than $10.00 per share immediately preceding the closing of the merger.

On December 19, 2014, the Pacific Ethanol Board held a lengthy meeting to discuss the results of the due diligence review of Aventine to date and to review the terms of the proposed merger with Aventine. At the invitation of the Pacific Ethanol Board, members of senior management and a representative of Troutman Sanders also were present. At the meeting, the Pacific Ethanol Board approved the exchange ratio of 1.25 shares of Pacific Ethanol's common stock for every one share of Aventine's common stock and the option for Pacific Ethanol and Aventine to not consummate the merger transaction if Pacific Ethanol's common stock was trading at less than $10.00 per share immediately preceding the closing of the merger.

On December 19, 2014, Troutman Sanders distributed a revised draft of the merger agreement to the various interested parties. The revisions to the merger agreement included, among other things, (i) the addition of a termination right for Pacific Ethanol upon an Adverse Aurora Coop Litigation Event (defined in the draft of the merger agreement), with a termination fee to be paid by Pacific Ethanol to Aventine; (i) the deletion of the employee benefits matters section, relating to Aventine employees after the merger; (ii) additions of certain covenants for Aventine including, but not limited to, (A) the use of commercially reasonable efforts to complete a connection from the inner rail loop track belonging to Aurora West, LLC to the BNSF main line (sometimes referred to as the BNSF connection), (B) conducting necessary "effects" bargaining with any labor organization prior to the closing of the merger and (C) maintaining pollution liability insurance; (iii) changes to certain closing conditions including, but not limited to, (X) the addition of closing conditions related to a bring down fairness opinion for Pacific Ethanol, the Pacific Ethanol stock price being a certain amount on the date immediately preceding the closing date, Phase 1 Environmental assessments, receipt of releases from Aventine employees and the BNSF connection, and (Y) changes to the Aurora Coop Litigation condition, and (iv) changes to the outside termination date.

On December 20, 2014, the Aventine Special Committee convened a formal meeting, which included Mr. Continenza and Mr. Horton, along with representatives of Akin Gump and the general counsel of Aventine. During the course of the meeting, the group discussed the scope of changes to the merger agreement, including the addition of certain representations and warranties and the condition related to the trading price per share of Pacific Ethanol's common stock, as reported on The NASDAQ Capital Market. The Aventine Special Committee decided that the Aventine Board should meet as soon as possible to discuss the open issues surrounding the merger agreement.

On December 20, 2014, Aventine and Duff & Phelps entered into an engagement letter with respect to the delivery by Duff & Phelps to Aventine of a fairness opinion in connection with the proposed merger with Aventine.

On December 21, 2014, Mr. Wright provided an initial draft of the stockholders agreement to representatives of Candlewood.

On December 22, 2014, the Pacific Ethanol Board held a meeting to discuss in detail various financial and valuation information relating to the proposed merger with Aventine. At the invitation of the Pacific Ethanol Board, members of senior management and a representative of Troutman Sanders also were present. Prior to the meeting, copies of the draft merger agreement and financial modeling information were made available to the Pacific Ethanol Board.

On December 22, 2014, the Aventine Board held a meeting to discuss recent developments in the proposed merger with Pacific Ethanol. At the invitation of the Aventine Board, members of senior management and a representative of Akin Gump also were present. The Aventine Board also discussed its fiduciary duty obligations, the executory period and the various contingencies impacting the close of the merger, including the BNSF connection matter, current crush margins and the status of negotiation of the merger agreement. The Aventine Board also approved the retention of Duff & Phelps to render a fairness opinion regarding the proposed merger.

During the morning and early afternoon of December 23, 2014, the Pacific Ethanol Board held a meeting to continue its prior discussion that it had on December 22, 2014 regarding various financial and valuation information relating to the proposed merger with Aventine. At the invitation of the Pacific Ethanol Board, members of senior management and a representative of Troutman Sanders also were present. The Pacific Ethanol Board also discussed the Aurora Coop Litigation matter, the BNSF connection matter, current crush margins and the status of negotiation of the merger agreement.

On December 23, 2014, the Aventine Board held a meeting to discuss disclosure information related to the Aurora Coop Litigation and negotiations and developments regarding the proposed transaction with Pacific Ethanol. At the invitation of the Aventine Board, members of senior management and representatives of Akin Gump also were present.

Also on December 23, 2014, Akin Gump distributed a revised draft of the merger agreement to the various interested parties. The revisions to the merger agreement included, among other things, (i) the inclusion of the exchange ratio, (ii) changes to the treatment of Aventine's warrants and stock options, (iii) adding back the employee benefits matters section, relating to Aventine employees after the merger, (iv) changes to the Change in Recommendation section for the Aventine Board, (v) changes to the registration requirement to include just Pacific Ethanol's proxy instead of a joint proxy, (vi) the deletion of the closing condition that Pacific Ethanol receive a bring down fairness opinion, (vii) changes to the Adverse Aurora Coop Litigation Event condition, (viii) Phase 1 Environmental Assessment requirement, (ix) changes to the pollution liability insurance requirement and (x) the deletion of the closing condition related to the BNSF connection.

Also on December 23, 2014, Candlewood distributed a revised draft of the stockholders agreement to the various interested parties. The revisions to the stockholders agreement included, among other things, (i) the change of the shares covered by the stockholders agreement from all the shares held by the Aventine stockholders party to the agreement, to shares that, in the aggregate, account for 51% of the outstanding common stock of Aventine, (ii) the deletion of the proxy granted to Pacific Ethanol in the event Candlewood failed to vote its shares in favor of the merger at the meeting, (iii) changes to the market standoff provision, (iv) the deletion of the stockholders' obligations for indemnification of breaches, (v) the addition of a stockholder's right to terminate the agreement upon a change in recommendation from the board of Aventine or an amendment to the merger agreement reducing the merger consideration, (vi) the addition of a provision making Pacific Ethanol responsible for stockholders' out of pocket expenses related to the stockholders agreement and (vii) the addition of a provision that made the obligations of the stockholders several and not joint.

After discussions held on December 24, 2014 between Candlewood and Troutman Sanders regarding open issues related to the stockholders agreement, on December 24, 2014, Candlewood distributed a revised draft of the stockholders agreement to the various interested parties. The revisions to the stockholders agreement included, among other things, (i) the requirement that transferred shares of the stockholders comply with the stockholders agreement and (ii) the deletion of Pacific Ethanol's obligation to be responsible for the stockholders' out of pocket expenses related to the stockholders agreement.

On December 24, 2014, the Pacific Ethanol Board held a meeting to review the terms of the proposed merger with Aventine. At the invitation of the Pacific Ethanol Board, members of senior management and representatives of Troutman Sanders and Craig-Hallum also were present. Craig-Hallum, made a lengthy presentation of its financial analysis of the proposed merger with Aventine. In addition, the senior management of Pacific Ethanol advised the Pacific Ethanol Board of the status of the negotiation of the proposed merger.

On December 26, 2014, the Pacific Ethanol Board held a meeting to review the terms of the proposed merger with Aventine. At the invitation of the Pacific Ethanol Board, members of senior management and representatives of Troutman Sanders and Craig-Hallum also were present.

Later on December 26, 2014, Mr. Wright, representatives from Troutman Sanders and representatives from Akin Gump held a telephonic meeting to discuss certain comments made by Akin Gump in its draft of the merger agreement dated December 23, 2014 and open issues with respect to the merger agreement.

Also on December 26, 2014, Mr. Wright sent an email to Mr. Koenig and Candlewood's general counsel, Janet Miller, outlining a number of open issues regarding the stockholders agreements including, among others, (i) transfers by the signatories to the stockholders agreements of Aventine common stock between signing of the stockholders agreements and the closing of the merger, (ii) the requirement by the signatories to invoke their drag-along rights in connection with voting their shares of Aventine common stock in favor of the merger, (iii) the inclusion of a provision granting Pacific Ethanol a proxy in the event any of the signatories fails to vote their shares at the special meeting of Aventine stockholders, (iv) provisions relating to the termination of the stockholders agreements and (v) terms of the market stand-off provisions. Later that day, Mr. Koenig responded to the issues raised in Mr. Wright's email.

On December 27, 2014, Troutman Sanders circulated a revised draft of the merger agreement to the various interested parties. The revisions to the merger agreement included, among other things, (i) a requirement that Pacific Ethanol and Aventine prepare a joint proxy statement/prospectus to be used in connection with the special meetings of stockholders of Pacific Ethanol and Aventine, (ii) the addition of certain voting requirements regarding Pacific Ethanol's Series B Preferred Stock, (iii) changes to the employee benefits matters section relating to Aventine employees after the merger, (iv) changes to the pollution liability insurance requirement, (v) changes to the closing condition related to the Phase I environment assessments requirement, and (vi) adding back the closing condition related to the BNSF connection.

On December 27, 2014, Candlewood distributed a revised draft of the stockholders agreement to the various interested parties. The revisions to the stockholders agreement included, among other things, (i) an addition of a covenant by the stockholders to exercise any drag-along rights such stockholders may have in connection with the vote for the merger agreement and (ii) an agreement by Pacific Ethanol that Pacific Ethanol will not amend the sections of the merger agreement related to company takeover proposals and changes in recommendation of the Aventine Board.

On December 28, 2014, Troutman Sanders distributed a revised draft of the stockholders agreement to the various interested parties. The revisions to the stockholders agreement included, among other things, the removal of the ability of the stockholders to terminate the stockholders agreement upon a change of recommendation by the Aventine Board.

On December 29, 2014, Candlewood distributed a revised draft of the stockholders agreement to the various interested parties, accepting most of the revisions contained in the draft dated December 28, 2014 that was circulated by Troutman Sanders.

During the afternoon of December 29, 2014, the Pacific Ethanol Board held a meeting to approve the merger with Aventine and approve the issuance of shares of Pacific Ethanol common stock and non-voting common stock pursuant to the terms of the merger agreement. At the invitation of the Pacific Ethanol Board, members of senior management and representatives of Troutman Sanders and Craig-Hallum also were present. Prior to the meeting, copies of the draft merger agreement and the presentation prepared by Craig-Hallum were made available to the directors. At the meeting, Mr. Wright provided an update on the negotiation of the merger agreement and reviewed with the Pacific Ethanol Board the proposed material terms of the transaction. Representatives from Craig-Hallum delivered an oral opinion, subsequently confirmed by delivery of a written opinion dated December 29, 2014, that, as of such date and based on and subject to the factors, assumptions, procedures and limitations set forth in that opinion, that the exchange ratio, as set forth in the merger agreement, was fair from a financial point of view to Pacific Ethanol. After extensive discussion among the directors and with their advisors regarding the proposed transaction, the Pacific Ethanol Board unanimously:

- determined that the merger is advisable, fair to and in the best interests of Pacific Ethanol and its stockholders;
- approved the merger agreement;

- directed that approval of (i) the issuance of Pacific Ethanol common stock and non-voting common stock pursuant to the merger agreement, (ii) the amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock, and (iii) the holders of Pacific Ethanol Series B Preferred Stock, that the merger will not be treated as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations be submitted for consideration by Pacific Ethanol stockholders at a Pacific Ethanol special meeting;

- resolved to recommend that the Pacific Ethanol stockholders vote "**FOR**" approval of the above proposals and a proposal to adjourn the special meeting if necessary to permit the solicitation of additional proxies; and

- authorized Pacific Ethanol management to finalize, execute and deliver the merger agreement and to take all other actions with respect to the merger transaction.

The parties continued to negotiate and revise certain provisions of the merger agreement over the course of December 29, 2014 and December 30, 2014, including but not limited to, (i) the closing conditions related to the Phase I environmental assessments and the BNSF connection, (ii) the outside termination date and (iii) the inclusion of dollar amounts for the termination fees. The parties also continued to negotiate and revise certain provisions of the stockholders agreement over the course of December 29, 2014 and December 30, 2014, including but not limited to, (i) the market standoff provision (ii) the specific performance provision and (iii) the number of shares' of the stockholders.

During the morning and early evening of December 30, 2014, the Aventine Board held a special meeting to consider the proposed definitive merger agreement and the other transaction agreements, copies of which were delivered to each director prior to the meeting. At the invitation of the Aventine Board, members of senior management and representatives of Akin Gump, Morris Nichols, Arsht & Tunnell LLP, Duff & Phelps and RPA Advisors were also present. Representatives from RPA delivered a presentation to the Board regarding the proposed transaction, which included diligence information about Pacific Ethanol. Representatives from Duff & Phelps reviewed its analysis with the Aventine Board, and subsequently delivered to the Aventine Board an opinion that, as of that date and based upon the factors and assumptions set forth in the Duff & Phelps fairness opinion, the exchange ratio, as set forth in the merger agreement, was fair from a financial point of view to the Aventine stockholders electing to receive Pacific Ethanol common stock. After extensive discussion among the directors and with their advisors and senior management regarding the proposed transaction and the definitive merger agreement and the related transaction documents, the Aventine Board unanimously:

- determined that the merger is advisable, fair to and in the best interests of Aventine and its stockholders; and

- approved the merger agreement.

Following the respective resolutions by the Pacific Ethanol and Aventine Boards to approve the merger agreement, the applicable parties executed the merger agreement and the stockholders agreements on December 30, 2014.

Recommendation of the Pacific Ethanol Board and its Reasons for the Merger

At a special meeting of the Pacific Ethanol Board held on December 29, 2014, the Pacific Ethanol Board unanimously:

- determined that the merger is advisable, fair to and in the best interests of Pacific Ethanol and its stockholders;
- approved the merger agreement;
- directed that approval of (i) the issuance of Pacific Ethanol common stock and non-voting common stock pursuant to the merger agreement, (ii) the amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock, and (iii) the holders of Pacific Ethanol Series B Preferred Stock, that the merger will not be treated as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations be submitted for consideration by Pacific Ethanol stockholders at a Pacific Ethanol special meeting;
- resolved to recommend that the Pacific Ethanol stockholders vote **"FOR"** approval of the above proposals and a proposal to adjourn the special meeting if necessary to permit the solicitation of additional proxies; and
- authorized Pacific Ethanol management to finalize, execute and deliver the merger agreement and to take all other actions with respect to the merger transaction.

In reaching its decision, the Pacific Ethanol Board consulted with Pacific Ethanol's senior management and outside legal counsel, and considered the short-term and long-term interests of Pacific Ethanol and its stockholders.

Strategic Rationale

The Pacific Ethanol board of directors' decision to approve the merger and the merger agreement and to recommend to Pacific Ethanol's stockholders that they vote for the adoption of the merger agreement was based on a number of factors. These factors included, without limitation, the following (which are not necessarily presented in order of relative importance):

- the merger would allow Pacific Ethanol to access new customers and obtain additional access to new markets;
- the combined company, with a larger number of assets and production capabilities, will be able to increase the mix of co-products and add high-value products to regional and international markets, broadening the capabilities that Pacific Ethanol can offer to its customers;
- the combined company will have greater cash flow and liquidity, enabling new investment in plant assets, pursuit of strategic initiatives, and improved financing arrangements;
- the combined company will benefit from a more diverse geographical footprint, thereby mitigating exposure to regional logistical constraints and price volatility in any one grain market, providing greater access to regional ethanol pricing premiums, creating new hedging opportunities, and allowing for more efficient marketing and distribution of its products than on a stand-alone basis;
- the implied value of Aventine's plants in the merger is attractive when compared to comparable transactions and to the implied market value of Pacific Ethanol's plants;
- the combined company will benefit from expected cost synergies through the combination of the corporate management, commodities marketing and administrative support functions; and
- the merger will assist Pacific Ethanol in achieving its growth objectives and profitability targets.

Risks and Potentially Negative Factors

In addition to the above factors, the Pacific Ethanol Board also identified and considered a number of uncertainties, risks and other potentially negative factors in its consideration of the merger and the merger agreement, including without limitation:

- the historical financial results of Aventine, and the fact that there have been significant changes in the operations in the recent past that should lead to improved financial performance in the future. These changes include the resumption of operations at the NELLC plant, and the restart of Aventine's Aurora-West plant, improved grain handling capacity being constructed at both the plants located in Pekin, Illinois and Aurora, Nebraska, the planned installation of additional grain storage capacity at the Nebraska site, and the establishment of a direct rail connection from the Aurora-West plant to the BNSF;

- the environmental conditions at Aventine's plants and the results of management's investigation of such matters, and the fact that the merger agreement allows Pacific Ethanol to continue to investigate and to terminate the merger agreement under certain circumstances if new information pertaining to environmental exposure is discovered;

- the risks and contingencies relating to litigation to which Aventine is party, including the Aurora Coop Litigation, and the fact that the merger agreement allows Pacific Ethanol to continue to monitor and investigate the Aurora Coop Litigation and to terminate the merger agreement under certain circumstances if there are negative developments in the matter;

- the financial presentation of Craig-Hallum and its opinion dated December 29, 2014 to the Pacific Ethanol Board as to the fairness, from a financial point of view and as of that date, of the exchange ratio in the transaction to Pacific Ethanol, as more fully described below under "—Opinion of Craig-Hallum Capital group LLC" beginning on page 105 and in the written opinion of Craig-Hallum attached as *Annex D* to this joint proxy statement/prospectus;

- the challenges and costs of combining the two businesses and the risks of completing the integration, which could harm the combined company's operating results and preclude the realization of anticipated synergies or benefits from the merger. The Pacific Ethanol Board also considered preliminary plans for integration presented by management;

- the exchange ratio and the fact that the exchange ratio is fixed and will not fluctuate based upon changes in the Pacific Ethanol stock price between signing and closing, reflecting the strategic purpose of the merger and consistent with market practices for a merger of this type;

- the potential for diversion of management and employee attention from other strategic priorities and for increased employee attrition both before and after the closing of the merger agreement, and the potential effect on the business and relations of Pacific Ethanol with customers and suppliers;

- the fees and expenses associated with completing the merger; and

- the risk that the merger would not be completed in a timely manner or at all.

The Pacific Ethanol Board weighed these positive and negative factors, realizing that future results are uncertain, including any future results considered or expected in the factors noted above. In addition, many of the nonfinancial factors considered were highly subjective. As a result, in view of the number and variety of factors they considered, the Pacific Ethanol Board did not consider it practicable and did not attempt to quantify or otherwise assign relative weights to the specific factors it considered. Rather, the Pacific Ethanol Board made its determination based on the totality of the information it considered. Individually, each director may have given greater or lesser weight to a particular factor or consideration.

In addition, the Pacific Ethanol Board did not undertake to make any specific determination as to whether any particular factor, or any aspect of any particular factor, was favorable or unfavorable to its ultimate determination, but rather conducted an overall analysis of the factors described above, including discussions with Pacific Ethanol's management team and Pacific Ethanol's outside legal and financial advisors. Based on the totality of the information presented, the Pacific Ethanol Board determined that Pacific Ethanol should proceed with the merger and the merger agreement, and recommends that the Pacific Ethanol stockholders approve the issuance of common stock and non-voting common stock and the amendment to Pacific Ethanol's Certificate of Incorporation.

The Pacific Ethanol Board believed that, overall, the potential benefits of the merger to Pacific Ethanol and its stockholders outweighed the risks mentioned above.

The foregoing discussion of the information and factors considered by the Pacific Ethanol Board is forward-looking in nature. This information should be read in light of the factors described under the section entitled "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 49.

Opinion of Craig-Hallum Capital Group LLC

On December 29, 2014, at a meeting of the Pacific Ethanol Board held to evaluate the proposed transaction, Craig-Hallum delivered to the Pacific Ethanol Board an oral opinion, confirmed by delivery of a written opinion, dated December 29, 2014, to the effect that, as of that date and based upon and subject to the factors and assumptions set forth therein, the exchange ratio, as set forth in the merger agreement, was fair, from a financial point of view, to Pacific Ethanol.

The full text of the written opinion of Craig-Hallum, dated December 29, 2014, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as *Annex D* to this joint proxy statement/prospectus. The following summary of Craig-Hallum's opinion in this joint proxy statement/prospectus is qualified in its entirety by reference to the full text of the opinion. Craig-Hallum provided its opinion for the information and assistance of the Pacific Ethanol Board in connection with its consideration of the merger. The Craig-Hallum opinion was not intended to and does not constitute a recommendation as to how any holder of Pacific Ethanol common stock should vote or take any action with respect to the merger or any other matter.

In arriving at its opinion, Craig-Hallum, among other things:

- reviewed a substantially final draft of the merger agreement;
- reviewed certain business, financial and other information and data with respect to Pacific Ethanol publicly available or made available to Craig-Hallum from internal records of Pacific Ethanol;

- reviewed certain business, financial and other information and data with respect to Aventine made available to Craig-Hallum from internal records of Aventine;

- reviewed certain internal financial projections for Pacific Ethanol and Aventine on a stand-alone basis prepared for financial planning purposes and furnished to Craig-Hallum by management of Pacific Ethanol and Aventine, respectively, including but not limited to forecasts prepared by the management teams of Pacific Ethanol and Aventine, respectively, of future utilization of its net operating losses;

- conducted discussions with members of the senior management of Pacific Ethanol and Aventine with respect to the business and prospects of Pacific Ethanol and Aventine, respectively, on a stand-alone basis and on a combined basis;

- reviewed the reported prices and trading activity of Pacific Ethanol common stock and similar information for certain other companies deemed by Craig-Hallum to be comparable to Pacific Ethanol;

- compared the financial performance of Pacific Ethanol and Aventine with that of certain other publicly traded companies deemed by Craig-Hallum to be comparable to Pacific Ethanol and Aventine, respectively;

- reviewed the financial terms, to the extent publicly available, of certain comparable merger transactions;

- performed a discounted cash flows analysis for Pacific Ethanol and Aventine, each on a stand-alone basis;

- performed a relative contribution analysis of Pacific Ethanol and Aventine; and

- conducted such other analyses, examinations and inquiries and considered such other financial, economic and market criteria as Craig-Hallum deemed necessary and appropriate in arriving at its opinion.

In conducting its review and rendering its opinion, Craig-Hallum relied upon and assumed the accuracy, completeness and fairness of the financial, accounting and other information discussed with, reviewed by, provided to or otherwise made available to Craig-Hallum, and did not attempt to independently verify, and assumed no responsibility for the independent verification of, such information; relied upon the assurances of management of Pacific Ethanol and Aventine that the information provided was prepared on a reasonable basis in accordance with industry practice, and that management was not aware of any information or facts that made the information provided to Craig-Hallum incomplete or misleading; assumed that there were no material changes in assets, financial condition, results of operations, business or prospects since the date of the last financial statements made available to Craig-Hallum prior to the date of its opinion; assumed that neither Pacific Ethanol nor Aventine was party to any material pending transaction, including any external financing, recapitalization, acquisition or merger, other than the merger; assumed with respect to financial forecasts, estimates of net operating loss tax benefits and other estimates and forward-looking information relating to Pacific Ethanol and Aventine reviewed by Craig-Hallum, that such information reflected the best available estimates and judgments of management at that time; and expressed no opinion as to any financial forecasts, net operating loss or other estimates or forward-looking information of Pacific Ethanol or Aventine or the assumptions on which they were based.

The internal management projections provided by Pacific Ethanol and Aventine to Craig-Hallum in connection with Craig-Hallum's analysis of the merger were not prepared with a view toward public disclosure. These internal management projections were prepared by management of the respective companies and were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of management, including, without limitation, factors related to general economic and competitive conditions. Accordingly, actual results could vary significantly from those set forth in such internal management projections.

Craig-Hallum was not asked to undertake, and did not undertake, an independent verification of any information provided to or reviewed by Craig-Hallum, nor was Craig-Hallum furnished with any evaluations or appraisals of such information and Craig-Hallum does not assume any responsibility or liability for the accuracy or completeness thereof. Craig-Hallum did not conduct a physical inspection of any of the properties or assets of Pacific Ethanol or Aventine. Craig-Hallum did not undertake an independent analysis of any pending or threatened litigation (including, but not limited to, the Aurora Coop Litigation), governmental proceedings or investigations, possible unasserted claims or other liabilities (contingent or otherwise), to which any of Pacific Ethanol, Aventine or their respective affiliates is a party or may be subject. At Pacific Ethanol's direction and with its consent, Craig-Hallum's opinion makes no assumption concerning and therefore does not consider, the possible assertion of claims, outcomes, damages or recoveries arising out of any such matters. Craig-Hallum also did not evaluate the solvency of Pacific Ethanol or Aventine under any state or federal laws.

Craig-Hallum also assumed that the final executed form of the merger agreement did not differ in any material respects from the latest draft provided to Craig-Hallum, that the representations and warranties contained in the merger agreement are true and correct, and that the merger will be consummated in accordance with the terms and conditions of the merger agreement, without waiver, modification or amendment of any material term, condition or agreement, and that, in the course of obtaining the necessary regulatory or third party consents and approvals (contractual or otherwise) for the merger, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on Pacific Ethanol or Aventine or the contemplated benefits of the merger. Craig-Hallum is not a legal, tax or regulatory advisor and relied upon, without independent verification, the assessment of Pacific Ethanol and its legal, tax and regulatory advisors with respect to such matters, including the tax consequences of the merger summarized in this joint proxy statement/prospectus.

Craig-Hallum was not requested to, and did not, (i) participate in negotiations with respect to the merger agreement, (ii) solicit any expressions of interest from any other parties with respect to any business combination with Pacific Ethanol or any other alternative transaction or (iii) advise the Pacific Ethanol Board or any other party with respect to alternatives to the merger. In addition, Craig-Hallum was not requested to and did not provide advice regarding the structure, the exchange ratio, any other aspect of the merger, or provide services other than the delivery of its opinion. Craig-Hallum expressed no opinion as to the amount, nature or fairness of consideration or compensation to be received in or as a result of the proposed merger by warrant holders, option holders, officers, directors, employees or any other class of such persons or relative to or in comparison with the exchange ratio. Craig-Hallum's opinion did not address any other aspect or implication of the merger, the merger agreement or any other agreement or understanding entered into in connection with the merger or otherwise. Craig-Hallum was not requested to opine as to, and its opinion does not address, the basic business decision to proceed with or effect the merger, or any solvency or fraudulent conveyance consideration relating to the merger.

Craig-Hallum's opinion was necessarily based upon economic, market, monetary, regulatory and other conditions as they existed and could be evaluated, and the information made available to Craig-Hallum, as of the date of its opinion. Craig-Hallum did not express any opinion as to the prices or trading ranges at which Pacific Ethanol common stock will trade at any time. Furthermore, Craig-Hallum did not express any opinion as to the impact of the merger on the solvency or viability of the surviving corporation in the merger or the ability of the surviving corporation to pay its obligations when they become due.

Craig-Hallum assumed no responsibility for updating or revising its opinion based on circumstances or events occurring after the date thereof. Craig-Hallum's opinion was approved by Craig Hallum's fairness opinion committee in accordance with established procedures.

The exchange ratio was determined through arm's-length negotiations between Pacific Ethanol and Aventine and was approved by the Pacific Ethanol Board. Craig-Hallum did not provide advice to the Pacific Ethanol Board during these negotiations nor recommend any specific consideration to Pacific Ethanol or the Pacific Ethanol Board or suggest that any specific consideration constituted the only appropriate consideration for the merger. In addition, Craig-Hallum's opinion and its presentation to the Pacific Ethanol Board were one of many factors taken into consideration by the Pacific Ethanol Board in deciding to approve the merger.

Summary of Financial Analyses

In accordance with customary investment banking practice, Craig-Hallum employed generally accepted valuation methods in reaching its fairness opinion. The following is a summary of the material financial analyses contained in the presentation that was made by Craig-Hallum to the Pacific Ethanol Board on December 29, 2014, and that were utilized by Craig-Hallum in connection with providing its opinion. The following summary, however, does not purport to be a complete description of the financial analyses performed by Craig-Hallum, nor does the order of analyses described represent the relative importance or weight given to those analyses by Craig-Hallum. Some of the summaries in the financial analyses include information presented in tabular format. The tables must be read together with the full text of each summary and are alone not a complete description of Craig-Hallum's financial analyses. Some of the following quantitative information, was based on market data as it existed on or before December 29, 2014, and is not necessarily indicative of current or future market conditions. All analyses conducted by Craig-Hallum were going concern analyses and Craig-Hallum expressed no opinion regarding the liquidation value of any entity.

For purposes of its stand-alone analyses performed on Pacific Ethanol, Craig-Hallum utilized Pacific Ethanol's internal financial projections for the years ended December 31, 2014 through December 31, 2019, prepared by and furnished to Craig-Hallum by the management of Pacific Ethanol. Information regarding the net cash, number of fully-diluted shares of common stock outstanding and net operating losses for Pacific Ethanol was provided by management. For purposes of its stand-alone analyses performed on Aventine, Craig-Hallum utilized Aventine's internal financial projections for the years ended December 31, 2014 through December 31, 2019 prepared by and furnished to Craig-Hallum by the management of Aventine. Information regarding the net debt, number of fully-diluted shares of common stock outstanding and net operating losses for Aventine was provided by management. For more information regarding these internal financial projections, see "Summary—Forward-Looking Financial Information—Pacific Ethanol Forward-Looking Financial Information."

For purposes of its analyses, Craig-Hallum calculated a total enterprise value (sometimes referred to as TEV) of Aventine implied by the exchange ratio (for the purposes of this analysis, TEV equates to implied equity value, plus debt, less cash) of approximately $323.4 million, based on the closing price per share of Pacific Ethanol's common stock on December 29, 2014, the number of shares of Aventine's common stock outstanding using the treasury share method based on information provided by Aventine's management as of December 20, 2014, the exchange ratio and Aventine's cash and cash equivalents and total debt as of November 30, 2014 based on information provided by Aventine's management. For purposes of its analyses, Craig-Hallum calculated a TEV of Pacific Ethanol of approximately $283.4 million, based on the closing price per share of Pacific Ethanol's common stock on December 29, 2014, the number of shares of Pacific Ethanol's common stock outstanding using the treasury share method based on information provided by Pacific Ethanol's management as of December 22, 2014 and Pacific Ethanol's cash and cash equivalents, minority equity interests, preferred stock and total debt as of November 30, 2014 based on information provided by Pacific Ethanol's management.

Pacific Ethanol Historical Trading Analyses

Craig-Hallum reviewed the share price trading history of Pacific Ethanol common stock (which trades on The NASDAQ Capital Market under the symbol "PEIX") and Aventine common stock (which trades on the OTCBB under the symbol "AVRW") for the one-year period ended December 29, 2014 on a stand-alone basis and also in relation to the S&P 500 Index and an equal-weight composite index comprised of the public companies listed below deemed by Craig-Hallum in its professional judgment to be comparable to Pacific Ethanol and Aventine:

- Green Plains Inc.;
- REX American Resources Corporation; and
- Aemetis, Inc.

This analysis showed that during the one-year period ended December 29, 2014, the trading price of the shares of Pacific Ethanol rose 110.7%, the S&P 500 Index rose 13.6%, the comparable public companies index rose 74.4%. Craig-Hallum also noted that shares of Aventine were thinly traded relative to Pacific Ethanol's common stock and the common stock of most publicly traded companies.

Comparable Public Company Analysis

Craig-Hallum reviewed and compared certain financial information for Pacific Ethanol and Aventine to corresponding financial information, ratios and public market multiples for the following publicly traded companies, which, in the exercise of its professional judgment, Craig-Hallum determined to be relevant to its analysis. In selecting comparable public companies, Craig-Hallum focused on businesses in the ethanol production industry and did not include companies that primarily traded on an over-the-counter market. The selected companies were as follows:

- Green Plains Inc.;
- REX American Resources Corporation; and
- Aemetis, Inc.

Craig-Hallum obtained financial metrics and projections for the selected companies from documents filed by such companies with the Securities and Exchange Commission and S&P Capital IQ (sometimes referred to as Capital IQ). In its analysis, Craig-Hallum derived and compared multiples for Aventine and the selected companies, calculated as follows:

- the TEV as a multiple of Adjusted EBIT for 2014, which is referred to below as "TEV/2014E Adjusted EBIT";
- the TEV as a multiple of Adjusted EBITDA for 2014, which is referred to below as "TEV/2014E Adjusted EBITDA";
- the TEV as a multiple of estimated Adjusted EBIT for 2015, which is referred to below as "TEV/2015E Adjusted EBIT"; and
- the TEV as a multiple of estimated Adjusted EBITDA for 2015, which is referred to below as "TEV/2015E Adjusted EBITDA".

Adjusted EBIT refers to earnings before interest, taxes and one-time expenses deemed non-recurring in nature. Adjusted EBITDA refers to earnings before interest, taxes, depreciation, amortization, stock-based compensation and one-time expenses deemed non-recurring in nature. Applying its professional judgment, Craig-Hallum selected the representative ranges of the 25th percentile to the 75th percentile for each metric. Craig-Hallum then compared Pacific Ethanol's TEV and Aventine's TEV implied by the exchange ratio to each company's projected Adjusted EBIT for 2014, Adjusted EBITDA for 2014, Adjusted EBIT for 2015 and Adjusted EBITDA for 2015. A summary of this comparison is shown in the table below.

This analysis indicated the following:

	TEV/2014E Adjusted EBIT	TEV/2014E Adjusted EBITDA(1)	TEV/2015E Adjusted EBIT	TEV/2015E Adjusted EBITDA(1)
25th Percentile	3.1x	2.8x	3.3x	2.9x
Median	3.6x	3.3x	3.4x	3.1x
75th Percentile	3.9x	3.4x	3.9x	3.4x
Pacific Ethanol	3.0x	2.6x	2.7x	2.3x
Aventine(2)	5.7x	4.3x	2.2x	2.0x

(1) Consensus EBITDA estimates for one of the selected companies was not available. To calculate projected EBITDA for this selected company, Craig-Hallum annualized the company's depreciation and amortization for the nine month period included in the company's most recent publicly reported financial results and added it to consensus EBIT for 2014. For 2015, Craig-Hallum annualized the company's depreciation and amortization for the quarter for which the company most recently reported its financial results and applied this figure to 2015 consensus EBIT estimates.

(2) Based on Aventine's TEV implied by the exchange ratio.

Although Craig-Hallum selected the companies reviewed in the analysis because, among other things, their businesses are reasonably similar to that of Pacific Ethanol, no selected company is identical to Pacific Ethanol or Aventine. Accordingly, Craig-Hallum's comparison of selected companies to Pacific Ethanol and Aventine and analysis of the results of such comparisons was not purely quantitative, but instead necessarily involved qualitative considerations and professional judgments concerning differences in financial and operating characteristics and other factors that could affect the relative value of Pacific Ethanol and Aventine.

Precedent Transaction Analysis

Craig-Hallum performed a selected precedent transactions analysis, which is designed to imply a value for a company based on publicly available financial terms of the selected transactions that share some characteristics with the merger. Craig-Hallum reviewed precedent transactions that, in the exercise of its professional judgment, Craig-Hallum selected as relevant to its analysis and that met the following criteria:

- transactions where the target company operated in the ethanol production industry in the United States;
- transactions closed since January 1, 2011 in which the implied TEV of the target and the financial terms of the transaction were publicly disclosed; and
- the acquisition was not of a minority interest.

In its analysis, Craig-Hallum reviewed the following precedent transactions as of the date of announcement:

Acquirer	Target	Date Announced
Guardian Hankinson	Hankinson Renewable Energy	December 2013
Green Plains	Buffalo Lake Energy and Pioneer Trail Energy	November 2013
Granite Falls Energy	Heron Lake BioEnergy	August 2013
Global Partners	Cascade Kelly	January 2013
Flint Hills Resources	ABE Fairmont	October 2012
Aemetis Advanced Fuels Keyes	Cilion	July 2012
The Andersons	The Andersons Denison Ethanol	February 2012
Great River Energy	Blue Flint Ethanol	January 2012
REX American Resources	NuGen Energy	November 2011
Green Plains	Otter Tail Ag Enterprises	January 2011

For each precedent transaction indicated above, using SEC filings and Capital IQ, Craig-Hallum calculated multiples of implied TEV using the target company's TEV implied by the transaction value and the target company's ethanol plant annual production capacity at the announcement date (measured in millions of gallons) (sometimes referred to as MMFY Capacity). Applying its professional judgment, Craig-Hallum selected the representative ranges of the 25th percentile to the 75th percentile for the target company's implied TEV/MMGY Capacity. Craig-Hallum then compared Aventine's TEV implied by the exchange ratio to Aventine's MMGY Capacity as of December 29, 2014 as provided by Aventine's management. A summary of this comparison is shown in the table below.

	Implied TEV ($ in millions)	MMGY Capacity	Implied TEV/ MMGY Capacity
75th Percentile	$109	110	$1.39
Median	$84	80	$1.10
25th Percentile	$64	55	$0.88
Aventine[(1)]	$323	312	$1.04

(1) Based on Aventine's TEV implied by the exchange ratio.

No target company or transaction utilized in the selected precedent transactions analysis is identical to Aventine or the merger. In evaluating the precedent transactions, Craig-Hallum made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Aventine, such as the impact of competition on the business of Aventine or the industry generally, industry growth and the absence of any adverse material change in the financial condition and prospects of Aventine or the industry or in the financial markets in general.

Discounted Cash Flow Analysis – Pacific Ethanol Stand-Alone

Craig-Hallum conducted an illustrative discounted cash flow analysis for Pacific Ethanol on a stand-alone basis, which is designed to estimate the implied value of a company by calculating the present value of the estimated future unlevered free cash flows of the company. Craig-Hallum calculated a range of implied equity values of Pacific Ethanol based on forecasts for calendar years 2015 through 2019 provided by management of Pacific Ethanol. Craig-Hallum first calculated unlevered free cash flows (calculated as earnings before interest and taxes, less taxes, plus depreciation and amortization, less the amount of any increase or plus the amount of any decrease in net working capital, and less capital expenditures) of Pacific Ethanol for calendar years 2015 through 2019, using an assumed tax rate of 37.5%. Craig-Hallum then calculated present value of Pacific Ethanol's estimated future unlevered free cash flows after 2019 based on an assumed growth rate of unlevered free cash flows for all years after 2019. The terminal perpetuity growth rates ranged from 2.0% to 3.0% and were selected based on Craig-Hallum's professional judgment. In addition, Craig-Hallum added Pacific Ethanol's net operating loss carryforwards expected to be utilized by Pacific Ethanol's management to reduce future federal and state taxes, in each case based on internal estimates of Pacific Ethanol's management. These unlevered free cash flows and net operating loss carryforwards were then discounted to present values as of December 31, 2014 using a range of discount rates of 13.0% to 17.0% (which range was selected based on Craig-Hallum's professional judgment and derived from an analysis of the estimated weighted average cost of capital using Pacific Ethanol and the comparable company data) to calculate a range of implied total enterprise values for Pacific Ethanol. From this analysis, Craig-Hallum derived a 25th percentile value of $469.7 million and a 75th percentile value of $574.2 million for Pacific Ethanol from the discounted cash flow analysis.

Discounted Cash Flow Analysis – Aventine Stand-Alone

Craig-Hallum conducted an illustrative discounted cash flow analysis for Aventine on a stand-alone basis, which is designed to estimate the implied value of a company by calculating the present value of the estimated future unlevered free cash flows of the company. Craig-Hallum calculated a range of implied equity values of Aventine based on forecasts of future unlevered free cash flows for calendar years 2015 through 2019 provided by management of Aventine. Craig-Hallum first calculated unlevered free cash flows (calculated as earnings before interest and taxes, less taxes, plus depreciation and amortization, less the amount of any increase or plus the amount of any decrease in net working capital, and less capital expenditures) of Aventine for calendar years 2015 through 2019, using an assumed tax rate of 37.5%. Craig-Hallum then calculated present value of Aventine's estimated future unlevered free cash flows after 2019 based on an assumed growth rate of unlevered free cash flows for all years after 2019. The terminal perpetuity growth rates ranged from 2.0% to 3.0% and were selected based on Craig-Hallum's professional judgment. In addition, Craig-Hallum added Aventine's net operating loss carryforwards expected to be utilized by Aventine's management to reduce future federal and state taxes, in each case based on internal estimates of Aventine's management. These unlevered free cash flows and net operating loss carryforwards were then discounted to present values as of December 31, 2014 using a range of discount rates of 13.0% to 17.0% (which range was selected based on Craig-Hallum's professional judgment and derived from an analysis of the estimated weighted average cost of capital using Pacific Ethanol and the comparable company data) to calculate a range of implied total enterprise values for Aventine. From this analysis, Craig-Hallum derived a 25th percentile value of $622.8 million and a 75th percentile value of $749.7 million for Aventine from the discounted cash flow analysis.

Relative Contribution Analysis

Craig-Hallum performed a relative contribution analysis for Pacific Ethanol and Aventine based on the valuation methodologies described above as well as 2015 forecasted financials and capacity. In performing the relative contribution analysis, Craig-Hallum compared the range of stand-alone implied equity values for each company derived from the range of mean and median values calculated for each of the comparable public companies, selected precedent transactions, and discounted cash flow analyses. Craig-Hallum then compared these ranges to generate the implied relative contribution for each company for each analysis. Craig-Hallum then compared the implied relative contribution ranges to the exchange ratio.

	Implied Equity Value*		Implied Relative Contribution*	
	Pacific Ethanol	Aventine	Pacific Ethanol	Aventine
Methodology	Range of Means/Medians (1)	Range of Means/Medians (1)	Range of Means/Medians (1)	Range of Means/Medians (1)
Comparable Public Company	$330.6 – $389.6	$195.9 – $537.5	38.1% – 66.5%	33.5% – 61.9%
Precedent Transactions	$216.6 – $219.9	$338.0 – $343.1	38.7% – 39.4%	60.6% – 61.3%
Discounted Cash Flow	$516.8 – $524.4	$680.1 – $689.3	42.8% – 43.5%	56.5% – 57.2%
Merger Exchange Ratio			46.7%	53.3%

* Dollars in millions

(1) Based on the lowest and highest mean and median multiples from the financial multiples calculated for the comparable public company and precedent transactions analyses, and the mean and median values produced by the discount cash flow analysis for each of Pacific Ethanol and Aventine.

Miscellaneous

The foregoing summary of material financial analyses does not purport to be a complete description of the analyses or data presented by Craig-Hallum. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Craig-Hallum believes that the foregoing summary and its analyses must be considered as a whole and that selecting portions of it, without considering all of its analyses, could create an incomplete view of the processes underlying the analyses and its opinion. No single factor or analysis was determinative of Craig-Hallum's fairness determination. Rather, Craig-Hallum considered the totality of the factors and analyses performed in arriving at its opinion. Craig-Hallum based its analyses on assumptions that it deemed reasonable, including those concerning general business and economic conditions and industry-specific factors. The other principal assumptions upon which Craig-Hallum based its analysis have been described under the description of each analysis in the foregoing summary. Analyses based upon forecasts of future results are inherently uncertain, as they are subject to numerous factors or events beyond the control of the parties and their advisors. Accordingly, forecasts and analyses used or made by Craig-Hallum are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. Moreover, Craig-Hallum's analyses are not and do not purport to be appraisals or otherwise reflective of the prices at which securities may trade at the present time or at any time in the future or at which businesses actually could be bought or sold.

As part of its investment banking business, Craig-Hallum and its affiliates are continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions. Craig-Hallum was selected to provide a fairness opinion to the Pacific Ethanol Board on the basis of Craig-Hallum's experience and its familiarity with Pacific Ethanol and the industry in which it operates.

Under the terms of the engagement letter dated December 15, 2014, Pacific Ethanol has paid Craig-Hallum a fee of $275,000 for rendering its opinion whether or not the transaction is consummated. In addition, Pacific Ethanol has paid Craig-Hallum a retainer fee of $25,000 in connection with engaging Craig-Hallum and agreed to reimburse Craig-Hallum for reasonable expenses incurred in connection with the engagement and to indemnify Craig-Hallum against certain liabilities that may arise out of its engagement by Pacific Ethanol and the rendering of the opinion. In the ordinary course of business, Craig-Hallum and its affiliates may actively trade or hold the securities of Pacific Ethanol or any of its affiliates for Craig-Hallum's account or for others and, accordingly, may at any time hold a long or short position in such securities. Craig-Hallum has, in the past two years, provided financial advisory and financing services to Pacific Ethanol, and received fees for the rendering of such services. Craig-Hallum acted as underwriter for Pacific Ethanol's April 2014 public offering of common stock, for which Craig-Hallum received an underwriting discount of approximately $336,000.

Craig-Hallum's analyses were prepared solely as part of Craig-Hallum's analysis of the fairness, from a financial point of view, to Pacific Ethanol of the exchange ratio and were provided to the Pacific Ethanol Board in that connection. The opinion of Craig-Hallum was only one of the factors taken into consideration by the Pacific Ethanol Board in making its determination to approve the merger agreement and the merger.

Recommendation of the Aventine Board and its Reasons for the Merger

The Aventine Board, with the advice and assistance of its financial and legal advisors, negotiated, evaluated, and, at a meeting held on December 30, 2014, unanimously approved the merger agreement, the merger and the other transactions contemplated thereby and authorize Aventine management to finalize, execute and deliver the merger agreement and take all other actions with respect to the merger transactions. The Aventine Board unanimously recommends that the Aventine stockholders vote **"FOR"** the adoption of the merger agreement.

In reaching the decisions to approve the merger agreement and the transactions contemplated thereby and to recommend that the Aventine stockholders vote to adopt the merger agreement and approve the merger, the Aventine Board consulted extensively with its financial and legal advisors and Aventine's management, and considered strategic alternatives to the proposed merger. In addition, the Aventine Board received verbal direction and guidance from its majority stockholder that it was favorably inclined to pursue a merger with Pacific Ethanol and enter into a voting agreement to support the merger agreement. After such discussions and considering such alternatives, the Aventine Board unanimously determined the proposed merger to be in the best interests of Aventine and its stockholders.

Strategic Rationale

The Aventine Board' decision to approve the merger and the merger agreement and to recommend to Aventine's stockholders that they vote for the adoption of the merger agreement was based on a number of factors. These factors included, without limitation, the following (which are not necessarily presented in order of relative importance):

- Aventine's stockholders will benefit from the combined company's greater cash flow generation ability, enhanced liquidity and stronger balance sheet, improving its ability to withstand cyclical downturns in the ethanol industry.

- the merger will strengthen the combined company's ability to pursue strategic initiatives, including potential refinancing and acquisition opportunities.

- Aventine's stockholders will benefit from the combined company's more diverse geographical footprint, thereby mitigating exposure to regional logistical constraints and price volatility in any one grain market, providing greater access to regional ethanol pricing premiums and allowing for more efficient marketing and distribution of its products than on a stand-alone basis.

- Aventine's stockholders will benefit from expected cost synergies through the combination of the corporate management, commodities marketing and administrative support functions.

- the merger provides Aventine's stockholders with greater liquidity through the exchange of their current equity interests into the publicly-traded common stock of Pacific Ethanol since the common stock of Aventine is not listed or traded on any stock market.

- the merger is expected to qualify as a tax-free transaction and, as a result, provide greater value to the Aventine stockholders than a cash-based asset sale transaction.

- the merger consideration will be paid in shares of Pacific Ethanol common stock, which will enable them to share in any synergies and participate in any future appreciation of Pacific Ethanol common stock following the consummation of the merger, whether from future earnings growth or as a result of any premium paid in connection with a future sale of the combined company.

- prior transaction proposals inquired about a sale of a portion of Aventine's assets and assumption of limited liabilities and the merger with Pacific Ethanol results in the transfer of all assets and liabilities, including but not limited to any potential exposure related to the Aurora Coop Litigation.

- although Aventine is a private company, Pacific Ethanol was able to conduct a sufficient level of diligence to enable it to agree to a transaction structure that excluded indemnification arrangements and any related escrows or holdback arrangements.

- the financial analyses reviewed and discussed with the Aventine Board and the written opinion from Duff & Phelps, Aventine's financial advisor, to the Aventine Board, dated as of December 30, 2014, to the effect that, as of such date and based on and subject to the factors and assumptions, qualifications and limiting conditions set forth in that opinion, the exchange ratio payable to Aventine's stockholders electing Pacific Ethanol common stock pursuant to the merger agreement was fair, from a financial point of view, to such stockholders of Aventine. The full text of the written opinion of Duff & Phelps is attached to this joint proxy statement/prospectus as *Annex E.*

- the fact that Duff & Phelps and Aventine's legal advisors were involved throughout the negotiations and updated the Aventine Board directly and regularly, which provided the Aventine Board with perspectives on the negotiation in addition to those of management.

- the fact that the merger consideration is a fixed exchange ratio of shares of Pacific Ethanol common stock, which affords the Aventine stockholders the opportunity to benefit from any increase in the trading price of Pacific Ethanol common stock between the announcement and completion of the merger.

- the fact that the merger agreement contains a "floor" share price as a condition to closing.

- although Aventine's significant stockholders have entered into stockholders agreements in support of the Pacific Ethanol merger, the Aventine Board retains the right to pursue unsolicited takeover proposals deemed to be superior proposals, following payment of a reasonable termination fee.

- Pacific Ethanol will be required to pay Aventine an agreed upon expense reimbursement amount if the requisite stockholder vote of Pacific Ethanol is not obtained and the merger agreement is terminated.

Risks and Potentially Negative Factors

In addition to the above factors, the Aventine Board also identified and considered a number of uncertainties, risks and other potentially negative factors in its consideration of the merger and the merger agreement, including without limitation:

- the fact that the merger may not be completed in a timely manner or at all, despite the parties' efforts and even if the requisite approval is obtained from Aventine stockholders and Pacific Ethanol stockholders, if certain conditions related to Aventine's litigation matters with Aurora Coop occur and/or other material conditions are not satisfied.

- the fact that Aventine negotiated exclusively with Pacific Ethanol rather than conducting a public or private "auction" or sales process of Aventine.

- the risks and costs to Aventine if the merger is not completed, including the diversion of management and employee attention, potential employee attrition and the potential effect on Aventine's business and relations with customers, suppliers and vendors.

- the transaction costs to be incurred in connection with the merger will be quite significant.

- the restrictions on the conduct of Aventine's business prior to completion of the merger, which could delay or prevent Aventine from undertaking material strategic opportunities that might arise pending completion of the merger to the detriment of Aventine's stockholders.

- the fact that the merger consideration consists solely of stock to be delivered on a fixed exchange ratio, which could result in the Aventine stockholders being adversely affected by a decrease in the trading price of Pacific Ethanol common stock after the date of execution of the merger agreement.

The Aventine Board weighed these positive and negative factors, realizing that future results are uncertain, including any future results considered or expected in the factors noted above. In addition, many of the nonfinancial factors considered were highly subjective. As a result, in view of the number and variety of factors they considered, the Aventine Board did not consider it practicable and did not attempt to quantify or otherwise assign relative weights to the specific factors it considered. Rather, the Aventine Board made its determination based on the totality of the information it considered. Individually, each director may have given greater or lesser weight to a particular factor or consideration.

The Aventine Board believed that, overall, the potential benefits of the merger to Aventine and its stockholders outweighed the risks mentioned above.

The foregoing discussion of the information and factors considered by the Aventine Board is forward-looking in nature. This information should be read in light of the factors described under the section entitled "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 49.

Opinion of Financial Advisor to the Aventine Board

Duff & Phelps was engaged to serve as an independent financial advisor to the Aventine Board and to provide an opinion as to the fairness, from a financial point of view, to the stockholders of Aventine electing Pacific Ethanol common stock of the exchange ratio to be received by such stockholders in the merger of Merger Sub with and into Aventine, which we refer to as the merger (without giving effect to any impact of the merger on any particular stockholder other than in its capacity as a stockholder).

Duff & Phelps delivered its written opinion to the Aventine Board on December 30, 2014 to the effect that, based upon and subject to the assumptions, qualifications and limiting conditions set forth therein, as of such date, the exchange ratio payable to Aventine's stockholders electing Pacific Ethanol common stock in the merger was fair, from a financial point of view, to such stockholders of Aventine (without giving effect to any impact of the merger on any particular stockholder other than in its capacity as a stockholder).

The full text of the opinion of Duff & Phelps is attached as *Annex E* to this joint proxy statement/prospectus and is incorporated into this joint proxy statement/prospectus by reference. The full text of the written opinion should be read carefully in its entirety for a description of the assumptions made, procedures followed, matters considered and qualifications and limitations of the review undertaken in connection with the opinion.

The opinion of Duff & Phelps was furnished for the use and benefit of the board of directors of Aventine in connection with its consideration of the merger and was not intended to, and does not, confer any rights or remedies upon any other person, and was not intended to be used, and may not be used, by any other person or for any other purpose, without Duff & Phelps' express consent. The opinion of Duff & Phelps also did not address the merits of the underlying business decision to enter into the merger versus any alternative strategy, transaction, or transaction structure; did not address any transaction related to the merger; was not a recommendation as to how the Aventine Board or any stockholder should vote or act with respect to any matters relating to the merger or whether to proceed with the merger or any related transaction; and did not indicate that the exchange ratio payable was the best possibly attainable under any circumstances; instead, it merely stated whether the exchange ratio payable to stockholders electing Pacific Ethanol common stock in the merger was within a range suggested by certain financial analyses described in more detail below. The decision as to whether to proceed with the merger or any related transaction may depend on an assessment of factors unrelated to the financial analysis on which the opinion of Duff & Phelps was based. The opinion of Duff & Phelps should not be construed as creating any fiduciary duty on the part of Duff & Phelps to any party.

In connection with its opinion, Duff & Phelps made such reviews, analyses and inquiries as it deemed necessary and appropriate under the circumstances. Duff & Phelps also took into account its assessment of general economic, market and financial conditions, as well as its experience in securities and business valuation, in general, and with respect to similar transactions, in particular. Duff & Phelps' procedures, investigations, and financial analysis with respect to the preparation of its opinion included, but were not limited to, the items summarized below.

In performing its analyses and rendering its opinion with respect to the merger, Duff & Phelps:

- reviewed the following documents:
  - Aventine's audited financial statements for the years ended December 31, 2010 through December 31, 2013;
  - unaudited financial information for Aventine for the eleven months ended November 30, 2014, which Aventine's management identified as being the most current financial statements available;
  - Pacific Ethanol's annual reports and audited financial statements on Form 10-K filed with the Securities and Exchange Commission for the years ended December 31, 2010 through December 31, 2013 and Pacific Ethanol's unaudited interim financial statements for the nine months ended September 30, 2014 included in Pacific Ethanol's Form 10-Q filed with the SEC;
  - other internal documents relating to the history, current operations, and probable future outlook of Aventine, including financial projections of Aventine and financial projections of Pacific Ethanol provided to Aventine by Pacific Ethanol and used by Aventine in its own evaluation of Pacific Ethanol, all provided to Duff & Phelps by management of Aventine;
  - a letter dated December 24, 2014 from the management of Aventine which made certain representations as to historical financial statements, financial projections for Aventine and Pacific Ethanol and the underlying assumptions, and a pro forma schedule of assets and liabilities (including identified contingent liabilities) for Aventine and Pacific Ethanol on a post-transaction basis; and
  - financial terms and conditions of a draft of the Agreement and Plan of Merger, by and among Aventine, Pacific Ethanol and Merger Sub, dated December 22, 2014;

- discussed the information referred to above and the background and other elements of the merger with the management of Aventine;

- reviewed the historical trading price and trading volume of Pacific Ethanol's common stock, and the publicly traded securities of certain other companies that Duff & Phelps deemed relevant;

- performed certain valuation and comparative analyses using generally accepted valuation and analytical techniques, including a discounted cash flow analysis, an analysis of selected public companies that Duff & Phelps deemed relevant, and an analysis of selected transactions that Duff & Phelps deemed relevant; and

- conducted such other analyses and considered such other factors as Duff & Phelps deemed appropriate.

In performing its analyses and rendering its opinion with respect to the merger, Duff & Phelps, with Aventine's consent:

- relied upon the accuracy, completeness, and fair presentation of all information, data, advice, opinions and representations obtained from public sources or provided to it from private sources, including Aventine management, and did not independently verify such information;

- relied upon the fact that the Aventine Board and Aventine have been advised by counsel as to all legal matters with respect to the merger, including whether all procedures required by law to be taken in connection with the merger have been duly, validly and timely taken;

- assumed that any estimates, evaluations, forecasts and projections furnished to Duff & Phelps were reasonably prepared and based upon the best currently available information and good faith judgment of the person furnishing the same, and Duff & Phelps expressed no opinion with respect to such projections or the underlying assumptions;

- assumed that information supplied and representations made by Aventine management were true and correct in all material respects regarding Aventine, Pacific Ethanol and the merger;

- assumed that the representations and warranties made in the merger agreement were true and correct in all material respects;

- assumed that the final versions of all documents reviewed by Duff & Phelps in draft form conformed in all material respects to the drafts reviewed;

- assumed that there has been no material change in the assets, liabilities, financial condition, results of operations, business, or prospects of Aventine since the date of the most recent financial statements and other information made available to Duff & Phelps, and that there was no information or facts that would make the information reviewed by Duff & Phelps incomplete or misleading;

- assumed that all of the conditions required to implement the merger will be satisfied and that the merger will be completed in accordance with the terms of the merger agreement without any amendments thereto or any waivers of any terms or conditions thereof; and

- assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the merger will be obtained without any adverse effect on Aventine or the contemplated benefits expected to be derived in the merger.

To the extent that any of the foregoing assumptions or any of the facts on which its opinion was based prove to be untrue in any material respect, the opinion of Duff & Phelps cannot and should not be relied upon. Furthermore, in Duff & Phelps' analysis and in connection with the preparation of its opinion, Duff & Phelps made numerous assumptions with respect to industry performance, general business, market and economic conditions and other matters, many of which are beyond the control of any party involved in the merger.

The opinion of Duff & Phelps was necessarily based upon market, economic, financial and other conditions as they existed and could be evaluated as of the date of its opinion, and Duff & Phelps disclaimed any undertaking or obligation to update, revise, or reaffirm its opinion or advise any person of any change in any fact or matter affecting its opinion which may come or be brought to the attention of Duff & Phelps after the date of its opinion.

Duff & Phelps did not evaluate Aventine's solvency or conduct an independent appraisal or physical inspection of any specific assets or liabilities (contingent or otherwise). Duff & Phelps was not requested to, and did not, (i) initiate any discussions with, or solicit any indications of interest from, third parties with respect to the merger, the assets, businesses or operations of Aventine, or any alternatives to the merger, (ii) negotiate the terms of the merger, and therefore, Duff & Phelps assumed that such terms are the most beneficial terms, from Aventine's perspective, that could, under the circumstances, be negotiated among the parties to the merger agreement and the merger, or (iii) advise the Aventine Board or any other party with respect to alternatives to the merger.

Duff & Phelps did not express any opinion as to the market price or value of the Pacific Ethanol non-voting common stock that may be issuable in the merger, the Pacific Ethanol common stock or Aventine common stock (or anything else) after the announcement or the consummation of the merger. The opinion of Duff & Phelps should not be construed as a valuation opinion, credit rating, solvency opinion, an analysis of Aventine's credit worthiness, as tax advice or as accounting advice. Duff & Phelps has not made, and assumed no responsibility to make, any representation, or render any opinion, as to any legal or tax matter. The issuance of its opinion was approved by Duff & Phelps' opinion review committee, and Duff & Phelps has consented to the inclusion of its opinion in this proxy statement.

In rendering its opinion, Duff & Phelps did not express any opinion with respect to the amount or nature of any compensation to any of Aventine's officers, directors, or employees, or any class of such persons, relative to the exchange ratio payable to the stockholders of Aventine electing Pacific Ethanol common stock in the merger, or with respect to the fairness of any such compensation.

Set forth below is a summary of the material analyses performed by Duff & Phelps in connection with providing its opinion to the Aventine Board. This summary is qualified in its entirety by reference to the full text of the written opinion, attached to this proxy statement as *Annex E.* While this summary describes the analyses and factors that Duff & Phelps deemed material in its presentation to the Aventine Board, it is not a comprehensive description of all analyses and factors considered by Duff & Phelps. The preparation of a fairness opinion is a complex process that involves various determinations as to the most appropriate and relevant methods of financial analysis and the application of these methods to the particular circumstances. Therefore, neither the fairness opinion nor Duff & Phelps' underlying analysis is readily susceptible to partial analysis or a summary description. In arriving at its opinion, Duff & Phelps did not attribute any particular weight to any analysis or factor considered by it, but rather made qualitative judgments as to the significance and relevance of each analysis and factor. Accordingly, Duff & Phelps believes that the totality of its analyses must be considered as a whole and that selecting portions of its analyses and of the factors considered by it, without considering all analyses and factors, could create a misleading or incomplete view of the evaluation process underlying its opinion. The conclusion reached by Duff & Phelps was based on all analyses and factors taken as a whole, and also on the application of Duff & Phelps' own experience and judgment.

Selected M&A Transactions Analysis

Duff & Phelps performed a search for precedent merger and acquisition transactions in the ethanol industry, but did not identify any transactions for which public information was available or that it deemed relevant.

Selected Public Companies Analysis

The companies identified in Duff & Phelps' selected public companies analysis were determined by Duff & Phelps not to be sufficiently comparable to Aventine to provide a basis for valuation.

Discounted Cash Flow Analysis

Duff & Phelps performed a discounted cash flow analysis of the estimated future free cash flows of Aventine for the fiscal years ending December 31, 2015 through December 31, 2019 based on the management projections provided by Aventine. Duff & Phelps also performed a discounted cash flow analysis of the estimated future free cash flows of Pacific Ethanol for the fiscal years ending December 31, 2015 through December 31, 2019 based on the management projections provided by Aventine. The discounted cash flow analyses were used to determine the net present value of estimated future free cash flows of Aventine and Pacific Ethanol utilizing appropriate costs of capital for the discount rates, which reflect the relative risk associated with the companies' respective cash flows as well as the rates of return that security holders of Aventine and Pacific Ethanol could expect to realize on alternative investment opportunities with similar risk profiles. Duff & Phelps utilized and relied upon projections from Aventine's management and assumptions provided by Aventine's management for purposes of its discounted cash flow analysis.

In its discounted cash flow analysis of Aventine, Duff & Phelps used discount rates ranging from 10.5% to 11.5%, reflecting Duff & Phelps' estimate of Aventine's cost of capital, to discount the projected free cash flows and terminal value. Duff & Phelps estimated Aventine's terminal value in 2019 using a terminal growth rate of 0.0%. Based on these assumptions, this analysis indicated a per share reference range of Aventine common stock of $9.90 to $12.02.

In its discounted cash flow analysis of Pacific Ethanol, Duff & Phelps used discount rates ranging from 10.5% to 11.5%, reflecting Duff & Phelps' estimate of Pacific Ethanol's cost of capital, to discount the projected free cash flows and terminal value. Duff & Phelps estimated Pacific Ethanol's terminal value in 2019 using a terminal growth rate of 3.0%. Based on these assumptions, this analysis indicated a per share reference range of Pacific Ethanol common stock of $7.95 to $8.72.

The per share reference ranges of Aventine and Pacific Ethanol implied an exchange ratio range of 1.14 to 1.51 shares of Pacific Ethanol common stock per each share of Aventine common stock as compared to the merger exchange ratio of 1.25 shares of Pacific Ethanol common stock per each share of Aventine common stock.

Duff & Phelps also performed a trading analysis of Pacific Ethanol based on the closing price of Pacific Ethanol on December 29, 2014 and the volume weighted average price of Pacific Ethanol common stock for the 30 day, 60 day and 90 day periods preceding December 29, 2014. This analysis indicated a per share reference range of Pacific Ethanol common stock of $11.23 to $12.40. Applied to the per share reference ranges of Aventine indicated by the discounted cash flow analysis set forth above, the Pacific Ethanol trading analysis implied an exchange ratio range of 0.80 to 1.07 shares of Pacific Ethanol common stock per each share of Aventine common stock as compared to the merger exchange ratio of 1.25 shares of Pacific Ethanol common stock per each share of Aventine common stock.

Miscellaneous

The Aventine Board selected Duff & Phelps because Duff & Phelps is a leading independent financial advisory firm, offering a broad range of valuation and corporate finance services, including fairness and solvency opinions, mergers and acquisitions advisory, mergers and acquisitions due diligence services, financial reporting and tax valuation, fixed asset and real estate consulting, ESOP and Employee Retirement Income Security Act advisory services, legal business solutions and dispute consulting.

Fees and Expenses

The amount of the fees for Duff & Phelps' services in connection with the rendering of its opinion to the Aventine Board were payable as follows: $150,000 in cash upon execution of the engagement letter with Duff & Phelps; $150,000 in cash upon Duff & Phelps informing the Aventine Board that it was prepared to deliver its opinion; and $50,000 in cash promptly following the determination to include Duff & Phelps' opinion in a filing with the Securities and Exchange Commission. No portion of Duff & Phelps' fee is contingent upon the conclusion expressed in its opinion. Furthermore, Duff & Phelps is entitled to be paid additional fees at Duff & Phelps' standard hourly rates for any time incurred should Duff & Phelps be called upon to support its findings subsequent to the delivery of its opinion. Aventine has also agreed to reimburse Duff & Phelps for certain of its out-of-pocket expenses and to indemnify Duff & Phelps for certain liabilities arising out of its engagement.

The terms of the fee arrangements with Duff & Phelps, which Aventine believes are customary in transactions of this nature, were negotiated at arm's length, and the Aventine Board is aware of these fee arrangements.

Other than this engagement, during the two years preceding the date of its opinion, Duff & Phelps has not had any material relationship with any party to the merger for which compensation has been received or is intended to be received, nor is any such material relationship or related compensation mutually understood to be contemplated.

Accounting Treatment

The acquisition of Aventine common stock by Pacific Ethanol in the merger will be accounted for in accordance with the acquisition method of accounting and the regulations of the Securities and Exchange Commission. This means that the assets and liabilities of Aventine will be recorded, as of the completion of the merger, at their fair values and consolidated with those of Pacific Ethanol. This will result in recording an amount for goodwill, which represents the excess of the purchase price over the fair value of the identifiable net assets of Aventine. Financial statements of Pacific Ethanol issued after the merger will reflect only the operations of Aventine's business after the merger and will not be restated retroactively to reflect the historical financial position or results of operations of Aventine.

All unaudited pro forma combined condensed financial information contained in this joint proxy statement/prospectus was prepared using the acquisition method of accounting for business combinations. The final allocation of the purchase price will be determined after the merger is completed and after completion of an analysis to determine the fair value of the assets and liabilities of Aventine's business. Accordingly, the final purchase accounting adjustments may be materially different from the unaudited pro forma adjustments. Any decrease in the fair value of the assets or increase in the fair value of the liabilities of Aventine's business as compared to the unaudited pro forma combined condensed financial information included in this joint proxy statement/prospectus will have the effect of increasing the amount of recorded goodwill. An increase or decrease in the share price of Pacific Ethanol would have the effect of increasing or decreasing goodwill, as the case may be. The goodwill amount will not be affected by a change in the Aventine share price.

Material United States Federal Income Tax Consequences of the Merger

The following discussion, subject to the limitations and qualifications described herein, and to the extent this discussion constitutes a summary of United States. federal income tax laws or legal conclusions with respect thereto, constitutes the opinion of Troutman Sanders LLP and Akin Gump Strauss Hauer & Feld LLP as to the material United States federal income tax consequences of the merger applicable to United States holders (as defined below) of Aventine common stock. Pacific Ethanol and Aventine intend for the merger to qualify as a reorganization within the meaning of Section 368(a) of the Code for United States federal income tax purposes. At or prior to the effective time and as a closing condition to the merger, Pacific Ethanol will have received a written opinion from Troutman Sanders LLC, and Aventine will have received a written opinion from Akin Gump Strauss Hauer & Feld LLP, both to the effect that the merger will constitute a reorganization within the meaning of Section 368(a) of the Code for United States federal income tax purposes.

The tax opinions of Troutman Sanders LLP and Akin Gump Strauss Hauer & Feld LLP are based, in part, on representations, in form and substance reasonably acceptable to Troutman Sanders LLP and Akin Gump Strauss Hauer & Feld LLP, made by Pacific Ethanol and Aventine with respect to factual matters related to the requirements of the tax law relevant to rendering the preceding opinions, and on customary factual assumptions set forth in their opinions attached as *Exhibits 8.1 and 8.2*, respectively, to the registration statement of which this joint proxy statement/prospectus forms a part, all of which must be consistent with the state of facts existing as of the effective time of the merger. If any of the factual representations or assumptions on which the opinions described above are based, are inaccurate as of the effective time of the merger, the tax consequences to United States holders of Aventine common stock could differ materially from those described below. Although the merger agreement allows Pacific Ethanol and Aventine to waive the opinion requirements as a condition to closing, neither Pacific Ethanol nor Aventine intends to do so. If either Pacific Ethanol or Aventine does waive these conditions, you will be informed of this decision prior to being asked to vote on the transaction.

The above-described opinions of counsel represent the best legal judgment of counsel to Pacific Ethanol and counsel to Aventine. These opinions and the discussion set forth herein are not binding on the Internal Revenue Service (sometimes referred to as the IRS) or any court. No ruling will be sought from the IRS with respect to the tax consequences of the transaction and no assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences set forth below.

The following discussion is based upon the Code, United States Treasury regulations, judicial authorities, published positions of the IRS, and other applicable authorities, all as currently in effect on the date of this joint proxy statement/prospectus and all of which are subject to change or differing interpretations (possibly with retroactive effect). This discussion is limited to holders that hold their shares of Aventine common stock as capital assets for United States federal income tax purposes (generally, assets held for investment). This discussion does not address all of the tax consequences that may be relevant to a particular Aventine stockholder or to Aventine stockholders that are subject to special treatment under United States federal income tax laws including, but not limited to, non-U.S. persons or entities, financial institutions, tax-exempt organizations, insurance companies, regulated investment companies, partnerships or other pass-through entities, broker-dealers, traders in securities who elect the mark to market method of accounting for their securities, Aventine stockholders that hold their shares of Aventine common stock as part of a "straddle," "hedge," "conversion transaction" or other integrated transaction, Aventine stockholders who acquired their shares of Aventine common stock pursuant to the exercise of employee stock options or otherwise in connection with the performance of services, United States expatriates, Aventine stockholders who have a functional currency other than the United States dollar, Aventine stockholders liable for the alternative minimum tax and Aventine stockholders who exercise appraisal rights. This discussion also does not address the tax consequences to Aventine, or to Aventine stockholders that own 5% or more of Aventine common stock or that are affiliates of Aventine. In addition, this discussion does not address other United States federal taxes (such as gift or estate taxes or alternative minimum taxes), the tax consequences of the transaction under state, local or foreign tax laws, certain tax reporting requirements that may be applicable with respect to the transaction or the Medicare tax on "net investment income."

For purposes of this discussion, the term "United States holder" means a beneficial owner of Aventine common stock that is (i) a citizen or resident of the United States, (ii) a corporation, or other entity treated as a corporation for United States federal income tax purposes, created or organized under the laws of the United States or any state thereof or the District of Columbia, (iii) an estate the income of which is subject to United States federal income tax regardless of its source and (iv) a trust if such trust has validly elected to be treated as a United States person for United States federal income tax purposes or if (A) a United States court can exercise primary supervision over the trust's administration and (B) one or more United States persons have the authority to control all substantial decisions of the trust.

If a partnership (or other entity treated as a partnership for United States federal income tax purposes) is an Aventine stockholder, the United States federal income tax treatment of a partner in the partnership generally will depend upon the status of the partner and the activities of the partnership. A partner in a partnership holding Aventine common stock should consult its tax advisors with respect to the tax consequences of the transaction.

Aventine stockholders are urged to consult their tax advisors as to the particular United States federal income tax consequences of the transaction to them, as well as any tax consequences arising under any state, local and non-United States tax laws or any other United States federal tax laws.

Based on and subject to the foregoing, assuming that, for United States federal income tax purposes, the merger will constitute a reorganization within the meaning of Section 368(a) of the Code, the following material United States federal income tax consequences will result from the transaction:

Consequences to Pacific Ethanol and Aventine

Each of Pacific Ethanol and Aventine will be a party to the merger within the meaning of Section 368(b) of the Code, and neither Pacific Ethanol nor Aventine will recognize any gain or loss as a result of the merger.

Consequences to Aventine Stockholders

Exchange of Aventine Common Stock for Pacific Ethanol Common Stock. United States holders of Aventine common stock that exchange all of their Aventine common stock for Pacific Ethanol common stock or non-voting common stock will not recognize income, gain or loss for United States federal income tax purposes, except, as discussed below, with respect to cash received in lieu of fractional shares of Pacific Ethanol common stock or non-voting common stock.

Cash Received in Lieu of Fractional Shares. A United States holder that receives cash in lieu of a fractional share of Pacific Ethanol common stock or non-voting common stock in the merger generally will be treated as if the fractional share of Pacific Ethanol common stock or non-voting common stock had been distributed to them as part of the merger, and then redeemed by Pacific Ethanol in exchange for the cash actually distributed in lieu of the fractional share, with the redemption generally qualifying as an "exchange" under Section 302 of the Code. Consequently, those holders generally will recognize capital gain or loss with respect to the cash payments they receive in lieu of fractional shares measured by the difference between the amount of cash received and the tax basis allocated to the fractional shares, and will be long-term capital gain or loss if, as of the effective date of the merger, the holding period of such shares is greater than one year. The deductibility of capital losses is subject to limitations.

Tax Basis in, and Holding Period for, Pacific Ethanol Common Stock and Non-Voting Common Stock. A United States holder's aggregate tax basis in the Pacific Ethanol common stock or non-voting common stock received in the merger will be equal to such stockholder's aggregate tax basis in the Aventine common stock surrendered in the merger, reduced by any amount allocable to a fractional share of Pacific Ethanol common stock or non-voting common stock for which cash is received. The holding period of Pacific Ethanol common stock or non-voting common stock received by a United States holder in the merger will include the holding period of the Aventine common stock exchanged in the merger if the Aventine common stock exchanged is held as a capital asset at the time of the merger. If a United States holder acquired different blocks of Aventine common stock at different times or at different prices, the Pacific Ethanol common stock or non-voting common stock such holder receives will be allocated pro rata to each block of Aventine common stock, and the basis and holding period of each block of Pacific Ethanol common stock or non-voting common stock such holder receives will be determined on a block-for-block basis depending on the basis and holding period of the blocks of Aventine common stock exchanged for such block of Pacific Ethanol common stock or non-voting common stock.

Backup Withholding and Reporting Requirements

United States holders of Aventine common stock, other than certain exempt recipients, may be subject to backup withholding at a rate of 28% with respect to any cash payment received in the merger in lieu of fractional shares. However, backup withholding will not apply to any United States holder that either (a) furnishes a correct taxpayer identification number and certifies that it is not subject to backup withholding or (b) otherwise proves to Pacific Ethanol and its exchange agent that the United States holder is exempt from backup withholding. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or credit against the holder's United States federal income tax liability, provided the holder timely furnishes the required information to the IRS.

In addition, United States holders of Aventine common stock are required to retain permanent records and make such records available to any authorized IRS officers and employees. The records should include the number of shares of Aventine stock exchanged, the number of shares of Pacific Ethanol common stock and/or non-voting common stock received, the fair market value and tax basis of Aventine shares exchanged and the United States holder's tax basis in the Pacific Ethanol common stock and/or non-voting common stock received.

If a United States holder of Aventine common stock that exchanges such stock for Pacific Ethanol common stock or non-voting common stock is a "significant holder" with respect to Aventine, the United States holder is required to include a statement with respect to the exchange on or with the federal income tax return of the United States holder for the year of the exchange. A United States holder of Aventine common stock will be treated as a significant holder in Aventine if the United States holder's ownership interest in Aventine is 5% or more of Aventine's issued and outstanding common stock or if the United States holder's basis in the shares of Aventine stock exchanged is $1,000,000 or more. The statement must be prepared in accordance with Treasury Regulation Section 1.368-3 and must be entitled "STATEMENT PURSUANT TO §1.368-3 BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER". The statement must include the names and employer identification numbers of Aventine and Pacific Ethanol, the date of the merger, and the fair market value and tax basis of Aventine shares exchanged (determined immediately before the merger).

The tax consequences of the transaction to a particular Aventine stockholder will depend on the stockholder's individual circumstances. Aventine stockholders are strongly encouraged to consult their tax advisors regarding the specific tax consequences of the transaction to them, including tax return reporting requirements and the applicability of federal, state, local and non-United States tax laws.

Appraisal Rights

Pacific Ethanol stockholders are not entitled to appraisal rights in connection with the merger. See "Information About the Pacific Ethanol Special Meeting and Vote—Appraisal Rights; Trading of Shares" beginning on page 78 for more detail.

Under Delaware law, Aventine stockholders have appraisal rights in connection with the merger. Therefore, a stockholder of Aventine may elect to be paid cash for the fair value of such stockholder's shares as determined by the Delaware Court of Chancery and in accordance with the procedures set forth in Section 262. To the extent the drag-along is exercised pursuant to the Aventine Stockholders Agreement, the Aventine stockholders subject to the drag-along right have waived their respective appraisal rights arising out of a drag-along transaction. See "Information About the Aventine Special Meeting and Vote—Appraisal Rights" beginning on page 83 for more detail.

Regulatory Matters Relating to the Merger

General

Under the terms of the merger agreement, the merger cannot be completed until the waiting period applicable to the consummation of the merger under the HSR Act has expired or been terminated and all other specified required approvals have been obtained or any applicable waiting period thereunder has expired or been terminated.

Under the HSR Act and the rules promulgated thereunder by the FTC, the merger cannot be completed until each of Pacific Ethanol and Aventine has filed a notification and report form with the FTC and the Antitrust Division of the DOJ under the HSR Act and the applicable waiting period has expired or been terminated. Each of Pacific Ethanol and Aventine filed an initial notification and report form with the FTC and the DOJ on February 3, 2015.

At any time before or after consummation of the merger, notwithstanding the termination of the waiting period under the HSR Act, the Antitrust Division of the DOJ or the FTC could take such action under the antitrust laws as it deems necessary or desirable in the public interest, including seeking to enjoin the completion of the merger or seeking divestiture of substantial assets of Pacific Ethanol or Aventine. At any time before or after the completion of the merger, and notwithstanding the termination of the waiting period under the HSR Act, any state could take such action under the antitrust laws as it deems necessary or desirable in the public interest. Such action could include seeking to enjoin the completion of the merger or seeking divestiture of substantial assets of Pacific Ethanol or Aventine. Private parties may also seek to take legal action under the antitrust laws under certain circumstances.

There can be no assurance that all of the regulatory approvals described above will be sought or obtained and, if obtained, there can be no assurance as to the timing of any approvals, the ability of Pacific Ethanol or Aventine to obtain the approvals on satisfactory terms or the absence of any litigation challenging such approvals. There can also be no assurance that the DOJ, the FTC or any other governmental entity or any private party will not attempt to challenge the merger on antitrust grounds and, if such a challenge is made, there can be no assurance as to its result.

Under the terms of the merger agreement, each of Pacific Ethanol and Aventine has agreed to cooperate and use its reasonable best efforts to take or cause to be taken all actions that are necessary, proper or advisable to consummate and make effective the merger and the other transactions contemplated by the merger agreement as promptly as practicable, including:

- obtaining from any government entity or any other third person any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by such party or any of their subsidiaries in connection with the merger;
- as promptly as practicable, make all necessary filings and make any other required submissions, with respect to merger and the merger agreement required under applicable law, including an securities laws and antitrust laws;
- making all required filings (subject to applicable law regarding the sharing of information), including giving all parties and their respective counsel reasonable opportunity to review and comment upon such filings and any amendments or supplements to the filing prior to such filing;
- to obtain any clearances or approvals of any governmental entities required for the consummation of the merger under any antitrust law including the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other federal, state or foreign law designed to prohibit, restrict or regulate actions for the purpose or effect of monopolization or restraint of trade;

- to obtain the expiration of any applicable waiting period under any antitrust law;
- to respond to any government requests for information under any antitrust law;
- to contest and resist any action, including any legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that restricts, prevents or prohibits the consummation of the merger or any other transactions contemplated by the merger agreement under any antitrust law.
- to file, as promptly as practicable, all notifications required under the HSR Act and any applicable international antitrust requirements.

Neither Pacific Ethanol, nor Aventine nor any of their subsidiaries is required to (i) license, divest, dispose of or hold separate any assets or businesses of Pacific Ethanol or Aventine or any of their subsidiaries or otherwise take or commit to take any action that limits its freedom of action with respect to, or its ability to retain, any of the assets or businesses of Pacific Ethanol or Aventine or any of their subsidiaries, or that would otherwise have a material adverse effect on the combined company or (ii) pay more than de minimis amounts in connection with seeking or obtaining any such consents, approvals or authorizations as are required to complete the merger under applicable antitrust laws (excluding any mandatory filing fees and reasonable and customary costs and expenses).

Pacific Ethanol and Aventine have agreed to keep the other apprised of the status of matters relating to the completion of the merger and work cooperatively in connection with obtaining all required consents, authorizations, orders or approvals of, or any exemptions by, any governmental entity. Each party shall promptly consult with the other party with respect to and provide any necessary information and assistance as the other party may reasonably request with respect to (and, in the case of correspondence, provide the other party (or their counsel) copies of) all notices, submissions, or filings made by such party with any governmental entity or any other information supplied by such party to, or correspondence with, a governmental entity in connection with the merger and the merger agreement. Pacific Ethanol and Aventine have agreed to promptly inform the other party and, if in writing, furnish the other party with copies of any communication from or to any governmental entity regarding the merger, and permit the other party to review and discuss in advance, and consider in good faith the views of the other party in connection with, any proposed communication with any such governmental entity. If Pacific Ethanol or Aventine, or their representatives receive a request for additional information or documentary material from any governmental entity with respect to the merger, then such party shall use reasonable best efforts to make, or cause to be made, promptly and after consultation with the other party, an appropriate response in substantial compliance with such request. No party shall participate in any meeting or teleconference with any governmental entity where material issues or any matters relating to timing would likely be discussed in connection with the merger and the merger agreement unless such party consults with the other party in advance and, to the extent not prohibited by such governmental entity, gives the other party the opportunity to attend and participate thereat. In addition, without the prior written consent of Pacific Ethanol, Aventine shall not agree or commit to, or permit any of its subsidiaries to agree or commit to, any commitment to sell, divest or dispose of any businesses, assets, relationships or contractual rights of Aventine or any of its subsidiaries or purporting to limit Aventine's, any of its subsidiaries' or Pacific Ethanol's freedom to action with respect to, or ability to retain, any businesses, assets, relationships or contractual rights.

Each of Pacific Ethanol and Aventine currently intends to submit the merger proposals to its respective stockholders at a special meeting as noted above in "Information About the Pacific Ethanol Special Meeting and Vote" beginning on page 74 and "Information About the Aventine Special Meeting and Vote" beginning on page 81. It is possible that a governmental agency will not have approved the merger by the date of such special meetings, which could delay or prevent completion of the merger for a significant period of time after Pacific Ethanol stockholders and Aventine stockholders have approved the proposals relating to the merger. Any delay in the completion of the merger could diminish the anticipated benefits of the merger or result in additional transaction costs, loss of revenue or other effects associated with uncertainty surrounding the transaction. In addition, it is possible that, among other things, a governmental agency could condition its approval of the merger upon Pacific Ethanol and Aventine entering into an agreement to divest a portion of their combined businesses or assets, or could restrict the operations of the combined businesses in accordance with specified business conduct rules. See "Risk Factors" beginning on page 32. A governmental agency also could impose significant additional costs on the business of the combined company. Acceptance of any such conditions could diminish the benefits of the merger to the combined company and result in additional costs, loss of revenue or other effects. Alternatively, rejection of such conditions could result in Pacific Ethanol and Aventine litigating with a governmental entity, which could delay the merger or cause the merger to be abandoned.

No additional stockholder approval is expected to be required for any decision by Pacific Ethanol or Aventine after the special meetings are held relating to any divestitures or other terms and conditions necessary to resolve any regulatory objections to the merger and, possibly, to proceed with consummation of the merger.

As more fully described in "The Merger Agreement and Related Agreements—Termination" and "—Termination Fee and Expenses" beginning on pages 148 and 149, respectively, the merger agreement may be terminated by Pacific Ethanol or Aventine if the merger is not consummated on or before the outside date (initially May 31, 2015 but subject to an automatic extension to June 30, 2015 if the financial statements of Pacific Ethanol that are required to be included in the registration statement on Form S-4 are for the year ended December 31, 2014), and the party seeking to terminate the merger agreement has not breached its obligations under the merger agreement in a manner that proximately caused the failure of the merger to be completed on or before the outside date.

Federal Securities Laws Consequences; Stock Transfer Restrictions

The shares of Pacific Ethanol common stock and non-voting common stock to be issued in connection with the merger, together with the shares of Pacific Ethanol common stock issuable upon the conversion of shares of non-voting common stock, will be freely transferable under the Securities Act of 1933, as amended (sometimes referred to as the Securities Act), and the Securities Exchange Act of 1934, as amended (sometimes referred to as the Exchange Act), except for shares issued to any stockholder of Aventine who may be deemed to be an "affiliate" of Pacific Ethanol for purposes of Rule 144 under the Securities Act and except for shares issued to any stockholder of Aventine who is a party to the stockholders agreements with Pacific Ethanol. Persons who may be deemed to be affiliates include individuals or entities that control, are controlled by, or under the common control with Pacific Ethanol and may include the executive officers, directors and significant stockholders of Pacific Ethanol. This joint proxy statement/prospectus does not cover resales of Pacific Ethanol common stock or non-voting common stock received by any person upon the completion of the merger, and no person is authorized to make any use of this joint proxy statement/prospectus in connection with any resale.

For a description of the stock transfer restrictions imposed upon the Aventine stockholders who are parties to the stockholders agreements with Pacific Ethanol, see "The Merger Agreement and Related Agreements—Stockholders Agreements" beginning on page 150.

Stock Exchange Listing; Shares to be Issued in the Merger

It is a condition to the merger that the shares of Pacific Ethanol common stock issuable pursuant to the merger be approved for listing on The NASDAQ Capital Market, subject to official notice of issuance. In addition, if the merger results in a "change of control" under NASDAQ Marketplace Rule 5635(b), Pacific Ethanol will be required to submit a new original listing application with NASDAQ and comply with the NASDAQ Capital Market initial listing requirements.

Shares of Pacific Ethanol common stock will continue to be traded on The NASDAQ Capital Market under the symbol "PEIX" immediately following the completion of the merger. When the merger is completed, Aventine common stock will cease to be traded on OTCBB. Shares of Pacific Ethanol non-voting common stock will not be listed for trading on any securities exchange.

Based on the exchange ratio contemplated by the merger agreement and the number of shares of Aventine common stock issued and outstanding as of January 30, 2015, a total of an aggregate of approximately 17,755,300 shares of Pacific Ethanol common stock and non-voting common stock will be issued upon the closing of the merger, which will represent approximately 42% of the total Pacific Ethanol common stock and non-voting common stock issued and outstanding immediately following the merger.

After the merger, Pacific Ethanol stockholders will continue to own their existing shares of Pacific Ethanol common stock. Accordingly, Pacific Ethanol stockholders will hold the same number of shares of Pacific Ethanol common stock that they held immediately prior to the merger. However, because Pacific Ethanol will be issuing new shares of Pacific Ethanol common stock and non-voting common stock to Aventine stockholders in the merger, each outstanding share of Pacific Ethanol common stock immediately prior to the merger will represent a smaller percentage of the total number of shares of Pacific Ethanol common stock and non-voting common stock issued and outstanding after the merger. It is expected that Pacific Ethanol stockholders before the merger will hold approximately 58% of the total Pacific Ethanol common stock and non-voting common stock issued and outstanding immediately following completion of the merger.

ADDITIONAL INTERESTS OF CERTAIN OF AVENTINE'S DIRECTORS AND EXECUTIVE OFFICERS IN THE MERGER

Leadership of the Combined Company

As of the effective time of the merger, the board of directors of the combined company will be composed of the members of the Pacific Ethanol Board (currently seven members) and two designees nominated by holders of a majority of shares of Aventine common stock and who must be independent with respect to Pacific Ethanol. A transition team comprised of senior executives from both companies is leading the integration planning process. Upon the closing of the merger, the Pacific Ethanol Board will increase the number of board seats to nine and appoint the two designees to fill the two vacancies. The current executive management of Pacific Ethanol will remain unchanged following the merger.

The seven current directors of Pacific Ethanol are William L. Jones, Neil M. Koehler, Michael D. Kandris, Terry L. Stone, John L. Prince, Douglas L. Kieta, and Larry D. Layne. As of the date of this joint proxy statement/prospectus, the two designees have not been identified.

William L. Jones will continue to serve as Pacific Ethanol's Chairman of the Board and Neil M. Koehler will continue to serve as Pacific Ethanol's President and Chief Executive Officer.

Severance Arrangements

Each of Mark Beemer (Chief Executive Officer of Aventine) and Brian Steenhard (Chief Financial Officer of Aventine), the executive officers of Aventine, are party to employment agreements with Aventine.

Compensation upon Termination

Under each executive officer's employment agreement, such executive officer is entitled to "compensation upon termination" provisions.

Under the termination provision, each executive officer whose employment is terminated without "cause" or by the executive officer "for good reason," (see below for the definitions of "cause" and "good reason") is entitled to the payments and benefits described below.

- a lump sum severance payment equal to 12 months' base salary
- provided that the executive officer timely elects COBRA continuation coverage the costs of continued group life, medical, dental, and vision insurance coverage for such executive officer and his dependents under the plans and programs in which such executive officer participated immediately prior to his employment termination, or materially equivalent plans and programs maintained by Aventine in replacement thereof, for a period of 12 months following the date of termination.

"Cause" means (i) willful misconduct or gross negligence by the executive officer in the performance of his duties; (ii) an executive officer being convicted of, or pleading guilty or *nolo contendere* to a felony; (iii) an executive officer's theft or embezzlement from Aventine or its affiliates; (iv) an executive officer's failure to relocate his residence within a reasonable period of time following a written request to do so from Aventine's Board; (v) an executive officer's willful and substantial failure to perform his duties or any other material breach by such executive officer of any material provision of his employment agreement, which is not cured (if curable) by such executive officer within 10 days following his receipt of written notice thereof.

"Good Reason" means the occurrence of any of the following events, unless (1) such event occurs with the executive officer's express prior written consent, (2) the event is an isolated, insubstantial or inadvertent action or failure to act which was not in bad faith and which is remedied by Aventine promptly after receipt of written notice thereof given by such executive officer, or (3) the event occurs in connection with termination of such executive officer's employment for cause, disability or death: (i) a material reduction (10% or more) in such executive officer's base salary, or a significant reduction in any employer-paid health insurance, life insurance or disability insurance benefit that is not generally applicable to other executives of Aventine, (ii) the assignment to the executive officer by Aventine of any duties which are, in any material respect, a diminution of such executive officer's position, duty, title, or responsibility with Aventine; or (iii) any material breach, non-performance, or non-observance of any material provision of executive officer's employment agreement; provided, however, that Good Reason shall not exist unless the executive officer provides written notice to Aventine, of the existence of the event or occurrence giving rise to the alleged Good Reason condition within 30 calendar days of its initial existence, and Aventine is provided a period of at least 30 calendar days from the receipt of written notice during which it may remedy the Good Reason condition.

Pursuant to his employment letter with Aventine, Christopher A. Nichols (General Counsel, Vice President, and Secretary) is entitled to six months of severance should his employment with Aventine be terminated for any reason other than (i) for gross negligence on Mr. Nichols's behalf or (ii) Mr. Nichols resigning.

Golden Parachute Compensation

The following disclosure sets forth amounts that Aventine's named executive officers may become entitled to pursuant to the terms of their employment arrangements. These amounts have been calculated assuming the merger was consummated on December 31, 2014, and assuming each named executive officer experiences a qualifying termination of employment as of that date (see footnotes below for a discussion of each named executed officer's qualifying termination). All of the amounts shown in the table below would be payable by Aventine and only upon such a qualifying termination of employment. Calculations of cash severance are based on the named executive officer's current base salary. See "Additional Interests of Certain of Aventine's Directors and Executive Officers in the Merger—Severance Arrangements" beginning on page 130.

The amounts indicated below are estimates of amounts that would be payable to the named executive officers and the estimates are based on multiple assumptions that may or may not actually occur, including assumptions described in this joint proxy statement/prospectus. Some of the assumptions are based on information not currently available and as a result the actual amounts, if any, received by a named executive officer may differ in material respects from the amounts set forth below.

Named Executive Officer	Cash ($)	Equity ($)	Pension/ NQDC ($)	Perquisites/ Benefits ($)	Tax Reimbursement ($)	Total ($)
Mark Beemer, Chief Executive Officer	$420,000 (1)	—	—	$34,000 (5)	—	$454,000
Brian Steenhard, Chief Financial Officer	250,000 (2)	—	—	34,000 (5)	—	284,000
Christopher A. Nichols, Vice President	110,000 (3)	—	—	—	—	110,000
John Valenti, Vice President	191,755 (4)	—	—	—	—	191,755

(1) Represents the lump sum severance payment payable to Mr. Beemer if he is terminated by Aventine without cause or if he resigns for good reason, as such terms are more fully described in "Additional Interests of Certain of Aventine's Directors and Executive Officers in the Merger—Severance Arrangements" beginning on page 130. Any such severance payment is subject to compliance with certain noncompetition and nonsolicitation covenants and a release of claims.

(2) Represents the lump sum severance payment payable to Mr. Steenhard if he is terminated by Aventine without cause or if he resigns for good reason, as such terms are more fully described in "Additional Interests of Certain of Aventine's Directors and Executive Officers in the Merger—Severance Arrangements" beginning on page 130. Any such severance payment is subject to compliance with certain noncompetition and nonsolicitation covenants and a release of claims.

(3) Represents the lump sum severance payment payable to Mr. Nichols if he is terminated for any reason other than cause or his resignation.

(4) Aventine at its sole discretion may award Mr. Valenti up to 12 months base salary and bonus amount in a lump sum severance payment. However, if Mr. Valenti is terminated prior to June 12, 2015, Aventine must continue to pay Mr. Valenti his base salary through such date. Any such severance payment is subject to compliance with certain noncompetition and nonsolicitation covenants and a release of claims.

(5) Represents the value of continued group life, medical, dental and vision insurance coverage for such executive officer and his dependents under the plans and programs in which such executive officer participated immediately prior to his employment termination, or materially equivalent plans and programs maintained by Aventine in replacement thereof, for a period of 12 months following the date of termination.

Indemnification and Insurance

The merger agreement provides that for six years after the effective time of the merger and to the fullest extent permitted by law, Pacific Ethanol will cause the surviving corporation to honor all rights to indemnification for acts or omissions prior to the effective time of the merger existing in favor of Aventine directors or officers as provided in Aventine's organizational documents. The merger agreement also provides that, prior to the effective time of the merger, Aventine will purchase six-year "tail" officers' and directors' liability insurance policies on terms and conditions reasonably comparable to Aventine's existing directors' and officers' liability insurance. If such "tail" policies are not purchased prior to the effective time, Aventine shall purchase these "tail" policies or as much insurance coverage as can be obtained following the effective time for 200% or less of the annual premium paid by Aventine for its existing insurance. Pacific Ethanol and the surviving corporation are obligated to maintain such tail policies in full force and effect and continue to honor their respective obligations thereunder for the full term thereof. In addition, if a claim is made against Aventine's current insurance policy prior to the closing of the merger, a new aggregate limit of liability will be negotiated in connection with the directors' and officers' liability insurance policy.

THE MERGER AGREEMENT AND RELATED AGREEMENTS

The following discussion summarizes material provisions of the Agreement and Plan of Merger, which we refer to as the merger agreement, a copy of which is attached as Annex A to this joint proxy statement/prospectus and is incorporated by reference herein. The rights and obligations of the parties are governed by the express terms and conditions of the merger agreement and not by this summary. This summary is not complete and is qualified in its entirety by reference to the complete text of the merger agreement. We urge you to read the merger agreement carefully in its entirety, as well as this joint proxy statement/prospectus, before making any decisions regarding the merger.

The representations and warranties described below and included in the merger agreement were made by Pacific Ethanol and Aventine to each other as of specific dates. The assertions embodied in those representations and warranties were made solely for purposes of the merger agreement and may be subject to important qualifications and limitations agreed to by Pacific Ethanol and Aventine in connection with negotiating its terms, including, but not limited to, the qualifications and limitations listed in the disclosure schedules to the merger agreement. Moreover, the representations and warranties may be subject to a contractual standard of materiality that may be different from what may be viewed as material to stockholders, or may have been used for the purpose of allocating risk between Pacific Ethanol and Aventine rather than establishing matters as facts. Information concerning the subject matter of these representations and warranties may have changed since the date of the merger agreement. Pacific Ethanol will provide additional disclosure in its public reports to the extent it is aware of the existence of any material facts that are required to be disclosed under federal securities laws and that might otherwise contradict the terms and information contained in the merger agreement and will update such disclosure as required by federal securities laws. Other than as disclosed in this joint proxy statement/prospectus and the documents incorporated herein by reference, as of the date of this joint proxy statement/prospectus, neither Pacific Ethanol nor Aventine is aware of any material facts that are required to be disclosed under the federal securities laws that would contradict the representations and warranties in the merger agreement. The representations and warranties in the merger agreement and the description of them in this document should not be read alone but instead should be read in conjunction with the other information contained in the reports, statements and filings Pacific Ethanol publicly files with the Securities and Exchange Commission and the other information about Pacific Ethanol and the information about Aventine contained in this joint proxy statement/prospectus. See "Where You Can Find More Information" beginning on page 183.

The Merger

The merger agreement provides for the merger of Merger Sub with and into Aventine. Aventine will be the surviving corporation in the merger and will remain a wholly-owned subsidiary of Pacific Ethanol.

Completion and Effectiveness of the Merger

Unless they agree to an earlier date, Pacific Ethanol and Aventine will complete the merger on the date that is the second business day after all of the conditions to completion of the merger contained in the merger agreement are satisfied or waived. The conditions are described in the section entitled "The Merger Agreement—Conditions to the Completion of the Merger" beginning on page 145. The merger will become effective upon the filing of the certificate of merger with the Secretary of State of the State of Delaware or at such later time as Pacific Ethanol and Aventine may agree in writing and specify in the certificate of merger.

Merger Consideration

Common Stock and Non-Voting Common Stock

Each share of Aventine common stock, par value $0.001 per share, issued and outstanding immediately prior to the completion of the merger (other than dissenting shares and shares held by Pacific Ethanol or Aventine), will be converted into the right to receive, at the election of the holder (pursuant to the terms of an election form to be distributed to all holders in advance of the special meeting and certain limitations in order to maintain the tax free treatment of the merger), (i) 1.25 shares of Pacific Ethanol common stock, (ii) 1.25 shares of Pacific Ethanol non-voting common stock, or (iii) a combination of Pacific Ethanol common stock and non-voting common stock resulting in such Aventine stockholder receiving a total number of shares of common stock and non-voting common stock equal to 1.25 times the number of shares of Aventine common stock held by such stockholder.

Based on the exchange ratio contemplated by the merger agreement and the number of shares of Aventine common stock issued and outstanding as of January 30, 2015, a total of an aggregate of approximately 17,755,300 shares of Pacific Ethanol common stock and non-voting common stock will be issued upon the closing of the merger, assuming no exercise or conversion of outstanding options and warrants. Those amounts will be adjusted based upon the actual number of shares of Aventine common stock, options and warrants outstanding at the effective time of the merger.

Adjustments

The merger consideration will be equitably adjusted to provide holders of shares of Aventine common stock with the same economic effect contemplated by the merger agreement if, at any time between the signing and the effective time of the merger, there is any change in the outstanding shares of capital stock of Aventine or Pacific Ethanol by reason of any reclassification, recapitalization, split-up, combination, exchange of shares or similar readjustment within such period, or a stock dividend with a record date during such period.

Treasury Shares; Shares Owned by Pacific Ethanol

At the effective time of the merger, each share of Aventine common stock (i) held as a treasury share by Aventine, (ii) owned of record by any subsidiary of Aventine, or (iii) owned of record by Pacific Ethanol, Merger Sub or any of their respective wholly owned subsidiaries will, in each case, be cancelled, and no merger consideration will be delivered in exchange for those shares.

Dividends and Distributions

No dividends or other distributions declared or made after the effective time of the merger with respect to Pacific Ethanol stock with a record date after the effective time of the merger shall be paid to any holder of any unsurrendered share of Aventine common stock who is entitled to receive Pacific Ethanol stock upon such surrender, and no cash payment amounts in respect of fractional shares shall be paid to any such Aventine stockholder, unless and until the Aventine stockholder surrenders such holder's Aventine common stock. Subject to the effect of escheat, tax or other applicable laws, following surrender of any such Aventine common stock certificate or book entry share, such Aventine stockholder will be paid (i) promptly, (A) the amount of any cash payable with respect to a fractional share of Pacific Ethanol to which such holder is entitled and (B) the amount of dividends or other distributions with a record date after the effective time of the merger theretofore paid with respect to such whole shares of Pacific Ethanol and (ii) at the appropriate payment date, the amount of dividends or other distributions, with a record date after the effective time of the merger but prior to the date of surrender of such holder's Aventine common stock and with a payment date occurring after the date of surrender, payable with respect to such whole shares of Pacific Ethanol.

Appraisal Rights

Holders of Aventine common stock will be entitled to appraisal rights under Delaware law and to obtain payment in cash for the judicially-determined fair value of their shares of Aventine common stock in connection with the merger agreement if the merger is consummated and provided that the holders follow the requirements of Delaware law. If any such holder fails to perfect or waives, withdraws or loses the right to appraisal under Delaware law or if a court of competent jurisdiction determines that such holder is not entitled to the relief provided thereunder, then (i) such shares of Aventine common stock that were subject to the appraisal (appraisal shares) will cease to constitute appraisal shares and (ii) the right of such holder to be paid the fair value of such holder's appraisal shares will be forfeited and cease. If such forfeiture occurs following the effective time of the merger, each such appraisal share will thereafter be deemed to have been converted into and to have become, as of the effective time of the merger, the right to receive the merger consideration (without interest thereon). See "Appraisal Rights" beginning on page 178 for additional information and the full text of Section 262 reproduced in its entirety as *Annex F* to this joint proxy statement/prospectus. To the extent the drag-along is exercised pursuant to the Aventine Stockholders Agreement, the Aventine stockholders subject to the drag-along right have waived their respective appraisal rights arising out of a drag-along transaction.

Treatment of Aventine Stock Options

As of January 30, 2015, there were outstanding options to purchase up to 3,140 shares of Aventine common stock at an exercise price of $3.55 expiring on February 24, 2022. Each outstanding option to acquire Aventine common stock will be converted automatically at the effective time of the merger into an option to acquire Pacific Ethanol common stock and/or non-voting common stock and will continue to be governed by the terms of the relevant Aventine stock plan and related grant agreements under which it was granted, which will remain in effect, except that:

- each converted stock option will be exercisable for a number of shares of Pacific Ethanol common stock and/or non-voting common stock equal to the product of the number of shares of Aventine common stock previously subject to the Aventine stock option and 1.25, rounded down to the next whole share; and

- the per share exercise price for the Pacific Ethanol common stock and/or non-voting common stock issuable upon exercise of each converted stock option will be equal to (i) exercise price for each share of Aventine common stock previously subject to the stock option immediately prior to completion of the merger, divided by (ii) 1.25, rounded up to the nearest whole cent.

The holder of an option to acquire Aventine common stock may elect to receive shares of Pacific Ethanol common stock, non-voting common stock or a combination thereof upon exercise of such option.

Treatment of Aventine Warrants

As of January 30, 2015, there were outstanding warrants to purchase up to 787,855 shares of Aventine common stock, at an exercise price of $61.75, expiring on September 24, 2017. Each outstanding warrant to purchase Aventine common stock will be converted automatically at the effective time of the merger into a warrant to purchase Pacific Ethanol common stock and/or non-voting common stock and will continue to be governed by the terms of the relevant Aventine warrant agreement, except that:

- the number of shares of Pacific Ethanol common stock and/or non-voting common stock subject to each such warrant will be equal to the product of the number of shares of Aventine common stock previously subject to the Aventine warrant and 1.25, rounded down to the next whole share; and

- the per share exercise price for the Pacific Ethanol common stock and/or non-voting common stock issuable upon exercise of such warrant will be equal to (i) the exercise price for each share of Aventine common stock previously subject to the warrant immediately prior to completion of the merger, divided by (ii) 1.25, rounded up to the nearest whole cent.

The holder of a warrant to acquire Aventine common stock may elect to receive shares of Pacific Ethanol common stock, non-voting common stock or a combination thereof upon exercise of such warrant.

Fractional Shares

Fractional shares of Pacific Ethanol common stock will not be issued pursuant to the merger. Instead, each holder of shares of Aventine common stock who would otherwise be entitled to receive a fractional share of Pacific Ethanol common stock pursuant to the merger will be entitled to receive a cash payment, in lieu thereof, in an amount that will represent such fraction rounding to the nearest ten thousandth of a share multiplied by the market price of a share of Pacific Ethanol common stock rounded to the nearest whole cent, calculated based on the volume-weighted average price per share of Pacific Ethanol common stock on The NASDAQ Capital Market for the five most recent trading days ending before the effective time of the merger.

Conversion of Shares; Exchange of Certificates

After the effective time, each certificate that previously represented shares of Aventine common stock will represent only the right to receive the applicable merger consideration as described above under "—Merger Consideration," including cash for any fractional shares of Pacific Ethanol common stock or non-voting common stock. The conversion of Aventine common stock into the right to receive the merger consideration will occur automatically at the effective time of the merger.

Prior to the completion of the merger, Pacific Ethanol will appoint an exchange agent (sometimes referred to as the exchange agent) for the purpose of exchanging certificates and book entry shares of Aventine common stock. Promptly after the effective time of the merger, the exchange agent will mail transmittal materials to each holder of record of shares of Aventine common stock. This mailing will contain instructions for surrendering common stock certificates and book entry shares to the exchange agent in exchange for the merger consideration. Exchange of any book entry shares will be made in accordance with the exchange agent's customary procedures with respect to securities presented by book entry.

Each holder of a share of Aventine common stock that has been converted into a right to receive the applicable merger consideration (including cash for fractional shares) will receive the applicable merger consideration upon surrender to the exchange agent of the applicable Aventine common stock certificate or book entry shares, together with a letter of transmittal covering such shares and such other documents as Pacific Ethanol or the exchange agent may reasonably require. Holders of Aventine common stock should not send in their Aventine stock certificates until they receive, complete and submit a signed letter of transmittal sent by the exchange agent with instructions for the surrender of Aventine stock certificates.

After completion of the merger, there will be no further transfers on the stock transfer books of Aventine except as required to settle trades executed prior to completion of the merger.

Withholding Taxes

Pacific Ethanol and Merger Sub or the exchange agent will be entitled to deduct and withhold from the cash in lieu of fractional shares payable to any Aventine stockholder the amounts it is required to deduct and withhold under any federal, state, local or foreign tax law. If the exchange agent withholds any amounts, they will be treated as having been paid to the stockholders from whom they were withheld.

Termination of Exchange Fund

Nine months after the completion of the merger, Pacific Ethanol may require the exchange agent to deliver to Pacific Ethanol all cash and shares of Pacific Ethanol common stock and non-voting common stock remaining in the exchange fund. Thereafter, Aventine stockholders must look only to Pacific Ethanol for payment of the merger consideration on their shares of Aventine common stock.

Transfers of Ownership and Lost Stock Certificates

Pacific Ethanol will only issue the merger consideration, cash in lieu of a fractional share and any dividends or distributions on Pacific Ethanol common stock that may be applicable in a name other than the name in which a surrendered Aventine stock certificate is registered if the certificate is properly endorsed or otherwise in proper form and any applicable stock transfer taxes have been paid. If a certificate for Aventine common stock has been lost, stolen or destroyed, the exchange agent will issue the consideration properly payable under the merger agreement upon receipt of appropriate evidence as to that theft, loss or destruction and customary indemnification.

No Liability

Aventine and Pacific Ethanol are not liable to holders of shares of Aventine common stock for any amount delivered to a public official under applicable abandoned property, escheat or similar laws.

Distributions with Respect to Unexchanged Shares

Holders of Aventine common stock are not entitled to receive any dividends or other distributions on Pacific Ethanol common stock until the merger is completed. After the merger is completed, holders of Aventine common stock certificates will be entitled to dividends and other distributions declared or made after completion of the merger with respect to the number of whole shares of Pacific Ethanol common stock and non-voting common stock to which they are entitled upon exchange of their Aventine stock certificates, but they will not be paid any dividends or other distributions on Pacific Ethanol common stock or non-voting common stock until they surrender their Aventine stock certificates to the exchange agent in accordance with the exchange agent instructions.

Appraisal Rights

Shares of Aventine common stock held by any Aventine stockholder that properly demands payment for its shares in compliance with the appraisal rights under Section 262 will not be converted into the right to receive the merger consideration. Aventine stockholders properly exercising appraisal rights will be entitled to payment as described under “Appraisal Rights” beginning on page 178. However, if any Aventine stockholder fails to perfect or otherwise waives, withdraws or loses the right to receive payment under Section 262, then that stockholder will not be paid in accordance with Section 262 and the shares of common stock held by that stockholder will be exchangeable solely for the right to receive the merger consideration. To the extent the drag-along is exercised pursuant to the Aventine Stockholders Agreement, the Aventine stockholders subject to the drag-along right have waived their respective appraisal rights arising out of a drag-along transaction.

Reasonable Best Efforts; Other Agreements

Reasonable Best Efforts

Pacific Ethanol and Aventine have agreed to use their reasonable best efforts to take, or cause to be taken, all reasonable actions, and do, or cause to be done, all reasonable things necessary and proper under applicable law to consummate and make effective the merger as promptly as practicable. Notwithstanding the foregoing, neither Pacific Ethanol, nor Aventine nor any of their subsidiaries shall be required to (i) license, divest, dispose of or hold separate any assets or businesses of Pacific Ethanol or Aventine or any of their respective subsidiaries or otherwise take or commit to take any action that limits its freedom of action with respect to, or its ability to retain, any of the assets or businesses of Pacific Ethanol or Aventine or any of their respective subsidiaries, or that would otherwise have a material adverse effect on the combined company or (ii) pay more than *de minimis* amounts in connection with seeking or obtaining such consents, approvals or authorizations as are required to complete the merger under any antitrust laws (excluding any mandatory filing fees and reasonable and customary costs and expenses associated with making applications for, and responding to requests for information from governmental entities with respect to, such required consents, approvals or authorizations). In addition, without the prior written consent of Pacific Ethanol, Aventine shall not agree or commit to, or permit any of its subsidiaries to agree or commit to, any commitment to sell, divest or dispose of any businesses, assets, relationships or contractual rights of Aventine or any of its subsidiaries or purporting to limit Aventine's, any of its subsidiaries' or Pacific Ethanol's freedom to action with respect to, or ability to retain, any businesses, assets, relationships or contractual rights.

Joint proxy statement/prospectus; Stockholders' Meetings

Pacific Ethanol and Aventine have agreed to cooperate in preparing and filing with the Securities and Exchange Commission this joint proxy statement/prospectus and the registration statement on Form S-4 of which it forms a part. Each has agreed to use its reasonable best efforts to resolve any Securities and Exchange Commission comments relating to this joint proxy statement/prospectus and to have the registration statement of which it forms a part declared effective, and will cause this joint proxy statement/prospectus to be mailed to its respective stockholders as early as practicable after it is declared effective. Each has also agreed to hold a stockholders' meeting as promptly as possible after the registration statement is declared effective and in any event within 45 days of such declaration.

Other Agreements

The merger agreement contains certain other agreements, including agreements relating to access to information and cooperation between Pacific Ethanol and Aventine during the pre-closing period, public announcements and certain tax matters.

Representations and Warranties

The merger agreement contains customary representations and warranties of Aventine, which are subject to materiality and knowledge qualifications in many respects and which expire at the effective time of the merger. These representations and warranties relate to, among other things:

- organization and qualification;
- capitalization;
- subsidiaries;
- corporate power and authority, non-contravention;
- reports and financial statements;
- absence of undisclosed liabilities;
- litigation;
- absence of certain changes or events;
- compliance with applicable laws and permits;
- material contracts and defaults;
- tax matters;
- employee benefit plans and ERISA compliance;
- labor and other employment matters;
- environmental matters;
- intellectual property;
- real property;
- insurance;
- matters related to assets;
- matters related to business practices, relationships, products and services;
- related party transactions;
- matters related to certain business practices;
- opinion of financial advisor;
- brokers and finders;
- takeover laws;
- hedging;
- matters related to Aventine's diamond switch;
- hybrid equity plans;
- books and records;
- information supplied; and
- no additional representations.

The merger agreement also contains customary representations and warranties of Pacific Ethanol, which are subject to materiality and knowledge qualifications in many respects and which expire at the effective time of the merger. These representations and warranties relate to, among other things:

- organization and qualification;
- capitalization;
- subsidiaries;
- authority; non-contravention; approvals;
- reports and financial statements;
- absence of undisclosed liabilities;
- litigation;
- absence of certain changes or events;
- compliance with applicable laws and permits;
- taxes;
- environmental matters;
- contracts;
- business relationships;
- transactions with affiliates;
- certain business practices;
- opinion of financial advisor;
- brokers and finders;
- indebtedness;
- intellectual property rights;
- off balance sheet arrangements;
- manipulation of price;
- no additional agreements;
- Pacific Ethanol stock;
- merger sub;
- insurance;
- employee relations;
- information supplied; and
- no additional representations.

Conduct of Business Before Completion of the Merger

Aventine and Pacific Ethanol have agreed to restrictions on their activities until the completion of the merger. In general, each of the parties has agreed to conduct its business in the ordinary course of business consistent with past practice in all material respects and in compliance in all material respects with all applicable laws and use its commercially reasonable efforts to preserve its current business organization and goodwill. In addition, Aventine has agreed that it will not take any action that would adversely affect or delay in any material respect the ability of Pacific Ethanol or Aventine to obtain any necessary approvals or any regulatory agency or entity required for the transactions contemplated by the merger agreement and that it will keep available the services of its present officers, employees and independent contractors and preserve its goodwill and business relationships with its customers, suppliers and others having business relationships with Aventine.

Aventine has also agreed that, except as expressly permitted by the merger agreement (including the Company Disclosure Schedule thereto) or with Pacific Ethanol's prior written consent, it will not (and will not permit any of its subsidiaries to):

- amend or propose to amend the Certificate of Incorporation or bylaws;
- split, combine or reclassify its outstanding capital stock or issue or authorize the issuance of any other security;
- declare, set aside, make or pay any dividend or other distribution;
- create any subsidiary or alter its or any of its subsidiaries' corporate structure or ownership;
- enter into any agreement with respect to the voting of its capital stock or other securities held by it or any of its subsidiaries;
- issue, sell, pledge, dispose of, grant, encumber, or agree to issue, sell, pledge, dispose of, grant or encumber any shares of any class of capital stock, or any options, warrants or rights of any kind to acquire any shares of, its capital stock of any class or any debt or equity securities convertible into or exchangeable for such capital stock, except that it may issue shares upon exercise of stock options and warrants outstanding on the date of the agreement in accordance with their terms;
- issue any debt securities, incur, guarantee or otherwise become contingently liable with respect to any indebtedness for borrowed money, or enter into any arrangement having the economic effect of any of the foregoing;
- make any loans, advances or capital contributions to, or investments in, any person;
- redeem, purchase, acquire or offer to purchase or acquire any shares of its capital stock, or any options, warrants or rights to acquire any of its capital stock or any security convertible into or exchangeable for its capital stock;
- acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets other than in the ordinary course of business consistent with past practice;
- authorize, make or agree to make any new capital expenditure or expenditures, or enter into any contract or arrangement that reasonably may result in payments by or liabilities in excess of $1,000,000 individually or $5,000,000 in the aggregate in any 12 month period that is not set forth in Aventine's capital budget;
- sell, pledge, assign, dispose of, transfer, lease, securitize, or encumber any businesses, properties or assets;
- except as required by any benefit plan or contract existing on the date of the merger agreement, increase the compensation payable or to become payable (including bonus grants) or increase or accelerate the vesting of the benefits provided to its directors, officers or employees or other service providers, except for increases in the ordinary course of business and consistent with past practice in salaries or wages of its employees who are not directors or executive officers;
- except as required by any benefit plan or contract existing on the date of the merger agreement, grant any severance or termination pay or benefits to, or enter into any employment, severance, retention, change in control, consulting or termination agreement with, any director, officer or other employee or other service provider;
- except as required by any benefit plan or contract existing on the date of the merger agreement, establish, adopt, enter into or amend any collective bargaining, bonus, profit-sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee or other service providers;
- except as required by any benefit plan or contract existing on the date of the merger agreement, pay or make, or agree to pay or make, any accrual or arrangement for payment of any pension, retirement allowance, or any other employee benefit;

- knowingly violate or knowingly fail to perform any obligation or duty imposed upon it by any applicable federal, state, local or foreign law, rule, regulation, guideline or ordinance, or under any order, settlement agreement or judgment;

- announce, implement or effect any reduction in labor force, lay-off, early retirement program, severance program or other program or effort concerning the termination of employment of employees;

- make any change to accounting policies or procedures, other than actions required to be taken by GAAP;

- prepare or file any tax return inconsistent with past practice or, on any tax return, take any position, make any election, or adopt any method inconsistent with positions taken, elections made or methods used in preparing or filing similar tax returns in prior periods;

- except for immaterial elections or changes, make or change any express or deemed election related to taxes, change an annual accounting period, adopt or change any method of accounting, file an amended tax return, surrender any right to claim a refund of taxes, consent to any extension or waiver of the limitation period applicable to any tax proceedings;

- except as would not reasonably be expected to be materially adverse to Aventine and its subsidiaries as a whole, commence any litigation or proceedings with respect to taxes, settle or compromise any litigation or proceedings with respect to taxes;

- enter into a new line of business which is material to Aventine and its subsidiaries taken as a whole or open or close any facility or office of Aventine or its subsidiaries;

- pay, discharge or satisfy any claims, liabilities or obligations (whether or not absolute, accrued, asserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms, of liabilities adequately reflected or reserved against in, its most recent financial statements (or the notes thereto);

- amend, modify or consent to the termination of any material contract, or amend, waive, modify or consent to the termination of its rights thereunder;

- enter into, amend, modify, permit to lapse any rights under, or terminate (i) any agreements pursuant to which any other party is granted exclusive marketing or other exclusive rights of any type or scope with respect to any of its products or technology or which restricts Aventine or any of its subsidiaries or, upon completion of the merger or any other transaction contemplated by the merger agreement, Pacific Ethanol, from engaging or competing in any line of business or in any location, (ii) any agreement or contract with any customer, supplier, sales representative, agent or distributor, other than in the ordinary course of business and consistent with past practice, (iii) any arrangement with affiliates or executive officers or directors of Aventine, or (iv) any material rights or claims with respect to any confidentiality or standstill agreement to which Aventine is a party and which relates to a business combination or other similar extraordinary transaction, in each case, that would reasonably be expected to, individually or in the aggregate, materially affect Aventine's business or operations;

- terminate, cancel, amend or modify any insurance coverage policy which is not promptly replaced by a comparable amount of insurance coverage;

- commence, waive, release, assign, settle or compromise any material claims, or any material litigation, proceeding or arbitration including, without limitation, all Aurora Coop Litigation;

- except as Aventine's Board determines in good faith is necessary to comply with its fiduciary duties, take any action to (i) render inapplicable, or to exempt any third person from, the provisions of Section 203 of the DGCL, or any other state takeover or similar law or state law that purports to limit or restrict business combinations or the ability to acquire or vote shares or (ii) adopt or implement any stockholder rights agreement or plan; or

- authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

Pacific Ethanol has agreed that, except as expressly permitted by the merger agreement or with Aventine's prior written consent, it will not (and will not permit any of its subsidiaries to):

- amend or propose to amend its Certificate of Incorporation or bylaws, except for such amendments (i) required by law or the rules or regulations of the Securities and Exchange Commission or The NASDAQ Capital Market, (ii) as contemplated by the proposed amendment to its Certificate of Incorporation authorizing a class of Pacific Ethanol non-voting common stock, or (iii) those changes that would not reasonably be expected to have a material adverse effect on Pacific Ethanol;

- sell, lease, pledge or otherwise dispose of or encumber any properties or assets, other than sales of inventory in the ordinary course of business and other transactions that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Pacific Ethanol;

- authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing;

- split, combine or reclassify their outstanding capital stock or issue or authorize the issuance of any other security in respect or, in lieu of, or in substitution for, shares of its capital stock;

- declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, other than the payment of any dividend on shares of Pacific Ethanol Series B Preferred Stock;

- create any subsidiary or alter (through merger, liquidation, reorganization, restructuring or in any other fashion) the corporate structure or ownership of Pacific Ethanol or any of its subsidiaries;

- enter into any agreement with respect to the voting of its capital stock or other securities held by Pacific Ethanol or any of its subsidiaries;

- issue, sell, pledge, dispose of, grant, encumber, or agree to issue, sell, pledge, dispose of, grant or encumber any shares of any class of capital stock of Pacific Ethanol or any of its subsidiaries, or any options, warrants or rights of any kind to acquire any shares of, their capital stock of any class or any debt or equity securities convertible into or exchangeable for such capital stock, except that Pacific Ethanol may issue common stock upon exercise or conversion, as applicable, of options, warrants or Pacific Ethanol Series B Preferred Stock issued and outstanding on the date of the merger agreement in accordance with their present terms;

- issue any debt securities, incur, guarantee or otherwise become contingently liable with respect to any indebtedness for borrowed money or enter into any arrangement having the economic effect of any of the foregoing;

- make any loans, advances or capital contributions to, or investments in, any person;

- redeem, purchase, acquire or offer to purchase or acquire any shares of its capital stock, or the capital stock of its subsidiaries, or any options, warrants or rights to acquire any of its capital stock or any security convertible into or exchangeable for its capital stock, or the capital stock of its subsidiaries; or

- sell, pledge, assign, dispose of, transfer, lease, securitize, or encumber any businesses, properties or assets of Pacific Ethanol or its subsidiaries.

Employee Matters

Pacific Ethanol has announced to its employees and to Aventine's employees that following completion of the merger, Aventine's employees' medical, dental and vision benefits will remain in effect until mid-2015, the end of the current insurance contracts and Pacific Ethanol's employees' medical, dental and vision benefits will remain in effect until December 31, 2015, the end of the current insurance contracts. The employee-paid premiums will also remain the same for the remainder of the current contracts. After the effective time of the merger, Pacific Ethanol will review both insurance plans to take advantage of the buying power of the combined company and it is likely that all employees will be covered by a single health insurance plan at some point in the future. Pacific Ethanol has agreed to credit each Aventine employee with all service years for purposes of 401(k) and pension plan vesting, accrual rate for vacation days, service recognition awards and unexpired equity awards. Notwithstanding the foregoing, Pacific Ethanol may amend, modify or terminate any of the existing employee benefit plans of Aventine or related contracts in accordance with their terms and applicable law.

Non-Solicitation; Change in Recommendation

In the merger agreement, Aventine has agreed that its board will recommend that Aventine's stockholders adopt the merger agreement and approve the merger and that it will not directly or indirectly:

- solicit, initiate or knowingly encourage the submission, making or announcement of any "takeover proposal" (as described below);

- participate in any discussions or negotiations regarding, or provide any person any information with respect to, or otherwise cooperate in any way with respect to, or take any action to facilitate the making of, any inquiry or proposal that is or would reasonably be expected to lead to a takeover proposal; or

- make or authorize any statement, recommendation or solicitation in respect of any takeover proposal.

In addition, Aventine has agreed to immediately terminate any discussions with respect to any takeover proposal or any discussions that would reasonably be expected to lead to a takeover proposal conducted prior to the entry into the merger agreement and has agreed to enforce (and not waive any provision of or releases any person from any obligations under) any confidentiality, standstill or similar agreement to which Aventine or any subsidiary of Aventine is a party unless the board of directors of Aventine concludes in good faith and a failure to take any action described in this sentence would be inconsistent with the Aventine Board's fiduciary duties to the stockholders of Aventine under applicable law.

However, if Aventine receives a bona fide takeover proposal prior to the time that the Aventine stockholder vote approving the merger has been obtained, that does not result from the breach or deemed breach of the terms of the merger agreement or the confidentiality agreement with Pacific Ethanol and the Aventine Board determines in good faith, (i) after consultation with outside counsel and an independent financial advisor, that the takeover proposal is, or is reasonably likely to result in, a "superior proposal" (as described below), and (ii) after consultation with outside counsel, that failure to take the following actions with respect to the takeover proposal would be inconsistent with its fiduciary duties to its stockholders under applicable law, then Aventine may (after providing written notice to Pacific Ethanol):

- furnish information about Aventine to the person making the takeover proposal, subject to a confidentiality agreement no less restrictive than the confidentiality agreement entered into with Pacific Ethanol, and providing that all information not previously provided to Pacific Ethanol is provided to it; and

- participate in discussion or negotiations with the person making the takeover proposal.

As used in the merger agreement, "takeover proposal" means any inquiry, proposal or offer from any person relating to, or that is reasonably likely to lead to, directly or indirectly: (i) a merger, consolidation, tender offer, exchange offer, share exchange, business combination or other similar transaction involving Aventine or its subsidiaries that constitutes 25% or more of the net revenues, net income or assets of Aventine; (ii) the acquisition by any person in any manner of a number of shares of any class of equity securities of Aventine or any subsidiary of Aventine equal to or greater than 25% of the number of shares outstanding prior to such acquisition; (iii) the acquisition by any person in any manner (including by license or lease), directly or indirectly, of assets that constitute 25% or more of the net revenues, net income or assets of Aventine (in each case, on a consolidated basis), in each case other than the transactions contemplated by the merger.

As used in the merger agreement, "superior proposal" means any written offer made by a third party not in violation of the terms of the merger agreement that if consummated would result in such third party acquiring, directly or indirectly, a majority of the outstanding capital stock of Aventine or a majority of its assets (including the assets of Aventine's subsidiaries), (i) for consideration that the Aventine Board determines in its good faith judgment (following consultation with an independent financial advisor) to be superior from a financial point of view to the Aventine stockholders than the transactions contemplated by the merger agreement, based on the advice of the independent financial advisor, taking into account all the terms and conditions of such proposal, the merger agreement and any proposal by Pacific Ethanol to amend the terms of the merger agreement, and (ii) that, in the good faith judgment of the board of directors, is otherwise reasonably likely to be consummated, taking into account all legal, financial, regulatory and other aspects of the proposal and the person making the proposal.

The Aventine Board has unanimously adopted a resolution recommending that the Aventine stockholders adopt the merger agreement and approve the merger. Under the merger agreement, except as provided below, the Aventine Board may not withdraw, modify or qualify, or propose to withdraw, modify or qualify its recommendation, or approve or recommend, or propose to approve or recommend any takeover proposal. Any of these actions is referred to as a "change in recommendation". In addition, the Aventine Board may not approve or cause or permit Aventine to enter into any letter of intent or agreement relating to any takeover proposal.

The Aventine Board may make a change of recommendation if prior to the time that the Aventine stockholder vote approving the merger has been obtained, the board of directors receives an unsolicited takeover proposal that did not result from a breach or deemed breach of the terms of the merger agreement or the confidentiality agreement with Pacific Ethanol that the Aventine Board determines, in good faith after consultation with outside counsel, constitutes a superior proposal that is not withdrawn, and the board determines that the failure to do so would be inconsistent with its fiduciary duties to the Aventine stockholders under applicable law. However, the board of directors may make a change of recommendation or terminate the merger agreement under these circumstances only if (i) it has complied with the non-solicitation and change of recommendation provisions of the merger agreement, (ii) it has provided written notice to Pacific Ethanol in accordance with the terms of the merger agreement, (iii) either Pacific Ethanol does not modify the terms of the merger agreement within five business days after receipt of the written notice from Aventine or the Aventine Board determines in good faith after consultation with its financial advisor that any proposed modifications by Pacific Ethanol do not cause the takeover proposal to cease being a superior proposal, and (iv) concurrently with and as a condition of such termination, Aventine accepts the superior proposal and enters into an acquisition agreement with respect to the superior proposal, and pays Pacific Ethanol a termination fee (as described further in "—Termination Fee and Expenses" below).

The merger agreement also provides that Aventine must promptly, but in any event within 48 hours, notify Pacific Ethanol of any takeover proposal received by it and provide Pacific Ethanol with copies of all written material provided to it with respect to any takeover proposal. Aventine must also keep Pacific Ethanol fully informed of the status and terms of any such takeover proposal and provide Pacific Ethanol with at least 48 hours prior written notice (or such lesser prior notice as is provided to the members of the Aventine Board) of any Aventine Board meeting at which the board of directors is expected to consider any takeover proposal or related inquiry, or consider providing information to any person in connection with a takeover proposal.

Conditions to Completion of the Merger

Each party's obligation to effect the merger is subject to the satisfaction or waiver of various conditions, which include the following:

- the adoption of the merger agreement by Aventine stockholders;
- the approval of (i) the issuance of shares of Pacific Ethanol common stock and non-voting common stock by Pacific Ethanol stockholders, (ii) the amendment to Pacific Ethanol's Certificate of Incorporation to authorize a class of non-voting common stock and (iii) an agreement not to treat the merger as a liquidation, dissolution or winding up within the meaning of the Pacific Ethanol Series B Certificate of Designations;
- the approval of the listing of the Pacific Ethanol common stock to be issued in the merger on The NASDAQ Capital Market;
- the effectiveness of the registration statement of which this joint proxy statement/prospectus is a part and the absence of any stop order or proceedings initiated for that purpose;
- the absence of any order, judgment, injunction or other decree issued by any court of competent jurisdiction making the merger illegal or otherwise preventing the consummation of the merger;

- the receipt of any governmental authorizations, consents, orders and approvals as may be required in connection with the merger, subject to certain exceptions;

- the absence of any suit, action or proceeding by any person or governmental entity seeking to prohibit the consummation of the merger or any transaction contemplated by the merger agreement or that would otherwise have a material adverse effect on Aventine or Pacific Ethanol, provided that this condition is deemed satisfied if a court dismisses or denies a request for an injunction; or

- the volume weighted average price per share of Pacific Ethanol's common stock, as reported on The NASDAQ Capital Market for the 20 trading days immediately preceding the closing of the merger, must equal or exceed $10.00.

Each of Pacific Ethanol's and Aventine's obligations to complete the merger is also separately subject to the satisfaction or waiver of the following conditions:

- the truth and correctness of the other party's representations and warranties, subject to certain materiality standards provided in the merger agreement;

- the performance by the other party of its obligations under the merger agreement in all material respects; and

- there shall have been no material adverse effect on the other party.

In addition, Pacific Ethanol's obligation to complete the merger is also separately subject to a number of conditions, including the following:

- Aventine shall have obtained all required consents from any person or governmental entity whose consent or approval is required in connection with the merger or under certain agreed upon agreements;

- Pacific Ethanol shall have received a tax opinion from its counsel, Troutman Sanders LLP that the transaction will be treated as a reorganization described in Section 368(a) of the Code;

- the entry into certain employment agreements by certain Aventine employees identified by Pacific Ethanol within 30 days of the date of the merger agreement;

- Aventine shall not have received demands for the appraisal of shares of Aventine common stock from holders of Aventine common stock representing more than 1% of the issued and outstanding shares of Aventine common stock;

- Aventine shall have delivered resignation letters of its officers, directors and managers to Pacific Ethanol;

- there shall not have occurred an event, nor shall Pacific Ethanol have become aware of information not known by Pacific Ethanol as of December 28, 2014 which, upon the occurrence of such event or upon Pacific Ethanol learning of such information, would be reasonably viewed as either resulting in, or substantially increasing the likelihood of, a material adverse result in any Aurora Coop Litigation;

- the registration rights agreements between Aventine and certain of its stockholders shall have been terminated by mutual agreement of the parties;

- Pacific Ethanol shall have received current and valid Phase I environmental site assessments for each of Aventine's facilities, and such assessments shall not reveal any condition(s) (except for certain enumerated conditions), that would reasonably be expected to give rise to a cost of remediation exceeding $3,300,000 in the aggregate for all of Aventine's facilities; provided, that this condition will be deemed satisfied if Pacific Ethanol does not provide notice to Aventine within 30 days after receipt of all such current and valid Phase I environmental site assessments commissioned by Pacific Ethanol as of December 30, 2014, that the cost of remediation of Aventine's facilities would be in the reasonable determination of Pacific Ethanol be expected to exceed $3,300,000 in the aggregate;

- Pacific Ethanol shall not have become aware of information that would reasonably be understood to indicate that the BNSF does not intend to establish a rail track connecting the rail facilities of Aventine's subsidiary to the inner rail loop belonging to Aventine's Aurora West facility along with the associated "diamond switch" crossing the outer rail loop, which lie entirely on land owned by one or more subsidiaries of Aventine such that Aventine's Aurora West facility will be able to ship ethanol by rail in unit trains and single cars; and

- Aventine shall have obtained agreed upon releases relating to payment obligations pursuant to (i) an Aventine restricted stock unit from each person who has received payments in respect of an Aventine restricted stock unit or (ii) a bonus or severance payment from each employee of Aventine who has received or will receive a bonus or severance payment in connection with the merger.

In addition, Aventine's obligation to complete the merger is also separately subject to a number of conditions, including the following:

- Aventine shall have shall have received a tax opinion from its counsel, Akin Gump Strauss Hauer & Feld LLP, to the effect that the transaction will be treated as a reorganization within the meaning of Section 368(a) of the Code; and

- Aventine shall have received evidence satisfactory to it of the appointment of two individuals nominated by the holders of a majority of shares of Aventine common stock to the Pacific Ethanol Board.

The merger agreement provides that certain of the conditions described above may be waived by Pacific Ethanol or Aventine. Neither Pacific Ethanol nor Aventine currently expects to waive any material condition to the completion of the merger.

The merger agreement defines a material adverse effect on each party as any fact, event, circumstance or effect that, individually or together with all other such facts, events, circumstances and effects, is, or could reasonably be expected to be, material and adverse to the business, condition (financial or otherwise), capitalization, assets, liabilities, or results of operations of that party, taken as a whole, or prevents or materially delays, or would reasonably be expected to prevent or materially delay, the ability of the party to perform its obligations under the merger agreement or to consummate the transactions contemplated by the merger agreement in accordance, other than: (i) changes after the date of the merger agreement in laws, rules or regulations of general applicability or interpretations thereof by a governmental entity, unless such changes disproportionately adversely affects the party as compared with other companies operating in its industries, (ii) general changes after the date hereof in economic conditions, securities markets in general in the United States, or political environment in general or general changes in the industry in which the party operates generally, including adverse effects attributable to conditions affecting ethanol and/or oil production, including changes to prevailing market prices (including futures prices) of ethanol or corn, unless such changes disproportionately adversely affect the party as compared with other companies operating in its industries, (iii) a change or proposed change in GAAP or the interpretation thereof; (iv) the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war, any other acts of war (whether declared or undeclared), sabotage, military action or any escalation or worsening thereof, earthquakes, hurricanes or similar catastrophes, or the occurrence of any other calamity or crisis, including an act of terrorism; (v) the announcement, pendency or consummation of the transactions contemplated by the merger agreement, or the failure to take actions as a result of any terms or conditions set forth in the merger agreement, including any loss of or change in the relationship with employees, customers, partners, suppliers or other persons having business relationships with such person; (vi) any action taken pursuant to the merger agreement or at the express request of the other party; (vii) failure to meet internal projections or forecasts or (viii) a change in the market price or trading volume of the party's common stock, in and of itself.

Termination

Generally, the merger agreement may be terminated and the merger may be abandoned at any time prior to the completion of the merger (including after stockholder approval) by mutual written consent of Pacific Ethanol and Aventine. The agreement may also be terminated by either Pacific Ethanol or Aventine if:

- the merger is not consummated on or before May 31, 2015, except that such right is not available to any party whose failure to comply with the merger agreement has been the cause of, or resulted in, such failure and provided that this date (which we sometimes refer to as the outside date) will be automatically extended to June 30, 2015 if the financial statements of Pacific Ethanol that are required for this registration statement are for the year ending December 31, 2014;

- a governmental entity issues a final and nonappealable order, decree or ruling or takes any other final and nonappealable action enjoining or otherwise prohibiting the merger;

- the required Pacific Ethanol or Aventine stockholder vote has not been obtained at the applicable stockholder meeting, or any adjournment or postponement thereof; or

- the other party breaches any of its agreements or representations in the merger agreement in such a way as would cause certain of the conditions to closing not to be satisfied, and such breach is either incurable or is not cured by the earlier of (i) 30 days following receipt of written notice of such breach or failure to perform or (ii) the outside date.

In addition, the merger agreement may be terminated by Pacific Ethanol, and Aventine will be required to pay the termination fee (as described below) to Pacific Ethanol, if prior to the time that the Aventine stockholder vote approving the merger has been obtained:

- the Aventine Board effects a change of recommendation or resolves to do so;

- the Aventine Board approves or recommends a takeover proposal or resolves to do so;

- a tender offer or exchange offer for Aventine's shares is commenced (other than by Pacific Ethanol) and the Aventine Board recommends that the Aventine stockholders tender their shares in the offer or fails to recommend that its stockholders reject such tender or exchange; or

- Aventine materially breaches certain terms of the merger agreement related to non-solicitation, changes in recommendations, its board of directors' recommendation in favor of the merger and holding the stockholders meeting to approve the merger.

The merger agreement may be terminated by Aventine prior to the time the Aventine stockholder approval of the merger is obtained if Aventine terminates the agreement in connection with the entry into an agreement for a superior proposal in accordance with the terms and conditions of the merger agreement with Pacific Ethanol, as long as Aventine has complied with all related notice and other provisions and pays Pacific Ethanol the termination fee (as described below).

In addition, the merger agreement may be terminated by Pacific Ethanol and Pacific Ethanol will be required to pay the termination fee (as described below) to Aventine in connection with such termination, if there shall occur an event, or Pacific Ethanol becomes aware of information not known by Pacific Ethanol as of December 28, 2014 which, upon the occurrence of such event or upon Pacific Ethanol learning of such information, would be reasonably viewed as either resulting in, or substantially increasing the likelihood of, a material adverse result in the Aurora Coop Litigation.

Termination Fee and Expenses

Aventine is required to pay a termination fee of $5,982,000 (which we sometimes refer to as the termination fee) to Pacific Ethanol in the event the merger agreement is terminated by Aventine in connection with the entry into an agreement for a superior proposal, as described above. In addition, Aventine is required to pay Pacific Ethanol the termination fee if Pacific Ethanol terminates the merger agreement prior to the time that the Aventine stockholder vote approving the merger has been obtained under the following conditions:

- the Aventine Board effects a change of recommendation or resolves to do so;

- the Aventine Board approves or recommends a takeover proposal or resolved to do so;

- a tender offer or exchange offer for Aventine's shares is commenced (other than by Pacific Ethanol) and the Aventine Board recommends that the Aventine stockholders tender their shares in the offer or fails to recommend that its stockholders reject such tender or exchange; or

- Aventine materially violates certain terms of the merger agreement related to non-solicitation, changes in recommendations, its board of directors' recommendation in favor of the merger and holding the stockholder meeting.

Pacific Ethanol is required to pay the termination fee to Aventine in the event the merger agreement is terminated by Pacific Ethanol if there shall occur an event, or Pacific Ethanol learns of information that would be reasonably viewed as either resulting in, or substantially increasing the likelihood of, a material adverse result in any of the Aurora Coop Litigation matters.

Pacific Ethanol is required to reimburse Aventine for all fees and expenses incurred by Aventine in connection with the merger, up to $1,994,000, in the event the merger agreement is terminated by Aventine or Pacific Ethanol because the required Pacific Ethanol stockholder vote has not been obtained at the applicable stockholder meeting, or any adjournment or postponement thereof.

Except as set forth above, whether or not the merger is completed, all costs and expenses incurred in connection with the merger agreement and the transactions contemplated by the merger agreement will be paid by the party incurring those costs or expenses.

Effect of Termination

If the merger agreement is terminated as described in "—Termination" above, the agreement will become void and there will be no liability or obligation of any party, except that (i) both parties will remain liable for any willful breach of the merger agreement or fraud occurring prior to termination, and (ii) designated provisions of the merger agreement, including certain provisions relating to confidential treatment of information and fees and expenses (including the termination fees described above) will survive termination.

Amendment, Waiver and Extension of the Merger Agreement

Subject to applicable law, the merger agreement may be amended by the parties in writing at any time. However, after approval by Pacific Ethanol's stockholders of the transactions contemplated by the merger agreement, if any such amendment or waiver would require the approval of Pacific Ethanol's stockholders under applicable law or in accordance with the rules and regulations of NASDAQ, the effectiveness of such amendment or waiver will require further approval by Pacific Ethanol's stockholders.

At any time prior to the completion of the merger, each of the parties may extend the time for performance of any of the obligations or other acts of the other party to the merger agreement, waive any inaccuracies in the representations and warranties of the other party or waive compliance by the other party with any agreement or condition in the merger agreement.

Stockholders Agreements

In order to induce Pacific Ethanol to enter into the merger agreement, on December 30, 2014 several Aventine stockholders entered into stockholders agreements with Pacific Ethanol pursuant to which, among other things, each of these stockholders agreed, solely in its capacity as a stockholder, to vote their pro-rata share of 51% of the issued and outstanding shares of common stock of Aventine (i) in favor of the merger and the adoption of the merger agreement and (ii) with respect to any other proposals submitted by Aventine stockholders that, directly or indirectly, would reasonably be expected to prevent or materially delay the consummation of the merger or the transactions contemplated by the merger agreement vote, in such manner as Pacific Ethanol may direct. Such Aventine stockholders agreed not to withdraw any such votes and not to take any action that is inconsistent with such stockholder's obligation to vote in favor of the merger agreement and the merger or that may have the effect of delaying or interfering with the merger.

These Aventine stockholders may vote their shares of Aventine capital stock and securities on all other matters not referred to in such proxy. Copies of the stockholders agreements are attached to this joint proxy statement/prospectus as *Annex C-1 and Annex C-2*.

Under these stockholders agreements, subject to certain exceptions, the Aventine stockholders have also agreed not to sell or transfer Aventine capital stock and securities held by them until the completion of the merger. These Aventine stockholders also agreed to exercise any drag-along rights with respect to Aventine stockholders under the stockholders agreements in favor of the merger agreement and the merger.

In addition, pursuant to the stockholders agreements and subject to certain exceptions, Aventine stockholders that entered into the stockholders agreements have further agreed not to directly or indirectly offer, sell or contract or grant any option to sell, or otherwise dispose of, pledge or transfer any shares of Pacific Ethanol common stock and non-voting common stock acquired by them pursuant to the terms of the merger agreement without the prior written consent of Pacific Ethanol for a restricted period of time. After the 30th day following the consummation of the merger, such Aventine stockholders will be permitted to sell 25% of the shares of Pacific Ethanol common stock and non-voting common stock acquired by them pursuant to the terms of the merger agreement without prior written consent of Pacific Ethanol. After the 60th day following the consummation of the merger, such Aventine stockholders will be permitted to sell 50% of the shares of Pacific Ethanol common stock and non-voting common stock acquired by them pursuant to the terms of the merger agreement without prior written consent of Pacific Ethanol. After the 90th day following the consummation of the merger, such Aventine stockholders will be permitted to sell 75% of the shares of Pacific Ethanol common stock and non-voting common stock acquired by them pursuant to the terms of the merger agreement without prior written consent of Pacific Ethanol. After the 120th day following the consummation of the merger, such Aventine stockholders will be permitted to sell 100% of the shares of Pacific Ethanol common stock and non-voting common stock acquired by them pursuant to the terms of the merger agreement without prior written consent of Pacific Ethanol.

The Aventine stockholders that entered into the stockholders agreements have agreed not to solicit any takeover proposal of Aventine, enter into any agreement with or approve or recommend that Aventine enter into any takeover proposal or participate in any discussions or provide information regarding Aventine with respect to a takeover proposal of Aventine. Such stockholders of Aventine agreed not to issue any press release or make public statements regarding the merger. Such stockholders of Aventine also agreed to exercise any drag-along rights in favor of the merger, pursuant to the Aventine Stockholders Agreement they are currently a party to.

Aventine stockholders that entered into the stockholders agreements have agreed to waive any and all dissenter's rights or similar rights they may have in connection with the merger.

Nothing in the stockholders agreements limits or restricts any of the stockholders who are party to the agreements or any of their affiliates from acting in its capacity as an officer, director or employee of Aventine.

The stockholders agreements and the obligations of the parties thereunder shall terminate immediately, without any further action being required, upon the earlier of the closing date of the merger, any amendment to the merger agreement that reduces the consideration of such Aventine stockholders, the termination of the merger agreement according to its terms or by mutual consent of all the parties to the stockholders agreement. However, certain sections of the stockholders agreements will survive the termination including, if the merger is completed, the lock-up restrictions on the shares of Pacific Ethanol common stock described above.

UNAUDITED PRO FORMA
COMBINED CONDENSED FINANCIAL STATEMENTS

The unaudited pro forma combined condensed balance sheet as of September 30, 2014 is presented as if the proposed merger had occurred as of September 30, 2014. The unaudited pro forma combined condensed statements of operations for the nine months ended September 30, 2014 and the year ended December 31, 2013 are presented as if the merger had occurred on January 1, 2013. The pro forma consolidated financial statements of Pacific Ethanol and Aventine have been adjusted to reflect certain reclassifications in order to conform Aventine's historical financial statement presentation to Pacific Ethanol's financial statement presentation for the combined company.

The unaudited pro forma combined condensed financial statements give effect to the merger under the acquisition method of accounting in accordance with Financial Accounting Standards Board Accounting Standard Topic 805, *Business Combinations*, which we refer to as ASC 805, with Pacific Ethanol treated as the acquirer. As of the date of this filing, Pacific Ethanol has not completed the detailed valuation work necessary to arrive at the required estimates of the fair value of the Aventine assets to be acquired and the liabilities to be assumed and the related allocation of purchase price, nor has it identified all adjustments necessary to conform Aventine's accounting policies to Pacific Ethanol's accounting policies. A final determination of the fair value of Aventine's assets and liabilities, including intangible assets with both indefinite or finite lives, will be based on the actual net tangible and intangible assets and liabilities of Aventine that exist as of the closing date of the merger and, therefore, cannot be made prior to the completion of the merger. In addition, the value of the consideration to be paid by Pacific Ethanol upon the consummation of the merger will be determined based on the closing price per share of Pacific Ethanol common stock on the closing date of the merger. As a result of the foregoing, the pro forma adjustments are preliminary and are subject to change as additional information becomes available and as additional analyses are performed. The preliminary pro forma adjustments have been made solely for the purpose of presenting the unaudited pro forma combined condensed financial statements. Pacific Ethanol estimated the fair value of Aventine's assets and liabilities as of September 30, 2014 is based on preliminary valuation studies and due diligence. Until the merger is completed, both companies are limited in their ability to share certain information. Therefore, information necessary for the complete valuation is not currently available and, accordingly, management has used its best estimates based upon information currently available. Upon completion of the merger, final valuations will be performed based on the actual net tangible and intangible assets of Aventine that will exist on the date of the merger. The final purchase price allocation may be different than that reflected in the pro forma purchase price allocation presented herein, and this difference may be material.

Assumptions and estimates underlying the unaudited adjustments to the pro forma combined condensed financial statements are described in the accompanying notes, which should be read in conjunction with the unaudited pro forma combined condensed financial statements. The historical consolidated financial statements have been adjusted in the unaudited pro forma combined condensed financial statements to give effect to pro forma events that are: (1) directly attributable to the merger; (2) factually supportable; and (3) with respect to the unaudited pro forma combined condensed statements of operations, expected to have a continuing impact on the combined results of Pacific Ethanol and Aventine following the merger.

In connection with the plan to integrate the operations of Pacific Ethanol and Aventine, Pacific Ethanol anticipates that non-recurring charges, such as costs associated with systems implementation, relocation expenses, severance and other costs related to closing the transaction, will be incurred. Pacific Ethanol is not able to determine the timing, nature and amount of these charges as of the date of this joint proxy statement/prospectus. However, these charges could affect the combined results of operations of Pacific Ethanol and Aventine, as well as those of the combined company following the merger, in the period in which they are recorded. The unaudited pro forma combined condensed financial statements do not include the effects of the costs associated with any restructuring or integration activities resulting from the transaction, as they are non-recurring in nature and not factually supportable at the time that the unaudited pro forma combined condensed financial statements were prepared. Additionally, these adjustments do not give effect to any synergies that may be realized as a result of the merger, nor do they give effect to any nonrecurring or unusual restructuring charges that may be incurred as a result of the integration of the two companies.

UNAUDITED PRO FORMA COMBINED CONDENSED BALANCE SHEETS
OF PACIFIC ETHANOL AND AVENTINE
As of September 30, 2014
(in thousands)

	Historical Pacific Ethanol	Historical Aventine	Pro Forma Adjustments	Notes	Pro Forma Amounts
Cash and equivalents	$ 56,256	$ 35,060	$ –		$ 91,316
Accounts receivable, net	30,474	11,865	–		42,339
Inventories	20,263	29,935	–		50,198
Prepaid inventory	10,581	13,962	–		24,543
Other current assets	2,197	5,434	–		7,631
Total current assets	119,771	96,256	–		216,027
Property and Equipment, net	155,771	212,760	94,040	(a)	462,571
Goodwill	–	–	–	(b)	–
Intangible assets	2,904	–	–		2,904
Other assets	1,686	4,001	–		5,687
Total other Assets	4,590	4,001	–		8,591
Total Assets	$ 280,132	$ 313,017	$ 94,040		$ 687,189
Accounts payable, trade	$ 12,338	$ 13,594	$ –		$ 25,932
Accrued liabilities	8,346	2,177	–		10,523
Current portion of capital leases	4,961	2,157	–		7,118
Other current liabilities	806	7,648	–		8,454
Total current liabilities	26,451	25,576	–		52,027
Long-term debt-revolvers	13,472	23,400	–		36,872
Long-term debt-term debt	17,003	202,466	(67,325)	(c)	152,144
Accrued preferred dividends	2,194	–	–		2,194
Warrant liabilities, at fair value	4,793	–	–		4,793
Capital leases-net of current portion	2,277	–	–		2,277
Other liabilities	1,759	10,065	32,914	(d)	44,738
Total Liabilities	67,949	261,507	(34,411)		295,045
Preferred stock	1	–	–		1
Common stock	24	2	18	(e)	44
Additional paid-in capital	732,801	258,354	(80,819)	(e)	910,336
Accumulated other comprehensive income	–	(5,627)	5,627	(e)	–
Accumulated deficit	(524,531)	(201,219)	203,625	(e)	(522,125)
Total Pacific Ethanol equity	208,295	51,510	128,451		388,256
Non controlling interest equity	3,888	–	–		3,888
Total Stockholders' Equity	212,183	51,510	128,451		392,144
Total Liabilities and Stockholders' Equity	$ 280,132	$ 313,017	$ 94,040		$ 687,189

The accompanying notes are an integral part of these pro forma combined condensed consolidated financial statements

UNAUDITED PRO FORMA COMBINED CONDENSED STATEMENTS OF OPERATIONS OF PACIFIC ETHANOL AND AVENTINE
For the nine months ended September 30, 2014
(in thousands, except per share amounts)

	Historical Pacific Ethanol	Historical Aventine	Pro Forma Adjustments	Notes	Pro Forma Amounts
Net revenues	$ 851,260	$ 416,593	$ –		$ 1,267,853
Cost of goods sold	761,153	355,541	16,825	(f,h)	1,133,519
Gross profit	90,107	61,052	(16,825)		134,334
Selling, general and administrative expenses	12,377	12,191	–		24,568
Other expense	–	2,689	(2,689)	(g)	–
Operating income (loss)	77,730	46,172	(14,136)		109,766
Fair value adjustments	(39,737)	–	–		(39,737)
Interest expense, net	(8,370)	(11,342)	(18,141)	(g,i)	(37,853)
Loss on extinguishment of debt	(2,363)	–	–		(2,363)
Gain (loss) on derivative transactions	–	(13,298)	13,298	(f)	–
Other expense, net	(734)	(2,087)	–		(2,821)
Income before provision for income taxes and discontinued operations	26,526	19,445	(18,979)		26,992
Provision for income taxes	(13,629)	–	–		(13,629)
Net income before discontinued operations	12,897	19,445	(18,979)		13,363
Loss from discontinued operations	–	(607)	607	(j)	–
Net income attributed to noncontrolling interests	(4,126)	–	–		(4,126)
Net income attributed to Pacific Ethanol	8,771	18,838	(18,372)		9,237
Preferred dividends	(946)	–	–		(946)
Net income available to common stockholders	$ 7,825	$ 18,838	$ (18,372)		$ 8,291
Net income per share, basic	$ 0.40				$ 0.22
Net income per share, diluted	$ 0.35				$ 0.21
Weighted-average shares outstanding, basic	19,713				37,468
Weighted-average shares outstanding, diluted	22,073				39,828

The accompanying notes are an integral part of these pro forma combined condensed consolidated financial statements

UNAUDITED PRO FORMA COMBINED CONDENSED STATEMENTS OF OPERATIONS OF PACIFIC ETHANOL AND AVENTINE
For the year ended December 31, 2013
(in thousands, except per share amounts)

	Historical Pacific Ethanol	Historical Aventine	Pro Forma Adjustments	Notes	Pro Forma Amounts
Net revenues	$ 908,437	$ 480,266	$ –		$ 1,388,703
Cost of goods sold	875,507	469,231	10,156	(f,h)	1,354,894
Gross profit	32,930	11,035	(10,156)		33,809
Selling, general and administrative expenses	14,021	13,590	–		27,611
Other expense	–	807	(807)	(g)	–
Operating income (loss)	18,909	(3,362)	(9,349)		6,198
Fair value adjustments	(1,013)	–	–		(1,013)
Interest expense, net	(15,671)	(12,942)	(13,418)	(g,i)	(42,031)
Loss on extinguishment of debt	(3,035)	–	–		(3,035)
Loss on derivative transactions	–	(5,454)	5,454	(f)	–
Other expense, net	(352)	6,296	–		5,944
Bargain purchase gain	–	–	2,406		2,406
Loss before provision for income taxes and discontinued operations	(1,162)	(15,462)	(14,907)		(31,531)
Provision for income taxes	–	–	–		–
Net loss before discontinued operations	(1,162)	(15,462)	(14,907)		(31,531)
Loss from discontinued operations	–	(58,843)	58,843	(j)	–
Net loss attributed to noncontrolling interests	381	–	–		381
Net loss attributed to Pacific Ethanol	(781)	(74,305)	43,936		(31,150)
Preferred dividends	(1,265)	–	–		(1,265)
Net loss available to common stockholders	$ (2,046)	$ (74,305)	$ 43,936		$ (32,415)
Net loss per share, basic and diluted	$ (0.17)				$ (1.08)
Weighted-average shares outstanding, basic and diluted	12,264				30,019

The accompanying notes are an integral part of these pro forma combined condensed consolidated financial statements

NOTES TO UNAUDITED PRO FORMA COMBINED CONDENSED FINANCIAL STATEMENTS

1. Basis of Presentation

The unaudited pro forma combined condensed financial statements are prepared under the acquisition accounting method in accordance with ASC 805, with Pacific Ethanol treated as the acquirer. Under the acquisition accounting method, the total estimated purchase price allocation is calculated as described in Note 3. In accordance with ASC 805, the assets acquired and the liabilities assumed have been measured at fair value based on various preliminary estimates, and these estimates are subject to change pending further review of the fair value of assets acquired and liabilities assumed. The final amounts recorded for the merger may differ materially from the information presented herein.

The unaudited pro forma combined condensed financial statements were prepared in accordance with GAAP and pursuant to Securities and Exchange Commission Regulation S-X Article 11, and present the pro forma financial position and results of operations of the combined companies based upon the historical information after giving effect to the merger and adjustments described in these Notes to the unaudited pro forma combined condensed financial statements. The unaudited pro forma combined condensed balance sheet is presented as if the merger had occurred on September 30, 2014; and the unaudited pro forma combined condensed statements of operations for the nine months ended September 30, 2014 and the year ended December 31, 2013 are presented as if the merger had occurred on January 1, 2013.

Certain reclassifications have been made relative to Aventine's historical financial statements to conform to the financial statement presentation of Pacific Ethanol. Such reclassifications are described in further detail in Note 4 to the unaudited pro forma combined condensed financial statements.

2. Preliminary Estimated Purchase Price Consideration

Subject to the terms and conditions of the merger agreement, each outstanding share of Aventine common stock will be exchanged for 1.25 shares of common stock of Pacific Ethanol.

The merger agreement further provides for each Aventine stock option and restricted stock award that is outstanding and unexercised at the closing date to be assumed and converted into an option or award to purchase Pacific Ethanol common stock based on the 1.25 conversion ratio. The estimated value of the stock options and restricted stock awards assumed and converted based on closing price of Pacific Ethanol stock as of December 31, 2014 is not considered material.

The requirement to determine the final purchase price using the number of Aventine shares outstanding at the closing date and the closing price of Pacific Ethanol's common stock as of the closing date could result in a total purchase price different from the price assumed in these unaudited pro forma combined condensed financial statements, and that difference may be material. Therefore, the estimated consideration expected to be transferred reflected in these unaudited pro forma combined condensed financial statements does not purport to represent what the actual consideration transferred will be when the merger is completed.

As a condition to the merger agreement, Pacific Ethanol's 20-day VWAP stock price must be greater than $10.00. Pacific Ethanol's closing stock price on the date the merger agreement was signed was $10.71. On January 30, 2015, Pacific Ethanol's closing stock price was $8.59. Solely for purposes of these pro forma combined condensed financial statements, the stock price assumed for the total preliminary purchase price is $10.00. As a result, the estimated total preliminary purchase price was approximately $177.6 million. It should be noted however, that if the Minimum Price Closing Condition is not satisfied, in order for the merger to be consummated both parties would have to mutually agree to waive the Minimum Price Closing Condition.

For purposes of these unaudited pro forma combined condensed financial statements, the estimated purchase price has been allocated among Aventine's tangible and intangible assets and liabilities based on their estimated fair value as of September 30, 2014. Based on a preliminary analysis, no material identifiable intangible assets have been determined and as such, none have been included in the allocation of the preliminary estimated purchase price. The final determination of the allocation of the purchase price will be based on the fair value of such assets and liabilities as of the date of closing of the merger. Such final determination of the purchase price allocation may be significantly different from the preliminary estimates used in these unaudited pro forma combined condensed financial statements.

An increase (decrease) of 20% in the estimated Pacific Ethanol common stock price of $10.00 would increase (decrease) the consideration transferred and the purchase price by approximately $35.5 million. Such changes would be reflected in these unaudited pro forma combined condensed financial statements as an increase (decrease) to goodwill, respectively.

3. Preliminary Estimated Purchase Price Allocation

The following allocation of the preliminary estimated purchase price assumes, with the exception of property and equipment and long-term debt, carrying values approximate fair value. Fair value of property and equipment is based a preliminary valuation of similar historical transactions available. Fair value of long-term debt was based on the amount outstanding. Based upon these assumptions, the total purchase price consideration was allocated to Aventine's assets and liabilities, as of September 30, 2014, as follows (in thousands):

	Estimated Fair Value
Cash and Equivalents	$ 35,060
Accounts Receivable, net	11,865
Inventories	29,935
Prepaid Inventory	13,962
Other current assets	5,434
Total Current Assets	96,256
Property and Equipment, net	306,800
Other assets	4,001
Total Assets Acquired	$ 407,057
Accounts Payable, trade	$ 13,594
Accrued Liabilities	2,177
Current portion of capital leases	2,157
Other current liabilities	7,648
Total Current Liabilities	25,576
Long-term debt - Revolvers	23,400
Long-term debt - Term debt	135,141
Warrant liabilities, at fair value	–
Litigation reserve	–
Other Liabilities	42,981
Total Liabilities Assumed	$ 227,098
Net Assets Acquired	$ 179,959
Bargain Purchase Gain	$ (2,406)
Total Estimated Purchase Price	$ 177,553

The final determination of the purchase price allocation will be based on the actual net tangible and intangible assets of Aventine that will exist on the date of the merger and completion of the valuation of the fair value of such net assets. Pacific Ethanol anticipates that the ultimate purchase price allocation of balance sheet amounts such as current assets and liabilities, property and equipment, intangible assets and long-term assets and liabilities will differ from the preliminary assessment outlined above. Any changes to the initial estimates of the fair value of the acquired assets and assumed liabilities will be recorded as adjustments to those assets and liabilities and residual amounts will be allocated to goodwill.

4. Preliminary Pro Forma Financial Statement Adjustments

Adjustments included in the column under the heading "Pro Forma Adjustments" represent the following:

Unaudited Pro Forma Combined Condensed Balance Sheet

(a) To record the difference in book value and fair value of property and equipment acquired and related depreciation expense that would have occurred had the transaction occurred on January 1, 2013. The step up in property and equipment relates primarily to the ethanol production facilities, which have a current estimated weighted average useful life of 20 years that will be depreciated on a straight-line basis. The amount of purchase price allocated to tangible assets, as well as the associated useful lives, may increase or decrease and could materially affect the amount of pro forma depreciation expense to be recorded in the pro forma combined condensed statements of operations.

(b) Net assets acquired are greater than total estimated purchase price, creating bargain purchase gain, which under GAAP is recognized into income. As such, the adjustment was recorded in Accumulated deficit in (e) below.

(c) Reflects the pro forma adjustments to long-term debt – term debt to amount outstanding. See Note (i) for more information.

(d) Represents deferred income taxes on step up in fair value of plant and equipment at 35% statutory tax rate.

(e) Represents the elimination of Aventine's historical stockholders' equity and the issuance of Pacific Ethanol's common stock. The amounts adjusting APIC and Accumulated Deficit are as follows:

	APIC	Accumulated Deficit
Eliminate Aventine Historical Balance	$ (258,354)	$ 201,219
Issuance of Pacific Ethanol common stock less par	$ 177,535	–
Bargain purchase gain	–	$ 2,406
Net Pro forma adjustment	$ (80,819)	$ 203,625

Unaudited Pro Forma Combined Condensed Statements of Operations

Conforming Reclassifications Between Pacific Ethanol and Aventine:

The following reclassifications have been made to the presentation of Aventine's historical consolidated financial statements to conform to Pacific Ethanol's presentation:

(f) Loss on derivative transactions is recorded in cost of goods sold for Pacific Ethanol and is being reclassed with respect to Aventine's reported amounts, which was classified as other income (loss) in Aventine's historical financial statements.

(g) Other expense represents unamortized debt issuance costs on revolving and term loans.

Pro Forma Adjustments

(h) Reflects pro forma adjustments to depreciation of property and equipment assuming the preliminary estimates of the fair value and estimated useful life of the asset as described in Note (a) and conforming classifications.

(i) Reflects adjustments to eliminate the impact of Aventine's troubled debt restructuring accounting under ASC 470-60, *Debt – Troubled Debt Restructurings by Debtors.* Aventine restructured its debt in 2012. All gains related to the forgiveness of Aventine's debt were deferred as the future cash outflows of the new debt exceeded the carrying amount of Aventine's existing debt at that time. As payments were made interest expense was reduced.

(j) Adjustment to present pro forma financials to income (loss) from continuing operations.

5. Pro Forma Combined Net Income (Loss) per Share

The pro forma basic and diluted net income (loss) per share presented in the unaudited pro forma combined condensed statements of operations is computed based on the weighted-average number of shares outstanding (in thousands except per share data):

	Nine Months Ended September 30, 2014	Year Ended December 31, 2013
Pro Forma net income (loss) available to common stockholders, as combined	$ 8,291	$ (32,415)
Pacific Ethanol's historical weighted-average shares, Basic	19,713	12,264
Shares expected to be issued in merger	17,755	17,755
Pro Forma weighted-average shares, Basic	37,468	30,019
Pro Forma net income (loss) per share, Basic	$ 0.22	$ (1.08)
Pacific Ethanol's historical weighted-average shares, Diluted	22,073	12,264
Shares expected to be issued in merger	17,755	17,755
Pro Forma weighted-average shares, Diluted	39,828	30,019
Pro Forma net income (loss) per share, Diluted	$ 0.21	$ (1.08)

DESCRIPTION OF PACIFIC ETHANOL CAPITAL STOCK

Pacific Ethanol has summarized below the material terms of Pacific Ethanol's capital stock. The following description of the material terms of the capital stock of Pacific Ethanol does not purport to be complete and is qualified in its entirety by reference to Pacific Ethanol's Certificate of Incorporation and bylaws, each as amended to date, which documents are incorporated by reference as exhibits to the registration statement of which this joint proxy statement/prospectus is a part, and the applicable provisions of the DGCL. All references within this section to common stock mean the common stock of Pacific Ethanol unless otherwise noted.

Authorized and Outstanding Capital Stock

Pacific Ethanol's authorized capital stock consists of 300,000,000 shares of common stock, $0.001 par value per share, 20,000,000 shares of non-voting common stock (assuming the stockholders of Pacific Ethanol approve the proposed amendment to Pacific Ethanol's Certificate of Incorporation creating a class of non-voting common stock), $0.001 par value per share, and 10,000,000 shares of preferred stock, $0.001 par value per share, of which 1,684,375 shares are designated as Series A Cumulative Redeemable Convertible Preferred Stock (sometimes referred to as the Series A Preferred Stock), and 1,580,790 shares are designated as Series B Preferred Stock. As of January 30, 2015, there were 24,499,534 shares of common stock, no shares of non-voting common stock, no shares of Series A Preferred Stock and 926,942 shares of Series B Preferred Stock issued and outstanding. On June 8, 2011, Pacific Ethanol effected a one-for-seven reverse split of Pacific Ethanol's common stock. On May 14, 2013, Pacific Ethanol effected a one-for-fifteen reverse split of Pacific Ethanol's common stock. All share information contained in this joint prospectus statement/prospectus reflects the effects of these reverse stock splits. The following description of Pacific Ethanol's capital stock does not purport to be complete and should be reviewed in conjunction with Pacific Ethanol's certificate of incorporation, including Pacific Ethanol's Certificate of Designations, Powers, Preferences and Rights of the Series A Preferred Stock (sometimes referred to as the Pacific Ethanol Series A Certificate of Designations), the Pacific Ethanol Series B Certificate of Designations, and Pacific Ethanol's bylaws.

Common Stock

All outstanding shares of Pacific Ethanol's common stock are fully paid and nonassessable. The following summarizes the rights of holders of Pacific Ethanol's common stock:

- each holder of common stock is entitled to one vote per share on all matters to be voted upon generally by the stockholders;
- subject to preferences that may apply to shares of preferred stock issued and outstanding, the holders of common stock are entitled to receive lawful dividends as may be declared by the board of directors of Pacific Ethanol;
- upon liquidation, dissolution or winding up of Pacific Ethanol, the holders of shares of common stock and non-voting common stock are entitled to receive a pro rata portion of all of Pacific Ethanol's assets remaining for distribution after satisfaction of all its liabilities and the payment of any liquidation preference of any outstanding preferred stock;
- there are no redemption or sinking fund provisions applicable to Pacific Ethanol's common stock; and
- there are no preemptive or conversion rights applicable to Pacific Ethanol's common stock.

Transfer Agent and Registrar

The transfer agent and registrar for Pacific Ethanol's common stock is American Stock Transfer & Trust Company, LLC. Its telephone number is (718) 921-8200.

Listing of Common Stock

Pacific Ethanol's common stock is listed on The NASDAQ Capital Market under the symbol "PEIX".

Non-Voting Common Stock

The rights and preferences of shares of Pacific Ethanol's non-voting common will be substantially the same in all respects to the rights and preferences of shares of Pacific Ethanol's common stock, except that the holders of shares of non-voting common stock will not be entitled to vote and shares of non-voting common stock are convertible into shares of common stock.

The following summarizes the expected rights of holders of Pacific Ethanol's non-voting common stock:

- a holder of non-voting common stock will not be entitled to vote on any matter submitted to a vote of the stockholders, provided that such holders shall be entitled to prior notice of, and to attend and observe, all meetings of the stockholders;

- subject to preferences that may apply to shares of preferred stock issued and outstanding, the holders of non-voting common stock will be entitled to receive lawful dividends as may be declared by the Pacific Ethanol Board on parity in all respects with the holders of common stock, provided that if the holders of common stock become entitled to receive a divided or distribution of shares of common stock, holders of non-voting common stock shall receive, in lieu of the shares of common stock, an equal number of shares of non-voting common stock;

- upon liquidation, dissolution or winding up of Pacific Ethanol, the holders of shares of common stock and non-voting common stock will be entitled to receive a pro rata portion of all of Pacific Ethanol's assets remaining for distribution after satisfaction of all its liabilities and the payment of any liquidation preference of any outstanding preferred stock;

- there will be no redemption or sinking fund provisions applicable to Pacific Ethanol's non-voting common stock; and

- there will be no preemptive rights applicable to Pacific Ethanol's non-voting common stock.

Conversion

Each share of non-voting common stock will be convertible at the option of the holder into one share of Pacific Ethanol's common stock at any time. The conversion price will be subject to customary adjustment for stock splits, stock combinations, stock dividends, mergers, consolidations, reorganizations, share exchanges, reclassifications, distributions of assets and issuances of convertible securities, and the like.

No shares of non-voting common stock may be converted into common stock if the holder of such shares or any of its affiliates would, after such conversion, beneficially own in excess of 9.99% of Pacific Ethanol's outstanding shares of common stock (sometimes referred to as the Blocker). The Blocker applicable to the conversion of shares of non-voting common stock may be raised or lowered at the option of the holder to any percentage not in excess of 9.99%, except that any increase will only be effective upon 61-days' prior notice to Pacific Ethanol.

When shares of non-voting common stock cease to be held by the initial holder or an affiliate of an initial holder of such shares, such shares shall automatically convert into one share of Pacific Ethanol's common stock.

Preferred Stock

The Pacific Ethanol Board is authorized to issue from time to time, in one or more designated series, any or all of Pacific Ethanol's authorized but unissued shares of preferred stock with dividend, redemption, conversion, exchange, voting and other provisions as may be provided in that particular series. The issuance need not be approved by Pacific Ethanol's common stockholders and need only be approved by holders, if any, of Pacific Ethanol's Series A Preferred Stock and Series B Preferred Stock if, as described below, the shares of preferred stock to be issued have preferences that are senior to or on parity with those of Pacific Ethanol's Series A Preferred Stock and Series B Preferred Stock.

The rights of the holders of Pacific Ethanol's common stock, non-voting common stock, Series A Preferred Stock and Series B Preferred Stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued in the future. Issuance of a new series of preferred stock, while providing desirable flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of entrenching the Pacific Ethanol Board and making it more difficult for a third-party to acquire, or discourage a third-party from acquiring, a majority of Pacific Ethanol's outstanding voting stock. The following is a summary of the terms of the Series A Preferred Stock and the Series B Preferred Stock.

Series B Preferred Stock

As of January 30, 2015, 926,942 shares of Series B Preferred Stock were issued and outstanding and an aggregate of 1,419,210 shares of Series B Preferred Stock had been converted into shares of Pacific Ethanol's common stock. The converted shares of Series B Preferred Stock have been returned to undesignated preferred stock. A balance of 653,848 shares of Series B Preferred Stock remain authorized for issuance.

Rank and Liquidation Preference

Shares of Series B Preferred Stock rank prior to shares of Pacific Ethanol's common stock and non-voting common stock as to distribution of assets upon liquidation events, which include a liquidation, dissolution or winding up of Pacific Ethanol, whether voluntary or involuntary. The liquidation preference of each share of Series B Preferred Stock is equal to $19.50 (sometimes referred to as the Series B Issue Price), plus any accrued but unpaid dividends on the Series B Preferred Stock. If assets remain after the amounts are distributed to the holders of Series B Preferred Stock, the assets shall be distributed pro rata, on an as-converted to common stock basis, to the holders of Pacific Ethanol's common stock, non-voting common stock and Series B Preferred Stock. The written consent of a majority of the issued and outstanding shares of Series B Preferred Stock is required before Pacific Ethanol can authorize the issuance of any class or series of capital stock that ranks senior to or on parity with shares of Series B Preferred Stock.

Dividend Rights

As long as shares of Series B Preferred Stock remain outstanding, each holder of shares of Series B Preferred Stock is entitled to receive, and shall be paid quarterly in arrears, in cash out of funds legally available therefor, cumulative dividends, in an amount equal to 7.0% of the Series B Issue Price per share per annum with respect to each share of Series B Preferred Stock. The dividends may, at Pacific Ethanol's option, be paid in shares of Series B Preferred Stock valued at the Series B Issue Price. In the event Pacific Ethanol declares, orders, pays or makes a dividend or other distribution on Pacific Ethanol's common stock, other than a dividend or distribution made in common stock, the holders of the Series B Preferred Stock shall be entitled to receive with respect to each share of Series B Preferred Stock held, any dividend or distribution that would be received by a holder of the number of shares of Pacific Ethanol's common stock into which the Series B Preferred Stock is convertible on the record date for the dividend or distribution.

The Series B Preferred Stock ranks pari passu with respect to dividends and liquidation rights with the Series A Preferred Stock and pari passu with respect to any class or series of capital stock specifically ranking on parity with the Series B Preferred Stock.

Optional Conversion Rights

Each share of Series B Preferred Stock is convertible at the option of the holder into shares of Pacific Ethanol's common stock at any time. Each share of Series B Preferred Stock is convertible into the number of shares of common stock as calculated by multiplying the number of shares of Series B Preferred Stock to be converted by the Series B Issue Price, and dividing the result thereof by the Conversion Price. The "Conversion Price" was initially $682.50 per share of Series B Preferred Stock, subject to adjustment; therefore, each share of Series B Preferred Stock was initially convertible into 0.03 shares of common stock, which number is equal to the quotient of the Series B Issue Price of $19.50 divided by the initial Conversion Price of $682.50 per share of Series B Preferred Stock. Accrued and unpaid dividends are to be paid in cash upon any conversion.

Mandatory Conversion Rights

In the event of a Transaction which will result in an internal rate of return to holders of Series B Preferred Stock of 25% or more, each share of Series B Preferred Stock shall, concurrently with the closing of the Transaction, be converted into shares of common stock. A "Transaction" is defined as a sale, lease, conveyance or disposition of all or substantially all of Pacific Ethanol's capital stock or assets or a merger, consolidation, share exchange, reorganization or other transaction or series of related transactions (whether involving Pacific Ethanol or a subsidiary of Pacific Ethanol) in which the stockholders immediately prior to the transaction do not retain a majority of the voting power in the surviving entity. Any mandatory conversion will be made into the number of shares of common stock determined on the same basis as the optional conversion rights above. Accrued and unpaid dividends are to be paid in cash upon any conversion.

No shares of Series B Preferred Stock will be converted into common stock on a mandatory basis unless at the time of the proposed conversion Pacific Ethanol has on file with the Securities and Exchange Commission an effective registration statement with respect to the shares of common stock issued or issuable to the holders on conversion of the Series B Preferred Stock then issued or issuable to the holders and the shares of common stock are eligible for trading on The NASDAQ Capital Market (or approved by and listed on a stock exchange approved by the holders of 66 2/3% of the then outstanding shares of Series B Preferred Stock).

Conversion Price Adjustments

The Conversion Price is subject to customary adjustment for stock splits, stock combinations, stock dividends, mergers, consolidations, reorganizations, share exchanges, reclassifications, distributions of assets and issuances of convertible securities, and the like. The Conversion Price is also subject to downward adjustments if Pacific Ethanol issues shares of common stock or securities convertible into or exercisable for shares of common stock, other than specified excluded securities, at per share prices less than the then effective Conversion Price. In this event, the Conversion Price shall be reduced to the price determined by dividing (i) an amount equal to the sum of (a) the number of shares of common stock outstanding immediately prior to the issue or sale multiplied by the then existing Conversion Price, and (b) the consideration, if any, received by Pacific Ethanol upon such issue or sale, by (ii) the total number of shares of common stock outstanding immediately after the issue or sale. For purposes of determining the number of shares of common stock outstanding as provided in clauses (i) and (ii) above, the number of shares of common stock issuable upon conversion of all outstanding shares of Series B Preferred Stock, and the exercise of all outstanding securities convertible into or exercisable for shares of common stock, will be deemed to be outstanding.

The Conversion Price will not be adjusted in the case of the issuance or sale of the following: (i) securities issued to Pacific Ethanol's employees, officers or directors or options to purchase common stock granted by Pacific Ethanol to its employees, officers or directors under any option plan, agreement or other arrangement duly adopted by Pacific Ethanol and the grant of which is approved by the compensation committee of the Pacific Ethanol Board; (ii) the Series B Preferred Stock and any common stock issued upon conversion of the Series B Preferred Stock; (iii) securities issued on the conversion of any convertible securities, in each case, outstanding on the date of the filing of the Pacific Ethanol Series B Certificate of Designations; and (iv) securities issued in connection with a stock split, stock dividend, combination, reorganization, recapitalization or other similar event for which adjustment is made in accordance with the foregoing.

Voting Rights and Protective Provisions

The Series B Preferred Stock votes together with all other classes and series of Pacific Ethanol's voting stock as a single class on all actions to be taken by Pacific Ethanol's stockholders (giving effect to the Preferred Voting Ratio). Each share of Series B Preferred Stock entitles the holder thereof to the number of votes equal to the number of shares of common stock into which each share of Series B Preferred Stock is convertible on all matters to be voted on by Pacific Ethanol's stockholders, however, the number of votes for each share of Series B Preferred Stock may not exceed the number of shares of common stock into which each share of Series B Preferred Stock would be convertible if the applicable Conversion Price were $682.50 (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting the shares).

Pacific Ethanol is not permitted, without first obtaining the written consent of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock voting as a separate class, to:

- increase or decrease the total number of authorized shares of Series B Preferred Stock or the authorized shares of Pacific Ethanol's common stock reserved for issuance upon conversion of the Series B Preferred Stock (except as otherwise required by Pacific Ethanol's Certificate of Incorporation or the Pacific Ethanol Series B Certificate of Designations);

- increase or decrease the number of authorized shares of preferred stock or common stock (except as otherwise required by Pacific Ethanol's Certificate of Incorporation or the Pacific Ethanol Series B Certificate of Designations);

- alter, amend, repeal, substitute or waive any provision of Pacific Ethanol's Certificate of Incorporation or Pacific Ethanol's bylaws, so as to affect adversely the voting powers, preferences or other rights, including the liquidation preferences, dividend rights, conversion rights, redemption rights or any reduction in the stated value of the Series B Preferred Stock, whether by merger, consolidation or otherwise;

- authorize, create, issue or sell any securities senior to or on parity with the Series B Preferred Stock or securities that are convertible into securities senior to or on parity the Series B Preferred Stock with respect to voting, dividend, liquidation or redemption rights, including subordinated debt;

- authorize, create, issue or sell any securities junior to the Series B Preferred Stock other than common stock or securities that are convertible into securities junior to Series B Preferred Stock other than common stock with respect to voting, dividend, liquidation or redemption rights, including subordinated debt;

- authorize, create, issue or sell any additional shares of Series B Preferred Stock other than the Series B Preferred Stock initially authorized, created, issued and sold, Series B Preferred Stock issued as payment of dividends and Series B Preferred Stock issued in replacement or exchange therefore;

- engage in a Transaction that would result in an internal rate of return to holders of Series B Preferred Stock of less than 25%;

- declare or pay any dividends or distributions on Pacific Ethanol's capital stock in a cumulative amount in excess of the dividends and distributions paid on the Series B Preferred Stock in accordance with the Pacific Ethanol Series B Certificate of Designations;

- authorize or effect the voluntary liquidation, dissolution, recapitalization, reorganization or winding up of Pacific Ethanol's business; or

- purchase, redeem or otherwise acquire any of Pacific Ethanol's capital stock other than Series B Preferred Stock, or any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Pacific Ethanol's capital stock or securities convertible into or exchangeable for Pacific Ethanol's capital stock.

Reservation of Shares

Pacific Ethanol initially was required to reserve 200,000 shares of common stock for issuance upon conversion of shares of Series B Preferred Stock and is required to maintain a sufficient number of reserved shares of common stock to allow for the conversion of all shares of Series B Preferred Stock.

Series A Preferred Stock

As of January 30, 2015, no shares of Series A Preferred Stock were issued and outstanding and an aggregate of 5,315,625 shares of Series A Preferred Stock had been converted into shares of Pacific Ethanol's common stock and returned to undesignated preferred stock. A balance of 1,684,375 shares of Series A Preferred Stock remain authorized for issuance. The rights and preferences of the Series A Preferred Stock are substantially the same as the Series B Preferred Stock, except as follows:

- the Series A Issue Price, on which the Series A Preferred Stock liquidation preference is based, is $16.00 per share;

- dividends accrue and are payable at a rate per annum of 5.0% of the Series A Issue Price per share;

- each share of Series A Preferred Stock is convertible at a rate equal to the Series A Issue Price divided by an initial Conversion Price of $840.00 per share;

- holders of the Series A Preferred Stock have a number of votes equal to the number of shares of common stock into which each share of Series A Preferred Stock is convertible on all matters to be voted on by Pacific Ethanol's stockholders, voting together as a single class; provided, however, that the number of votes for each share of Series A Preferred Stock shall not exceed the number of shares of common stock into which each share of Series A Preferred Stock would be convertible if the applicable Conversion Price were $943.95 (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting the shares); and

- Pacific Ethanol is not permitted, without first obtaining the written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock voting as a separate class, to:

    - change the number of members of the Pacific Ethanol Board to be more than nine members or less than seven members;

    - effect any material change in Pacific Ethanol's industry focus or that of Pacific Ethanol's subsidiaries, considered on a consolidated basis;

    - authorize or engage in, or permit any subsidiary to authorize or engage in, any transaction or series of transactions with one of Pacific Ethanol's or Pacific Ethanol's subsidiaries' current or former officers, directors or members with value in excess of $100,000, excluding compensation or the grant of options approved by Pacific Ethanol's board of directors; or

    - authorize or engage in, or permit any subsidiary to authorize or engage in, any transaction with any entity or person that is affiliated with any of Pacific Ethanol's or Pacific Ethanol's subsidiaries' current or former directors, officers or members, excluding any director nominated by the initial holder of the Series B Preferred Stock.

Preemptive Rights

Holders of Pacific Ethanol's Series A Preferred Stock have preemptive rights to purchase a pro rata portion of all capital stock or securities convertible into capital stock that Pacific Ethanol issues, sells or exchanges, or agrees to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange. Pacific Ethanol must deliver each holder of its Series A Preferred Stock a written notice of any proposed or intended issuance, sale or exchange of capital stock or securities convertible into capital stock which must include a description of the securities and the price and other terms upon which they are to be issued, sold or exchanged together with the identity of the persons or entities (if known) to which or with which the securities are to be issued, sold or exchanged, and an offer to issue and sell to or exchange with the holder of the Series A Preferred Stock the holder's pro rata portion of the securities, and any additional amount of the securities should the other holders of Series A Preferred Stock subscribe for less than the full amounts for which they are entitled to subscribe. In the case of a public offering of Pacific Ethanol's common stock for a purchase price of at least $12.00 per share and a total gross offering price of at least $50 million, the preemptive rights of the holders of the Series A Preferred Stock shall be limited to 50% of the securities. Holders of Pacific Ethanol's Series A Preferred Stock have a 30 day period during which to accept the offer. Pacific Ethanol will have 90 days from the expiration of this 30 day period to issue, sell or exchange all or any part of the securities as to which the offer has not been accepted by the holders of the Series A Preferred Stock, but only as to the offerees or purchasers described in the offer and only upon the terms and conditions that are not more favorable, in the aggregate, to the offerees or purchasers or less favorable to Pacific Ethanol than those contained in the offer.

The preemptive rights of the holders of the Series A Preferred Stock shall not apply to any of the following securities: (i) securities issued to Pacific Ethanol's employees, officers or directors or options to purchase common stock granted by Pacific Ethanol to its employees, officers or directors under any option plan, agreement or other arrangement duly adopted by Pacific Ethanol and the grant of which is approved by the compensation committee of the Pacific Ethanol Board; (ii) the Series A Preferred Stock and any common stock issued upon conversion of the Series A Preferred Stock; (iii) securities issued on the conversion of any convertible securities, in each case, outstanding on the date of the filing of the Pacific Ethanol Series A Certificate of Designations; (iv) securities issued in connection with a stock split, stock dividend, combination, reorganization, recapitalization or other similar event for which adjustment is made in accordance with the Pacific Ethanol Series A Certificate of Designations; and (v) the issuance of Pacific Ethanol's securities issued for consideration other than cash as a result of a merger, consolidation, acquisition or similar business combination by Pacific Ethanol approved by the Pacific Ethanol Board.

Warrants

As of January 30, 2015, Pacific Ethanol had outstanding warrants to purchase 855,513 shares of its common stock at exercise prices ranging from $6.09 to $735.00 per share. These outstanding warrants consist of warrants to purchase an aggregate of 210,503 shares of common stock at an exercise price of $6.09 per share expiring in 2017, warrants to purchase an aggregate of 473,336 shares of common stock at an exercise price of $8.85 per share expiring in 2015, warrants to purchase an aggregate of 138,154 shares of common stock at an exercise price of $8.43 per share expiring in 2016 and warrants to purchase an aggregate of 33,520 shares of common stock at an exercise price of $735.00 per share expiring in 2018.

Options

As of January 30, 2015, Pacific Ethanol had outstanding options to purchase an aggregate of 241,475 shares of its common stock at exercise prices ranging from $3.74 to $871.50 per share issued under Pacific Ethanol's 2004 Stock Option Plan and 2006 Stock Incentive Plan.

Anti-Takeover Effects of Delaware Law and Pacific Ethanol's Certificate of Incorporation and Bylaws

A number of provisions of Delaware law, Pacific Ethanol's certificate of incorporation and Pacific Ethanol's bylaws contain provisions that could have the effect of delaying, deferring and discouraging another party from acquiring control of us. These provisions, which are summarized below, are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of Pacific Ethanol to first negotiate with Pacific Ethanol's board of directors. Pacific Ethanol believes that the benefits of increased protection of Pacific Ethanol's potential ability to negotiate with an unfriendly or unsolicited acquiror outweigh the disadvantages of discouraging a proposal to acquire Pacific Ethanol because negotiation of these proposals could result in an improvement of their terms.

Undesignated Preferred Stock

The ability to authorize undesignated preferred stock makes it possible for the Pacific Ethanol Board to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to acquire us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of Pacific Ethanol.

Delaware Anti-Takeover Statute

Pacific Ethanol is subject to the provisions of Section 203 of the DGCL (sometimes referred to as Section 203) regulating corporate takeovers. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging, under specified circumstances, in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares of voting stock outstanding (but not the outstanding voting stock owned by the stockholder) (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or subsequent to the date of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66-2/3% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting securities. Pacific Ethanol expects the existence of this provision to have an anti-takeover effect with respect to transactions the Pacific Ethanol Board does not approve in advance. Pacific Ethanol also anticipates that Section 203 may also discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

The provisions of Delaware law, Pacific Ethanol's Certificate of Incorporation and Pacific Ethanol's bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of Pacific Ethanol's common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in Pacific Ethanol's management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

COMPARISON OF RIGHTS OF PACIFIC ETHANOL AND AVENTINE STOCKHOLDERS

Both Pacific Ethanol and Aventine are incorporated under the laws of the State of Delaware and, accordingly, the rights of the stockholders of each are currently, and will continue to be, governed by the DGCL. Before the consummation of the merger, the rights of holders of Aventine common stock are also governed by the fourth amended and restated Certificate of Incorporation of Aventine and the second amended and restated bylaws of Aventine. After the consummation of the merger, Aventine stockholders will become stockholders of Pacific Ethanol, and their rights will be governed by the DGCL, the Certificate of Incorporation of Pacific Ethanol, as amended, and the bylaws of Pacific Ethanol.

The following is a summary of the material differences between the rights of Pacific Ethanol stockholders and the rights of Aventine stockholders. While we believe that this summary covers the material differences between the two, this summary may not contain all of the information that is important to you. This summary is not intended to be a complete discussion of the respective rights of Pacific Ethanol and Aventine stockholders and is qualified in its entirety by reference to the DGCL and the various documents of Pacific Ethanol and Aventine that we refer to in this summary. You should carefully read this entire joint proxy statement/prospectus and the other documents we refer to in this joint proxy statement/prospectus for a more complete understanding of the differences between being a stockholder of Aventine and being a stockholder of Pacific Ethanol. Pacific Ethanol has filed its documents referred to herein with the Securities and Exchange Commission. Each of Pacific Ethanol and Aventine will send copies of these documents to you upon your request. See "Where You Can Find More Information."

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Authorized Capital Stock	
Pacific Ethanol is authorized to issue: • 300,000,000 shares of common stock, of which 24,499,534 were issued and outstanding as of January 30, 2015. • 20,000,000 shares of non-voting common stock, of which none were issued and outstanding as of January 30, 2015 (assuming the stockholders of Pacific Ethanol approve the proposed amendment to Pacific Ethanol's Certificate of Incorporation creating a class of non-voting common stock). • 10,000,000 shares of preferred stock, of which 926,942 shares designated as Series B preferred stock were issued and outstanding as of January 30, 2015. The Pacific Ethanol Board is authorized to issue the preferred stock in one or more series	Aventine is authorized to issue: • 15,000,000 shares of common stock, of which 14,204,240 were issued and outstanding as of January 30, 2015. • 5,000,000 shares of preferred stock, of which none are issued and outstanding. The Aventine Board is authorized to issue the preferred stock in one or more series.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Voting Rights	
Under Pacific Ethanol's bylaws, at any meeting of Pacific Ethanol stockholders, each stockholder is entitled to vote in person or by and proxy and shall have one vote for each share of voting stock held by such stockholder.	Under Aventine's fourth amended and restated Certificate of Incorporation and second amended and restated bylaws, at any meeting of Aventine stockholders, each stockholder is entitled to vote in person or by and proxy and shall have one vote for each share having voting power held by such stockholder.
Quorum	
Under Pacific Ethanol's bylaws, the holders of a majority of the stock issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except where otherwise provided by statute, the Certificate of Incorporation or the bylaws.	Under Aventine's bylaws, except as otherwise provided by applicable law, the Certificate of Incorporation or the bylaws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of Aventine representing a majority of the voting power of all outstanding shares of capital stock of Aventine entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business.
Stockholder Rights Plans	
Pacific Ethanol is not a party to a rights plan.	Aventine is not a party to a rights plan.
Number of Directors	
The Pacific Ethanol bylaws provide that the Pacific Ethanol Board must consist of seven directors, until changed by resolutions of the Pacific Ethanol Board. Currently, there are seven directors on the Pacific Ethanol Board. After the merger, the Pacific Ethanol Board will comprise the current members of the Pacific Ethanol Board and two directors nominated by the majority of Aventine stockholders.	The Aventine fourth amended and restated Certificate of Incorporation and bylaws provide that the board of directors must consist of five directors; provided, however, that the number of directors may be modified from time to time exclusively by the board pursuant to a resolution adopted by at least 66⅔% of the Aventine Board.
Filling Vacancies on the Board of Directors	
Under Pacific Ethanol's Certificate of Incorporation and bylaws, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum.	Under Aventine's fourth amended and restated Certificate of Incorporation, newly created directorships resulting from an increase in the number of directors and any vacancies on the board resulting from death, resignation, retirement, disqualification, removal or other cause may be filled solely by a majority vote of the directors then in office that are not officers, employees or members of Aventine's management team, even if less than a quorum.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Removal of Directors	
Under Pacific Ethanol's bylaws, any director, or the entire Pacific Ethanol Board may be removed at any time, but only for cause. The removal shall be accomplished by the affirmative vote, at a special meeting of stockholders called for that purpose, of the holders of at least a majority of the issued and outstanding shares entitled to vote at an election for directors.	Under Aventine's fourth amended and restated Certificate of Incorporation, any and all of the directors may be removed from office at any time, with or without cause by the affirmative vote of holders of a majority of the voting power of all then outstanding shares of capital stock of Aventine entitled to vote in the election of directors, voting together as a single class.
Under Pacific Ethanol's bylaws, the Pacific Ethanol Board or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the issued and outstanding shares entitled to vote on such removal; provided, however, that unless the entire Pacific Ethanol Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.	
Director Nominations by Stockholders	
Nominations of persons for election to the Pacific Ethanol Board by the stockholders may be made at any meeting of stockholders only (a) pursuant to Pacific Ethanol's notice of meeting, (b) by or at the direction of the Pacific Ethanol Board or (c) by any stockholder of Pacific Ethanol who was a stockholder of record at the time of giving of notice provided for in Pacific Ethanol's bylaws, who is entitled to vote at the meeting and who complies with the notice procedures set forth in the bylaws; provided that stockholder nominations of persons for election to the Pacific Ethanol Board at a special meeting may only be made if the Pacific Ethanol Board has determined that directors are to be elected at the special meeting.	Nominations of persons for election to the board of Aventine at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in Aventine's notice of such special meeting, may be made (i) by or at the direction of the board or (ii) by any stockholder of the Aventine (x) who is a stockholder of record on the date of the giving of the notice provided for in the Aventine bylaws and who is entitled to vote in the election of directors at such meeting and (y) who complies with the notice procedures set forth in the bylaws (unless such notice procedures are otherwise waived.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
For nominations to be properly brought before a meeting of stockholders by a stockholder, the stockholder must have given timely notice thereof in writing to the secretary of Pacific Ethanol. To be timely, a stockholder's notice must be delivered to the secretary of Pacific Ethanol not later than: (A) in the case of an annual meeting, the close of business on the 45th day before the first anniversary of the date on which Pacific Ethanol first mailed its proxy materials for the prior year's annual meeting of stockholders; provided, however, that if the date of the meeting has changed more than 30 days from the date of the prior year's meeting, then in order for the stockholder's notice to be timely it must be delivered to the secretary of Pacific Ethanol a reasonable time before Pacific Ethanol mails its proxy materials for the current year's meeting; provided further, that for purposes of the preceding sentence, a "reasonable time" shall conclusively be deemed to coincide with any adjusted deadline publicly announced by Pacific Ethanol pursuant to Rule 14a-5(f) or otherwise; and (B) in the case of a special meeting, the close of business on the 7th day following the day on which public announcement is first made of the date of the special meeting. In no event shall the public announcement of an adjournment of a meeting of stockholders commence a new time period for the giving of a stockholder's notice as described above.	For a nomination to be made by a stockholder, such stockholder must have given timely notice in proper written form to the Secretary of Aventine. To be timely, a stockholder's notice with respect to such nominations must be received by the Secretary at the principal executive offices of Aventine (i) in the case of an annual meeting, not later than the close of business on the 20th day nor earlier than the opening of business on the 60th day before the anniversary date of the immediately preceding annual meeting of stockholders; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day nor earlier than the 30th day following the day on which a public announcement of the date of the special meeting is first made by Aventine. The public announcement of an adjournment or postponement of an annual meeting or special meeting shall not commence a new time period for the giving of a stockholder's notice.
Such stockholder's notice shall set forth as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made (i) the name and address of such stockholder, as they appear on Pacific Ethanol's books, and of such beneficial owner, (ii) the class and number of shares of Pacific Ethanol that are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of stock of Pacific Ethanol entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination, and (iv) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group that intends (X) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of Pacific Ethanol's outstanding capital stock required to elect the nominee and/or (Y) otherwise to solicit proxies from stockholders in support of such nomination.	These nominating notice requirements may be waived by holders of at least a majority of the voting power of all then outstanding shares of capital stock of Aventine entitled to vote generally in the election of directors, voting together as a single class, by written consent without prior board approval.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Stockholder Proposals	
At an annual or special meeting of the stockholders, only business properly brought before the meeting will be conducted. Proposal of business to be considered by the stockholders may be made at any meeting of stockholders only (a) pursuant to Pacific Ethanol's notice of meeting, (b) by or at the direction of the Pacific Ethanol Board or (c) by any stockholder of Pacific Ethanol who was a stockholder of record at the time of giving of notice provided for in these bylaws, who is entitled to vote at the meeting and who complies with the notice procedures set forth in Pacific Ethanol's bylaws. In addition, the stockholder must comply with all notice procedures in Pacific Ethanol's bylaws.	To be properly brought before an annual meeting , the business must be (i) specified in Aventine's notice of meeting given by or at the direction of the board, (ii) otherwise properly brought before the annual meeting by or at the direction of the board or (iii) otherwise properly brought before the annual meeting by any stockholder of Aventine (x) who is a stockholder of record on the date of the giving of the notice and who is entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in Aventine's bylaws. Special meetings of stockholders, for any purpose or purposes, may be called only by (i) the Chairman of the Board, (ii) the Chief Executive Officer, (iii) the board pursuant to a resolution adopted by a majority of the entire board, or (iv) a request of the holders of at least 35% of the voting power of all then outstanding shares of capital stock of Aventine entitled to vote generally in the election of directors. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to Aventine's notice of meeting. Stockholders must comply with all notice procedures in Aventine's bylaws.
Stockholder Action by Written Consent	
Any action required or which may be taken at any annual or special meeting of stockholders of Pacific Ethanol may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to Pacific Ethanol.	Any action by the stockholders of Aventine may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Amendments to Certificate of Incorporation	
Pacific Ethanol's Certificate of Incorporation provides that the corporation may amend, alter, change or repeal any provision contained in the Certificate of Incorporation in the manner prescribed by statute. Under Delaware law, an amendment to a Certificate of Incorporation generally requires the approval of the board of directors and the approval of the holders of a majority of the issued and outstanding stock entitled to vote upon the proposed amendment.	Aventine's Certificate of Incorporation may be amended as provided by statute; provided however, that certain sections of the Certificate of Incorporation may only be amended by an affirmative vote of the holders of at least 66 ⅔% of the shares of the then outstanding shares of common stock, voting as a single class. Under Delaware law, an amendment to a Certificate of Incorporation generally requires the approval of the board of directors and the approval of the holders of a majority of the issued and outstanding stock entitled to vote upon the proposed amendment.
Bylaw Amendments	
The Pacific Ethanol Board is expressly authorized to make, alter, amend or repeal the bylaws. In addition, the bylaws may be amended, altered or repealed, and new bylaws may be adopted, by the stockholders entitled to vote.	Aventine's board shall have the power to adopt, amend, alter or repeal the bylaws; provided, however, that certain sections of the bylaws may only be amended, altered or repealed by the affirmative vote of at least 66⅔% of the entire board. Subject to the foregoing, the affirmative vote of a majority of the entire board shall be required to adopt, amend, alter or repeal the bylaws. The bylaws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that the affirmative vote of the holders of at least a majority of the voting power of all outstanding shares of capital stock of Aventine entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the bylaws; provided further that the affirmative vote of the holders of at least 66⅔% of the shares of all then outstanding shares of common stock of Aventine voting together as a single class, shall be required to amend certain sections of the bylaws.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Special Meetings of Stockholders	
Special meetings of the stockholders of Pacific Ethanol for any purpose or purposes, unless otherwise prescribed by law, may be called by the Pacific Ethanol Board, the chairman of the board, the chief executive officer or president (in the absence of a chief executive officer), and shall be called by the secretary of Pacific Ethanol at the request in writing by holders of not less than 10% of the total voting power of all outstanding securities of Pacific Ethanol then entitled to vote. If a special meeting is called by any person or persons other than the Pacific Ethanol Board, chief executive officer, president or the chairman of the board, then the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the secretary of Pacific Ethanol. The secretary shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with Pacific Ethanol's bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting. No business may be transacted at such special meeting other than the business specified in such notice to stockholders.	Except as otherwise required by applicable law, special meetings of stockholders of Aventine, for any purpose or purposes, may be called only by (i) the Chairman of the board, (ii) the Chief Executive Officer, (iii) the board pursuant to a resolution adopted by a majority of the entire board, or (iv) a request of the holders of at least 35% of the voting power of all then outstanding shares of capital stock of Aventine entitled to vote generally in the election of directors. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the person calling the special meeting and stated in Aventine's notice of the meeting, provided that the board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication.
Limitation of Personal Liability of Directors	
The Pacific Ethanol Certificate of Incorporation, as amended, eliminates personally liable of a director to Pacific Ethanol and its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for a breach of the director's duty of loyalty to Pacific Ethanol or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL (which creates liability for unlawful payment of dividends and unlawful stock purchases or redemptions) or (iv) for any transaction from which the director derived any improper personal benefit. The Pacific Ethanol Certificate of Incorporation further provides that if the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of Pacific Ethanol shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.	The Aventine fourth amended and restated Certificate of Incorporation eliminates the personal liability of a director to Aventine and its stockholders for monetary damages for breach of fiduciary duty as a director except to the extent such exemption from liability or limitation thereof is not permitted by the DGCL. The Aventine Certificate of Incorporation further provides that if the DGCL is amended to authorize corporate action further limiting or eliminating the liability of directors, then the liability of a director to Aventine or its stockholders shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Indemnification	
Pacific Ethanol's bylaws provides for mandatory indemnification, to the fullest extent and in the manner permitted by the DGCL, for each of its directors and officers who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal or administrative or investigative by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director, officer, employee or agent of Pacific Ethanol or is or was serving at the request of Pacific Ethanol as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, non-profit entity or other enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such action, suit, or proceeding. Pacific Ethanol shall be required to indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Pacific Ethanol Board. Pacific Ethanol's Certificate of Incorporation, as amended, and bylaws permit, to the fullest extent and in the manner permitted by the DGCL, Pacific Ethanol to indemnify and hold harmless, each of its employees and agents who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal or administrative or investigative by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of Pacific Ethanol or is or was serving at the request of Pacific Ethanol as an employee or agent of another corporation, partnership, joint venture, trust, non-profit entity or other enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such action, suit, or proceeding.	Aventine's fourth amended and restated Certificate of Incorporation and second amended and restated bylaws provide for mandatory indemnification for each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director or officer of Aventine, while a director or officer of Aventine, is or was serving at the request of Aventine as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust or other enterprise, including service with respect to an employee benefit plan and/or direct or indirect subsidiary, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by Aventine to the fullest extent authorized or permitted by applicable law, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnified person in connection with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. To the fullest extent authorized or permitted by applicable law, the right to indemnification shall include the right to be paid by Aventine any expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition, subject to the delivery by such indemnified person of any undertakings, if any, required by the DGCL (as it may be amended or modified from time to time) at such time.

Pacific Ethanol Stockholder Rights	Aventine Stockholder Rights
Business Combinations	
Pacific Ethanol's Certificate of Incorporation, as amended, does not contain any provision requiring a supermajority vote of stockholders for business combinations.	Aventine's fourth amended and restated Certificate of Incorporation does not contain any provision requiring a supermajority vote of stockholders for business combinations.
Forum for Adjudication of Disputes	
Pacific Ethanol's Certificate of Incorporation, as amended, and bylaws do not contain any provision designating a sole and exclusive forum for stockholder claims.	Aventine's fourth amended and restated Certificate of Incorporation, and second amended and restated bylaws do not contain any provision designating a sole and exclusive forum for stockholder claims.

APPRAISAL RIGHTS

In connection with the merger, record holders of Aventine common stock who are not party to the Aventine Stockholders Agreement and if the drag along is not exercised comply with the procedures summarized below will be entitled to appraisal rights if the merger is completed. Under Section 262, as a result of completion of the merger, holders of shares of Aventine common stock, with respect to which appraisal rights are properly demanded and perfected and not withdrawn or lost, are entitled, in lieu of receiving the merger consideration, to have the "fair value" of their shares at the effective time of the merger (exclusive of any element of value arising from the accomplishment or expectation of the merger) judicially determined and paid to them in cash by complying with the provisions of Section 262. Aventine is required to send a notice to that effect to each stockholder not less than 20 days prior to the special meeting. This joint proxy statement/prospectus constitutes that notice to you.

The following is a brief summary of Section 262, which sets forth the procedures for demanding statutory appraisal rights. This summary is qualified in its entirety by reference to Section 262, a copy of the text of which is attached to this joint proxy statement/prospectus as *Annex F*. The following summary does not constitute any legal or other advice nor does it constitute a recommendation that stockholders exercise their appraisal rights under Section 262.

A stockholder who desires to exercise appraisal rights must (i) not vote in favor of the adoption of the merger agreement, (ii) deliver in the manner set forth below a written demand for appraisal of the stockholder's shares to the Corporate Secretary of Aventine before the vote on the adoption of the merger agreement at the special meeting at which the proposal to adopt the merger agreement will be submitted to Aventine's stockholders, (iii) continuously hold the shares of record from the date of making the demand through the effective time of the merger, and (iv) otherwise comply with the requirements of Section 262. Within 10 days after the effective time of the merger, the surviving corporation must provide notice of the effective time to all stockholders who have complied with Section 262 and not voted in favor of the merger.

Only a holder of record of Aventine common stock is entitled to demand an appraisal of the shares registered in that holder's name. If shares are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, such demand must be executed by the fiduciary. If shares are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand must be executed by all joint owners. An authorized agent, including an agent of two or more joint owners, may execute the demand for appraisal for a stockholder of record; however, the agent must identify the record owner and expressly disclose that, in exercising the demand, the agent is acting as agent for the record owner.

A record owner, such as a broker, who holds shares as a nominee for others may exercise appraisal rights with respect to the shares held for all or less than all beneficial owners of shares as to which the holder is the record owner. In that case, the written demand must set forth the number of shares covered by the demand. Where the number of shares is not expressly stated, the demand will be presumed to cover all shares outstanding in the name of the record owner.

Beneficial owners who are not record owners and who intend to exercise appraisal rights must act promptly to cause the record holder to follow the steps summarized herein properly and in a timely manner to perfect appraisal rights. Shares held through brokerage firms, banks and other financial institutions are frequently deposited with and held of record in the name of a nominee of a central security depositary. Any holder of shares desiring appraisal rights with respect to such shares who held such shares through a brokerage firm, bank or other financial institution is responsible for ensuring that the demand for appraisal is made by the record holder. The stockholder should instruct such firm, bank or institution that the demand for appraisal must be made by the record holder of the shares, which might be the nominee of a central security depositary if the shares have been so deposited.

As required by Section 262, a demand for appraisal must be in writing and must reasonably inform Aventine of the identity of the record holder (which might be a nominee as described above) and of such holder's intention to seek appraisal of such shares.

Stockholders of record who elect to demand appraisal of their shares must mail or deliver their written demand to: Aventine Renewable Energy Holdings, Inc., 1300 S. 2nd Street, Pekin, IL 61554 , Attention: Corporate Secretary. The written demand must be received by Aventine prior to the taking of the vote on the merger. Neither voting (in person or by proxy) against, abstaining from voting on or failing to vote on the proposal to adopt the merger agreement and approve the merger will alone suffice to constitute a written demand for appraisal within the meaning of Section 262. In addition, the stockholder seeking to demand appraisal must not vote its shares of stock in favor of adoption of the merger agreement. Because a proxy that does not contain voting instructions will, unless revoked, be voted in favor of adoption of the merger agreement, it will constitute a waiver of the stockholder's right of appraisal and will nullify any previously delivered written demand for appraisal. Therefore, a stockholder who wishes to exercise appraisal rights must vote against the adoption of the merger agreement, abstain from voting on the adoption of the merger agreement or refrain from executing and submitting the enclosed proxy card.

Within 120 days after the effective time of the merger, but not thereafter, either the surviving corporation in the merger or any stockholder who has timely and properly demanded appraisal of such stockholder's shares and who has complied with the requirements of Section 262 and is otherwise entitled to appraisal rights, or any beneficial owner for which a demand for appraisal has been properly made by the record holder, may commence an appraisal proceeding by filing a petition in the Delaware Court of Chancery, with a copy served on the surviving corporation in the case of a petition filed by a stockholder, demanding a determination of the fair value of the shares of all stockholders who have properly demanded appraisal.

There is no present intent on the part of the surviving corporation to file an appraisal petition and stockholders seeking to exercise appraisal rights should not assume that the surviving corporation will file such a petition or that the surviving corporation will initiate any negotiations with respect to the fair value of such shares. Accordingly, stockholders who desire to have their shares appraised should initiate any petitions necessary for the perfection of their appraisal rights within the time periods and in the manner prescribed in Section 262. Within 120 days after the effective time of the merger, any stockholder who has theretofore complied with the applicable provisions of Section 262 will be entitled, upon written request, to receive from the surviving corporation a statement setting forth the aggregate number of shares of common stock not voting in favor of the merger and with respect to which demands for appraisal were received by the surviving corporation and the number of holders of such shares. A person who is the beneficial owner of shares held in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in the previous sentence. Such statement must be mailed within 10 days after the written request therefor has been received by the surviving corporation.

If a petition for an appraisal is timely filed, at the hearing on such petition, the Delaware Court of Chancery will determine which stockholders are entitled to appraisal rights. The Delaware Court of Chancery may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Delaware Court of Chancery may dismiss the proceedings as to such stockholder. Where proceedings are not dismissed, the appraisal proceeding shall be conducted, as to the shares of common stock owned by such stockholders, in accordance with the rules of the Delaware Court of Chancery, including any rules specifically governing appraisal proceedings.

After a hearing on such petition, the Delaware Court of Chancery will determine which stockholders are entitled to appraisal rights and thereafter will appraise the shares owned by those stockholders, determining the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger, together with interest to be paid, if any, upon the amount determined to be the fair value. Unless the Delaware Court of Chancery in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharges) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. In determining fair value, the Delaware Court of Chancery is required to take into account all relevant factors. In *Weinberger v. UOP, Inc.*, the Delaware Supreme Court discussed the factors that could be considered in determining fair value in an appraisal proceeding, stating that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court" should be considered and that "[f]air price obviously requires consideration of all relevant factors involving the value of a company." The Delaware Supreme Court stated that in making this determination of fair value the court must consider "market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts which were known or which could be ascertained as of the date of merger which throw any light on future prospects of the merged corporation." The Delaware Supreme Court construed Section 262 to mean that "elements of future value, including the nature of the enterprise, which are known or susceptible of proof as of the date of the merger and not the product of speculation, may be considered." However, the Delaware Supreme Court noted that Section 262 provides that fair value is to be determined "exclusive of any element of value arising from the accomplishment or expectation of the merger."

Stockholders considering seeking appraisal should bear in mind that the fair value of their shares determined under Section 262 could be more than, the same as, or less than the merger consideration they are entitled to receive pursuant to the merger agreement if they do not seek appraisal of their shares, and that opinions of investment banking firms as to the fairness from a financial point of view of the consideration payable in a transaction are not opinions as to, and do not address, fair value under Section 262. Neither Pacific Ethanol nor Aventine anticipates offering more than the applicable merger consideration to any Aventine stockholder exercising appraisal rights, and reserve the right to assert, in any appraisal proceeding, that for purposes of Section 262, the "fair value" of a share of Aventine common stock is less than the applicable merger consideration.

The cost of the appraisal proceeding may be determined by the Delaware Court of Chancery and charged upon the parties as the Delaware Court of Chancery deems equitable in the circumstances. However, costs do not include attorneys' and expert witness fees. Each dissenting stockholder is responsible for his or her attorneys' and expert witness fees although upon application of a stockholder seeking appraisal rights, the Delaware Court of Chancery may order that all or a portion of the expenses incurred by such stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorneys' fees and the fees and expenses of experts, be charged pro rata against the value of all shares entitled to appraisal. In the absence of such a determination of assessment, each party bears its own expenses.

Any stockholder who has duly demanded appraisal in compliance with Section 262 will not, after the effective time of the merger, be entitled to vote for any purpose any shares subject to such demand or to receive payment of dividends or other distributions on such shares, except for dividends or distributions payable to stockholders of record at a date prior to the effective time of the merger.

At any time within 60 days after the effective time of the merger, any stockholder who has demanded appraisal and who has not commenced an appraisal proceeding or joined that proceeding as a named party, shall have the right to withdraw such stockholder's demand for appraisal and to accept the cash and Pacific Ethanol common stock as provided for in the merger agreement by delivering to the surviving corporation a written withdrawal of such stockholder's demand for appraisal and acceptance of the merger consideration. After this period, the stockholder may withdraw such stockholder's demand for appraisal only with the consent of the surviving corporation. If no petition for appraisal is filed with the Delaware Court of Chancery within 120 days after the effective time of the merger, all stockholders' rights to appraisal shall cease and all stockholders shall be entitled only to receive the merger consideration as provided for in the merger agreement. Inasmuch as the parties to the merger agreement have no obligation to file such a petition, and have no present intention to do so, any stockholder who desires that such petition be filed is advised to file it on a timely basis. No appraisal proceeding in the Delaware Court of Chancery shall be dismissed as to any stockholders without the approval of the Delaware Court of Chancery, and that approval may be conditioned upon such terms as the Delaware Court of Chancery deems just. However, the preceding sentence will not affect the right of any stockholder who has not commenced an appraisal proceeding or joined the proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger within 60 days after the effective time of the merger.

The foregoing is a brief summary of Section 262 that sets forth the procedures for demanding statutory appraisal rights. This summary, however, is not a complete statement of all applicable requirements and is qualified in its entirety by reference to Section 262, a copy of the text of which is attached as *Annex f* to this joint proxy statement/prospectus.

A stockholder's failure to comply with all the procedures set forth in Section 262 will result in the loss of such stockholder's statutory appraisal rights. Consequently, if you wish to exercise your appraisal rights, you should consider consulting a legal advisor. To the extent the drag-along is exercised pursuant to the Aventine Stockholders Agreement, the Aventine stockholders subject to the drag-along right have waived their respective appraisal rights arising out of a drag-along transaction.

LEGAL MATTERS

The validity of the Pacific Ethanol common stock and non-voting common stock and certain United States federal income tax consequences relating to the merger will be passed upon for Pacific Ethanol by Troutman Sanders LLP.

Certain United States federal income tax consequences relating to the merger will be passed upon for Aventine by Akin Gump Strauss Hauer & Feld LLP.

EXPERTS

The consolidated financial statements of Pacific Ethanol as of December 31, 2013 and 2012, have been incorporated by reference in this registration statement have been so included in reliance upon the reports of Hein & Associates LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of Hein & Associates LLP as experts in accounting and auditing.

The consolidated financial statements of Aventine and subsidiaries as of December 31, 2013 and for the year ending December 31, 2013 appearing in this registration statement have been audited by McGladrey LLP, as stated in their report appearing elsewhere in the registration statement (which report expresses an unqualified opinion on the financial statements), and are included in reliance upon such report and upon the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of Aventine Renewable Energy Holdings, Inc. at December 31, 2012 and 2011, and for the years then ended, appearing in this prospectus and registration statement have been audited by Ernst & Young LLP, independent auditors, set forth in their report therein appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

STOCKHOLDER PROPOSALS

Pacific Ethanol

To be eligible for inclusion in the proxy statement and form of proxy for Pacific Ethanol's 2015 annual meeting of stockholders, stockholder proposals must have been submitted in writing by the close of business on January 5, 2015. If any proposal that has not been submitted for inclusion in the 2015 proxy statement is instead sought to be presented directly at the 2015 annual meeting, such proposal may be considered if written notice of such proposal is timely received by Pacific Ethanol's Secretary. Generally, a notice is timely given if it is received by Pacific Ethanol's Secretary not less than 90 or more than 120 days before the date of the annual meeting. If, however, the date of the annual meeting has not been publicly disclosed or announced at least 105 days in advance of the annual meeting, then Pacific Ethanol's Secretary must have received the notice within 15 days of such initial public disclosure or announcement.

Pursuant to Pacific Ethanol's bylaws, in order for nominations or other business to be properly brought before a meeting of stockholders of Pacific Ethanol by a stockholder, the stockholder must give timely notice in writing to the secretary of Pacific Ethanol and such business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to the secretary of Pacific Ethanol not later than: (A) in the case of an annual meeting, the close of business on the forty-fifth (45th) day before the first anniversary of the date on which Pacific Ethanol first mailed its proxy materials for the prior year's annual meeting of stockholders, or March 21, 2015; provided, however, that if the date of the meeting has changed more than thirty (30) days from the date of the prior year's meeting, then in order for the stockholder's notice to be timely it must be delivered to the secretary of Pacific Ethanol a reasonable time before Pacific Ethanol mails its proxy materials for the current year's meeting; provided further, that "reasonable time" shall conclusively be deemed to coincide with any adjusted deadline publicly announced by Pacific Ethanol pursuant to Rule 14a-5(f) or otherwise; and (B) in the case of a special meeting, the close of business on the seventh (7th) day following the day on which public announcement is first made of the date of the special meeting, or [●], 2015. In no event shall the public announcement of an adjournment of a meeting of stockholders commence a new time period for the giving of a stockholder's notice as described above.

Pacific Ethanol's bylaws state that nothing in the bylaws shall be deemed to affect any rights (1) of stockholders to request inclusion of proposals in Pacific Ethanol's proxy statement pursuant to Rule 14a-8 under the Securities and Exchange Act or (2) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of Pacific Ethanol's certificate of incorporation.

Aventine

Aventine will hold a 2015 annual meeting of stockholders only if the merger is not completed. Any proposal of a stockholder of Aventine that is intended to be presented by such stockholder at Aventine's 2015 annual meeting of stockholders (if it is held) must have been received by Aventine, such proposal may be considered if written notice of such proposal is timely received by Aventine's Secretary. Generally, a notice is timely given if received by Aventine's Secretary not less than 90 or more than 120 days before the date of the annual meeting.

WHERE YOU CAN FIND MORE INFORMATION

Pacific Ethanol files annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any of this information at the Securities and Exchange Commission's public reference room at 100 F Street, N.E., Washington, D.C. 20549. Please call the Securities and Exchange Commission at 1-800-SEC-0330 or 202-942-8090 for further information on the public reference room. The Securities and Exchange Commission also maintains an Internet website that contains reports, proxy statements and other information regarding issuers, including Pacific Ethanol, who file electronically with the Securities and Exchange Commission. The address of that site is www.sec.gov. The information contained on the Securities and Exchange Commission's website is expressly not incorporated by reference into this joint proxy statement/prospectus. Pacific Ethanol's internet website is www.pacificethanol.com, and Pacific Ethanol makes available free of charge at such website Pacific Ethanol's annual reports, quarterly reports, current reports, reports filed pursuant to Section 16 of the Exchange Act and amendments to those reports as soon as reasonably practical after such reports are electronically filed or furnished to the Securities and Exchange Commission. The information on Pacific Ethanol's website is not incorporated by reference into this joint proxy statement/prospectus.

Pacific Ethanol has filed with the Securities and Exchange Commission a registration statement on Form S-4 of which this joint proxy statement/prospectus is a part. The registration statement registers the shares of Pacific Ethanol common stock to be issued to Aventine stockholders in connection with the merger, together with shares of Pacific Ethanol common stock that may be issued upon conversion of the Pacific Ethanol non-voting common stock that may be issued in connection with the merger. The registration statement, including the attached exhibits and annexes, contains additional relevant information about the common stock and non-voting common stock of Pacific Ethanol and the common stock of Aventine. The rules and regulations of the Securities and Exchange Commission allow Pacific Ethanol to omit certain information included in the registration statement from this joint proxy statement/prospectus.

The Securities and Exchange Commission allows Pacific Ethanol to "incorporate by reference" information into this joint proxy statement/prospectus, which means that Pacific Ethanol can disclose important information to you by referring you to another document filed separately with the Securities and Exchange Commission. The information incorporated by reference is deemed to be part of this joint proxy statement/prospectus, except for any information superseded by information in, or incorporated by reference in, this joint proxy statement/prospectus. This joint proxy statement/prospectus incorporates by reference the documents listed below that Pacific Ethanol has previously filed with the Securities and Exchange Commission (other than documents or information deemed to have been furnished and not filed in connection with Securities and Exchange Commission rules). These documents contain important information about Pacific Ethanol and its financial position.

Pacific Ethanol Securities and Exchange Commission Filings (File No. 000-21467)

- Annual Report on Form 10-K for the year ended December 31, 2013;
- Quarterly Reports on Form 10-Q for the quarters ended March 31, 2014, June 30, 2014 and September 30, 2014;
- Current Reports on Form 8-K filed on February 26, 2014, April 2, 2014, April 3, 2014, April 30, 2014, May 13, 2014, May 28, 2014, June 10, 2014, June 13, 2014, June 18, 2014, July 25, 2014, July 30, 2014, October 29, 2014 and December 31, 2014;
- The description of Pacific Ethanol common stock set forth in Current Report on Form 8-K filed on June 8, 2007, including any amendment or report filed for the purpose of updating such description; and
- All documents filed by Pacific Ethanol in accordance with Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act on or after the date of this joint proxy statement/prospectus and before the termination of an offering under this joint proxy statement/prospectus, other than documents or information deemed furnished and not filed in accordance with Securities and Exchange Commission rules.

Aventine is not required to and does not file periodic reports with the Securities and Exchange Commission.

This document is a prospectus of Pacific Ethanol and is a joint proxy statement of Pacific Ethanol and Aventine for the Pacific Ethanol and Aventine special meetings. Neither Pacific Ethanol nor Aventine has authorized anyone to give any information or make any representation about the merger or Pacific Ethanol or Aventine that is different from, or in addition to, that contained in this joint proxy statement/prospectus. Therefore, if anyone does give you information of this sort, you should not rely on it. The information contained in this document speaks only as of the date of this document unless the information specifically indicates that another date applies.

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.
INDEX TO FINANCIAL STATEMENTS

Aventine Renewable Energy Holdings, Inc.
Condensed Consolidated Balance Sheets

	(Unaudited) September 30, 2014	December 31, 2013
	(In thousands)	
Assets		
Current assets:		
Cash and cash equivalents	$ 35,060	$ 40,456
Accounts receivable, net of allowance for doubtful accounts of $219 in 2014 and $299 in 2013	11,865	8,779
Inventory	29,935	32,437
Derivative financial instruments	507	1,183
Other current assets	13,962	5,585
Current assets held for sale	4,927	39,671
Total current assets	96,256	128,111
Property, plant and equipment, net	212,760	209,775
Other long-term assets	4,001	6,324
Total assets	$ 313,017	$ 344,210
Liabilities and Stockholders' Equity		
Current liabilities:		
Current maturities of long-term debt and capital leases	$ 2,157	$ 2,143
Accounts payable	13,594	10,269
Accrued liabilities	2,177	1,995
Other current liabilities	7,648	12,759
Current liabilities held for sale	–	591
Total current liabilities	25,576	27,757
Long-term debt	225,866	273,824
Deferred tax liabilities	2,078	2,078
Other long-term liabilities	7,987	3,904
Total liabilities	261,507	307,563
Stockholders' equity:		
Common stock, par value $0.001 per share (15,000,000 shares authorized; 2,354,673 shares outstanding, net of 1,496 shares held in treasury at both September 30, 2014 and December 31, 2013)	2	2
Additional paid-in capital	258,354	258,318
Accumulated deficit	(201,219)	(220,057)
Accumulated other comprehensive loss	(5,627)	(1,616)
Total stockholders' equity	51,510	36,647
Total liabilities and stockholders' equity	$ 313,017	$ 344,210

See notes to the condensed consolidated financial statements.

Aventine Renewable Energy Holdings, Inc.
Condensed Consolidated Statements of Operations
(Unaudited)

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In thousands)	
Net sales	$ 416,593	$ 364,373
Cost of goods sold	355,541	365,306
Gross profit (loss)	61,052	(933)
Selling, general and administrative expenses	12,191	10,813
Other expenses (income)	2,689	(340)
Operating income (loss)	46,172	(11,406)
Interest expense, net	(11,342)	(8,537)
Gain (loss) on derivative transactions, net	(13,298)	(869)
Other non-operating (expense) income	(2,087)	6,058
Loss before income taxes	19,445	(14,754)
Income tax benefit (expense)	–	–
Net income (loss) – continuing operations	$ 19,445	$ (14,754)
Net loss – discontinued operations	(607)	(11,186)
Net income (loss)	$ 18,838	$ (25,940)

See notes to the condensed consolidated financial statements.

Aventine Renewable Energy Holdings, Inc.
Condensed Consolidated Statements of Comprehensive Income (Loss)
(Unaudited)

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In thousands)	
Net income (loss)	$ 18,838	$ (25,940)
Other comprehensive income, net of tax		
Pension and postretirement liability adjustment	(4,011)	2,776
Total comprehensive income (loss), net of tax	$ 14,827	$ (23,164)

See notes to the condensed consolidated financial statements.

Aventine Renewable Energy Holdings, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(Unaudited)

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In thousands)	
Operating Activities		
Net income (loss)	$ 18,838	$ (25,940)
Adjustments to reconcile net loss to net cash used in operating activities:		
Loss on sale of assets	3,303	–
Loss on write-off of loan acquisition costs	2,087	–
Depreciation and amortization	11,460	14,171
Stock-based compensation expense	36	41
Amortization of additional carrying value of debt	(12,611)	(11,168)
Amortization of deferred financing costs	–	1,538
Accumulated PIK interest	20,032	15,098
Changes in operating assets and liabilities:		
Accounts receivable, net	(3,086)	4,069
Inventory	2,502	1,094
Prepaid expenses and other current assets	(7,701)	(4,907)
Other assets	(439)	(13)
Accounts payable	3,325	1,233
Other liabilities	(4,857)	2,094
Net cash provided by (used in) operating activities	32,889	(2,690)
Investing Activities		
Proceeds from the sale of assets	34,153	–
Additions to property, plant and equipment, net	(16,129)	(4,337)
Net cash provided by (used in) investing activities	18,024	(4,337)
Financing Activities		
Proceeds from the issuance of debt	23,358	35,000
Payment of debt issuance costs	(944)	(671)
Payments on long-term debt	(78,623)	(28)
Payments on capital leases	(100)	(74)
Net cash (used in) provided by financing activities	(56,309)	34,227
Net (decrease) increase in cash and equivalents	(5,396)	27,200
Cash and equivalents at beginning of the period	40,456	16,941
Cash and equivalents at end of the period	$ 35,060	$ 44,141

See notes to the condensed consolidated financial statements.

1. NATURE OF BUSINESS, BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

Aventine Renewable Energy Holdings, Inc., (collectively referred to as Aventine, the Company or we) and its subsidiaries produce and markets ethanol. In addition to producing ethanol, Aventine's facilities also produce several co-products, including corn gluten feed and meal, corn germ, condensed corn distillers solubles, dried distillers grain, wet distillers grain, carbon dioxide, and grain distillers dried yeast.

Basis of Presentation

The accompanying condensed consolidated financial statements include the accounts of Aventine Renewable Energy Holdings, Inc. and its subsidiaries. All significant intercompany transactions have been eliminated in consolidation.

The accompanying consolidated financial statements are prepared in conformity with GAAP. Certain information and footnote disclosures normally included in statements prepared in accordance with GAAP have been omitted pursuant to such rules and regulations, although it is Aventine's belief that the disclosures are adequate to make the information presented not misleading. These financial statements should be read in conjunction with Aventine's audited financial statements and notes.

The ethanol facilities included in continuing operations on the condensed statements of operations are located in Pekin, Illinois and Aurora, Nebraska. The ethanol facilities located in Mount Vernon, Indiana (Mount Vernon) and Canton, Illinois (Canton), are classified as held for sale on the condensed consolidated balance sheets in accordance with Accounting Standard Codification (ASC) Topic 360-10-55 *Disposal of Long-Lived Assets*. As a result, the Company presents the results of operations for Mount Vernon and Canton as discontinued operations on the condensed consolidated statement of operations in accordance with ASC Topic 205-20 *Discontinued Operations*.

The preparation of the condensed consolidated financial statements in conformity with GAAP requires Aventine to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. These estimates are based on Aventine's management team's knowledge of current events and actions that Aventine may take in the future. Estimates, by their nature, are based on judgment and available information. Actual results could differ from those estimates.

The accompanying condensed consolidated financial statements presented herewith reflect all adjustments (consisting of only normal and recurring adjustments unless otherwise disclosed) which, in the opinion of Aventine's management team, are necessary for a fair presentation of the results of operations for the nine months ended September 30, 2014 and 2013. The results of operations for interim periods are not necessarily indicative of results to be expected for an entire year.

Summary of Significant Accounting Policies

Revenue recognition: Revenue is recognized when title transfers to an unaffiliated customer, the sales price is fixed or determinable and collectability is reasonably assured. For the majority of Aventine's sales, transfer of title occurs after the product has been delivered to its designated shipping point. Aventine's ethanol indexed sales are invoiced based upon a provisional price and are adjusted to a final price in the same month using the monthly average of spot market prices. Other sales are invoiced at the final per unit price, which may be the contracted fixed price or a market price at the time of shipment. Sales are made under normal terms and do not require collateral.

The majority of sales are reported gross, inclusive of freight costs being paid by Aventine. Aventine recognizes such freight costs in cost of goods sold in the financial statements. When freight costs are paid by the buyer, Aventine excludes these costs from its financial statements.

Fair value of financial instruments: Financial instruments include cash and cash equivalents, accounts receivable, accounts payable, accrued expenses, long-term debt and derivative instruments. Aventine's management team believes the fair value of each of these instruments approximates their carrying value except for the long-term debt. The fair value of derivative instruments is based on quoted market prices. The fair value of financial instruments classified as current assets and liabilities are estimated to approximate carrying values due to the short-term nature of these instruments. The fair values of the term loans are estimated to approximate the stated principal value.

Cash and cash equivalents: Aventine considers all highly liquid short-term investments purchased with a maturity of three months or less to be cash equivalents. Cash equivalents are carried at cost, which approximates fair value. Aventine's cash balances are maintained in bank deposit accounts which at times may exceed federally insured limits. Aventine has not experienced any losses in such accounts.

Accounts receivable: Accounts receivable are recorded on a gross basis, without discounting, less an allowance for doubtful accounts. Trade receivables arise in the ordinary course of business from sales of finished product to Aventine's customers. Aventine's management team estimates the allowance for doubtful accounts based on existing economic conditions, the financial conditions of the customers, and the amount and age of past-due accounts. Aventine writes off specific accounts receivable when collection efforts are exhausted and the amounts are deemed unrecoverable.

Inventories: Inventories are stated at the lower of cost or market. Cost is determined using a weighted-average method. Inventory costs include expenditures incurred to bring inventory to its existing condition and location. Inventories primarily consist of agricultural and energy-related commodities, including corn, sugar, ethanol, and coal.

Derivative financial instruments and hedging activities**:** Derivatives are accounted for in accordance with ASC 815, *Derivatives and Hedging*, and primarily consist of Aventine's commodity futures contracts. These instruments are not designated as hedges and, therefore, are marked to market each period. Accordingly, any realized or unrealized gain or loss related to the derivative instrument is recorded in the statements of operations as non-operating income. Aventine reports all contracts with the same counter party on a net basis at fair value on Aventine's consolidated balance sheets.

Under ASC 815, companies are required to evaluate contracts to determine whether such contracts are derivatives. Certain contracts that meet the definition of a derivative under ASC 815 may be exempted from the accounting and reporting requirements of ASC 815 as normal purchases or normal sales. Aventine has elected to designate its forward purchases of corn and natural gas and forward sales of ethanol as normal purchases and normal sales under ASC 815. Accordingly, these forward commodity contracts are not reflected in the consolidated financial statements at fair value.

Property, plant and equipment: Newly acquired land, buildings, and equipment are carried at cost less accumulated depreciation. Depreciation is provided over the estimated useful lives of the assets, generally on the straight-line basis for financial reporting purposes (furniture and fixtures, 5-15 years; machinery and equipment, 3-20 years; storage tanks, 15-25 years; and buildings and leasehold improvements, 4-40 years). Maintenance and repairs are charged to expense as incurred.

Impairment of long-lived assets: Long-lived assets are evaluated for impairment under the provisions of ASC 360, *Property, Plant and Equipment.* When facts and circumstances indicate that long-lived assets used in operations may be impaired, and the undiscounted cash flows estimated to be generated from those assets are less than their carrying values, an impairment charge is recorded equal to the excess of the carrying value over fair value. No impairment was recognized at 2013 during the nine months ended September 30, 2014 and 2013 on assets used in continuing operations.

Employment-related benefits**:** Employment-related benefits associated with pensions and postretirement health care are expensed based on actuarial analysis. The recognition of expense is affected by estimates made by Aventine's management team, such as discount rates used to value certain liabilities, investment rates of return on plan assets, increases in future wage amounts, and future health care costs.

Discount rates are determined based on a spot yield curve that includes bonds with maturities that match expected benefit payments under the plan.

Employee stock plans**:** Aventine accounts for its employee stock compensation in accordance with ASC 718, *Compensation – Stock Compensation.* Equity awards are expensed based on their grant date fair value. As required under the guidance, Aventine's management team estimates the number of shares that are expected to vest and expensed the value of those shares from the date of grant through the end of the performance cycle period using the grant-date fair value.

Income taxes: Deferred tax liabilities and assets are recorded for the expected future tax consequences of events that have been recognized in the financial statements or tax returns. Deferred income taxes also include net operating loss and capital loss carryforwards. Aventine establishes valuation allowances to reduce deferred tax assets to amounts it believes are realizable. These valuation allowances and contingency reserves are adjusted based upon changing facts and circumstances. Aventine has fully reserved for its deferred tax assets to the amount management believes is more likely than not to be realized. As such, Aventine has not recorded any tax expense or benefit for the nine month period ending September 30, 2014 and 2013.

On February 27, 2014, the IRS notified Aventine that its 2012 consolidated federal tax return would be subject to IRS audit. The audit process is on-going, but based on the size of Aventine's 2012 loss, its loss carry-forwards, valuation allowance and reserves, Aventine does not expect the outcome of the audit to generate additional cash tax obligations.

Accumulated other comprehensive loss: Comprehensive loss is the total of net loss and other comprehensive income (loss). Other comprehensive income (loss) is comprised of unrecognized pension costs.

Discontinued operations: Aventine classified the results of operations of Mount Vernon and Canton as discontinued operations in the fourth quarter of 2013. As a result, the operating results from these locations have been removed from continuing operations for all periods presented.

Major customers: Aventine sells ethanol to most of the major integrated oil companies, as well as to a significant number of large, independent refiners and petroleum wholesalers. Trade receivables result primarily from ethanol marketing operations. As a general policy, collateral is not required for receivables, but customers' financial condition and creditworthiness are evaluated regularly.

Subsequent events: Aventine has evaluated subsequent events through February 3, 2015, the date Aventine's condensed consolidated financial statements were made available. All items requiring disclosure or recognition have been included.

2. DISCONTINUED OPERATIONS

As part of a strategic repositioning and refocusing on Aventine's core competitive advantages, Aventine made the decision to sell its Mount Vernon and Canton facilities in 2013. Proceeds generated by the sale of these idled assets will be used to reduce Aventine's debt and other long-term obligations.

On March 21, 2014, Aventine sold its Mount Vernon facility to an independent third party. Under the terms of the agreement, Aventine received approximately $34 million of cash consideration and a full release of all of its contractual obligations related to the site lease and utility contracts. After transaction fees, closing adjustments and working capital reserves, net sale proceeds of $24.3 million were used to repay Aventine's senior secured term loan debt.

The sale process for Canton continued into 2014. Aventine is in the process of assessing and analyzing all of its disposal options, and expects a final determination for Canton to occur in 2015. At September 30, 2014, the assets related to the Canton facility assets have been classified as current assets held for sale on the consolidated condensed financial statements.

	2014			2013		
	Canton	Mt. Vernon	Total	Canton	Mt. Vernon	Total
Revenue	$ –	$ –	$ –	$ –	$ 489	$ 489
Net Loss	$ (572)	$ (35)	$ (607)	$ (449)	$ (10,737)	$ (11,186)

3. INVENTORY

Inventories primarily consist of agricultural and energy-related commodities, including corn, ethanol, and coal, and were as follows at September 30, 2014 and December 31, 2013:

	September 30, 2014	December 31, 2013
	(In thousands)	
Finished products	$ 15,609	$ 16,663
Work-in-process	5,947	1,812
Raw materials	8,379	13,962
Total	$ 29,935	$ 32,437

4. FAIR VALUE MEASUREMENTS

Aventine categorizes its investments and certain other assets and liabilities recorded at fair value into a three-level fair value hierarchy as follows:

- Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2: Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability; and
- Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

Derivative financial instruments**:** Exchange-traded futures and options and over-the-counter swaps and option contracts are reported at fair value utilizing Level 1 inputs.

The following tables summarize the valuation of Aventine's financial instruments that are measured at fair value on a recurring basis as of September 31, 2014 and December 31, 2013:

	September 30, 2014				
	Fair Value	Level 1	Level 2	Level 3	Benefit Plan Percentage Allocation
Assets:					
Derivative financial instruments	$ 18,379	18,379	–	–	
Liabilities:					
Derivative financial instruments	$ (17,872)	(17,872)	–	–	

	September 30, 2013				
	Fair Value	Level 1	Level 2	Level 3	Benefit Plan Percentage Allocation
Assets:					
Derivative financial instruments	$ 412	412	–	–	
Liabilities:					
Derivative financial instruments	$ (1,441)	(1,441)	–	–	

5. DERIVATIVE INSTRUMENTS AND HEDGING

Aventine's operating activities expose it to a variety of market risks, including the effects of changes in commodity prices. Commodity price risk is monitored and managed by Aventine as part of its overall risk management program that seeks ways to reduce the potentially adverse effects market volatility may have on its operating results. Aventine generally follows a policy of entering into forward contracts for the physical purchase of corn and the physical sale of ethanol and co-products in order to fix the price of these commodities and lock in operating margins. These forward contracts have been designated as normal purchases and normal sales. Any unrealized gains or losses on these contracts are not included in Aventine's consolidated financial statements. When forward contracts are not available at competitive prices, Aventine may enter into over-the-counter or exchange-traded futures, swaps and options contracts to reduce its exposure to commodity market volatility. The fair value of these commodity derivative contracts is recorded on Aventine's consolidated balance sheets. Changes in the fair value of commodity derivatives are recorded in non-operating income as gain (loss) on derivative transactions.

The following table provides information about the fair values of Aventine's derivative financial instruments and the line items on the consolidated balance sheets in which the fair values are reflected:

Type	Balance Sheet Classification	September 30, 2014	December 31, 2013
		(In thousands)	
Corn future positions - gain	Derivative financial instruments	$ 16,821	$ 350
Corn future positions – loss	Derivative financial instruments	(17,872)	(75)
Ethanol future positions - gain	Derivative financial instruments	1,558	62
Ethanol future positions - loss	Derivative financial instruments	-	(1,366)
Cash held by broker	Derivative financial instruments	-	2,212
		$ 507	$ 1,183

The realized and unrealized effect on Aventine's condensed consolidated statement of operations for derivatives not designated as hedging instruments for the nine months ended September 30, 2014 and 2013 were as follows:

		Realized Losses	
		Nine Months ended September 30,	
Type	Statement of Operations Classification	2014	2013
		(In thousands)	
Commodity contracts	Gain (loss) on derivative transactions	$ (14,834)	$ (1,291)

		Unrealized Gain/Loss	
		Nine Months ended September 30,	
Type	Statement of Operations Classification	2014	2013
		(In thousands)	
Commodity contracts	Gain (loss) on derivative transactions	$ 1,536	$ 422

6. DEBT AND PLEDGED ASSETS

The following table summarizes Aventine's outstanding long-term debt:

	September 30, 2014	December 31, 2013
	(In thousands)	
Senior secured term loans	$ 202,445	$ 272,132
Loan and security agreement	23,358	–
Other	2,220	3,835
Total debt	$ 228,023	$ 275,967
Less: current maturities of long-term debt	(2,157)	(2,143)
Total debt, net	$ 225,866	$ 273,824

Aventine's long-term debt matures over the next five years as follows: $2,157 in 2015, $63 in 2016, $158,478 in 2017, $0 in 2018, and $0 in 2019 and thereafter. The actual debt pay-off amount is $67,325 lower than the carrying value of Aventine's debt at September 30, 2014 due to the troubled debt restructuring transaction that occurred in 2012, which required the Company to account for the impact of its debt forgiveness prospectively instead of taking an immediate write-down.

Senior Secured Term Loan Credit Agreement

On December 22, 2010, Aventine entered into a Term Loan Agreement with its lenders to provide Aventine with a $200 million term loan facility (the Term Loan Facility). Aventine provided a first lien priority security interest on substantially all of Aventine's fixed assets as collateral under the Term Loan Facility.

On September 24, 2012, Aventine restructured its Term Loan Facility. As a result of the restructuring, Aventine converted $132.3 million of outstanding debt into 2,186,298 shares of common stock of Aventine. After the exchange, the remaining $100 million of debt was converted into a Term Loan B Facility (Term Loan B) and continued to be secured with substantially all Aventine's fixed assets. Interest on Term Loan B may be paid in cash at a 10.5% rate or paid-in-kind at a 15% interest rate. If Aventine elects paid-in-kind interest, the interest is capitalized at the end of each quarter. The maturity date for Term Loan B is September 24, 2017. For the nine months ended September 30, 2014 and 2013, Aventine elected paid-in-kind interest on the Term Loan B debt.

The September 24, 2012 debt restructuring qualified as a troubled debt restructuring under ASC 470-60, Debt – Troubled Debt Restructurings by Debtors. Accordingly in 2012, Aventine reduced its aggregate debt balance of $232.3 million under the Term Loan Facility million by $26.8 million to account for the fair value of the equity interest granted in exchange for $132.3 million of debt forgiveness. No gain or loss on debt forgiveness was recognized as the future maximum cash outflows on the restructured debt exceeded the amount of the Term Loan Facility. The additional carrying value of the Term Loan Facility is $67,325 and $79,937 at September 30, 2014 and December 31, 2013, respectively

In conjunction with the debt restructuring on September 24, 2012, $30 million of new term loan debt was issued to Aventine (Term Loan A). Aventine provided a first lien priority security interest in substantially all of Aventine's fixed assets as collateral under the Term Loan A. Aventine also financed its Term Loan A closing fees of $0.9 million. The total Term Loan A debt of $30.9 million was due on September 24, 2016. Interest on Term Loan A accrued at a 12% cash rate on a quarterly basis until it was amended on June 18, 2013.

On June 18, 2013, $35 million of Term Loan A-1 was issued to Aventine (Term Loan A-1) as an amendment to the existing term loan agreement. Interest on Term Loan A-1 accrued at 25% on a quarterly basis and is payable in kind. Term Loan A-1 and was originally due on September 24, 2016. As part of the June 18, 2013 transaction, the interest rate on Term Loan A was increased by 3% from 12% to 15% (12% cash and 3% paid in kind). The additional paid-in-kind interest of 3% is capitalized at the end of each quarter.

The Term Loan A and Term Loan A-1 debt was fully repaid on September 20, 2014.

Revolving Credit Facility

On July 20, 2011, Aventine entered into a $50.0 million revolving credit facility commitment with a bank. On September 24, 2012, the $50 million revolving credit facility was lowered to a $30 million revolving facility with the same bank. The revolving credit facility is secured by Aventine's accounts receivable and inventory, and a second priority lien interest on substantially all of Aventine's assets. Loans under the revolving facility agreement mature on July 20, 2015. Borrowings bore interest at (i) the London Interbank Offered Rate (LIBOR) plus 4.0% or (ii) an alternate base rate (prime rate) plus 2.5% based on Aventine's election. The revolving facility agreement contained customary affirmative and negative covenants concerning the conduct of Aventine's business operations.

Loan and Security Agreement

On September 17, 2014, Aventine cancelled its revolving credit facility and entered into a new $40 million loan and security agreement ("LSA") with two co-lenders. The LSA is secured by Aventine's accounts receivable and inventory, and a second priority lien interest on substantially all of Aventine's assets. Advances under LSA are charged interest at a rate of LIBOR plus 6.0%. The LSA contains customary affirmative and negative covenants including but not limited to, meeting certain financial covenants. Aventine's used the initial advances plus its existing cash to repay the remaining balances of the Term Loan A and Term Loan A-1 in full.

At September 30, 2014, the Company had $23,400,000 of loan advances and $6,055,000 in letters of credit outstanding under the LSA.

7. WARRANTS

In connection with the restructuring transaction occurring in September 2012, the original equity holders of Aventine received warrants to purchase up to an aggregate amount of 787,855 shares of Aventine's common stock at an exercise price of $61.75 per share (2012 Warrants). The 2012 warrants expire on the fifth anniversary of the issuance date and had no fair value as of the grant date. As of September 30, 2014, none of the warrants issued in connection with the restructuring transaction have been exercised.

In connection with the issuance of the Term Loan A-1 debt on June 18, 2013, debt holders received warrants allowing for the purchase of up to 11.8 million shares of Aventine's common stock at an exercise price of $.01 per share (2013 Warrants). The 2013 warrants can only be exercised upon a change in control of Aventine, which Aventine's management team deemed unlikely at the grant date. No fair value was assigned to the warrants. These warrants expire on the third anniversary of the issuance date. As of September 30, 2014, none of the warrants issued have been exercised.

Subsequent to September 30, 2014, the warrants became exercisable and as a result the warrant holders exercised their rights and an additional 11,849,567 in common shares were issued.

8. INTEREST EXPENSE

The following table summarizes interest expense:

	Nine Months Ended September 30, 2014	Nine Months Ended September 30, 2013
	(In thousands)	
Term Loan Facility and revolving credit facilities	$ 23,746	$ 17,946
2012 Debt forgiveness recognized	(12,608)	(11,178)
Debt issuance costs	1,619	1,538
Other, net	191	242
Capitalized interest	(1,606)	(11)
Interest expense, net	$ 11,342	$ 8,537

9. COMMITMENTS AND CONTINGENCIES

Operating Leases

Aventine leases certain assets such as rail cars, barges, buildings, and equipment from unaffiliated parties under noncancelable operating leases. Terms of the leases, including renewals, vary by lease. Rental expense for operating leases for the nine months ended September 30, 2014 and 2013, was $7.6 million and $4.5 million, respectively.

At September 30, 2014, minimum rental commitments under noncancelable operating lease terms in excess of one year are as follows:

12 months Ending September 31:	
2015	$ 9,413
2016	7,607
2017	6,513
2018	5,545
2019	3,795
Thereafter	1,050
Total minimum lease payments	$ 33,923

Commodity Commitments

Purchase commitments: At September 30, 2014, Aventine had contracted for future fixed price corn deliveries valued at $6.0 million.

Sales commitments: At September 30, 2014, Aventine had sold fixed price ethanol contracts valued at $49.2 million.

Environmental Remediation and Contingencies

Aventine is subject to federal, state and local environmental laws and regulations. These laws and regulations, among other things, require Aventine to maintain or make operational changes that limit adverse impacts to the environment. Violations of regulations can result in fines. In addition, environmental laws and regulations can change over time, and any such changes may require additional compliance efforts.

Federal and state environmental authorities have investigated alleged excess volatile organic compounds emissions and other air emissions from many U.S. ethanol plants, including Aventine's facilities located in Illinois. The investigation relating to the Illinois wet mill facility is still pending, and Aventine could be required to install additional air pollution control equipment or take other measures to control air pollutant emissions at that facility. In addition, if the authorities determine that Aventine's emissions are in violation of applicable law, Aventine would likely be required to pay fines. Aventine has installed natural gas fired boilers to comply with the 2016 air emission standards.

Aventine has made, and will continue to make capital expenditures on an ongoing basis to comply with the EPA National Emissions Standard for Hazardous Air Pollutants ("NESHAP"). This NESHAP was originally issued but subsequently vacated in 2007. The vacated version of the rule required Aventine to implement maximum achievable control technology at its Illinois wet mill facility to reduce hazardous air pollutant emissions from its boilers. The EPA issued a new Boiler MACT rule on December 22, 2012. The rule became final on January 31, 2013. Aventine will have three years from the date of the final rule to meet the new emission limits and has installed natural gas fired boilers to comply with the new 2016 emission standards.

Litigation Matters

Aventine is subject to various claims and contingencies in the ordinary course of its business, including those related to litigation, business transactions, employee-related matters, and others. When Aventine is aware of a claim or potential claim, it assesses the likelihood of any loss or exposure. If it is probable that a loss will result and the amount of the loss can be reasonably estimated, Aventine will record a liability for the loss. If the loss is not probable or the amount of the loss cannot be reasonably estimated, Aventine discloses the claim if the likelihood of a potential loss is reasonably possible and the amount involved could be material.

On May 31, 2012, Aventine served Aurora Cooperative Elevator Company (Aurora) with a petition for declaratory relief of Aurora's claims that Aventine failed to complete construction and operate the Aventine Renewable Energy – Aurora West, LLC facility by a contractual deadline. Aventine countered that the contract only required Aventine to diligently pursue construction and that construction was complete, and that there was no contractual production requirement. The parties are engaged in protracted discovery and motion practice in this matter at this time.

On September 20, 2012, Aurora brought a claim to the National Grain and Feed Association in the United States District Court, Nebraska to sue Aventine for damages related to grain Aurora had acquired on Aventine's behalf. Aventine denied that the grain belonged to Aventine and counterclaimed for the amounts Coop owed to Aventine and had set-off against the disputed debt. The dispute was referred to arbitration, in which Aventine prevailed. Aurora has appealed the ruling.

10. RETIREMENT AND PENSION PLANS

Aventine previously disclosed in its financial statements for the year ended December 31, 2013, that it did not expect to contribute to its pension plan in 2014. As of September 30, 2014, no contributions have been made.

11. LONG TERM INCENTIVE COMPENSATION AND SUBSEQUENT EVENT

Aventine's restricted stock unit agreements with certain of its directors and officers (the Participants) are dated and effective as of January 1, 2014. Under the agreements, the Participants were granted an aggregate of 1,167,000 restricted stock unit awards (RSUs). The RSUs granted to director Participants vest in one-third increments beginning on the date of the agreement through October 1, 2015 and the RSUs granted to officer Participants vest in one-third increments on each of the first three anniversaries of the grant date. Upon a change of control, all unvested RSUs of Participants become fully vested and settle based on the fair market value of the common shares of Aventine at that time. The RSUs vest only if the respective Participant is providing services to Aventine at the time of the change of control or for director Participants, if a change of control occurs within one-year following the director Participant's involuntary removal from the board of directors of Aventine (other than a removal for cause). Cash settlement of the RSUs is made upon a change of control. If the Participants voluntary cease providing services to Aventine, all unvested RSUs automatically terminate. As of September 30, 2014, one-third of the RSUs granted to each of the director Participants had vested. During the nine months ended September 30, 2014, the Company did not recognize expense associated with these RSUs as none had vested and vesting was not probable at that time.

On November 25, 2014, a change of control occurred under each of the restricted stock unit agreements resulting in an expense and aggregate payment of $10.5 million to the Participants.

12. SUBSEQUENT EVENT

On December 30, 2014, Aventine entered into an agreement and plan of merger that contemplates a merger with another ethanol producer, Pacific Ethanol, Inc. Upon approval and closing of the merger, AVR Merger Sub, Inc., a wholly owned subsidiary of Pacific Ethanol, will merge with and into Aventine. Aventine will be the surviving entity in the merger as a wholly-owned subsidiary of Pacific Ethanol.

Independent Auditor's Report

To the Board of Directors and Stockholders
Aventine Renewable Energy Holdings, Inc.
Pekin, IL

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of Aventine Renewable Energy Holdings, Inc. and its subsidiaries, which comprise the consolidated balance sheet as of December 31, 2013, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity and cash flows for the year then ended and the related notes to the consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated 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 consolidated financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Aventine Renewable Energy Holdings, Inc. as of December 31, 2013, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

/s/ McGladrey LLP

Des Moines, Iowa
March 31, 2014

Aventine Renewable Energy Holdings, Inc.

Consolidated Balance Sheet
December 31, 2013 (In thousands)

Assets		
Current Assets		
Cash and cash equivalents	$	40,456
Accounts receivable, net of allowance for doubtful accounts of $299		8,779
Inventories		32,437
Derivative financial instruments		1,183
Prepaid expenses and other current assets		5,585
Current assets held for sale		39,671
Total current assets		128,111
Property, Plant and Equipment, net		209,775
Other Long Term Assets		6,324
Total assets	$	344,210
Liabilities and Stockholders' Equity		
Current Liabilities		
Current maturities of long-term debt (stated principal amount of $2,043)	$	2,043
Current obligations under capital leases		100
Accounts payable		10,269
Accrued liabilities		1,995
Other current liabilities		12,759
Current liabilities held for sale		591
Total current liabilities		27,757
Long-term debt (stated principal amount of $193,887)		273,824
Deferred tax liabilities		2,078
Other long-term liabilities		3,904
Total liabilities		307,563
Stockholders' Equity		
Common stock, par value $0.001 per share; 15,000,000 shares authorized; 2,353,176 shares outstanding, net of 1,497 shares held in treasury		2
Additional paid-in capital		258,318
Retained deficit		(220,057)
Accumulated other comprehensive loss, net		(1,616)
Total stockholders' equity		36,647
Total liabilities and stockholders' equity	$	344,210

See Notes to Consolidated Financial Statements.

Aventine Renewable Energy Holdings, Inc.
Consolidated Statement of Operations
Year Ended December 31, 2013 (In thousands)

Net sales	$	480,266
Cost of goods sold		469,231
Gross profit		11,035
Selling, general and administrative expenses		13,590
Other expense		807
		14,397
Operating loss		(3,362)
Nonoperating income (expense):		
Interest expense, net		(12,942)
Gain (loss) on derivative transactions, net		(5,454)
Other nonoperating income		6,296
		(12,100)
Loss from continuing operations before income taxes		(15,462)
Income tax (expense)		–
Loss from continuing operations		(15,462)
Discontinued operations:		
Loss from operations of discontinued components		(58,843)
Net loss	$	(74,305)

See Notes to Consolidated Financial Statements.

Aventine Renewable Energy Holdings, Inc.
Consolidated Statement of Comprehensive Loss
Year Ended December 31, 2013 (In thousands)

Net loss	$	(74,305)
Other comprehensive gain		
Pension and postretirement liability adjustment		3,247
Total comprehensive loss	$	(71,058)

See Notes to Consolidated Financial Statements.

Aventine Renewable Energy Holdings, Inc.
Consolidated Statement of Changes in Stockholders' Equity
Year Ended December 31, 2013
(In thousands)

	Number of Shares						
	Treasury Shares	Common Shares	Additional Common Stock	Paid-In Capital	Retained Deficit	Accumulated Other Comprehensive (Loss)	Total Stockholders' Equity
Balance, December 31, 2012	1,497	2,354,673	$ 2	$ 258,223	$ (145,752)	$ (4,863)	$ 107,610
Stock-based compensation	–	–	–	95	–	–	95
Net loss	–	–	–	–	(74,305)	–	(74,305)
Pension and postretirement liability adjustment	–	–	–	–	–	3,247	3,247
Balance, December 31, 2013	**1,497**	**2,354,673**	**$ 2**	**$ 258,318**	**$ (220,057)**	**$ (1,616)**	**$ 36,647**

See Notes to Consolidated Financial Statements.

Aventine Renewable Energy
Holdings, Inc.

Consolidated Statement of Cash Flows
Year Ended December 31, 2013 (In thousands)

Cash Flows from Operating Activities		
Net loss	$	(74,305)
Adjustments to reconcile net loss to net cash (used in) operating activities:		
Depreciation and amortization		18,717
Amortization of additional carrying value of debt		(15,289)
Amortization of deferred financing costs		2,089
Stock-based compensation expense		95
Write down to fair value of held for sale assets		44,184
Accumulated PIK Interest		22,205
Changes in working capital components:		
Accounts receivable, net		197
Inventories		(4,504)
Derivative financial instruments		(1,015)
Prepaid expenses and other current assets		(917)
Other assets		(653)
Accounts payable		2,531
Other liabilities		3,307
Net cash (used in) operating activities		(3,358)
Cash Flows (Used In) Investing Activities, additions to property, plant and equipment, net		(7,513)
Cash Flows from Financing Activities		
Proceeds from issuance of long-term debt		35,000
Payments on long-term debt		(540)
Payments on other long-term debt and capital lease obligations		(74)
Net cash provided by financing activities		34,386
Net increase in cash and cash equivalents		23,515
Cash and Cash Equivalents		
Beginning of year		16,941
End of year	$	40,456

(Continued)

Aventine Renewable Energy
Holdings, Inc.

Consolidated Statement of Cash Flows (Continued)
Year Ended December 31, 2013

Supplemental Disclosure of Cash Flow Information	
Interest paid (including capitalized interest of $0.2)	$ 3,485
Income taxes paid	$ –
Supplemental Schedule of Noncash Investing and Financing Activities	
Equipment purchased through issuance of long-term debt	$ 4,113

See Notes to Consolidated Financial Statements.

Notes to Consolidated Financial Statements (in 000's)

Note 1. Nature of Business and Significant Accounting Policies

Nature of business: Aventine Renewable Energy Holdings, Inc. and its wholly owned subsidiaries (collectively referred to as Aventine, the Company, we, or our) owns six ethanol plants capable of producing approximately 460 million gallons per year. In 2013, the Company produced approximately 136 million gallons of ethanol from two of their operational plants. In addition to producing ethanol, the Company's facilities also produces and sells several co-products, including corn gluten feed and meal, corn germ, condensed corn distillers solubles, distillers grains, carbon dioxide, and yeast.

Basis of presentation: The accompanying consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP). All material intercompany transactions and balances have been eliminated.

The ethanol facilities included in continuing operations on the statements of operations are located in Pekin, Illinois and Aurora, Nebraska with a combined production capacity of 312 million gallons. The ethanol facilities located in Mount Vernon, Indiana (Mount Vernon) and Canton, Illinois (Canton), respectively, are classified as held for sale on the consolidated balance sheet at December 31, 2013 in accordance with Accounting Standard Codification (ASC) Topic 360-10-55 *Disposal of Long-Lived Assets*. As a result, the Company presents the results of operations for Mount Vernon and Canton as discontinued operations on the consolidated statement of operations in accordance with ASC Topic 205-20 *Discontinued Operations.*

Use of estimates: The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. These estimates are based on management's knowledge of current events and actions that the Company may take in the future. Estimates, by their nature, are based on judgment and available information. Therefore, actual results could differ from those estimates and could have a material impact on the consolidated financial statements.

Revenue recognition: Revenue is recognized when title transfers to an unaffiliated customer, the sales price is fixed or determinable and collectability is reasonably assured. For the majority of our sales, transfer of title occurs after the product has been delivered to its designated shipping point. The Company's ethanol indexed sales are invoiced based upon a provisional price and are adjusted to a final price in the same month using the monthly average of spot market prices. Other sales are invoiced at the final per unit price, which may be the contracted fixed price or a market price at the time of shipment. Sales are made under normal terms and do not require collateral.

The majority of sales are reported gross, inclusive of freight costs being paid by the Company. The Company recognizes such freight costs in cost of goods sold in the financial statements. When freight costs are paid by the buyer, the Company excludes these costs from its financial statements.

Fair value of financial instruments: Financial instruments include cash and cash equivalents, accounts receivable, accounts payable, accrued expenses, long-term debt and derivative instruments. Management believes the fair value of each of these instruments approximates their carrying value. The fair value of derivative instruments is based on quoted market prices. The fair value of financial instruments classified as current assets and liabilities are estimated to approximate carrying values due to the short-term nature of these instruments. The fair values of the term loans are estimated to approximate the stated principal value.

Notes to Consolidated Financial Statements (in 000's)

Note 1. Nature of Business and Significant Accounting Policies (Continued)

Cash and cash equivalents: The Company considers all highly liquid short-term investments purchased with a maturity of three months or less to be cash equivalents. Cash equivalents are carried at cost, which approximates fair value. The Company's cash balances are maintained in bank deposit accounts which at times may exceed federally insured limits. The Company has not experienced any losses in such accounts.

Accounts receivable: Accounts receivable are recorded on a gross basis, without discounting, less an allowance for doubtful accounts. Trade receivables arise in the ordinary course of business from sales of finished product to the Company's customers. Management estimates the allowance for doubtful accounts based on existing economic conditions, the financial conditions of the customers, and the amount and age of past-due accounts. The Company writes off specific accounts receivable when collection efforts are exhausted and the amounts are deemed unrecoverable.

Inventories: Inventories are stated at the lower of cost or market. Cost is determined using a weighted-average method. Inventory costs include expenditures incurred to bring inventory to its existing condition and location. Inventories primarily consist of agricultural and energy-related commodities, including corn, sugar, ethanol, and coal, and were as follows at December 31, 2013:

Raw materials	$	13,962
Work in process		1,812
Finished products		16,663
	$	32,437

Derivative financial instruments and hedging activities: Derivatives are accounted for in accordance with ASC 815, *Derivatives and Hedging,* and primarily consist of the Company's commodity futures contracts. These derivative instruments are not designated as hedges and, therefore, are marked to market each period. Accordingly, any realized or unrealized gain or loss related to the derivative instruments is recorded in the statements of operations as nonoperating income. The Company reports all contracts with the same counter party on a net basis at fair value on the Company's consolidated balance sheets.

Under ASC 815, companies are required to evaluate contracts to determine whether such contracts are derivatives. Certain contracts that meet the definition of a derivative under ASC 815 may be exempted from the accounting and reporting requirements of ASC 815 as normal purchases or normal sales. The Company has elected to designate its forward purchases of corn and natural gas and forward sales of ethanol as normal purchases and normal sales under ASC 815. Accordingly, these forward commodity contracts are not reflected in the consolidated financial statements at fair value.

Property, plant and equipment: Newly acquired land, buildings, and equipment are carried at cost less accumulated depreciation. Depreciation is provided over the estimated useful lives of the assets, generally on the straight-line basis for financial reporting purposes (furniture and fixtures, 5-15 years; machinery and equipment, 3-20 years; storage tanks, 15-25 years; and buildings and leasehold improvements, 4-40 years). Maintenance and repairs are charged to expense as incurred.

Note 1. Nature of Business and Significant Accounting Policies (Continued)

Impairment of long-lived assets: Long-lived assets are evaluated for impairment under the provisions of ASC 360, *Property, Plant and Equipment.* When facts and circumstances indicate that long-lived assets used in operations may be impaired, and the undiscounted cash flows estimated to be generated from those assets are less than their carrying values, an impairment charge is recorded equal to the excess of the carrying value over fair value. No impairment was recognized at December 31, 2013 on assets used in continuing operations.

Employment-related benefits: Employment-related benefits associated with pensions and postretirement health care are expensed based on actuarial analysis. The recognition of expense is affected by estimates made by management, such as discount rates used to value certain liabilities, investment rates of return on plan assets, increases in future wage amounts, and future health care costs.

Discount rates are determined based on a spot yield curve that includes bonds with maturities that match expected benefit payments under the plan.

Employee stock plans: The Company accounts for its employee stock compensation in accordance with ASC 718, *Compensation – Stock Compensation.* Equity awards are expensed based on their grant date fair value. As required under the guidance, management estimates the number of shares that are expected to vest and expensed the value of those shares from the date of grant through the end of the performance cycle period using the grant-date fair value. During the year ended December 31, 2013 there were no new equity awards issued to employees. All unvested equity awards issued prior to December 31, 2012 were forfeited during the year ended December 31, 2013 except for an immaterial amount of stock options and hybrid equity units.

Income taxes: Deferred tax liabilities and assets are recorded for the expected future tax consequences of events that have been recognized in the financial statements or tax returns. Deferred income taxes also include net operating loss and capital loss carryforwards. The Company establishes valuation allowances to reduce deferred tax assets to amounts it believes are realizable. These valuation allowances and contingency reserves are adjusted based upon changing facts and circumstances.

The Company has evaluated its income tax positions in accordance with the guidance related to A*ccounting for Uncertainty in Income Taxes* and determined no income tax uncertainties exist. The Company files income tax returns in the U.S. federal jurisdiction and various state jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal, or state and local income tax examinations by tax authorities for years before 2010. On February 27, 2014, the IRS notified the Company that its 2012 consolidated federal tax return would be subject to IRS audit. The audit process is in its preliminary stages. Based on the size of the Company's 2012 loss, its loss carry-forwards, valuation allowance and reserves, the Company does not expect the outcome of the audit to generate additional tax liability or penalty.

Accumulated other comprehensive loss: Comprehensive loss is the total of net loss and other comprehensive income (loss). Other comprehensive income (loss) is comprised of unrecognized pension costs.

Note 1. Nature of Business and Significant Accounting Policies (Continued)

Major customers: The Company sells ethanol to most of the major integrated oil companies, as well as to a significant number of large, independent refiners and petroleum wholesalers. Trade receivables result primarily from ethanol marketing operations. As a general policy, collateral is not required for receivables, but customers' financial condition and creditworthiness are evaluated regularly.

During the year ended December 31, 2013, Customer A and Customer B accounted for 18.6% and 10.0%, respectively, of the Company's consolidated net sales and had receivable balances consisting of 5.7% and 1.3%, respectively, of total accounts receivable at December 31, 2013.

Labor concentration: At December 31, 2013 approximately 60% of the Company's full-time employees located in Illinois are covered by a collective bargaining labor agreement that runs through October 2015.

Subsequent events: Subsequent events have been evaluated for potential recognition and disclosure through March 31, 2014, the date the financial statements were available for issuance. Through that date there were no events requiring recognition or disclosure other than the sale of the Mount Vernon facilities discussed in Note 2.

Note 2. Discontinued Operations and Subsequent Event

As part of a strategic repositioning and refocusing on the Company's core competitive advantages, Aventine made the decision to sell its Mount Vernon and Canton facilities in 2013. Proceeds generated by the sale of these idled assets will be used to reduce the Company's debt and other long-term obligations.

Subsequent to the year ended December 31, 2013, the Company sold its Mount Vernon facility to an independent third party. Under the terms of the agreement, the Company received approximately $34 million of cash consideration and a full release of all of its contractual obligations related to the site lease and utility contracts. The transaction closed on March 21, 2014. After applying transaction fees, closing adjustments and a $10 million working capital reserve, net sale proceeds of $24.3 million were used to repay the Company's senior secured term loan debt.

The sale process for Canton continued through December 31, 2013. The Company is in the process of assessing and analyzing all of its disposal options, and expects a final determination for Canton to occur in 2014. At December 31, 2013, the Company determined the fair value of Canton to be approximately $5 million.

The amount of revenue and pretax loss for each disposal group included in discontinued operations is as follows for the year ended December 31, 2013:

	Mount Vernon	Canton	Total
Revenue	$ 556	$ –	$ 556
Pre-tax loss	(14,110)	(549)	(14,659)
Write down to fair value, less costs to sell	(22,849)	(21,335)	(44,184)

Note 2. Discontinued Operations and Subsequent Event (Continued)

The major classes of assets and liabilities classified as held for sale at December 31, 2013 are as follows:

	Mount Vernon	Canton	Total
Current assets held for sale:			
Inventory	$ 139	$ 42	$ 181
Prepaid expenses and other current assets	516	–	516
Property, plant and equipment, net	28,828	4,927	33,755
Other long term assets	5,219	–	5,219
Total current assets held for sale	$ 34,702	$ 4,969	$ 39,671
Current liabilities held for sale:			
Other current liabilities	$ –	$ 591	$ 591

Included in the loss from operations of discontinued components on the statement of operations for the year ended December 31, 2013 is a loss of $44,184 recognized to reduce the carrying value of the assets being sold to fair value and an additional write-down for the amount of remaining selling costs to be incurred subsequent to December 31, 2013.

Note 3. Fair Value Measurements

Fair value is 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 determining fair value, the Company uses various methods including market, income and cost approaches. Based on these approaches, the Company often utilizes certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and/or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market-corroborated, or generally unobservable inputs. The Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. Based on the observability of the inputs used in the valuation techniques, the Company is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.

Level 2: Quoted prices in markets that are not active, or inputs that are observable, either directly or indirectly, for substantially the full term of the asset or liability.

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

A description of the valuation methodologies used for instruments measured at fair value, including the general classification of such instruments pursuant to the valuation hierarchy, is set for below. These valuation methodologies were applied to all of the Company's financial assets and financial liabilities carried at fair value.

Note 3. Fair Value Measurements (Continued)

Derivative financial instruments: Exchange-traded futures and options and over-the-counter swaps and option contracts are reported at fair value utilizing Level 1 inputs. For these contracts, fair value measurements consider observable exchange-traded pricing data from the Chicago Board of Trade and the Chicago and New York Mercantile Exchanges. The fair value measurements also consider observable data that may include dealer quotes and live trading levels from the over-the-counter markets.

Pooled separate accounts: Pooled separate accounts (other than the Real estate account) invest primarily in domestic and international stocks, commercial paper, or single mutual funds. The Real estate account invests primarily in commercial real estate and includes mortgage loans which are backed by the associated properties. The net asset value is used as a practical expedient to determine fair value for these accounts. Each pooled separate account provides for redemptions by the Plan at reported net asset values per share, with little to no advance notice requirement, therefore these funds are classified within Level 2 of the valuation hierarchy.

The following tables summarize the valuation of the Company's financial instruments that are measured at fair value on a recurring basis as of December 31, 2013:

	Fair Value	Level 1	Level 2	Level 3	Benefit Plan Percentage Allocation
Assets:					
Derivative financial instruments	$ 412	$ 412	$ –	$ –	
Defined benefit plan assets (pooled separate accounts):					
Large U.S. Equity	3,820	–	3,820	–	29%
Small/Mid U.S. Equity	942	–	942	–	7%
International Equity	1,594	–	1,594	–	12%
Real estate	195	–	195	–	2%
Fixed Income	6,516	–	6,516	–	50%
	$ 13,479	$ 412	$ 13,067	$ –	
Liabilities:					
Derivative financial instruments	$ (1,441)	$ (1,441)	$ –	$ –	

Note 3. Fair Value Measurements (Continued)

The following table sets forth additional disclosures of the investments whose fair value is estimated using net asset value per share as of December 31, 2013:

Investment	Fair Value	Unfunded Commitment	Redemption Frequency	Redemption Notice Period
Pooled separate accounts:				
Large U.S. equity (a)	$ 3,820	$ –	Immediate	None
Small/mid-size U.S. equity (b)	942	–	Immediate	None
International equity (c)	1,594	–	Immediate	None
Real estate (d)	195	–	See (d)	See (d)
Fixed income (e)	6,516	–	Immediate	None
Total pooled separate accounts	$ 13,067	$ –		

(a) This category includes investments in funds comprised of equity securities of large U.S. companies. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

(b) This category includes investments in funds comprised of equity securities of small- and medium-sized U.S. companies. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

(c) This category includes investments in funds comprised of equity securities of foreign companies including emerging markets. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

(d) This category invests the majority of its assets in U.S. commercial real estate holdings including multifamily, office, warehouse, manufacturing, and retail properties. It focuses on properties that return both lease income and appreciation of the buildings' marketable value. Investments in this category can be redeemed two times in a 30 day period at the current net asset value per share based on the fair value of the underlying assets. Participants are not allowed to transfer back into this category until the 30 day period has expired. New contributions are allowed during this period.

(e) This category includes investments in funds comprised of U.S. and foreign investment-grade fixed income securities, high-yield fixed income securities that are rated below investment-grade, U.S. treasury securities, mortgage-backed securities, and other asset-backed securities. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

The following table presents the other financial instruments that are not carried at fair value, but which require fair value disclosure as of December 31, 2013:

	Carrying Value	Fair Value
Term loans	$ (272,132)	$ (195,930)

Note 3. Fair Value Measurements (Continued)

In September of 2012, the Company restructured its debt, which resulted in approximately $132 million of debt forgiveness. The transaction was classified as a troubled debt restructuring under GAAP. As a result, the Company was required to account for the impact of debt forgiveness prospectively instead of recording an immediate write-down creating a majority of the difference between the carrying value of the Company's debt and its payoff amount.

Note 4. Derivative Financial Instruments and Risk Management

The Company's operating activities expose it to a variety of market risks, including the effects of changes in commodity prices. Commodity price risk is monitored and managed by the Company as part of its overall risk management program that seeks ways to reduce the potentially adverse effects market volatility may have on its operating results. The Company generally follows a policy of entering into forward contracts for the physical purchase of corn and the physical sale of ethanol and co-products to fix the price of these commodities and lock in operating margins. These forward contracts have been designated as normal purchases and normal sales. Any unrealized gains or losses on these contracts are not included in the Company's consolidated financial statements. When forward contracts are not available at competitive prices, the Company may enter into over-the-counter or exchange-traded futures, swaps and options contracts to reduce its exposure to commodity market volatility. The fair value of these commodity derivative contracts is recorded on the Company's consolidated balance sheets. Changes in the fair value of commodity derivatives are recorded in nonoperating income as gain (loss) on derivative transactions.

Derivative financial instruments not designated as hedging instruments at December 31, 2013, were as follows:

Type	Balance Sheet Classification		
Corn future contracts - gain	Derivative financial instruments	$	350
Corn future contracts - loss	Derivative financial instruments		(75)
Ethanol future contracts - gain	Derivative financial instruments		62
Ethanol future contracts - loss	Derivative financial instruments		(1,366)
Cash held by broker	Derivative financial instruments		2,212
		$	1,183

The realized and unrealized effects on the Company's consolidated statements of operations for derivatives not designated as hedging instruments for the year ended December 31, 2013, were as follows:

Type	Statement of Operations Classification		
Ethanol future contracts	Gain (loss) on derivative transactions, net	$	(2,430)
Corn future contracts	Gain (loss) on derivative transactions, net		(3,024)

Note 5. Property, Plant and Equipment

Property, plant and equipment at December 31, 2013, were as follows:

Land and improvements	$	5,654
Building and leasehold improvements		9,550
Machinery and equipment		155,144
Furniture and fixtures		890
Less accumulated depreciation		(38,469)
Total		132,769
Construction-in-progress		77,006
Total property, plant and equipment, net	$	209,775

At December 31, 2013 one of the ethanol plants in Aurora, Nebraska was idled which had a net depreciated cost of $18.0 million.

Depreciation expense for the year ended December 31, 2013, was $17.5 million. As a result of reclassifying the Mount Vernon facilities to discontinued operations, the Company ceased recording depreciation on those assets while being held for sale. For the year ended December 31, 2013, $6.9 million of depreciation expense was recorded in discontinued operations related to the Mount Vernon facility while the remainder was primarily all grouped with cost of goods sold on the consolidated statement of operations.

At December 31, 2013, construction-in-progress includes $63.4 million related to the construction of the Aurora West plant and $13.4 million related to capitalized projects at the Pekin facility.

The Company capitalized $0.2 million of interest for the year ended December 31, 2013.

Note 6. Short-Term Borrowings and Pledged Assets

On July 20, 2011, the Company entered into a $50.0 million revolving credit facility commitment with a bank. On September 24, 2012, the $50 million revolving credit facility was lowered to a $30 million revolving facility with the same bank. The new revolving credit facility is secured by the Company's accounts receivable and inventory, and a second priority lien interest on substantially all of the Company's assets. The total borrowing capacity of the new revolving credit facility was less than the previous revolving facility's capacity, which resulted in a loss on debt extinguishment of $0.9 million in 2012. The Company capitalized $1.5 million in debt issuance costs related to the new revolving credit facility in 2012.

The loans under the new revolving facility agreement will mature on the earlier of (a) July 20, 2015, or (b) the date that is six months before the earliest maturity date of the term loan indebtedness under Term Loan A and B (as defined below), or if the indebtedness under Term Loan A and B is fully refinanced or replaced, the maturity date of such refinanced or replaced indebtedness.

Borrowings under the new revolving credit facility agreement bear interest at (i) the London Interbank Offered Rate (LIBOR) plus 4.0% or (ii) the alternate base rate plus 2.5% based on the Company's election. The alternate base rate will be calculated based on the greater of (i) the federal funds rate plus 1/2 of 1.0%, (ii) the LIBOR rate, plus 1.0% and (iii) the prime rate.

Note 6. Short-Term Borrowings and Pledged Assets (Continued)

The new revolving facility agreement contains customary affirmative and negative covenants concerning the conduct of Aventine's business operations, including limitations on indebtedness, liens, mergers, consolidations and dispositions of assets, restricted payments and the payment of dividends, investments, and transactions with affiliates. The new revolving credit facility also contains a financial covenant that requires Aventine to maintain minimum required liquidity of $5.0 million for up to $1.0 million of borrowings under the facility, and $10.0 million of liquidity for borrowings in excess of $1.0 million. In addition, the agreement contains an ethanol production covenant that requires at least 80 million gallons of production during any trailing 12-month period. Upon the occurrence of an event of default, Aventine's obligations under the new revolving facility agreement may be accelerated, and all indebtedness there under would become immediately due and payable.

The new revolving credit facility provides for the issuance of letters of credit. At December 31, 2013 there were $7.2 million of letters of credit issued and outstanding under the facility.

At December 31, 2013 there were no short-term borrowings against the revolving facility agreement.

Note 7. Long-Term Debt and Pledged Assets

The following table summarizes the Company's outstanding long-term debt at December 31:

Senior debt	$	272,132
Other		3,735
		275,867
Less: current maturities of long-term debt		(2,043)
Total long-term debt	$	273,824

On December 22, 2010, the Company entered into a Term Loan Agreement with its lenders to provide the Company with a $200 million term loan facility (the Term Loan Facility). The Company provided a first lien priority security interest on substantially all of the Company's fixed assets as collateral under the Term Loan Facility.

On September 24, 2012, the Company restructured its Term Loan Facility with its lenders. As a result of the restructuring, the Company converted $132.3 million of outstanding debt into 2,186,298 shares of common stock of the Company. After the exchange, the remaining $100 million of Term Loan Facility debt was converted into a Term Loan B Facility (Term Loan B) and continued to be secured with substantially all of the Company's fixed assets. Interest on Term Loan B may be paid in cash or paid-in-kind, and compounds, on a quarterly basis. If the Company elects to pay cash interest, the rate is 10.5%. If the Company elects paid-in-kind interest, interest accrues at a rate of 15%, and is capitalized at the end of each quarter. The maturity date for Term Loan B is September 24, 2017. In 2013, the Company elected paid-in-kind interest on the Term Loan B debt.

In conjunction with the debt restructuring on September 24, 2012, $30 million of new term loan debt was issued to the Company (Term Loan A). The Company provided a first lien priority security interest in substantially all of the Company's fixed assets as collateral under the Term Loan A. In addition, the Term Loan A must be fully repaid prior to making any debt payments on Term Loan B. The Company financed its Term Loan A closing fees of $0.9 million. The total $30.9 million of Term Loan A debt matures on September 24, 2016. Interest on Term Loan A accrues at a 12% cash rate and is due on a quarterly basis. A $0.9 million exit fee also becomes due when the loan matures or is paid in full.

Note 7. Long-Term Debt and Pledged Assets (Continued)

The September 24, 2012 debt restructuring qualified as a troubled debt restructuring under ASC 470-60, *Debt – Troubled Debt Restructurings by Debtors*. Accordingly, the Company reduced its aggregate debt balance of $232.3 under the Term Loan Facility million by $26.8 million to account for the fair value of the equity interest granted in exchange for $132.3 million of debt forgiveness. No gain or loss on debt forgiveness was recognized as the future maximum cash outflows on the restructured Term Loan A and B debt exceeded the amount of the Term Loan Facility. As part of the troubled debt restructuring, the Company incurred $3.5 million of restructuring costs.

On June 18, 2013, $35 million of Term Loan A-1 was issued to the Company (Term Loan A-1) by the existing lenders under an amendment to the existing term loan agreement. Interest on Term Loan A-1 accrues at 25% on a quarterly basis and is payable in kind. Term Loan A-1 and its accumulated interest becomes due on September 24, 2016. Term Loan A-1 has the same repayment priorities and first lien asset securities as Term Loan A. If Term Loan A-1 is paid prior to its one year anniversary date of June 18, 2014, the Company will incur a prepayment penalty. As part of the June 18, 2013 transaction, the interest rate on Term Loan A was increased by 3% from 12% to 15% (12% cash and 3% paid in kind). The additional paid-in-kind interest of 3% is capitalized at the end of each quarter.

The Term Loan Agreement borrowings as of December 31, 2013 are comprised of the following:

Term Loan A principal	$	30,000
Term Loan A fees		900
Term Loan A interest paid-in-kind		507
Term Loan B principal		100,000
Term Loan B interest paid-in-kind		20,846
Term Loan A-1 principal		35,000
Term Loan A-1 interest paid-in-kind		4,942
		192,195
Additional carrying value of debt		79,937
	$	272,132

The Company has other debt agreements that total $3.7 million, charge interest at rates up to 8%, is secured by certain equipment and real estate and expire through September 2016.

Maturities relating to outstanding debt at December 31, 2013 are as follows:

2014	$	2,043
2015		1,656
2016		71,385
2017		120,846
	$	195,930

Note 8. Lease Commitments and Contingencies

Lease commitments: The Company leases certain assets such as rail cars, barges, buildings, and equipment from unaffiliated parties under noncancelable operating leases. Terms of the leases, including renewals, vary by lease. Rental expense for operating leases for the year ended December 31, 2013 was $6.0 million.

At December 31, 2013, minimum rental commitments under noncancelable operating lease terms in excess of one year are as follows:

Years Ending December 31:		
2014	$	7,577
2015		7,424
2016		4,973
2017		4,682
2018		3,331
Thereafter		1,720
Total minimum lease payments	$	29,707

Other commitments: At December 31, 2013, the Company had forward contracts to purchase approximately 32 thousand tons of coal for $1.7 million delivered in 2014.

At December 31, 2013, the Company had firm-price purchase commitments to purchase approximately 2.4 million bushels of corn at an average fixed price of $4.58 per bushel for delivery through July 2014 and unpriced forward contracts for approximately 790 thousand bushels of commodity grain through January 2014. These commitments were negotiated in the normal course of business and represent a portion of the Company's corn requirements.

At December 31, 2013, the Company had fixed-price contracts to sell 12.3 million gallons of ethanol at an average price of $1.95 per gallon, and had sold 22.1 million gallons of ethanol at index prices using indices from Oil Price Information Service in 2013.

Environmental remediation and contingencies: The Company is subject to federal, state, and local environmental laws and regulations. These laws and regulations, among other things, require the Company to maintain or make operational changes that limit actual or potential adverse impacts to the environment. Violations of regulations can result in substantial fines. In addition, environmental laws and regulations can change over time, and any such changes may require additional compliance efforts. The Company has not accrued any amounts for environmental matters as of December 31, 2013.

Federal and state environmental authorities have been investigating alleged excess volatile organic compounds emissions and other air emissions from many U.S. ethanol plants, including the Company's Illinois facilities. The investigation relating to the Illinois wet mill facility is still pending, and the Company could be required to install additional air pollution control equipment or take other measures to control air pollutant emissions at that facility. In addition, if the authorities determine that the Company's emissions are in violation of applicable law, the Company would likely be required to pay fines. The Company is in the process of installing natural gas boilers in 2014 to comply with the new 2016 emission standards.

Note 8. Lease Commitments and Contingencies (Continued)

The Company has made, and expects to continue making capital expenditures on an ongoing basis to comply with the U.S. Environmental Protection Agency's (EPA) National Emissions Standard for Hazardous Air Pollutants (NESHAP). This NESHAP was issued but subsequently vacated in 2007. The vacated version of the rule required the Company to implement maximum achievable control technology at its Illinois wet mill facility to reduce hazardous air pollutant emissions from its boilers. The EPA issued a new Boiler MACT rule on December 22, 2012. The rule became final on January 31, 2013. The Company will have three years from the date of the final rule to meet the new emission limits and is in the process of installing natural gas boilers in 2014 to comply with the new 2016 emission standards.

Litigation matters: On November 6, 2008, Aventine Renewable Energy, Inc. filed a complaint against JPMorgan Securities, Inc. and JPMorgan Chase Bank, N.A. for the recovery of money lost in an investment in auction rate securities. In 2013, the parties agreed to settle this matter. The legal settlement is recorded in other non-operating income on the statement of operations in 2013.

On May 31, 2012, the Company served Aurora Cooperative Elevator Company (Aurora) with a petition for declaratory relief filed in the District Court of Dallas County, Texas, 160th Judicial District. The petition alleges, among other things, that Aurora improperly threatened - in direct contravention of the agreement between the Company and Aurora - to invoke a contractual option to repurchase the land on which the Company's Aurora West ethanol plant (the Plant) is located. Aurora's stated position is that Aurora has the right to invoke the option if the Plant has not been producing ethanol for 30 days, at a daily rate equivalent to an annualized production rate of 90 million gallons, by July 31, 2012. The petition alleges that the contract setting forth the option does not require 30 days of production in order to prevent Aurora's exercise of the contractual option. Rather, the Company asserts the contract only requires that it "diligently pursue construction" of the Plant "to completion by July 1, 2012," where "diligently pursue construction ... to completion" does not mean "operation" or "production." The Company is seeking a declaratory judgment that the Company was not required to operate the plant or produce ethanol at the Plant at the rates or amounts asserted by Aurora before July 31, 2012, and the Company need not operate the Plant or meet the production requirements to avoid the exercise of the contractual option. This case has since been transferred to the United States District Court for the District of Nebraska, where the parties are engaged in extensive discovery. The Company intends to pursue any and all rights available to it with respect to the foregoing. At this time, the Company is unable to determine the impact such litigation will have on its business, operating results, financial condition, and cash flows.

On September 20, 2012, Aurora sued the Company in the United States District Court for the District of Nebraska alleging that the Company (and two of its subsidiaries) breached the parties' grain supply agreement. Specifically, Aurora alleges that it procured 1.7 million bushels of corn on the Company's behalf, for which the Company is liable. The Company denies that it ever contracted for the corn in question or that Aurora suffered the losses it alleges with respect to that corn. Rather, the Company maintains that Aurora improperly set off amounts it owes to the Company (or one or more of its subsidiaries) in violation of the parties' grain and marketing agreements, thus resulting in uncured breaches of each agreement. As a result, the Company issued notice of termination of those agreements. This matter is pending in court. The claims relating to the alleged purchases of grain by Aurora were submitted to arbitration before the National Grain and Feed Association, where an arbitration panel found in favor of the Company. The Company intends to pursue any and all rights and remedies available to it with respect to the foregoing. At this time, the Company is unable to determine the impact such litigation will have on its business, operating results, financial condition, and cash flows.

Note 9. Retirement and Pension Plans

Defined contribution plan: The Company has 401(k) plans covering substantially all of its employees. Contributions made under the defined contribution plans include a match, at the Company's discretion, of an employee's contribution to the plans. For the year ended December 31, 2013, such contributions amounted to $.6 million.

Qualified retirement plan: The Company has a defined benefit pension plan (the Retirement Plan) that is noncontributory, and covers unionized employees at its Pekin, Illinois, facility who fulfill minimum age and service requirements. Benefits are based on a prescribed formula based upon the employee's years of service. On October 29, 2010, the Union ratified a new collective bargaining agreement with the Company for its hourly production workers in Pekin, Illinois. This new agreement was effective November 1, 2010. The agreement states that, among other things, employees hired after November 1, 2010, will not be eligible to participate in the Retirement Plan. The Company uses a December 31 measurement date for its Retirement Plan. The Company's funding policy is to make the minimum annual contribution that is required by applicable regulations.

Information related to the defined benefit plan is presented below:

Amounts at the end of the year:		
Accumulated/projected benefit obligation	$	13,708
Fair value of plan assets		13,067
Funded status, (underfunded)/overfunded	$	(641)
Amounts recognized in the consolidated balance sheets:		
Other long-term liabilities	$	(641)
Accumulated other comprehensive loss, unrecognized net loss		916
Amounts recognized in the plan for the year:		
Company contributions	$	–
Participant contributions		–
Benefits paid		(535)
Net periodic benefit cost	$	359
Other changes recognized in other comprehensive loss:		
Net (gain)/loss	$	(2,425)
Amortization of net gain/(loss)		(206)
Total recognized in other comprehensive income	$	(2,631)
Assumptions used in computation benefit obligations:		
Discount rate		4.80%
Expected long-term return on plan assets		7.75%
Rate of compensation increase		–

The Company is not expected to make any contributions in the year ending December 31, 2014. Expected net periodic benefit cost for 2014 is estimated at approximately $88.

Note 9. Retirement and Pension Plans (Continued)

The following table summarizes the expected benefit payments for the Company's plan for each of the next five fiscal years and in the aggregate for the five fiscal years thereafter:

December 31:		
2014	$	593
2015		558
2016		604
2017		618
2018		640
2019-23		3,546
	$	6,559

See Note 3 for discussion of the plan's fair value disclosures.

Historical and future expected returns of multiple asset classes were analyzed to develop a risk-free real rate of return and risk premiums for each asset class. The overall rate for each asset class was developed by combining a long-term inflation component, the risk-free real rate of return, and the associated risk premium. A weighted average rate was developed based on those overall rates and the target asset allocation of the plan.

The Company's pension committee is responsible for overseeing the investment of pension plan assets. The pension committee is responsible for determining and monitoring the appropriate asset allocations and for selecting or replacing investment managers, trustees, and custodians. The pension plan's current investment target allocations are 50% equities and 50% debt. The pension committee reviews the actual asset allocation in light of these targets periodically and rebalances investments as necessary. The pension committee also evaluates the performance of investment managers as compared to the performance of specified benchmarks and peers and monitors the investment managers to ensure adherence to their stated investment style and to the plan's investment guidelines.

Note 10. Postretirement Benefit Obligation

The Company sponsors a health care plan and life insurance plan (the Postretirement Plan) that provides postretirement medical benefits and life insurance to certain "grandfathered" unionized employees. Employees hired after December 31, 2000, are not eligible to participate in the Postretirement Plan. The plan is contributory, with contributions required at the same rate as active employees. Benefit eligibility under the plan reduces at age 65 from a defined benefit to a defined dollar cap based upon years of service.

Information related to the Company's postretirement benefit obligation is presented below:

Amounts at the end of the year:		
Accumulated/projected benefit obligation	$	3,420
Fair value of plan assets		–
Funded status, (underfunded)/overfunded	$	(3,420)
Amounts recognized in the consolidated balance sheets:		
Other current liabilities	$	(157)
Other long-term liabilities		(3,263)
Accumulated other comprehensive loss, unrecognized net loss		699
Amounts recognized in the plan for the year:		
Company contributions	$	93
Participant contributions		19
Benefits paid		(113)
Net periodic benefit cost	$	309
Other changes recognized in OCI:		
Net (gain)	$	(537)
Amortization of net (loss)		(79)
Total recognized in other comprehensive income	$	(616)
Assumptions used in computation benefit obligations:		
Discount rate		4.6%

Note 10. Postretirement Benefit Obligation (Continued)

The Company expects to recognize amortization of net actuarial loss of $0.1 million during the year ended December 31, 2014.

The following table summarizes the expected benefit payments for the Company's plan for each of the next five fiscal years and in the aggregate for the five fiscal years thereafter:

December 31:		
2014	$	157
2015		136
2016		170
2017		189
2018		160
2019-23		1,015
	$	1,827

For purposes of determining the cost and obligation for pre-Medicare postretirement medical benefits, a 6.7% annual rate of increase in the per capita cost of covered benefits (i.e., health care trend rate) was assumed for the plan in 2013, adjusting to a rate of 7.7% in 2023. Assumed health care cost trend rates have a significant effect on the amounts reported for health care plans.

Note 11. Income Taxes

There were no provisions for income taxes for the year ended December 31, 2013.

The reconciliation of differences between the statutory U.S. federal income tax rate and the effective tax rate for the year ended December 31, 2013, is primarily due to changes in the valuation allowances and deferred tax assets limited as a result of the troubled debt restructuring transaction, which caused a change in ownership for tax purposes.

Deferred income taxes included in the consolidated balance sheets reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the carrying amount for income tax return purposes.

The deferred tax provision for the year ended December 31, 2013, does not reflect the tax effect of $0.6 million, resulting from the pension and other postretirement liability components included in accumulated other comprehensive income.

Note 11. Income Taxes (Continued)

Significant components of the deferred tax assets and liabilities are as follows:

Current assets	$ 2,391
Long-term assets	95,079
	97,470
Valuation allowance	(93,873)
	3,597
Current liabilities	634
Long-term liabilities	5,041
	5,675
	$ (2,078)

At December 31, 2013, the Company has recorded valuation allowances of $93.8 million on its deferred tax assets to reduce the deferred tax assets to the amount that management believes is more likely than not to be realized. Management considered the scheduled reversal of deferred tax liabilities and tax planning strategies in making this assessment. The increase in current year valuation allowance is primarily related to certain debt modifications and ownership transactions that have limited amounts of future tax benefits. The deferred tax assets subject to the valuation allowance primarily include tax benefits associated with capital loss on securities; stock-based compensation; basis of property, plant, and equipment; benefit obligations; debt issuance costs and original issuance discount; and both federal and state income tax net operating loss carryforwards.

At December 31, 2013, the Company had net operating loss carryforwards of $61.6 million. The future utilization of these net operating loss carryforwards has been limited due to certain ownership changes. Due to the uncertainty regarding realization of the tax benefits, $231.6 million of the 2013 loss carryforwards has been deemed worthless.

At December 31, 2013, the Company had capital loss carryforwards of $30.0 million which are available to offset future consolidated capital gains. The future utilization of capital loss carryforwards has been limited due to certain ownership changes. Due to the uncertainty regarding the realization of the capital loss carryforward, the entire 2013 loss carryforward has been deemed worthless.

ASC 740, *Income Taxes,* provides that the tax effects from an uncertain tax position can be recognized in the Company's financial statements only if the position is more likely than not of being sustained on audit, based on the technical merits of the position. Tax positions that meet the recognition threshold are reported at the largest amount that is more likely than not to be realized. This determination requires a high degree of judgment and estimation. The Company periodically analyzes and adjusts amounts recorded for the Company's uncertain tax positions, as events occur to warrant adjustment, such as when the statutory period for assessing tax on a given tax return or period expires or if tax authorities provide administrative guidance or a decision is rendered in the courts. The Company does not reasonably expect the total amount of uncertain tax positions to significantly increase or decrease within the next 12 months. As of December 31, 2013, the Company's uncertain tax positions were not significant for income tax purposes. In the event the Company has uncertain tax positions, it is the Company's policy to include the interest expense or income, as well as potential penalties on unrecognized tax benefits, as components of income tax expense in the consolidated statements of operations.

Note 12. Warrants

In connection with the restructuring transaction occurring in September 2012, the original equity holders of the Company received warrants to purchase up to an aggregate amount of 787,855 shares of the Company's common stock at an exercise price of $61.75 per share. These warrants expire on the 5th anniversary of the issuance date and had no fair value as of the grant date. Under certain circumstances, the expiration date of the warrants could be accelerated. Events that could lead to an acceleration of the expiration date include, but are not limited to, a change in control, or a significant change in the price of the Company's common stock. As of December 31, 2013, none of the warrants issued in connection with the restructuring transaction have been exercised.

In connection with the issuance of the Term Loan A-1 debt (see Note 7) participating lenders received from the Company warrants allowing for the purchase of up to 11.8 million shares of the Company's common stock at an exercise price of $.01 per share. The warrants can only be exercised upon a change in control of the Company, which management deemed unlikely at the grant date, therefore no fair value was assigned to the warrants. These warrants expire on the 3rd anniversary of the issuance date. Certain other events could lead to an acceleration of the expiration date, including a change in control. As of December 31, 2013, none of the warrants issued in connection with the restructuring transaction have been vested or exercised.

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Report of Independent Auditors

The Board of Directors and Stockholders
Aventine Renewable Energy Holdings, Inc.

We have audited the accompanying consolidated financial statements of Aventine Renewable Energy Holdings, Inc., which comprise the consolidated balance sheets as of December 31, 2012 and 2011, and the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in conformity with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free of material misstatement, whether due to fraud or error.

Auditor's Responsibility

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. 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 involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Aventine Renewable Energy Holdings, Inc. at December 31, 2012 and 2011, and the consolidated results of its operations and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

June 27, 2013
except for Note 2, as to which
the date is February 2, 2015

Aventine Renewable Energy Holdings, Inc.
Consolidated Balance Sheets

	December 31	
	2012	**2011**
	(In Thousands, Except Share and Per Share Data)	
Assets		
Current assets:		
Cash and equivalents	**$ 16,941**	$ 36,105
Accounts receivable, net of allowance for doubtful accounts of $312 in 2012 and $174 in 2011	**8,976**	16,582
Inventories	**28,113**	42,999
Prepaid expenses and other current assets	**5,351**	7,693
Total current assets	**59,381**	103,379
Property, plant, and equipment, net	**293,540**	301,700
Other assets	**14,246**	16,121
Total assets	**$ 367,167**	$ 421,200
Liabilities and stockholders' equity		
Current liabilities:		
Current maturities of long-term debt	**$ 37**	$ 2,283
Current obligations under capital leases	**174**	348
Accounts payable	**7,738**	12,910
Accrued liabilities	**2,746**	3,224
Other current liabilities	**9,813**	14,570
Total current liabilities	**20,508**	33,335
Long-term debt	**230,342**	214,119
Deferred tax liabilities	**2,078**	2,078
Other long-term liabilities	**6,629**	6,025
Total liabilities	**259,557**	255,557
Stockholders' equity:		
Common stock, par value $0.001 per share; 15,000,000 shares authorized;2,353,176 shares outstanding, net of 1,497 shares held in treasury at December 31, 2012; 166,926 shares outstanding, net of 1,497 shares held in treasury at December 31, 2011	**2**	–
Preferred stock; 5,000,000 shares authorized; no shares issued or outstanding	**–**	–
Additional paid-in capital	**258,223**	231,752
Retained deficit	**(145,752)**	(61,892)
Accumulated other comprehensive loss, net	**(4,863)**	(4,217)
Total stockholders' equity	**107,610**	165,643
Total liabilities and stockholders' equity	**$ 367,167**	$ 421,200

See notes to consolidated financial statements.

Aventine Renewable Energy Holdings, Inc.
Consolidated Statements of Operations

	Year Ended December 31	
	2012	**2011**
	(In Thousands)	
Net sales	**$ 479,710**	$ 639,798
Cost of goods sold	**(503,880)**	(598,754)
Gross profit (loss)	**(24,170)**	41,044
Selling, general, and administrative expenses	**(25,204)**	(30,170)
Other expense	**(1,632)**	(1,409)
Operating (loss) income	**(51,006)**	9,465
Interest expense, net	**(21,136)**	(24,040)
Gain (loss) on derivative transactions, net	**681**	(4,424)
Loss on available-for-sale securities	**(174)**	(510)
Loss on early extinguishment of debt	**(857)**	(10,038)
Other nonoperating income	**7,909**	2,074
Loss from continuing operations before income taxes	**(64,583)**	(27,473)
Income tax benefit (expense)	**(9)**	(536)
Loss from continuing operations	**(64,592)**	(28,009)
Discontinued operations:		
Loss from operations of discontinued components	**(19,268)**	(8,419)
Net loss	**$ (83,860)**	$ (36,428)

See notes to consolidated financial statements.

Aventine Renewable Energy Holdings, Inc.
Consolidated Statements of Comprehensive Loss

	Year Ended December 31	
	2012	**2011**
	(In Thousands)	
Net loss	$ (83,860)	$ (36,428)
Other comprehensive loss, net of tax:		
Pension and postretirement liability adjustment, net of tax	**(646)**	(3,971)
Total comprehensive loss, net of tax	**$ (84,506)**	$ (40,399)

See notes to consolidated financial statements.

Aventine Renewable Energy Holdings, Inc.
Consolidated Statements of Stockholders' Equity

	Treasury Shares	Common Shares	Common Stock	Additional Paid-In Capital	Retained Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
				(In Thousands)			
Balance at December 31, 2010	156	149,134	$ –	$ 227,368	$ (25,464)	$ (246)	$ 201,658
Warrants exercised	–	3	–	5	–	–	5
Stock-based compensation	–	–	–	4,912	–	–	4,912
Issuances of common stock	–	19,286	–	522	–	–	522
Purchase of treasury stock	1,341	–	–	(1,055)	–	–	(1,055)
Comprehensive loss:							
Net loss	–	–	–	–	(36,428)	–	(36,428)
Pension and postretirement liability adjustment, net of tax	–	–	–	–	–	(3,971)	(3,971)
Balance at December 31, 2011	1,497	168,423	–	231,752	(61,892)	(4,217)	165,643
Stock-based compensation	**–**	**–**	**–**	**333**	**–**	**–**	**333**
Fractional share cancellation	**–**	**(48)**	**–**	**–**	**–**	**–**	**–**
Issuances of common stock	**–**	**2,186,298**	**2**	**26,138**	**–**	**–**	**26,140**
Comprehensive loss:							
Net loss	**–**	**–**	**–**	**–**	**(83,860)**	**–**	**(83,860)**
Pension and postretirement liability adjustment, net of tax	–	–	–	–	–	(646)	(646)
Balance at December 31, 2012	**1,497**	**2,354,673**	**$ 2**	**$ 258,223**	**$ (145,752)**	**$ (4,863)**	**$ 107,610**

See notes to consolidated financial statements.

Aventine Renewable Energy Holdings, Inc.
Consolidated Statements of Cash Flows

	Year Ended December 31	
	2012	**2011**
	(In Thousands)	
Operating activities		
Net loss	**$ (83,860)**	$ (36,428)
Adjustments to reconcile net loss to net cash used in operating activities:		
Unrealized/realized loss on available-for-sale securities	**174**	510
Depreciation and amortization	**22,232**	20,243
Stock-based compensation expense	**333**	5,434
Loss on asset retirement	**1,108**	–
Loss on early retirement of debt	**857**	10,038
Gain on legal settlements	**–**	(1,462)
Accrued interest – paid-in-kind	**8,349**	–
Other	**22**	142
Changes in operating assets and liabilities:		
Accounts receivable, net	**7,803**	(5,007)
Income tax receivable	**(24)**	145
Inventories	**14,885**	1,181
Prepaid expenses and other current assets	**2,224**	4,744
Other assets	**199**	(448)
Accounts payable	**(5,004)**	(8,579)
Other liabilities	**(5,475)**	1,000
Net cash used in operating activities	**(36,177)**	(8,487)
Investing activities		
Additions to property, plant, and equipment, net	**(10,564)**	(23,330)
Net cash used in investing activities	**(10,564)**	(23,330)
Financing activities		
Proceeds from issuance of debt	**30,000**	25,000
Repayment of senior secured notes	**–**	(155,000)
Payment of term loan	**(2,134)**	(2,188)
Decrease in restricted cash	**–**	180,976
Penalty on early retirement of debt	**–**	(8,350)
Debt issuance costs	**(1,541)**	(5,193)
Payments on other long-term debt and capital lease obligations	**(322)**	(806)
Paid-in-kind amendment fee financed with debt	**2,217**	–
Equity issuance costs	**(643)**	–
Proceeds from warrants exercised	**–**	5
Purchase of treasury shares	**–**	(1,055)
Net cash provided by financing activities	**27,577**	33,389
Net (decrease) increase in cash and equivalents	**(19,164)**	1,572
Cash and equivalents at beginning of the period	**36,105**	34,533
Cash and equivalents at end of the period	**$ 16,941**	$ 36,105
Supplemental disclosure of cash flow		
Interest paid	**$ 12,897**	$ 23,747
Income taxes paid	**50**	372

See notes to consolidated financial statements.

Aventine Renewable Energy Holdings, Inc.
Notes to Consolidated Financial Statements
December 31, 2012

1. Organization and Basis of Presentation

Organization

Aventine Renewable Energy Holdings, Inc. and its subsidiaries (collectively referred to as Aventine, the Company or we) produces and markets ethanol. In addition to producing ethanol, the Company's facilities also produce several co-products, including corn gluten feed and meal, corn germ, condensed corn distillers solubles, dried distillers grain, wet distillers grain, carbon dioxide, and grain distillers dried yeast.

Basis of Presentation

The accompanying consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America (GAAP). All material intercompany transactions and balances have been eliminated. Any material events or transactions that occurred subsequent to December 31, 2012, through June 27, 2013, the date these financial statements are being issued, were reviewed for purposes of determining whether any adjustments or additional disclosures were required to be made to the accompanying consolidated financial statements.

The accompanying consolidated financial statements for the prior period contain certain reclassifications to conform to the presentation used in the current period.

Liquidity Outlook

Our ability to maintain adequate liquidity depends in part upon industry conditions and general economic, financial, competitive, regulatory, and other factors beyond our control. We expect our earnings and cash flow to vary significantly from year to year due to the cyclical nature of our industry. As a result, the amount of debt we can manage in some periods may not be appropriate for us in other periods. In addition, our future cash flow may be insufficient to meet our debt obligations and commitments. Any insufficiency could negatively impact our business. A range of economic, competitive, business, and industry factors will affect our future financial performance and, as a result, our ability to generate cash flow from operations and to pay our debt. Many of these factors, such as ethanol prices, corn prices, and economic and financial conditions in our industry and the global economy or competitive initiatives of our competitors are beyond our control.

1. Organization and Basis of Presentation (continued)

Our principal sources of liquidity are cash and cash equivalents, cash provided by our borrowing facility and other borrowings, and cash provided by operations. At December 31, 2012, we had $16.9 million of cash and cash equivalents. On June 18, 2013, we further stabilized our long-term liquidity needs by borrowing an additional $35 million under our term loan agreements using an amendment. See Note 10. In addition, at December 31, 2012, we had availability of $10.8 million under the New Revolving Facility. If our existing cash, operating cash flows, and borrowings under the New Revolving Facility are not sufficient to meet our cash requirements, we may be required to seek additional financing.

Our liquidity position is significantly influenced by our operating results, which in turn are substantially dependent on commodity prices, especially prices for corn, ethanol, natural gas, and unleaded gasoline. As a result, adverse commodity price movements adversely impact our liquidity. Often, movements in commodity prices are well correlated such that increases or decreases in commodity prices provide a predictable change in our liquidity. However, there have been periods of time in which other economic factors cause deterioration in commodity price correlations such that our ability to predict our liquidity level may be significantly diminished.

Our principal uses of liquidity are working capital, funding of operations, and capital expenditures. If we do not generate enough cash flow from operations to satisfy our principal uses of liquidity, we may have to undertake alternative financing plans, such as refinancing or restructuring our debt, selling assets, reducing or delaying capital investments, or raising additional capital.

We believe that we have sufficient liquidity through our cash and cash equivalents, cash from operations, borrowings executed subsequent to year-end, and borrowing capacity under our New Revolving Facility to meet our short-term and long-term normal recurring operating needs, debt service obligations, contingencies, and anticipated capital expenditures. We also believe that the additional avenues available to preserve liquidity in the event of an industry or economic downturn are adequate to allow us to continue operations.

2. Discontinued Operations

As part of a strategic repositioning and refocusing on the Company's core competitive advantages, Aventine made the decision to sell its Mount Vernon and Canton facilities in 2013. Accordingly, the 2012 and 2011 financial statements have been adjusted to retroactively present the Mt. Vernon and Canton facilities as discontinued operations.

On March 21, 2014, the Company sold its Mount Vernon facility to an independent third party. Under the terms of the agreement, the Company received $34 million of cash consideration and a full release of all of its contractual obligations related to the site lease and utility contracts.

The amount of net sales and loss before income taxes for each disposal group included in discontinued operations is as follows for the years ended December 31, 2012 and 2011:

	2012			2011		
	Mount Vernon	Canton	Total	Mount Vernon	Canton	Total
Net sales	$ 50,260	$ –	$ 50,260	$ 247,789	$ –	$ 247,789
Loss before income taxes	(17,082)	(2,186)	(19,268)	(6,780)	(1,639)	(8,419)

3. Bankruptcy Proceedings and Related Events

On April 7, 2009, Aventine and all of its direct and indirect subsidiaries (collectively, the Debtors), filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code) with the United States Bankruptcy Court for the District of Delaware (the Bankruptcy Court). The Debtors filed their First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code on January 13, 2010 (as modified, the Plan). The Plan was confirmed by order entered by the Bankruptcy Court on February 24, 2010, and became effective on March 15, 2010 (the Effective Date), the date on which the Company emerged from protection under Chapter 11 of the Bankruptcy Code.

The Company emerged from bankruptcy on March 15, 2010. In accordance with Accounting Standards Codification (ASC) 852, *Reorganizations*, the Company adopted fresh-start accounting and adjusted the historical carrying value of its assets and liabilities to their respective fair values at the Effective Date. Simultaneously, the Company determined the fair value of its equity at the Effective Date.

4. Summary of Significant Accounting Policies

The accounting policies below relate to amounts reported in the Company's consolidated financial statements.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. These estimates are based on management's knowledge of current events and actions that the Company may take in the future. Estimates, by their nature, are based on judgment and available information. Therefore, actual results could differ from those estimates and could have a material impact on the consolidated financial statements.

Revenue Recognition

Revenue is generally recognized when title to products is transferred to an unaffiliated customer as long as the sales price is fixed or determinable and collectability is reasonably assured. For the majority of sales, this generally occurs after the product has been offloaded at customer sites. For others, the transfer of title occurs at the shipment origination point. The Company's ethanol indexed sales are invoiced based upon a provisional price and are adjusted to a final price in the same month using the monthly average of spot market prices. Other sales are invoiced at the final per unit price, which may be the contracted fixed price or a market price at the time of shipment. Sales are made under normal terms and usually do not require collateral.

The majority of sales are reported gross, inclusive of freight costs being paid by the Company. The Company recognizes such freight costs in cost of goods sold in the financial statements. When freight costs are paid by the buyer, the Company excludes these costs from its financial statements.

4. Summary of Significant Accounting Policies (continued)

Fair Value Measurement

The Company accounts for certain financial assets and liabilities under ASC 820, *Fair Value Measurement*. The Company uses the following methods in estimating fair value disclosures for financial instruments:

Cash and equivalents, accounts receivable, and accounts payable: The carrying amount reported in the consolidated balance sheets approximates fair value due to the short-term nature of the asset or liability.

Revolving credit facility and long-term debt: The carrying amount of the Company's borrowings under its revolving credit facility approximates fair value. The fair values of the term loans are based on observed transaction prices between market participants.

Commodity derivatives: Commodity derivative instruments, entered into periodically by the Company, consist of futures contracts, swaps, and option contracts. The fair value of these commodity derivative instruments is determined by reference to quoted market prices.

Available-for-sale securities: Available-for-sale securities consist of a common stock investment in an exchange-traded security. The fair value of these securities is determined using quoted market prices.

See Note 5 for additional information regarding the Company's fair value assets and liabilities.

Cash and Cash Equivalents

The Company considers all highly liquid short-term investments purchased with a maturity of three months or less to be cash equivalents. Cash equivalents are carried at cost, which approximates fair value.

4. Summary of Significant Accounting Policies (continued)

Accounts Receivable

Accounts receivable are recorded on a gross basis, with no discounting, less an allowance for doubtful accounts. These trade receivables arise in the ordinary course of business from sales of finished product to the Company's customers. Management estimates the allowance for doubtful accounts based on existing economic conditions, the financial conditions of the customers, and the amount and age of past-due accounts. The Company writes off specific accounts receivable when collection efforts are exhausted and the amounts are deemed unrecoverable.

Inventories

Inventories are stated at the lower of cost or market. Cost is determined using a weighted-average first-in, first-out (FIFO) method for bushels of corn purchased, gallons of ethanol produced at the Company's plants, and other gallons purchased for resale, when applicable. Inventory costs include expenditures incurred to bring inventory to its existing condition and location. Inventories primarily consist of agricultural and energy-related commodities, including corn, ethanol, and coal, and were as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Finished products	$ 19,430	$ 27,946
Work-in-process	**3,408**	6,542
Raw materials	**5,275**	8,511
Totals	**$ 28,113**	$ 42,999

Derivatives and Hedging Activities

Derivatives are accounted for in accordance with ASC 815, Derivatives and Hedging, and primarily consist of commodity futures contracts, swaps, and option contracts.

The Company's futures contracts are not designated as hedges and, therefore, are marked to market each period, with corresponding gains and losses recorded in other nonoperating income. Such derivative instruments are recorded at fair value and are included in "Prepaid expenses and other current assets" on the Company's consolidated balance sheets. See Note 7.

4. Summary of Significant Accounting Policies (continued)

Under ASC 815, companies are required to evaluate contracts to determine whether such contracts are derivatives. Certain contracts that meet the definition of a derivative under ASC 815 may be exempted from the accounting and reporting requirements of ASC 815 as normal purchases or normal sales. The Company has elected to designate its forward purchases of corn and natural gas and forward sales of ethanol as normal purchases and normal sales under ASC 815. Accordingly, these forward commodity contracts are not reflected in the consolidated financial statements at fair value.

Property, Plant, and Equipment

Newly acquired land, buildings, and equipment are carried at cost less accumulated depreciation. Depreciation is provided over the estimated useful lives of the assets, generally on the straight-line basis for financial reporting purposes (furniture and fixtures, 5–15 years; machinery and equipment, 3–20 years; storage tanks, 15–25 years; and buildings and leasehold improvements, 4–40 years), and on accelerated methods for tax purposes. See Note 8.

Impairment of Long-Lived Assets

Long-lived assets are evaluated for impairment under the provisions of ASC 360, *Property, Plant and Equipment*. When facts and circumstances indicate that long-lived assets used in operations may be impaired, and the undiscounted cash flows estimated to be generated from those assets are less than their carrying values, an impairment charge is recorded equal to the excess of the carrying value over fair value.

Available-for-Sale Securities

Available-for-sale securities at December 31, 2012 and 2011, consisted of shares of Imperial Petroleum Inc. (Imperial). For the years ended December 31, 2012 and 2011, the Company recognized a noncash loss on available-for-sale securities of $0.2 million and $0.5 million, respectively, due to the declining market value of the Imperial stock, which was determined to be other than temporary. See Note 6.

4. Summary of Significant Accounting Policies (continued)

Employment-Related Benefits

Employment-related benefits associated with pensions and postretirement health care are expensed as actuarially determined. The recognition of expense is affected by estimates made by management, such as discount rates used to value certain liabilities, investment rates of return on plan assets, increases in future wage amounts, and future health care costs. The Company uses third-party specialists to assist management in appropriately measuring the expenses and liabilities associated with employment-related benefits.

The Company determines its actuarial assumptions for the pension and postretirement plans, after consultation with its actuaries, on December 31 of each year to calculate liability information as of that date and pension and postretirement expense for the following year. The discount rate assumption is determined based on a spot yield curve that includes bonds that are rated Corporate AA or higher with maturities that match expected benefit payments under the plan.

The expected long-term rate of return on plan assets reflects the projected returns for the investment mix and is determined by taking into account the expected weighted averages of the investments of the assets, the fact that the plan assets are actively managed to mitigate downside risks, the historical performance of the market in general and the historical performance of the retirement plan assets over the past ten years.

Employee Stock Plans

The Company accounts for its employee stock compensation in accordance with ASC 718, *Compensation – Stock Compensation*. Equity awards are expensed based on their grant date fair value. As required under the guidance, an accounting estimate of the number of shares that are expected to vest is made and then expensed utilizing the grant-date fair value of the shares from the date of grant through the end of the performance cycle period. See Note 16.

4. Summary of Significant Accounting Policies (continued)

Income Taxes

Deferred tax liabilities and assets are recorded for the expected future tax consequences of events that have been recognized in the financial statements or tax returns. Property, plant, and equipment, stock-based compensation expense, debt issuance costs, and original issue discount are the primary sources of these temporary differences. Deferred income taxes also include net operating loss and capital loss carryforwards. The Company establishes valuation allowances to reduce deferred tax assets to amounts it believes are realizable. These valuation allowances and contingency reserves are adjusted based upon changing facts and circumstances. See Note 14.

Concentrations

Labor Concentration

Approximately 60% of the Company's full-time employees at December 31, 2012 (comprised of the hourly employees at the Illinois facilities), are covered by a collective bargaining agreement between Aventine's subsidiary, Aventine Renewable Energy, Inc., and the United Steelworkers International Union, Local 7-662 (the Union). On November 4, 2012, the Union ratified a new collective bargaining agreement with Aventine Renewable Energy, Inc. for its hourly production workers in Pekin, Illinois. This new agreement was effective November 5, 2012, and runs through October 31, 2015.

Concentration of Credit Risk

The Company sells ethanol to most of the major integrated oil companies, as well as to a significant number of large, independent refiners and petroleum wholesalers. Trade receivables result primarily from ethanol marketing operations. As a general policy, collateral is not required for receivables, but customers' financial condition and creditworthiness are evaluated regularly. Credit risk concentration related to accounts receivable has resulted from the Company's top 10 customers having generated 62.4% and 65.6% of the consolidated net sales for the years ended December 31, 2012 and 2011, respectively.

In 2012, Marathon Petroleum Corporation (Marathon) accounted for 11.8% of the Company's consolidated net sales. In 2011, Marathon and Buckeye Energy Services, LLC (Buckeye) accounted for 24.0% and 14.2%, respectively, of the Company's consolidated net sales. No other customers in 2012 or 2011 represented more than 10% of Aventine's consolidated net sales.

4. Summary of Significant Accounting Policies (continued)

Recent Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2011-05, *Presentation of Comprehensive Income*, which changes the presentation requirements of comprehensive income to improve the comparability, consistency, and transparency of financial reporting and to increase the prominence of items reported in other comprehensive income. ASU 2011-05 requires that all nonowner changes in stockholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. This update was effective on January 1, 2012, and was retrospectively applied. The adoption did not have a material impact on the Company's consolidated financial statements.

The FASB issued ASU 2013-02, *Reporting of Amounts Out of Accumulated Other Comprehensive Income*, in February 2013. This ASU amends ASC 220 and requires entities to report either on the income statement or disclose in the footnotes to the financials the effects on earnings related to items reclassified out of other comprehensive income. This update is effective for the Company in fiscal 2013, and the Company is currently evaluating the impact of adopting this standard.

In May 2011, the FASB issued ASU 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and International Financial Reporting Standards* (IFRS), which changes certain fair value measurement and disclosure requirements, clarifies the application of existing fair value measurement and disclosure requirements, and provides consistency to ensure that GAAP and IFRS fair value measurement and disclosure requirements are described in the same way. ASU 2011-04 was effective and adopted on January 1, 2012. This adoption did not have a material impact on the Company's consolidated financial statements.

5. Fair Value Measurements

In accordance with ASC 820, the Company categorizes its investments and certain other assets and liabilities recorded at fair value into a three-level fair value hierarchy as follows:

- Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities
- Level 2: Quoted prices in markets that are not active, or inputs that are observable, either directly or indirectly, for substantially the full term of the asset or liability
- Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity)

Fair Value Hierarchy on a Recurring Basis

The following tables summarize the valuation of the Company's financial instruments that are carried at fair value as of December 31, 2012 and 2011:

	Fair Value Measurements at December 31, 2012			
	Fair Value	**Quoted Prices in Active Markets Using Identical Assets (Level 1)**	**Significant Other Observable Inputs (Level 2)**	**Significant Unobservable Inputs (Level 3)**
	(In Thousands)			
Cash and equivalents	**$ 16,941**	**$ 16,941**	**$ –**	**$ –**
Derivative contracts	**168**	**168**	**–**	**–**
Available-for-sale securities	**17**	**17**	**–**	**–**

	Fair Value Measurements at December 31, 2012			
	Fair Value	**Quoted Prices in Active Markets Using Identical Assets (Level 1)**	**Significant Other Observable Inputs (Level 2)**	**Significant Unobservable Inputs (Level 3)**
	(In Thousands)			
Cash and equivalents	$ 36,105	$ 36,105	$ –	$ –
Derivative contracts	239	239	–	–
Available-for-sale securities	191	191	–	–

5. Fair Value Measurements (continued)

The Company did not hold any financial assets requiring the use of Level 2 or Level 3 inputs at December 31, 2012 and 2011.

Available-for-Sale Securities

The Company's available-for-sale securities consist of shares of Imperial stock. The Company records the fair value of its Imperial stock using unadjusted quoted market prices and, accordingly, discloses these investments in Level 1 of the fair value hierarchy.

Financial Instruments Not Reported at Fair Value

The carrying values of other financial instruments, including cash, accounts receivable, and accounts payable and accrued liabilities, approximate fair value due to their short maturities of the respective balances. The following table presents the other financial instruments that are not carried at fair value, but which require fair value disclosure as of December 31, 2012 and 2011:

	December 31, 2012		December 31, 2011	
	Carrying Value	Fair Value	Carrying Value	Fair Value
	(In Thousands)			
Term loans	$ (230,216)	$ (133,172)	$ (222,813)	$ (222,813)

In 2012, the Company completed a debt restructuring that was accounted for as a troubled debt restructuring under GAAP. As a result, the $230.2 million carrying value is greater than the term loan payoff of $135.9 million due to the inability to recognize any of debt forgiveness. See Note 10.

In 2011, the term loan was at a variable rate, and therefore the carrying value approximated the fair value.

6. Investments

Available-for-Sale Securities

Losses of $0.2 million and $0.5 million, respectively, were presented in "Loss on available-for-sale securities" on the consolidated statements of operations for the years ended December 31, 2012 and 2011. At each reporting date, the Company performs an evaluation of impaired equity securities to determine if any unrealized losses are other than temporary. Such evaluation consists of a number of factors, including, but not limited to, the length of time and extent to which the fair value has been less than cost, the financial condition and near-term prospects of the issuer, and management's ability and intent to hold the securities until fair value recovers. The assessment of the ability and intent to hold these securities to recovery focuses on liquidity needs, asset/liability management objectives, and security portfolio objectives. Based on the results of the evaluation, management concluded that as of December 31, 2012 and 2011, the unrealized losses related to its 425,000 shares of Imperial were not temporary.

7. Derivative Instruments and Hedging

The Company's operations and cash flows are subject to fluctuations due to changes in commodity prices. As such, the Company has historically used various derivative financial instruments to minimize the effects of the volatility of commodity price changes primarily related to corn, natural gas, and ethanol. The Company monitors and manages its exposure as part of its overall risk management policy. As such, the Company seeks to reduce potentially adverse effects that the volatility of these markets may have on its operating results. The Company may take derivative positions in these commodities as one way to mitigate risk.

The Company is subject to market risk with respect to the price and availability of corn, the principal raw material it uses to produce ethanol and ethanol by-products. The availability and price of corn is subject to wide fluctuations due to unpredictable factors such as weather conditions, farmer planting decisions, governmental policies with respect to agriculture and international trade, and global demand and supply. From time to time, the Company may have firm-price purchase commitments with some of its corn suppliers under which the Company agrees to buy corn at a price set in advance of the actual delivery of that corn. Under these arrangements, the Company assumes the risk of a price decrease in the market price of corn between the time this price is fixed and the time the corn is delivered. The Company accounts for these transactions as normal purchases under ASC 815, and accordingly, it does not mark these transactions to market.

7. Derivative Instruments and Hedging (continued)

The Company periodically enters into firm-price purchase commitments with some of its natural gas suppliers under which the Company agrees to buy natural gas at a price set in advance of the actual delivery of that natural gas. Under these arrangements, the Company assumes the risk of a price decrease in the market price of natural gas between the time this price is fixed and the time the natural gas is delivered. The Company accounts for these transactions as normal purchases under ASC 815, and accordingly, it does not mark these transactions to market.

The Company is also subject to market risk with respect to ethanol pricing. The Company's ethanol sales are priced using contracts that can either be fixed, based upon the price of wholesale gasoline plus or minus a fixed amount, or based upon a market price at the time of shipment. The Company sometimes fixes the price at which it sells ethanol using fixed price physical delivery contracts. The Company has elected to account for these transactions as normal sales transactions under ASC 815, and accordingly, it has not marked these transactions to market.

Realized Gains (Losses)

The Company recorded a net gain of $0.7 million on derivative transactions for the year ended December 31, 2012, and a net loss of $4.4 million for the year ended December 31, 2011, in "Gain (loss) on derivative transactions, net" on the consolidated statements of operations.

Derivative instruments not designated as hedging instruments under ASC 815 at December 31, 2012 and 2011, were as follows:

		December 31	
Type	**Balance Sheet Classification**	**2012**	**2011**
		(In Thousands)	
Corn future positions	Other current assets	**$ 26**	$ 8
Ethanol future positions	Other current assets	**–**	911

The realized and unrealized effects on the Company's consolidated statements of operations for derivatives not designated as hedging instruments under ASC 815 for the years ended December 31, 2012 and 2011, were as follows:

		December 31	
Type	**Balance Sheet Classification**	**2012**	**2011**
		(In Thousands)	
Corn	Gain (loss) on derivative transactions	**$ 667**	$ (2,235)
Ethanol	Gain (loss) on derivative transactions	**14**	(2,189)

7. Derivative Instruments and Hedging (continued)

At December 31, 2012, the Company had 109 short March 2013 corn futures contracts (545,000 bushels) at an average price of $7.19 per bushel, and six long May 2013 corn futures contracts (30,000 bushels) at an average price of $7.98 per bushel.

8. Property, Plant, and Equipment

Property, plant, and equipment at December 31, 2012 and 2011, were as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Land and improvements	**$ 12,137**	$ 12,064
Building and leasehold improvements	**11,605**	11,161
Machinery and equipment	**214,990**	211,782
Furniture and fixtures	**957**	957
Less accumulated depreciation	**(41,012)**	(24,394)
Totals	**198,677**	211,570
Construction-in-progress	**94,863**	90,130
Total property, plant, and equipment, net	**$ 293,540**	$ 301,700

Total depreciation expense for the years ended December 31, 2012 and 2011, was $17.3 million and $17.9 million, respectively, and depreciation from continuing operations was primarily recorded in "Cost of goods sold" on the consolidated statements of operations. Depreciation expense related to discontinued operations was recorded in "Loss from operations of discontinued components" on the consolidated statements of operations.

Construction-in-Progress

At December 31, 2012, construction-in-progress includes $63.3 million related to the construction of the Aurora West plant, $25.1 million related to the Canton facility acquired in August 2010, and $6.0 million related to capitalized projects at the Pekin facility.

At December 31, 2011, construction-in-progress includes $56.6 million related to the construction of the Aurora West plant, $23.0 million related to the Canton facility acquired in August 2010, and $9.8 million related to capitalized projects at the Pekin facility.

The Company capitalized $2.3 million and $3.5 million of interest for the years ended December 31, 2012 and 2011, respectively.

9. Short-Term Borrowings

Revolving Credit Facility with Wells Fargo

On July 20, 2011, the Company and each of its subsidiaries, as co-borrowers (collectively, the Borrowers), entered into a Revolving Facility with the lenders party thereto (the Lenders), and Wells Fargo Capital Finance LLC as Lender and as agent for the Lenders (in such capacity, Wells Fargo) (as amended, and as may be amended, supplemented or otherwise modified from time to time, the Revolving Facility Agreement) with a $50.0 million commitment (the Commitments). The Revolving Facility has a borrowing base that is principally supported by accounts receivable and inventory. The Company terminated the Old Revolving Credit Agreement with PNC and paid a $0.6 million early termination fee, which is included in debt extinguishment costs for the year ended December 31, 2011. The Company capitalized $0.1 million and $2.9 million in debt issuance costs related to the Revolving Facility Agreement for the years ended December 31, 2012 and 2011, respectively. The Company recognized $0.6 million and $0.3 million of expense for the amortization of debt issuance costs related to the Revolving Facility Agreement during the years ended December 31, 2012 and 2011, respectively.

On June 8, 2012, the Company's excess availability under the Revolving Facility Agreement fell below the required $7.5 million threshold, which constituted an Event of Default. Under the terms of the agreement, the Company had 30 days to cure the event of default. On July 6, 2012, the Revolving Credit Facility was amended to cure the default. As part of the amendment, the Company was required to collateralize any excess availability shortfall with restricted cash, up to an amount not to exceed $7.5 million.

On September 24, 2012, the Borrowers entered into a New Revolving Facility with Wells Fargo with a $30 million commitment. The New Revolving Facility is principally supported by accounts receivable and inventory, and replaces the Revolving Facility Agreement entered into with Wells Fargo in 2011. The total borrowing capacity of the New Revolving Facility is 40% lower than the total borrowing capacity of the Revolving Facility. As a result, a loss on debt extinguishment of $0.9 million was recognized in 2012 for the write-off of 40% of the previously unamortized debt issuance costs relating to the Revolving Facility. The remaining portion of these costs will be added to the issuance costs capitalized as part of the New Revolving Facility and amortized over the term of the New Revolving Facility, as described below. The Company capitalized $1.5 million in debt issuance costs related to the New Revolving Facility. The Company recognized $0.3 million in expense for the amortization of debt issuance costs related to the New Revolving Facility for the year ended December 31, 2012.

9. Short-Term Borrowings (continued)

The loans under the New Revolving Facility Agreement will mature on the earlier of (a) July 20, 2015, and (b) the date that is six months before the earliest maturity date of the Term Loan Indebtedness under the Term Loan Agreement (as defined below) (or if the indebtedness under the Term Loan Agreement is fully refinanced or replaced, the maturity date of such refinanced or replaced indebtedness).

Borrowings under the New Revolving Facility Agreement will bear interest at (i) the London Interbank Offered Rate (LIBOR) plus 4.0% or (ii) the alternate base rate plus 2.5% based on the Company's election. The alternate base rate will be calculated based on the greater of (A) the federal funds rate plus 1/2 of 1.0%, (B) the LIBOR rate (calculated based upon an interest period of three months and determined on a daily basis), plus 1.0% and (C) the rate of interest announced, from time to time, by Wells Fargo Bank, National Association, as its "prime rate."

The security interests granted under the New Revolving Facility Agreement in the assets (including inventory and accounts receivable) other than substantially all of Borrowers' fixed assets will be first priority in nature, subject to customary exceptions, and the security interests in the collateral constituting substantially all of the Borrowers' fixed assets will be second priority in nature, and subject to customary liens and the first priority lien on such assets under Aventine's senior secured term loan credit agreement dated as of December 22, 2010 by and among Aventine, as borrower, Citibank, N.A., as administrative agent and collateral agent (in such capacity, the "Term Loan Agent"), the lenders party thereto and certain other persons (as amended, and as may be amended, supplemented or otherwise modified from time to time, the "Term Loan Agreement").

The New Revolving Facility Agreement requires mandatory prepayment of the obligations thereunder in the event that the amount of (i) outstanding revolving loans under the New Revolving Facility plus (ii) the aggregate undrawn amount of all outstanding letters of credit issued by certain Lenders exceeds the Borrowing Base (as defined in the New Revolving Facility Agreement).

The New Revolving Facility Agreement contains customary affirmative and negative covenants concerning the conduct of Aventine's business operations, such as limitations on the incurrence of indebtedness, the granting of liens, maintenance of operations, mergers, consolidations and dispositions of assets, restricted payments and the payment of dividends, investments, and transactions with affiliates.

9. Short-Term Borrowings (continued)

The New Revolving Facility Agreement contains a financial covenant that will require Aventine to maintain minimum liquidity levels of $10.0 million throughout the term of the agreement. In addition, the agreement contains an ethanol production covenant that will require production of at least 80 million gallons during any trailing 12-month period ending as of any calendar month. The New Revolving Facility Agreement also includes customary events of default, including, but not limited to, failure to pay principal or interest, failure to pay or default under other material debt, misrepresentation or breach of warranty, violation of certain covenants, a change of control, the commencement of a bankruptcy proceeding, any of the Borrowers' insolvency and the rendering of a judgment or judgments against any of the Borrowers in excess of a specified amount individually or in the aggregate. Upon the occurrence of an event of default, Aventine's obligations under the New Revolving Facility Agreement may be accelerated, and all indebtedness thereunder would become immediately due and payable.

The Company was in compliance with all of the covenants related to the New Revolving Facility Agreement at December 31, 2012.

At December 31, 2012, the Company had no short-term borrowings and letters of credit outstanding of $7.6 million under the New Revolving Facility Agreement.

10. Long-Term Debt

The following table summarizes the Company's outstanding debt at December 31:

	December 31	
	2012	**2011**
	(In Thousands)	
Senior secured term loan credit agreement, final maturity date December 2017	**$ 230,216**	**$ 216,138**
Other	**163**	264
	230,379	216,402
Less: current maturities of long-term debt	**(37)**	(2,283)
Total long-term debt, net	**$ 230,342**	$ 214,119

10. Long-Term Debt (continued)

Senior Secured Term Loan Credit Agreement

On December 22, 2010, the Company entered into the Term Loan Agreement with the Term Loan Agent, the lenders party thereto, Citigroup Global Markets Inc. and Jefferies Finance LLC, as joint lead arrangers and joint book-runners, and Citibank, N.A. and Jefferies Finance LLC, as co-syndication agents. Under the Term Loan Agreement, the lenders provided to the Company an aggregate principal amount $200 million term loan facility (the Term Loan Facility). The Term Loan Facility was issued net of original issue discount of $8.0 million.

Also on December 22, 2010, the Company gave notice of redemption pursuant to the indenture dated as of the Effective Date among the Company, each of the Company's direct and indirect wholly owned subsidiaries, as guarantors, and Wilmington Trust FSB, as trustee and collateral agent, providing that it would redeem all $155.0 million aggregate principal amount of notes at a redemption price of 105% of the principal amount thereof, plus accrued and unpaid interest to, but not including, the redemption date. The Company redeemed such notes on January 21, 2011. In connection with the redemption, the Company paid $164.8 million, of which $155.0 million related to the principal amount of the notes, $7.8 million related to a prepayment penalty on the notes and $2.0 million related to interest on the notes.

On April 7, 2011, the Company entered into an incremental amendment (the Incremental Amendment) with the Term Loan Agent and Macquarie Bank Limited, as lender (Macquarie), to the Company's Term Loan Agreement. Pursuant to the Incremental Amendment, Macquarie loaned an aggregate principal amount equal to $25.0 million, before fees of $1.3 million, to the Company. The loan under the Incremental Amendment had substantially the same terms as the existing loans under the Term Loan Agreement, including seniority, ranking in right of payment and of security, maturity date, applicable margin, and interest rate floor.

10. Long-Term Debt (continued)

On September 24, 2012, the Company entered into a troubled debt restructuring with the Term Loan Lenders and Citibank, as Agent for the Lenders. As a result of this transaction, the Company converted $132.3 million of its outstanding term loan debt into 2,186,298 newly issued shares of common stock of the Company, which represents approximately 92.5% of the Company's currently issued and outstanding shares. After the exchange, $100 million of original Term Loan debt (Term Loan B) remained. In addition, the Term Loan Lenders issued $30 million in debt to the Company. Pursuant to the agreement, a closing fee of $0.9 million was capitalized and added to the principal. The total of $30.9 million of principal (Term Loan A) and a $0.9 million exit fee are due at maturity. Term Loan A accrues interest payable in cash at the end of each quarter. Interest accrues at a rate of 12%. The final maturity date for all principal and accrued interest on Term Loan A is in September 2016.

Term Loan B accrues interest payable at the end of each quarter. Under the terms of the agreement, the interest may be paid in cash or paid in kind. If the Company elects to pay the interest in cash, interest will accrue at a rate of 10.5%. If the Company elects paid-in-kind interest, interest will accrue at a rate of 15% and will be capitalized as part of Term Loan B at the end of the quarter. The final maturity date for all principal and accrued interest on Term Loan B is in September 2017.

The restructuring transaction qualifies as a troubled debt restructuring and falls within the scope of ASC 470-60, *Debt – Troubled Debt Restructurings by Debtors*, because the Company, as the debtor, was experiencing financial difficulty and the creditor granted a concession. As a result, the impact of the restructuring is accounted for prospectively using the effective-interest method. Accordingly, the aggregate debt balance of $232.3 million was reduced by only $26.8 million, the fair value of the equity interest granted in exchange for forgiveness of $132.3 million of debt. No gain on debt forgiveness was recognized, as the future maximum cash out flows associated with the principal and interest on the remaining debt may exceed the amount of the previously recognized debt obligation. Additionally, the debt balance was increased $30 million resulting from the issuance of Term Loan A. The Company recognized $1.4 million in effective interest expense related to Term Loans A and B for the year ended December 31, 2012. The Company made interest payments of $1.0 million related to Term Loans A and B for the year ended December 31, 2012. ASC 470-60 requires debt issuance costs related to the original debt to continue to be amortized over the term of the new debt instrument, through September 2017. Costs related to the restructuring of the debt should be expensed as incurred. The Company amortized $1.5 million of debt issuance costs related to the original Term Loan for the year ended December 31, 2012. As part of the troubled debt restructuring, the Company incurred fees of $3.5 million. These fees are recorded in selling, general, and administrative expenses.

10. Long-Term Debt (continued)

The Term Loan Agreement borrowings as of December 31, 2012, are comprised of the following:

	December 31, 2012
	(In Thousands)
Term Loan A principal	$ 30,000
Term Loan A fees	900
Term Loan B principal	100,000
Term Loan B interest paid-in-kind	4,090
Principal reduced but not derecognized and other	95,389
	$ 230,379

Under the terms of the Term Loan Agreement, the amount of indebtedness the Company is permitted to incur under the New Revolving Facility (including bank products and hedging obligations) is capped at $58.0 million. The Term Loan Agreement requires the Company to maintain liquidity of at least $5 million throughout the term of the agreement.

Debt Maturities

Maturities relating to outstanding debt, excluding unrecognized principal forgiveness that may be paid as interest in future periods, at December 31, 2012, for each of the five years in the period ending December 31, 2017, and thereafter are expected as follows:

	December 31
	(In Thousands)
2013	$ 37
2014	42
2015	48
2016	31,836
2017	104,090
Thereafter	–
Total	$ 136,053

10. Long-Term Debt (continued)

Subsequent to 2012, the Company amended its Term Loan Agreement and borrowed an additional $35 million to fund capital expenditures and provide additional liquidity. Interest accrues quarterly and is payable in kind. The maturity date for the additional $35 million coincides with the Term Loan A maturity date of September 2016.

11. Commitments and Contingencies

Lease Commitments

The Company leases certain assets such as rail cars, terminal facilities, barges, buildings, and equipment from unaffiliated parties under noncancelable operating leases. Terms of the leases, including renewals, vary by lease. Rental expense for operating leases for the years ended December 31, 2012 and 2011, was $7.3 million and $6.8 million, respectively.

At December 31, 2012, minimum rental commitments under noncancelable operating lease terms in excess of one year are as follows:

	Minimum Rental Commitments
	(In Thousands)
Years ending December 31:	
2013	$ 6,313
2014	4,475
2015	4,026
2016	1,155
2017	885
Thereafter	7,713
Total minimum lease payments	$ 24,567

Other Commitments

At December 31, 2012, the Company had forward contracts to purchase approximately 153,000 tons of coal for $10.7 million, delivered in 2013.

At December 31, 2012, the Company had committed to purchase approximately 241,800 MMBtus of natural gas for $0.9 million through January 2013, delivered.

11. Commitments and Contingencies (continued)

At December 31, 2012, the Company had firm-price purchase commitments to purchase approximately 841,332 bushels of corn at an average fixed price of $7.38 per bushel for delivery through January 2013. These commitments were negotiated in the normal course of business and represent a portion of the Company's corn requirements.

At December 31, 2012, the Company had fixed-price contracts to sell 336,000 gallons of ethanol at an average price of $2.85 per gallon, and had sold 35.4 million gallons of ethanol at index prices using indices from Oil Price Information Service in 2013.

Environmental Remediation and Contingencies

The Company is subject to extensive federal, state, and local environmental laws, regulations, and permit conditions (and interpretations thereof), including those relating to the discharge of materials into the air, water, and ground; the generation, storage, handling, use, transportation, and disposal of hazardous materials; and the health and safety of the Company's employees. These laws, regulations, and permits require the Company to incur significant capital and other costs, including costs to obtain and maintain expensive pollution control equipment. They may also require the Company to make operational changes to limit actual or potential impacts to the environment. A violation of these laws, regulations, or permit conditions can result in substantial fines, natural resource damages, criminal sanctions, permit revocations, and/or facility shutdowns. In addition, environmental laws and regulations (and interpretations thereof) change over time, and any such changes, more vigorous enforcement policies, or the discovery of currently unknown conditions may require substantial additional environmental expenditures. The Company has not accrued any amounts for environmental matters as of December 31, 2012.

Federal and state environmental authorities have been investigating alleged excess volatile organic compounds emissions and other air emissions from many U.S. ethanol plants, including the Company's Illinois facilities. The investigation relating to the Illinois wet mill facility is still pending, and the Company could be required to install additional air pollution control equipment or take other measures to control air pollutant emissions at that facility. If authorities require such controls to be installed, the Company anticipates that costs would be higher than the approximately $3.4 million it incurred in connection with a similar investigation at its Nebraska facility due to the larger size of the Illinois wet mill facility. In addition, if the authorities determine that the Company's emissions are in violation of applicable law, the Company would likely be required to pay fines that could be material.

11. Commitments and Contingencies (continued)

The Company has made, and expects to continue making, significant capital expenditures on an ongoing basis to comply with increasingly stringent environmental laws, regulations, and permits, including compliance with the U.S. Environmental Protection Agency's (EPA) National Emissions Standard for Hazardous Air Pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters (also known as Boiler MACT). This NESHAP was issued but subsequently vacated in 2007. The vacated version of the rule required the Company to implement maximum achievable control technology at its Illinois wet mill facility to reduce hazardous air pollutant emissions from its boilers. The EPA issued a new Boiler MACT rule on December 22, 2012. The rule became final on January 31, 2013. The Company will have three years from the date of the final rule to meet the new emission limits and is in the process of determining the costs of compliance, which are not known at this time.

Litigation Matters

On November 6, 2008, Aventine Renewable Energy, Inc. filed a complaint against JPMorgan Securities, Inc. and JPMorgan Chase Bank, N.A. in the Circuit Court for the Tenth Judicial Circuit of Tazewell County, Illinois. Aventine sought to recover money lost in the investment of funds in student loan-backed auction rate securities. Aventine alleged that JPMorgan Chase Bank, through its investment arm, JPMorgan Securities, gave false assurances of the liquidity of this type of investment. Aventine's claim represented funds lost because Aventine was forced to sell the investment at a loss after the securities became illiquid. The matter was assigned to a FINRA arbitration panel and was set to be heard in April 2013. Subsequent to year-end but prior to the scheduled hearing date, the parties agreed to settle this matter. The terms of the settlement are subject to a confidentiality clause.

On April 7, 2009, the Company filed voluntary petitions with the Bankruptcy Court to reorganize under Chapter 11 of the United States Code. On January 13, 2010, the Debtors filed with an effective date of March 15, 2010. Since the Effective Date, most of the Debtors' cases have been closed by order of the Bankruptcy Court; however, the case of Aventine Renewable Energy, Inc. remains open, wherein certain creditor claims remain subject to dispute and further adjudication, as do certain claims and potential claims by Aventine Renewable Energy, Inc. against certain third parties to recover sums that Aventine asserts is owed to it. At this time, the Company is unable to determine the impact such litigation will have on its business, operating results, financial condition and cash flows.

11. Commitments and Contingencies (continued)

On May 31, 2012, the Company served Aurora Cooperative Elevator Company (Aurora) with a petition for declaratory relief filed in the District Court of Dallas County, Texas, 160th Judicial District. The petition alleges, among other things, that Aurora has improperly threatened – in direct contravention of the agreement between the Company and Aurora – to invoke a contractual option to repurchase the land on which the Company's Aurora West ethanol plant (the Plant) is located. Aurora's stated position is that Aurora has the right to invoke the option if the Plant has not been producing ethanol for 30 days, at a daily rate equivalent to an annualized production rate of 90 million gallons, by July 31, 2012. The petition alleges that the contract setting forth the option does not require 30 days of production in order to prevent Aurora's exercise of the contractual option. Rather, the Company asserts the contract only requires that it "diligently pursue construction" of the Plant "to completion by July 1, 2012," where "diligently pursue construction ... to completion" does not mean "operation" or "production." The Company is seeking a declaratory judgment that the Company was not required to operate the plant or produce ethanol at the Plant at the rates or amounts asserted by Aurora before July 31, 2012, and the Company need not operate the Plant or meet the production requirements to avoid the exercise of the contractual option. This case has since been transferred to the United States District Court for the District of Nebraska, where the parties await rulings as to whether and which one of the competing claims will move forward. The Company intends to pursue any and all rights available to it with respect to the foregoing. At this time, the Company is unable to determine the impact such litigation will have on its business, operating results, financial condition, and cash flows.

On September 20, 2012, Aurora sued the Company in the United States District Court for the District of Nebraska alleging that the Company (and two of its subsidiaries) breached the parties' grain supply agreement. Specifically, Aurora alleges that it procured 1.7 million bushels of corn on the Company's behalf, for which the Company is liable. The Company denies that it ever contracted for the corn in question or that Aurora suffered the losses it alleges with respect to that corn. Rather, the Company maintains that Aurora improperly set off amounts it owes to the Company (or one or more of its subsidiaries) in violation of the parties' grain and marketing agreements, thus resulting in uncured breaches of each agreement. As a result, the Company issued notice of termination of those agreements. This matter is pending in court and also before the National Grain and Feed Association, where an arbitration proceeding has commenced to resolve the grain dispute. The Company intends to pursue any and all rights and remedies available to it with respect to the foregoing. At this time, the Company is unable to determine the impact such litigation will have on its business, operating results, financial condition, and cash flows.

11. Commitments and Contingencies (continued)

From time to time, the Company is involved in various legal proceedings, including legal proceedings relating to the extensive environmental laws and regulations that apply to the Company's facilities and operations. The Company is not involved in any legal proceedings, other than those described herein, that it believes could have a material adverse effect upon the Company's business, operating results, financial condition, or cash flows.

12. Retirement and Pension Plans

Defined Contribution Plan

The Company has 401(k) plans covering substantially all of its employees. Contributions made under the defined contribution plans include a match, at the Company's discretion, of an employee's contribution to the plans. For the years ended December 31, 2012 and 2011, such contributions amounted to $0.9 million and $0.9 million, respectively.

Qualified Retirement Plan

The Company has a defined benefit pension plan (the Retirement Plan) that is noncontributory, and covers unionized employees at its Pekin, Illinois, facility who fulfill minimum age and service requirements. Benefits are based on a prescribed formula based upon the employee's years of service. On October 29, 2010, the Union ratified a new collective bargaining agreement with the Company for its hourly production workers in Pekin, Illinois. This new agreement was effective November 1, 2010. The agreement states that, among other things, employees hired after November 1, 2010, will not be eligible to participate in the Retirement Plan. The Company uses a December 31 measurement date for its Retirement Plan.

12. Retirement and Pension Plans (continued)

Changes in the benefit obligations, the fair value of the assets, the funded status, and the amounts recognized in the consolidated balance sheets were as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Changes in benefit obligation		
Benefit obligation at the beginning of the year	$ 13,490	$ 10,405
Service cost	**457**	364
Interest cost	**567**	566
Actuarial loss	**833**	2,592
Benefits paid	**(481)**	(437)
Benefit obligation at the end of the year	**14,866**	13,490
Changes in plan assets		
Fair value at the beginning of the year	10,604	10,308
Actual return on plan assets	**1,321**	116
Employer contributions	**509**	617
Benefits paid	**(481)**	(437)
Fair value of plan assets at the end of the year	**11,953**	10,604
Funded surplus (deficit) at the end of the year	**$ (2,913)**	$ (2,886)
Amounts recognized in the consolidated balance sheets		
Noncurrent liabilities	**$ (2,913)**	$ (2,886)
Amounts recognized in accumulated other comprehensive income		
Net loss	**$ 3,548**	$ 3,376

The fair value of plan assets, the accumulated benefit obligation and the projected benefit obligation were as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Fair value of plan assets	**$ 11,953**	$ 10,604
Accumulated benefit obligation	**14,866**	13,490
Projected benefit obligation	**14,866**	13,490

12. Retirement and Pension Plans (continued)

A summary of the components of net periodic pension cost for the Retirement Plan is as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Components of net periodic benefit cost (credit):		
Service cost	**$ 457**	$ 364
Interest cost	**567**	566
Expected return on plan assets	**(829)**	(805)
Amortization of net actuarial loss	**169**	–
Net periodic pension cost	**364**	125
Other changes in plan assets and benefit obligations recognized in AOCI:		
Net loss	**342**	3,281
Amortization of net loss	**(169)**	–
Total recognized in AOCI		
Net amount recognized in total periodic benefit cost and AOCI	**173**	3,281
Actual return on plan assets	**$ 1,321**	$ 116
Employer contributions	**509**	617
Benefits paid	**481**	437

The Company did not recognize any amortization of net actuarial losses for the year ended December 31, 2011, as losses as of January 1, 2011, did not exceed 10% of projected benefit obligation.

The Company is not expected to make any contributions in the year ending December 31, 2013.

Certain assumptions utilized in determining the projected benefit obligation and net periodic benefit cost for the years ended December 31 are as follows:

	Year Ended December 31	
	2012	**2011**
Assumptions used to determine benefit obligation:		
Discount rate	**3.90%**	4.30%
Assumptions used to determine net periodic benefit cost:		
Discount rate	**4.30%**	5.41%
Expected long-term rate of return on plan assets	**7.75%**	7.75%

12. Retirement and Pension Plans (continued)

	December 31	
	2012	**2011**
Unfunded status	**$ (2,913)**	$ (2,886)
Amounts recognized in:		
Long-term liabilities	**(2,913)**	(2,886)
Accumulated other comprehensive loss unamortized net actuarial loss	3,548	3,376

The Company generated actuarial losses for the years ended December 31, 2012 and 2011, primarily from the decrease in the discount rate used in the calculation of the benefit obligation. The discount rate used was 3.90% at December 31, 2012, and 4.30% at December 31, 2011.

Expected Benefit Payments – The following table summarizes the expected benefit payments for the Retirement Plan for each of the next five fiscal years and in the aggregate for the five fiscal years thereafter:

	December 31 *(In Thousands)*
2013	$ 496
2014	511
2015	546
2016	597
2017	610
2018–2022	3,351

Plan Assets

The Company's pension committee is responsible for overseeing the investment of pension plan assets. The pension committee is responsible for determining and monitoring the appropriate asset allocations and for selecting or replacing investment managers, trustees, and custodians. The pension plan's current investment target allocations are 53% equities and 47% debt. The pension committee reviews the actual asset allocation in light of these targets periodically and rebalances investments as necessary. The pension committee also evaluates the performance of investment managers as compared to the performance of specified benchmarks and peers and monitors the investment managers to ensure adherence to their stated investment style and to the plan's investment guidelines.

12. Retirement and Pension Plans (continued)

Plan assets are invested using a total return investment approach whereby a mix of equity securities and debt securities are used to preserve asset values, diversify risk and achieve the Company's target investment return benchmark. Investment strategies and asset allocations are based on careful consideration of plan liabilities, the plan's funded status and the Company's financial condition. Investment performance and asset allocation are measured and monitored on an ongoing basis.

Plan assets are managed in a balanced portfolio comprised of two major components: an equity portion and a fixed income portion. The expected role of plan equity investments is to maximize the long-term real growth of fund assets, while the role of fixed income investments is to generate current income, provide for more stable periodic returns and provide some protection against a prolonged decline in the market value of fund equity investments.

Equity securities include U.S. and international equity, while fixed income securities include long-duration and high-yield bond funds.

The average asset allocations for the Retirement Plan at December 31 are as follows:

	December 31	
	2012	**2011**
Equity securities	**53%**	49%
Debt securities	**47**	51
Total	**100%**	100%

The following table presents the categorization of plan assets, measured at fair value as of December 31, 2012:

Asset Category	**Market Value at December 31, 2012**	**Quoted Prices in Active Markets for Identical Assets (Level 1)**	**Significant Observable Inputs (Level 2)**	**Significant Unobservable Inputs (Level 3)**
		(In Thousands)		
Large-cap U.S. equity securities(1)	$ 3,793	$ –	$ 3,793	$ –
Small/mid-cap U.S. equity securities(2)	1,088	–	1,088	–
International equity securities(3)	1,442	–	1,442	–
Debt securities(4)	5,630	–	5,630	–
Total pension assets	$ 11,953	$ –	$ 11,953	$ –

12. Retirement and Pension Plans (continued)

The following table presents the categorization of plan assets, measured at fair value as of December 31, 2011:

Asset Category	Market Value at December 31, 2012	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
		(In Thousands)		
Large-cap U.S. equity securities (1)	$ 3,147	$ –	$ 3,147	$ –
Small/mid-cap U.S. equity securities (2)	905	–	905	–
International equity securities (3)	1,145	–	1,145	–
Debt securities (4)	5,407	–	5,407	–
Total pension assets	$ 10,604	$ –	$ 10,604	$ –

(1) This category includes investments in funds comprised of equity securities of large U.S. companies. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

(2) This category includes investments in funds comprised of equity securities of small- and medium-sized U.S. companies. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

(3) This category includes investments in funds comprised of equity securities of foreign companies including emerging markets. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

(4) This category includes investments in funds comprised of U.S. and foreign investment-grade fixed income securities, high-yield fixed income securities that are rated below investment-grade, U.S. treasury securities, mortgage-backed securities, and other asset-backed securities. The funds are valued using the net asset value method in which an average of the market prices for the underlying investments is used to value the fund.

13. Postretirement Benefit Obligation

The Company sponsors a health care plan and life insurance plan (the Postretirement Plan) that provides postretirement medical benefits and life insurance to certain “grandfathered” unionized employees. Employees hired after December 31, 2000, are not eligible to participate in the Postretirement Plan. The plan is contributory, with contributions required at the same rate as active employees. Benefit eligibility under the plan reduces at age 65 from a defined benefit to a defined dollar cap based upon years of service.

13. Postretirement Benefit Obligation (continued)

On December 31, 2012, the annual measurement date, the Postretirement Plan had an accumulated benefit obligation of $3.8 million, which is greater than the accumulated benefit obligation at December 31, 2011, of $3.1 million. The Postretirement Plan is unfunded and has no assets.

Changes in the benefit obligations, the fair value of the assets, the funded status and amount recognized in the consolidated balance sheets were as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Changes in benefit obligation		
Benefit obligation at the beginning of the year	**$ 3,086**	$ 2,206
Service cost	**106**	94
Interest cost	**141**	127
Plan participants' contribution	11	–
Actuarial loss	**549**	696
Benefits paid	**(72)**	(37)
Benefit obligation at the end of the year	**3,821**	3,086
Changes in plan assets		
Fair value at the beginning of the year	**–**	–
Employer contributions	**61**	37
Plan participants' contributions	**11**	–
Benefits paid	**(72)**	(37)
Fair value of plan assets at the end of the year	**–**	–
Deficit at the end of the year	**$ (3,821)**	$ (3,086)
Amounts recognized in the consolidated balance sheets		
Current liabilities	**$ (106)**	$ (49)
Noncurrent liabilities	**(3,715)**	**(3,037)**
Amounts recognized	**$ (3,821)**	$ (3,086)
Amounts recognized in accumulated other comprehensive loss		
Net loss	**$ 1,315**	$ 841

13. Postretirement Benefit Obligation (continued)

A summary of the components of net periodic postretirement benefit cost for the Postretirement Plan for the years ended December 31, 2012 and 2011 are as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Components of postretirement benefit cost:		
Service cost	**$ 106**	$ 93
Interest cost	**141**	127
Amortization of net actuarial loss	**76**	7
Net periodic postretirement benefit cost	**323**	227
Other changes in benefit obligations recognized in accumulated other comprehensive income (loss):		
Net loss	**549**	697
Amortization of net loss	**(76)**	(7)
Total recognized in accumulated other comprehensive loss	**473**	690
Net amount recognized in postretirement benefit cost and accumulated other comprehensive loss	**796**	917

Items not yet recognized as a component of net periodic postretirement cost and recognized in the consolidated balance sheets are as follows at December 31:

	December 31	
	2012	**2011**
	(In Thousands)	
Unfunded status	**$ (3,821)**	**$ (3,086)**
Amounts recognized in:		
Current liabilities	**(106)**	(49)
Long-term liabilities	**(3,715)**	(3,037)
Accumulated other comprehensive loss		
Unamortized net actuarial loss	**1,315**	841

The Company expects to recognize amortization of net actuarial loss of $0.1 million in 2013.

The weighted-average discount rate used to determine net periodic postretirement benefit cost was 4.2% and 5.4% for the years ended December 31, 2012 and 2011, respectively.

13. Postretirement Benefit Obligation (continued)

Expected Benefit Payments – The following table summarizes the expected benefit payments for the Company's plan for each of the next five fiscal years and in the aggregate for the five fiscal years thereafter:

	December 31
	(In Thousands)
2013	$ 106
2014	114
2015	121
2016	176
2017	193
2018–2022	1,003

For purposes of determining the cost and obligation for pre-Medicare postretirement medical benefits, a 7.5% annual rate of increase in the per capita cost of covered benefits (i.e., health care trend rate) was assumed for the plan in 2012, declining to a rate of 7.0% in 2022. Assumed health care cost trend rates have a significant effect on the amounts reported for health care plans. A one percent change in the assumed health care cost trend rate would have had the following effects:

	1% Increase		1% Decrease	
	2012	**2011**	**2012**	**2011**
		(In Thousands)		
Effect on total of service and interest cost components	**$ 25**	$ 21	**$ (22)**	$ (18)
Effect on postretirement benefit obligation	**306**	247	**(267)**	(216)

Patient Protection and Affordable Care Act

In March 2010, the Patient Protection and Affordable Care Act (PPACA) was enacted, potentially impacting the Company's cost to provide health care benefits to its eligible active and retired employees. The PPACA has both short-term and long-term implications on benefit plan standards. Implementation of this legislation is planned to occur in phases, beginning in 2010, and extending through 2018.

14. Income Taxes

The provision for income taxes for the years ended December 31, 2012 and 2011, consists of the following:

	Year Ended December 31	
	2012	**2011**
	(In Thousands)	
Current expense	$ 9	$ 484
Deferred expense	–	52
Total income tax expense	**$ 9**	$ 536

The reconciliation of differences between the statutory U.S. federal income tax rate and the effective tax rate for the years ended December 31, 2012 and 2011, is primarily due to changes in the valuation allowances and deferred tax assets limited as a result of the troubled debt restructuring transaction, which caused a change in ownership for tax purposes.

Deferred income taxes included in the consolidated balance sheets reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the carrying amount for income tax return purposes.

The deferred tax provision for the years ended December 31, 2012 and 2011, does not reflect the tax effect of $1.9 million and $1.7 million, respectively, resulting from the pension and other postretirement liability components included in accumulated other comprehensive income.

14. Income Taxes (continued)

Significant components of the deferred tax assets and liabilities are as follows:

	December 31	
	2012	**2011**
	(In Thousands)	
Current deferred tax asset	**$ 2,954**	$ 4,979
Valuation allowance	**(2,737)**	(4,837)
Net current deferred tax asset	**217**	142
Current deferred tax liability	228	1,287
Long-term deferred tax liabilities:		
Partnership investment	**6,318**	6,432
Unrealized gain on bankruptcy	**197**	197
Long-term deferred tax liability	**6,515**	6,629
Long-term deferred tax assets:		
Basis of property, plant and equipment	**49,445**	130,744
Debt issuance costs and original issue discount	**4,079**	24
Capital losses	**793**	6,665
State NOLs	**239**	8,660
Federal NOLs	**1,673**	46,729
Stock-based compensation	**1,719**	3,449
Benefit obligations	**2,694**	2,305
Investment in marketing alliances	**–**	696
Valuation allowance	**(56,194)**	(193,576)
Long-term deferred tax assets	**4,448**	5,696
Net long-term deferred tax liability	**$ (2,078)**	$ (2,078)

14. Income Taxes (continued)

At December 31, 2012 and 2011, the Company has recorded valuation allowances of $58.9 million and $198.4 million, respectively, on its deferred tax assets to reduce the deferred tax assets to the amount that management believes is more likely than not to be realized. Management considered the scheduled reversal of deferred tax liabilities and tax planning strategies in making this assessment. The decrease in current year valuation allowance is primarily related to certain debt modifications and ownership transactions that have limited amounts of future tax benefits. The deferred tax assets subject to the valuation allowance primarily include tax benefits associated with capital loss on securities; stock-based compensation; basis of property, plant, and equipment; benefit obligations; debt issuance costs and original issuance discount; and both federal and state income tax net operating loss carryforwards.

At December 31, 2012 and 2011, the Company had net operating loss carryforwards of $147.1 million and $133.5 million, respectively. The future utilization of these net operating loss carryforwards has been limited due to certain ownership changes. Due to the uncertainty regarding realization of the tax benefits, $142.3 million of the 2012 loss carryforwards has been deemed worthless.

At December 31, 2012 and 2011, the Company had capital loss carryforwards of $30.0 million and $6.7 million, respectively, which are available to offset future consolidated capital gains. The future utilization of capital loss carryforwards has been limited due to certain ownership changes. Due to the uncertainty regarding the realization of the capital loss carryforward, the entire 2012 loss carryforward has been deemed worthless.

ASC 740, *Income Taxes*, provides that the tax effects from an uncertain tax position can be recognized in the Company's financial statements only if the position is more likely than not of being sustained on audit, based on the technical merits of the position. Tax positions that meet the recognition threshold are reported at the largest amount that is more likely than not to be realized. This determination requires a high degree of judgment and estimation. The Company periodically analyzes and adjusts amounts recorded for the Company's uncertain tax positions, as events occur to warrant adjustment, such as when the statutory period for assessing tax on a given tax return or period expires or if tax authorities provide administrative guidance or a decision is rendered in the courts. The Company does not reasonably expect the total amount of uncertain tax positions to significantly increase or decrease within the next 12 months. As of December 31, 2012, the Company's uncertain tax positions were not significant for income tax purposes. In the event the Company has uncertain tax positions, it is the Company's policy to include the interest expense or income, as well as potential penalties on unrecognized tax benefits, as components of income tax expense in the consolidated statements of operations.

14. Income Taxes (continued)

The Company files a federal and various state income tax returns. The Company's federal income tax returns for 2009 to 2011 are open tax years under the statute of limitations. The Company's federal income tax return for 2008 has been audited. The Company files in numerous state jurisdictions with varying statutes of limitations open from 2008 to 2011.

15. Warrants

When the Company emerged from protection under Chapter 11 of the Bankruptcy Code in 2010, holders of allowed Class 9(a) equity interests received warrants (the Original Warrants) to purchase up to an aggregate amount of 450,000 shares of common stock of the successor company at an exercise price of $40.94 per share. As of September 24, 2012, holders of the Original Warrants had exercised 498 of the Original Warrants. The Original Warrants expired in 2012, after the restructuring transaction. Since the Original Warrants have expired, the share amounts and prices are not affected by the 50 for 1 reverse stock split that occurred in September 2012.

In connection with the restructuring transaction occurring in September 2012, the original equity holders of the Company received warrants to purchase up to an aggregate amount of 787,855 shares of the Company's common stock at an exercise price of $61.75 per share. These warrants expire on the 5th anniversary of the issuance date and had no fair value as of the grant date. Under certain circumstances, the expiration date of the warrants could be accelerated. Events that could lead to an acceleration of the expiration date include, but are not limited to, a change in control, or a significant change in the price of the Company's common stock. As of December 31, 2012, none of the warrants issued in connection with the restructuring transaction have been exercised.

As provided in ASC 825-20, *Financial Instruments – Registration Payment Arrangements*, the warrants are considered equity because they can only be physically settled in company shares and can be settled in unregistered shares. The Company has adequate authorized shares to settle the outstanding warrants, and each warrant is fixed in terms of settlement to one share of company stock subject only to remote contingency adjustment factors designed to assure that the relative value in terms of shares remains fixed.

16. Stock-Based Compensation Plans

The Equity Incentive Plan

At December 31, 2012, the Company maintained one stock-based compensation plan, the Aventine Renewable Energy Holdings, Inc. 2010 Equity Incentive Plan (the Equity Incentive Plan). The Equity Incentive Plan was adopted by the Board of Directors (the Board) effective March 15, 2010, and provides for the grant of awards in the form of stock options, restricted stock or units, stock appreciation rights, and other equity-based awards to directors, officers, employees and consultants or advisors (and prospective directors, officers, employees, and consultants or advisors) of the Company or its affiliates at the discretion of the Board or the compensation committee of the Board. The term of awards granted under the Equity Incentive Plan is determined by the Board or by the compensation committee of the Board, and cannot exceed ten years from the date of the grant. The maximum number of shares of common stock that may be issued under the Equity Compensation Plan is limited to 17,100. Unless terminated sooner, the Equity Incentive Plan will continue in effect until March 15, 2020.

Pretax stock-based compensation expense for the years ended December 31, 2012 and 2011, was $0.3 million and $5.4 million, respectively, and was charged to selling, general, and administrative expenses for both years.

The Company recorded pretax stock-based compensation expense for the years ended December 31, 2012 and 2011, as follows:

	Year ended December 31	
	2012	**2011**
	(In Millions)	
Stock-based compensation expense:		
Non-qualified options	**$ 0.3**	$ 0.7
Restricted stock	**–**	0.6
Restricted stock units	**(0.1)**	1.3
Hybrid equity units	**0.1**	2.8
Total	**$ 0.3**	$ 5.4

16. Stock-Based Compensation Plans (continued)

As of December 31, 2012, the Company had not yet recognized compensation expense on the following non-vested awards:

	December 31, 2012		December 31, 2011	
	Non-Recognized Compensation	Average Remaining Recognition Period	Non-Recognized Compensation	Average Remaining Recognition Period
	(In Millions)	*(In Years)*	*(In Millions)*	*(In Years)*
Non-qualified options	**$ –**	**–**	$ 0.4	0.9
Restricted stock	**–**	**–**	0.2	0.9
Restricted stock units	**–**	**–**	0.1	0.8
Hybrid equity units	**0.6**	**2.0**	1.4	3.1
Total	**$ 0.6**	**2.0**	$ 2.1	2.2

The Company values its share-based payments awards using a form of the Black-Scholes option pricing model (the Option Pricing Model). The determination of fair value of share-based payment awards on the date of grant using the Option Pricing Model is affected by the Company's stock price as well as the input of other subjective assumptions, of which the most significant are expected stock price volatility, the expected pre-vesting forfeiture rate, and the expected option term (the amount of time from the grant date until the options are exercised or expire). The Company estimated volatility by considering, among other things, the historical volatilities of public companies engaged in similar industries. Pre-vesting forfeitures are estimated to be 0% due to the nature of the vesting schedules for the limited number of grants made to employees. The expected option term is calculated using the "simplified" method permitted by ASC 718. The Company's options have characteristics significantly different from those of traded options, and changes in the assumptions can materially affect the fair value estimates.

16. Stock-Based Compensation Plans (continued)

The determination of the fair value of the stock-related awards, using the Option Pricing Model for the years ended December 31, 2012 and 2011, incorporated the assumptions in the following table for stock options granted in 2012 and 2011:

	Year ended December 31	
	2012	**2011**
Expected stock price volatility	**102%**	99%
Expected life (in years)	**6.0**	3.7
Risk-free interest rate	**1.2%**	1.4%
Expected dividend yield	**0.0%**	0.0%
Weighted-average fair value per option	**$ 2.82**	$ 17.67

The following table summarizes stock options outstanding and changes during the years ended December 31, 2012 and 2011:

	Shares	**Weighted-Average Exercise Price**	**Weighted-Average Remaining Life (Years)**	**Aggregate Intrinsic Value**
Options outstanding – December 31, 2010	6,519	$ 2,192.20	8.6	$ –
Options exercisable – December 31, 2010	2,154	2,237.06	9.3	–
Granted	–	–	–	–
Exercised	–	–	–	–
Cancelled or expired	(250)	2,280.00	–	–
Options outstanding – December 31, 2011	6,269	2,188.70	4.6	–
Options exercisable – December 31, 2011	4,796	2,332.76	4.0	–
Granted	**903**	**177**	**3.5**	–
Exercised	**–**	–	**–**	–
Cancelled or expired	**(4,269)**	**2,189.27**	**–**	**–**
Options outstanding – December 31, 2012	**2,903**	**489.07**	**1.7**	**–**
Options exercisable – December 31, 2012	**2,000**	**629.75**	**0.9**	**–**

16. Stock-Based Compensation Plans (continued)

Restricted stock award activity for the years ended December 31, 2012 and 2011, is summarized below:

	Shares	Weighted-Average Grant Date Fair Value per Award
Unvested restricted stock awards – December 31, 2010	1,233	$ 1,437.64
Granted	–	–
Vested	(695)	1,359.32
Cancelled or expired	–	–
Unvested restricted stock awards – December 31, 2011	538-	1,538.94
Granted		–
Vested	(352)	1,693.20
Cancelled or expired	**(186)**	**1,247.00**
Unvested restricted stock awards – December 31, 2012	**–**	**–**

The total fair value of restricted stock awards that vested during the years ended December 31, 2012 and 2011 was $0.6 million and $0.9 million, respectively.

16. Stock-Based Compensation Plans (continued)

Restricted stock units represent the right to receive a share of stock in the future, provided that the restrictions and conditions designated have been satisfied. Restricted stock unit award activity for the years ended December 31, 2012 and 2011, is summarized below:

	Shares	Weighted-Average Grant Date Fair Value per Award
Unvested restricted stock unit awards – December 31, 2010	3,031	$ 1,280.78
Granted	358	600.00
Vested	(3,122)	1,194.66
Cancelled or expired	–	–
Unvested restricted stock unit awards – December 31, 2011	267	1,375.00
Granted	**1,211**	**177.50**
Vested	**(620)**	**177.50**
Cancelled or expired	**(858)**	**550.15**
Unvested restricted stock unit awards – December 31, 2012	**–**	**–**

	Shares	Weighted-Average Grant Date Fair Value per Award
Vested restricted stock unit awards – December 31, 2010	428	$ 1,247.00
Vested	3,122	1,194.66
Converted into shares of common stock	(2,565)	1,247.00
Vested restricted stock unit awards – December 31, 2011	985	1,081.43
Vested	**620**	**177.50**
Converted into shares of common stock	**(752)**	**1,188.02**
Vested restricted stock unit awards – December 31, 2012	**853**	**328.86**

The total fair value of restricted stock unit awards that vested during the years ended December 31, 2012 and 2011, was $0.1 million and $3.7 million, respectively.

16. Stock-Based Compensation Plans (continued)

In 2011, the Board adopted a program of annual grants of hybrid equity units. Hybrid equity units represent the right to receive shares of stock in the future, depending upon the stock price on the measurement date. Each unit granted will translate into up to one share, depending on the average closing share price for the last 15 trading days of 2014, denoted as "S" in the following formula:

Shares = # Units x (1 – $980.00/S)

For example, if a manager is granted 200 units, and S equals $2,000, then the manager would receive 102 shares (i.e., 200 units x (1 – $980.00/2,000) = 102). If the stock price ends up higher, then the participant would receive more shares; if the stock price were lower, he or she would receive fewer shares. If the stock price falls below $980.00, the participant would be granted no shares.

Hybrid equity unit activity for the years ended December 31, 2012 and 2011, is summarized below:

	Units	Weighted-Average Grant Date Fair Value per Award
Granted	5,530	$ 883.50
Vested	(3,546)	883.50
Cancelled or expired	(34)	883.50
Unvested hybrid equity units at December 31, 2011	1,950	883.50
Granted	–	–
Vested	–	–
Cancelled or expired	**(783)**	**883.50**
Unvested hybrid equity units at December 31, 2012	**1,167**	**883.50**

The total fair value of hybrid equity units that vested during the years ended December 31, 2012 and 2011, was $0 million and $3.1 million, respectively.

17. Subsequent Events

As described in Note 11, in May 2013, the Company agreed to a settlement of its pending auction rate securities litigation.

As described in Note 10, in June 2013, the Company amended its Term Loan Agreement to borrow an additional $35 million. In connection with this amendment, the Company granted warrants for $11,853,453 shares of common stock, which are contingently exercisable upon a future event of liquidation.

PART II: INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law ("DGCL") permits a corporation to indemnify its directors and officers against expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with a pending or completed action, suit or proceeding if the officer or director acted in good faith and in a manner the officer or director reasonably believed to be in the best interests of the corporation.

Pacific Ethanol's certificate of incorporation provides that, except in certain specified instances, its directors shall not be personally liable to Pacific Ethanol or its stockholders for monetary damages for breach of their fiduciary duty as directors, except liability for the following:

- any breach of their duty of loyalty to Pacific Ethanol or its stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; and
- any transaction from which the director derived an improper personal benefit.

In addition, Pacific Ethanol's certificate of incorporation and bylaws obligate it to indemnify its directors and officers against expenses and other amounts reasonably incurred in connection with any proceeding arising from the fact that such person is or was an agent of Pacific Ethanol. Pacific Ethanol's bylaws also authorize it to purchase and maintain insurance on behalf of any of its directors or officers against any liability asserted against that person in that capacity, whether or not Pacific Ethanol would have the power to indemnify that person under the provisions of the DGCL. Pacific Ethanol has entered and expect to continue to enter into agreements to indemnify its directors and officers as determined by the Pacific Ethanol Board. These agreements provide for indemnification of related expenses including attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. Pacific Ethanol believes that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. Pacific Ethanol also maintains directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in Pacific Ethanol's certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against its directors for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against Pacific Ethanol's directors and officers, even though an action, if successful, might benefit Pacific Ethanol and other stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving any of Pacific Ethanol's directors, officers or employees regarding which indemnification is sought, and Pacific Ethanol is not aware of any threatened litigation that may result in claims for indemnification.

Insofar as the provisions of Pacific Ethanol's certificate of incorporation or bylaws provide for indemnification of directors or officers for liabilities arising under the Securities Act, Pacific Ethanol has been informed that in the opinion of the Securities and Exchange Commission this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 21. Exhibits and Financial Statement Schedules

A list of exhibits included as part of this registration statement is set forth in the Exhibit Index which immediately precedes such exhibits and is hereby incorporated by reference herein

Item 22. Undertakings

The undersigned registrant hereby undertakes:

To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

- to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

- to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness; provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

i. Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

ii. Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

iii. The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

iv. Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.

The registrant undertakes that every prospectus (i) that is filed pursuant to the paragraph immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sacramento, State of California, on this 4th day of February, 2015.

Pacific Ethanol, Inc.,
a Delaware corporation

By: /s/ NEIL M. KOEHLER
Neil M. Koehler
Chief Executive Officer

POWER OF ATTORNEY

NOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Neil M. Koehler his attorney-in-fact and agent, with the power of substitution and resubstitution, for him and in his name, place or stead, in any and all capacities, to sign any amendment to this registration statement on Form S-4, and to file such amendments, together with exhibits and other documents in connection therewith, with the Securities and Exchange Commission, granting to such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully as he might or could do in person, and ratifying and confirming all that the attorney-in-fact and agent, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ WILLIAM L. JONES William L. Jones	Chairman of the Board and Director	February 4, 2015
/s/ NEIL M. KOEHLER Neil M. Koehler	President, Chief Executive Officer (principal executive officer) and Director	February 4, 2015
/s/ BRYON T. MCGREGOR Bryon T. McGregor	Chief Financial Officer (principal financial and accounting officer)	February 4, 2015
/s/ MICHAEL D. KANDRIS Michael D. Kandris	Chief Operating Officer and Director	February 4, 2015
/s/ TERRY L. STONE Terry L. Stone	Director	February 4, 2015
/s/ JOHN L. PRINCE John L. Prince	Director	February 4, 2015
/s/ DOUGLAS L. KIETA Douglas L. Kieta	Director	February 4, 2015
/s/ LARRY D. LAYNE Larry D. Layne	Director	February 4, 2015

EXHIBIT INDEX

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated as of December 30, 2014, by and among Pacific Ethanol, Inc., AVR Merger Sub, Inc. and Aventine Renewable Energy Holdings, Inc.(included as **Annex A** to the joint proxy statement/prospectus which forms part of this registration statement).
3.1	Certificate of Incorporation of Pacific Ethanol, Inc. (incorporated by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q of Pacific Ethanol, Inc. filed August 7, 2013, File No. 000-21467).
3.2	Certificate of Designations, Powers, Preferences and Rights of the Series A Cumulative Redeemable Convertible Preferred Stock of Pacific Ethanol, Inc. (incorporated by reference to Exhibit 3.2 to the Quarterly Report on Form 10-Q of Pacific Ethanol, Inc. filed August 7, 2013, File No. 000-21467).
3.3	Certificate of Designations, Powers, Preferences and Rights of the Series B Cumulative Convertible of Pacific Ethanol, Inc. (incorporated by reference to Exhibit 3.3 to the Quarterly Report on Form 10-Q of Pacific Ethanol, Inc. filed August 7, 2013, File No. 000-21467).
3.4	Certificate of Amendment to Certificate of Incorporation of Pacific Ethanol, Inc. dated June 10, 2010 (incorporated by reference to Exhibit 3.4 to the Quarterly Report on Form 10-Q of Pacific Ethanol, Inc. filed August 7, 2013, File No. 000-21467).
3.5	Certificate of Amendment to Certificate of Incorporation of Pacific Ethanol, Inc. dated June 8, 2011(incorporated by reference to Exhibit 3.5 to the Quarterly Report on Form 10-Q of Pacific Ethanol, Inc. filed August 7, 2013, File No. 000-21467).
3.6	Certificate of Amendment to Certificate of Incorporation of Pacific Ethanol, Inc. dated May 14, 2013 (incorporated by reference to Exhibit 3.6 to the Quarterly Report on Form 10-Q of Pacific Ethanol, Inc. filed August 7, 2013, File No. 000-21467).
3.7	Form of Certificate of Amendment to Certificate of Incorporation of Pacific Ethanol, Inc. (included as **Annex B** to the joint proxy statement/prospectus which forms part of this registration statement).
3.8	Bylaws of Pacific Ethanol, Inc. (incorporated by reference to Exhibit 3.2 to the Current Report on Form 8-K of Pacific Ethanol, Inc. filed on March 29, 2005, File No. 000-21467).
5.1	Opinion of Troutman Sanders LLP as to validity of the securities being registered.
8.1	Opinion of Troutman Sanders LLP regarding certain tax matters.*
8.2	Opinion of Akin Gump Strauss Hauer & Feld LLP regarding certain tax matters.*
10.1	Amended and Restated Senior Secured Term Loan Credit Agreement, dated September 24, 2012, by and among Aventine Renewable Energy Holdings, Inc., the lenders listed therein and CitiBank, N.A., as collateral and administrative agent.
10.2	Incremental Agreement, dated June 18, 2013, by and among Aventine Renewable Energy Holdings, Inc., the lenders listed therein and CitiBank, N.A., as collateral and administrative agent.
10.3	Loan and Security Agreement, dated September 17, 2014, by and among Aventine Renewable Energy, Inc., the financial institutions listed therein, Midcap Financial, LLC, as collateral agent, and Alostar Bank of Commerce, as administrative agent.

10.4	Stockholders Agreement, dated September 24, 2012, by and among Aventine Renewable Energy Holdings, Inc., the investors listed therein and the existing stockholders listed therein.
10.5	Agreement, effective November 5, 2012 through October 31, 2015, between Aventine Renewable Energy, Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International Union on behalf of Local 7-662.
21.1	Subsidiaries of Pacific Ethanol, Inc.
23.1	Consent of Hein & Associates LLP, independent registered public accounting firm for Pacific Ethanol, Inc.
23.2	Consent of McGladrey LLP, independent auditor for Aventine Renewable Energy Holdings, Inc.
23.3	Consent of Ernst & Young LLP, independent auditors for Aventine Renewable Energy Holdings, Inc.
23.4	Consent of Troutman Sanders LLP (included in Exhibit 5.1 and Exhibit 8.1 hereto).
23.5	Consent of Akin Gump Strauss Hauer & Feld LLP (included in Exhibit 8.2 hereto).*
24.1	Power of Attorney (contained on the signature page to this registration statement).
99.1	Form of Proxy Card of Pacific Ethanol, Inc.*
99.2	Form of Proxy Card of Aventine Renewable Energy Holdings, Inc.*
99.3	Opinion of Craig-Hallum Capital Group LLC (included as **Annex D** to the joint proxy statement/prospectus which forms part of this registration statement).
99.4	Opinion of Duff & Phelps, LLC (included as **Annex E** to the joint proxy statement/prospectus which forms part of this registration statement).
99.5	Consent of Craig-Hallum Capital Group LLC.
99.6	Consent of Duff & Phelps, LLC.

* To be filed by amendment.

ANNEX A

AGREEMENT AND PLAN OF MERGER

by and among

PACIFIC ETHANOL, INC.,

AVR MERGER SUB, INC. AND

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

Dated as of December 30, 2014

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Exhibits:

Exhibit A	Form of Parent Stockholders Agreement
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Exhibit D	Bylaws of the Surviving Corporation
Exhibit E	Certificate of Amendment to the Certificate of Incorporation of Parent

Schedules:

Schedule A	Parties to Parent Stockholders Agreement
Schedule 2.6(a)	Directors of the Surviving Corporation
Schedule 2.6(b)	Officers of the Surviving Corporation
Company Disclosure Schedules	

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is dated as of December 30, 2014 (the "**Execution Date**"), among PACIFIC ETHANOL, INC., a Delaware corporation ("**Parent**"), AVR MERGER SUB, INC., a Delaware corporation and a direct wholly-owned subsidiary of Parent ("**Merger Sub**"), and AVENTINE RENEWABLE ENERGY HOLDINGS, INC., a Delaware corporation (the "**Company**"). Each of Parent, Merger Sub and the Company is a "**Party**" and together, the "**Parties**."

RECITALS:

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company have each determined unanimously that it is in the best interests of their respective corporations and stockholders for Parent to acquire the Company upon the terms and subject to the conditions set forth herein;

WHEREAS, in furtherance of such acquisition, it is proposed that Merger Sub will merge with and into the Company, with the Company surviving the merger as a wholly-owned subsidiary of Parent (the "**Merger**"), on the terms and subject to the conditions of this Agreement;

WHEREAS, the respective Boards of Directors of Parent, Merger Sub and the Company have unanimously approved, in accordance with applicable provisions of the Delaware General Corporation Law, as amended (the "**DGCL**"), this Agreement, the Merger and the transactions contemplated hereby; the Board of Directors of the Company has resolved to recommend to its stockholders the adoption of this Agreement; the Board of Directors of Parent has resolved to (i) recommend to its stockholders the approval of the issuance of shares of common stock of Parent, par value $0.001 per share (the "**Parent Voting Common Stock**"), and (ii) amend the certificate of incorporation of Parent, as amended, to create a class of convertible non-voting common stock of Parent, par value $0.001 per share, (the "**Parent Non-Voting Common Stock**" and together with the Parent Voting Common Stock, the "**Parent Stock**"); and Parent, in its capacity as the sole stockholder of Merger Sub, will approve and adopt this Agreement promptly following the execution of this Agreement by the parties hereto;

WHEREAS, concurrently with the execution of this Agreement, and as a condition to and inducement of Parent's willingness to enter into this Agreement, certain stockholders of the Company are entering into a stockholders agreement providing for, among other things, certain restrictions on transferability, an irrevocable proxy and a market stand-off agreement, in substantially the form attached hereto as Exhibit A (the "**Parent Stockholders Agreement**"), as specified on Schedule A;

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe certain conditions to the Merger; and

WHEREAS, Parent, Merger Sub and the Company intend, (i) for federal income tax purposes, that the Merger qualifies as a "reorganization" described in Section 368(a) of the Internal Revenue Code of 1986, as amended (the "**Code**"); (ii) that this Agreement constitute a "plan of reorganization" within the meaning of Section 1.368-2(g) of the regulations promulgated under the Code; and (iii) that Parent, Merger Sub and the Company will each be a "party to the reorganization" within the meaning of Section 368(a) of the Code.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION

Section 1.1 Definitions. The following capitalized terms as used in this Agreement shall have the meanings ascribed to them in this Article I:

"**Acquisition Agreement**" has the meaning set forth in Section 6.13(b)(i) of this Agreement.

"**Adverse Aurora Coop Litigation Event**" has the meaning set forth in Section 7.2(k) of this Agreement.

"**Affiliate**" of any Person shall mean another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

"**Affiliated Person**" has the meaning set forth in Section 4.20(a) of this Agreement.

"**Agreement**" has the meaning set forth in the Preamble of this Agreement.

"**Amended Certificate of Incorporation**" means the Certificate of Amendment to the Certificate of Incorporation of Parent in the form of Exhibit E attached hereto.

"**Antitrust Laws**" has the meaning set forth in Section 6.10(b) of this Agreement.

"**Audited Financial Statements**" has the meaning set forth in Section 4.5(a) of this Agreement.

"**Aurora Coop Litigation**" means any and all litigation matters between the Company or any Subsidiary of the Company and Aurora Cooperative Elevator Company including, without limitation, the following matters: (i) *Aurora Cooperative Elevator Co. v. Aventine Renewable Energy – Aurora West, LLC, et al.*; United States District Court, District of Nebraska, Case No. 4:12-cv-00230; (ii) *Aurora Cooperative Elevator Co. v. Aventine Renewable Energy Holdings, Inc. et al*, United States District Court, District of Nebraska, Case No. 4:14-cv-03032; (iii) *Aurora Cooperative Elevator Co. v. Aventine Renewable Energy Holdings, Inc. et al*, United States District Court, District of Nebraska, Case No. 4:12-cv-03200; (iv) *Aurora Cooperative Elevator Co. v. Aventine Renewable Energy Holdings, Inc. et al*., National Grain and Feed Association, NGFA Case No. 2651; (v) *Aventine Renewable Energy – Aurora West, LLC v. Aurora Cooperative Elevator Co*., Nebraska Public Service Commission; and (vi) *Nebraska Energy, L.L.C. v. Aurora Cooperative Elevator Co.*, United States District Court, District of Nebraska, Case No. 4:13-cv-03190.

"**Aurora West Facility**" means the Company's Delta-T ethanol plant located in Aurora, Nebraska.

"**Balance Sheet Date**" has the meaning set forth in Section 4.6 of this Agreement.

"**BNSF**" means Burlington Northern Santa Fe Railroad Company, or any successor thereto.

"**Book-Entry Shares**" has the meaning set forth in Section 3.1(d) of this Agreement.

"**Business Day**" means any day, other than (i) a Saturday or a Sunday or (ii) a day on which banking and savings and loan institutions are authorized or required by Law to be closed in Sacramento, California.

"**Certificate**" has the meaning set forth in Section 3.1(d) of this Agreement.

"**Certificate of Merger**" has the meaning set forth in Section 2.2 of this Agreement.

"**Change in Recommendation**" has the meaning set forth in Section 6.13(b)(i) of this Agreement.

"**Closing**" has the meaning set forth in Section 2.2 of this Agreement.

"**Closing Date**" has the meaning set forth in Section 2.2 of this Agreement.

"**Code**" has the meaning set forth in the Recitals of this Agreement.

"**Company**" has the meaning set forth in the Preamble of this Agreement.

"**Company Benefit Arrangement**" means each individual employment, severance or termination agreement between the Company or any of the Company's Subsidiaries and any current or former employee, officer or director of the Company or any of the Company's Subsidiaries, other than (i) any agreement mandated by applicable Law or (ii) any Company Benefit Plan.

"**Company Benefit Plans**" mean each employee benefit plan, program or policy providing benefits to any current or former employee, officer or director of the Company or any of its Subsidiaries or any beneficiary or dependent thereof that is sponsored or maintained by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries contributes or is obligated to contribute, or with respect to which the Company or any of its Subsidiaries has or may have any Liability, including but not limited to each "employee pension benefit plan" (as defined in Section 3(2) of ERISA), each "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and any other bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, retirement, vacation, severance, change in control, disability, death benefit, hospitalization, medical, fringe benefit or other plan, or program.

"**Company Board**" means the Board of Directors of the Company.

"**Company Bylaws**" has the meaning set forth in Section 4.1(b) of this Agreement.

"**Company Certificate**" has the meaning set forth in Section 4.1(b) of this Agreement.

"**Company Common Stock**" shall mean the common stock of the Company, par value $0.001 per share.

"**Company Disclosure Schedule**" has the meaning set forth in the preamble to Article IV of this Agreement.

"**Company Financial Advisor**" has the meaning set forth in Section 4.22 of this Agreement.

"**Company Hedges**" has the meaning set forth in Section 4.25 of this Agreement.

"**Company Hybrid Equity Plan**" means the 2011 Hybrid Equity Unit Plan established by the Company.

"**Company Leases**" has the meaning set forth in Section 4.16(b) of this Agreement.

"**Company Material Adverse Effect**" means any fact, event, circumstance or effect, other than any Excluded Company Matters, that, individually or together with all other such facts, events, circumstances and effects, (i) is, or would reasonably be expected to be, material and adverse to the business, condition (financial or otherwise), capitalization, assets, liabilities, or results of operations of the Company and its Subsidiaries, taken as a whole or (ii) prevents or materially delays, or would reasonably be expected to prevent or materially delay, the ability of the Company and its Subsidiaries to perform their obligations under this Agreement or to consummate the transactions contemplated by this Agreement in accordance with the terms hereof.

"**Company Material Contracts**" has the meaning set forth in Section 4.10(a) of this Agreement.

"**Company Material Leased Real Property**" has the meaning set forth in Section 4.16(b) of this Agreement.

"**Company Material Licenses**" has the meaning set forth in Section 4.15(b) of this Agreement.

"**Company Owned Intellectual Property**" means all material Intellectual Property owned by the Company or any of its Subsidiaries.

"**Company Owned Real Property**" has the meaning set forth in Section 4.16(a) of this Agreement.

"**Company Permits**" has the meaning set forth in Section 4.9(a) of this Agreement.

"**Company Preferred Stock**" has the meaning set forth in Section 4.2(a) of this Agreement.

"**Company Product**" means any product, line of products or service which the Company or any of its Subsidiaries has marketed and/or sold in the preceding three (3) calendar years.

"**Company Qualified Plans**" has the meaning set forth in Section 4.12(d) of this Agreement.

"**Company Registered Brand Name**" means all registrations for trademarks, trade names, brand names, and service marks owned by the Company or any of its Subsidiaries that are material to the business and operations of the business.

"**Company Registration Rights Agreements**" means any and all agreements between the Company and any Person relating to the registration of any of the Company's securities under the Securities Act.

"**Company Representatives**" means with respect to the Company, each of its Subsidiaries, and each of their respective officers, directors, employees, agents, counsel, accountants, investment bankers, financial advisors and authorized representatives.

"**Company Required Statutory Approvals**" has the meaning set forth in Section 4.4(d) of this Agreement.

"**Company Shares**" has the meaning set forth in Section 3.1(b) of this Agreement.

"**Company Stock Options**" means options to acquire Company Shares granted under or pursuant to any Company Stock Plan or otherwise.

"**Company Stock Plans**" means any plan or arrangement under which the Company grants equity-based awards.

"**Company Stockholder Approval**" has the meaning set forth in Section 4.4(a) of this Agreement.

"**Company Stockholders Agreement**" means that certain Stockholders Agreement dated as of September 24, 2012 by and among the Company and the investors and stockholders parties thereto.

"**Company Stockholders' Meeting**" shall mean a meeting of the holders of Company Common Stock to vote on the approval and adoption of this Agreement and the Merger.

"**Company Takeover Proposal**" means any inquiry, proposal or offer from any Person relating to, or that is reasonably likely to lead to, directly or indirectly: (i) a merger, consolidation, tender offer, exchange offer, share exchange, business combination or other similar transaction involving the Company or any operating Company's Subsidiaries that constitutes twenty-five percent (25%) or more of the net revenues, net income or assets of the Company; (ii) the acquisition by any Person in any manner of a number of shares of any class of equity securities of the Company or any of the Company's Subsidiary equal to or greater than twenty-five percent (25%) of the number of such shares outstanding before such acquisition; or (iii) the acquisition by any Person in any manner (including by license or lease), directly or indirectly, of assets that constitute twenty-five percent (25%) or more of the net revenues, net income or assets of the Company (in each case, on a consolidated basis) in the case of each of the foregoing clauses (i)-(iii) other than the transactions contemplated by this Agreement.

"**Company Tax Opinion**" has the meaning set forth in Section 7.3(d) of this Agreement.

"**Company Termination Fee**" has the meaning set forth in Section 8.3(b) of this Agreement

"**Company Unregistered Brand Name**" means all (i) trademarks, trade names, brand names, and service marks for which the Company or any of its Subsidiaries that are the subjects of such trademarks, trade names, brand names, and service marks has filed an application with the U.S. Patent and Trademark Office or any foreign equivalent office and (ii) material trademarks, trade names, brand names, and service marks owned and used by the Company or any of its Subsidiaries but not registered or are the subject of any pending applications in any country anywhere in the world.

"**Company Voting Proposal**" has the meaning set forth in Section 6.7(a) of this Agreement.

"**Company Warrants**" has the meaning set forth in Section 3.3(b) of this Agreement.

"**Company's Facilities**" means the Company's productions facilities located in Pekin, Illinois, Aurora, Nebraska, and Canton, Illinois.

"**Confidentiality Agreement**" has the meaning set forth in Section 6.3(a) of this Agreement.

"**Contingent Obligation**" means, as to any Person, any direct or indirect Liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such Liability, or the primary effect thereof, is to provide assurance to the obligee of such Liability that such Liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such Liability will be protected (in whole or in part) against loss with respect thereto.

"**Contract**" means any agreements, contracts, leases, powers of attorney, notes, loans, evidence of indebtedness, purchase orders, letters of credit, settlement agreements, franchise agreements, undertakings, covenants not to compete, employment agreements, licenses, covenants not to sue, instruments, obligations, commitments, understandings, policies, purchase and sales orders, quotations and other executory commitments to which any Person is a party or to which any of the assets of such Person are subject, whether oral or written, express or implied (each, including all amendments thereto).

"**control**" (including the terms "controlled," "controlled by" and "under common control with") means the possession, direct or indirect, or the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act.

"**Dataroom**" means the electronic dataroom hosted by Merrill Corporation with such contents contained therein as of immediately prior to the execution of this Agreement.

"**D&O Insurance**" has the meaning set forth in Section 6.12(d) of this Agreement.

"**DGCL**" has the meaning set forth in the Recitals of this Agreement.

"**Dissenting Shares**" has the meaning set forth in Section 3.4 of this Agreement.

"**EDGAR**" means the Electronic Data Gathering, Analysis and Retrieval System.

"**Effective Time**" has the meaning set forth in Section 2.2 of this Agreement.

"**Election Deadline**" has the meaning set forth in Section 3.2(c) of this Agreement.

"**Election Form**" has the meaning set forth in Section 3.2(b) of this Agreement.

"**Election Form Record Date**" has the meaning set forth in Section 3.2(b) of this Agreement.

"**Environmental Law(s)**" means any and all applicable international, federal, state, or local Laws or rule of common Law which regulate or relate to (i) the condition, protection or cleanup of the environment, or the preservation or protection of waterways, groundwater, surface water, drinking water, land, soil, air, wildlife, plants or other natural resources; (ii) the generation, manufacturing, labeling, use, treatment, storage, transportation, handling, disposal, presence or release of Hazardous Substances; (iii) the protection of public health or property; or (iv) impose Liability or responsibility with respect to any of the foregoing, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended, California's Proposition 65, the Clean Air Act, as amended, the Atomic Energy Act of 1954, as amended, and all analogous Laws promulgated or issued by any Governmental Entity.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**ERISA Affiliate**" means, with respect to any entity, trade or business, any other entity, trade or business that is, or was at the relevant time, a member of a group described in Section 52 or 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included the first entity, trade or business, or that is, or was at the relevant time, a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

"**Exchange Agent**" has the meaning set forth in Section 3.5(a) of this Agreement.

"**Exchange Agent Agreement**" has the meaning set forth in Section 3.5(a) of this Agreement.

"**Exchange Fund**" has the meaning set forth in Section 3.5(a) of this Agreement.

"**Exchange Ratio**" means 1.25.

"**Excluded Company Matters**" means any one or more of the following: (i) changes after the date hereof in Laws, rules or regulations of general applicability or interpretations thereof by a Governmental Entity; (ii) general changes after the date hereof in economic conditions, markets (including capital, financial, credit or securities) or political environment in general or general changes in the industry in which the Company operates generally, including adverse effects attributable to conditions affecting ethanol and/or oil production, including changes to prevailing market prices (including futures prices) of ethanol or corn; (iii) a change or proposed change in GAAP or the interpretation thereof; (iv) the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war, any other acts of war (whether declared or undeclared), sabotage, military action or any escalation or worsening thereof, earthquakes, hurricanes or similar catastrophes, or the occurrence of any other calamity or crisis, including an act of terrorism; (v) the announcement, pendency or consummation of the transactions contemplated by this Agreement, or the failure to take actions as a result of any terms or conditions set forth in this Agreement, including any loss of or change in the relationship with employees, customers, partners, suppliers or other persons having business relationships with such Person; (vi) any action taken pursuant to this Agreement or at the express request of the other Party; (vii) failure to meet internal projections or forecasts (provided, that the underlying causes of any such change shall not be excluded pursuant to this clause (vii)), or (viii) a change in the market price or trading volume of the Company Common Stock, in and of itself; *provided, however*, that any matter in subsections (i) or (ii) that disproportionately adversely affects the Company compared with other companies in the ethanol production and distribution industry in which the Company operates shall not be an Excluded Company Matter.

"**Excluded Parent Matters**" means any one or more of the following: (i) changes after the date hereof in Laws, rules or regulations of general applicability or interpretations thereof by a Governmental Entity; (ii) general changes after the date hereof in economic conditions, securities markets in general in the United States or general changes in the industry in which Parent operates generally; (iii) a change or proposed change in GAAP or the interpretation thereof ; (iv) the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war, any other acts of war (whether declared or undeclared), sabotage, military action or any escalation or worsening thereof, earthquakes, hurricanes or similar catastrophes, or the occurrence of any other calamity or crisis, including an act of terrorism; (v) the announcement, pendency or consummation of the transactions contemplated by this Agreement, or the failure to take actions as a result of any terms or conditions set forth in this Agreement, including any loss of or change in the relationship with employees, customers, partners, suppliers or other persons having business relationships with such Person; (vi) any action taken pursuant to this Agreement or at the express request of the other party; (vii) failure to meet internal projections or forecasts (provided, that the underlying causes of any such change shall not be excluded pursuant to this clause (vii)), or (viii) a change in the market price or trading volume of the Parent Stock, in and of itself; *provided*, *however*, that any matter in subsections (i) or (ii) that disproportionately adversely affects Parent compared with other companies operating in the ethanol production and distribution industry in which Parent operates shall not be an Excluded Parent Matter.

"**Execution Date**" has the meaning set forth in the Preamble of this Agreement.

"**Financial Statements**" has the meaning set forth in Section 4.5(b) of this Agreement.

"**Fractional Share Cash Amount**" has the meaning set forth in Section 3.5(e) of this Agreement.

"**GAAP**" means United States generally accepted accounting principles.

"**Governmental Entity**" means any foreign, federal, state, local or multi-national court, arbitral tribunal, administrative agency or commission or other governmental or regulatory body, agency, instrumentality or authority.

"**Hazardous Substances**" means any pollutant, chemical, chemical compound, waste, material or substance that is defined, classified or regulated, or controlled by any Environmental Law, whether solid, liquid or gas, and including without limitation, any quantity of asbestos in any form, urea formaldehyde, PCBs, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or by-products, mixtures or derivatives.

"**Hedging Transaction**" means any futures, hedge, swap, collar, put, call, floor, cap, option or other contract that is intended to benefit from, relate to or reduce or eliminate the risk of fluctuations in the price of commodities, including ethanol, interest rates, currencies or securities.

"**Holder Representative**" has the meaning set forth in Section 3.2(b) of this Agreement.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Indebtedness**" of any Person means, without duplication (i) all indebtedness for borrowed money; (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, "capital leases" in accordance with generally accepted accounting principles) (other than trade payables entered into in the ordinary course of business); (iii) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments; (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses; (v) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (vi) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease; (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, claim, lien, tax, right of first refusal, encumbrance, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (viii) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above.

"**Indemnified Directors and Officers**" has the meaning set forth in Section 6.12(b) of this Agreement.

"**Indemnified Parties**" has the meaning set forth in Section 6.12(c) of this Agreement.

"**Intellectual Property**" means all intellectual property or other proprietary rights of every kind, foreign and domestic, including: (i) patents, patent applications (including any provisionals, continuations, divisions, continuations-in-part, extensions, renewals, reissues, revivals and reexaminations, any national phase PCT applications, PCT international applications, and all foreign counterparts), statutory invention certificates, copyrights, mask works, industrial designs, URLs, domain names, trademarks, service marks, logos, brand names, trade dress and trade names; (ii) all rights in, applications for, registrations of any of the foregoing; (iii) moral rights, rights to use a natural person's name and likeness, publicity rights; (iv) all rights in and to trade secrets, confidential information, inventions, discoveries, improvements, modifications, know-how, techniques, methods, data, embodied or disclosed in any computer programs; product specifications; and manufacturing; and (v) all goodwill related to any of the foregoing.

"**IRS**" means Internal Revenue Service.

"**Joint Proxy Statement/Prospectus**" shall mean the joint proxy statement/prospectus to be sent to the holders of the Company Shares in connection with the Company Stockholders' Meeting and to the holders of Parent Voting Common Stock in connection with the Parent Stockholders' Meeting.

"**Knowledge**" shall mean, with respect to the Company, the actual knowledge or awareness of any of Mark Beemer and Brian Steenhard, and the knowledge of each such person after inquiry of those persons employed by the Company or any of its Subsidiaries that would reasonably be expected to know the answer to such inquiry. "**Knowledge**" shall mean, with respect to Parent, the actual knowledge or awareness of any of Neil Koehler and Bryon McGregor, and the knowledge of each such person after inquiry of those persons employed by Parent or any of its Subsidiaries that would reasonably be expected to know the answer to such inquiry.

"**Law**" means, as to any Person, any statute, rule, regulation, ordinance, code, guideline, law, judicial decision, determination, order (including any injunction, judgment, writ, award or decree), or consent of the court, other Governmental Entity or arbitrator, in each case applicable to or binding upon such Person, including the conduct of its business, or any of its assets or revenues to which such Person or any of its assets or revenues are subject.

"**Liability**" **or** "**Liabilities**" mean any direct or indirect liability, Indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any type, whether accrued, absolute, contingent, matured, unmatured, liquidated, unliquidated, known or unknown.

"**Liens**" means any mortgage, deed of trust, deed to secure debt, title retention agreement, pledge, lien, encumbrance, security interest, right of first refusal, option, conditional or installment sale agreement, charge or other claims of third parties of any kind.

"**Mailing Date**" has the meaning set forth in Section 3.2(b) of this Agreement.

"**Merger**" has the meaning set forth in the Recitals of this Agreement.

"**Merger Consideration**" means the aggregate of (i) the Voting Common Stock Consideration, (ii) the Non-Voting Common Stock Consideration and (iii) the Fractional Share Cash Amount.

"**Merger Sub**" has the meaning set forth in the Preamble of this Agreement.

"**Merging Corporations**" shall mean Merger Sub and the Company.

"**Mixed Election**" has the meaning set forth in Section 3.1(c)(iii) of this Agreement.

"**Multiemployer Plan**" means any "multiemployer plan" within the meaning of Section 3(37) or 4001(a)(3) of ERISA.

"**NASDAQ**" shall mean the National Association of Securities Dealers Automated Quotation System.

"**NELLC**" means Nebraska Energy, L.L.C.

"**Non-Election Shares**" has the meaning set forth in Section 3.1(c)(iv) of this Agreement.

"**Non-Voting Common Stock Consideration**" has the meaning set forth in Section 3.1(c)(i) of this Agreement.

"**Non-Voting Election Shares**" has the meaning set forth in Section 3.2(a) of this Agreement.

"**Non-Voting Stock Election**" has the meaning set forth in Section 3.2(a) of this Agreement.

"**Non-Employee Options**" has the meaning set forth in Section 6.17 of this Agreement.

"**Parent**" has the meaning set forth in the Preamble of this Agreement.

"**Parent Board**" shall mean the Board of Directors of Parent.

"**Parent Expense Reimbursement Fee**" has the meaning set forth in Section 8.3 of this Agreement.

"**Parent Financial Advisor**" has the meaning set forth in Section 5.16 of this Agreement.

"**Parent Financial Statements**" has the meaning set forth in Section 5.5 of this Agreement.

"**Parent Material Adverse Effect**" shall mean any fact, event, circumstance or effect, other than any Excluded Parent Matters, that, individually or together with all other such facts, events, circumstances and effects, (i) is, or would reasonably be expected to be, material and adverse to the business, condition (financial or otherwise), capitalization, assets, Liabilities, or results of operations of Parent; or (ii) prevents or materially delays, or would reasonably be expected to prevent or materially delay, the ability of Parent to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement in accordance with the terms hereof.

"**Parent Material Contract**" has the meaning set forth in Section 5.12 of this Agreement.

"**Parent Non-Voting Common Stock**" has the meaning set forth in the Recitals of this Agreement.

"**Parent Permits**" has the meaning set forth in Section 5.9(a) of this Agreement.

"**Parent Representatives**" means Affiliates of Parent and each of its Subsidiaries, and each of their respective officers, directors, employees, agents, counsel, accountants, investment bankers, financial advisors and representatives.

"**Parent Required Statutory Approvals**" has the meaning set forth in Section 5.4(c) of this Agreement.

"**Parent SEC Documents**" has the meaning set forth in Section 5.5(a) of this Agreement.

"**Parent Series A Preferred Stock**" has the meaning set forth in Section 5.2(a) of this Agreement.

"**Parent Series B Preferred Stock**" has the meaning set forth in Section 5.2(a) of this Agreement.

"**Parent Stockholders' Meeting**" shall mean a meeting of the holders of Parent Voting Common Stock to vote on the Parent Voting Proposals.

"**Parent Stock**" has the meaning set forth in the Recitals of this Agreement.

"**Parent Stockholders Agreement**" has the meaning in the Recitals of this Agreement.

"**Parent Stock Option**" means any option to purchase Parent Stock granted under any Parent Stock Plan or otherwise.

"**Parent Stock Plans**" means any plan or arrangement under which Parent grants equity-based awards.

"**Parent Tax Opinion**" has the meaning set forth in Section 7.2(e) of this Agreement.

"**Parent Termination Fee**" has the meaning set forth in Section 8.3(b)(ii) of this Agreement.

"**Parent Voting Common Stock**" has the meaning set forth in the Recitals of this Agreement.

"**Parent Voting Proposals**" has the meaning set forth in Section 6.7(b) of this Agreement.

"**Parent Warrant**" means any warrant to purchase Parent Stock granted by Parent.

"**Parties**" has the meaning set forth in the Preamble of this Agreement.

"**PBGC**" means the Pension Benefit Guaranty Corporation.

"**Person**" means any individual, firm, corporation, partnership, company, limited liability company, trust, joint venture, association, Governmental Entity or other entity.

"**Plants**" means any and all ethanol plants owned by the Company and/or a Company's Subsidiary.

"**Pollution Liability Insurance**" has the meaning set forth in Section 6.20 of this Agreement.

"**Proceeding(s)**" means any claims, controversies, demands, actions, lawsuits, investigations, proceedings or other disputes, formal or informal, including any by, involving or before any arbitrator or any Governmental Entity.

"**Proposal Period**" has the meaning set forth in Section 6.13(b)(ii) of this Agreement.

"**Registration Statement**" shall mean the registration statement on Form S-4 to be filed with the SEC by Parent in connection with issuance of Parent Stock in the Merger, as said registration statement may be amended prior to the time it is declared effective by the SEC.

"**Remediation Notice**" has the meaning set forth in Section 7.2(k).

"**Required Company Stockholder Vote**" shall mean the affirmative vote to approve and adopt this Agreement and the Merger by (i) the holders of a majority of the Company Shares issued and outstanding and entitled to vote at the Company Stockholders' Meeting (in person or by proxy) and constituting a quorum for the purpose of voting on such approval or (ii) the holders of a majority of the Company Shares issued and outstanding and entitled to vote by written consent in lieu of any stockholder meeting.

"**Required Parent Stockholder Vote**" shall mean the vote or consent, as applicable, to (i) approve the issuance of Parent Stock in the Merger, (ii) approve the amendment to Parent's Amended Certificate of Incorporation to authorize a class of Parent Non-Voting Common Stock that has the terms and conditions set forth in the Amended Certificate of Incorporation, and (iii) not treat the Merger as a liquidation, dissolution or winding up within the meaning of Section 4 of the Certificate of Designations, Powers, Preferences and Rights of the Series B Cumulative Convertible Preferred Stock of the Parent Series B Preferred Stock, (x) in the case of clause (i), (A) by the holders of a majority of the votes of Parent Stock and Parent Series B Preferred Stock, voting together as a single class, present (in person or by proxy) at the Parent Stockholders' Meeting and constituting a quorum for the purpose of voting on such approval, and (B) by the holders of a majority of the shares of Parent Series B Preferred Stock, voting as a separate class, present (in person or by proxy) at the Parent Stockholders' Meeting, (y) in the case of clause (ii), (A) by the holders of a majority of the issued and outstanding shares of Parent Stock and (B) by the holders of a majority of the shares of Parent Series B Preferred Stock present (in person or by proxy) at the Parent Stockholders' Meeting, and (z) in the case of clause (iii), by the holders of 66-2/3% of the shares of Parent Series B Preferred Stock (the matter in this clause (z) is referred to as the "**Special Series B Approval**").

"**SEC**" means the United States Securities and Exchange Commission.

"**SEC Reports**" means all forms, reports, statements, schedules and other documents filed by Parent pursuant to the federal securities laws and the SEC rules and regulations thereunder, and all forms, reports, statements, schedules and other documents to be filed by Parent with the SEC after the date hereof and prior to the Effective Time.

"**Securities Act**" means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"**Sarbanes-Oxley Act**" means the Sarbanes-Oxley Act of 2002, as amended.

"**Subsidiary**" means, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) such party or any other Subsidiary of such party is a general partner (excluding partnerships, the general partnership interests of which held by such party or any Subsidiary of such party do not have a majority of the voting interest in such partnership) or (ii) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party or by any one or more of its Subsidiaries, or by such party and one or more of its Subsidiaries.

"**Subsidiary Bylaws**" has the meaning set forth in Section 4.3(c) of this Agreement.

"**Subsidiary Charters**" has the meaning set forth in Section 4.3(c) of this Agreement.

"**Superior Company Proposal**" means any written offer made by a third party not in violation of Section 6.13 that if consummated would result in such third party acquiring, directly or indirectly, a majority of the Company Shares or a majority of the assets of the Company and the Company's Subsidiaries, (i) for consideration that the Company Board determines in its good faith judgment (following consultation with an independent financial advisor) to be superior from a financial point of view to the holders of Company Shares than the transactions contemplated by this Agreement (based on the advice of the Company Financial Advisor), taking into account all the terms and conditions of such proposal, this Agreement and any proposal by Parent to amend the terms of this Agreement as permitted hereunder; and (ii) that, in the good faith judgment of the Company Board, is reasonably likely to be consummated, taking into account all legal, financial, regulatory and other aspects of the proposal and the Person making the proposal.

"**Superior Proposal Notice**" has the meaning set forth in Section 6.13(b)(ii) of this Agreement.

"**Surviving Corporation**" has the meaning set forth in Section 2.1 of this Agreement.

"**Takeover Laws**" has the meaning set forth in Section 6.16 of this Agreement.

"**Tax**" or "**Taxes**" means all taxes of whatever kind or nature, including, without limitation, those on or measured by or referred to as income, gross receipts, sales, use, ad valorem, franchise, profits, license, estimated, withholding, payroll, employment, excise, severance, stamp, occupation, premium, value added, property or windfall profits taxes, customs, duties or other similar fees, assessments or charges of any kind whatsoever (together with any interest and any penalties, additions to tax or additional amounts), whether disputed or not, imposed by any Governmental Entity (domestic or foreign).

"**Tax Returns**" means any report, return (including information return or declaration of estimated Taxes), claim for refund, or statement relating to Taxes filed or required to be filed with any Governmental Entity, including any schedule or attachment thereto, and including any amendments thereof.

"**Termination Date**" has the meaning set forth in Section 8.1(b)(i) of this Agreement.

"**Trading Day**" means (i) a day on which the Parent Voting Common Stock is traded on NASDAQ or (ii) if the Parent Voting Common Stock is not listed on NASDAQ, a day on which the Parent Voting Common Stock is traded in the over the counter market, as reported by the OTC Bulletin Board; *provided, however*, that in the event that the Common Stock is not listed or quoted as set forth in (i) and (ii) hereof, then "Trading Day" shall mean a Business Day.

"**Transfer Taxes**" has the meaning set forth in Section 9.4 of this Agreement.

"**TTB**" means the Alcohol and Tobacco Tax and Trade Bureau.

"**Unaudited Financial Statements**" has the meaning set forth in Section 4.5(b) of this Agreement.

"**Voting Common Stock Consideration**" has the meaning set forth in Section 3.1(c)(ii) of this Agreement.

"**Voting Election Shares**" has the meaning set forth in Section 3.2(a) of this Agreement.

"**Voting Stock Election**" has the meaning set forth in Section 3.2(a) of this Agreement.

Section 1.2 Construction. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, and references to the singular include the plural, (b) references to any gender include the other gender, (c) the words "include," "includes" and "including" do not limit the preceding terms or words and will be deemed to be followed by the words "without limitation", (d) the terms "hereof," "herein," "hereunder," "hereto" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, (e) the terms "day" and "days" mean and refer to calendar day(s) and (f) the terms "year" and "years" mean and refer to calendar year(s). Unless otherwise set forth herein, references in this Agreement to (a) any document, instrument or agreement (including this Agreement) include (1) all exhibits, schedules and other attachments thereto, (2) all documents, instruments or agreements issued or executed in replacement thereof and (3) such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (b) a particular Law means such Law as amended, modified, supplemented or succeeded, from time to time and in effect through the Closing Date. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specified. This Agreement will not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it. All accounting terms not specifically defined herein will be construed in accordance with GAAP.

Volume Weighted Average Price" or "**VWAP**" means on any Trading Day such price per share of Parent Voting Common Stock as displayed on Bloomberg (or any successor service) page "PEIX US&equity&VAP" (or any equivalent successor page) in respect of the period from 9:30 a.m. to 4:00 p.m. (Eastern time), on such Trading Day; or, if such price is not available, "**VWAP**" means the market value per share of Parent Voting Common Stock on that day as determined by a nationally recognized independent investment banking firm retained for this purpose by Parent.

ARTICLE II

THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, and in accordance with the DGCL, Merger Sub shall be merged with and into the Company at the Effective Time. Following the Effective Time, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the corporation surviving the Merger (the "**Surviving Corporation**") and shall continue its corporate existence under the DGCL.

Section 2.2 Closing; Effective Time. The closing of the Merger (the "**Closing**") shall take place at 10:00 a.m. (Pacific time) at the offices of Troutman Sanders LLP, 5 Park Plaza, Irvine, California 92614, unless another place is agreed to in writing by the Parties hereto on the second Business Day after the satisfaction or waiver (subject to applicable Law) of the conditions set forth in Article VII (excluding conditions that, by their nature, cannot be satisfied until the Closing, but subject to the continued satisfaction or, to the extent provided by Law and this Agreement, waiver of those conditions), unless this Agreement has been terminated pursuant to its terms or unless another time or date is agreed to in writing by the Parties hereto (the actual date at 10:00 a.m. (Pacific time) of the Closing being referred to herein as the "**Closing Date**"). On the Closing Date and subject to the terms and conditions hereof, the Parties hereto shall cause the Merger to be consummated by filing a Certificate of Merger, in substantially the form attached hereto as Exhibit B (the "**Certificate of Merger**"), executed in accordance with the relevant provisions of the DGCL, with the Secretary of State of the State of Delaware. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware (or at such subsequent time as Parent and the Company shall agree and as shall be specified in the Certificate of Merger), such time being referred to herein as the "**Effective Time**."

Section 2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time, except as otherwise provided herein, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, Liabilities and duties of the Company and Merger Sub shall become the debts, Liabilities and duties of the Surviving Corporation.

Section 2.4 Certificate of Incorporation of the Surviving Corporation. At the Effective Time, the certificate of incorporation of the Surviving Corporation shall be amended to read in its entirety as set forth on Exhibit C attached hereto and shall be the certificate of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein, by the DGCL or by applicable Law.

Section 2.5 Bylaws of the Surviving Corporation. At the Effective Time, the bylaws of the Surviving Corporation shall be amended to read in its entirety as set forth on Exhibit D attached hereto and shall be the bylaws of the Surviving Corporation, until amended as provided therein, by the DGCL or by applicable Law.

Section 2.6 Directors and Officers of the Surviving Corporation.

(a) The individuals set forth on Schedule 2.6(a) attached hereto shall be the directors of the Surviving Corporation upon the Effective Time and such persons shall hold office from the Effective Time until their respective successors are duly elected or appointed and qualified in the manner provided in the certificate of incorporation or bylaws of the Surviving Corporation or as otherwise provided by Law.

(b) The individuals set forth on Schedule 2.6(b) attached hereto shall be the officers of the Surviving Corporation upon the Effective Time and shall hold office from the Effective Time until their respective successors are duly elected or appointed and qualified in the manner provided in the certificate of incorporation or bylaws of the Surviving Corporation or as otherwise provided by Law.

ARTICLE III

EFFECT ON CAPITAL STOCK; EXCHANGE PROCEDURES

Section 3.1 Effect on Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or the holders of any securities of the Merging Corporations:

(a) Merger Sub Common Stock. Each share of common stock, par value $0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock, par value $0.001 per share, of the Surviving Corporation and shall constitute the only shares of capital stock of the Surviving Corporation outstanding immediately after the Effective Time. Each stock certificate of Merger Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation after giving effect to the transactions contemplated by this Section 3.1(a).

(b) Cancellation of Treasury Stock and Parent-Owned Stock. Each share of Company Common Stock (shares of Company Common Stock being hereinafter collectively referred to as "**Company Shares**") held in the treasury of the Company and any Company Shares owned by Parent or by any direct or indirect wholly-owned Subsidiary of Parent or the Company (including any Company Shares issued by the Company pursuant to a stock option) immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no payment shall be made with respect thereto.

(c) Conversion of Company Common Stock. Subject to the provisions of this Article III, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 3.1(b) and other than Dissenting Shares shall become and be converted into, as provided in and subject to the limitations set forth in this Agreement, the right to receive, at the election of the holder thereof, the following:

(i) for each share of Company Common Stock with respect to which a holder elects to receive Parent Non-Voting Common Stock pursuant to Section 3.2, an amount of Parent Non-Voting Common Stock equal to the product of (i) the Exchange Ratio and (ii) each such share of Company Common Stock (the "**Non-Voting Common Stock Consideration**") upon surrender and exchange of a Certificate or Book-Entry Share;

(ii) for each share of Company Common Stock with respect to which a holder elects to receive Parent Voting Common Stock pursuant to Section 3.2, an amount of Parent Voting Common Stock equal to the product of (i) the Exchange Ratio and (ii) each such Company Share (the "**Voting Common Stock Consideration**") upon surrender and exchange of a Certificate or Book-Entry Share;

(iii) a combination of the Non-Voting Common Stock Consideration and the Voting Common Stock Consideration converted in accordance with Section 3.1(c)(i) and Section 3.1(c)(ii) in the proportion set forth in the Election Form (a "**Mixed Election**"); and

(iv) for each share of Company Common Stock as to which a Non-Voting Election, a Voting Election, or a Mixed Election has not been effectively made or lost, pursuant to Section 3.2 (collectively, "**Non-Election Shares**"), such Non-Election Shares of each holder shall be converted into Voting Common Stock Consideration in accordance with Section 3.1(c)(ii) upon surrender and exchange of a Certificate or Book-Entry Share.

(d) Cancellation of Company Converted Common Stock. All of the Company Shares converted into the right to receive the Merger Consideration pursuant to this Article III shall no longer be outstanding and shall automatically be cancelled and shall cease to exist as of the Effective Time, and uncertificated Company Shares represented in book-entry form ("**Book-Entry Shares**") and each certificate that, immediately prior to the Effective Time, represented any such Company Shares (each, a "**Certificate**") shall thereafter represent only the right to receive the Merger Consideration and the Fractional Share Cash Amount, plus any dividends or other distributions to which such Certificates or Book-Entry Shares become entitled in accordance with Section 3.5(d).

Section 3.2 Election Procedures.

(a) Holders of Company Common Stock may elect to receive shares of Parent Non-Voting Common Stock (a "**Non-Voting Stock Election**") or Parent Voting Common Stock (a "**Voting Stock Election**") (in either case without interest) in exchange for their Company Shares in accordance with the procedures set forth herein. Shares of Parent Non-Voting Common Stock as to which a Non-Voting Election (including, pursuant to a Mixed Election) has been made are referred to herein as "**Non-Voting Election Shares**". Shares of Parent Voting Common Stock as to which a Voting Election (including, pursuant to a Mixed Election) has been made are referred to herein as "**Voting Election Shares**".

(b) An election form and other appropriate and customary transmittal materials (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of such Certificates to the Exchange Agent), in such form as Company and Parent shall mutually agree ("**Election Form**"), shall be mailed no more than forty (40) Business Days and no less than twenty (20) Business Days prior to the anticipated Effective Time or on such earlier date as Company and Parent shall mutually agree (the "**Mailing Date**") to each holder of record of Company Common Stock as of five (5) Business Days prior to the Mailing Date (the "**Election Form Record Date**"). Each Election Form shall permit such holder, subject to the election procedures set forth in this Section 3.2, (i) to elect to receive the Non-Voting Common Stock Consideration for all of the Company Shares held by such holder, in accordance with Section 3.1(c)(i); (ii) to elect to receive the Voting Common Stock Consideration for all of such Company Shares, in accordance with Section 3.1(c)(ii); (iii) to elect to receive the Non-Voting Common Stock Consideration for a part of such holder's Company Common Stock and Voting Common Stock Consideration for the remaining part of such holder's Company Common Stock; or (iv) to indicate that such record holder has no preference as to the receipt of Parent Non-Voting Common Stock or Parent Voting Common Stock for such Company Shares. A holder of record of Company Shares who holds such Company Shares as nominee, trustee or in another representative capacity (a "**Holder Representative**") may submit multiple Election Forms, provided that each such Election Form covers all the Company Shares held by such Holder Representative for a particular beneficial owner. Any Company Shares with respect to which the holder thereof shall not, as of the Election Deadline, have made an election by submission to the Exchange Agent of an effective, properly completed Election Form shall be deemed Non-Election Shares.

(c) To be effective, a properly completed Election Form shall be submitted to the Exchange Agent on or before 5:00 p.m., (Pacific time), on the twentieth (20th) day following the Mailing Date (or such other time and date as the Company and Parent may mutually agree) (the "**Election Deadline**"); *provided, however*, that the Election Deadline may not occur on or after the Closing Date. The Company shall use its reasonable best efforts to make available up to two separate Election Forms, or such additional Election Forms as Parent may permit, to all Persons who become holders (or beneficial owners) of Company Common Stock between the Election Form Record Date and the close of business on the business day prior to the Election Deadline. The Company shall provide to the Exchange Agent all information reasonably necessary for it to perform as specified herein. An election shall have been properly made only if the Exchange Agent shall have actually received a properly completed Election Form by the Election Deadline. An Election Form shall be deemed properly completed only if accompanied by one or more Certificates (or customary affidavits and indemnification regarding the loss or destruction of such Certificates or the guaranteed delivery of such Certificates) and/or evidence of Book-Entry Shares representing all Company Shares covered by such Election Form, together with duly executed transmittal materials included with the Election Form. If a holder of Company Common Stock either (i) does not submit a properly completed Election Form in a timely fashion or (ii) revokes its Election Form prior to the Election Deadline (without later submitting a properly completed Election Form prior to the Election Deadline), the Company Shares held by such stockholder shall be designated as Non-Election Shares. Any Election Form may be revoked or changed by the person submitting such Election Form to the Exchange Agent by written notice to the Exchange Agent only if such notice of revocation or change is actually received by the Exchange Agent at or prior to the Election Deadline. Parent shall cause the Certificates and/or Book-Entry Shares relating to any revoked Election Form to be promptly returned without charge to the person submitting the Election Form to the Exchange Agent. Subject to the terms of this Agreement and of the Election Form, the Exchange Agent shall have discretion to determine when any election, modification or revocation is received and whether any such election, modification or revocation has been properly made. All elections shall be revoked automatically if the Exchange Agent is notified in writing by Parent or the Company, upon exercise by Parent or the Company of its respective or their mutual rights to terminate this Agreement to the extent provided under Article VIII, that this Agreement has been terminated in accordance with Article VIII.

Section 3.3 Company Stock Options and Company Warrants.

(a) Treatment of Company Stock Options. The Company and Parent shall take all actions reasonably necessary (including any required notices by the Company) to provide that, effective as of the Effective Time, each outstanding Company Stock Option will be assumed by Parent. Each Company Stock Option assumed by Parent will continue to have, and be subject to, the same material terms and conditions of such option immediately prior to the Effective Time, except that (i) each Company Stock Option will be exercisable for a number of shares of Parent Voting Common Stock equal to the product of the number of Company Shares that would have been issuable upon exercise of the Company Stock Option outstanding immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Stock, and (ii) the per share exercise price for the Parent Voting Common Stock issuable upon exercise of such assumed Company Stock Option will be equal to the quotient determined by dividing the per share exercise price for such Company Stock Option outstanding immediately prior to the Effective Time by the Exchange Ratio, rounded up to the nearest whole cent. The holder of a Company Stock Option may elect to receive shares of Parent Non-Voting Common Stock, Parent Voting Common Stock or a combination thereof upon exercise of such Company Stock Option. The exercise price and the number of shares purchasable pursuant to the assumed Company Stock Options as well as the terms and conditions of exercise of such assumed options shall be designed to comply with Sections 424(a) and 409A of the Code. Any restriction on the exercisability of such Company Stock Option will continue in full force and effect, and the term, exercisability, vesting schedule or other provisions of such Company Stock Option will remain unchanged. The Merger will not terminate any of the outstanding Company Stock Options or accelerate the exercisability or vesting of such Company Stock Options or the shares of Parent Voting Common Stock underlying the Company Stock Options upon Parent's assumption thereof in the Merger.

(b) Treatment of Company Warrants. To the extent the Company Warrants have not been terminated in accordance with their terms, at the Effective Time, (i) each outstanding warrant to purchase Company Shares (a "**Company Warrant**") shall by virtue of the Merger be assumed by Parent subject to the terms of such Company Warrant and (ii) the Company shall take all actions reasonably necessary, including any required notices by the Company, to provide that, effective as of the Effective Time, each outstanding Company Warrant will be assumed by Parent. Each Company Warrant assumed by Parent will continue to have, and be subject to, the same terms and conditions of such warrant immediately prior to the Effective Time, except that (A) each Company Warrant will be exercisable for a number of shares of Parent Voting Common Stock equal to the product of the number of Company Shares that would have been issuable upon exercise of the Company Warrant outstanding immediately prior to the Effective Time multiplied by the Exchange Ratio, rounded down to the nearest whole number of shares of Parent Voting Common Stock, and (B) the per share exercise price for the Parent Voting Common Stock issuable upon exercise of such assumed Company Warrant will be equal to the quotient determined by dividing the per share exercise price for such Company Warrant outstanding immediately prior to the Effective Time by the Exchange Ratio, rounded up to the nearest whole cent. The holder of a Company Warrant may elect to receive shares of Parent Non-Voting Common Stock, Parent Voting Common Stock or a combination thereof upon exercise of such Company Warrant. Any restriction on the exercisability of such Company Warrant will continue in full force and effect, and the term, exercisability or other provisions of such Company Warrant will remain unchanged. Consistent with the terms of the Company Warrants, the Merger will not accelerate the exercisability of such Company Warrants or the shares of Parent Voting Common Stock underlying the Company Warrants upon Parent's assumption thereof in the Merger.

Section 3.4 Dissenters' Rights. Notwithstanding any provision of this Agreement to the contrary, Company Shares which are issued and outstanding immediately prior to the Effective Time and which are held by holders who shall have complied with the provisions of Section 262 of the DGCL (the "**Dissenting Shares**") shall not be converted into or represent a right to receive the applicable Merger Consideration, and holders of such Dissenting Shares shall be entitled to receive payment of the fair value of such Dissenting Shares in accordance with the provisions of Section 262 of the DGCL, unless and until the applicable holder fails to comply with the provisions of Section 262 of the DGCL or effectively withdraws or otherwise loses such holder's rights to receive payment of the fair value of such holder's Shares under Section 262 of the DGCL. If, after the Effective Time, any such holder fails to comply with the provisions of Section 262 of the DGCL or effectively withdraws or loses such right, such Dissenting Shares shall thereupon be treated as if they had been converted at the Effective Time into the right to receive the applicable Merger Consideration and the Surviving Corporation and Parent shall remain liable for payment of the Merger Consideration with respect to such Dissenting Shares. Notwithstanding anything to the contrary contained in this Section 3.4, if this Agreement is terminated prior to the Effective Time, then the right of any holder of Company Common Stock to be paid the fair value of such holder's Dissenting Shares pursuant to Section 262 of the DGCL shall cease. The Company shall give Parent notice of any written demands for appraisal of Company Common Stock received by the Company under Section 262 of the DGCL, and shall give Parent the opportunity to participate in all negotiations and Proceedings with respect thereto. The Company shall not, except with the prior written consent of Parent, (i) make any payment with respect to any such demands for appraisal or (ii) offer to settle or settle any such demands.

Section 3.5 Exchange Procedures.

(a) Exchange Agent. Prior to the mailing of the Joint Proxy Statement/Prospectus, Parent shall appoint a bank or trust reasonably acceptable to the Company to act as exchange agent (the "**Exchange Agent**") for the payment of Merger Consideration and shall enter into an agreement (the "**Exchange Agent Agreement**") relating to the Exchange Agent's responsibilities under this Agreement, which Exchange Agent Agreement shall be subject to the reasonable approval of the Company. At or prior to the Effective Time, Parent shall deposit, or shall cause to be deposited, with the Exchange Agent for the benefit of the holders of Company Shares, for exchange in accordance with this Article III through the Exchange Agent (i) evidence of Parent Stock in book-entry form representing the number of shares of Parent Stock sufficient to deliver the applicable Merger Consideration and (ii) an amount of cash sufficient to make Fractional Share Cash Amount payments in accordance with Section 3.5(e) (collectively, the "**Exchange Fund**"). Parent further agrees to provide to the Exchange Agent, from time to time as needed, immediately available funds sufficient to pay any dividends and other distributions pursuant to Section 3.5(c). Pursuant to irrevocable instructions, the Exchange Agent shall promptly deliver the applicable Merger Consideration from the Exchange Fund to the former Company stockholders who are entitled thereto pursuant to Section 3.1. Except as contemplated by Section 3.5(c) and Section 3.5(e) hereof, the Exchange Fund shall not be used for any other purpose. Parent shall pay all charges and expenses, including those of the Exchange Agent, incurred by it in connection with the exchange of Company Shares for the Merger Consideration and other amounts contemplated by this Article III.

(b) Surrender of Certificates. Upon surrender of a Certificate or Book-Entry Shares to the Exchange Agent, together with such Election Form, duly executed and completed in accordance with the instructions thereto, and such other documents as may reasonably be required by Parent or the Exchange Agent, the holder of such Certificate or Book-Entry Shares shall be entitled to receive in exchange therefor the Merger Consideration into which the shares represented by such Certificates or Book-Entry Shares have been converted pursuant to this Agreement, together with the Fractional Share Cash Amount and any dividends or other distributions to which such Certificates or Book-Entry Shares become entitled in accordance with Section 3.5(c), if any, and the Certificate or Book-Entry Share so surrendered shall forthwith be cancelled and exchanged as provided in this Article III. No interest will be paid or will accrue on any cash payable pursuant to Section 3.5(c) or Section 3.5(e). In the event of a transfer of ownership of Company Shares which is not registered in the transfer records of the Company, the Merger Consideration may be issued and paid with respect to such Company Shares to such a transferee if the Certificate or sufficient evidence of Book-Entry Shares representing such transferred Company Shares is presented to the Exchange Agent in accordance with this Section 3.5(b), accompanied by all documents required to evidence and effect such transfer and evidence that any applicable stock Transfer Taxes have been paid.

(c) Dividends and Distributions; Treatment of Unexchanged Shares. No dividends or other distributions declared or made after the Effective Time with respect to the Parent Stock with a record date after the Effective Time shall be paid to any holder of any unsurrendered share of Company Common Stock who is entitled to receive Parent Stock upon such surrender, and no Fractional Share Cash Amount payment in respect of fractional shares shall be paid to any such holder pursuant to Section 3.5(e), unless and until the holder of such Company Common Stock shall surrender such Company Common Stock in accordance with Section 3.5(b). Subject to the effect of escheat, Tax or other applicable Laws, following surrender of any such Company Common Stock, there shall be paid to the holder of the stock certificates or Book-Entry Shares representing whole shares of Parent Stock to be issued in exchange therefor, without interest, (i) promptly, (A) the amount of any cash payable with respect to a fractional share of Parent Stock to which such holder is entitled pursuant to Section 3.5(e) and (B) the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Stock and (ii) at the appropriate payment date, the amount of dividends or other distributions, with a record date after the Effective Time but prior to the date of surrender of such holder's Company Common Stock and a payment date occurring after the date of surrender, payable with respect to such whole shares of Parent Stock.

(d) Full Satisfaction. The Merger Consideration delivered upon surrender of Company Common Stock in accordance with the terms hereof (including any cash paid pursuant to Section 3.5(c)) shall be deemed to have been paid in full satisfaction of all rights pertaining to the such Company Shares.

(e) Fractional Shares. No fractional shares of Parent Stock shall be issued in connection with the Merger, and no certificates or scrip for any such fractional shares shall be issued. Any holder of Company Common Stock who would otherwise be entitled to receive a fraction of a share of Parent Stock, after aggregating all fractional shares of Parent Stock issuable to such holder, shall in lieu of such fraction of a share and upon surrender of such holder's Certificates, be paid in cash the dollar amount (rounded to the nearest whole cent), without interest, determined by multiplying such fraction by the VWAP of the Parent Stock during the five (5) Trading Days immediately preceding the Closing Date (the "**Fractional Share Cash Amount**"). As soon as practicable after the determination of the Fractional Share Cash Amount to be paid to former holders of Company Shares in lieu of any fractional shares of Parent Stock, the Exchange Agent shall distribute such amounts to such former holders.

(f) Termination of Fund. Any portion of the Exchange Fund which remains undistributed to the holders of Company Shares nine (9) months after the Effective Time shall be returned to Parent, upon demand, and, from and after such delivery to Parent, any holders of Company Shares who have not theretofore complied with this Article III shall thereafter look only to Parent for the Merger Consideration payable in respect of such Company Shares and any cash paid in respect of the Fractional Share Cash Amount and any dividends or other distributions with respect to Parent Stock to which they are entitled pursuant to Section 3.5(c), in each case, without any interest thereon. Neither Parent, the Surviving Corporation, the Exchange Agent nor the Company shall be liable to any holder of Company Common Stock for any such shares of Parent Stock (or dividends or distributions with respect thereto) or cash from the Exchange Fund delivered to a public official pursuant to any abandoned property, escheat or similar Law.

(g) Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or Exchange Agent, the posting by such Person of a bond in such reasonable amount as Parent or Exchange Agent may direct as indemnity against any claim that may be made against the Surviving Corporation with respect to such Certificate, the Exchange Agent shall pay in exchange for such lost, stolen or destroyed Certificate the Merger Consideration payable in respect of the Company Shares represented by such Certificate, any cash paid in respect of the Fractional Share Cash Amount and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 3.5(c), in each case, without any interest thereon.

(h) Withholding Taxes. Parent or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Company Common Stock such amounts as Parent or the Exchange Agent are required to deduct and withhold under the Code, or any Tax Law, with respect to the making of such payment. To the extent that amounts are so withheld by Parent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Company Common Stock in respect of whom such deduction and withholding was made by Parent or the Exchange Agent.

(i) Exchange Fund Cash. The Exchange Agent shall invest any cash included in the Exchange Fund, as directed by Parent, on a daily basis; *provided, however*, that no such investment or loss thereon shall affect the amounts payable to the holder of Company Common Stock pursuant to this Article III. Any interest and other income resulting from such investments shall be paid to Parent upon termination of the Exchange Fund pursuant to Section 3.5(f). In the event the cash in the Exchange Fund shall be insufficient to fully satisfy all of the payment obligations to be made by the Exchange Agent hereunder, Parent shall promptly deposit cash into the Exchange Fund in an amount that is equal to the deficiency in the amount of cash required to fully satisfy such payment obligations.

(j) No Further Ownership Rights in Shares. From and after the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of Company Shares that were outstanding immediately prior to the Effective Time. From and after the Effective Time, subject to applicable Law in the case of Dissenting Shares, all holders of Certificates and/or Book-Entry Shares shall cease to have any rights as Company stockholders other than the right to receive the Merger Consideration into which the shares represented by such Certificates and/or Book-Entry Shares have been converted pursuant to this Agreement upon the surrender of such Certificates and/or Book-Entry Shares in accordance with Section 3.5(b) (together with the Fractional Share Cash Amount and any dividends or other distributions to which such Certificates and/or Book-Entry Shares become entitled in accordance with Section 3.5(c)), without interest. If, after the Effective Time, any Certificates and/or Book-Entry Shares formerly representing Company Shares are presented to the Surviving Corporation, Parent or the Exchange Agent for any reason, such Certificates or Book-Entry Shares shall be cancelled and exchanged as provided in this Article III, subject to applicable Law in the case of Dissenting Shares. Any cash paid in respect of the Fractional Share Cash Amount and any dividends or other distributions to which the holders thereof are entitled pursuant to Section 3.5(c), in each case, net of any required withholding for Taxes and without any interest thereon.

Section 3.6 Adjustments. Notwithstanding anything in this Agreement to the contrary, if, between the date of this Agreement and the Effective Time, the issued and outstanding Company Shares or Parent Stock shall have been changed into a different number of shares or a different class by reason of any stock split, reverse stock split, stock dividend, reclassification, redenomination, recapitalization, split-up, combination, exchange of shares or other similar transaction, the Merger Consideration and any other dependent items shall be appropriately adjusted to provide to the holders of Company Shares the same economic and proportional effect as contemplated by this Agreement prior to such action and as so adjusted shall, from and after the date of such event, be the Merger Consideration or other dependent item, subject to further adjustment in accordance with this sentence; *provided, however,* that nothing in this Section 3.6 shall be constrained to permit the Company or Parent to take any action with respect to its securities that is prohibited by the terms of this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures expressly set forth in the correspondingly numbered Section of the disclosure letter of the Company delivered to Parent and Merger Sub concurrently with the parties' execution of this Agreement (the "**Company Disclosure Schedule**"), the Company represents and warrants to Parent and Merger Sub as follows:

Section 4.1 Organization and Qualification.

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite power and authority to own, lease, license and operate its assets and properties and to carry on its business as it is now being conducted. The Company is duly licensed or qualified to do business, and is in good standing, in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where such failure to be so duly approved, qualified or licensed and in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Section 4.1(a) of the Company Disclosure Schedule lists each jurisdiction in which the Company is qualified to do business as a foreign entity and its directors and officers.

(b) Complete, true and correct copies of the Company's certificate of incorporation, as amended (the "**Company Certificate**"), and bylaws, as amended (the "**Company Bylaws**"), have been made available to Parent in the Dataroom, and no other such documents are binding upon the Company. The Company Certificate and the Company Bylaws are in full force and effect. The Company is not in violation of any provision of the Company Certificate or the Company Bylaws. The Company has made available to Parent in the Dataroom copies of the charters of each committee of the Company's Board of Directors and any code of conduct or similar policy adopted by the Company.

Section 4.2 Capitalization.

(a) The authorized capital stock of the Company consists of 15,000,000 Company Shares and 5,000,000 shares of preferred stock, par value $0.001 per share ("**Company Preferred Stock**"). As of December 29, 2014, (i) 14,204,240 Company Shares were issued and outstanding, (ii) no shares of Company Preferred Stock were issued or outstanding, (iii) 537 Company Shares were held in the treasury of the Company, (iv) 3,140 Company Shares were reserved for issuance upon exercise of Company Stock Options, and (v) 787,855 Company Shares were reserved for issuance upon exercise of Company Warrants. Each issued and outstanding share of capital stock of the Company is, and each share of Company Common Stock reserved for issuance as specified above will be, upon issuance on the terms and conditions specified in the instruments pursuant to which it is issuable, duly authorized, validly issued, fully paid, nonassessable. All of the issued and outstanding shares of capital stock of the Company were issued in compliance with applicable Laws. None of the issued and outstanding shares of capital stock of the Company were issued in violation of any agreement, arrangement or commitment to which the Company is a party or is subject to or in violation of any preemptive or similar rights of any Person. All of the issued and outstanding Company Shares are owned of record by the Persons set forth in Section 4.2(a) of the Company Disclosure Schedule. Since the Balance Sheet Date, there are no dividends or distributions which have accrued or been declared but are unpaid upon any of the Company's capital stock.

(b) Except for Company Stock Options set forth in Section 4.2(c) of the Company Disclosure Schedule and Company Warrants set forth in Section 4.2(d) of the Company Disclosure Schedule, as of the date hereof, there are no outstanding subscriptions, options, calls, Contracts, commitments, understandings, restrictions, arrangements, rights or warrants, including any right of conversion or exchange under any outstanding security, instrument or other agreement and also including any rights plan or other anti-takeover agreement, obligating the Company or any Subsidiary of the Company to issue, deliver or sell, or cause to be issued, delivered or sold, Company Shares or obligating the Company or any Subsidiary of the Company to grant, extend or enter into any such agreement or commitment. As of the date hereof, there are no obligations, contingent or otherwise, of the Company or its Subsidiaries to (i) repurchase, redeem or otherwise acquire any Company Shares or the capital stock or other equity interests of any Subsidiary of the Company or (ii) provide material funds to, or make any material investment in (in the form of a loan, capital contribution or otherwise), or provide any guarantee with respect to the obligations of, any Person other than a Company's Subsidiary. Except as set forth in Section 4.2(b) of the Company Disclosure Schedule, there are no outstanding stock appreciation rights or similar derivative securities or rights of the Company or any of its Subsidiaries. There are no bonds, debentures, notes or other Indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which stockholders of the Company may vote. Except for the Company Stockholders Agreement, there are no voting trusts, irrevocable proxies or other agreements or understandings to which the Company or any Subsidiary of the Company is a party or is bound with respect to the voting of any Company Shares. Except for the Company Registration Rights Agreements, the Company has not agreed to register any securities under the Securities Act or under any state securities law or granted registration rights to any Person (except rights which have terminated or expired). Neither the Company nor any of its Subsidiaries has any outstanding obligations in respect of prior acquisitions of businesses to pay, in the form of securities, cash or other property, any portion of the consideration payable to the seller or sellers in such transaction.

(c) Section 4.2(c) of the Company Disclosure Schedule sets forth a complete and correct list as of the date hereof, of all holders of outstanding Company Stock Options, including the date of grant, the number of Company Shares subject to each such option, the exercise price per Company Share, the exercise and vesting schedule, the number of Company Shares remaining subject to each such option, the Company Stock Options that are incentive stock options for purposes of the Code, and the maximum term of each such option. Complete and correct copies of (i) all written agreements, including amendments thereto, evidencing the grant of Company Stock Options and (ii) all Company Board consents approving each Company Stock Option, including the written agreement and amendments thereto, have been made available to Parent in the Dataroom. None of the Company Stock Options were granted with exercise prices below fair market value on the date of grant. All Company Stock Options have been validly issued and properly approved by the Company Board (or a duly authorized committee or subcommittee thereof) in compliance with all applicable Law and recorded on the Company financial statements in accordance with GAAP, and no such grants involved any "back dating," "forward dating" or similar practices with respect to such grants.

(d) The Company has previously made available to Parent in the Dataroom complete and correct copies of each Company Warrant. Section 4.2(d) of the Company Disclosure Schedule sets forth a complete and correct list as of the date hereof, of all holders of outstanding Company Warrants, including the date of issuance, the number of Company Shares subject to each such warrant, the exercise price per Company Share, the exercise and vesting schedule, the number of Company Shares remaining subject to each such warrant, and the maximum term of each such warrant. Complete and correct copies of the relevant forms of written agreements, including forms of amendments thereto, evidencing the issuance of Company Warrants have been made available to Parent in the Dataroom. All Company Warrants have been validly issued and properly approved by the Company Board (or a duly authorized committee or subcommittee thereof) in compliance with all applicable Law and recorded on the Financial Statements in accordance with GAAP.

Section 4.3 Subsidiaries.

(a) Each Subsidiary of the Company is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite power and authority to own, lease, license and operate its assets and properties and to carry on its business as it is now being conducted, and each Subsidiary of the Company is qualified to transact business, and is in good standing, in each jurisdiction in which the properties owned, leased, licensed or operated by it or the nature of the business conducted by it makes such qualification necessary, except where such failure to be so duly approved, qualified or licensed and in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) All of the outstanding shares of capital stock or other equity interests of each Subsidiary of the Company are validly issued, fully paid, nonassessable and free of preemptive rights and are owned directly or indirectly by the Company as set forth in Section 4.3(b) of the Company Disclosure Schedule. All of the issued and outstanding shares of capital stock of each Subsidiary of the Company were issued in compliance with applicable Laws. None of the issued and outstanding shares of capital stock of any Subsidiary of the Company were issued in violation of any agreement, arrangement or commitment to which any Subsidiary of the Company or the Company is a party or is subject to or in violation of any preemptive or similar rights of any Person. There are no subscriptions, options, warrants, voting trusts, proxies or other commitments, understandings, restrictions or arrangements relating to the issuance, sale, voting or transfer of any shares of capital stock or other equity interests of any Subsidiary of the Company, including any right of conversion or exchange under any outstanding security, instrument or agreement. The Company has no material investment in any entity other than its Subsidiaries.

(c) Section 4.3(c) of the Company Disclosure Schedule contains, for each Subsidiary of the Company, a complete and accurate list of each jurisdiction in which such Subsidiary of the Company is qualified to do business as a foreign entity. The Company has heretofore furnished to Parent in the Dataroom a complete and correct copy of each of the Company's Subsidiaries' Articles of Incorporation, Certificate of Incorporation, Articles of Organization or Operating Agreement, as the case may be, (collectively, the "**Subsidiary Charters**") and Bylaws (collectively, the "**Subsidiary Bylaws**"), each as amended to date. The Subsidiary Charters and the Subsidiary Bylaws are in full force and effect. The Company's Subsidiaries are not in violation of any provision of the applicable Subsidiary Charters or the Subsidiary Bylaws. The Company has made available to Parent in the Dataroom copies of, the charters of each committee of the Board of Directors of each Subsidiary of the Company and any code of conduct or similar policy adopted by each Subsidiary of the Company.

Section 4.4 Authority; Non-Contravention; Approvals.

(a) The Company has all necessary power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, subject to obtaining the Company Stockholder Approval, to consummate the Merger and the other transactions contemplated by this Agreement. Subject to obtaining the Company Stockholder Approval, the execution, delivery and performance by the Company of this Agreement, and the consummation by the Company of the Merger and the other transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of the Company, and no other actions on the part of the Company are necessary to authorize this Agreement or to consummate the Merger or the other transactions contemplated by this Agreement other than (i) obtaining the Company Stockholder Approval, (ii) the filing and recordation of the Certificate of Merger as required by the DGCL and (iii) filings by the Company required by the HSR Act. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the rights and remedies of creditors generally and the effect of general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at Law). The affirmative vote of the holders of a majority of the issued and outstanding Company Shares (i) entitled to vote at a duly called and held meeting of the Company stockholders or (ii) action by written consent as permitted by the Company Bylaws, will be the only vote of the holders of capital stock of the Company necessary to approve and adopt this Agreement and the Merger (the "**Company Stockholder Approval**").

(b) At a meeting duly held on December 30, 2014, at which all directors were present, the Company Board unanimously (i) determined that this Agreement, the Merger and the other transactions contemplated hereby, are advisable, fair to and in the best interests of the Company and the holders of the Company Shares, (ii) approved and adopted this Agreement, the Merger and the transactions contemplated hereby and (iii) resolved to recommend approval and adoption of this Agreement and the Merger by the Company's stockholders. Such determinations, approvals, resolutions and recommendations are in effect as of the date hereof. No takeover statute or other similar statute or regulation relating to the Company is applicable to the Merger or the other transactions contemplated by this Agreement.

(c) Except as disclosed in Section 4.4(c) of the Company Disclosure Schedule, the execution, delivery and performance of this Agreement by the Company and the consummation of the Merger and the other transactions contemplated hereby do not and will not violate, conflict with, give rise to the right to modify or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any offer to purchase or any prepayment of any debt, or result in the creation of any Lien, security interest or encumbrance upon any of the properties or assets of the Company or any of its Subsidiaries under any of the terms, conditions or provisions of (i) the respective certificate of incorporation or bylaws or similar governing documents of the Company or any of its Subsidiaries, (ii) any statute, Law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any Governmental Entity applicable to the Company or any of its Subsidiaries or any of their respective properties or assets, subject in the case of consummation, to obtaining the Company Required Statutory Approvals and the Company Stockholder Approval, (iii) any Company Permit, or (iv) any Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or any of their respective properties or assets may be bound or affected, other than such violations, conflicts, rights to modify, breaches, defaults, terminations, accelerations or creations of Liens, security interests or encumbrances that would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.

(d) Except as disclosed in Section 4.4(d) of the Company Disclosure Schedule and for (i) obtaining the Company Stockholder Approval, (ii) the filings by the Company required by the HSR Act, (iii) the filing of the Certificate of Merger as required by the DGCL and (iv) the filings with TTB (the filings and approvals referred to in clauses (i), (ii), (iii) and (iv) collectively, the "**Company Required Statutory Approvals**"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any Governmental Entity or other Person is necessary for the execution and delivery of this Agreement by the Company or the consummation by the Company of the Merger or the other transactions contemplated hereby, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

Section 4.5 Reports and Financial Statements.

(a) The Company has made available to Parent in the Dataroom copies of the Company's audited consolidated financial statements as of and for the fiscal years ended December 31, 2012 and 2013, together with the notes thereto (the "**Audited Financial Statements**"). The Audited Financial Statements were prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as otherwise stated in such financial statements, including the related notes) and each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of the Company and its consolidated Subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise set forth in the notes thereto.

(b) The Company has made available to Parent in the Dataroom copies of Company's unaudited consolidated financial statements, including the notes thereto, for the nine (9) month period ended September 30, 2014 (the "**Unaudited Financial Statements**"). The Unaudited Financial Statements were prepared in accordance with GAAP on a basis consistent with the Audited Financial Statements and are correct and complete and fairly present, in all material respects, the financial position and condition of the Company at the date thereof and the results of operations for the period covered thereby (subject to normal year-end adjustments and the absence of complete footnotes) (the Audited Financial Statements and the Unaudited Financial Statements, together, the "**Financial Statements**").

(c) The Company has disclosed to its auditors and the audit committee of the Company Board (and made available to Parent in the Dataroom a summary of the significant aspects of such disclosure) (i) any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

(d) Since October 4, 2012, the Company has not received written notice of any SEC inquiries or investigations or other governmental inquiries or investigations (pending or threatened) in each case regarding any accounting practices of the Company or any malfeasance by any director or executive officer of the Company. The Company has not conducted any internal investigations regarding accounting or revenue recognition discussed with, reviewed by or initiated at the direction of the chief executive officer, chief financial officer, general counsel or similar legal officer, the Company Board or any committee thereof.

Section 4.6 Absence of Undisclosed Liabilities. Except as set forth in Section 4.6 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has any Liabilities that are required to be reported by GAAP, except such Liabilities: (a) as and to the extent set forth on the audited consolidated balance sheet of the Company and its Subsidiaries as of December 31, 2013 (the "**Balance Sheet Date**"); or (b) incurred after the Balance Sheet Date in the ordinary course of business consistent with past practice which, individually or in the aggregate, would not have a Company Material Adverse Effect. Since the Balance Sheet Date, the Company has collected its accounts receivable and paid its accounts payable in the ordinary course of business consistent with past practice.

Section 4.7 Litigation. Except as set forth in Section 4.7 of the Company Disclosure Schedule, there is no Proceeding pending, or, to the Knowledge of the Company, threatened, against the Company, any of its Subsidiaries or any of their respective directors, managers or officers (in their capacities as such or relating to their employment, services or relationship with the Company or any of its Subsidiaries) or that would materially relate to or affect the Company or any of its Subsidiaries. Neither the Company nor any Subsidiary has committed a violation of any judgment, decree, injunction or order of any Governmental Entity applicable to the Company or any Subsidiary or any of their respective properties or assets. Since January 1, 2013, there has not been any internal investigations or inquiries conducted by the Company, the Company Board (or any committee thereof) or any other Person at the request of any of the foregoing concerning any financial, accounting, Tax, conflict of interest, self-dealing, fraudulent or deceptive conduct or other misfeasance or malfeasance issues. Neither the Company nor its Subsidiaries, nor, to the Knowledge of the Company, any of the directors, managers or officers of the Company or any of its Subsidiaries (in their capacities as such or relating to their employment, services or relationship with the Company or any of its Subsidiaries as applicable) is subject to any judgment, decree, injunction or order of any Governmental Entity. Except as set forth in Section 4.7 of the Company Disclosure Schedule, neither the Company nor its Subsidiaries has any Proceeding pending against any other Person.

Section 4.8 Absence of Certain Changes or Events. Except as set forth in Section 4.8 of the Company Disclosure Schedule, since September 30, 2014, the Company and its Subsidiaries have conducted their businesses in the ordinary course of business consistent with past practice and there has not been:

(a) any circumstance or event, or series of circumstances or events, which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect;

(b) any material change in any method of accounting or accounting practice by the Company or any Subsidiary, except for any such change required by reason of a concurrent change in GAAP;

(c) any material revaluation by the Company or any Subsidiary of a material asset (including, without limitation, any material writing down of the value of inventory or material writing-off of notes or accounts receivable);

(d) any transaction or commitment made, or any Contract or agreement entered into, by the Company or any Subsidiary, relating to its assets or business (including, without limitation, the acquisition, disposition, leasing or licensing of any tangible or intangible assets) or any relinquishment by the Company or any Subsidiary of any Contract or other right, in either case, material to the Company and Subsidiary taken as a whole, other than transactions and commitments in the ordinary course of business consistent with past practice and those contemplated by this Agreement;

(e) any declaration, setting aside or payment of any dividend (whether in cash, stock or property) or other distribution in respect of the Company's capital stock or any redemption, purchase or other acquisition of any of the Company's securities;

(f) any split, combination or reclassification of any of the Company's capital stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock;

(g) any amendment of any material term of any outstanding security of the Company or any Subsidiary;

(h) any issuance by the Company or any Subsidiary of any notes, bonds or other debt securities or any capital stock or other equity securities or any securities convertible, exchangeable or exercisable into any capital stock or other equity securities, except for the issuance of any Company Shares pursuant to the exercise of any Company Stock Options and Company Warrants in existence prior to the date hereof;

(i) any material incurrence, assumption or guarantee by the Company or any Subsidiary of any Indebtedness for borrowed money other than in the ordinary course of business and in amounts and on terms consistent with past practices;

(j) any creation or assumption by the Company or any Subsidiary of any material Lien on any material asset(s) (alone or in the aggregate) other than in the ordinary course of business consistent with past practice;

(k) any making of any material loan, advance or capital contributions to or investment in any entity or person other than loans, advances or capital contributions to or investments in any Subsidiary and except for cash advances to employees for reimbursable travel and other reasonable business expenses, in each case made in the ordinary course of business consistent with past practice;

(l) any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the business or assets of the Company or any Subsidiary which, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect;

(m) any material grant of equity or other compensation, or increase in the benefits under, or the establishment, material amendment or termination of, any Company Benefit Plan covering current or former employees, officers, consultants, or directors of the Company or any Subsidiary, or any material increase in the compensation payable or to become payable to or any other material change in the employment terms for any current or former directors or officers of the Company or any of its Subsidiaries or any other employee earning noncontingent cash compensation in excess of $100,000 per year;

(n) any entry by the Company or any Subsidiary into any employment, consulting, severance, change in control, retention, termination or indemnification agreement with any current or former director, consultant or officer of the Company or any Subsidiary, entry into any such agreement with any person for a noncontingent cash amount in excess of $250,000 per year or outside the ordinary course of business, or entry into any employment agreement other than on an at-will basis;

(o) any labor dispute, other than routine individual grievances, or any activity or Proceeding by a labor union or representative thereof to organize any employees of the Company or any of its subsidiaries for the purposes of forming a labor union or labor organization, or for selecting a labor union or labor organization as a collective bargaining representative, for employees who were not subject to a collective bargaining agreement as of September 30, 2014 or any lockouts, strikes, slowdowns, work stoppages or threats thereof by or with respect to any employees;

(p) any authorization or commitment with respect to, any single capital expenditure that was in excess of $1,000,000 individually or $5,000,000 in the aggregate; or

(q) any authorization of, or agreement by the Company or any Subsidiary to take, any of the actions described in this Section 4.8, except as expressly contemplated by this Agreement.

Section 4.9 Compliance with Applicable Law; Permits.

(a) Except as set forth in Section 4.9 of the Company Disclosure Schedule, the Company and its Subsidiaries hold all material authorizations, permits, licenses, certificates, easements, concessions, franchises, variances, exemptions, orders, consents, registrations, approvals and clearances of all Governmental Entities (including, without limitation, any Governmental Entity engaged in the regulation of the Company's products) which are required for the Company and its Subsidiaries to own, lease, license and operate their respective properties and other assets and to carry on their respective business in the manner as they are being conducted as of the date hereof (the "**Company Permits**"), and all the Company Permits are valid, and in full force and effect other than any Company Permit which if not held or not valid, as the case may be, would not individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Section 4.9 of the Company Disclosure Schedule sets forth a list of all material Company Permits.

(b) The Company and its Subsidiaries are, and have been since January 1, 2013, in compliance with the terms of the Company Permits and all applicable Laws relating to the Company and its Subsidiaries or their respective businesses, assets or properties, except where the failure to be in compliance with the terms of the Company Permits or such applicable Law would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Since January 1, 2013, neither the Company nor any of its Subsidiaries has received any written notification from any Governmental Entity (i) asserting that the Company or any of its Subsidiaries is not in compliance with any Law or Company Permit, or (ii) threatening to revoke any Company Permit.

Section 4.10 Company Material Contracts; Defaults.

(a) Except as set forth in Section 4.10(a) of the Company Disclosure Schedule and previously made available to Parent, neither the Company nor any of its Subsidiaries is a party to, and none of their respective assets, businesses or operations is bound by, any Contract (whether written or oral), or groups of related Contracts with the same party or group of parties, that (i) would constitute a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated under the Securities Act (it being understood that to the extent that a material contract described under Item 601(b)(10) is duplicative with any of the Contracts set forth in clauses (ii) through (xiii) of this Section 4.10(a), the thresholds set forth in clauses (ii) through (xiii) of this Section 4.10(a) shall control for disclosure purposes to the extent there is any conflict with such material contract definition); (ii) relate to borrowed money or other Indebtedness in excess of $1,000,000 or the mortgaging, pledging or otherwise placing a Lien on any material asset or material group of assets of the Company or any of its Subsidiaries, the foreclosure of which would reasonably be expected to have, individually or in the aggregate a Company Material Adverse Effect; (iii) require the payment or receipt of $1,000,000 or more per year which are not cancelable by the Company on 30 days' or less notice without premium or penalty or other cost of any kind or nature; (iv) relate to any joint venture, partnership or other similar agreements to which the Company or any of its Subsidiaries is a party; (v) relate to lease agreements to which the Company or any of its Subsidiaries is a party with annual lease payments in excess of $1,000,000; (vi) relate to standby letter of credits obtained by the Company or any of its Subsidiaries has in an amount in excess of $100,000 and Contracts under which the Company or any of its Subsidiaries has advanced or loaned any other Person or entity an amount in excess of or guaranteed an amount in excess of $100,000; (vii) relate to agreements under which the Company has granted any Person or entity registration rights (including, without limitation, demand and piggy-back registration rights); (viii) relate to agreements under which the Company or any of its Subsidiaries has granted any right of first refusal or similar right in favor of any third party with respect to any material portion of the Company's or any of its Subsidiaries' properties or assets; (ix) (A) purport to restrict or prohibit the Company or any of its Subsidiaries from engaging or competing in any material line of business or activity, with any Person or in any geographic area, or (B) would have any such effect on Parent or any of its Affiliates after the consummation of the Merger or the Closing Date; (x) (A) grants any exclusive supply or exclusive distribution agreement or other material exclusive rights, or (B) grants any "most favored nation" rights or other preferential pricing terms with respect to any Company Product or service; (xi) relate to any executory obligations relating to the acquisition or disposition of all or any portion of any material business of the Company or any of its Subsidiaries (whether by merger, sale of stock, sale of assets, business combination or otherwise); (xii) the Company or any of the Company's Subsidiary is a party with any Governmental Entity and which requires the payment or receipt of $1,000,000 or more per year; and (xiii) to the extent not included within the foregoing, any Contract that the termination of which would result in a Company Material Adverse Effect (the items described in clauses (i) through (xiii) hereof, collectively, the "**Company Material Contracts**"). The Company has made available to Parent in the Dataroom a correct and complete copy of each Company Material Contract listed in Section 4.10(a) of the Company Disclosure Schedule (including all exhibits and schedules thereto).

(b) Each of the Company Material Contracts is valid and binding on the Company or its Subsidiary party thereto and, to the Knowledge of the Company, each other Person party thereto, and is in full force and effect and enforceable against the Company or such Subsidiary, as the case may be, in accordance with its terms, except as enforcement may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles and (ii) to the extent applicable, securities laws limitations on the enforceability of provisions regarding indemnification in connection with the sale or issuance of securities. No Company Material Contract will, by its terms, terminate as a result of the transactions contemplated by this Agreement or require any consent from or notice to any Person thereto in order to remain in full force and effect immediately after the Effective Time.

(c) Neither the Company nor any of its Subsidiaries is in material violation, breach or default under any of the Company Material Contracts, and there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute such a violation, breach or default. The Company has delivered or made available to Parent in the Dataroom a list of those Persons who, to the Company's Knowledge, have alleged or claimed that the Company or any of its Subsidiaries, or any sublicensee of the Company or any of its Subsidiaries, is in material violation, breach or default under any Company Material Contract.

Section 4.11 Taxes.

(a) Each of the Company and its Subsidiaries has (i) duly and timely filed with the appropriate Governmental Entity all Tax Returns required to be filed by it (taking into account any applicable extensions), and all such Tax Returns are true, correct and complete in all material respects and prepared in compliance with all applicable Laws and (ii) timely paid all Taxes due and owing (whether or not shown due on any Tax Returns). Neither the Company nor any of its Subsidiaries currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by a Governmental Entity in a jurisdiction where the Company and its Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation by that jurisdiction. Neither the Company nor any of its Subsidiaries has commenced activities in any jurisdiction which will result in an initial filing of a Tax Return with respect to Taxes imposed by a Governmental Entity that it had not previously been required to file in the immediately preceding taxable period.

(b) The unpaid Taxes of the Company and its Subsidiaries did not, as of September 30, 2014, exceed the reserve for Tax Liabilities (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the balance sheets (rather than in any notes thereto) contained in the Financial Statements. Since September 30, 2014, neither the Company nor any of its Subsidiaries has incurred any Liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(c) There are no Liens for Taxes upon any property or asset of the Company or any Subsidiary thereof, except for Liens for current Taxes the payment of which is not yet delinquent, or for Taxes contested in good faith through appropriate proceedings and reserved against in accordance with GAAP.

(d) Except as set forth in Section 4.11(d) of the Company Disclosure Schedule, no deficiencies for Taxes with respect to any of the Company and its Subsidiaries have been set forth or claimed in writing, or proposed or assessed by a Governmental Entity. There are no pending or, to the Knowledge of the Company, proposed or threatened audits, investigations, disputes or claims or other actions for or relating to any Liability for Taxes with respect to any of the Company and its Subsidiaries. No material issues relating to Taxes of the Company or any Subsidiary of the Company were raised by the relevant Governmental Entity in any completed audit or examination that would reasonably be expected to recur in a later taxable period. The Company has made available to Parent in the Dataroom true and complete copies of federal, state and local income Tax Returns of each of the Company and its Subsidiaries and their predecessors for the years ended December 31, 2010, 2011 and 2012, and true and complete copies of all examination reports and statements of deficiencies assessed against or agreed to by any of the Company and its Subsidiaries or any predecessor, with respect to Taxes. None of the Company, any of its Subsidiaries or any predecessor has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, or has made any request in writing for any such extension or waiver. There is not currently in effect any power of attorney authorizing any Person to act on behalf of the Company, or receive information relating to the Company, with respect to any Tax matter.

(e) Neither the Company nor any of its Subsidiaries has requested or received any ruling from any Governmental Entity, or signed any binding agreement with any Governmental Entity (including, without limitation, any advance pricing agreement) that would affect any amount of Tax payable after the Closing Date and has not made any request for issuance of a ruling from a Governmental Entity on behalf of the Company or any of its Subsidiaries (regardless of whether the requested ruling is still pending or withdrawn).

(f) Each of the Company and its Subsidiaries has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, and all Tax Returns (including without limitation all IRS Forms W-2 and 1099) required with respect thereto have been properly completed and timely filed with, and supplied to, the appropriate parties.

(g) Except for any such customary agreements with customers, vendors, lenders, lessors or the like entered into in the ordinary course of business (each of which is not specifically entered into to address Taxes), neither the Company nor any of its Subsidiaries is a party to or bound by or has any obligation under any Tax sharing, allocation or indemnification agreement or similar contract or arrangement or any agreement that obligates it to make any payment computed by reference to the Taxes, taxable income or taxable losses of any other Person.

(h) Except for the affiliated group of which the Company is the common parent, each of the Company and its Subsidiaries is not and has never been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code or any group that has filed a combined, consolidated or unitary Tax Return. Neither the Company nor any of its Subsidiaries is liable for the Taxes of any Person (including an individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Entity) other than the Company and its Subsidiaries (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor, (iii) by Contract, or (iv) otherwise.

(i) Neither the Company nor any of its Subsidiaries is a party to or subject to any joint venture, partnership or other agreement or arrangement which is treated as a partnership for federal income Tax purposes.

(j) Neither the Company nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(k) Neither the Company nor any of its Subsidiaries has taken any action, failed to take any action, or knows of any fact that would be reasonably expected to prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code.

(l) Neither the Company nor any of its Subsidiaries has been a party to a "reportable transaction," as such term is defined in Treasury Regulations Section 1.6011-4(b)(1) (other than such transactions that have been properly reported) or any other transaction requiring disclosure under analogous provisions of state, local or foreign Tax law.

(m) Except as set forth in Section 4.11(m) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has made or agreed to make, and is not required to make, any change in method of accounting previously used by it in any Tax Return which change in method would require an adjustment to its income pursuant to Section 481(a) of the Code (or any similar provision) on any Tax Return for any taxable period for which the Company or any of its Subsidiaries has not yet filed a Tax Return. No application is pending with any Governmental Entity requesting permission to make any change in any accounting method that would require such an adjustment, nor has the Company or any of its Subsidiaries received any notice that a Governmental Entity proposes to require a change in method of accounting used in any Tax Return which has been filed by the Company or any of its Subsidiaries that would require such an adjustment.

(n) The Company has not taken any action not in accordance with past practice that would have the effect of deferring a measure of Tax from a period (or portion thereof) ending on or before the Execution Date to a period (or portion thereof) beginning after the Execution Date. Except to the extent adequately reserved for in the Unaudited Financial Statements, the Company has no deferred income or other Tax Liability arising out of any transaction, including, without limitation, any (i) intercompany transaction (as defined in Treasury Regulations Section 1.1502-13), (ii) the disposal of any property in a transaction accounted for under the installment method pursuant to Section 453 of the Code, (iii) excess loss account (as defined in Treasury Regulations Section 1.1502-19) with respect to the stock of any Subsidiary of the Company, (iv) use of the long-term contract method of accounting, or (v) receipt of any prepaid amount on or before the Execution Date.

(o) Neither the Company nor any of its Subsidiaries has made an election under Section 108(i) of the Code (or any corresponding provision of state, local or foreign Law).

(p) The Company has made available to Parent in the Dataroom the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax or excess charitable deduction available for use by the Company or any of its Subsidiaries. Except as disclosed by the Company to Parent in the Dataroom, there is currently no limitation on the use of the Tax attributes of the Company under Sections 269, 382, 383, 384 or 1502 of the Code (and similar provisions of state, local or foreign Tax Law).

(q) Neither the Company nor any of its Subsidiaries has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code at any time during the preceding five (5) years.

(r) Neither the Company nor any of its Subsidiaries has a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in a jurisdiction outside of its place of incorporation.

Section 4.12 Employee Benefit Plans; ERISA.

(a) Section 4.12(a) of the Company Disclosure Schedule includes a complete list, as of the date hereof, of each Company Benefit Plan. With respect to each of the written Company Benefit Plans, the Company has made available to Parent true and complete copies of the following documents to the extent applicable: (i) the governing plan document, all amendments thereto and related trust documents, group contracts, insurance policies or other funding arrangements, and amendments thereto; (ii) the three most recently filed Forms 5500 annual returns and all schedules thereto, including any audited financial statements and auditors' opinions; (iii) the most recent favorable determination, opinion or advisory letter issued by the IRS; (iv) the actuarial report, statement of assets and liabilities, and annual nondiscrimination testing results for the three most recently completed plan years; (v) the most recent summary plan description and any summaries of material modifications thereto; (vi) a summary of the material terms of any Company Benefit Plan that is not in writing; and (vii) any filings, applications or submissions under the IRS' Voluntary Correction Program or the Department of Labor's Delinquent Filer Voluntary Compliance Program or the Voluntary Fiduciary Correction Program.

(b) The Company and its Subsidiaries have operated and administered each of the Company Benefit Plans in accordance with their terms and all the provisions of Laws and regulations applicable to the Company Benefit Plans. All contributions, reserves or premium payments required to be made or accrued as of the date hereof with respect to the Company Benefit Plans have been timely paid or accrued by the Company and its Subsidiaries as applicable. The Company and its Subsidiaries have satisfied all reporting and disclosure requirements under the Code and ERISA that are applicable to the Company Benefit Plans. No event or condition exists which would reasonably be expected to subject the Company or any of its Subsidiaries to Liability in connection with the Company Benefit Plans or any plan, program, or policy sponsored or contributed to by any of their respective ERISA Affiliates other than the provision of benefits thereunder in the ordinary course. With respect to each applicable Company Benefit Plan, (i) there are no pending or, to the Knowledge of the Company, threatened actions which have been asserted or instituted and which would reasonably be expected to result in any Liability of the Company or any of its Subsidiaries (other than routine claims for benefits payable in the ordinary course); (ii) there are no audits, inquiries or Proceedings pending or threatened by any governmental authority; and (iii) there has been no breach of fiduciary duty (including violations under Part 4 of Subtitle B of Title I of ERISA) which has resulted or would reasonably be expected to result in material Liability to the Company, any Company Subsidiary, or any of their respective employees.

(c) In no event will the execution and delivery of this Agreement or any other related agreement, the consummation of the Merger or the transactions contemplated hereby or thereby, or the Company Stockholder Approval (either alone or in conjunction with any other event, such as termination of employment) result in, cause the accelerated vesting, exercisability, funding or delivery of, or increase the amount or value of, any material payment or benefit to any current or former employee, officer or director of the Company or any of its Subsidiaries or any beneficiary or dependent thereof or result in a limitation on the right of the Company or any of its Subsidiaries to amend, merge, terminate or receive a reversion of assets from any Company Benefit Plan or related trust.

(d) Section 4.12(d) of the Company Disclosure Schedule identifies each Company Benefit Plan that is intended to be a "qualified plan" within the meaning of Section 401(a) of the Code or is intended to be similarly qualified or registered under applicable foreign law (collectively, the "**Company Qualified Plans**"). Each Company Qualified Plan that is intended to be tax-qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS that it is entitled to rely upon, and its accompanying trust is exempt from taxation under Section 501(a) of the Code, and, to the Knowledge of the Company, no fact or event has occurred since the date of such letter that would reasonably be expected to jeopardize the tax-qualified status of any such Company Qualified Plan or the tax-exempt status of its accompanying trust.

(e) Except as otherwise provided in Section 4.12(e) of the Company Disclosure Schedule, no Company Benefit Plan provides health benefits (whether or not insured) with respect to employees or former employees (or any of their beneficiaries) of the Company or any of its Subsidiaries after retirement or other termination of service (other than coverage or benefits (A) required to be provided under Part 6 of Subtitle B of Title I of ERISA or any other similar applicable Law or (B) the full cost of which is borne by the employee or former employee (or any of their beneficiaries)).

(f) Except as otherwise provided in Section 4.12(f) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries or any of their respective ERISA Affiliates sponsor, contribute to or have any Liabilities with respect to any Company Benefit Plan that: (i) is subject to Title IV or Section 302 of ERISA or Section 412, 430, 431 or 432 of the Code; (ii) is a Multiemployer Plan; or (iii) is a multiple employer plan that is described in Section 413 of the Code. No "reportable event," as such term is defined in ERISA Section 4043(c), has occurred or is continuing with respect to any Company Benefit Plan. No Company Benefit Plan that is or was subject to Title IV of ERISA has been terminated and no proceeding has been initiated to terminate any such plan. Neither the Company nor any of its Subsidiaries or any of their respective ERISA Affiliates has incurred or reasonably expects to incur, any Liability to the PBGC with respect to any Company Benefit Plan, except for required premium payments, which payments have been timely made when due. The market value of assets under each Company Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Code equals or exceeds the present value of all vested and nonvested Liabilities thereunder determined in accordance with PBGC methods, factors and assumptions applicable to a plan terminating on the date of determination. No Company Benefit Plan that is subject to Part 3 of Subtitle B of Title I of ERISA has incurred any "accumulated funding deficiency" (within the meaning of Section 302 of ERISA), whether or not waived.

(g) Neither the Company nor any of its Subsidiaries or any of their respective ERISA Affiliates has incurred or expects to incur any "withdrawal liability" (as defined in ERISA Section 4201) under or with respect to any Company Benefit Plan that is a Multiemployer Plan.

(h) No Company Benefit Plan is maintained outside the jurisdiction of the United States, or covers any employee, contractor or other service provider residing or working outside the United States.

(i) There is no Contract, agreement, plan or arrangement to which the Company or any Subsidiary of the Company is a party, including but not limited to the provisions of this Agreement, that, individually or collectively, would give rise to the payment of any amount that would not be deductible pursuant to Section 162(m) of the Code.

(j) No payment pursuant to any Company Benefit Plan or Company Benefit Arrangement between Company or a Subsidiary and any "service provider" (as such term is defined in Section 409A of the Code and the United States Treasury Regulations and IRS guidance thereunder), including, without limitation, the grant, vesting or exercise of any equity option, would subject any Person to a tax pursuant to Section 409A of the Code, whether pursuant to the consummation of the Merger, any other transaction contemplated by this Agreement or otherwise.

(k) Each Company Benefit Plan, Company Benefit Arrangement, or other Contract, plan, program, agreement, or arrangement that is a "nonqualified deferred compensation plan" (within the meaning of Section 409A(d)(1) of the Code) has been operated in compliance with Section 409A of the Code, its Treasury regulations, and any applicable administrative guidance relating thereto; and no additional tax under Section 409A(a)(1)(B) of the Code has been or is reasonably expected to be incurred by a participant in any such Company Benefit Plan, Company Benefit Arrangement, or other Contract, plan, program, agreement, or arrangement. Neither the Company nor any ERISA Affiliate is a party to, or otherwise obligated under, any Contract, agreement, plan or arrangement that provides for the gross-up of taxes imposed by Section 409A(a)(1)(B) of the Code.

(l) Except as set forth on Section 4.12(l) of the Company Disclosure Schedule, no amount that could be received (whether in cash or property or the vesting of property), as a result of the execution and delivery of this Agreement or any other related agreement, the consummation of the transactions contemplated hereby or thereby, or the stockholder approval of the Merger (either alone or in conjunction with any other event, such as termination of employment), by any employee, officer or director of the Company or any Subsidiary of the Company who is a "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) under any Company Benefit Plan, Company Benefit Arrangement or otherwise could be characterized as a "parachute payment" (as defined in Section 280G(b)(2) of the Code). The Company has made available to Parent all necessary information to determine, as of the date hereof, the estimated maximum amount that could be paid to each disqualified individual in connection with the transactions contemplated by this Agreement under all employment, severance and termination agreements, other compensation arrangements, Company Benefit Arrangements and Company Benefit Plans currently in effect, assuming that the individual's employment with the Company is terminated immediately after the Effective Time. The Company has made available to Parent in the Dataroom (i) the grant dates, exercise prices and vesting schedules applicable to each Company Option granted to the individual; (ii) the "base amount" (as defined in Section 280G(b)(e) of the Code) for each such individual as of the date of this Agreement; and (iii) the maximum additional amount that the Company has an obligation to pay to each disqualified individual to reimburse the disqualified individual for any excise tax imposed under Section 4999 of the Code with respect to the disqualified individual's excess parachute payments (including any taxes, interest or penalties imposed with respect to the excise tax).

Section 4.13 Labor and Other Employment Matters.

(a) Except as set forth on Section 4.13(a) of the Company Disclosure Schedules, as of the date hereof, (i) no work stoppage, slowdown, lockout, labor strike, grievances, arbitration or other material labor dispute against the Company or any of its Subsidiaries by employees is pending or, to the Knowledge of the Company, threatened; (ii) neither the Company nor any of its Subsidiaries is delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it or amounts required to be reimbursed to such employees; (iii) for the past four (4) years, the Company and each of its Subsidiaries have been in material compliance with all applicable Laws respecting labor, employment, fair employment practices, terms and conditions of employment, immigration, workers' compensation, occupational safety, plant closings, layoffs, reductions in force and wage and hours; (iv) the Company and each of its Subsidiaries has withheld all amounts required by Law or by agreement to be withheld from the wages, salaries, and other payments to employees and is not liable for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing; (v) neither the Company nor any of its Subsidiaries is liable for any material payment to any trust or other fund or to any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the ordinary course of business consistent with past practice); (vi) other than as made available to Parent in the Dataroom, there are no pending claims against the Company or any of its Subsidiaries under any workers' compensation plan or policy or for long term disability; (vii) there are no controversies pending or, to the Knowledge of the Company, threatened (including threatened lawsuits or claims), between the Company or any of its Subsidiaries and any of their respective current or former employees, which controversies have or would reasonably be expected to result in an Proceeding before the National Labor Relations Board, the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, Labor Commissioner, the Department of Labor, OSHA, or any other Governmental Entity; (viii) all employees of the Company and its Subsidiaries are employed on an at-will basis, and their respective employment can be terminated at any time, with or without notice, for any lawful reason or no reason at all; and (ix) the Company and its Subsidies have not conducted any layoffs or reductions in force within six (6) months of the date hereof. As of the date hereof, to the Knowledge of the Company, no employees of the Company or any of its Subsidiaries are in violation of any term of any employment or other Contract, including any non-disclosure agreement, noncompetition agreement, or any restrictive covenant to a former employer relating to the right of any such employee to be employed by the Company or any of its Subsidiaries because of the nature of the business conducted or presently proposed to be conducted by the Company or such Subsidiary or to the use of trade secrets or proprietary information of others. As of the date hereof, no exempt employee of the Company or any of its Subsidiaries has given notice in writing to the Company or any of its Subsidiaries that any such employee intends to terminate his or her employment with the Company or any of its Subsidiaries.

(b) Except as set forth in Section 4.13(b) of the Company Disclosure Schedule, since January 1, 2013, neither the Company nor any of its Subsidiaries is a party to or otherwise bound by any collective bargaining Contract with a labor union or labor organization, nor is any such Contract presently being negotiated. Except as set forth in Section 4.13(b) of the Company Disclosure Schedule, since January 1, 2013 to the date hereof, there has not been any campaign to organize any of the employees of the Company or any of its Subsidiaries for the purposes of forming a labor union or labor organization or selecting a labor union or labor organization as a collective bargaining representative and, to the Knowledge of the Company, there are no campaigns or other efforts being conducted to organize employees of the Company or any of its Subsidiaries for the purposes of forming a labor union or labor organization or selecting a labor union or labor organization as a collective bargaining representative.

(c) The Company has identified in Section 4.13(c) of the Company Disclosure Schedule and has made available to Parent in the Dataroom true and complete copies of (i) all severance and employment agreements with directors, officers or employees of or consultants to the Company or any of its Subsidiaries; (ii) all severance programs and policies of each of the Company and each of its Subsidiaries with or relating to its employees; and (iii) all plans, programs, agreements and other arrangements of the Company and each of its Subsidiaries with or relating to its directors, officers, employees or consultants which contain change in control provisions. In no event will the execution and delivery of this Agreement or any other related agreement, the consummation of the transactions contemplated hereby or thereby, or the Company Stockholder Approval (either alone or in conjunction with any other event, such as termination of employment) (x) result in any payment (including, without limitation, severance, unemployment compensation, parachute or otherwise) becoming due to any director or any employee of the Company or any of its Subsidiaries or Affiliates from the Company or any of its Subsidiaries or Affiliates under any Company Benefit Plan or otherwise, (y) significantly increase any benefits otherwise payable under any Company Benefit Plan or otherwise, or (z) result in any acceleration of the time of payment or vesting of any benefits.

(d) The Company has made available to Parent, as of the date hereof, a list of the names of all current directors, officers, employees and consultants currently employed or engaged by the Company and its Subsidiaries and who have received payment by way of compensation from the Company or its Subsidiaries in excess of $100,000 during the current fiscal year, together with their respective salaries or wages, other compensation, dates of employment or service with the Company or its Subsidiaries, seniority, exemption classification, any union membership, and current positions and identifies all written agreements between the Company or its Subsidiaries and such individuals (other than any of the following agreements in the Company or its Subsidiaries' standard form: (i) offer letters for employment; (ii) proprietary rights assignment agreements; (iii) stock option agreements; or (iv) restricted stock purchase agreements) concerning their employment, consulting or independent contractor relationship with the Company.

Section 4.14 Environmental Matters.

(a) Except as set forth in Section 4.14(a) of the Company Disclosure Schedule, the Company and its Subsidiaries are in compliance and have been in compliance since January 1 2010, in all material respects, with all Environmental Laws, which compliance has included obtaining and complying, in all material respects, with all Permits required pursuant to Environmental Laws for the occupation of their facilities and properties and the operation of their respective businesses (it being understood that the Company Disclosure Schedule shall not include any closed environmental matters).

(b) Except as set forth in Section 4.14(b) of the Company Disclosure Schedule, since January 1, 2010, neither the Company nor any of its Subsidiaries has received any written notice, report or other information regarding any actual or alleged material violation of, or Liability under, Environmental Laws with respect to their past or current operations, properties or facilities (it being understood that the Company Disclosure Schedule shall not include any closed environmental matters).

(c) Except as set forth in Section 4.14(c) of the Company Disclosure Schedule, none of the following exists at any property or facility owned or operated by the Company and its Subsidiaries: (i) underground storage tanks; (ii) asbestos-containing material; (iii) materials or equipment containing polychlorinated biphenyls; or (iv) landfills, surface impoundments, or disposal areas.

(d) Except as set forth in Section 4.14(d) of the Company Disclosure Schedule since January 1, 2010, neither the Company nor any of its Subsidiaries have treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any substance, including any Hazardous Substance, or currently or formerly owned, operated or leased any property or facility so as to give rise to any current or future material Liability or corrective or remedial obligation under any Environmental Laws (it being understood that the Company Disclosure Schedule shall not include any closed environmental matters).

(e) Except as set forth in Section 4.14(e) of the Company Disclosure Schedule, and to the Knowledge of the Company, no release or threatened release of any Hazardous Substance has occurred or is occurring at, on, under, from or to any property or facility currently or formerly owned, operated or leased by the Company, or to which the Company has sent a Hazardous Substance, and no such property or facility is contaminated by any Hazardous Substance that would reasonably be expected to give rise to any current or future Liability or corrective or remedial obligation under any Environmental Laws.

(f) Except as set forth in Section 4.14(f) of the Company Disclosure Schedule, to the Knowledge of the Company, neither the Company nor any of its Subsidiaries have assumed, provided an indemnity with respect to, or otherwise become subject to any material Liabilities of any other Person under any Environmental Law.

(g) To the Knowledge of the Company, there are no past or present actions, activities, circumstances, conditions, events or incidents that would reasonably be expected to form the basis of any material claim, action, cause of action, suit, Proceeding, investigation, order, demand, notice or other material Liability of the Company or its Subsidiaries arising out of, based on, resulting from or relating to (a) the presence, or release into the environment, of, or exposure to, any Hazardous Substances at any location, whether or not owned, operated or leased by the Company or any of its Subsidiaries, now or in the past, or (b) any violation, or alleged violation, or requirement of any Environmental Law.

(h) To the Knowledge of the Company, the Company has made available to Parent in the Dataroom all assessments, reports, data, results of investigations or audits, and other material information that is in the possession of the Company regarding environmental matters pertaining to or the environmental condition of the business and properties of the Company or its Subsidiaries, or the compliance (or material noncompliance) by such entities with any Environmental Laws.

Section 4.15 Intellectual Property.

(a) Section 4.15(a) of the Company Disclosure Schedule sets forth a true and complete list as of the date hereof of all (i) issued patents and patent applications; (ii) Company Registered Brand Names; (iii) Company Unregistered Brand Names and applications therefor; and (iv) domain name registrations, in each case set forth in subsections (i) through (iv) above, included in the Company Owned Intellectual Property as of the date hereof. All the patents, patent applications, Company Registered Brand Names, copyright registrations, copyright applications, and applications comprising Company Unregistered Brand Names are subsisting and all the necessary fees and costs have been paid.

(b) Section 4.15(b) of the Company Disclosure Schedule sets forth a complete and accurate list of all Contracts by which the Company or any of its Subsidiaries has been granted or has granted to others any license, covenant not to sue or other immunity to or under Intellectual Property that is material to the conduct of the business of the Company or any of its Subsidiaries, as conducted as of the date hereof (collectively, "**Company Material Licenses**"); *provided, however*, that Section 4.15(b) of the Company Disclosure Schedule does not disclose licenses of computer software which computer software has not been significantly modified or customized and that is available commercially off-the-shelf. The Company has made available to Parent in the Dataroom a true and complete copy of each Company Material License.

(c) Neither (i) the use of the Company Owned Intellectual Property and Intellectual Property licensed to the Company and/or its Subsidiaries under the Company Material Licenses in connection with the operation of the business of the Company or any of its Subsidiaries as conducted as of the date hereof, nor(ii) the manufacture, use, offer for sale, and sale of Company Products (as such products exist as of the date hereof) to the Knowledge of the Company, infringe or misappropriate or otherwise violate any valid Intellectual Property rights of any Person, and the Company is unaware of any facts that would form a reasonable basis for a claim of any such infringement, misappropriation or violation. No Proceeding is pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries alleging any of the foregoing.

(d) The Company or a Subsidiary of the Company is the exclusive owner of all right, title and interest in and to each item of Intellectual Property purported to be Company Owned Intellectual Property, including without limitation, the items listed on Section 4.15(a) of the Company Disclosure Schedule. The Company or a Subsidiary of the Company is entitled to use the Company Owned Intellectual Property and Intellectual Property licensed to the Company and/or its Subsidiaries under the Company Material Licenses in the ordinary course of its business consistent with past practice, subject only to any applicable terms of the Company Material Licenses.

(e) Other than the Company Owned Intellectual Property and Intellectual Property licensed to the Company and/or its Subsidiaries under the Company Material Licenses, there are no items of Intellectual Property that are necessary to the conduct of the business of the Company or any of its Subsidiaries as conducted as of the date hereof, with the exception of any licenses of computer software which computer software has not been significantly modified or customized and that is available commercially off-the-shelf. The Company Owned Intellectual Property is valid and enforceable, and the Company has the right to enforce such Company Owned Intellectual Property that has not been licensed to another Person on an exclusive basis, and such Intellectual Property has not been adjudged by a court of competent jurisdiction to be invalid or unenforceable (except for challenges and adjudications that may be received in the ordinary course of the prosecution of Intellectual Property applications in Intellectual Property offices) in whole or part.

(f) No legal Proceedings are pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries (i) based upon, challenging or seeking to deny or restrict the use by the Company or any of its Subsidiaries of any of the Intellectual Property licensed to the Company and/or its Subsidiaries under the Company Material Licenses, or (ii) alleging that the Company Material Licenses conflict with the terms of any other Person's license or other agreement.

(g) To the Knowledge of the Company, there are no infringements, misappropriations or violations by others of any of the Company Owned Intellectual Property and the Company is unaware of any facts which would form a reasonable basis for a claim of any such infringement, misappropriation or violation.

(h) The Company and its Subsidiaries have taken commercially reasonable measures (but at least commensurate with industry standards) to maintain their material trade secrets in confidence.

(i) To the Knowledge of the Company (i) there has been no misappropriation of any trade secrets of the Company or any of its Subsidiaries by any Person, and (ii) no employee, independent contractor or agent of the Company or any of its Subsidiaries has misappropriated any trade secrets of any other Person in the course of such performance as an employee, independent contractor or agent.

(j) The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, will not result in or give rise to (i) any right of termination or other right to impair or limit any of the Company's rights to own or license any of the Company Owned Intellectual Property, (ii) the inability (for any period of time) of the Surviving Corporation to succeed to the rights and perform the obligations of the Company and any of its applicable Subsidiaries with respect to the Company Owned Intellectual Property, pursuant to the terms of this Agreement, or (iii) the right to market the Company Products as presently marketed.

Section 4.16 Real Property.

(a) Section 4.16(a) of the Company Disclosure Schedule sets forth a complete list of all material real property owned by the Company or any of its Subsidiaries as of the date hereof ("**Company Owned Real Property**"). Except as set forth in the title reports made available to Parent in the Dataroom, the Company and each of its Subsidiaries has good and valid title in fee simple to all Company Owned Real Property, free and clear of all Liens of any nature whatsoever, except (i) Liens for current Taxes, payments of which are not yet delinquent or are being disputed in good faith, or (ii) such imperfections in title and easements and encumbrances, if any, as are not substantial in character, amount or extent and do not materially detract from the value, or interfere with the present use of the property subject thereto or affected thereby, or otherwise materially impair the Company's or any of its Subsidiaries' business operations (in the manner presently carried on by the Company or such Subsidiaries). Except as set forth in Section 4.16(a) of the Company Disclosure Schedule, no litigation, condemnation, expropriation, eminent domain or similar Proceeding affecting all or any material portion of any Company Owned Real Property is pending or threatened. The Company Owned Real Property has the benefit of indefeasible easements or other real property rights sufficient to continue the current use and operation of the Company Owned Real Property, including without limitation, to the extent in use as of the date hereof, easements or other grants of access rights to common rail service lines from the Company Owned Real Property.

(b) Section 4.16(b) of the Company Disclosure Schedule sets forth a complete list of all material real property leased by the Company or any of its Subsidiaries as of the date hereof ("**Company Material Leased Real Property**"). A copy of the lease, including all amendments, extensions, renewals, guaranties and other agreements for each Company Material Leased Real Property (the "**Company Leases**") has been made available to Parent in the Dataroom. With respect to each of the Company Leases: (i) such Company Lease is legal, valid, and binding on the Company or its Subsidiary party thereto, and, to the Knowledge of the Company, each other Person party thereto, and is enforceable and in full force and effect, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the rights and remedies of creditors generally and the effect of general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law); (ii) the transactions contemplated by this Agreement do not require the consent of any other party to such Company Lease, will not result in a breach of or default under such Company Lease, or otherwise cause such Company Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing; (iii) neither the Company nor any of its Subsidiaries, as the case may be, nor any other party to the Company Lease is in material breach or default under such Company Lease, and no event has occurred or failed to occur or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Company Lease; (iv) the other party to such Company Lease is not an Affiliate of, and otherwise does not have any economic interest in, the Company or any of its Subsidiaries; (v) neither the Company nor any of its Subsidiaries, as the case may be, has subleased, licensed or otherwise granted any Person the right to use or occupy such Company Material Leased Real Property or any portion thereof; and (vi) neither the Company nor any of its Subsidiaries, as the case may be, has collaterally assigned or granted any other security interest in such Company Lease or any interest therein.

(c) The Company and each of its Subsidiaries has good and valid leasehold interest to all Company Material Leased Real Property, free and clear of all Liens of any nature whatsoever, except (i) Liens for current Taxes, payments of which are not yet delinquent or are being disputed in good faith, (ii) liens in respect of pledges or deposits under workers' compensation laws or similar legislation, or (iii) liens imposed by law and incurred in the ordinary course of business for obligations not past due, and liens, encumbrances and defects in title, that in each case do not materially detract from the value or use of the property subject thereto.

(d) Except as set forth in Section 4.16(d) of the Company Disclosure Schedule, the present use of the land, buildings, structures and improvements on the Company Owned Real Property and Company Material Leased Real Property are, in all material respects, in conformity with all Laws, including all applicable zoning Laws, ordinances and regulations and with all registered deeds or other restrictions of record, and neither the Company nor any of its Subsidiaries, as the case may be, has received any written notice of material violation thereof. Neither the Company nor any of its Subsidiaries, as the case may be, has received any written notice of any material conflict or dispute with any regulatory authority or other Person relating to any Company Owned Real Property and Company Material Leased Real Property or the activities thereon, other than where there is no current or reasonably likely material interference with the operations at the Company Owned Real Property and Company Material Leased Real Property as presently conducted (or as would be conducted at full capacity).

(e) Neither the Company nor any of its Subsidiaries, as the case may be, has received any notice from any insurance company of any material defects or inadequacies in the Company Owned Real Property and Company Material Leased Real Property or any part thereof, which would materially and adversely affect the insurability of the same or of any termination or threatened (in writing) termination of any policy of insurance relating to any such Company Owned Real Property and Company Material Leased Real Property.

Section 4.17 Insurance. Section 4.17 of the Company Disclosure Schedule contains an accurate and complete list of all policies and programs of insurance providing coverage for the Company together with its Subsidiaries, including the name of the insurer, type of insurance or coverage, and the amount of coverage and any retention or deductible of the Company or any Subsidiary. All premiums due and payable under all such policies and bonds have been paid and the Company and its Subsidiaries are otherwise in compliance in all material respects with the terms of such policies and bonds. Except as set forth in Section 4.17 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries maintains any material self-insurance or co-insurance programs. Neither the Company nor any of its Subsidiaries has any material disputed claim or claims with any insurance provider relating to any claim for insurance coverage under any policy or insurance maintained by the Company or any of its Subsidiaries. No notice of cancellation, termination or reduction in coverage has been received by the Company or any Subsidiary with respect to any policy listed in Section 4.17 of the Company Disclosure Schedule.

Section 4.18 Assets. Except as disclosed in Section 4.18 of the Company Disclosure Schedule, the Company and its Subsidiaries have good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of their properties and assets, real and personal, used or held for use in their businesses located on their premises or shown on the consolidated balance sheet of the Company and its subsidiaries as of the Balance Sheet Date or acquired thereafter, free and clear of any Liens. As fee owners and operators of the Company Owned Real Property, except as disclosed in Section 4.18 of the Company Disclosure Schedule, the Company and its Subsidiaries hold indefeasible rights of access to common rail service lines from the Company Owned Real Property as necessary for the operation of the Company Owned Real Property in the normal course of business consistent with past use and practice. Except as disclosed in Section 4.18 of the Company Disclosure Schedule, the Company's and each of its Subsidiary's buildings, equipment and other tangible assets are in good operating condition (normal wear and tear excepted) and are fit for use in the ordinary course of their respective businesses, consistent with past use and practice. Except as disclosed in Section 4.18 of the Company Disclosure Schedule, the buildings, Plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company and its Subsidiaries are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, consistent with past use and practice. Except as disclosed in Section 4.18 of the Company Disclosure Schedule, the buildings, Plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company or its Subsidiaries, together with all other properties and assets of the Company and its Subsidiaries, are sufficient for the conduct of the Company's business as of the date hereof in substantially the same manner as conducted prior to the date hereof and constitute all of the rights, property and assets necessary to conduct the business of the Company as currently conducted as of the date hereof.

Section 4.19 Business Relationships. The Company has made available to Parent in the Dataroom the top ten (10) suppliers (based on current fiscal year expenditures) of products or services and the top ten (10) customers (based on current fiscal year revenues) of the Company and its Subsidiaries (on a consolidated basis). Since the Balance Sheet Date, to the Knowledge of the Company, there has not been any material adverse change in the business relationship of the Company or any of its Subsidiaries with any such customer or supplier or any change or development that is reasonably likely to give rise to any such material adverse change, and neither the Company nor any of its Subsidiaries has received any written or oral communication or notice from any such customer or supplier to the effect that, or otherwise has Knowledge that, any such customer or supplier (a) has changed, modified, amended or reduced, or is reasonably likely to change, modify, amend or reduce, its business relationship with the Company or any of its Subsidiaries in a manner that is, or is reasonably likely to be, materially adverse to the Company or any of its Subsidiaries, or (b) will fail to perform, or is reasonably likely to fail to perform, its obligations under any Contract with the Company or any of its Subsidiaries in any manner that is, or is reasonably likely to be, materially adverse to business and operations of the Company or any of its Subsidiaries.

Section 4.20 Related Party Transactions.

(a) Except as set forth on Section 4.20 of the Disclosure Schedule, no director, officer, partner, "affiliate" or "associate" (as such terms are defined in Rule 12b-2 under the Exchange Act) of the Company or any of its Subsidiaries (or, with respect to clause (a) of this sentence, to the Knowledge of the Company, its employees) (collectively, "**Affiliated Persons**"): (i) has borrowed any monies from or has outstanding any Indebtedness or other similar obligations to the Company or any of its Subsidiaries; (ii) owns any direct or indirect interest of any kind in, or is a director, officer, employee, partner, affiliate or associate of, or consultant or lender to, or borrower from, or has the right to participate in the management, operations or profits of, any person or entity which is (x) a competitor, supplier, customer, distributor, lessor, tenant, creditor or debtor of the Company or any of its Subsidiaries, (y) engaged in a business related to the business of the Company or any of its Subsidiaries, (iii) participating in any transaction to which the Company or any of its Subsidiaries is a party, (iv) otherwise a party to any Contract, arrangement or understanding with the Company or any of its Subsidiaries, or (v) to the Knowledge of the Company, no Affiliated Person has any claim against the Company or any of its Subsidiaries, other than claims arising in the ordinary course of business for wages owed and employment benefits accrued.

(b) No Affiliated Person of the Company is a party to any Contract with any customer or supplier of the Company or any Subsidiary that affects in any material manner the business, financial condition or results of operation of the Company.

Section 4.21 Certain Business Practices. Neither the Company, nor any of its Subsidiaries, nor any of their respective directors, officers, agents, employees or any other Persons acting on their behalf has, in connection with the operation of their respective businesses, (a) used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activity to government officials, candidates or members of political parties or organizations, or established or maintained any unlawful or unrecorded funds in violation of Section 104 of the Foreign Corrupt Practices Act of 1977, as amended, or any other similar applicable foreign, federal or state Law, (b) paid, accepted or received any unlawful contributions, payments, expenditures or gifts, or (c) violated or operated in noncompliance with any export restrictions, anti-boycott regulations, embargo regulations or other applicable domestic or foreign Laws and regulations.

Section 4.22 Opinion of Financial Advisor. The Company's independent financial advisor (the "**Company Financial Advisor**"), has delivered to the Company Board its written opinion to the effect that, as of the date of such opinion, the Exchange Ratio is fair, from a financial point of view, to holders of Company Shares electing to receive Parent Voting Common Stock. Subject to Section 6.6(c), a copy of that opinion has been delivered to Parent.

Section 4.23 Brokers and Finders. Except as set forth in Section 4.23 of the Company Disclosure Schedule, none of the Company or its Subsidiaries has entered into any Contract, arrangement or understanding with any Person or firm which may result in the obligation of the Company or any of its Subsidiaries to pay any investment banking fees, finder's fees, or brokerage commissions in connection with the transactions contemplated hereby, other than fees payable to the Company Financial Advisor.

Section 4.24 Takeover Laws. The Company has taken all action necessary to exempt this Agreement and the transactions contemplated hereby, including the Merger and the Company Stockholders Agreements, from the provisions of Section 203 of the DGCL. No other anti-takeover, "fair price", "moratorium", "control share acquisition", "business combination" or other similar statute or regulation applies or purports to apply to this Agreement or the transactions contemplated hereby. The Company does not have any stockholder rights plan or "poison pill" in effect, including without limitation any agreement with a third party trust or fiduciary entity with respect thereto.

Section 4.25 Hedging. The Company has made available to Parent in the Dataroom a complete and correct list of all Hedging Transactions (including each outstanding commodity or financial hedging position) entered into by or assigned to the Company or its Subsidiaries or for the account of any of their respective customers as of the date of this Agreement ("**Company Hedges**"). All Company Hedges were entered into in accordance with applicable Laws, and in accordance with the investment, securities, commodities, risk management and other policies, practices and procedures employed by the Company and its Subsidiaries, and were entered into with counterparties believed at the time and still believed to be financially responsible and able to understand (either alone or in consultation with its advisers) and to bear the risks of such material Company Hedges. The Company has duly performed all of its material obligations under the Company Hedges to the extent that such obligations to perform have accrued, and, to the Knowledge of the Company, there are no material breaches, violations, collateral deficiencies, requests for collateral or demands for payment, or defaults or allegations or assertions of such by any party thereunder.

Section 4.26 Diamond Switch. The rail track connecting the rail facilities of NELLC to the inner rail loop belonging to the Aurora West Facility along with the associated "diamond switch" crossing the outer rail loop, lie entirely on land owned by NELLC or Aventine Renewable Energy - Aurora West, LLC and were installed in compliance with all published rules and regulations, and to the Knowledge of the Company in compliance with any unpublished rules and regulations of the BNSF, and in compliance with all applicable Laws.

Section 4.27 Company Hybrid Equity Plan. The Company Hybrid Equity Plan has expired pursuant to its terms and the Company has no Liability thereunder.

Section 4.28 Books and Records. The minute books and stock record books of the Company and each of its Subsidiaries, all of which have been made available to Parent, are materially complete and correct. The minute books of the Company and each of its Subsidiaries contain accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, members, the board of directors, managers and any committees of the board of directors of the Company and its Subsidiaries, as applicable, and no meeting, or action taken by written consent, of any such stockholders, members, board of directors, managers or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company. The accounting, financial reporting , and business books and records of the Company and each of its Subsidiaries accurately and fairly reflect in all material respects the business and condition of the Company and its Subsidiaries and the transactions and the assets and liabilities of the Company and its Subsidiaries with respect thereto.

Section 4.29 Information Supplied. The information supplied or to be supplied by the Company in writing expressly for inclusion in the Form S-4 will not, at the time the Form S-4 is declared effective by the SEC, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by the Company with respect to statements made therein based on information supplied by Parent in writing expressly for inclusion therein. The information supplied by the Company in writing expressly for inclusion in the Joint Proxy Statement/Prospectus will not, at the time the Joint Proxy Statement/Prospectus is first mailed to Parent stockholders and at the time of the Parent Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by the Company with respect to statements made therein based on information supplied by Parent in writing expressly for inclusion therein.

Section 4.30 No Additional Representations. Except for the representations and warranties contained in this Article IV, each of Parent and Merger Sub acknowledges that neither the Company nor any other Person on behalf of the Company makes any other express or implied representation or warranty with respect to the Company or any of its Subsidiaries or with respect to any other information provided to Parent or Merger Sub, including any information, documents, projections, forecasts or other material made available to Parent or any Parent Representative, or Merger Sub or their representatives in the Dataroom (other than information contained in the Dataroom that is specifically referred to in any of the representations and warranties contained in this Article IV) or management presentations in expectation of the transactions contemplated by this Agreement, including with respect to the completeness, accuracy or currency of any such information. The Company disclaims any other representations or warranties, whether made by the Company or any of its Subsidiaries or any other Person.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub represent and warrant to the Company that except as set forth in the SEC Reports (including any documents, instruments or Contracts included as exhibits to the SEC Reports):

Section 5.1 Organization and Qualification. Each of Parent and Merger Sub is a corporation duly organized and validly existing under the laws of the State of Delaware and has the requisite corporate power and authority to own, lease, license and operate its assets and properties and to carry on its business as it is now being conducted. Each of Parent and Merger Sub is qualified to transact business and, where applicable, is in good standing in each jurisdiction in which the properties owned, leased, licensed or operated by it or the nature of the business conducted by it makes such qualification necessary, except where failure to be so qualified or in good standing would not, individually or in the aggregate, reasonable be expected to have a Parent Material Adverse Effect.

Section 5.2 Capitalization.

(a) The authorized capital stock of Parent consists of 300,000,000 shares of Parent Stock and 10,000,000 shares of preferred stock, $0.001 par value per share, of which 1,684,375 shares are designated as Series A Cumulative Redeemable Convertible Preferred Stock ("**Parent Series A Preferred Stock**) and 1,580,790 shares are designated as Series B Cumulative Convertible Preferred Stock ("**Parent Series B Preferred Stock**"). As of December 30, 2014, (i) 24,504,534 shares of Parent Stock were issued and outstanding, (ii) no shares of Series A Preferred Stock were issued and outstanding, (iii) 926,942 shares of Series B preferred Stock were issued and outstanding, (iv) 634,641 shares of Parent Stock were reserved for issuance upon conversion of the Series B Preferred Stock, (v) 1,267,948 shares of Parent Stock were reserved for issuance upon exercise of outstanding options and warrants outstanding, and (vi) 724,288 shares of Parent Stock were reserved for issuance under the Parent Stock Plans (including shares of Parent Stock authorized and reserved for future issuance upon exercise of outstanding awards issued under the Parent Stock Plans). No shares of Parent Voting Common Stock are held in treasury. To the Knowledge of the Parent, as of the date hereof, no Person owns ten percent (10%) or more of the Company's issued and outstanding shares of Parent Voting Common Stock (calculated based on the assumption that all securities convertible, exchangeable or exercisable into any capital stock or other equity securities of Parent, whether or not presently exercisable or convertible, have been fully exercised or converted (as the case may be) taking account of any limitations on exercise or conversion (including "blockers") contained therein without conceding that such identified Person is a ten percent (10%) stockholder for purposes of federal securities laws).

(b) Except as disclosed in Section 5.2(a) above, (i) none of Parent's or any of its Subsidiaries' outstanding capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by Parent or any Subsidiary of Parent; (ii) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of Parent or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which Parent or any of its Subsidiaries is or may become bound to issue additional capital stock of Parent or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of Parent or any of its Subsidiaries; (v) there are no agreements or arrangements under which Parent or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act; (vi) there are no outstanding securities or instruments of Parent or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which Parent or any of its Subsidiaries is or may become bound to redeem a security of Parent or any of its Subsidiaries; (vii) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by this Merger Agreement or the issuance of the Parent Stock contemplated hereunder; (viii) neither Parent nor any of its Subsidiaries has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (ix) neither Parent nor any of its Subsidiaries have any Liabilities or obligations required to be disclosed in the Parent SEC Documents which are not so disclosed in the Parent SEC Documents, other than those incurred in the ordinary course of Parent's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or would not have a Parent Material Adverse Effect.

Section 5.3 Subsidiaries.

(a) Each Subsidiary of Parent is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the requisite power and authority to own, lease, license and operate its assets and properties and to carry on its business as it is now being conducted, and each Subsidiary of Parent is qualified to transact business, and is in good standing, in each jurisdiction in which the properties owned, leased, licensed or operated by it or the nature of the business conducted by it makes such qualification necessary, except where such failure to be so duly approved, qualified or licensed and in good standing has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) All of the outstanding shares of capital stock or other equity interests of each Subsidiary of Parent are validly issued, fully paid, nonassessable and free of preemptive rights and are owned directly or indirectly by Parent. There are no subscriptions, options, warrants, voting trusts, proxies or other commitments, understandings, restrictions or arrangements relating to the issuance, sale, voting or transfer of any shares of capital stock or other equity interests of any Subsidiary of Parent, including any right of conversion or exchange under any outstanding security, instrument or agreement.

Section 5.4 Authority; Non-Contravention; Approvals.

(a) Parent and Merger Sub have all necessary power and authority to execute and deliver this Agreement, to perform their respective obligations hereunder and, subject to obtaining the Required Parent Stockholder Vote, to consummate the Merger and the other transactions contemplated by this Agreement. Subject to obtaining the Required Parent Stockholder Vote, the execution, delivery and performance by Parent and Merger Sub of this Agreement, and the consummation of the Merger and the other transactions contemplated by this Agreement, have been duly authorized by all necessary corporate action on the part of Parent and Merger Sub, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement or to consummate the Merger or the other transactions contemplated by this Agreement other than (i) the filing and recordation of the Certificate of Merger as required by the DGCL, (ii) obtaining the Required Parent Stockholder Vote, (iii) approval of this Agreement by Parent as the sole stockholder of Merger Sub and (iv) the Parent Required Statutory Approvals. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes a valid and binding obligations of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the rights and remedies of creditors generally and the effect of general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at law). Promptly following the execution of this Agreement by the parties hereto, Parent shall, by consent in lieu of a meeting, approve and adopt this Agreement and the transactions contemplated hereby in its capacity as the sole stockholder of Merger Sub, which consent shall be delivered to the Company.

(b) The execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation of the Merger and the other transactions contemplated hereby does not and will not violate, conflict with, give rise to the right to modify or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, or require any offer to purchase or any prepayment of any debt, or result in the creation of any Lien upon any of the properties or assets of Parent or any of its Subsidiaries under any of the terms, conditions or provisions of (i) the respective certificate of incorporation or bylaws or similar governing documents of Parent or any of its Subsidiaries, (ii) any statute, Law, ordinance, rule, regulation, judgment, decree, order, injunction, writ, permit or license of any Governmental Entity applicable to Parent or any of its Subsidiaries or any of their respective properties or assets, subject to obtaining the Parent Required Statutory Approvals, or (iii) any Parent Permit or Contract to which Parent or any of its Subsidiaries is a party or by which Parent or any of its Subsidiaries or any of their respective properties or assets may be bound or affected, other than, in the case of (ii) and (iii) above, such violations, conflicts, rights to modify, breaches, defaults, terminations, accelerations or creations of Liens, security interests or encumbrances that would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

(c) Except for (i) the filings by Parent or Merger Sub required by the HSR Act (ii) the applicable requirements of the Exchange Act and the Securities Act, (iii) the filing of the Certificate of Merger and appropriate merger documents as required by the DGCL, (iv) the filing of the Joint Proxy Statement/Prospectus and the Registration Statement, and the effectiveness of the Registration Statement, and (v) any required filings under the rules and regulations of NASDAQ (the filings and approvals referred to in clauses (i) through (v) collectively, the "**Parent Required Statutory Approvals**"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any Governmental Entity is necessary for the execution and delivery of this Agreement by Parent or Merger Sub or the consummation by Parent or Merger Sub, as applicable, of the Merger or the other transactions contemplated hereby, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not made or obtained, as the case may be, would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 5.5 Reports and Financial Statements.

(a) Since January 1, 2013, Parent has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of NASDAQ and the Exchange Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**Parent SEC Documents**"). As of their respective dates, the Parent SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the Parent SEC Documents, and none of the Parent SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of Parent included in the Parent SEC Documents (the "**Parent Financial Statements**") complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of Parent as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). Parent is not currently contemplating to amend or restate any of the Parent Financial Statements (including without limitation, any notes or any letter of the independent accountants of Parent with respect thereto) included in the Parent SEC Documents, nor is Parent currently aware of facts or circumstances which would require Parent to amend or restate any of the Parent Financial Statements, in each case, in order for any of the Parent Financials Statements to be in compliance with GAAP and the rules and regulations of the SEC. Parent has not been informed by its independent accountants that they recommend that Parent amend or restate any of the Parent Financial Statements or that there is any need for Parent to amend or restate any of the Parent Financial Statements.

(b) Parent is in compliance with all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and all applicable rules and regulations promulgated by the SEC thereunder that are effective as of the date hereof.

(c) Each of Parent and its Subsidiaries maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) that is effective 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, including that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability; (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. Parent maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that are effective in ensuring that information required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is accumulated and communicated to Parent's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure.

Section 5.6 Absence of Undisclosed Liabilities. Neither Parent nor any of its Subsidiaries has any Liabilities (whether accrued, absolute, contingent or otherwise), except Liabilities: (a) as and to the extent set forth on the audited consolidated balance sheet of Parent and its Subsidiaries as of the Balance Sheet Date; or (b) incurred after the Balance Sheet Date in the ordinary course of business consistent with past practice which, individually or in the aggregate, would not have a Parent Material Adverse Effect. Since the Balance Sheet Date, Parent has collected its accounts receivable and paid its accounts payable in the ordinary course of business consistent with past practice. No material event or development has occurred with respect to Parent, any of its Subsidiaries or any of their respective businesses, properties, prospects, operations (including results thereof) or condition (financial or otherwise), since the filing of Parent's Form 10-Q for the three and nine months ended September 30, 2014 through the date hereof, that would be required to be disclosed by Parent under applicable securities Laws on a registration statement on Form S-1 filed with the SEC on the date hereof relating to an issuance of securities or would be reasonably likely to have a Parent Material Adverse Effect.

Section 5.7 Litigation. There is no Proceeding pending, or, to the Knowledge of Parent, threatened, against Parent, any of its Subsidiaries or any of their respective directors, managers or officers (in their capacities as such or relating to their employment, services or relationship with Parent or any of its Subsidiaries) or that would materially relate to or affect Parent and Merger Sub or any of its Subsidiaries, before any court or other Governmental Entity or any arbitrator which would reasonably be expected to individually or in the aggregate, have a Parent Material Adverse Effect. To the Knowledge of Parent, neither Parent nor any Subsidiary has committed a violation of any judgment, decree, injunction or order of any Governmental Entity applicable to the Company or any Subsidiary or any of their respective properties or assets. Since January 1, 2013, there has not been any internal investigations or inquiries conducted by Parent, the Parent Board (or any committee thereof) or any other Person at the request of any of the foregoing concerning any financial, accounting, Tax, conflict of interest, self-dealing, fraudulent or deceptive conduct or other misfeasance or malfeasance issues. Neither Parent nor its Subsidiaries, nor, to the Knowledge of Parent, any of the directors, managers or officers of Parent or any of its Subsidiaries (in their capacities as such or relating to their employment, services or relationship with Parent or any of its Subsidiaries as applicable) is subject to any judgment, decree, injunction or order of any Governmental Entity. Neither Parent nor its Subsidiaries has any action, suit, proceeding, claim, mediation, arbitration or investigation pending against any other Person.

Section 5.8 Absence of Certain Changes or Events. Since September 30, 2014, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of Parent or any of its Subsidiaries. Since September 30, 2014, neither Parent nor any of its Subsidiaries has (i) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (ii) through the date hereof made any material capital expenditures, individually or in the aggregate. Parent nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does Parent or any of its Subsidiaries have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so.

Section 5.9 Compliance with Applicable Law; Permits.

(a) Parent and its Subsidiaries hold all material authorizations, permits, licenses, certificates, easements, concessions, franchises, variances, exemptions, orders, consents, registrations, approvals and clearances of all Governmental Entities (including, without limitation, all those that may be required by Governmental Entities engaged in the regulation of Parent's products) which are required for Parent and its Subsidiaries to own, lease, license and operate their properties and other assets and to carry on their respective business in the manner described in the Parent SEC Documents filed prior to the date hereof and as they are being conducted as of the date hereof (the "**Parent Permits**"), and all Parent Permits are valid, and in full force and effect, except where the failure to have, or the suspension or cancellation of, or the failure to be valid or in full force and effect of, any such Parent Permits would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

(b) Parent and its Subsidiaries are, and have been at all times, in compliance with the terms of the Parent Permits and all applicable Laws relating to Parent and its Subsidiaries or their respective businesses, assets or properties, except where the failure to be in compliance with the terms of the Parent Permits or such applicable Law would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. To the Knowledge of Parent, neither Parent nor any of its Subsidiaries has received any written notification from any Governmental Entity (i) asserting that Parent or any of its Subsidiaries is not in compliance with any Law or Parent Permit, or (ii) threatening to revoke any Parent Permit.

Section 5.10 Taxes.

(a) Each of Parent and its Subsidiaries has (i) duly and timely filed with the appropriate Governmental Entity all Tax Returns required to be filed by it (taking into account any applicable extensions), and all such Tax Returns are true, correct and complete in all material respects and prepared in compliance with all applicable Laws and (ii) timely paid all Taxes due and owing (whether or not shown due on any Tax Returns). Neither Parent nor any of its Subsidiaries currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by a Governmental Entity in a jurisdiction where Parent and its Subsidiaries do not file Tax Returns that Parent or any of its Subsidiaries is or may be subject to taxation by that jurisdiction. Neither Parent nor any of its Subsidiaries has commenced activities in any jurisdiction which will result in an initial filing of a Tax Return with respect to Taxes imposed by a Governmental Entity that it had not previously been required to file in the immediately preceding taxable period.

(b) The unpaid Taxes of Parent and its Subsidiaries did not, as of September 30, 2014, materially exceed the reserve for Tax Liabilities (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the balance sheets (rather than in any notes thereto) contained in the Financial Statements. Since September 30, 2014, neither Parent nor any of its Subsidiaries has incurred any Liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(c) There are no Liens for Taxes upon any property or asset of Parent or any Subsidiary thereof, except for Liens for current Taxes the payment of which is not yet delinquent, or for Taxes contested in good faith through appropriate proceedings and reserved against in accordance with GAAP.

(d) No material deficiencies for Taxes with respect to any of Parent and its Subsidiaries have been set forth or claimed in writing, or proposed or assessed by a Governmental Entity. There are no pending or, to the Knowledge of Parent, proposed or threatened audits, investigations, disputes or claims or other actions for or relating to any Liability for Taxes with respect to any of Parent and its Subsidiaries; provided, however, that Parent's Subsidiary, Pacific Ethanol Madera LLC, is currently under audit for tax years 2011 through 2014 in respect of property taxes. No material issues relating to Taxes of the Company or any Subsidiary of the Company were raised by the relevant Governmental Entity in any completed audit or examination that would reasonably be expected to recur in a later taxable period. There are no examination reports or statements of deficiencies assessed against or agreed to by any of Parent and its Subsidiaries or any predecessor, with respect to Taxes. None of Parent, any of its Subsidiaries or any predecessor has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, or has made any request in writing for any such extension or waiver.

(e) Each of Parent and its Subsidiaries has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, and all Tax Returns (including without limitation all IRS Forms W-2 and 1099) required with respect thereto have been properly completed and timely filed with, and supplied to, the appropriate parties.

(f) Except for any such customary agreements with customers, vendors, lenders, lessors or the like entered into in the ordinary course of business (each of which is not specifically entered into to address Taxes), neither Parent nor any of its Subsidiaries is a party to or bound by or has any obligation under any Tax sharing, allocation or indemnification agreement or similar contract or arrangement or any agreement that obligates it to make any payment computed by reference to the Taxes, taxable income or taxable losses of any other Person.

(g) Except for the affiliated group of which Parent is the common parent, each of Parent and its Subsidiaries is not and has never been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code or any group that has filed a combined, consolidated or unitary Tax Return. Neither Parent nor any of its Subsidiaries is liable for the Taxes of any Person (including an individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Entity) other than Parent and its Subsidiaries (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), (ii) as a transferee or successor, (iii) by Contract, or (iv) otherwise.

(h) Neither Parent nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(i) Neither Parent nor any of its Subsidiaries has taken any action, failed to take any action, or knows of any fact that would be reasonably expected to prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code.

(j) Neither Parent nor any of its Subsidiaries has been a party to a "reportable transaction," as such term is defined in Treasury Regulations Section 1.6011-4(b)(1) (other than such transactions that have been properly reported) or any other transaction requiring disclosure under analogous provisions of state, local or foreign Tax law.

(k) Neither Parent nor any of its Subsidiaries has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code at any time during the preceding five (5) years.

(l) Neither Parent nor any of its Subsidiaries has requested or received any ruling from any Governmental Entity, or signed any binding agreement with any Governmental Entity (including, without limitation, any advance pricing agreement) that would affect any amount of Tax payable after the Closing Date and has not made any request for issuance of a ruling from a Governmental Entity on behalf of Parent or any of its Subsidiaries (regardless of whether the requested ruling is still pending or withdrawn).

(m) Parent has provided to the Company its good faith estimate of the amount of any net operating loss and net capital loss available for use by Parent or any of its Subsidiaries, which Tax attributes of Parent are limited in their use under Sections 382 of the Code (and similar provisions of state, local or foreign Tax Law).

Section 5.11 Environmental Matters. Parent and its Subsidiaries (i) are in compliance with all Environmental Laws, (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.12 Contracts. The Exhibit Index to Parent's Annual Report on Form 10-K for the year ended December 31, 2013 or the Quarterly Reports on Form 10-Q or Current Reports on Form 8-K filed subsequent to such Form 10-K list each Contract that would be required to be filed by Parent as a "material contract" pursuant to Item 601(b)(10) of Regulation S-K in such reports (each, a "**Parent Material Contract**"). Neither Parent nor any Subsidiary of Parent is in breach or violation of or default in any material respect under the terms of any Parent Material Contract and, to the Knowledge of Parent, no other party to any Parent Material Contract is in breach or violation of or default in any material respect under the terms of any Parent Material Contract and, to the Knowledge of Parent, no event has occurred or not occurred through Parent's or any of its Subsidiaries' action or inaction or, to Parent's Knowledge, through the action or inaction of any third party, that with notice or the lapse of time or both would constitute a breach or violation of or default under the terms of any Parent Material Contract, in each case except as has not had and would not reasonably be expected to have a Parent Material Adverse Effect. To the Knowledge of Parent, each Parent Material Contract (i) is a valid and binding obligation of Parent or the Subsidiary of Parent that is party thereto and of each other party thereto and (ii) is in full force and effect except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws relating to or affecting the rights and remedies of creditors generally and the effect of general principles of equity (regardless of whether such enforceability is considered in a Proceeding in equity or at Law). There are no disputes pending or, to Parent's Knowledge, threatened with respect to any Parent Material Contract and neither Parent nor any of its Subsidiaries has received any written notice of the intention of any other party to a Parent Material Contract to terminate for default, convenience or otherwise any Parent Material Contract, nor to the Parent's Knowledge, is any such party threatening to do so, in each case except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.13 Business Relationships. Parent has made available to the Company the top ten (10) suppliers (based on current fiscal year expenditures) of products or services and the top ten (10) customers (based on current fiscal year revenues) of Parent and Parent's Subsidiaries (on a consolidated basis). Since the Balance Sheet Date, to the Knowledge of Parent, there has not been any material adverse change in the business relationship of Parent or any of Parent's Subsidiaries with any such customer or supplier or any change or development that is reasonably likely to give rise to any such material adverse change, and neither Parent nor any of Parent's Subsidiaries has received any written or oral communication or notice from any such customer or supplier to the effect that, or otherwise has Knowledge that, any such customer or supplier (a) has changed, modified, amended or reduced, or is reasonably likely to change, modify, amend or reduce its business relationship with Parent or any of Parent's Subsidiaries in a manner that is, or is reasonably likely to be materially adverse to Parent or any of Parent's Subsidiaries, or (b) will fail to perform, or is reasonably likely to fail to perform, its obligations under any Contract with Parent or any of Parent's Subsidiaries in any manner that is, or is reasonably likely to be materially adverse to the business and operations of Parent or any of Parent's Subsidiaries.

Section 5.14 Transactions with Affiliates. None of the officers, directors, employees or Affiliates of Parent or any of its Subsidiaries is presently a party to any transaction with Parent or any of its Subsidiaries (other than for ordinary course services as employees, officers or directors), including any Contract or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director, employee or affiliate or, to the Knowledge of Parent or any of its Subsidiaries, any corporation, partnership, trust or other Person in which any such officer, director, or employee has a substantial interest or is an employee, officer, director, trustee, affiliate or partner.

Section 5.15 Certain Business Practices.

(a) Neither Parent nor its Subsidiaries, nor any of their directors, managers, officers, or to the Knowledge of Parent their employees, agents or any other person acting for or on behalf of Parent or any of its Subsidiaries, directly or indirectly, (i) violated the Foreign Corrupt Practices Act of 1977, as amended, or violated any similar Law; or (ii) made any unlawful bribe, unlawful kickback or other unlawful payment to any person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business to obtain special concessions for Parent or any of its Subsidiaries. Neither Parent nor its Subsidiaries, nor, any of their directors, officers, or, to the Knowledge of Parent their employees, agents, or any other person acting for or on behalf of Parent or its Subsidiaries is the subject of any current, pending or threatened investigation, inquiry or enforcement proceedings for violations of the Foreign Corrupt Practices Act of 1977, as amended, or any similar Law in any country in which Parent or its Subsidiaries does business.

(b) None of Parent or any Subsidiary of Parent nor, to the Knowledge of Parent, any director, officer, employee, auditor, accountant or representative of Parent or any Subsidiary of Parent, has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding accounting, internal accounting controls or auditing practices, procedures, methodologies or methods of Parent or any Subsidiary of Parent or any material complaint, allegation, assertion or claim from employees of Parent or any Subsidiary of Parent regarding questionable accounting or auditing matters with respect to Parent or any Subsidiary of Parent, and to the Knowledge of Parent, no attorney representing Parent or any Subsidiary Parent, whether or not employed by Parent or any Subsidiary of Parent, has reported evidence of any material violation of state or federal banking or securities Laws, breach or violation of fiduciary duty or similar violation, by Parent, any Subsidiary of Parent or any of their respective officers, directors, managers, employees or agents to the Board of Directors of Parent or any committee thereof, or to the general counsel or chief executive officer of Parent.

(c) Without limiting the generality of the foregoing, Parent is not in violation of any of the rules, regulations or requirements of NASDAQ and has no Knowledge of any facts or circumstances that would reasonably be expected to lead to delisting or suspension of the Parent Voting Common Stock by the rules and regulations of NASDAQ. During the two years prior to the date hereof, (i) the Parent Voting Common Stock has been listed or designated for quotation on NASDAQ; (ii) trading in the Parent Voting Common Stock has not been suspended by the SEC or NASDAQ; and (iii) Parent has received no communication, written or oral, from the SEC or NASDAQ regarding the suspension or delisting of the Voting Parent Common Stock from NASDAQ.

Section 5.16 Opinion of Financial Advisor. Parent's financial advisor, Craig-Hallum Capital Group LLC (the "**Parent Financial Advisor**"), has delivered to the Parent Board its written opinion to the effect that, as of the date of such opinion, the Merger is fair, from a financial point of view, to the stockholders of Parent. A copy of that opinion has been delivered to the Company.

Section 5.17 Brokers and Finders. Parent has not entered into any Contract, arrangement or understanding with any Person or firm which may result in the obligation of Parent to pay any investment banking fees, finder's fees, or brokerage commissions in connection with the transactions contemplated hereby, other than fees payable to the Parent Financial Advisor.

Section 5.18 Indebtedness. Neither Parent nor any of its Subsidiaries has any outstanding material Indebtedness.

Section 5.19 Intellectual Property Rights. Parent and its Subsidiaries own or possess adequate rights or licenses to use all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, original works, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor (the "**Parent Intellectual Property Rights**") necessary to conduct their respective businesses as now conducted. Parent has no Knowledge of any infringement of the Parent Intellectual Property Rights by others. There is no claim, action or proceeding pending, or to the Knowledge of Parent, threatened, against Parent or any of its Subsidiaries regarding the Parent Intellectual Property Rights. To the Knowledge of Parent, there are no facts or circumstances which could reasonably be expected to give rise to any of the foregoing infringements or Proceedings. Parent and each of its Subsidiaries have taken commercially reasonable security measures to protect the secrecy, confidentiality and value of all material Parent Intellectual Property Rights.

Section 5.20 Off Balance Sheet Arrangements. There is no transaction, arrangement, or other relationship between Parent or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by Parent in its Exchange Act filings and is not so disclosed or that otherwise would be reasonably likely to have a Parent Material Adverse Effect.

Section 5.21 Manipulation of Price. Neither Parent nor any of its Subsidiaries has, and, to the Knowledge of Parent, no Person acting on their behalf has, directly or indirectly, (a) taken any action designed to cause or to result in the stabilization or manipulation of the price of any security of Parent or any of its Subsidiaries to facilitate the sale or resale of any of the Parent Voting Common Stock, (b) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Parent Voting Common Stock, or (c) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of Parent or any of its Subsidiaries.

Section 5.22 No Additional Agreements. Except with respect to the Parent Stockholders Agreement, Parent does not have any agreement or understanding with the Company or its Affiliates or stockholders with respect to the transactions contemplated hereunder other than as specified in this Agreement.

Section 5.23 Parent Stock. At the Closing, Parent shall have sufficient authorized but unissued shares of Parent Stock to consummate the Merger.

Section 5.24 Merger Sub. Merger Sub is a direct, wholly-owned subsidiary of Parent formed solely for the purpose of effecting the Merger, and has conducted no other material activity and has incurred no other material Liability or obligation other than as contemplated by this Agreement.

Section 5.25 Insurance. Parent and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of Parent believes to be prudent and customary in the businesses in which the Parent and its Subsidiaries are engaged. Neither Parent nor any such Subsidiary has since January 1, 2013 been refused any insurance coverage sought or applied for, and neither Parent nor any such Subsidiary has any reason to believe that it will be unable to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Parent Material Adverse Effect.

Section 5.26 Employee Relations. Neither Parent nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. No executive officer (as defined in Rule 501(f) promulgated under the Securities Act) or other key employee of Parent or any of its Subsidiaries has notified Parent or any such Subsidiary that such officer intends to leave Parent or any such Subsidiary or otherwise terminate such officer's employment with Parent or any such Subsidiary. No executive officer or other key employee of Parent or any of its Subsidiaries is, or is now expected by Parent to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer or other key employee (as the case may be) will, to the Knowledge of Parent, not subject Parent or any of its Subsidiaries to any liability with respect to any of the foregoing matters. Parent and its Subsidiaries are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Parent Material Adverse Effect.

Section 5.27 Information Supplied. The information supplied or to be supplied by Parent in writing expressly for inclusion in the Form S-4 will not, at the time the Form S-4 is declared effective by the SEC, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by Parent with respect to statements made therein based on information supplied by the Company in writing expressly for inclusion therein. The information supplied by Parent in writing expressly for inclusion in the Joint Proxy Statement/Prospectus will not, at the time the Joint Proxy Statement/Prospectus is first mailed to the Company stockholders and at the time of the Company Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation or warranty is made by Parent with respect to statements made therein based on information supplied by the Company in writing expressly for inclusion therein.

Section 5.28 No Additional Representations. Except for the representations and warranties contained in this Article V, the Company acknowledges that none of Parent, Merger Sub nor any other Person on behalf of either Parent or Merger Sub makes any other express or implied representation or warranty with respect to Parent or Merger Sub or with respect to any other information provided to the Company (other than information provided to the Company specifically referred to in any of the representations and warranties contained in this Article V), including any information, documents, projections, forecasts or other material made available to the Company or any Company Representative or management presentations in expectation of the transactions contemplated by this Agreement, including with respect to the completeness, accuracy or currency of any such information. Parent and Merger Sub disclaim any other representations or warranties, whether made by Parent or Merger Sub or any other Person.

ARTICLE VI

COVENANTS

Section 6.1 Conduct of Business by the Company Pending the Closing. From the Execution Date through the Effective Time, except as expressly contemplated by the terms of this Agreement, the Company shall, and shall cause each of its Subsidiaries to, (i) conduct its business in the ordinary course of business consistent with past practice in all material respects and in compliance in all material respects with all applicable Laws, (ii) use commercially reasonable efforts to preserve intact their respective business organizations and goodwill, keep available the services of their respective present officers, employees and independent contractors, and preserve the goodwill and business relationships with customers, suppliers, licensors, licensees and others having business relationships with them and (iii) not take any action which would adversely affect or delay in any material respect the ability of either Parent or the Company to obtain any necessary approvals of any regulatory agency or other Governmental Entity required for the transactions contemplated hereby. In addition, and without limiting the generality of the foregoing, from the Execution Date through the Effective Time, except as expressly contemplated by the terms of this Agreement, as required by applicable Law and except as set forth in Section 6.1 of the Disclosure Schedule, the Company shall not, and shall not permit any of its Subsidiaries to, do any of the following outside of the ordinary course of business consistent with past practices without the prior written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed):

(a) (i) amend or propose to amend the certificate of incorporation or bylaws or similar governing documents of the Company or any of its Subsidiaries, (ii) split, combine or reclassify their outstanding capital stock or issue or authorize the issuance of any other security in respect or, in lieu of, or in substitution for, shares of its capital stock, (iii) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, (iv) create any Subsidiary or alter (through merger, liquidation, reorganization, restructuring or in any other fashion) the corporate structure or ownership of the Company or any of its Subsidiaries, or (v) enter into any agreement with respect to the voting of its capital stock or other securities held by the Company or any of its Subsidiaries;

(b) issue, sell, pledge, dispose of, grant, encumber, or agree to issue, sell, pledge, dispose of, grant or encumber any shares of any class of capital stock of the Company or any of its Subsidiaries, or any options, warrants or rights of any kind to acquire any shares of, their capital stock of any class or any debt or equity securities convertible into or exchangeable for such capital stock, except that the Company may issue Company Shares upon exercise of Company Stock Options and Company Warrants outstanding on the date hereof in accordance with their present terms;

(c) (i) issue any debt securities, incur, guarantee or otherwise become contingently liable with respect to any indebtedness for borrowed money or enter into any arrangement having the economic effect of any of the foregoing, (ii) make any loans, advances or capital contributions to, or investments in, any Person, or (iii) redeem, purchase, acquire or offer to purchase or acquire any shares of its capital stock, or the capital stock of its Subsidiaries, or any options, warrants or rights to acquire any of its capital stock or any security convertible into or exchangeable for its capital stock, or the capital stock of its Subsidiaries;

(d) (i) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any corporation, limited liability company, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets other than in the ordinary course of business consistent with past practice, or (ii) authorize, make or agree to make any new capital expenditure or expenditures, or enter into any Contract or arrangement that reasonably may result in payments by or Liabilities of the Company, in excess of $1,000,000 individually or $5,000,00 in the aggregate in any twelve (12) month period that is not set forth in the capital expenditure budget;

(e) sell, pledge, assign, dispose of, transfer, lease, securitize, or encumber any businesses, properties or assets of the Company or its Subsidiaries;

(f) except as required by any Company Benefit Plan or Company Contract existing on the date hereof, (i) increase the compensation payable or to become payable (including bonus grants) or increase or accelerate the vesting of the benefits provided to its directors, officers or employees or other service providers, except for increases in the ordinary course of business and consistent with past practice in salaries or wages of employees of the Company or any of its Subsidiaries who are not directors or executive officers of the Company, (ii) grant any severance or termination pay or benefits to, or enter into any employment, severance, retention, change in control, consulting or termination agreement with, any director, officer or other employee or other service providers of the Company or of any of the Company's Subsidiary, (iii) establish, adopt, enter into or amend any collective bargaining, bonus, profit-sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee or other service providers, or (iv) pay or make, or agree to pay or make, any accrual or arrangement for payment of any pension, retirement allowance, or any other employee benefit;

(g) knowingly violate or knowingly fail to perform any obligation or duty imposed upon it by any applicable federal, state, local or foreign Law, rule, regulation, guideline or ordinance, or under any order, settlement agreement or judgment;

(h) announce, implement or effect any reduction in labor force, lay-off, early retirement program, severance program or other program or effort concerning the termination of employment of employees of the Company or any of its Subsidiaries;

(i) make any change to accounting policies or procedures, other than actions required to be taken by GAAP;

(j) prepare or file any Tax Return inconsistent with past practice or, on any Tax Return, take any position, make any election, or adopt any method inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns in prior periods;

(k) except for immaterial elections or changes, make or change any express or deemed election related to Taxes, change an annual accounting period, adopt or change any method of accounting, file an amended Tax Return, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax Proceedings relating to the Company or any of its Subsidiaries;

(l) except as would not reasonably be expected to be materially adverse to the Company and its Subsidiaries taken as a whole, commence any litigation or Proceedings with respect to Taxes, settle or compromise any Proceedings with respect to Taxes;

(m) (i) enter into a new line of business which is material to the Company and its Subsidiaries taken as a whole or (ii) open or close any facility or office of the Company or any of its Subsidiaries;

(n) pay, discharge or satisfy any claims, Liabilities or obligations (whether or not absolute, accrued, asserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms, of Liabilities adequately reflected or reserved against in, the most recent financial statements (or the notes thereto) of the Company;

(o) amend, modify or consent to the termination of any Company Material Contract, or amend, waive, modify or consent to the termination of the Company's or any of its Subsidiary's rights thereunder;

(p) enter into, amend, modify, permit to lapse any rights under, or terminate (i) any agreements pursuant to which any other party is granted exclusive marketing or other exclusive rights of any type or scope with respect to any of its products or technology or which restricts the Company or any of its Subsidiary or, upon completion of the Merger or any other transaction contemplated hereby, Parent or any of its Subsidiaries, from engaging or competing in any line of business or in any location, (ii) any agreement or Contract with any customer, supplier, sales representative, agent or distributor, other than in the ordinary course of business and consistent with past practice; (iii) arrangement with Persons that are Affiliates or are executive officers or directors of the Company, or (iv) any material rights or claims with respect to any confidentiality or standstill agreement to which the Company is a party and which relates to a business combination or other similar extraordinary transaction, in each case, that would reasonably be expected to, individually or in the aggregate, materially affect the business or operations of the Company;

(q) terminate, cancel, amend or modify any material insurance coverage policy maintained by Company or any of its Subsidiaries which is not promptly replaced by a comparable amount of insurance coverage;

(r) commence, waive, release, assign, settle or compromise any material claims, or any material litigation, Proceeding or arbitration including, without limitation, the Aurora Coop Litigation;

(s) except as the Company Board determines in good faith is necessary to comply with its fiduciary duties, take any action to (i) render inapplicable, or to exempt any third Person from, the provisions of Section 203 of the DGCL, or any other state takeover or similar Law or state Law that purports to limit or restrict business combinations or the ability to acquire or vote shares or (ii) adopt or implement any stockholder rights agreement or plan; or

(t) authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any Contract, agreement, commitment or arrangement to do any of the foregoing.

Section 6.2 Conduct of Business by Parent Pending the Closing. From the Execution Date until the Effective Time, unless the Company shall otherwise consent in writing, which consent shall not be unreasonably withheld, or except as otherwise expressly permitted by or provided for in this Agreement, Parent shall, and shall cause each of its Subsidiaries to, conduct its business in the ordinary course of business consistent with past practice and in compliance in all material respects with all applicable Laws and use reasonable best efforts to preserve intact their respective business organizations and goodwill. In addition to and without limiting the generality of the foregoing, except as otherwise expressly permitted by or provided for in this Agreement, from the date hereof until the Effective Time, without the prior written consent of the Company, which consent shall not be unreasonably withheld, conditioned, or delayed, Parent shall not, and shall not permit any of its Subsidiaries to, do any of the following outside the ordinary course of business consistent with past practices:

(a) adopt or propose any material change in its certificate of incorporation or bylaws, except for such amendments (i) required by any applicable Law or the rules and regulations of the SEC or NASDAQ, (ii) as contemplated by the Amended Certificate of Incorporation, or (iii) that would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect;

(b) sell, lease, pledge, or otherwise dispose of or encumber any properties or assets of Parent or its Subsidiaries, except for (i) the sale of inventory in the ordinary course of business and (ii) other transactions which would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect;

(c) authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing; (i) amend or propose to amend the certificate of incorporation or bylaws or similar governing documents of Parent or any of its Subsidiaries, (ii) split, combine or reclassify their outstanding capital stock or issue or authorize the issuance of any other security in respect or, in lieu of, or in substitution for, shares of its capital stock, (iii) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, other than the payment of any dividend on shares of Parent Series B Preferred Stock (iv) create any Subsidiary or alter (through merger, liquidation, reorganization, restructuring or in any other fashion) the corporate structure or ownership of Parent or any of its Subsidiaries, or (v) enter into any agreement with respect to the voting of its capital stock or other securities held by Parent or any of its Subsidiaries;

(d) issue, sell, pledge, dispose of, grant, encumber, or agree to issue, sell, pledge, dispose of, grant or encumber any shares of any class of capital stock of Parent or any of its Subsidiaries, or any options, warrants or rights of any kind to acquire any shares of, their capital stock of any class or any debt or equity securities convertible into or exchangeable for such capital stock, except that Parent may issue Parent Stock upon exercise or conversion, as applicable, of Parent Stock Options, Parent Warrants or Parent Series B Preferred Stock outstanding on the date hereof in accordance with their present terms;

(e) (i) issue any debt securities, incur, guarantee or otherwise become contingently liable with respect to any indebtedness for borrowed money or enter into any arrangement having the economic effect of any of the foregoing, (ii) make any loans, advances or capital contributions to, or investments in, any Person, or (iii) redeem, purchase, acquire or offer to purchase or acquire any shares of its capital stock, or the capital stock of its Subsidiaries, or any options, warrants or rights to acquire any of its capital stock or any security convertible into or exchangeable for its capital stock, or the capital stock of its Subsidiaries; and

(f) sell, pledge, assign, dispose of, transfer, lease, securitize, or encumber any businesses, properties or assets of Parent or its Subsidiaries.

Section 6.3 Access to Information; Confidentiality.

(a) Each of Parent and the Company shall afford to each other's officers, employees, accountants, counsel, financial advisors, and other representatives, reasonable access (subject to applicable Laws regarding the sharing of such information), during normal business hours, and upon reasonable prior notice, during the period from the Execution Date through the Effective Time or the termination of this Agreement, to its properties, books and records, contracts, commitments and personnel in a manner commensurate with due diligence conducted by any Party prior to the date hereof. Any investigation conducted pursuant to the access contemplated by this Section 6.3(a) shall be conducted in a manner that does not unreasonably interfere with the conduct of the business of the Parties or their respective Subsidiaries, as the case may be, or create a risk of damage or destruction to any property or assets of the Parties or their respective Subsidiaries. During such period, the Company and Parent shall furnish or make available promptly to each other (except as otherwise available on EDGAR) (i) a copy of each report, schedule, registration statement and other document filed or received by it during such period pursuant to the requirements of federal or state securities laws; and (ii) all other information concerning its business, properties, assets and personnel as the other may reasonably request. Notwithstanding the foregoing, Parent and the Company may restrict or otherwise prohibit access to any documents or information to the extent that access to such documents or information would risk waiver of any attorney-client privilege, work product doctrine or other applicable privilege applicable to such documents or information. Except as otherwise required by applicable Law, all information obtained by Parent and the Company, and their respective Subsidiaries, pursuant to this Section 6.3(a) shall be kept confidential in accordance with the confidentiality agreement, dated November 18, 2014, by and between Parent and the Company (the "**Confidentiality Agreement**") or any other similar agreement among the Parties.

(b) The Company shall consult with Parent regarding its business in a prompt manner and on a regular basis. In addition, the Company and its officers and employees shall reasonably cooperate with Parent in, and shall permit Parent to participate in any discussions or negotiations relating to, the execution or amendment of any Company Material Contract.

(c) No information or knowledge obtained in any investigation pursuant to this Section 6.3 or otherwise shall affect or be deemed to modify any representation or warranty contained in this Agreement or the conditions to the obligations of the parties to consummate the Merger.

Section 6.4 Employee Matters. Promptly following the Execution Date, the Company and Parent shall reasonably cooperate to develop communication to the employees of the Company and its Subsidiaries concerning the Merger, including responses to anticipated employee questions and concerns.

Section 6.5 BNSF Matters. The Company shall use commercially reasonable efforts to complete all necessary arrangements, including engineering, design and contracting with the BNSF as promptly as practicable, in order to establish a connection from the rail facilities of NELLC to the inner rail loop track belonging to the Aurora West Facility along with the associated "diamond switch" crossing the outer rail loop, which lie entirely on land owned by NELLC or Aventine Renewable Energy – Aurora West, LLC such that the Aurora West Facility will be able to ship ethanol by rail in unit trains and single cars.

Section 6.6 Joint Proxy Statement/Prospectus; Registration Statement.

(a) Parent and the Company shall each use their reasonable best efforts to jointly prepare and file with the SEC the Joint Proxy Statement/Prospectus and the Registration Statement within twenty (20) Business Days following the Execution Date. Each of Parent and The Company shall provide as promptly as practicable to the other such information concerning its business affairs and Financial Statements as, in the reasonable judgment of the providing Party or its counsel, may be required or appropriate for inclusion in the Joint Proxy Statement/Prospectus and the Registration Statement, or in any amendments or supplements thereto, shall cause its counsel to cooperate with the other Party's counsel in the preparation of the Joint Proxy Statement/Prospectus and the Registration Statement and shall request the cooperation of such Party's auditors in the preparation of the Joint Proxy Statement/Prospectus and the Registration Statement. Each of Parent and the Company shall respond to any comments of the SEC and shall use their reasonable best efforts to have the Registration Statement declared effective under the Securities Act as promptly as practicable after such filings, and each of Parent and the Company will provide the other with a reasonable opportunity to review and comment (which comments will be considered by the other Party in good faith) on any amendment or supplement to the Joint Proxy Statement/Prospectus or the Registration Statement prior to the filing thereof with the SEC. The Company and Parent shall cause the Joint Proxy Statement/Prospectus to be mailed to their respective stockholders at the earliest practicable time after the Registration Statement is declared effective under the Securities Act. Each of Parent and the Company shall notify the other promptly upon the receipt of any comments from the SEC or its staff or any other government officials and of any request by the SEC or its staff or any other government officials for amendments or supplements to the Registration Statement, the Joint Proxy Statement/Prospectus or any filing pursuant to this Section 6.6(a) or for additional information and shall supply the other with copies of all correspondence between such Party or any of its Representatives, on the one hand, and the SEC, or its staff or any other government officials, on the other hand, with respect to the Registration Statement, the Joint Proxy Statement/Prospectus, the Merger or any filing pursuant to Section 6.6(b). Each of Parent and the Company shall cause all documents that it is responsible for filing with the SEC or other regulatory authorities under this Section 6.6(a) to comply as to form and substance as to such Party in all material respects with all applicable Laws.

(b) If, at any time prior to the Effective Time, any information is discovered or any event occurs with respect to Parent, the Company or any of their respective Subsidiaries, or any change occurs with respect to the other information included in the Registration Statement or the Joint Proxy Statement/Prospectus which is required to be described in an amendment of, or a supplement to, the Registration Statement or the Joint Proxy Statement/Prospectus so that such document does not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, then (i) the Party learning of such information shall notify the other Parties as promptly as practicable of such event, and Parent and the Company shall as promptly as practicable file with the SEC any necessary amendment or supplement to the Registration Statement or the Joint Proxy Statement/Prospectus, respectively, and (ii) Parent and the Company shall (A) use their reasonable best efforts to have such amendment or supplement cleared for mailing as soon as practicable and (B) as required by applicable Law, disseminate the information contained in such amendment or supplement to holders of Company Shares and Parent Shares; *provided, however*, that no amendment or supplement will be filed and no such information shall be otherwise disseminated without prior consultation between Parent and the Company and providing Parent and the Company with a reasonable opportunity to review and comment on such amendment or supplement.

(c) The Company shall provide Parent on a confidential, non-reliance basis for informational purposes only, a copy of the fairness opinion from the Company Financial Advisor stating that the Exchange Ratio is fair from a financial point of view to the holders of the Company Shares electing to receive Parent Voting Common Stock, as of the date of the fairness opinion; provided, that Parent has executed a non-reliance release letter reasonably acceptable to the Company Financial Advisor prior to the receipt of the fairness opinion, and Parent shall not disclose the fairness opinion, its contents or the identity of the Company Financial Advisor, including in the Joint Proxy Statement/Prospectus or the Registration Statement, except as required by applicable Law.

Section 6.7 Meetings of Stockholders; Board Recommendations.

(a) The Company, acting through the Company Board, shall take all actions in accordance with the DGCL, the Company Certificate or Company Bylaws or similar governing documents of the Company and all applicable Laws to promptly and duly call, give notice of, convene and hold as promptly as practicable, and in any event within forty-five (45) days after the declaration of effectiveness of the Registration Statement, the Company Stockholders' Meeting for the purpose of considering and voting upon the Company Voting Proposal. Subject to Section 6.13(b), (i) the Company Board shall recommend approval and adoption of this Agreement and the Merger by the stockholders of the Company (the "**Company Voting Proposal**") and include such recommendation in the Joint Proxy Statement/Prospectus, (ii) neither the Company Board nor any committee thereof shall effect a Change in Recommendation and (iii) the Company shall use its reasonable best efforts to solicit from its stockholders proxies in favor of the Company Voting Proposal and shall take all other action reasonably necessary or advisable to secure the Required Company Stockholder Vote. Without limiting the generality of the foregoing, (x) the Company agrees that its obligation to duly call, give notice of, convene and hold a meeting of the holders of Company Shares, as required by this Section 6.7(a), shall not be affected by the withdrawal, amendment or modification of the recommendation by the Company Board or committee thereof, including a Change in Recommendation, pursuant to the provisions contained in Section 6.12(b), (y) the Company agrees that its obligations pursuant to this Section 6.7(a) shall not be affected by the commencement, public proposal, public disclosure or communication to the Company of any Company Takeover Proposal and (z) notwithstanding any Change in Recommendation, unless this Agreement is validly terminated pursuant to, and in accordance with, Article VIII, this Agreement shall be submitted to the holders of the Company's Common Stock for the purpose of obtaining the Required Company Stockholder Vote.

(b) Parent, acting through the Parent Board, shall take all actions in accordance with the DGCL, the certificate of incorporation or bylaws or similar governing documents of Parent and all applicable Laws to promptly and duly call, give notice of, convene and hold as promptly as practicable, and in any event within forty-five (45) days after the declaration of effectiveness of the Registration Statement, the Parent Stockholders' Meeting for the purpose of considering and voting upon the issuance of Parent Stock in the Merger, the amendment to Parent's Amended Certificate of Incorporation to authorize a class of Parent Non-Voting Common Stock and securing the Special Series B Approval (the "**Parent Voting Proposals**"). The Parent Board shall recommend approval of the Parent Voting Proposals by the holders of Parent Stock and include such recommendation in the Parent's Proxy Statement. Neither the Parent Board nor any committee thereof shall withdraw, qualify or modify, or publicly propose to withdraw, qualify or modify in any manner adverse to the Company the recommendation of the Parent Board that the Parent's stockholders vote in favor of the Parent Voting Proposals. Parent shall use its reasonable best efforts to solicit from its stockholders proxies in favor of the Parent Voting Proposals and shall take all other action reasonably necessary or advisable to secure the Required Parent Stockholder Vote.

(c) Nothing contained in this Section 6.7 or otherwise contained in this Agreement shall be deemed to prohibit the Company from taking and disclosing to its stockholders a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or complying with the provisions of Rule 14d-9 promulgated under the Exchange Act or making any disclosure to its stockholders in order to comply with the Company Board's fiduciary duties to its stockholders under the DGCL.

(d) Unless otherwise mutually agreed upon by the Parties, the Parties shall use reasonable best efforts to cause the respective record dates and meeting dates for the Company Stockholders' Meeting and for the Parent Stockholders' Meeting to be the same.

(e) Except to the extent required by applicable Laws, the Company shall not (i) change the date specified in the Joint Proxy Statement/Prospectus for the Company Stockholders' Meeting or (ii) postpone, delay or adjourn the Company Stockholders' Meeting without the consent of Parent (not to be unreasonably withheld, delayed or conditioned), except, in each case, after consultation with Parent, (A) to the extent necessary (as determined in good faith by the Company Board following consultation with outside counsel) to ensure that any amendment or supplement to the Joint Proxy Statement/Prospectus required by applicable Laws is provided to the stockholders of the Company sufficiently in advance of the Company Stockholders' Meeting; (B) if there are an insufficient number of shares of Company Shares represented in person or by proxy at the Company Stockholders' Meeting to constitute a quorum or to adopt this Agreement, in which case the Company may adjourn the Company Stockholders' Meeting and use its reasonable best efforts to obtain a quorum and the Required Company Stockholder Vote as promptly as practicable in the prevailing circumstances; or (C) to a date not less than five (5) Business Days after the expiration of any five-Business Day contemplated by Section 6.13(b)(ii)); and (D) to a date not less than five (5) Business Days after a Change in Recommendation effected pursuant to Section 6.13(b)(iii). Except to the extent required by applicable Law, Parent shall not (i) change the date specified in the Joint Proxy Statement/Prospectus for the Parent Stockholders' Meeting or (ii) postpone, delay or adjourn the Parent Stockholders' Meeting without the consent of the Company (not to be unreasonably withheld, delayed or conditioned) except, in each case, after consultation with the Company, (A) to the extent necessary to ensure that any amendment or supplement to the Joint Proxy Statement/Prospectus required by applicable Law is provided to the stockholders of Parent sufficiently in advance of the Parent Stockholders' Meeting or (B) if there are an insufficient number of shares of Parent Stock represented in person or by proxy at the Parent Stockholders' Meeting to constitute a quorum, in which case Parent may adjourn the Parent Stockholders' Meeting and use its reasonable best efforts to obtain a quorum and the Required Parent Stockholder Vote as promptly as practicable in the prevailing circumstances.

Section 6.8 [Reserved].

Section 6.9 Public Announcements. Parent and the Company will provide each other a reasonable opportunity to review and make reasonable comment upon, any press release or other public statement with respect to this Agreement and the business combination contemplated hereby and, except as may be required by applicable Law or any listing agreement with, or regulation of, any securities exchange or market on which the Company Shares or the Parent Voting Common Stock, as applicable, are traded or listed, will not issue any such press release or make any such public statement prior to receiving the other Party's consent (which shall not be unreasonably withheld or delayed); *provided, however*, that each of Parent and the Company may make (a) subject to Section 6.10(a), public disclosure reasonably required in the public SEC filings made by the respective Parties in connection with the transactions contemplated hereby and (b) public statements in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are not inconsistent with previous statements that have been mutually agreed upon by each of the Parties with respect to press releases, public disclosures or public statements.

Section 6.10 Reasonable Best Efforts.

(a) Prior to the Closing, the Company and Parent shall each use their reasonable best efforts to (i) take, or cause to be taken, all reasonable actions, and do, or cause to be done, all reasonable things necessary and proper under applicable Law to consummate and make effective the Merger as promptly as practicable, (ii) obtain from any Governmental Entity or any other third Person any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by such Party or any of their Subsidiaries in connection with the consummation of the Merger and the transactions contemplated hereby, and (iii) as promptly as practicable, make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement and the Merger required under (A) the Securities Act and the Exchange Act, and any other applicable federal or state securities Laws, (B) any Antitrust Laws and any related governmental request thereunder, and (C) any other applicable Law. The Company and Parent shall cooperate with each other in connection with the making of all such filings (subject to applicable Law regarding the sharing of information), and the Company and Parent and their counsel shall be given a reasonable opportunity to review and comment upon such filings and any amendments or supplements thereto (and shall provide any comments thereon as soon as practicable) prior to the filing thereof with the SEC.

(b) The Company and Parent agree, and shall cause each of their respective Subsidiaries, to cooperate and to use their reasonable best efforts to obtain any clearances or approvals of any Governmental Entities required for the consummation of the Merger under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other federal, state or foreign Law designed to prohibit, restrict or regulate actions for the purpose or effect of monopolization or restraint of trade (collectively "**Antitrust Laws**"), to obtain the expiration of any applicable waiting period under any Antitrust Law, to respond to any government requests for information under any Antitrust Law, and to contest and resist any action, including any legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that restricts, prevents or prohibits the consummation of the Merger or any other transactions contemplated by this Agreement under any Antitrust Law. No Party to this Agreement shall consent to any voluntary delay of the consummation of the Merger at the behest of any Governmental Entity without the consent of the other Parties to this Agreement, which consent shall not be unreasonably withheld. The Company and Parent shall use reasonable best efforts to file, as promptly as practicable, all notifications required under the HSR Act and any applicable international antitrust requirements.

(c) Notwithstanding anything to the contrary in this Section 6.10(c), neither Parent, nor the Company nor any of their Subsidiaries shall be required to (i) license, divest, dispose of or hold separate any assets or businesses of Parent or the Company or any of their respective Subsidiaries or otherwise take or commit to take any action that limits its freedom of action with respect to, or its ability to retain, any of the assets or businesses of Parent or the Company or any of their respective Subsidiaries, or that would otherwise have a material adverse effect on the combined company or (ii) pay more than *de minimis* amounts in connection with seeking or obtaining such consents, approvals or authorizations as are required to complete the Merger under applicable Antitrust Laws (excluding any mandatory filing fees and reasonable and customary costs and expenses associated with making applications for, and responding to requests for information from Governmental Entities with respect to, such required consents, approvals or authorizations).

(d) Each of Parent and the Company, as applicable, shall give (or shall cause their respective Subsidiaries to give) any notices to third Persons, and use, and cause their respective Subsidiaries to use, their commercially reasonable efforts to obtain any third Person consents related to or required in connection with the Merger that are (i) necessary to consummate the transactions contemplated hereby, (ii) disclosed or required to be disclosed in the Company Disclosure Schedule, or (iii) required to prevent a Parent Material Adverse Effect or a Company Material Adverse Effect from occurring prior to or after the Effective Time; *provided, however*, that, with respect to this subsection (d), the Company shall not offer or pay any consideration in excess of $250,000 for all consents, approvals or waivers in the aggregate, or make any agreement or understanding affecting the business or the assets, properties or Liabilities of the Company, in order to obtain any such third Person consents, approvals or waivers, except with the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed). If any Party shall fail to obtain any consent from a third Person described in this subsection (d), such Party will use its reasonable efforts, and will take any such actions reasonably requested by the other Party hereto, to limit the adverse affect upon the Company and Parent, their respective Subsidiaries, and their respective businesses resulting, or that would reasonably be expected to result after the consummation of the Merger, from the failure to obtain such consent.

(e) Parent and the Company shall each keep the other apprised of the status of matters relating to the completion of the Merger and work cooperatively in connection with obtaining all required consents, authorizations, Orders or approvals of, or any exemptions by, any Governmental Entity undertaken pursuant to the provisions of this Section 6.10(e). In that regard, prior to the Closing, each party shall promptly consult with the other parties to this Agreement with respect to and provide any necessary information and assistance as the other parties may reasonably request with respect to (and, in the case of correspondence, provide the other parties (or their counsel) copies of) all notices, submissions, or filings made by such party with any Governmental Entity or any other information supplied by such party to, or correspondence with, a Governmental Entity in connection with this Agreement and the Merger. Each party to this Agreement shall promptly inform the other parties to this Agreement, and if in writing, furnish the other parties with copies of (or, in the case of oral communications, advise the other parties orally of) any communication from or to any Governmental Entity regarding the Merger, and permit the other parties to review and discuss in advance, and consider in good faith the views of the other parties in connection with, any proposed communication with any such Governmental Entity. If any party to this Agreement or any Representative of such parties receives a request for additional information or documentary material from any Governmental Entity with respect to the Merger, then such party shall use reasonable best efforts to make, or cause to be made, promptly and after consultation with the other parties to this Agreement, an appropriate response in substantial compliance with such request. No party shall participate in any meeting or teleconference with any Governmental Entity where material issues or any matters relating to timing would likely be discussed in connection with this Agreement and the Merger unless it consults with the other party in advance and, to the extent not prohibited by such Governmental Entity, gives the other party the opportunity to attend and participate thereat. In addition, without the prior written consent of Parent, the Company shall not agree or commit to, or permit any of its Subsidiaries to agree or commit to, any commitment to sell, divest or dispose of any businesses, assets, relationships or contractual rights of the Company or any of its Subsidiaries or purporting to limit the Company's, any of its Subsidiaries' or Parent's freedom to action with respect to, or ability to retain, any businesses, assets, relationships or contractual rights. Without limiting the foregoing, unless prohibited by Law or the applicable Governmental Entity, each party shall, on a current basis, furnish the other parties with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and any such Governmental Entity with respect to this Agreement and the Merger, and furnish the other parties with such necessary information and reasonable assistance as the other parties may reasonably request in connection with its preparation of necessary filings or submissions of information to any such Governmental Entity. Notwithstanding anything to the contrary contained in this Section 6.10(e), materials provided pursuant to this Section 6.10(e) may be redacted (i) to remove references concerning the valuation of the Company and the Merger or other similarly confidential information, (ii) as necessary to comply with contractual arrangements, and (iii) as necessary to address reasonable privilege concerns.

Section 6.11 Notification of Certain Matters. Parent and the Company shall promptly (and, in any event, within two (2) Business Days) advise the other orally and in writing of any state of facts, event, change, effect, development, condition or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a Parent Material Adverse Effect or a Company Material Adverse Effect, respectively. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect or (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; *provided, however*, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the Parties under this Agreement.

Section 6.12 Indemnification; Insurance.

(a) The certificate of incorporation and the bylaws of the Surviving Corporation (and the organizational documents of each Subsidiary of the Company) shall contain provisions with respect to indemnification, advancement of expenses and exculpation as are set forth in the Company Certificate and Company Bylaws as in effect at the date hereof (to the extent consistent with applicable Law), which provisions shall not be amended, repealed or otherwise modified for a period of six (6) years after the Effective Time in any manner that would adversely affect the rights thereunder of the persons who at any time prior to the Effective Time were entitled to indemnification, advancement of expenses or exculpation under the Company Certificate and Company Bylaws (or the applicable organizational documents of the Company's Subsidiaries) in respect of actions or omissions occurring at or prior to the Effective Time, unless otherwise required by applicable Law (and provided that all rights of indemnification, advancement of expenses and exculpation in respect of any claim asserted or made within such six-year period shall continue until the final disposition of such claim). From and after the Effective Time, Parent shall assume, be jointly and severally liable for, and honor, and cause the Surviving Corporation and the Surviving Corporation's Subsidiaries to honor, the respective covenants of this Section 6.12.

(b) From and after the Effective Time and until the expiration of any applicable statutes of limitation of the underlying claim to which the indemnification relates, Parent shall indemnify, defend and hold harmless the present and former officers directors of the Company and its Subsidiaries (collectively, together with their respective heirs, executors and administrators, the "**Indemnified Directors and Officers**") against all losses, claims, damages, expenses (including reasonable attorneys' fees and including any attorneys' fees or other fees incurred to enforce the provisions of this Section 6.12(b)), Liabilities or amounts that are paid in settlement of, or otherwise, in connection with any claim, action, suit, Proceeding or investigation, whether civil, criminal, administrative or investigative and including all appeals thereof to which any Indemnified Directors and Officers is or may become a party to by virtue of his or her service as a present or former director or officer of the Company or any of its Subsidiaries, and arising out of actual or alleged events, actions or omissions occurring or alleged to have occurred at or prior to the Effective Time, in each case to the fullest extent permitted by applicable Law.

(c) Parent agrees and shall cause the Surviving Corporation to agree, and the Company agrees, that all rights to indemnification, exculpation and advancement of expenses now existing in favor of any Indemnified Directors and Officers or any current or former employee of the Company or any of its Subsidiaries (together with their heirs, executors and administrators, and any Indemnified Directors and Officers, the "**Indemnified Parties**") as provided in the Company Certificate or the Company Bylaws (or the organizational documents of Company's Subsidiaries) shall survive the Merger and shall continue in full force and effect in accordance with their terms. For a period of six (6) years after the Effective Time, Parent shall cause the Surviving Corporation to agree, and the Surviving Corporation agrees, to maintain in effect the indemnification, exculpation and advancement of expenses provisions of the Company Certificate or the Company Bylaws (and the organizational documents of the Company's Subsidiaries) now in effect and any such indemnification agreements of the Company or any of its Subsidiaries with the Indemnified Parties and not to amend, repeal or otherwise modify such provisions in any manner that would adversely affect the rights thereunder of such Indemnified Parties, and all such rights in respect of any action, suit, proceeding or investigation pending or asserted or claim made or threatened within such period shall continue until the final disposition or resolution thereof.

(d) Prior to the Effective Time, the Company shall obtain "tail" insurance policies with a claims period of six (6) years from the Effective Time with respect to directors' and officers' liability insurance in an amount and scope reasonably comparable to the existing policy of the Company and reasonably acceptable to Parent for claims arising from facts or events that occurred on or prior to the Effective Time at a cost that is reasonable and customary for tail insurance policies with its existing directors' and officers' liability policy insurer or an insurer with a comparable insurer financial strength rating as Parent's existing directors' and officers' liability policy insurer (the "**D&O Insurance**"). The Company shall use commercially reasonable efforts to obtain competitive quotes (from insurance providers with comparable ratings) for such insurance coverage in an effort to reduce the cost thereof and shall use Lockton Companies in obtaining such insurance coverage. The cost of the D&O Insurance shall not exceed 200% of the Company's current annual premium, with credit given for any unearned premium remaining on the current policy. The parties agree that if a claim has been made against the Company's current D&O policy prior to the Closing, a new aggregate limit of liability shall be negotiated in connection with the D&O Insurance.

(e) The rights of each Indemnified Party hereunder shall be in addition to, and not in limitation of, any other rights such Indemnified Party may have under the certificate of incorporation, bylaws or other organizational documents of the Company and any of the Company's Subsidiaries or under any other indemnification agreements or under applicable Law. The obligations under this Section 6.12 shall not be terminated or modified in such a manner as to affect adversely any Indemnified Party to whom this Section 6.12 applies without the consent of such affected Indemnified Party (it being expressly agreed that the Indemnified Parties to whom this Section 6.12 applies and their respective heirs, successors and assigns shall be express third-party beneficiaries of this Section 6.12). This Section 6.12 shall survive the consummation of the Merger and is intended to be for the benefit of, and shall be enforceable by, the Indemnified Parties referred to herein.

(f) If the Parent or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, and in each case, to the extent necessary, proper provision shall be made so that the successors and assigns of the Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 6.12.

Section 6.13 No Solicitation.

(a) Company Takeover Proposal.

(i) The Company shall not, nor shall it authorize or permit any Subsidiary of the Company to, nor shall it authorize or permit any Company Representative to, directly or indirectly, (i) solicit, initiate or knowingly encourage the submission, making or announcement of any Company Takeover Proposal, (ii) participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, or otherwise cooperate in any way with respect to, or take any other action to facilitate the making of, any inquiry or any proposal that constitutes, or would reasonably be expected to lead to, any Company Takeover Proposal or (iii) make or authorize any statement, recommendation or solicitation in respect of any Company Takeover Proposal (in each case, except as permitted by this Section 6.13).

(ii) The Company shall, and shall cause each Subsidiary of the Company and each Company Representative to, immediately cease and cause to be terminated all discussions or negotiations with any person conducted heretofore with respect to any proposal that constitutes or would reasonably be expected to lead to a Company Takeover Proposal. The Company shall, and shall cause each Subsidiary of the Company to, enforce (and not waive any provision of or release any Person from any obligations under) any confidentiality, standstill or similar agreement to which the Company or any Subsidiary of the Company is a party unless the Company Board concludes in good faith that a failure to take any action described in this sentence would be inconsistent with the Company Board's fiduciary duties to the Company's stockholders under applicable Law.

(iii) Notwithstanding the foregoing, if, at any time after the date hereof and prior to the time that the Required Company Stockholder Vote has been obtained, the Company receives a bona fide Company Takeover Proposal that did not result from a breach or a deemed breach (pursuant to Section 6.13(a)(iv)) by the Company or any Company Representative of Section 6.13(a)(i) and/or (ii), or the Confidentiality Agreement and the Company otherwise has complied with Sections 6.13(a)(i) and (ii), and the Company Board determines in good faith (A) after consultation with outside counsel and an independent financial advisor that such Company Takeover Proposal is, or is reasonably likely to result in, a Superior Company Proposal and (B) after consultation with outside counsel that failure to take the actions set forth in clauses (1) and (2) below with respect to such Company Takeover Proposal would be inconsistent with the Company Board's fiduciary duties to the Company's stockholders under applicable Law, the Company may, subject to providing prior written notice of its decision to take such action to Parent and compliance with Section 6.13(c): (1) furnish information with respect to the Company and the Company's Subsidiaries to the Person making such Company Takeover Proposal pursuant to a confidentiality agreement no less restrictive of the other party than the Confidentiality Agreement (but which confidentiality agreement may allow such Person to make any Company Takeover Proposal to the Company in connection with the negotiations and discussions permitted by this Section 6.13), provided that all such information not previously provided to Parent is promptly provided to Parent and (2) participate in discussions or negotiations with the Person making such Company Takeover Proposal regarding such Company Takeover Proposal.

(iv) The parties hereto acknowledge that any violation by any Subsidiary of the Company or any Company Representative of any provision of this Section 6.13 shall be deemed to be a violation by the Company.

(b) Change in Recommendation.

(i) Neither the Company nor the Company Board nor any committee thereof shall (A) (1) withdraw (or qualify or modify in a manner adverse to Parent) or propose to withdraw (or qualify or modify in a manner adverse to Parent), the approval or recommendation by the Company Board or any such committee of this Agreement, the Merger or any of the transactions contemplated by this Agreement or (2) approve or recommend, or propose to approve or recommend, any Company Takeover Proposal (either (1) or (2) being a "**Change in Recommendation**") or (B) approve, or cause or permit the Company or any Subsidiary of the Company to enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement or other similar agreement relating to any Company Takeover Proposal (each, an "**Acquisition Agreement**").

(ii) Notwithstanding the foregoing, if, at any time after the date hereof and prior to the time that the Required Company Stockholder Vote has been obtained, (x) the Company receives a Superior Company Proposal that did not result from a breach or a deemed breach (pursuant to Section 6.13(a)(iv)) by the Company or any Company Representative of Section 6.13(a)(i) and/or Section 6.13(a)(ii), or the Confidentiality Agreement, and (y) the Company Board determines in good faith after consultation with outside counsel that, in light of such proposal, a failure to make a Change in Recommendation would be inconsistent with the Company Board's fiduciary duties to the Company's stockholders under applicable Law, the Company may, (A) make a Change in Recommendation or (B) terminate this Agreement pursuant to Section 8.1(f), so long as (and only if) (i) the Company has complied with this Section 6.13, including subsection (c) below, (ii) the Company Board shall have first provided a Superior Proposal Notice to Parent, (iii) either (x) within five (5) Business Days after receipt of such Superior Proposal Notice (the "**Proposal Period**"), Parent shall not have proposed (in writing and in a manner what would be binding on Parent if accepted by the Company) any adjustments to the terms and conditions of this Agreement or (y) the Company Board shall have determined in good faith, after consultation with its financial advisor, that any such proposal by Parent during the Proposal Period does not cause the Superior Company Proposal to cease to constitute a Superior Company Proposal, and (iv) concurrently with and as a condition to such termination, the Company Board causes the Company to enter into an Acquisition Agreement with such Person with respect to such Superior Company Proposal and to pay the Company Termination Fee pursuant to Section 8.3(b). The Company agrees that, during the Proposal Period, the Company and the Company Representatives shall negotiate in good faith with Parent and the Parent Representatives regarding any revisions to the terms of the transactions contemplated by this Agreement that are proposed by Parent. A "**Superior Proposal Notice**" means a written notice to Parent from the Company advising Parent that the Company Board is prepared to make a Change in Recommendation or accept a Superior Company Proposal, specifying the terms and conditions of such Superior Company Proposal, attaching the most current draft of the Superior Company Proposal and identifying the Person making such Superior Company Proposal (it being understood and agreed that any material amendment to the price or any other material term of such Superior Company Proposal shall require a new Superior Proposal Notice and a new Proposal Period, as provided above.

(iii) Notwithstanding anything to the contrary contained herein, prior to obtaining the Required Company Stockholder Vote, the Company Board may make a Change in Recommendation (except for a Change in Recommendation with respect to a Superior Proposal to which Section 6.13(b)(ii) applies), if the Company Board determines in good faith, after consultation with the Company's outside counsel, that the failure to take such action would be inconsistent with the Company directors' fiduciary duties to the Company stockholders under applicable Law.

(c) Company Takeover Proposal Information.

(i) The Company shall promptly, but in any event within forty-eight (48) hours, (i) advise Parent orally and in writing of any Company Takeover Proposal or any inquiry with respect to, or that would reasonably be expected to lead to or contemplates, any Company Takeover Proposal (including any change to the terms of any such Company Takeover Proposal or inquiry), specifying the material terms and conditions thereof and the identity of the Person making any such Company Takeover Proposal or inquiry and (ii) provide to Parent a copy of all written material provided to the Company or any Subsidiary of the Company or any Company Representative in connection with any such Company Takeover Proposal or any inquiry with respect to, or that would reasonably be expected to lead to or contemplates, any Company Takeover Proposal. The Company shall (A) keep Parent fully informed of the status of any such Company Takeover Proposal or inquiry, and (B) promptly, but in any event within forty-eight (48) hours, advise Parent orally and in writing of any material amendments to the terms of any such Company Takeover Proposal or inquiry and shall provide to Parent a copy of all written materials provided to the Company or any Subsidiary of the Company or any Company Representative in connection with any such Company Takeover Proposal. The Company shall not take any actions whether contractually or otherwise to limit its ability to comply with its obligations hereunder.

(ii) The Company shall provide Parent with at least forty-eight (48) hours prior notice (or such lesser prior notice as is provided to the members of the Company Board) of any meeting of the Company Board at which the Company Board is expected to consider any Company Takeover Proposal or any such inquiry or to consider providing information to any person or group in connection with a Company Takeover Proposal or any such inquiry.

Section 6.14 Tax Free Reorganization.

(a) Each of Parent and the Company shall use its commercially reasonable best efforts to cause the Merger to qualify as a "reorganization" within the meaning of Section 368(a) of the Code. None of Parent, the Company, or their respective Subsidiaries shall take, or agree to take, fail to take, or agree to fail to take, any action (including any action otherwise permitted by Section 6.1 in the case of the Company) that would reasonably be expected to prevent or impede the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code. Pursuant to the foregoing, each Party agrees to make such commercially reasonable additions or modifications to the terms of this Agreement as may be reasonably necessary to permit the Merger to so qualify.

(b) Unless otherwise required by applicable Law, each of Parent, Merger Sub and the Company (i) shall report the Merger as a "reorganization" within the meaning of Section 368(a) of the Code, (ii) shall not take any Tax reporting position inconsistent with such characterization and (iii) shall properly file with their federal income Tax Returns all information required by Treasury Regulations Section 1.368-3.

(c) The Parties hereto shall cooperate and use their commercially reasonable efforts to deliver to Parent's and the Company's Tax counsel and Tax advisors a certificate containing representations reasonably requested by such counsel and/or advisors in connection with the rendering of the Tax opinions to be issued by such counsel and/or advisors with respect to the treatment of the Merger as a reorganization within the meaning of Section 368(a) of the Code as required under Section 7.2(f) and 7.3(d) and in connection with the filing of the Registration Statement. Parent's and the Company's Tax counsel and Tax advisors shall be entitled to rely upon such representations in rendering any such opinions.

(d) The certificates required pursuant to Section 6.14(c) and the tax opinions required pursuant to Section 7.2(e) and Section 7.3(d) will be in a form and content that is reasonably acceptable to both Parent and the Company.

Section 6.15 Litigation. Each of the Parties hereto shall promptly notify the other Parties of any Proceeding that shall be instituted or threatened against a Party to restrain, prohibit or otherwise challenge the legality of any of the transactions contemplated by this Agreement. The Company shall promptly notify the other Parties of any Proceeding that may be threatened or asserted in writing, brought or commenced against such Party or any of such Party's Subsidiaries, that would have been disclosed pursuant to Article IV or Article V, as the case may be, if such Proceeding had arisen prior to the date hereof. The Company agrees that it shall not settle or make an offer to settle any litigation commenced against the Company or any director by any stockholder relating to this Agreement, the Merger or any other transactions contemplated hereby, unless Parent shall have consented in writing to such payment or settlement (with such consent not to be unreasonably withheld).

Section 6.16 Takeover Laws and Rights. If any "fair price," "moratorium," "control share acquisition" or other anti-takeover statute or regulation ("**Takeover Law**") is or may become applicable to this Agreement, the Parent Stockholders Agreement, the Company Shares, the Merger or any of the other transactions contemplated hereby, each of the Company and the Company Board, Parent and the Parent Board shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise act to eliminate or minimize the effects of such Takeover Law on this Agreement, the Parent Stockholders Agreement, the Company Shares, the Merger or such other transactions contemplated hereby.

Section 6.17 Registration Statement on Form S-8. Parent shall, as soon as practicable following the Effective Time, file a registration statement on Form S-8 with the SEC, if available for use by Parent, relating to the shares of Parent Stock issuable with respect to assumed Company Stock Options eligible for registration on Form S-8; *provided, however*, that (i) assumed Company Stock Options held by non-employees of the Company (the "**Non-Employee Options**") shall not be registered by Parent on Form S-8 and (ii) the Non-Employee Options may only be exercised following the Closing upon delivery to Parent of an opinion of counsel, in such form to be reasonably acceptable to Parent, that the exercise does not violate federal or state Law.

Section 6.18 Effects Bargaining. The Company shall be responsible for conducting any necessary "effects" bargaining with any labor union or labor organization that is a party to any collective bargaining Contract with the Company prior to the Closing Date.

Section 6.19 Merger Sub Compliance. Parent shall cause Merger Sub to comply with all of Merger Sub's obligations under this Agreement and to consummate the transactions contemplated hereby upon the terms and subject to the conditions in this Agreement.

Section 6.20 Pollution Liability Insurance. The Company shall, at the Company's expense, (a) prior to the Effective Time maintain in effect its existing pollution liability coverage, and (b) obtain as of the Effective Time and maintain pollution liability coverage for $20 million with no exclusions for pre-existing conditions, in each case for the properties of the Company and covering any releases of Hazardous Materials or other pollution conditions commencing or occurring on each of the properties prior to the Closing, and obtain endorsements naming Parent and Merger Sub as additional insureds, for a period of five (5) years following the Effective Date; *provided*, *however*, that if such pollution liability insurance is unavailable on a commercially reasonable basis and on commercially reasonable terms, the Company shall instead as of the Effective Time obtain and maintain pollution liability insurance as required under this Section 6.20 but in such lesser limits as are available on a commercially reasonable basis and on commercially reasonable terms (the "**Pollution Liability Insurance**").

Section 6.21 Further Assurances. Each of the Parties to this Agreement shall use its reasonable best efforts to effect the transactions contemplated hereby. Each Party hereto, at the reasonable request of another Party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting the consummation of the Merger and the transactions contemplated hereby.

ARTICLE VII

CONDITIONS TO THE MERGER

Section 7.1 Conditions to the Obligations of Each Party. The respective obligations of each party to consummate the Merger are subject to the satisfaction on or prior to the Closing Date of the following conditions:

(a) Stockholder Approval. The Company Voting Proposal shall have been approved at the Company Stockholders' Meeting by the Required Company Stockholder Vote and the Parent Voting Proposals shall have been approved at the Parent Stockholders' Meeting by the applicable Required Parent Stockholder Vote.

(b) No Order. No judgment, injunction, order or decree of a Governmental Entity of competent jurisdiction shall be in effect which has the effect of making the Merger illegal or prohibiting the consummation of the Merger or the other transactions contemplated by this Agreement; *provided, however*, that prior to asserting this condition, subject to Section 6.10, the Party seeking to assert this condition shall have used its reasonable efforts to prevent the entry of any such judgment, injunction, order or decree.

(c) HSR Act; Approvals. All waiting periods, and any extensions thereof, under the HSR Act relating to the Merger or any of the transactions contemplated hereby will have expired or terminated early. All other authorizations, consents, orders, declarations or approvals of, or filings and registrations with, any Governmental Entity that are required to effect the Merger or any of the transactions contemplated hereby shall have been obtained, shall have been made or shall have occurred.

(d) Registration Statement; Joint Proxy Statement/Prospectus. The Registration Statement shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceeding for that purpose, and no similar proceeding with respect to the Joint Proxy Statement/Prospectus, shall have been initiated or threatened in writing by the SEC or its staff and not concluded or withdrawn.

(e) Litigation. There shall not be pending any suit, action or proceeding by any Person or Governmental Entity in any court of competent jurisdiction seeking to prohibit the consummation of the Merger or any other transaction contemplated by this Agreement or that would otherwise cause a Company Material Adverse Effect or a Parent Material Adverse Effect; *provided, however*, that if the court of competent jurisdiction dismisses or renders a final decision denying a Governmental Entity's request for an injunction in such suit, action or proceeding, then four (4) Business Days following such dismissal or decision, this condition to Closing shall, with respect to such suit, action or proceeding, thereafter be deemed satisfied whether or not such Governmental Entity appeals the decision of such court or files an administrative complaint before the Federal Trade Commission.

(f) Parent Stock Price. The VWAP per share of Parent Voting Common Stock, as reported on NASDAQ for the twenty (20) Trading Days immediately preceding the Closing Date, shall equal or exceed $10.00.

(g) NASDAQ Listing. Shares of Parent Voting Common Stock to be issued in the Merger and the transactions contemplated hereby, shall have been authorized for listing on NASDAQ, subject to official notice of issuance.

Section 7.2 Additional Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of each of the following additional conditions, any of which may be waived, in writing, exclusively by Parent and Merger Sub:

(a) Representations and Warranties. Each of the representations and warranties of the Company set forth in this Agreement, without giving effect to any materiality or "Company Material Adverse Effect" qualification therein, shall be true and correct as of the Closing Date, except for such failures to be true and correct as would not have, individually or in the aggregate, a Company Material Adverse Effect (except to the extent such representations and warranties are expressly made as of a certain date, in which case such representations and warranties shall be so true and correct as of such certain date only); *provided, however*, that the representations and warranties contained in (i) Section 4.1 (Organization and Qualification); Section 4.3 (Subsidiaries); Section 4.4(a) and (b) (Authority; Non-Contravention; Approvals) and Section 4.11 (Taxes) shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties are expressly made as of a certain date, in which case such representations and warranties shall be so true and correct in all material respects as of such certain date only), and (ii) Section 4.2 (Capitalization) shall be true and correct in all respects, other than de minimis inaccuracies, at and as of the date of this Agreement and at and as of the Closing Date (except to the extent as permitted or approved pursuant Section 6.1(b)); and Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer and Chief Financial Officer to the effect that the conditions contained in this Section 7.2(a) have been satisfied.

(b) Performance of Obligations. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement on or prior to the Effective Time including, among other obligations, the obligation to obtain the D&O Insurance, and Parent shall have received a certificate signed on behalf of the Company by its Chief Executive Officer and its Chief Financial Officer to such effect.

(c) Material Adverse Effect. Since the date of this Agreement, there shall have been no Company Material Adverse Effect. Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer and the Chief Financial Officer of the Company to such effect.

(d) Consents. The Company shall have obtained the consent or approval of each Person or Governmental Entity whose consent or approval shall be required in connection with the Merger and the transactions contemplated hereby under any loan or credit agreement, note, mortgage, indenture, lease or other Contract or agreement (including any Company Material Contract) or instrument, or otherwise, as required to be set forth in Section 4.4(c) of the Company Disclosure Schedule.

(e) Tax Opinion. Parent shall have received the written opinion of its counsel, Troutman Sanders LLP, in form and substance reasonably satisfactory to Parent, on the basis of facts, representations and assumptions set forth in such opinion and dated the Closing Date, to the effect that the Merger will be treated as a reorganization described in Section 368(a) of the Code (the "**Parent Tax Opinion**"). In rendering such opinion, counsel may require and rely upon representations contained letters or certificates of officers of Parent and the Company, reasonably satisfactory in form and substance to it.

(f) Employment Agreements. The execution and delivery by those individuals identified by Parent within thirty (30) days after the date of this Agreement of employment agreements between such individuals and Parent, in each case in a form substantially similar to the form of employment agreements entered into between Parent and its employees holding similar positions.

(g) Dissenters' Rights. The Company shall not have received demands (in accordance with applicable Law and which have not been withdrawn or effectively withdrawn and with respect to which the right to seek appraisal on the shares underlying such demand has not otherwise been lost) for the appraisal of Company Shares as contemplated by Section 3.4 and within the time periods mandated by the DGCL from holders of Company Shares representing more than one percent (1%) of the issued and outstanding Company Shares.

(h) Resignation Letters. The Company shall have delivered to Parent written resignations of all officers, directors and managers, as the case may be, of the Company and each of the Company's Subsidiary effective as of the Effective Time.

(i) Aurora Coop Litigation. There shall not have occurred an event, nor shall Parent have become aware of information not known by Parent as of December 28, 2014 which, upon the occurrence of such event or upon Parent learning of such information, would be reasonably viewed as either resulting in, or substantially increasing the likelihood of, a material adverse result in any Aurora Coop Litigation (in either case, an "**Adverse Aurora Coop Litigation Event**").

(j) Company Registration Rights Agreements. The Company Registration Rights Agreements shall have been terminated by mutual agreement of the parties thereto and shall be of no further force or effect.

(k) Phase I Environmental Site Assessment. Parent shall have received current and valid Phase I environmental site assessments, performed in accordance with the applicable technical standard, along with a reliance letter if applicable, for each of the Company's Facilities, and such assessments shall not reveal any condition(s) (except any condition(s) that would be reasonably apparent to a reasonable Person under Parent's circumstances from the information disclosed to Parent in the Company's Disclosure Schedules or in the Dataroom on or prior to December 21, 2014, including from any previous Phase I environmental site assessments performed on any site of the Company's Facilities disclosed to Parent in the Dataroom on or prior to such date), that would reasonably be expected to give rise to a cost of remediation exceeding $3,300,000 in the aggregate (including the aforementioned reasonably apparent condition(s)) for the Company's Facilities; provided, that the condition in this Section 7.2(k) shall be deemed to have been satisfied if Parent has not provided notice to the Company within 30 days after receipt of all current and valid Phase I environmental site assessments commissioned by Parent as of the date hereof, that the cost of remediation of the Company's Facilities would in the reasonable determination of Parent be expected to exceed $3,300,000 in the aggregate (the "**Remediation Notice**"). If Parent timely provides the Remediation Notice, but without, however, affecting the satisfaction of the foregoing condition to Closing, the Parties will negotiate in good faith to develop a remediation plan that is mutually acceptable to the Parties.

(l) BNSF. Parent shall not have become aware of information that would reasonably be understood to indicate that the BNSF does not intend to establish a rail track connecting the rail facilities of NELLC to the inner rail loop belonging to the Aurora West Facility along with the associated "diamond switch" crossing the outer rail loop, which lie entirely on land owned by NELLC or Aventine Renewable Energy - Aurora West, LLC such that the Aurora West Facility will be able to ship ethanol by rail in unit trains and single cars (the "**BNSF Connection**").

(m) Releases. The Company shall have obtained releases, in forms that have been made available to Parent in the Dataroom, relating to payment obligations pursuant to (i) a Company Restricted Stock Unit from each Person who has received payments in respect of a Company Restricted Stock Unit or (ii) a bonus or severance payment from each employee of the Company who has received or will receive a bonus or severance payment in connection with the Merger.

Section 7.3 Additional Conditions to Obligations of the Company. The obligation of the Company to effect the Merger shall be subject to the satisfaction on or prior to the Closing Date of each of the following additional conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations and Warranties. Each of the representations and warranties of Parent and Merger Sub set forth in this Agreement, without giving effect to any materiality or "Parent Material Adverse Effect" qualification therein, shall be true and correct as of the Closing Date, except for such failures to be true and correct as would not have, individually or in the aggregate, a Parent Material Adverse Effect (except to the extent such representations and warranties are expressly made as of a certain date, in which case such representations and warranties shall be so true and correct as of such certain date only); *provided*, *however*, that the representations and warranties contained in Section 5.1 (Organization and Qualification); Section 5.3 (Subsidiaries); and Section 5.4(a) (Authority; Non-Contravention: Approvals) shall be true and correct in all material respects as of the Closing Date (except to the extent such representations and warranties are expressly made as of a certain date, in which case such representations and warranties shall be so true and correct in all material respects as of such certain date only); and the Company shall have received a certificate signed on behalf of Parent by its Chief Executive Officer and Chief Financial Officer to the effect that the conditions contained in this Section 7.3(a) have been satisfied.

(b) Performance of Obligations. Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by them under this Agreement on or prior to the Closing Date, and the Company shall have received certificates signed on behalf of Parent by its Chief Executive Officer and Chief Financial Officer to such effect.

(c) Material Adverse Effect. Since the date of this Agreement, there shall have been no Parent Material Adverse Effect. The Company shall have received a certificate signed on behalf of Parent by its Chief Executive Officer and Chief Financial Officer to such effect.

(d) Tax Opinion. The Company shall have received the written opinion of its counsel, Akin Gump Strauss Hauer & Feld LLP, in form and substance reasonably satisfactory to the Company, on the basis of facts, representations and assumptions set forth in such opinion and dated the Closing Date, to the effect that the Merger will be treated as a reorganization described in Section 368(a) of the Code (the "**Company Tax Opinion**"). In rendering such opinion, counsel may require and rely upon representations contained in letters or certificates of officers of Parent and the Company, reasonably satisfactory in form and substance to it.

(e) Directors. The Company shall have received evidence satisfactory to the Company of the appointment of the two individuals nominated by the holders of the majority of the issued and outstanding Company Shares to the Parent Board.

Section 7.4 Frustration of Closing Conditions. Neither the Company, on one hand, nor Parent or Merger Sub, on the other hand, may rely on the failure of any condition set forth in this Article VII to be satisfied if such failure was caused (to any substantial extent) by the Company's failure or either Parents' or Merger Sub's failure, respectively, to act in good faith to comply with this Agreement and to consummate the transactions provided for herein.

ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after any requisite approval of the stockholders of the Company or Merger Sub:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company:

(i) if the Merger has not been consummated on or before May 31, 2015, which shall be automatically extended to June 30, 2015 if the financial statements of Parent that are required to be included in the Registration Statement are for the year ending December 31, 2014 (the "**Termination Date**"); *provided, however*, that the right to terminate this Agreement pursuant to this subsection shall not be available to a Party if the failure of the Closing to occur by such date shall be due to the material breach, violation or failure to perform by such Party of any representation, warranty, covenant, obligation or other agreement of such Party set forth in this Agreement;

(ii) if any Governmental Entity shall have issued a final order, decree or ruling or taken any other final action enjoining or otherwise prohibiting the consummation of the Merger and such order, decree, ruling or other action is or shall have become final and nonappealable;

(iii) if, at the Company Stockholders' Meeting (including any adjournment or postponement thereof permitted by this Agreement) at which a vote on the Company Voting Proposal is taken, the Required Company Stockholder Vote in favor of the Company Voting Proposal shall not have been obtained; or

(iv) if the Parent Stockholders' Meeting (including any adjournments and postponements thereof) shall have been held and completed and Parent's stockholders shall have voted on the Parent Voting Proposals, and the Parent Voting Proposals shall not have been approved at such meeting (and shall not have been approved at any adjournment or postponement thereof) by the Required Parent Stockholder Vote;

(c) by Parent, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, which breach or failure to perform (i) if it occurred or was continuing to occur on the Closing Date, would result in the failure of the conditions set forth in Section 7.2(a) or Section 7.2(b) to be satisfied, and (ii) which is either not curable or is not cured by the earlier of (A) the Termination Date and (B) the date that is thirty (30) days following written notice from the Company to Parent describing such breach, violation or failure in reasonable detail; *provided*, that Parent is not then in material breach or violation of, and has not materially failed to perform, any representation, warranty, covenant, obligation or other agreement contained herein;

(d) by the Company, if there has been a breach of or failure to perform any representation, warranty, covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement, which breach or failure to perform (i) if it occurred or was continuing to occur on the Closing Date, would result in the failure of the conditions set forth in Section 7.3(a) or Section 7.3(b) to be satisfied, and (ii) which is either not curable or is not cured by the earlier of (A) the Termination Date and (B) the date that is thirty (30) days following written notice from Parent to the Company describing such breach, violation or failure in reasonable detail; *provided*, that the Company is not in material breach or violation of, and has not materially failed to perform, any representation, warranty, covenant, obligation or other agreement contained herein;

(e) by Parent (but only prior to the time the Required Company Stockholder Vote is obtained), if (i) the Company Board shall have effected a Change in Recommendation (other than as contemplated by Section 6.13(b)(iii)); (ii) the Company Board shall have approved or recommended to the holders of the Company Shares a Company Takeover Proposal; (iii) a tender offer or exchange offer for Company Shares that constitutes a Company Takeover Proposal is commenced (other than by Parent or any of its Affiliates) and the Company Board recommends that the holders of the Company Shares tender their shares in such tender or exchange offer or the Company Board fails to recommend that the holders of the Company Shares reject such tender or exchange offer within ten (10) Business Days of commencement thereof; or (iv) there has been a material breach by the Company of Section 6.7(a) or Section 6.13;

(f) by the Company, prior to the time that the Required Company Stockholder Vote has been obtained in accordance with Section 6.13(b); *provided, however*, that, in order for the termination of this Agreement pursuant to this Section 8.1(f) to be effective, (A) the Company shall have complied in all respects with the provisions of Section 6.13, including the notice provisions therein, (B) the Company Board shall have authorized the Company to enter into an Acquisition Agreement with respect to a Superior Proposal, (C) substantially concurrently with a termination, pursuant to this Section 8.1(f) the Company enters into such Acquisition Agreement and (D) the Company shall have complied with all applicable requirements of Section 8.3, including payment of the Company Termination Fee; or

(g) by Parent, if there shall have occurred an Adverse Aurora Coop Litigation Event.

The Party desiring to terminate this Agreement pursuant to this Section 8.1 (other than pursuant to Section 8.1(a)) shall give written notice of such termination to the other Parties.

Section 8.2 Effect of Termination. In the event of termination of this Agreement by either Parent or the Company prior to the Effective Time pursuant to the provisions of Section 8.1, this Agreement shall forthwith become void, and there shall be no Liability or further obligation on the part of Parent, the Company or Merger Sub or their respective officers or directors (except for the last sentence of Section 6.3(a) and the entirety of Section 8.2, Section 8.3 and Article IX, all of which shall survive the termination); *provided, however*, that nothing contained in this Section 8.2 shall relieve any Party hereto from any Liability for any willful material breach of this Agreement or fraud occurring prior to termination, in which case the aggrieved Party shall be entitled to all rights and remedies available at law or in equity.

Section 8.3 Fees and Expenses.

(a) General. Except as set forth in this Section 8.3 or as otherwise provided herein, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such expenses whether or not the Merger is consummated.

(b) Termination Fee.

(i) In the event that:

(A) this Agreement is terminated by the Company pursuant to Section 8.1(f); or

(B) this Agreement is terminated by Parent pursuant to Section 8.1(e).

then in the case of (A) or (B) above, the Company shall promptly, but in no event later than the date of the earliest such event, pay to Parent a fee equal to Five Million Nine Hundred Eighty-Two Thousand Dollars ($5,982,000)(the "**Company Termination Fee**"), payable by wire transfer of same day funds; *provided, however*, that, in the case of any termination pursuant to Section 8.1(f), the Company Termination Fee shall be payable prior to, and as a condition to, such termination.

(ii) In the event that this Agreement is terminated by Parent pursuant to Section 8.1(g), Parent shall promptly, but in no event later than the date of the earliest such event, pay to the Company a fee equal to Five Million Nine Hundred Eighty-Two Thousand Dollars ($5,982,000) (the "**Parent Termination Fee**"), payable by wire transfer of same day funds; *provided, however*, that, in the case of any termination pursuant to Section 8.1(g), the Parent Termination Fee shall be payable prior to, and as a condition to, such termination.

(iii) Each of the Company and Parent acknowledges that the agreements contained in this Section 8.3(b) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, each Party would not enter into this Agreement. Accordingly, if the Company or Parent fails promptly to make a payment due pursuant to this Section 8.3(b), and, in order to obtain such payment, Parent or Merger Sub on the one hand, or the Company on the other hand, commences a suit that results in a judgment against the other Party, such other Party shall pay to Parent and Merger Sub or the Company, as applicable, their reasonable costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount set forth in this Section 8.3(b) at the publicly announced prime rate of Bank of America, N.A. plus two percent (2.0%) per annum, compounded quarterly, from the date such payment was required to be paid. Payment of the fees described in this Section 8.3(b) shall not be in lieu of damages incurred in the event of a breach of this Agreement described in Section 8.2.

In no event shall more than one Company Termination Fee or Parent Termination Fee be payable hereunder.

(c) Payment of Company Expenses. In the event this Agreement is terminated by the Company or Parent pursuant to Section 8.1(b)(iv), Parent shall promptly, but in no event later than the third Business Day following the date of termination of this Agreement, reimburse the Company for fees or expenses (including all fees and expenses of counsel, accountants, consultants, financial advisors and investment bankers) incurred by the Company in connection with the authorization, preparation, negotiation, execution or performance of transactions contemplated by this Agreement, up to maximum amount of One Million Nine Hundred Ninety-Four Thousand Dollars ($1,994,000), (the "**Parent Expense Reimbursement Fee**"), payable by wire transfer of same day funds. If Parent fails promptly to make a payment due pursuant to this Section 8.3(c), and, in order to obtain such payment, the Company commences a suit that results in a judgment against Parent, Parent shall pay to the Company its reasonable costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount set forth in this Section 8.3(c) at the publicly announced prime rate of Bank of America, N.A. plus two percent (2.0%) per annum, compounded quarterly, from the date such payment was required to be paid. Payment of the fees described in this Section 8.3(c) shall not be in lieu of damages incurred in the event of a breach of this Agreement described in Section 8.2.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Non-Survival of Representations and Warranties. The representations, warranties and covenants of the Company, Parent and Merger Sub contained in this Agreement, or any instrument delivered pursuant to this Agreement, shall terminate at the Effective Time, except that the covenants that by their terms survive the Effective Time and this Article IX shall survive the Effective Time.

Section 9.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (i) on the date of delivery if delivered personally, (ii) on the date of confirmation of receipt (or, the first Business Day following such receipt if such date is not a Business Day) of transmission by facsimile (but only if followed by transmittal by a nationally recognized overnight carrier for delivery on the next Business Day), or (iii) on the date of confirmation of receipt (or, the first Business Day following such receipt if such date is not a Business Day) if delivered by a nationally recognized overnight courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Parent, Merger Sub, or the Surviving Corporation, to:

Pacific Ethanol, Inc.
400 Capitol Mall, Suite 2060
Sacramento, CA 95814
Attention: Christopher W. Wright, Esq., General Counsel
Email: cwright@pacificethanol.com
Facsimile No.: (916) 403-2785

with copies to:

Troutman Sanders LLP
5 Park Plaza, 14th Floor
Irvine, CA 92614
Attention: Larry A. Cerutti, Esq.
Email: larry.cerutti@troutmansanders.com
Facsimile No.: (949) 622-2739

If to the Company, to:

Aventine Renewable Energy Holdings, Inc.
1300 S. 2nd Street
Pekin, IL 61554
Attention: Christopher A. Nichols, Esq.
Email: Chris.Nichols@AventineREI.com
Facsimile No.: (309) 214-9026

with copies to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attention: Ackneil M. Muldrow, III, Esq.
Email: tmuldrow@akingump.com
Facsimile No.: (212) 872-1002

Section 9.3 Interpretation; Other Remedies. The table of contents, captions and headings contained in this Agreement are solely for convenience of reference and shall not be used to interpret or construe this Agreement. The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

Section 9.4 Transfer Taxes. All stock transfer, real estate transfer, documentary, stamp, recording and other similar Taxes (including interest, penalties and additions to any such Taxes) ("**Transfer Taxes**") incurred in connection with the transactions contemplated by this Agreement shall be paid by Parent, Merger Sub or the Surviving Corporation, and expressly shall not be a liability of the stockholders of the Company.

Section 9.5 Counterparts. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

Section 9.6 Entire Agreement; Third-Party Beneficiaries. This Agreement and all exhibits and attachments hereto, including the Company Disclosure Schedule, the Parent Stockholders Agreement and the Confidentiality Agreement constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, it being understood that the Confidentiality Agreement shall continue in full force and effect until the Closing and shall survive any termination of this Agreement. Each of Parent, Merger Sub and the Company agrees that this Agreement is not intended to, and does not, confer upon any Person, other than the Parties to this Agreement, any rights or remedies, and the Company only shall be entitled to enforce any remedies against Parent and Merger Sub on the one hand, and Parent and Merger Sub shall only be entitled to enforce any remedies against the Company on the other (in each case, including pursuant to Section 9.11 (related to specific performance)) for any breach or violation of this Agreement. Notwithstanding the foregoing, each Company Indemnified Party shall be an express third party beneficiary of and shall be entitled to rely upon Section 6.12 (notwithstanding this Section 9.6). Each of Parent, Merger Sub and the Company also agrees that their respective representations, warranties, covenants, obligations and other agreements set forth herein are solely for the benefit of the other Party hereto, in accordance with and subject to the terms of this Agreement.

Section 9.7 Assignment. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties, except that Parent may assign or pledge as collateral this Agreement or any of its rights and obligations hereunder to an affiliate of Parent or to any financing sources. Any purported assignment in violation of this Section 9.7 shall be void. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 9.8 Amendment. This Agreement may be modified or amended by the Parties hereto, by or pursuant to action taken by their respective Boards of Directors, in the case of Merger Sub or the Company, or Parent, at any time before or after approval of the matters presented in connection with the Merger by the stockholders of the Company or by the stockholder of Merger Sub, but, after any such approval if any such amendment or waiver shall by applicable Law or in accordance with the rules and regulations of NASDAQ require further approval of the Company stockholders, the effectiveness of such amendment or waiver shall be subject to the approval of the Company stockholders; *provided*, *however*, that no modification or amendment of this Agreement or of any provision of this Agreement shall be valid or enforceable unless in writing duly executed by each of the Parties hereto.

Section 9.9 Waiver. At any time prior to the Effective Time, the Parties hereto may (i) extend the time for the performance of any of the obligations or other acts of the other Parties hereto, (ii) waive any inaccuracies in the other Parties' representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the other Parties' agreements or conditions contained herein which may legally be waived. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. No failure of any Party to exercise any power given such Party hereunder or to insist upon strict compliance by any party with its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of that Party's right to demand exact compliance with the terms hereof. Any waiver shall not obligate that Party to agree to any further or subsequent waiver or affect the validity of the provision relating to any such waiver.

Section 9.10 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the Parties hereto. The Parties further agree to negotiate in good faith to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

Section 9.11 Specific Performance. The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 9.12 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Section 9.13 Jurisdiction. Each of the Parties hereto irrevocably and unconditionally agrees that any legal action or Proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other Party hereto or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery (or, if (and only if) the Court of Chancery does not accept jurisdiction over a particular matter, any court within the State of Delaware). Each of the Parties hereto hereby irrevocably submits with regard to any such action or Proceeding for itself and in respect of its property, generally and unconditionally, to the exclusive personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the aforesaid courts. Each of the Parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or Proceeding with respect to this Agreement, (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason, (ii) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) to the fullest extent permitted by applicable Law, any claim that (A) the suit, action or Proceeding in such court is brought in an inconvenient forum, (B) the venue of such suit, action or Proceeding is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each of the Company, Parent and Merger Sub hereby agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth in Section 9.2 shall be effective service of process for any suit or proceeding in connection with this Agreement or the transactions contemplated hereby.

Section 9.14 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED BY THE PARTIES IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (C) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 9.14.

Section 9.15 Disclosure. Any matter disclosed in any Section of a Party's Disclosure Schedule shall be considered disclosed for other sections of such Disclosure Schedule, but only to the extent such matter on its face would reasonably be expected to be pertinent to a particular Section of a Party's Disclosure Schedule in light of the disclosure made in such section. The provision of monetary or other quantitative thresholds for disclosure does not and shall not be deemed to create or imply a standard of materiality hereunder.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized all as of the date first written above.

PACIFIC ETHANOL, INC.

By: /s/ NEIL M. KOEHLER
Name: Neil M. Koehler
Title: President & Chief Executive Officer

AVR MERGER SUB, INC.

By: /s/ NEIL M. KOEHLER
Name: Neil M. Koehler
Title: President & Chief Executive Officer

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: /s/ MARK BEEMER
Name: Mark Beemer
Title: Chief Executive Officer

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

ANNEX B

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
PACIFIC ETHANOL, INC.
a Delaware corporation

PACIFIC ETHANOL, INC. a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), hereby certifies as follows:

1. The name of the Corporation is PACIFIC ETHANOL, INC.

2. That the Corporation's Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on February 28, 2005 (the "**Original Certificate**"). The following were subsequently filed: (i) Certificate of Designations, Powers, Preferences and Rights of the Series A Cumulative Redeemable Convertible Preferred Stock filed with the Secretary of State of Delaware on April 12, 2006; (ii) Certificate of Designations, Powers, Preferences and Rights of the Series B Cumulative Convertible Preferred Stock filed with the Secretary of State of Delaware on March 26, 2008; (iii) Certificate of Amendment of Certificate of Incorporation filed with the Secretary of State of Delaware on June 3, 2010; (iv) Certificate of Amendment of Certificate of Incorporation filed with the Secretary of State of Delaware on June 6, 2011; and (v) Certificate of Amendment of Certificate of Incorporation filed with the Secretary of State of Delaware on May 10, 2013 (the Original Certificate, together with the subsequently filed certificates, shall be collectively referred to as the "**Certificate of Incorporation**").

3. The Certificate of Incorporation of the Corporation is hereby amended by striking out Article FOURTH thereof and by substituting in lieu of said Article the following new Article FOURTH:

"FOURTH: The total number of shares of all classes of stock that the corporation shall have authority to issue is [●] shares, consisting of (A) three hundred million (300,000,000) shares of Common Stock, with the par value of $0.001 per share ("**Common Stock**"), (B) [●] shares of Non-Voting Common Stock, with the par value of $0.001 per share ("**Non-Voting Common Stock**") and (C) ten million (10,000,000) shares of Preferred Stock, with the par value of $0.001 per share ("**Preferred Stock**"), each having the rights set forth in this Article FOURTH.

4.1 Common Stock. Except as otherwise provided by the General Corporation Law of the State of Delaware or in this Article FOURTH (or in any certificate of designation establishing a series of Preferred Stock), the holders of Common Stock shall exclusively possess all voting power of the corporation. Each share of Common Stock shall be equal in all respects to every other share of Common Stock. Each holder of record of issued and outstanding Common Stock shall be entitled to one (1) vote on all matters for each share so held. Subject to the rights and preferences, if any, of the holders of Preferred Stock, each issued and outstanding share of Common Stock shall entitle the record holder thereof to receive dividends and distributions out of funds legally available therefor, when, as and if declared by the board of directors of this corporation (the "**Board of Directors**"), in such amounts and at such times, if any, as the board of directors shall determine, ratably in proportion to the number of shares of Common Stock held by each such record holder. Upon any voluntary or involuntary liquidation, dissolution or winding up of the corporation, after there shall have been paid to or set aside for the holders of any class of capital stock having preference over the Common Stock in such circumstances the full preferential amounts to which they are respectively entitled, the holders of the Common Stock, and of any class or series of capital stock entitled to participate in whole or in part therewith as to the distribution of assets, shall be entitled, after payment or provision for the payment of all debts and liabilities of the corporation, to receive the remaining assets of the corporation available for distribution, in cash or in kind, ratably in proportion to the number of shares of Common Stock (or any class or series of capital stock entitled to participate in whole or in part therewith) held by each such holder.

4.2 Non-Voting Common Stock. Each share of Non-Voting Common Stock shall rank equally in all respects and shall be subject to the following provisions of this Certificate of Incorporation.

4.2.1 Rank. Non-Voting Common Stock shall, with respect to rights on liquidation, winding up and dissolution, rank equally with the Common Stock.

4.2.2 Dividends. Holders of Non-Voting Common Stock shall receive dividends and distributions on parity in all respects with holders of Common Stock; provided, however, that if holders of shares of Common Stock become entitled to receive a distribution or dividend of shares of Common Stock, holders of Non-Voting Common Stock shall receive, in lieu of the shares of Common Stock that they are entitled to receive, an equal number of shares of Non-Voting Common Stock. Dividends or distributions payable pursuant to the preceding sentence shall be payable on the same date that such dividends or distributions are payable to the holders of record of Common Stock.

4.2.3 Liquidation Preference. Holders of Non-Voting Common Stock shall be entitled to receive, in all respects, the same preference as holders of Common Stock in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the corporation.

4.2.4 Voting Rights.

(A) Except as set forth in Section 4.2.4(B) and Section 4.2.4(C) below, holders of shares of Non-Voting Common Stock shall not be entitled to vote (in their capacity as holders of Non-Voting Common Stock) on any matter submitted to a vote of the stockholders of the corporation, but shall be entitled to prior written notice of, and to attend and observe, all special and annual meetings of the stockholders of the corporation.

(B) So long as any shares of Non-Voting Common Stock are outstanding, the corporation shall not, without the affirmative vote at a meeting called for that purpose by holders of at least a majority of the then outstanding shares of Non-Voting Common Stock, voting as a single and separate class, amend, alter or repeal any provision of this Article FOURTH or any other provision of the Certificate of Incorporation (by any means, including by merger, consolidation, reclassification, or otherwise) so as to, or in a manner that would, disproportionately and adversely affect the preferences, rights, privileges or powers of the Non-Voting Common Stock relative to the preferences, rights, privileges or powers of the Common Stock.

(C) The consent or votes required by Section 4.2.4(B) hereof shall be in addition to any approval of stockholders of the corporation which may be required by applicable law or pursuant to any provision of this Certificate of Incorporation.

4.2.5 Conversion.

(A) Optional Conversion; Conversion Upon Transfer.

(i) Holders of Non-Voting Common Stock shall have the right, at any time and from time to time, at the option of such holder, to convert any share of Non-Voting Common Stock held by such holder into one fully paid and non-assessable share of Common Stock, subject to the provisions contained in Section 4.2.5(A)(iii) and subject to the adjustments as described in Section 4.2.5(C) hereof.

(ii) Notwithstanding anything contained in Section 4.2.5(A)(i), at any time when a share of Non-Voting Common Stock is not or ceases to be owned by an Initial Holder or an Affiliate of an Initial Holder, such share of Non-Voting Common Stock, without any further action or deed on the part of the corporation or any other Person, shall automatically convert into one (1) fully paid and non-assessable share of Common Stock subject to adjustments as described in Section 4.2.5(C) hereof.

(iii) Notwithstanding anything to the contrary contained in this Article FOURTH, no Non-Voting Common Stock shall be convertible to Common Stock to the extent (but only to the extent) that after giving effect to such conversion pursuant to this Section 4.2.5, the holder (together with any of its Affiliates) of the Common Stock received from such conversion would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the Common Stock of the corporation. To the extent the above limitation applies, the determination of whether the Non-Voting Common Stock shall be convertible (vis-à-vis other convertible, exercisable or exchangeable securities owned by the holder or any of its Affiliates) and of which such securities shall be convertible, exercisable or exchangeable (as the case may be, as among all such securities owned by the holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the corporation for conversion, exercise or exchange (as the case may be). No prior inability to convert the Non-Voting Common Stock pursuant to this Section 4.25(A)(iii) shall have any effect on the applicability of the provisions of this Section 4.25(A)(iii) with respect to any subsequent determination of exercisability. For the purposes of this Section 4.25(A)(iii), beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent permitted by applicable law, the provisions of this Section 4.25(A)(iii) shall be implemented in a manner otherwise than in strict conformity with the terms of this Section 4.25(A)(iii) to correct this Section 4.25(A)(iii) (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. For purposes of determining Maximum Percentage, in determining the number of outstanding shares of Common Stock, the holder of Non-Voting Common Stock may rely on the number of outstanding shares of Common Stock as reflected in (1) the corporation's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the corporation or (3) any other notice by the corporation or the corporation's transfer agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the holder of Non-Voting Common Stock, the corporation shall within one (1) Business Day confirm orally and in writing to such holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock. By written notice to the corporation, any holder of Non-Voting Common Stock may increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided that (i) any such increase will not be effective until the sixty-first (61^{st}) day after such notice is delivered to the corporation, and (ii) any such increase or decrease will apply only to the holder sending such notice and not to any other holder of Non-Voting Common Stock.

(B) Mechanics of Conversion.

(i) In order to exercise its conversion right pursuant to Section 4.2.5(A)(i), a holder of Non-Voting Common Stock shall (i) surrender the certificate or certificates representing shares of Non-Voting Common Stock at the office of the corporation (or any transfer agent of the corporation previously designated by the corporation to the holders of Non-Voting Common Stock for this purpose) with a written notice of election to convert, completed and signed, specifying the number of shares to be converted.

(ii) Each conversion shall be deemed to have been effected immediately prior to the close of business on (x) in the case of conversion pursuant to Section 4.2.5(A)(i) hereof, the sixty-first (61^{st}) day following the day on which the certificates for shares of Non-Voting Common Stock shall have been surrendered and such notice received by the corporation pursuant to Section 4.2.5(B)(i), and (y) in the case of conversion pursuant to Section 4.2.5(A)(ii) hereof, the date the Non-Voting Common Stock is not or ceases to be owned by an Initial Holder or an Affiliate of an Initial Holder (in either case, the "**Conversion Date**"). On the Conversion Date: (a) the Person in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder of record of the shares of Common Stock represented thereby at such time, and (b) the shares of Non-Voting Common Stock so converted shall no longer be deemed to be outstanding, and all rights of a holder with respect to such shares shall immediately terminate except the right to receive the Common Stock pursuant to this Section 4.2.5. All shares of Common Stock delivered upon conversion of the Non-Voting Common Stock shall, upon delivery, be duly and validly authorized and issued, fully paid and nonassessable.

(iii) Holders of shares of Non-Voting Common Stock at the close of business on the record date for any payment of a dividend in which shares of Non-Voting Common Stock are to participate pursuant to Section 4.2.2 hereof shall be entitled to receive the dividend payable on such shares on the corresponding dividend payment date notwithstanding the conversion thereof following such dividend payment record date and prior to such dividend payment date.

(iv) The corporation shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, solely for the purpose of effecting conversions of the Non-Voting Common Stock, the aggregate number of shares of Common Stock issuable upon conversion of the Non-Voting Common Stock (as if all shares of Non-Voting Common Stock are so convertible). To the extent that shares of Common Stock are listed or traded on a securities exchange, the corporation shall procure, at its sole expense, the listing of all shares of Common Stock issuable upon conversion of the Non-Voting Common Stock, subject to issuance or notice of issuance, on such stock exchange, and shall take all action as may be necessary to ensure that all shares of Common Stock issuable upon conversion of Non-Voting Common Stock shall be issued without violation of any applicable law or regulation or of any requirement of such securities exchange.

(v) Issuance of certificates for shares of Common Stock upon conversion of the Non-Voting Common Stock shall be made without charge to the holder of shares of Non-Voting Common Stock or any of its transferees for any issue or transfer tax (other than taxes in respect of any transfer of Non-Voting Common Stock occurring contemporaneously therewith) or other incidental expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the corporation; provided, however, that the corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance or delivery of shares of Common Stock in a name other than that of the transferee of the Non-Voting Common Stock pursuant to Section 4.2.5(A)(ii) hereof, and no such issuance or delivery need be made unless and until the Person requesting such issuance or delivery has paid to the corporation the amount of any such tax or has established, to the reasonable satisfaction of the corporation, that such tax has been, or will timely be, paid.

(vii) Each share of Common Stock issued as a result of conversion of Non-Voting Common Stock shall be accompanied by any rights associated generally with each other share of Common Stock outstanding as of the applicable Conversion Date.

(C) Adjustments to Non-Voting Common Stock. From and after the date hereof, Non-Voting Common Stock shall be adjusted from time to time as follows:

(i) Stock Splits, Subdivisions, Reclassifications or Combinations. If the corporation shall (a) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (b) combine or reclassify the outstanding Common Stock into a smaller number of shares, the Non-Voting Common Stock shall be equally and ratably subdivided, combined or reclassified on the same basis as that of Common Stock.

(ii) Other Distributions. In case the corporation shall fix a record date for the making of a dividend or distribution to all holders of shares of its Common Stock of (a) shares of any class or of any Person other than shares of the corporation's Common Stock, (b) evidence of indebtedness of the corporation or any Subsidiary, (c) assets (excluding dividends or distributions covered by Section 4.2.5(C)(i)), or (d) rights or warrants in respect of any of the foregoing, in each such case all holders of Non-Voting Common stock shall receive such dividend or distribution equally and ratably in all respects with holders of Common Stock.

(iii) Certain Repurchases of Common Stock. In the event that the corporation effects a Pro Rata Repurchase (as defined below) of Common Stock, the corporation shall, simultaneously with the Offer related to such Pro Rata Repurchase of Common Stock, offer, in writing and in compliance with applicable laws, to all holders of Non-Voting Common Stock to purchase, on an equal, share-for-share basis, a percentage of all shares of Non-Voting Common Stock equal to the percentage of all shares of Common Stock that the corporation has offered to purchase under the related Offer, which offer to the holders of Non-Voting Common Stock shall be open for the same period, offer the same form and value of consideration, and otherwise be on the same terms and conditions, as such Offer to the holders of Common Stock in all respects.

As used in this Section 4.2.5(C)(iii): "**Pro Rata Repurchase**" means any purchase of shares of Common Stock by the corporation or any Subsidiary thereof pursuant to any Offer. "**Offer**" means any tender offer or exchange offer subject to Section 13(e) of the Exchange Act, or pursuant to any other offer available to substantially all holders of Common Stock, whether for cash, shares of capital stock of the corporation, other securities of the corporation, evidences of indebtedness of the corporation or any other Person or any other property (including, without limitation, shares of capital stock, other securities or evidences of indebtedness of a Subsidiary of the corporation), or any combination thereof, effected while the Non-Voting Common Stock is outstanding.

(iv) Business Combinations. In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock covered by Section 4.2.5(C)(i)), lawful provision shall be made as part of the terms of such Business Combination or reclassification whereby the holder of each share of Non-Voting Common Stock then outstanding shall have the right thereafter, to convert such share only into the kind and amount of securities, cash and other property receivable upon the Business Combination or reclassification by holders of Common Stock; provided, that, if the holders of at least a majority of the outstanding shares of Non-Voting Common Stock so elect, any such security receivable upon such Business Combination or reclassification by holders of Common Stock shall not have voting rights greater than those contained in Section 4.2.4 hereof.

(v) Adjustment for Unspecified Actions. If the corporation takes any action affecting the Common Stock, other than an action described in this Section 4.2.5(C), which would materially adversely affect the conversion rights of the holders of shares of Non-Voting Common Stock, the provisions of this Certificate of Incorporation shall be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Directors of the corporation may determine in good faith to be equitable in the circumstances.

(vi) Notices. In the event that the corporation shall give notice or make a public announcement to the holders of Common Stock of any action of the type described in this Section 4.2.5(C) or in Sections 4.2.2 or 4.2.4 hereof, the corporation shall, at the time of such notice or announcement, and in the case of any action which would require the fixing of a record date, at least ten (10) days prior to such record date, give notice to the holders of shares of Non-Voting Common Stock, by mail, first class postage prepaid, which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto as shall be reasonably necessary to indicate the effect on the Non-Voting Common Stock and the number, kind or class of shares or other securities or property which shall be deliverable upon conversion of the Non-Voting Common Stock.

4.2.6 Certain Other Provisions.

(A) The provisions of this Section 4.2 shall not be in effect at any time that there are no shares of Non-Voting Common Stock outstanding.

(B) No provision in this Section 4.2 shall be construed to limit or impair the right of each holder of Non-Voting Common Stock to participate equally and ratably in dividends and distributions pursuant to Section 4.2.2 hereof, the operation of any of the provisions of Section 4.2.5 hereof or the rights, preferences and privileges of a holder of Non-Voting Common Stock pursuant to Sections 4.2.1 and 4.2.3 hereof.

(C) If any Non-Voting Common Stock certificate shall be mutilated, lost, stolen or destroyed, the corporation shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the certificate lost, stolen or destroyed, a new Non-Voting Common Stock certificate of like tenor and representing an equivalent amount of Non-Voting Common Stock, upon receipt of evidence of such loss, theft or destruction of such certificate and, if requested by the corporation, an indemnity on customary terms for such situations reasonably satisfactory to the corporation.

(D) The corporation shall not, by amendment of this Certificate of Incorporation or through reorganization, consolidation, merger, dissolution, sale of assets, or otherwise, avoid or seek to avoid the observance or performance of any of the terms of this Section 4.2, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate in order to protect the rights of the holders of Non-Voting Common Stock against dilution or impairment. At all times, the corporation shall take all such actions as may be necessary or appropriate in order that the corporation may validly and legally issue shares of Common Stock as herein contemplated upon conversion of the shares of Non-Voting Common Stock.

(E) The headings and various subdivisions used within this Section 4.2 are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

4.2.7 Definitions. Unless the context otherwise requires, when used in this Section 4.2, the following terms shall have the meaning indicated.

"**Affiliate**" means with respect to any Person, any other Person directly, or indirectly through one or more intermediaries, controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" (and correlative terms "controlling," "controlled by" and "under common control with") means possession of the power, whether by contract, equity ownership or otherwise, to direct the policies or management of a Person.

"**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required by law to remain closed.

"**Business Combination**" means (i) any reorganization, consolidation, merger, share exchange or similar business combination transaction involving the corporation or (ii) the sale, assignment, conveyance, transfer, lease or other disposition by the corporation of all or substantially all of its assets.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"**Initial Holder"** means any Person who received shares of Non-Voting Common Stock upon the closing of that certain Agreement and Plan of Merger by and among Pacific Ethanol, Inc., Aventine Merger Sub, Inc. and Aventine Renewable Energy Holdings, Inc. dated December [●], 2014.

"**Person**" means an individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act).

"**Subsidiary**" of a Person means (i) a corporation, a majority of whose stock with voting power, under ordinary circumstances, to elect directors is at the time of determination, directly or indirectly, owned by such Person or by one or more Subsidiaries of such Person, or (ii) any other entity (other than a corporation) in which such Person or one or more Subsidiaries of such Person, directly or indirectly, at the date of determination thereof has at least a majority ownership interest.

4.3 Preferred Stock. The Board of Directors is authorized by resolution or resolutions, from time to time adopted, to provide for the issuance of Preferred Stock in one or more series and to fix and state the voting powers, designations, preferences and relative participating, optional or other special rights of the shares of each series and the qualifications, limitations and restrictions thereof, including, but not limited to, determination of one or more of the following:

(i) the distinctive designations of each such series and the number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors in creating such series) or decreased (but not below the number of shares thereof then outstanding) from time to time by the Board of Directors;

(ii) the annual rate or amount of dividends payable on shares of such series, whether such dividends shall be cumulative or non-cumulative, the conditions upon which and the dates when such dividends shall be payable, the date from which dividends on cumulative series shall accrue and be cumulative on all shares of such series issued prior to the payment date for the first dividend of such series, the relative rights of priority, if any, of payment of dividends on the shares of that series, and the participating or other special rights, if any, with respect to such dividends;

(iii) whether such series will have any voting rights in addition to those prescribed by law and, if so, the terms and conditions of the exercise of such voting rights;

(iv) whether the shares of such series will be redeemable or callable and, if so, the prices at which, and the terms and conditions on which, such shares may be redeemed or called, which prices may vary under different conditions and at different redemption or call dates;

(v) the amount or amounts payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the corporation, and the relative rights of priority, if any, of payment of shares of such series;

(vi) whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price or prices at which such shares may be redeemed or purchased through the application of such fund;

(vii) whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of capital stock of the corporation, and if so convertible or exchangeable, the conversion price or prices, or the rate or rates of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms of such conversion or exchange;

(viii) whether the shares of such series that are redeemed or converted shall have the status of authorized but unissued shares of Preferred Stock and whether such shares may be reissued as shares of the same or any other series of stock;

(ix) the conditions and restrictions, if any, on the payment of dividends or on the making of other distributions on, or the purchase, redemption or other acquisition by the corporation, or any subsidiary thereof, of, the Common Stock or any other class (or other series of the same class) ranking junior to the shares of such series as to dividends or upon liquidation, dissolution or winding up of the corporation; and

(x) the conditions and restrictions, if any, on the creation of indebtedness of the corporation, or any subsidiary thereof, or on the issue of any additional stock ranking on parity with or prior to the shares of such series as to dividends or upon liquidation, dissolution or winding up of the corporation.

All shares within each series of Preferred Stock shall be alike in every particular, except with respect to the dates from which dividends, if any, shall commence to accrue.

4.4 Reverse Stock Split on June 8, 2011. On June 8, 2011 (the "**First Split Date**"), each share of common stock, par value $0.001 per share (the "**Oldest Common Stock**"), issued and outstanding immediately before the First Split Date, was reclassified as and changed into one-seventh (1/7) of a share of common stock, par value $0.001 per share (the "**Newer Common Stock**"). The corporation, through its transfer agent, provided certificates representing Newer Common Stock to holders of Oldest Common Stock in exchange for certificates representing Oldest Common Stock. From and after the First Split Date, certificates representing shares of Oldest Common Stock were cancelled and as of the First Split Date represent only the right of holders thereof to receive Newer Common Stock. The corporation did not issue fractional shares of Newer Common Stock. The reverse stock split did not increase or decrease the amount of stated capital or paid-in surplus of the corporation, and any fractional share that would otherwise be issuable as a result of the reverse stock split was rounded up to the nearest whole share of Newer Common Stock. From the First Split Date until the Second Split Date (as defined below), the term "Newer Common Stock" as used in this Article FOURTH shall mean Common Stock as provided in the Certificate of Incorporation. From and after the Second Split Date, the term "Newer Common Stock" as used in this Article FOURTH shall mean Older Common Stock as provided in the Certificate of Incorporation.

4.5 Reverse Stock Split on May 14, 2013. On May 14, 2013 (the "**Second Split Date**"), each share of common stock, par value $0.001 per share (the "**Older Common Stock**"), issued and outstanding immediately before the Second Split Date, was reclassified as and changed into one-fifteenth (1/15) of a share of common stock, par value $0.001 per share (the "**Newest Common Stock**"). The corporation, through its transfer agent, provided certificates representing Newest Common Stock to holders of Older Common Stock in exchange for certificates representing Older Common Stock. From and after the Second Split Date, certificates representing shares of Older Common Stock were cancelled and now represent only the right of holders thereof to receive Newest Common Stock. The corporation did not issue fractional shares of Newest Common Stock. The reverse stock split did not increase or decrease the amount of stated capital or paid-in surplus of the corporation, and any fractional share that would otherwise be issuable as a result of the reverse stock split was rounded up to the nearest whole share of Newest Common Stock. From and after the Second Split Date, the term "Newest Common Stock" as used in this Article FOURTH shall mean common stock as provided in the Certificate of Incorporation."

4. The amendment of the Certificate of Incorporation herein certified has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

5. The Effective Date of this Amendment will be [●], 2015 at 12:01 a.m. Eastern Time.

IN WITNESS WHEREOF, said Corporation has caused this Certificate to be signed this [●]th day of [●], 2015.

/s/ Christopher W. Wright
Christopher W. Wright
Vice President, General Counsel & Secretary

ANNEX C-1

STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (the "**Stockholders Agreement**"), dated as of December 30, 2014, is by and among those entities holding shares of Aventine Renewable Energy Holdings, Inc. as set forth in the signature pages hereto (each a "**Stockholder**"; and collectively, "**Stockholders**") and Pacific Ethanol, Inc., a Delaware corporation ("**Parent**").

RECITALS

WHEREAS, contemporaneously with the execution and delivery of this Stockholders Agreement, Parent, AVR Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Parent (the "**Merger Sub**"), and Aventine Renewable Energy Holdings, Inc., a Delaware corporation (the "**Company**"), are entering into an Agreement and Plan of Merger (the "**Merger Agreement**"), dated as of the date hereof, which provides for the merger of Merger Sub with and into the Company, with the Company surviving as a wholly owned subsidiary of Parent (the "**Merger**");

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Merger Agreement;

WHEREAS, in the aggregate, Stockholders hold of record and own beneficially the number of shares of the Company's capital stock set forth on Exhibit A, certain of which shares, as noted on Exhibit A, are subject to pending sales by Stockholders to a third party pursuant to one or more transfer agreements entered into prior to the date hereof (collectively, the "**Third Party Transfers**");

WHEREAS, Stockholders wish to enter into this Stockholders Agreement solely with respect to their respective Pro Rata Share of an aggregate 51% of the issued and outstanding shares of capital stock of the Company (the Stockholders' shares described herein, collectively, the "**Shares**," are set forth on Exhibit B); for purposes of this Stockholders Agreement, "**Pro Rata Share**" means, as to any Stockholder, a fraction, (i) the numerator of which is the number of shares of the Company's capital stock held by the Stockholder as set forth on Exhibit A, and (ii) the denominator of which is the sum of (A) the number of shares of the Company's capital stock held by all Stockholders, in each case after the Third Party Transfers, and (B) the CS Shares (as defined in Section 16 below); and

WHEREAS, Stockholders stand to receive a material benefit from the Merger in the form of the consideration payable in the Merger in respect of the Shares and, as a condition to entering into the Merger Agreement, Parent has required that Stockholders agree, and Stockholders have agreed, to enter into this Stockholders Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and obligations set forth herein, and intending to be legally bound hereby, each of the parties hereto agrees as follows:

1. Representations and Warranties of Stockholders. Each Stockholder hereby severally, but not jointly, represents and warrants, as to itself only, to Parent as follows:

(a) Title. As of the date hereof, such Stockholder holds of record and owns beneficially, free and clear of any Encumbrances (other than restrictions under applicable securities Laws), all of the Shares set forth opposite its name on Exhibit B hereto. Other than the Shares and those additional shares of Company stock set forth on Exhibit A, such Stockholder does not, directly or indirectly, own any shares of capital stock of the Company, any option, warrant or other right to acquire shares of capital stock of the Company or any other securities of the Company. Other than the agreements subject to the Third Party Transfers, such Stockholder is not a party to any executory written or oral agreement, contract, subcontract, lease, instrument, commitment or undertaking of any nature ("**Contract**") (other than this Stockholders Agreement) that could require such Stockholder to sell, transfer or otherwise dispose of any capital stock of the Company and each Subsidiary of the Company.

(b) Right to Vote. Such Stockholder has full legal power, authority and right to vote all of the Shares, in favor of the approval and authorization of the Merger Agreement and the principal terms of the Merger without any approval, consent, ratification, permission, waiver or authorization (including any consents of Governmental Entities) ("**Consent**") of, or any other action on the part of, any other Person. Without limiting the generality of the foregoing, except as otherwise provided in this Stockholders Agreement or as set forth on Exhibit B hereto, such Stockholder has not entered into any voting agreement with any Person with respect to any of the Shares, granted any Person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposited any of the Shares in a voting trust or entered into any arrangement or agreement with any Person limiting or affecting such Stockholder's legal power, authority or right to vote the Shares on any matter.

(c) Authority. Such Stockholder has full legal power, capacity, authority and right to execute and deliver, and to perform its obligations under, this Stockholders Agreement. This Stockholders Agreement has been duly and validly authorized, executed and delivered by such Stockholder and constitutes a valid and binding agreement of Stockholder enforceable against Stockholder in accordance with its terms.

(d) Opportunity. Such Stockholder has had the opportunity to review this Stockholders Agreement and the Merger Agreement. Such Stockholder has had adequate opportunity to discuss the requirements of this Stockholders Agreement with his or her professional advisors to the extent such Stockholder has deemed necessary. Such Stockholder understands that its representations and agreements contained herein constitute a material inducement and condition to Parent and Merger Sub in entering the Merger.

(e) No Conflicts; Consents. The execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, result in or constitute (with or without notice or lapse of time) any breach of or default under, or result (with or without notice or lapse of time) in the creation of any Encumbrance on any of the Shares pursuant to, any Contract to which such Stockholder is a party or by which such Stockholder or any of the Shares are bound or affected as of the date of this Stockholders Agreement. The execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, require any Consent of any Person.

(f) Due Organization.

(i) If such Stockholder is an Entity: (A) such Stockholder is duly organized, validly existing and in good standing under the laws of the jurisdiction under which such Stockholder is organized; (B) the execution, delivery and performance of this Stockholders Agreement by such Stockholder has been duly authorized by all necessary action on the part of the board of directors of such Stockholder or other Persons performing similar functions; and (C) the execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, (I) result in or constitute any breach of or default under the partnership agreement or any of the other organizational documents of such Stockholder, or (II) require the approval of holders of voting or equity interests in Stockholder, other than any approval already obtained, except in each case as will not adversely affect the ability of such Stockholder to perform its obligations hereunder in any material respect or to consummate the transactions contemplated hereby in a timely manner.

(ii) If such Stockholder is an executor of an estate or trustee of a trust: (A) such Stockholder is the sole executor or trustee of such estate or trust; (B) such Stockholder has the sole power and authority to act on behalf of and bind such estate or trust; and (C) the execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, (I) result in or constitute any breach of or default under the will, trust agreement or other document relating to such estate or trust, or (II) require the approval of any beneficiary of such estate or trust, other than any approval already obtained.

(g) Accuracy of Representations and Warranties. All of such Stockholder's representations and warranties contained in this Stockholders Agreement will be accurate on the Closing as if made on and as of the Closing, *provided, however*, that Exhibits A and B may be updated as of Closing to reflect the consummation of the Third Party Transfers and/or transfers of shares or Shares permitted pursuant to the terms of this Stockholders Agreement.

2. Representations and Warranties of Parent. Parent hereby represents and warrants to each Stockholder as follows:

(a) Authority. Parent has full legal power, capacity, authority and right to execute and deliver, and to perform its obligations under, this Stockholders Agreement. This Stockholders Agreement has been duly and validly authorized, executed and delivered by Parent and constitutes a valid and binding agreement of Parent enforceable against Parent in accordance with its terms.

3. Stockholder Covenants. Until the termination of this Stockholders Agreement in accordance with Section 8(b), each Stockholder hereby severally, but not jointly, as to itself only, agrees as follows:

(a) Restrictions on Transfer. Such Stockholder agrees that, except for the Third Party Transfers, during the period from the Execution Date of the Merger Agreement through the Effective Time (the "**Pre-Closing Period**"), such Stockholder shall not directly or indirectly sell or otherwise transfer or dispose of, or pledge or otherwise permit to be subject to any Encumbrance (other than the Merger Agreement), any of the Shares, or any direct or indirect beneficial interest therein, unless such proposed transferee agrees, pursuant to a written agreement in form and content reasonably satisfactory to Parent, to be bound by, and comply with, the terms and provisions of this Stockholders Agreement in its entirety (subject to any necessary name or like changes) with respect to such transferred Shares.

(b) Agreement to Vote. Such Stockholder agrees that, following the execution and delivery of the Merger Agreement, such Stockholder shall vote the Shares at regular or special meetings of stockholders of the Company, including adjournments thereof, or in any other circumstances upon which a vote, consent or other approval (including by written consent) is sought (i) with respect to the Merger and the Merger Agreement, in favor of any proposal to approve the Merger Agreement and the Merger and (ii) with respect to all other proposals submitted to the stockholders of the Company, which, directly or indirectly, would reasonably be expected to prevent or materially delay the consummation of the Merger or the transactions contemplated by the Merger Agreement, in such manner as Parent may direct. Such Stockholder agrees not to withdraw any such vote and not to take any other action that is inconsistent with such Stockholder's obligation to vote in favor of approval of the Merger Agreement and the Merger or that may have the effect of delaying or interfering with the Merger.

(c) Market Stand-Off Agreement. Except as provided herein, such Stockholder will not, without the prior written consent of Parent, directly or indirectly offer, sell or contract or grant any option to sell, or otherwise dispose of (including short sales, sales against the box and/or other hedging or derivative transactions), pledge or transfer 100% of the shares of Parent Stock acquired by such Stockholder (including any Parent Voting Common Stock into which any Parent Non-Voting Common Stock is converted) pursuant to the terms of the Merger Agreement in exchange for the Shares (the "**Restricted Merger Consideration Shares**") for a period commencing on the Closing Date and continuing through (i) the 30th day thereafter, after which an aggregate of 25% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions, (ii) the 60th day thereafter, after which an aggregate of 50% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions, (iii) the 90th day thereafter, after which an aggregate of 75% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions, and (iv) the 120th day thereafter, after which an aggregate of 100% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions. The foregoing sentence shall not apply to (A) transfers of Restricted Merger Consideration Shares to immediate family members or trusts, partnerships, limited liability companies or other entities for the benefit of such family members, (B) transfers of Restricted Merger Consideration Shares to a wholly-owned subsidiary, parent, general partner, limited partner, retired partner, member or retired member of the undersigned, or (C) transfers of Restricted Merger Consideration Shares by such Stockholder in non-public transactions; *provided, however*, that in each case, (1) such transferee takes such Restricted Merger Consideration Shares subject to all of the provisions of this Stockholders Agreement, and (2) no filing by any party (transferor or transferee) under the Securities Exchange Act of 1934, as amended, shall be required or shall be voluntarily made in connection with such transfer of Restricted Merger Consideration Shares.

(d) No Actions. From and after the date hereof, except as otherwise permitted by this Stockholders Agreement, such Stockholder will not commit any act that would reasonably be expected to restrict or otherwise adversely affect in any material respect Stockholder's legal power, authority and right to vote all of the Shares. Without limiting the generality of the foregoing, except as required by this Stockholders Agreement, from and after the date hereof, such Stockholder will not enter into any voting agreement with any Person with respect to any of the Shares, grant any Person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposit any of the Shares in a voting trust or otherwise enter into any Contract with any Person limiting or affecting such Stockholder's legal power, capacity, authority or right to vote the Shares in favor of the Merger Agreement and the Merger.

(e) No Solicitation. Such Stockholder shall not, nor shall it authorize or permit any officer, director, employee of such Stockholder or instruct any investment banker, financial advisor, attorney or other advisor or representative of such Stockholder to, directly or indirectly (i) solicit, initiate, or encourage the submission of, any Company Takeover Proposal, (ii) enter into any agreement with respect to or approve or recommend any Company Takeover Proposal or (iii) participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to the Company or any Subsidiary in connection with, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Company Takeover Proposal. For the avoidance of doubt, a Stockholder may discuss any matters or information relating to the Company, any Subsidiary or any actual or potential Company Takeover Proposal with any of the partners, members, officers, directors, employees, advisors (including investment advisers), attorneys and other agents and representatives of (x) such Stockholder or any other Stockholder, (y) Credit Suisse AG or one or more of its Affiliates ("**CS**") or (z) the Company; provided, that the Stockholder complies with its obligations under this Section 3(e).

(f) Public Announcements. During the Pre-Closing Period, except as may be required under applicable Law, such Stockholder shall not (and such Stockholder shall not permit any of its representatives to) issue any press release or make any public statement regarding this Stockholders Agreement, the Merger Agreement or the Merger, or regarding any of the other transactions contemplated by this Stockholders Agreement or the Merger Agreement, without Parent's prior written consent. Unless made available to the public by any Stockholder or its Affiliate, the foregoing shall not apply or otherwise restrict investor communications between any Stockholder and its investors.

(g) Exercise of Drag-Along. With respect to the Shares, such Stockholder, simultaneously with CS and each other Stockholder, hereby agrees to exercise its drag-along rights under Article 6 of the Aventine Stockholders Agreement in favor of the Merger Agreement and the Merger. Pursuant to such exercise, such Stockholder shall furnish, together with CS and each other Stockholder, a Sale Notice (as such term is defined in the Aventine Stockholders Agreement) to all other stockholders of the Company party to the Aventine Stockholders Agreement in accordance with the terms thereof. Furthermore, at the reasonable request of Parent, Company or any other Stockholder, such Stockholder agrees to execute such additional instruments and other writings, and take such other action, as Parent, Company or any other Stockholder may reasonably request to effect or evidence the performance of Article 6 of the Aventine Stockholders Agreement in connection with the Merger.

4. Waiver of Dissenters' Rights. Each Stockholder hereby irrevocably and unconditionally waives, and agrees not to assert, (a) any dissenters' rights or any similar right relating to the Merger that Stockholder may have by virtue of, or with respect to, all of its shares of capital stock of the Company, and (b) any right to object to the manner in which the consideration to be paid to the Stockholders of the Company in connection with the Merger is to be calculated or paid pursuant to the Merger Agreement, or the nature or amount of consideration to be paid to Stockholder or any other stockholder of the Company pursuant to the Merger Agreement.

5. Parent Covenants. Until the termination of this Stockholders Agreement in accordance with Section 8(b), Parent hereby agrees not to consent to or permit the amendment of Section 6.13(b) of the Merger Agreement without the prior consent of Stockholders holding at least a majority of the Shares.

6. Action in Stockholder Capacity Only. No Stockholder makes an agreement or understanding herein in such Stockholder's capacity as a director, officer or employee of the Company. Each Stockholder is executing this Stockholders Agreement solely in such Stockholder's capacity as a record holder and beneficial owner of the Shares, and nothing herein shall limit or affect any actions taken in such Stockholder's capacity as an officer, director or employee of the Company.

7. Additional Shares. For the avoidance of doubt, if, after the date hereof, Stockholders acquire beneficial or record ownership of any additional shares of capital stock of the Company (any such shares, "**Additional Shares**"), including, without limitation, upon exercise of any option, warrant or right to acquire shares of capital stock of the Company or through any stock dividend or stock split, the provisions of this Stockholders Agreement applicable to the Shares shall not be applicable to such Additional Shares; *provided*, *however*, that the provisions of Section 4 of this Stockholders Agreement shall apply to any Additional Shares.

8. Amendments; Termination.

(a) This Stockholders Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement executed by the parties hereto.

(b) This Stockholders Agreement shall terminate upon the first to occur of (i) the Closing Date, (ii) the date of any material modification, waiver or amendment to any provision of the Merger Agreement that reduces the amount, changes the form or otherwise adversely affects the consideration payable to the Stockholder pursuant to the Merger Agreement as in effect on the date hereof, (iii) the valid termination of the Merger Agreement in accordance with its terms, and (iv) the mutual written consent of all of the parties hereto. Upon due termination of this Stockholders Agreement, no party shall have any further obligations or liabilities under this Stockholders Agreement; *provided, however*, that: (x) no party shall be relieved of any obligation or liability arising from any prior breach by such party of any representation, warranty, covenant or obligation of Stockholders contained in this Stockholders Agreement; and (y) subject to Section 16, Stockholders shall, in all events, remain bound by and continue to be subject to the provisions set forth in Sections 7 (excluding the proviso therein), 8, 9, 11 through 15 and 17 through 19 of this Stockholders Agreement; and (z) if this Stockholders Agreement terminates as a result of the occurrence of the Closing Date, Stockholders shall, in all events, remain bound by and continue to be subject to the provisions set forth in the Sections referenced in subsection (y) above and Sections 3(c), 4 and 7 (including the proviso therein).

9. Severability. If any term or other provision of this Stockholders Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other terms, conditions and provisions of this Stockholders Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Stockholders Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Stockholders Agreement may be consummated as originally contemplated to the fullest extent possible. If the parties fail to so agree within ten (10) Business Days of such determination that any term or other provision is invalid, illegal or incapable of being enforced, such holding shall not affect the validity or enforceability of any other aspect hereof (or of such provision in another jurisdiction) and the parties agree and hereby request that the court or arbitrator(s) make such valid modifications to (or replacement of, if necessary) the invalid provision as are necessary and reasonable to most closely approximate the parties' intent as evidenced hereby as a whole.

10. Execution in Counterparts; Exchanges by Facsimile or Electronic Transmission. This Stockholders Agreement may be executed in counterparts, each of which shall be an original, with the same effect as if the signatures hereto and thereto were upon the same instrument. The exchange of a fully executed Stockholders Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms of this Stockholders Agreement.

11. Specific Performance. The parties hereto agree that the failure for any reason of a Stockholder to perform any of such Stockholder's covenants or obligations under this Stockholders Agreement will cause irreparable harm or injury to Parent with respect to which money damages would not be an adequate remedy. Accordingly, such Stockholder agrees that, in seeking to enforce this Stockholders Agreement against such Stockholder, Parent shall be entitled to specific performance and injunctive and other equitable relief in addition to any other remedy available at law, in equity or otherwise.

12. Governing Law; Submission to Jurisdiction.

(a) This Stockholders Agreement shall be construed in accordance with, and governed in all respects by, the internal Laws of the State of Delaware (without giving effect to principles of conflicts of laws which would result in the application of the Law of any other jurisdiction). Any action, suit or proceeding relating to this Stockholders Agreement or the enforcement of any provision of this Stockholders Agreement may be brought or otherwise commenced in any state or federal court located in Wilmington, Delaware. Each party to this Stockholders Agreement: (i) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in the State of Delaware; (ii) agrees that each state and federal court located in Wilmington, Delaware shall be deemed to be a convenient forum; (iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such action, suit or proceeding commenced in any state or federal court located in Wilmington, Delaware, any claim that such party is not subject personally to the jurisdiction of such court, that such action, suit or proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Stockholders Agreement or the subject matter of this Stockholders Agreement may not be enforced in or by such court; and (iv) waives such party's right to trial by jury.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS STOCKHOLDERS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY CONTROVERSY INVOLVING ANY REPRESENTATIVE OF PARENT UNDER THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12(b).

13. Successors and Assigns. This Stockholders Agreement shall be binding upon: Parent and its successors and assigns (if any); each Stockholder and the Stockholders' heirs, executors, personal representatives, successors and assigns (if any). This Stockholders Agreement shall inure to the benefit of Parent and its respective successors and assigns (if any). Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party; *provided, however*, that Parent may assign this Stockholders Agreement or any of the rights, interests hereunder to an affiliate of Parent or to any financing sources.

14. Entire Agreement. This Stockholders Agreement and the Merger Agreement set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof.

15. Notices. Any notice or other communication required or permitted to be delivered to any party under this Stockholders Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile) to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

If to Parent, to:

Pacific Ethanol, Inc.
400 Capitol Mall, Suite 2060
Sacramento, CA 95814
Attention: Christopher W. Wright, Esq., General Counsel
Email: cwright@pacificethanol.com
Facsimile No.: (916) 403-2785

with copy to:

Troutman Sanders LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614
Attention: Larry A. Cerutti, Esq.
Email: larry.cerutti@troutmansanders.com
Facsimile No.: (949) 622-2739

If to a Stockholder, to the address set forth beneath such Stockholders name on the signature page hereto with copy to:

Candlewood Investment Group, LP
777 Third Avenue, Suite 19B
New York, NY 10017
Attention: David Koenig
Janet Miller, General Counsel/COO
Email: dkoenig@candlewoodgroup.com; compliance@candlewoodgroup.com
Facsimile No.: (212) 493-4492

16. Condition to Effectiveness. This Stockholders Agreement shall not be effective and shall be of no force or effect until (a) the Merger Agreement is executed by all parties thereto, (b) this Agreement is executed by all parties hereto and (c) such time as CS has executed an agreement substantially identical to this Stockholders Agreement with respect to all shares of the Company's capital stock beneficially held by CS, after giving effect to the Third Party Transfers (collectively, the "**CS Shares**"), pursuant to which CS agrees to vote its Pro Rata Share of an aggregate 51% of the issued and outstanding shares of capital stock of the Company (together with the Shares) in favor of the Merger Agreement and the Merger.

17. No Ownership Interest. Except as otherwise expressly provided herein, nothing contained in this Stockholders Agreement shall be deemed to vest in Parent or Merger Sub any direct or indirect ownership or incidence of ownership of or with respect to the Shares. All rights, ownership and economic benefits of and relating to the Shares shall remain vested in and belong to each applicable Stockholder, and neither Parent nor Merger Sub shall have any authority to manage, direct, restrict, regulate, govern, or administer any of the policies or operations of the Company or exercise any power or authority to direct such Stockholder in the voting of any of the Shares, except as otherwise expressly provided herein.

18. Stockholder Obligations Several and Not Joint. The obligations of each Stockholder hereunder shall be several and not joint, and no Stockholder shall be liable for any breach of the terms of this Agreement by any other Stockholder.

19. Definitions.

"**Aventine Stockholders Agreement**" means that certain Stockholders Agreement dated as of September 24, 2012 by and among Aventine Renewable Energy Holdings, Inc. and certain investors and stockholders party thereto.

"**Encumbrance**" means, except (i) as provided in the ordinary course with any Stockholder's prime broker, or (ii) pursuant to the Aventine Stockholders Agreement, any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, preemptive right or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

"**Entity**" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

[*Remainder of Page Intentionally left Blank.*]

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

PACIFIC ETHANOL, INC.

By: /s/ NEIL M. KOEHLER
Name: Neil M. Koehler
Title: Chief Executive Officer

STOCKHOLDER: Candlewood Special Situations Master Fund, Ltd.

By: /s/ DAVID KOENIG
Name: David Koenig
Authorized Signatory

STOCKHOLDER: CWD OC 522 Master Fund, Ltd.

By: /s/ DAVID KOENIG
Name: David Koenig
Authorized Signatory

STOCKHOLDER: Candlewood Financial Opportunities Master Fund, LP

By: /s/ DAVID KOENIG
Name: David Koenig
Authorized Signatory

STOCKHOLDER: Candlewood Financial Opportunities Fund, LLC

By: /s/ DAVID KOENIG
Name: David Koenig
Authorized Signatory

STOCKHOLDER: Flagler Master Fund SPC Ltd., for itself and on behalf of its Class A Segregated Portfolio

By: /s/ DAVID KOENIG
Name: David Koenig
Authorized Signatory

STOCKHOLDER: Flagler Master Fund SPC Ltd., for itself and on behalf of its Class B Segregated Portfolio

By: /s/ DAVID KOENIG
Name: David Koenig
Authorized Signatory

EXHIBIT A

All Company capital stock held by Stockholders

	December 30,2014	Post-Third Party Transfers	Third Party Transfers
TOTAL held by Stockholders	8,439,977	7,600,533	(839,444)
Candlewood Special Situations Master Fund, Ltd.	3,913,400	3,859,390	(54,010)
CWD OC 522 Master Fund, Ltd.	3,476,269	2,902,228	(574,041)
Candlewood Financial Opportunities Master Fund, LP	253,440	246,392	(7,048)
Candlewood Financial Opportunities Fund, LLC	181,393	61,598	(119,795)
Flagler Master Fund SPC Ltd. – Class A Segregated Portfolio	431,378	432,052	674
Flagler Master Fund SPC Ltd. – Class B Segregated Portfolio	184,097	98,873	(85,224)

EXHIBIT B

All Shares held by Stockholders & Related Proxy Documents

TOTAL held by Stockholders	5,299,342	
Candlewood Special Situations Master Fund, Ltd.	2,690,894	
CWD OC 522 Master Fund, Ltd.	2,023,529	
Candlewood Financial Opportunities Master Fund, LP	171,792	
Candlewood Financial Opportunities Fund, LLC	42,948	
Flagler Master Fund SPC Ltd. – Class A Segregated Portfolio	301,241	
Flagler Master Fund SPC Ltd. – Class B Segregated Portfolio	68,938	
Credit Suisse	1,946,696[1]	
Total	7,246,038	51.0%
	14,207,917	

1. Investment Management Agreement effective as of September 30, 2010 between the Candlewood Special Situations Master Fund, Ltd. and Candlewood Investment Group, LP
2. Investment Management Agreement effective as of August 17, 2011 by and among Candlewood Investment Group, LP, CWD OC 522 Offshore Fund, Ltd., CWD OC 522 Master Fund, LTD., and that certain investor
3. Investment Advisory Agreement made August 1, 2013 by and between Candlewood Financial Opportunities Master Fund, LP, Candlewood Investment Group Financial Advisors, LLC, and Candlewood Financial Opportunities General, LLC
4. Investment Advisory Agreement made July 19, 2013 by and between Candlewood Financial Opportunities Fund, LLC, Candlewood Investment Group Financial Advisors, LLC, and Candlewood Financial Opportunities General, LLC
5. Amended and Restated Investment Management Agreement effective as of May 28, 2014 entered into by and among Candlewood Investment Group, LP, Flagler Offshore Fund, Ltd., Flagler Master Fund SPC Ltd, on behalf of its Class A Segregated Portfolio and its Class B Segregated Portfolio and that certain investment advisor, general partner and/or managing member to investment funds or other accounts

[1] As provided by Credit Suisse Securities (USA) LLC. Stockholders do not represent or warrant as to the accuracy of the Credit Suisse stockholder holdings.

ANNEX C-2

STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (the "**Stockholders Agreement**"), dated as of December 30, 2014, is by and among the entity holding shares of Aventine Renewable Energy Holdings, Inc. as set forth in the signature pages hereto (the "**Stockholder**") and Pacific Ethanol, Inc., a Delaware corporation ("**Parent**").

RECITALS

WHEREAS, contemporaneously with the execution and delivery of this Stockholders Agreement, Parent, AVR Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Parent (the "**Merger Sub**"), and Aventine Renewable Energy Holdings, Inc., a Delaware corporation (the "**Company**"), are entering into an Agreement and Plan of Merger (the "**Merger Agreement**"), dated as of the date hereof, which provides for the merger of Merger Sub with and into the Company, with the Company surviving as a wholly owned subsidiary of Parent (the "**Merger**");

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Merger Agreement;

WHEREAS, the Stockholder holds of record and owns beneficially the number of shares of the Company's capital stock set forth on Exhibit A, certain of which shares, as noted on Exhibit A, are subject to pending sales by the Stockholder to a third party pursuant to one or more transfer agreements entered into prior to the date hereof (collectively, the "**Third Party Transfers**");

WHEREAS, the Stockholder wishes to enter into this Stockholders Agreement solely with respect to its Pro Rata Share of an aggregate 51% of the issued and outstanding shares of capital stock of the Company (the Stockholder's shares described herein, collectively, the "**Shares**," are set forth on Exhibit B); for purposes of this Stockholders Agreement, "**Pro Rata Share**" means, as to the Stockholder, a fraction, (i) the numerator of which is the number of shares of the Company's capital stock held by the Stockholder as set forth on Exhibit A, and (ii) the denominator of which is the sum of (A) the number of shares of the Company's capital stock held by the Stockholder, in each case after the Third Party Transfers, and (B) the Candlewood Shares (as defined in Section 16 below); and

WHEREAS, the Stockholder stands to receive a material benefit from the Merger in the form of the consideration payable in the Merger in respect of the Shares and, as a condition to entering into the Merger Agreement, Parent has required that the Stockholder agrees, and the Stockholder has agreed, to enter into this Stockholders Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and obligations set forth herein, and intending to be legally bound hereby, each of the parties hereto agrees as follows:

1. Representations and Warranties of the Stockholder. The Stockholder hereby represents and warrants to Parent as follows:

(a) Title. As of the date hereof, such Stockholder holds of record and owns beneficially, free and clear of any Encumbrances (other than restrictions under applicable securities Laws), all of the Shares set forth opposite its name on Exhibit B hereto. Other than the Shares and those additional shares of Company stock set forth on Exhibit A, such Stockholder does not, directly or indirectly, own any shares of capital stock of the Company, any option, warrant or other right to acquire shares of capital stock of the Company or any other securities of the Company. Other than the agreements subject to the Third Party Transfers, such Stockholder is not a party to any executory written or oral agreement, contract, subcontract, lease, instrument, commitment or undertaking of any nature ("**Contract**") (other than this Stockholders Agreement) that could require such Stockholder to sell, transfer or otherwise dispose of any capital stock of the Company and each Subsidiary of the Company.

(b) Right to Vote. Such Stockholder has full legal power, authority and right to vote all of the Shares, in favor of the approval and authorization of the Merger Agreement and the principal terms of the Merger without any approval, consent, ratification, permission, waiver or authorization (including any consents of Governmental Entities) ("**Consent**") of, or any other action on the part of, any other Person. Without limiting the generality of the foregoing, except as otherwise provided in this Stockholders Agreement or as set forth on Exhibit B hereto, such Stockholder has not entered into any voting agreement with any Person with respect to any of the Shares, granted any Person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposited any of the Shares in a voting trust or entered into any arrangement or agreement with any Person limiting or affecting such Stockholder's legal power, authority or right to vote the Shares on any matter.

(c) Authority. Such Stockholder has full legal power, capacity, authority and right to execute and deliver, and to perform its obligations under, this Stockholders Agreement. This Stockholders Agreement has been duly and validly authorized, executed and delivered by such Stockholder and constitutes a valid and binding agreement of Stockholder enforceable against Stockholder in accordance with its terms.

(d) Opportunity. Such Stockholder has had the opportunity to review this Stockholders Agreement and the Merger Agreement. Such Stockholder has had adequate opportunity to discuss the requirements of this Stockholders Agreement with his or her professional advisors to the extent such Stockholder has deemed necessary. Such Stockholder understands that its representations and agreements contained herein constitute a material inducement and condition to Parent and Merger Sub in entering the Merger.

(e) No Conflicts; Consents. The execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, result in or constitute (with or without notice or lapse of time) any breach of or default under, or result (with or without notice or lapse of time) in the creation of any Encumbrance on any of the Shares pursuant to, any Contract to which such Stockholder is a party or by which such Stockholder or any of the Shares are bound or affected as of the date of this Stockholders Agreement. The execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, require any Consent of any Person.

(f) Due Organization.

(i) If such Stockholder is an Entity: (A) such Stockholder is duly organized, validly existing and in good standing under the laws of the jurisdiction under which such Stockholder is organized; (B) the execution, delivery and performance of this Stockholders Agreement by such Stockholder has been duly authorized by all necessary action on the part of the board of directors of such Stockholder or other Persons performing similar functions; and (C) the execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, (I) result in or constitute any breach of or default under the partnership agreement or any of the other organizational documents of such Stockholder, or (II) require the approval of holders of voting or equity interests in Stockholder, other than any approval already obtained, except in each case as will not adversely affect the ability of such Stockholder to perform its obligations hereunder in any material respect or to consummate the transactions contemplated hereby in a timely manner.

(ii) If such Stockholder is an executor of an estate or trustee of a trust: (A) such Stockholder is the sole executor or trustee of such estate or trust; (B) such Stockholder has the sole power and authority to act on behalf of and bind such estate or trust; and (C) the execution and delivery of this Stockholders Agreement by such Stockholder does not and will not, and the performance of this Stockholders Agreement by such Stockholder will not, (I) result in or constitute any breach of or default under the will, trust agreement or other document relating to such estate or trust, or (II) require the approval of any beneficiary of such estate or trust, other than any approval already obtained.

(g) Accuracy of Representations and Warranties. All of such Stockholder's representations and warranties contained in this Stockholders Agreement will be accurate on the Closing as if made on and as of the Closing, *provided, however*, that Exhibits A and B may be updated as of Closing to reflect the consummation of the Third Party Transfers and/or transfers of shares or Shares permitted pursuant to the terms of this Stockholders Agreement.

2. Representations and Warranties of Parent. Parent hereby represents and warrants to Stockholder as follows:

(a) Authority. Parent has full legal power, capacity, authority and right to execute and deliver, and to perform its obligations under, this Stockholders Agreement. This Stockholders Agreement has been duly and validly authorized, executed and delivered by Parent and constitutes a valid and binding agreement of Parent enforceable against Parent in accordance with its terms.

3. Stockholder Covenants. Until the termination of this Stockholders Agreement in accordance with Section 8(b), the Stockholder hereby agrees as follows:

(a) Restrictions on Transfer. Such Stockholder agrees that, except for the Third Party Transfers, during the period from the Execution Date of the Merger Agreement through the Effective Time (the "**Pre-Closing Period**"), such Stockholder shall not directly or indirectly sell or otherwise transfer or dispose of, or pledge or otherwise permit to be subject to any Encumbrance (other than the Merger Agreement), any of the Shares, or any direct or indirect beneficial interest therein, unless such proposed transferee agrees, pursuant to a written agreement in form and content reasonably satisfactory to Parent, to be bound by, and comply with, the terms and provisions of this Stockholders Agreement in its entirety (subject to any necessary name or like changes) with respect to such transferred Shares.

(b) Agreement to Vote. Such Stockholder agrees that, following the execution and delivery of the Merger Agreement, such Stockholder shall vote the Shares at regular or special meetings of stockholders of the Company, including adjournments thereof, or in any other circumstances upon which a vote, consent or other approval (including by written consent) is sought (i) with respect to the Merger and the Merger Agreement, in favor of any proposal to approve the Merger Agreement and the Merger and (ii) with respect to all other proposals submitted to the stockholders of the Company, which, directly or indirectly, would reasonably be expected to prevent or materially delay the consummation of the Merger or the transactions contemplated by the Merger Agreement, in such manner as Parent may direct. Such Stockholder agrees not to withdraw any such vote and not to take any other action that is inconsistent with such Stockholder's obligation to vote in favor of approval of the Merger Agreement and the Merger or that may have the effect of delaying or interfering with the Merger.

(c) Market Stand-Off Agreement. Except as provided herein, such Stockholder will not, without the prior written consent of Parent, directly or indirectly offer, sell or contract or grant any option to sell, or otherwise dispose of (including short sales, sales against the box and/or other hedging or derivative transactions), pledge or transfer 100% of the shares of Parent Stock acquired by such Stockholder (including any Parent Voting Common Stock into which any Parent Non-Voting Common Stock is converted) pursuant to the terms of the Merger Agreement in exchange for the Shares (the "**Restricted Merger Consideration Shares**") for a period commencing on the Closing Date and continuing through (i) the 30th day thereafter, after which an aggregate of 25% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions, (ii) the 60th day thereafter, after which an aggregate of 50% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions, (iii) the 90th day thereafter, after which an aggregate of 75% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions, and (iv) the 120th day thereafter, after which an aggregate of 100% of the Restricted Merger Consideration Shares shall be released from the foregoing restrictions. The foregoing sentence shall not apply to (A) transfers of Restricted Merger Consideration Shares to immediate family members or trusts, partnerships, limited liability companies or other entities for the benefit of such family members, (B) transfers of Restricted Merger Consideration Shares to a wholly-owned subsidiary, parent, general partner, limited partner, retired partner, member or retired member of the undersigned, or (C) transfers of Restricted Merger Consideration Shares by such Stockholder in non-public transactions; *provided, however*, that in each case, (1) such transferee takes such Restricted Merger Consideration Shares subject to all of the provisions of this Stockholders Agreement, and (2) no filing by any party (transferor or transferee) under the Securities Exchange Act of 1934, as amended, shall be required or shall be voluntarily made in connection with such transfer of Restricted Merger Consideration Shares.

(d) No Actions. From and after the date hereof, except as otherwise permitted by this Stockholders Agreement, such Stockholder will not commit any act that would reasonably be expected to restrict or otherwise adversely affect in any material respect Stockholder's legal power, authority and right to vote all of the Shares. Without limiting the generality of the foregoing, except as required by this Stockholders Agreement, from and after the date hereof, such Stockholder will not enter into any voting agreement with any Person with respect to any of the Shares, grant any Person any proxy (revocable or irrevocable) or power of attorney with respect to any of the Shares, deposit any of the Shares in a voting trust or otherwise enter into any Contract with any Person limiting or affecting such Stockholder's legal power, capacity, authority or right to vote the Shares in favor of the Merger Agreement and the Merger.

(e) No Solicitation. Such Stockholder shall not, nor shall it authorize or permit any officer, director, employee of such Stockholder or instruct any investment banker, financial advisor, attorney or other advisor or representative of such Stockholder to, directly or indirectly (i) solicit, initiate, or encourage the submission of, any Company Takeover Proposal, (ii) enter into any agreement with respect to or approve or recommend any Company Takeover Proposal or (iii) participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to the Company or any Subsidiary in connection with, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Company Takeover Proposal. For the avoidance of doubt, the Stockholder may discuss any matters or information relating to the Company, any Subsidiary or any actual or potential Company Takeover Proposal with any of the partners, members, officers, directors, employees, advisors (including investment advisers), attorneys and other agents and representatives of (x) such Stockholder, (y) certain investment funds for which Candlewood Investment Group, LP or one or more of its Affiliates provides investment advice (collectively, the "**Candlewood Entities**") or (z) the Company; provided, that the Stockholder complies with its obligations under this Section 3(e).

(f) Public Announcements. During the Pre-Closing Period, except as may be required under applicable Law, such Stockholder shall not (and such Stockholder shall not permit any of its representatives to) issue any press release or make any public statement regarding this Stockholders Agreement, the Merger Agreement or the Merger, or regarding any of the other transactions contemplated by this Stockholders Agreement or the Merger Agreement, without Parent's prior written consent. Unless made available to the public by the Stockholder or its Affiliate, the foregoing shall not apply or otherwise restrict investor communications between the Stockholder and its investors.

(g) Exercise of Drag-Along. With respect to the Shares, such Stockholder, simultaneously with the Candlewood Entities, hereby agrees to exercise its drag-along rights under Article 6 of the Aventine Stockholders Agreement in favor of the Merger Agreement and the Merger. Pursuant to such exercise, such Stockholder shall furnish, together with the Candlewood Entities, a Sale Notice (as such term is defined in the Aventine Stockholders Agreement) to all other stockholders of the Company party to the Aventine Stockholders Agreement in accordance with the terms thereof. Furthermore, at the reasonable request of Parent or Company, such Stockholder agrees to execute such additional instruments and other writings, and take such other action, as Parent or Company may reasonably request to effect or evidence the performance of Article 6 of the Aventine Stockholders Agreement in connection with the Merger.

4. Waiver of Dissenters' Rights. The Stockholder hereby irrevocably and unconditionally waives, and agrees not to assert, (a) any dissenters' rights or any similar right relating to the Merger that Stockholder may have by virtue of, or with respect to, all of its shares of capital stock of the Company, and (b) any right to object to the manner in which the consideration to be paid to the Stockholder of the Company in connection with the Merger is to be calculated or paid pursuant to the Merger Agreement, or the nature or amount of consideration to be paid to Stockholder or any other stockholder of the Company pursuant to the Merger Agreement.

5. Parent Covenants. Until the termination of this Stockholders Agreement in accordance with Section 8(b), Parent hereby agrees not to consent to or permit the amendment of Section 6.13(b) of the Merger Agreement without the prior consent of the Stockholder.

6. Action in Stockholder Capacity Only. No Stockholder makes an agreement or understanding herein in such Stockholder's capacity as a director, officer or employee of the Company. The Stockholder is executing this Stockholders Agreement solely in such Stockholder's capacity as a record holder and beneficial owner of the Shares, and nothing herein shall limit or affect any actions taken in such Stockholder's capacity as an officer, director or employee of the Company.

7. Additional Shares. For the avoidance of doubt, if, after the date hereof, the Stockholder acquires beneficial or record ownership of any additional shares of capital stock of the Company (any such shares, "**Additional Shares**"), including, without limitation, upon exercise of any option, warrant or right to acquire shares of capital stock of the Company or through any stock dividend or stock split, the provisions of this Stockholders Agreement applicable to the Shares shall not be applicable to such Additional Shares; *provided*, *however*, that the provisions of Section 4 of this Stockholders Agreement shall apply to any Additional Shares.

8. Amendments; Termination.

(a) This Stockholders Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement executed by the parties hereto.

(b) This Stockholders Agreement shall terminate upon the first to occur of (i) the Closing Date, (ii) the date of any material modification, waiver or amendment to any provision of the Merger Agreement that reduces the amount, changes the form or otherwise adversely affects the consideration payable to the Stockholder pursuant to the Merger Agreement as in effect on the date hereof, (iii) the valid termination of the Merger Agreement in accordance with its terms, and (iv) the mutual written consent of all of the parties hereto. Upon due termination of this Stockholders Agreement, no party shall have any further obligations or liabilities under this Stockholders Agreement; *provided, however*, that: (x) no party shall be relieved of any obligation or liability arising from any prior breach by such party of any representation, warranty, covenant or obligation of the Stockholder contained in this Stockholders Agreement; and (y) subject to Section 16, the Stockholder shall, in all events, remain bound by and continue to be subject to the provisions set forth in Sections 7 (excluding the proviso therein), 8, 9, 11 through 15 and 17 through 19 of this Stockholders Agreement; and (z) if this Stockholders Agreement terminates as a result of the occurrence of the Closing Date, the Stockholder shall, in all events, remain bound by and continue to be subject to the provisions set forth in the Sections referenced in subsection (y) above and Sections 3(c), 4 and 7 (including the proviso therein).

9. Severability. If any term or other provision of this Stockholders Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other terms, conditions and provisions of this Stockholders Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Stockholders Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Stockholders Agreement may be consummated as originally contemplated to the fullest extent possible. If the parties fail to so agree within ten (10) Business Days of such determination that any term or other provision is invalid, illegal or incapable of being enforced, such holding shall not affect the validity or enforceability of any other aspect hereof (or of such provision in another jurisdiction) and the parties agree and hereby request that the court or arbitrator(s) make such valid modifications to (or replacement of, if necessary) the invalid provision as are necessary and reasonable to most closely approximate the parties' intent as evidenced hereby as a whole.

10. Execution in Counterparts; Exchanges by Facsimile or Electronic Transmission. This Stockholders Agreement may be executed in counterparts, each of which shall be an original, with the same effect as if the signatures hereto and thereto were upon the same instrument. The exchange of a fully executed Stockholders Agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms of this Stockholders Agreement.

11. Specific Performance. The parties hereto agree that the failure for any reason of the Stockholder to perform any of Stockholder's covenants or obligations under this Stockholders Agreement will cause irreparable harm or injury to Parent with respect to which money damages would not be an adequate remedy. Accordingly, the Stockholder agrees that, in seeking to enforce this Stockholder Agreement against the Stockholder, Parent shall be entitled to specific performance and injunctive and other equitable relief in addition to any other remedy available at law, in equity or otherwise.

12. Governing Law; Submission to Jurisdiction.

(a) This Stockholders Agreement shall be construed in accordance with, and governed in all respects by, the internal Laws of the State of Delaware (without giving effect to principles of conflicts of laws which would result in the application of the Law of any other jurisdiction). Any action, suit or proceeding relating to this Stockholders Agreement or the enforcement of any provision of this Stockholders Agreement may be brought or otherwise commenced in any state or federal court located in Wilmington, Delaware. Each party to this Stockholders Agreement: (i) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in the State of Delaware; (ii) agrees that each state and federal court located in Wilmington, Delaware shall be deemed to be a convenient forum; (iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such action, suit or proceeding commenced in any state or federal court located in Wilmington, Delaware, any claim that such party is not subject personally to the jurisdiction of such court, that such action, suit or proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Stockholders Agreement or the subject matter of this Stockholders Agreement may not be enforced in or by such court; and (iv) waives such party's right to trial by jury.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS STOCKHOLDERS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY CONTROVERSY INVOLVING ANY REPRESENTATIVE OF PARENT UNDER THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12(b).

13. Successors and Assigns. This Stockholders Agreement shall be binding upon: Parent and its successors and assigns (if any); the Stockholder and the Stockholder's heirs, executors, personal representatives, successors and assigns (if any). This Stockholders Agreement shall inure to the benefit of Parent and its respective successors and assigns (if any). Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party; *provided, however*, that Parent may assign this Stockholders Agreement or any of the rights, interests hereunder to an affiliate of Parent or to any financing sources.

14. Entire Agreement. This Stockholders Agreement and the Merger Agreement set forth the entire understanding of the parties hereto relating to the subject matter hereof and thereof and supersede all prior agreements and understandings among or between any of the parties relating to the subject matter hereof and thereof.

15. Notices. Any notice or other communication required or permitted to be delivered to any party under this Stockholders Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile) to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties hereto):

If to Parent, to:

Pacific Ethanol, Inc.
400 Capitol Mall, Suite 2060
Sacramento, CA 95814
Attention: Christopher W. Wright, Esq., General Counsel
Email: cwright@pacificethanol.com
Facsimile No.: (916) 403-2785

with copy to:

Troutman Sanders LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614
Attention: Larry A. Cerutti, Esq.
Email: larry.cerutti@troutmansanders.com
Facsimile No.: (949) 622-2739

If to the Stockholder, to the address set forth beneath the Stockholder's name on the signature page hereto with copy to:

Credit Suisse Securities (USA) LLC
11 Madison Avenue
New York, NY 10010
Attention: Ashwinee Sawh
Email: Americas.loandocs@credit-suisse.com

16. Condition to Effectiveness. This Stockholders Agreement shall not be effective and shall be of no force or effect until (a) the Merger Agreement is executed by all parties thereto, (b) this Agreement is executed by all parties hereto and (c) such time as the Candlewood Entities have executed an agreement substantially identical to this Stockholders Agreement with respect to all shares of the Company's capital stock beneficially held by such Candlewood Entities, after giving effect to the Third Party Transfers (collectively, the "**Candlewood Shares**"), pursuant to which the Candlewood Entities agree to vote their respective Pro Rata Share of an aggregate 51% of the issued and outstanding shares of capital stock of the Company (together with the Shares) in favor of the Merger Agreement and the Merger.

17. No Ownership Interest. Except as otherwise expressly provided herein, nothing contained in this Stockholders Agreement shall be deemed to vest in Parent or Merger Sub any direct or indirect ownership or incidence of ownership of or with respect to the Shares. All rights, ownership and economic benefits of and relating to the Shares shall remain vested in and belong to each applicable Stockholder, and neither Parent nor Merger Sub shall have any authority to manage, direct, restrict, regulate, govern, or administer any of the policies or operations of the Company or exercise any power or authority to direct such Stockholder in the voting of any of the Shares, except as otherwise expressly provided herein.

18. Reserved.

19. Definitions.

"**Aventine Stockholders Agreement**" means that certain Stockholders Agreement dated as of September 24, 2012 by and among Aventine Renewable Energy Holdings, Inc. and certain investors and stockholders party thereto.

"**Encumbrance**" means, except (i) as provided in the ordinary course with the Stockholder's prime broker, or (ii) pursuant to the Aventine Stockholders Agreement, any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, preemptive right or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

"**Entity**" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

[*Remainder of Page Intentionally left Blank.*]

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

PACIFIC ETHANOL, INC.

By: /s/ NEIL M. KOEHLER
Name: Neil M. Koehler
Title: Chief Executive Officer

STOCKHOLDER: Credit Suisse Securities (USA) LLC

By: /s/ NORMAN PARTON

Name: Norman Parton
Authorized Signatory

EXHIBIT A

All Company capital stock held by Stockholder

	December 30,2014	Post-Third Party Transfers	Third Party Transfers
TOTAL held by Stockholder	1,862,023	2,792,031	930,008
Credit Suisse Securities (USA) LLC	1,862,023	2,792,031	930,008

EXHIBIT B

All Shares held by Stockholder

TOTAL held by Stockholder	1,946,696	
Credit Suisse Securities (USA) LLC	1,946,696	
Candlewood Entities	5,299,342[1]	
Total	7,246,038	51.0%
	14,207,917	

[1] As provided by Candlewood Investment Group, LP. Stockholder does not represent or warrant as to the accuracy of the Candlewood Entities' holdings.

ANNEX D

December 29, 2014

Personal and Confidential

Board of Directors
Pacific Ethanol, Inc.
400 Capitol Mall, Suite 2060
Sacramento, California 95814

Members of the Board of Directors:

You have requested our opinion as to the fairness, from a financial point of view, to Pacific Ethanol, Inc. (the "Company") of the Exchange Ratio set forth in a draft of the Agreement and Plan of Merger (the "Agreement"), dated December 27, 2014, to be entered into among the Company, Aventine Merger Sub, Inc. (the "Merger Sub"), a wholly owned subsidiary of the Company, and Aventine Renewable Energy Holdings, Inc, a Delaware corporation ("Aventine"). The Agreement provides for the merger (the "Merger") of the Merger Sub with and into Aventine pursuant to which, among other things, each share of common stock of Aventine, other than Dissenting Shares and shares held in the treasury of Aventine and shares owned by the Company or by any direct or indirect wholly-owned subsidiary of the Company or Aventine, will be converted into the right to receive 1.25 shares of common stock of the Company (the shares of common stock of the Company issuable at such ratio being the "Exchange Ratio"). The terms and conditions of the Merger are more fully set forth in the Agreement. Capitalized terms not otherwise defined in this letter have the same meaning as in the Agreement.

We, as a customary part of our investment banking business, engage in the valuation of businesses and their securities in connection with mergers and acquisitions, underwriting and secondary distributions of securities, private placements and valuations for estate, corporate and other purposes. We have been engaged by the Company to render an opinion to its Board of Directors and we will receive a fee from the Company for rendering this opinion. This opinion fee is not contingent upon the consummation of the Merger or the conclusions reached in our opinion. Further the Company has agreed to pay us a retainer fee and to reimburse our expenses and indemnify us against certain liabilities that may arise in relation to our engagement. We have not been requested to, and did not, (i) participate in negotiations with respect to the Agreement, (ii) solicit any expressions of interest from any other parties with respect to any business combination with the Company or any other alternative transaction or (iii) advise the Board of Directors or any other party with respect to alternatives to the Merger. In addition, we were not requested to and did not provide advice regarding the structure, the Exchange Ratio, any other aspect of the Merger, or to provide services other than the delivery of this opinion. We have not otherwise acted as financial advisor to any party to the Merger.

In the ordinary course of our business, we and our affiliates may actively trade securities of the Company for our own account or the account of our customers and, accordingly, we may at any time hold a long or short position in such securities. We have, in the past two years, provided financial advisory and financing services to the Company, and have received fees for the rendering of such services.

In connection with our review of the Merger, and in arriving at our opinion, we have: (i) reviewed the financial terms of the draft of the Agreement dated December 27, 2014; (ii) reviewed certain business, financial and other information and data with respect to the Company publicly available or made available to us from internal records of the Company; (iii) reviewed certain business, financial and other information and data with respect to Aventine made available to us from internal records of Aventine; (iv) reviewed certain internal financial projections for the Company and Aventine on a stand-alone basis prepared for financial planning purposes and furnished to us by management of the Company and Aventine, respectively, including but not limited to forecasts prepared by Company management of future utilization of the Company's net operating losses; (v) conducted discussions with members of the senior management of the Company and Aventine with respect to the business and prospects of the Company and Aventine, respectively, on a stand-alone basis and on a combined basis; (vi) reviewed the reported prices and trading activity of Company common stock and similar information for certain other companies deemed by us to be comparable to the Company; (vii) compared the financial performance of the Company and Aventine with that of certain other publicly traded companies deemed by us to be comparable to the Company and Aventine, respectively; (viii) reviewed the financial terms, to the extent publicly available, of certain comparable merger transactions; and (ix) performed a discounted cash flows analysis for the Company and Aventine, each on a stand-alone basis. In addition, we have conducted such other analyses, examinations and inquiries and considered such other financial, economic and market criteria as we have deemed necessary and appropriate in arriving at our opinion.

In conducting our review and in rendering our opinion, we have relied upon and assumed the accuracy, completeness and fairness of the financial, accounting and other information discussed with us, reviewed by us, provided to us or otherwise made available to us, and have not attempted to independently verify, and have not assumed responsibility for the independent verification, of such information. We have further relied upon the assurances of the Company's and Aventine's management that the information provided has been prepared on a reasonable basis in accordance with industry practice, and that they are not aware of any information or facts that would make the information provided to us incomplete or misleading. We have assumed that there have been no material changes in either the Company's or Aventine's assets, financial condition, results of operations, business or prospects since the date of the last financial statements made available to us. Without limiting the generality of the foregoing, for the purpose of this opinion, we have assumed that neither the Company nor Aventine is a party to any material pending transaction, including any external financing, recapitalization, acquisition or merger, other than the Merger. With respect to financial forecasts, estimates of net operating loss tax benefits and other estimates and forward-looking information relating to the Company, Aventine and the Merger reviewed by us, we have assumed that such information reflects the best currently available estimates and judgments of the Company's and Aventine's management, respectively. We express no opinion as to any financial forecasts, net operating loss or other estimates or forward-looking information of the Company or Aventine or the assumptions on which they were based. We have relied, with your consent, on advice of the outside counsel and the independent accountants to the Company and Aventine, and on the assumptions of the management of the Company and Aventine, as to all accounting, legal, tax and financial reporting matters with respect to the Company, Aventine and the Agreement. Without limiting the foregoing, we have assumed that the Merger qualifies as a "reorganization" described in Section 368(a) of Code, that the Agreement constitutes a "plan of reorganization" within the meaning of Section 1.368-2(g) of the regulations promulgated under the Code and that the parties to the Agreement each are a "party to the reorganization" within the meaning of Section 368(a) of the Code.

We have assumed that the final form of the Agreement will be substantially similar to the draft, dated December 27, 2014, reviewed by us, without modification of any material terms or conditions. We have assumed that the representations and warranties contained in the Agreement are true and correct, that each party will perform all of the covenants and agreements required to be performed by it under the Agreement, and that the Merger will be consummated pursuant to the terms of the Agreement without amendments thereto and without waiver by any party of any conditions or obligations thereunder. In arriving at our opinion, we have assumed that all the necessary regulatory approvals and consents required for the Merger will be obtained in a manner that will not adversely affect the Company or Aventine or alter the terms of the Merger.

In arriving at our opinion, we have not performed any appraisals or valuations of any specific assets or liabilities (fixed, contingent or other) of the Company or Aventine or concerning the solvency or appraised or fair value of the Company or Aventine, and have not been furnished with any such appraisals or valuations, and we have made no physical inspection of the property or assets of the Company or Aventine. We express no opinion regarding the liquidation value of any entity. The analyses we performed in connection with this opinion were going concern analyses of an entity. We were not requested to opine, and no opinion is hereby rendered, as to whether any analyses of an entity, other than as a going concern, is appropriate in the circumstances and, accordingly, we have performed no such analyses.

We have undertaken no independent analysis of any pending or threatened litigation, governmental proceedings or investigations, possible unasserted claims or other contingent liabilities, to which any of the Company, Aventine or their respective affiliates is a party or may be subject and at the Company's direction and with its consent, our opinion makes no assumption concerning and therefore does not consider, the possible assertion of claims, outcomes, damages or recoveries arising out of any such matters. No company or transaction used in any analysis for purposes of comparison is identical to the Company, Aventine or the Merger. Accordingly, an analysis of the results of the comparisons is not mathematical; rather, it involves complex considerations and judgments about differences in the companies and transactions to which the Company, Aventine and the Merger were compared and other factors that could affect the public trading value or transaction value of the companies.

This opinion is necessarily based upon the information available to us, facts and circumstances and economic, market and other conditions as they exist and are subject to evaluation on the date hereof; events occurring after the date hereof could materially affect the assumptions used in preparing this opinion. We are not expressing any opinion herein as to the price at which shares of common stock of the Company have traded or such stock may trade following announcement of the Merger or at any future time. We have assumed for purposes of our analyses that the Company will issue only shares of its voting common stock in connection with the Merger. We have not undertaken to reaffirm or revise this opinion or otherwise comment upon any events occurring after the date hereof and do not have any obligation to update, revise or reaffirm this opinion.

Consistent with applicable legal and regulatory requirements, we have adopted policies and procedures to establish and maintain the independence of our research department and personnel. As a result, our research analysts may hold opinions, make statements or recommendations, and/or publish research reports with respect to the Company and the Merger and other participants in the Merger that differ from the views of our investment banking personnel.

This opinion is furnished pursuant to our engagement letter dated December 15, 2014. This opinion is directed to the Board of Directors of the Company in connection with its consideration of the Merger. This opinion is not intended to be and does not constitute a recommendation to any stockholder of the Company as to how such stockholder should act or vote with respect to the Merger or any other matter. Except with respect to the use of this opinion in connection with the proxy statement relating to the Merger in accordance with our engagement letter with the Company, this opinion shall not be published or otherwise used, nor shall any public references to us be made, without our prior written approval. This opinion has been approved by the Craig-Hallum Fairness Opinion Committee.

This opinion addresses solely the fairness, from a financial point of view, to the Company of the Exchange Ratio set forth in the Agreement and does not address any other terms or agreement relating to the Merger. We were not requested to opine as to, and this opinion does not address, the basic business decision to proceed with or effect the Merger, or any solvency or fraudulent conveyance consideration relating to the Merger. We express no opinion as to the relative merits of the Merger as compared to any alternative business strategies or transactions that might exist for the Company or any other party or the effect of any other transaction in which the Company or any other party might engage. We express no opinion as to the amount, nature or fairness of the consideration or compensation to be received in or as a result of the Merger by warrant holders, option holders, officers, directors or employees of the Company or Aventine, or any other class of such persons, or relative to or in comparison with the Exchange Ratio.

Based upon and subject to the foregoing and based upon such other factors as we consider relevant, it is our opinion that, as of the date hereof, the Exchange Ratio is fair, from a financial point of view, to the Company.

Sincerely,

Craig-Hallum Capital Group LLC

ANNEX E

Confidential
Aventine Renewable Energy Holdings, Inc.
1300 South Second Street
Pekin, IL 61554

December 30, 2014

Ladies and Gentlemen:

Aventine Renewable Energy Holdings, Inc. (the "Company") has engaged Duff & Phelps, LLC ("Duff & Phelps") to serve as an independent financial advisor to the Board of Directors (the "Board") of the Company (solely in their capacity as members of the Board) to provide an opinion (the "Opinion") as of the date hereof as to the fairness, from a financial point of view, to the stockholders of the Company electing Parent Voting Common Stock of the Exchange Ratio (as defined below) to be received by such stockholders in the contemplated transaction described below (the "Proposed Transaction") (without giving effect to any impact of the Proposed Transaction on any particular stockholder other than in its capacity as a stockholder).

Description of the Proposed Transaction

Duff & Phelps understands that the Company, Pacific Ethanol, Inc. ("Parent") and Aventine Merger Sub, Inc., a direct wholly-owned subsidiary of Parent ("Merger Sub"), propose to enter into an agreement and plan of merger pursuant to which, among other things, Merger Sub will be merged with and into the Company and that, in connection with the Proposed Transaction, each outstanding share of common stock of the Company, par value $0.001 per share ("Company Common Stock"), shall be converted into the right to receive, at the election of the holder thereof, 1.25 shares (the "Exchange Ratio") of (i) convertible non-voting common stock of Parent, par value $0.001 ("Parent Non-Voting Common Stock"), or (ii) common stock of Parent, par value $0.001 per share ("Parent Voting Common Stock"), or (iii) a combination of Parent Non-Voting Common Stock and Parent Voting Common Stock in the proportion specified by the shareholder on the election form.

Scope of Analysis

In connection with this Opinion, Duff & Phelps has made such reviews, analyses and inquiries as it has deemed necessary and appropriate under the circumstances. Duff & Phelps also took into account its assessment of general economic, market and financial conditions, as well as its experience in securities and business valuation, in general, and with respect to similar transactions, in particular. Duff & Phelps' procedures, investigations, and financial analysis with respect to the preparation of its Opinion included, but were not limited to, the items summarized below:

1. Reviewed the following documents:

   a. The Company's audited financial statements for the years ended December 31, 2010 through December 31, 2013;

   b. Unaudited financial information for the Company for the eleven months ended November 30, 2014, which the Company's management identified as being the most current financial statements available;

   c. Parent's annual reports and audited financial statements on Form 10-K filed with the Securities and Exchange Commission ("SEC") for the years ended December 31, 2010 through December 31, 2013 and Parent's unaudited interim financial statements for the nine months ended September 30, 2014 included in Parent's Form 10-Q filed with the SEC;

   d. Other internal documents relating to the history, current operations, and probable future outlook of the Company, including financial projections of Aventine and financial projections of Parent provided to the Company management by Parent and used by the Company in its own evaluation of Parent, all provided to us by management of the Company;

   e. A letter dated December 24, 2014 from the management of the Company which made certain representations as to historical financial statements, financial projections for the Company and Parent and the underlying assumptions, and a pro forma schedule of assets and liabilities (including identified contingent liabilities) for the Company and Parent on a post-transaction basis; and

   f. Financial terms and conditions of a draft of the Agreement and Plan of Merger, by and among the Company, Parent and Merger Sub, dated as of December **[22]**, 2014 (the "Merger Agreement");

2. Discussed the information referred to above and the background and other elements of the Proposed Transaction with the management of the Company;

3. Reviewed the historical trading price and trading volume of Parent's common stock, and the publicly traded securities of certain other companies that Duff & Phelps deemed relevant;

4. Performed certain valuation and comparative analyses using generally accepted valuation and analytical techniques including a discounted cash flow analysis, an analysis of selected public companies that Duff & Phelps deemed relevant, and an analysis of selected transactions that Duff & Phelps deemed relevant; and

5. Conducted such other analyses and considered such other factors as Duff & Phelps deemed appropriate.

Assumptions, Qualifications and Limiting Conditions

In performing its analyses and rendering this Opinion with respect to the Proposed Transaction, Duff & Phelps, with the Company's consent:

1. Relied upon the accuracy, completeness, and fair presentation of all information, data, advice, opinions and representations obtained from public sources or provided to Duff & Phelps from private sources, including Company management, and did not independently verify such information;

2. Relied upon the fact that the Board and the Company have been advised by counsel as to all legal matters with respect to the Proposed Transaction, including whether all procedures required by law to be taken in connection with the Proposed Transaction have been duly, validly and timely taken;

3. Assumed that any estimates, evaluations, forecasts and projections furnished to Duff & Phelps were reasonably prepared and based upon the best currently available information and good faith judgment of the person furnishing the same, and Duff & Phelps expresses no opinion with respect to such projections or the underlying assumptions;

4. Assumed that information supplied and representations made by Company management are true and correct in all material respects regarding the Company, Parent and the Proposed Transaction;

5. Assumed that the representations and warranties made in the final Merger Agreement are true and correct in all material respects;

6. Assumed that the final versions of all documents reviewed by Duff & Phelps in draft form conform in all material respects to the drafts reviewed;

7. Assumed that there has been no material change in the assets, liabilities, financial condition, results of operations, business, or prospects of the Company since the date of the most recent financial statements and other information made available to Duff & Phelps, and that there is no information or facts that would make the information reviewed by Duff & Phelps incomplete or misleading;

8. Assumed that all of the conditions required to implement the Proposed Transaction will be satisfied and that the Proposed Transaction will be completed in accordance with the terms of the Merger Agreement without any amendments thereto or any waivers of any terms or conditions thereof; and

9. Assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the Proposed Transaction will be obtained without any adverse effect on the Company or the contemplated benefits expected to be derived in the Proposed Transaction.

To the extent that any of the foregoing assumptions or any of the facts on which this Opinion is based prove to be untrue in any material respect, this Opinion cannot and should not be relied upon. Furthermore, in Duff & Phelps' analysis and in connection with the preparation of this Opinion, Duff & Phelps has made numerous assumptions with respect to industry performance, general business, market and economic conditions and other matters, many of which are beyond the control of any party involved in the Proposed Transaction.

Duff & Phelps has prepared this Opinion effective as of the date hereof. This Opinion is necessarily based upon market, economic, financial and other conditions as they exist and can be evaluated only as of the date hereof, and Duff & Phelps disclaims any undertaking or obligation to update, revise, or reaffirm this Opinion, or advise any person of any change in any fact or matter affecting this Opinion which may come or be brought to the attention of Duff & Phelps after the date hereof.

Duff & Phelps did not evaluate the Company's solvency or conduct an independent appraisal or physical inspection of any specific assets or liabilities (contingent or otherwise). Duff & Phelps has not been requested to, and did not, (i) initiate any discussions with, or solicit any indications of interest from, third parties with respect to the Proposed Transaction, the assets, businesses or operations of the Company, or any alternatives to the Proposed Transaction, (ii) negotiate the terms of the Proposed Transaction, and therefore, Duff & Phelps has assumed that such terms are the most beneficial terms, from the Company's perspective, that could, under the circumstances, be negotiated among the parties to the Merger Agreement and the Proposed Transaction, or (iii) advise the Board or any other party with respect to alternatives to the Proposed Transaction.

Duff & Phelps is not expressing any opinion as to the market price or value of the Parent Non-Voting Common Stock, the Parent Voting Common Stock or the Company Common Stock (or anything else) after the announcement or the consummation of the Proposed Transaction. This Opinion should not be construed as a valuation opinion, credit rating, solvency opinion, an analysis of the Company's credit worthiness, as tax advice, or as accounting advice. Duff & Phelps has not made, and assumes no responsibility to make, any representation, or render any opinion, as to any legal matter.

In rendering this Opinion, Duff & Phelps is not expressing any opinion with respect to the amount or nature of any compensation to any of the Company's officers, directors, or employees, or any class of such persons, relative to the Exchange Ratio payable to the stockholders of the Company electing Parent Voting Common Stock in the Proposed Transaction, or with respect to the fairness of any such compensation.

This Opinion is furnished solely for the use and benefit of the Board in connection with its consideration of the Proposed Transaction and is not intended to, and does not, confer any rights or remedies upon any other person, and is not intended to be used, and may not be used, by any other person or for any other purpose, without Duff & Phelps' express consent. This Opinion (i) does not address the merits of the underlying business decision to enter into the Proposed Transaction versus any alternative strategy, transaction or transaction structure; (ii) does not address any other transaction related to the Proposed Transaction; (iii) is not a recommendation as to how the Board or any stockholder should vote or act with respect to any matters relating to the Proposed Transaction, or whether to proceed with the Proposed Transaction or any related transaction, and (iv) does not indicate that the Exchange Ratio payable is the best possibly attainable under any circumstances; instead, it merely states whether the Exchange Ratio payable to shareholders electing Parent Voting Common Stock in the Proposed Transaction is within a range suggested by certain financial analyses. The decision as to whether to proceed with the Proposed Transaction or any related transaction may depend on an assessment of factors unrelated to the financial analysis on which this Opinion is based. This letter should not be construed as creating any fiduciary duty on the part of Duff & Phelps to any party.

This Opinion is solely that of Duff & Phelps, and Duff & Phelps' liability in connection with this letter shall be limited in accordance with the terms set forth in the engagement letter between Duff & Phelps and the Company dated December 20, 2014, as amended by the Addendum dated December 29, 2014 (the "Engagement Letter"). This Opinion is confidential, and its use and disclosure is strictly limited in accordance with the terms set forth in the Engagement Letter.

Disclosure of Prior Relationships

Duff & Phelps has acted as financial advisor to the Board and will receive a customary fee for its services. No portion of Duff & Phelps' fee is refundable or contingent upon either the conclusion expressed in this Opinion or whether or not the Proposed Transaction is successfully consummated. Pursuant to the terms of the Engagement Letter, a portion of Duff & Phelps' fee is payable upon Duff & Phelps' informing the Company that it is prepared to deliver the Opinion. In addition, the Company has agreed to indemnify Duff & Phelps for certain liabilities arising out of its engagement and to reimburse it for certain out-of-pocket expenses. Other than the current engagement, during the two years preceding the date of this Opinion, Duff & Phelps has not had any material relationship with any party to the Proposed Transaction for which compensation has been received or is intended to be received, nor is any such material relationship or related compensation mutually understood to be contemplated.

Conclusion

Based upon and subject to the foregoing, Duff & Phelps is of the opinion that as of the date hereof, the Exchange Ratio payable to the Company's stockholders electing Parent Voting Common Stock in the Proposed Transaction is fair, from a financial point of view, to such stockholders of the Company (without giving effect to any impact of the Proposed Transaction on any particular stockholder other than in its capacity as a stockholder).

This Opinion has been approved by the Opinion Review Committee of Duff & Phelps.

Respectfully submitted,

/s/ Duff & Phelps, LLC

Duff & Phelps, LLC

ANNEX F

SECTION 262 OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

§ 262 Appraisal rights

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title and, subject to paragraph (b)(3) of this section, § 251(h) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that, except as expressly provided in § 363(b) of this title, no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 251(h), § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) In the event of an amendment to a corporation's certificate of incorporation contemplated by § 363(a) of this title, appraisal rights shall be available as contemplated by § 363(b) of this title, and the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as practicable, with the word "amendment" substituted for the words "merger or consolidation," and the word "corporation" substituted for the words "constituent corporation" and/or "surviving or resulting corporation."

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Each stockholder electing to demand the appraisal of such stockholder's shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the tender or exchange offer contemplated by § 251(h) of this title and 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the tender or exchange offer contemplated by § 251(h) of this title and 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

Exhibit 5.1

[TROUTMAN SANDERS LETTER HEAD]

February 4, 2015

Pacific Ethanol, Inc.
400 Capital Mall, Suite 2060
Sacramento, California 95814

Re: Registration Statement on Form S-4

Ladies and Gentlemen:

We have acted as counsel to Pacific Ethanol, Inc., a Delaware corporation (the "Company"), in connection with its registration statement on Form S-4 (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), and relating to the proposed issuance of up to 18,744,044 shares of the Company's common stock, par value $0.001 per share (the "Common Stock"), and up to 18,744,044 shares of the Company's non-voting common stock, par value $0.001 per share (the "Non-Voting Common Stock" and together with the Common Stock, the "Shares"), pursuant to the Agreement and Plan of Merger (the "Merger Agreement") by and among the Company, AVR Merger Sub, Inc., and Aventine Renewable Energy Holdings, Inc. ("Aventine") providing for a merger of AVR Merger Sub, Inc., a wholly-owned subsidiary of the Company with and into Aventine (the "Merger"). The terms of the Merger, the Merger Agreement and the Shares are described in the Joint Proxy Statement/Prospectus which forms a part of the Registration Statement to which this opinion is an exhibit.

This opinion letter is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as expressly stated herein with respect to the issuance of the Shares.

In rendering the opinions expressed below, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, agreements, corporate records, and other instruments, certificates, orders, opinions, correspondence with public officials, certificates provided by the Company's officers and representatives, and other instruments or documents as we have deemed necessary or appropriate as a basis for the opinions set forth herein, including (i) the corporate and organizational documents of the Company, (ii) the resolutions of the Board of Directors of the Company with respect to the Registration Statement and the offering and sale of the Shares, (iii) the Registration Statement and exhibits thereto, including the Joint Proxy Statement/Prospectus comprising a part thereof, and (iv) the Merger Agreement. In addition to the foregoing, we have made such investigations of law as we have deemed necessary or appropriate as a basis for the opinions set forth herein.

In such examination and in rendering the opinions expressed below, we have assumed: (i) the due authorization of all agreements, instruments and other documents by all the parties thereto; (ii) the due execution and delivery of all agreements, instruments and other documents by all the parties thereto; (iii) the genuineness of all signatures on all documents submitted to us; (iv) the authenticity and completeness of all documents, corporate records, certificates and other instruments submitted to us; (v) that photocopy, electronic, certified, conformed, facsimile and other copies submitted to us of original documents, corporate records, certificates and other instruments conform to the original documents, records, certificates and other instruments, and that all such original documents were authentic and complete; (vi) the legal capacity of all individuals executing documents; (vii) that the documents executed in connection with the transactions contemplated thereby are the valid and binding obligations of each of the parties thereto, enforceable against such parties in accordance with their respective terms and that no such document has been amended or terminated orally or in writing except as has been disclosed to us; and (viii) that the statements contained in the certificates and comparable documents of public officials, officers and representatives of the Company and other persons on which we have relied for the purposes of this opinion are true and correct, including (A) the corporate and organizational documents of the Company, including the Certificate of Incorporation, as amended to date, and the Bylaws of the Company, as amended to date, (B) the resolutions of the Board of Directors of the Company with respect to the Registration Statement and the authorization, offering and sale of the Shares, (C) the Registration Statement and exhibits thereto, including the Joint Proxy Statement/Prospectus comprising a part thereof, and (D) the Merger Agreement. In addition, with your consent, we have assumed that all choice of law provisions are legally enforceable. As to all questions of fact material to this opinion and as to the materiality of any fact or other matter referred to herein, we have relied (without independent investigation) upon certificates or comparable documents of officers and representatives of the Company.

Based upon and subject to the qualifications, exceptions, assumptions, limitations, definitions, exclusions and other matters described in this opinion, we are of the opinion that when and to the extent issued and delivered in accordance with the terms of the Merger Agreement (including the filing by the Company of an amendment to its Certificate of Incorporation to create the Non-Voting Common Stock) and the Registration Statement, the Shares will be duly authorized, validly issued, fully paid and non-assessable.

Our opinion is subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium or similar laws and principles affecting creditors' rights generally (including, without limitation, fraudulent transfer or fraudulent conveyance laws); and (ii) the effect of general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing) and the availability of equitable remedies (including, without limitation, specific performance and equitable relief), regardless of whether considered in a proceeding in equity or at law.

We express no opinion with regard to the applicability or effect of the law of any jurisdiction other than the General Corporation Law of the State of Delaware as in effect on the date hereof. This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated herein.

This opinion letter is prepared for your use in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Securities Act solely for such purpose. This opinion speaks as of the date hereof. We assume no obligation to advise you of any change in the foregoing subsequent to the effectiveness of the Registration Statement even though the change may affect the legal analysis or a legal conclusion or other matters in this opinion.

We hereby consent to being named as counsel to the Company in the Registration Statement, to the references therein to our Firm under the caption "Legal Matters" and to the inclusion of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act, or the rules or regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Troutman Sanders LLP

Troutman Sanders LLP

Exhibit 10.1

AMENDED AND RESTATED
SENIOR SECURED TERM LOAN
CREDIT AGREEMENT

Dated as of September 24, 2012

among

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.,
as Borrower,

THE LENDERS FROM TIME TO TIME PARTY THERETO,

and

CITIBANK, N.A.
as Collateral Agent and Administrative Agent

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AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT ("this Agreement") is entered into as of September 24, 2012, among AVENTINE RENEWABLE ENERGY HOLDINGS, INC., a Delaware corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), CITIBANK, N.A., in its capacity as administrative agent for the Lenders (in such capacity, together with any successor in interest or assignee pursuant to Article IX, the "Administrative Agent"), and CITIBANK, N.A., in its capacity as collateral agent for the Secured Parties (in such capacity, together with any successor in interest or assignee pursuant to Article IX, the "Collateral Agent").

PRELIMINARY STATEMENTS:

WHEREAS, the Borrower, the Lenders, the Administrative Agent and Collateral Agent are parties to that certain Senior Secured Term Loan Credit Agreement, dated as of December 22, 2010 (as amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "Original Credit Agreement");

WHEREAS, as a result of certain events of default expected to occur under the Original Credit Agreement, the Borrower, the Lenders, the Administrative Agent and the Collateral Agent entered into the Forbearance Agreement (as defined herein);

WHEREAS, following execution and delivery of the Forbearance Agreement, the Borrower, the Lenders, the Subsidiary Guarantors and a majority of the holders of the Borrower's issued and outstanding common stock as of the date thereof entered into the Restructuring Agreement (as defined herein);

WHEREAS, in accordance with the Restructuring Agreement, the Borrower has requested that the Lenders, the Administrative Agent and the Collateral Agent amend and restate the Original Credit Agreement in order to, among other things, (a) provide for a new term loan A of $30,000,000 by certain of the Lenders, as set forth herein (such loan, as further defined herein, the "Term Loan A" and the Lenders providing the Term Loan A, as further defined herein, the "Term Loan A Lenders"), (b) amend, restate, convert and continue $100,000,000 in principal amount of the Existing Term Loan (as defined herein) extended under the Original Credit Agreement as a term loan B hereunder (as further defined herein, the "Term Loan B"), and (c) cancel and extinguish the remainder of the Existing Term Loan;

WHEREAS, in furtherance of the Restructuring Agreement, on the date hereof, the Borrower will issue new shares of its common stock to the Lenders (or their designees), with 50% of such shares being issued to the Term Loan A Lenders (or their designees) in consideration of the Term Loan A Lenders' agreement to make the Term Loan A and 50% of such shares being issued to all of the Lenders existing as of the Closing Date (or their designees) in consideration of the Lenders' agreement to cancel and extinguish that portion of the Existing Term Loan in excess of the Term Loan B;

WHEREAS, the Lenders have indicated their willingness to amend and restate the Original Credit Agreement but only on the terms and conditions of this Agreement, including the continuation of all security interests in the Collateral pursuant to the Collateral Documents and the continuation of the guarantees pursuant to the Subsidiary Guaranty (each as defined herein).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"ABL Cap" means $58,000,000.

"ABL First Priority Liens" has the meaning set forth in the Intercreditor Agreement.

"ABL Obligations" has the meaning specified in Section 7.02(a)(ii)(A).

"ABL Primary Collateral" has the meaning set forth in the Intercreditor Agreement.

"ABL Second Priority Liens" has the meaning set forth in the Intercreditor Agreement.

"Accounting Change" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the Securities and Exchange Commission.

"Activities" has the meaning specified in Section 9.02(b).

"Additional Term Commitments" has the meaning set forth in Section 2.10(a).

"Additional Commitment Effective Date" has the meaning specified in Section 2.10(d).

"Adjusted Consolidated Net Income" means, for any period, the aggregate net income (or loss) of the Borrower and its Subsidiaries for such period determined in conformity with GAAP; provided that the following items shall be excluded in computing Adjusted Consolidated Net Income (without duplication):

(a) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Borrower or any of its Subsidiaries or all or substantially all of the property and assets of such Person are acquired by the Borrower or any of its Subsidiaries;

(b) the net income of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such net income is not at the time permitted by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary (other than any restriction permitted by clause (f), (g) or (h) of Section 7.11) but excluding any amount of cash actually distributed by such Subsidiary to the Borrower or another Subsidiary during such period;

(c) any gains or losses (on an after-tax basis) attributable to sales of assets outside the ordinary course of business of the Borrower and its Subsidiaries;

(d) [Intentionally Omitted];

(e) all extraordinary gains or losses;

(f) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued);

(g) any non-cash compensation expense realized from grants of stock appreciation or similar rights, stock options or other rights to officers, directors or employees of the Borrower or any of its Subsidiaries;

(h) the cumulative effect of a change in accounting principles;

(i) any expense with respect to which, and to the extent that, the Borrower is indemnified by a third party (but only if and to the extent that the related indemnification payment from such third party is not included in the calculation of the net income of the Borrower);

(j) any non-cash asset impairment charges resulting from application of the FASB Accounting Standards Codification No. 350 and No. 360 and the amortization of intangibles pursuant to the FASB Accounting Standards Codification No. 805;

(k) any increase in amortization or depreciation of existing assets or any one-time non-cash charges resulting from purchase accounting in connection with acquisitions; and

(l) any non-cash gain or loss attributable to any Hedging Agreement until such time as it is settled, at which time the net gain or loss shall be included.

"Administrative Agent" has the meaning specified in the introductory paragraph of this Agreement.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Notwithstanding the foregoing, solely for the purpose of (x) the definitions of "Required Term Loan A Lenders", "Required Term Loan B Lenders" and "Required Lenders" and (y) Sections 10.06(d) and 10.06(h), no Lender shall be deemed to Control the Borrower solely because such Lender (or an Affiliate of an Approved Fund of such Lender), in its capacity as a New Equity Holder: (i) has the right to, or otherwise participates in, the selection of the initial Board of Directors of the Borrower on the Closing Date; (ii) has the right to, or otherwise participates in, the selection of any observer to the Board of Directors of the Borrower from time to time; (iii) is the owner of common stock of the Borrower so long as such Lender, together with its Affiliates and Approved Funds, owns less than 40% of the common stock of the Borrower on a Fully-Diluted Basis; or (iv) may be deemed to be acting together with other New Equity Holders as a group (within the meaning of Section 13(d) of the Exchange Act).

"Affiliated Lender" has the meaning specified in Section 10.06(h).

"Agents" means, collectively, the Administrative Agent, the Collateral Agent and any co-agent or sub-agent appointed from time to time pursuant to Section 9.05.

"Agent's Group" has the meaning specified in Section 9.02(b).

"Agent Parties" has the meaning specified in Section 10.02(c).

"Aggregate Commitments" means the Commitments of all the Lenders.

"Aggregate Principal Amount" has the meaning specified for such term in the Intercreditor Agreement.

"Agreement" has the meaning specified in the introductory paragraph of this Agreement.

"Agreement Among Lenders" means that certain Agreement Among Lenders, by and among the Term Loan A Lenders and the Term Loan B Lenders, dated as of September 24, 2012, as the same may be further amended, restated, supplemented or otherwise modified from time to time.

"Anti-Terrorism Laws" means any Applicable Law relating to terrorism or money laundering, including Executive Order No. 13224, the USA PATRIOT Act, any Applicable Law comprising or implementing the Bank Secrecy Act, and any Applicable Law administered by the United States Treasury Department's Office of Foreign Asset Control (as any of the foregoing Applicable Laws may from time to time be amended, renewed, extended, or replaced).

"Applicable Discount" has the meaning set forth in the definition of "Dutch Auction".

"Applicable Law" means, all laws, rules and regulations applicable to the Person, conduct, transaction, covenant, Contractual Obligation or contract in question, including all common law and equitable principles; all provisions of all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes, and determinations and orders of arbitrators or courts or other Governmental Authorities, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Applicable Percentage" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan A, Term Loan B, or New Term Loan represented by such Lender's Commitment (if any) or outstanding principal amount of such Term Loan or New Term Loan (as applicable) at such time. The initial Applicable Percentage of each Lender in respect of the Term Loans is set forth on Schedule IA and Schedule IB hereto or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Asset Sale" means:

(a) the sale, lease, conveyance or other disposition (including by way of merger or consolidation) in one transaction or a series of related transactions of any assets of the Borrower or any of its Subsidiaries to any Person other than the Borrower and its Subsidiary Guarantors; or

(b) the issuance of Capital Stock in any of the Borrower's Subsidiaries (other than directors' qualifying shares) or the sale or other disposition of Capital Stock in any of the Borrower's Subsidiaries to any Person other than the Borrower and its Subsidiary Guarantors;

in each case, that is not governed by Section 7.03; provided that "Asset Sale" shall not include:

(i) sales or other dispositions of accounts, inventory, products, services, receivables and other Consolidated Current Assets in the ordinary course of business;

(ii) sales, transfers or other dispositions of assets constituting a Permitted Investment or Restricted Payment permitted to be made under Section 7.05 or Section 7.14, as applicable;

(iii) [Intentionally omitted];

(iv) any sale, transfer, assignment or other disposition in the ordinary course of business of any property or equipment that has become damaged, worn out, obsolete or otherwise unsuitable for use in connection with the business of the Borrower or its Subsidiaries;

(v) sales or grants of licenses to use the Borrower's or any of its Subsidiaries' patents, trade secrets, know-how and technology to the extent that such license does not prohibit the licensor from using the patent, trade secret, know-how or technology;

(vi) foreclosures on assets;

(vii) any sale or other disposition in the ordinary course of business of intellectual property or other assets (other than Specified Collateral) which are obsolete, surplus, worn out or no longer commercially viable to operate and maintain or desirable in the conduct of the business of the Borrower and its Subsidiaries;

(viii) the lease or sublease of other property or assets (other than Specified Collateral) in the ordinary course of business not involving any purchase option which does not materially interfere with the business of the Borrower and its Subsidiaries, taken as a whole (subject, in the case of any Collateral, to the Lien securing the Obligations);

(ix) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of property (other than Specified Collateral) for like property for use in any Permitted Business;

(x) any Lien (or foreclosure thereon) securing Indebtedness to the extent such Lien is permitted by Section 7.01; or

(xi) an Event of Loss.

"Assignee Group" means (a) two or more Eligible Assignees that are Affiliates of one another or (b) two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(a)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or E-2 (as applicable) or any other form approved by the Administrative Agent.

"Attributable Debt" in respect of a Sale and Leaseback Transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP.

"Auction" has the meaning set forth in the definition of "Dutch Auction".

"Auction Amount" has the meaning set forth in the definition of "Dutch Auction".

"Auction Notice" has the meaning set forth in the definition of "Dutch Auction".

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Average Life" means, at any date of determination with respect to any debt security, the quotient obtained by dividing (a) the sum of the products of (i) the number of years from such date of determination to the dates of each successive scheduled principal payment of such debt security and (ii) the amount of such principal payment by (b) the sum of all such principal payments.

"Bank Product Agreement" has the meaning assigned to such term in the Existing ABL Facility as in effect on the date hereof.

"Bankruptcy Code" means title 11 of the United States Code, as amended from time to time.

"Blocked Person" has the meaning specified in Section 5.20(b).

"Board of Directors" means,

(a) with respect to a corporation, the board of directors of such corporation or any committee thereof duly authorized to act on behalf of such board;

(b) with respect to a partnership, the board of directors or other governing body of the general partner of the partnership;

(c) with respect to a limited liability company, the board of directors or other governing body, and in the absence of same, the manager or board of managers or the managing member or members or any controlling committee of managing members thereof; and

(d) with respect to any other Person, the board or committee of such Person or other individual or entity serving a similar function.

Unless otherwise indicated, the "Board of Directors" refers to the Board of Directors of the Borrower.

"Board Resolution" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Administrative Agent. Unless otherwise indicated, a Board Resolution refers to a Board Resolution of the Borrower.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means (a) a borrowing consisting of simultaneous term loans constituting the Term Loan A made by each of the Term Loan A Lenders pursuant to Section 2.01(a) or (b) a borrowing consisting of simultaneous term loans constituting a New Term Loan made by Lenders or New Lenders having commitments in respect thereof pursuant to Section 2.10.

"Borrowing Notice" means a notice of a Borrowing pursuant to Section 2.02 or 2.10 which shall be substantially in the form of Exhibit A.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located.

"Capital Expenditures" means expenditures made or liabilities incurred for the acquisition of any fixed assets or improvements, replacements, substitutions or additions thereto which have a useful life of more than one year, including the total principal portion of Capitalized Lease Obligations, which, in accordance with GAAP, would be classified as capital expenditures.

"Capital Stock" means (a) in the case of a corporation, corporate stock (including all classes of common stock and preferred stock); (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Capitalized Lease" means, as applied to any Person, any lease of any property (whether real, personal or mixed) which, in conformity with GAAP, is required to be capitalized (or otherwise reflected as a liability) on the balance sheet of such Person; provided "Capitalized Leases" shall not include any former operating leases which are treated as capital leases as a result of any change in lease accounting resulting from or similar in effect to the Exposure Draft, Leases, issued by the International Accounting Standards Board (IASB) and the U.S. Financial Accounting Standards Board (FASB) on August 17, 2010.

"Capitalized Lease Obligations" means with respect to any Person, the obligations of such Person to pay rents or other amounts under any Capital Lease and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Cash Collateral Account" means a blocked, interest bearing deposit account of one or more of the Loan Parties at Citibank, N.A. in the name of the Collateral Agent and under the sole dominion and control of the Collateral Agent, and otherwise established in a manner reasonably satisfactory to the Collateral Agent.

"Cash Equivalents" means any of the following:

(a) direct obligations of the United States of America or any agency thereof or obligations fully and unconditionally guaranteed by the United States of America or any agency thereof, in each case, maturing within one year;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within one year of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of $100,000,000 (or the foreign currency equivalent thereof) and has outstanding debt which is rated "A" (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) or any money market fund sponsored by a registered broker dealer or mutual fund distributor;

(c) repurchase obligations with a term of not more than one year for underlying securities of the types described in clause (a) above entered into with a bank or trust company meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of the Borrower) organized and in existence under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of "A-1" (or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act);

(e) securities with maturities of six (6) months or less from the date of acquisition issued or fully and unconditionally guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by S&P or Moody's;

(f) any mutual fund that has at least 95% of its assets continuously invested in investments of the types described in clauses (a) through (e) above; and

(g) overnight deposits and demand deposit accounts (in the respective local currencies) maintained in the ordinary course of business.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

"Cash Rate" has the meaning specified in Section 2.05(a)(ii).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601 et seq.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request or directive (whether or not having the force of law) by any Governmental Authority required to be complied with by any Lender.

"Change of Control" means such time as:

(a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Borrower and its Subsidiaries, taken as a whole, to any "person" (within the meaning of Section 13(d) of the Exchange Act) other than the Borrower or any of its Subsidiaries;

(b) the Borrower's stockholders approve a plan for the liquidation or dissolution of the Borrower;

(c) any Person or Persons acting together that would constitute a group (for purposes of Section 13(d) of the Exchange Act) (a "group"), together with any Affiliates or related Persons thereof, is or becomes the "Beneficial Owner," directly or indirectly, of more than 50% of the voting power of the Voting Stock of the Borrower, provided that none of the New Equity Holders shall be deemed to be acting together as a group for this purpose; provided, further, that in no event shall the sale of the Borrower's common stock to an underwriter or group of underwriters in privity of contract with the Borrower (or any other Person in privity of contract with such underwriters) be deemed to be a Change of Control unless such common stock is held in an investment account, in which case the investment account would be treated without giving effect to the foregoing part of this proviso; or

(d) individuals who on the Closing Date constituted the Board of Directors (together with any new directors appointed pursuant to the terms of the Stockholders Agreement or whose election by the Board of Directors or whose nomination by the Board of Directors for election by the Borrower's stockholders was approved by a vote of at least a majority of the Board of Directors then in office who either were members of the Board of Directors on the Closing Date or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the members of the Board of Directors then in office.

"Closing Date" means the first date that all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"Closing Fee" has the meaning set forth in Section 2.05(d).

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder and rulings issued thereunder.

"Collateral" means all of the "Collateral" and "Mortgaged Property" referred to in the Collateral Documents and all of the other property that is under the terms of the Collateral Documents, subject to Liens in favor of the Collateral Agent for the benefit of the Secured Parties as security for the Obligations.

"Collateral Account" means an account of the Borrower established at Citibank, N.A. and pledged as Collateral to the Collateral Agent for the benefit of the Secured Parties subject to the Intercreditor Agreement and into which, among other things, the Net Cash Proceeds (a) from an Event of Loss and (b) corresponding to the Term Loan Primary Collateral sold in a Primary Collateral Asset Sale are deposited in accordance with the provisions of Sections 6.17 and 7.04, respectively.

"Collateral Agent" has the meaning specified in the introductory paragraph to this Agreement.

"Collateral Documents" means, collectively, the Security Agreement, the Intercreditor Agreement, the Intellectual Property Security Agreements, the Mortgages, the Perfection Certificate, each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Agents pursuant to Section 4.01 or Section 6.13, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties as security for the Obligations.

"Commitment" means a Term Loan A Commitment or a commitment in respect of a New Term Loan.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Consolidated Current Assets" means all assets of the Borrower and its Subsidiaries that would, in accordance with GAAP, be classified as consolidated current assets.

"Consolidated Current Liabilities" means, as of any date of determination, all liabilities of the Borrower and its Subsidiaries at such date which should, in conformity with GAAP, be classified as current liabilities on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP, but excluding (a) the principal amount of the current portion of long-term Indebtedness and (b) (without duplication of clause (a) above) the then outstanding principal amount of the Loans.

"Consolidated Indebtedness" means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (without duplication) (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments and Obligations in respect of Disqualified Stock, (b) all direct obligations arising under standby letters of credit (other than letters of credit backed by cash collateral) and similar instruments, (c) all obligations in respect of the deferred purchase price of property or services (other than Trade Payables), (d) Attributable Debt in respect of Sale and Leaseback Transactions, (e) Capitalized Lease Obligations, (f) Indebtedness of other Persons secured by a Lien on the assets of any Borrower or Subsidiary not exceeding the lesser of (i) the amount of such Indebtedness and (ii) the Fair Market Value of such assets, (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than the Borrower or any of its Subsidiaries, and (h) the Hedge Termination Value that is due and payable by the Borrower and its Subsidiaries under any Hedging Agreement that has been closed out.

"Contractual Obligation" means, as to any Person, any Organization Document of such Person and any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Controlled Group" shall mean, at any time, the Borrower and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control and all other entities which are treated as a single employer under Section 414 of the Code.

"Credit Facilities" means, with respect to the Borrower and its Subsidiaries, one or more debt facilities, commercial paper facilities, or indentures providing for revolving credit loans, term loans, notes, or other financing or letters of credit, or other credit facilities (including, without limitation, the Existing ABL Facility), in each case, as amended, modified, renewed, refunded, replaced or refinanced from time to time.

"Debtor Relief Laws" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) as to any Loan. an interest rate equal to the rate of interest otherwise in effect for such Loan plus 2% per annum or (b) in any other case or if no rate of interest is in effect for such Loan, a rate of interest equal to 14% per annum.

"Defaulting Lender" means any Lender that (a) has failed to fund any portion of the Term Loans required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to any Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, (c) has notified the Borrower or the Administrative Agent that it does not intend to comply with the its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a bankruptcy or insolvency proceeding, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditor or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, of (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"Disclosed Litigation" has the meaning set forth in Section 4.01(e).

"Discount Range" has the meaning set forth in the definition of "Dutch Auction"

"Disqualified Stock" means any class or series of Capital Stock of any Person which, by its terms (or by the terms of any security or other Capital Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except as a result of a Change of Control or Asset Sale so long as any rights of the holders thereof upon the occurrence of a Change of Control or Asset Sale event shall be subject to the prior repayment in full of the Term Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Capital Stock that would constitute Disqualified Stock, in each case, prior to the date that is ninety-one (91) days after the Maturity Date.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary of the Borrower that is organized under the laws of any political subdivision of the United States or the District of Columbia.

"Dutch Auction" means an auction (an "Auction") conducted by the Borrower or one of its Subsidiaries in order to purchase Loans, in accordance with the following procedures:

(a) Notice Procedures. In connection with an Auction, the Borrower will provide notification to the Administrative Agent (for distribution to the applicable Lenders) of the Loans that will be the subject of the Auction (an "Auction Notice"); provided that any Auction Notice must apply to (i) with respect to the Term Loan A, all Term Loan A Lenders and with respect to the Term Loan B, all Term Loan B Lenders, (ii) only the Term Loan A Lenders and any New Term Loan Lenders so long as any portion of the Term Loan A or any New Term Loan remains outstanding, and (iii) with respect to any New Term Loans, all Lenders of New Term Loans with a like Maturity Date, in each case on the same terms to such Lenders. Each Auction Notice shall be in a form reasonably acceptable to the Administrative Agent and shall contain (A) the total cash value of the bid, in a minimum amount of $5,000,000 with minimum increments of $1,000,000 (the "Auction Amount"), and (B) the discount to par, which shall be a range, (the "Discount Range") of percentages of the par principal amount of the applicable Loans at issue that represents the range of purchase prices that could be paid in the Auction; provided that the minimum discount to par in the Discount Range shall not be less than 5%.

(b) Reply Procedures. In connection with any Auction, each applicable Lender may, in its sole discretion, participate in such Auction and may provide the Administrative Agent with a notice of participation (the "Return Bid") which shall be in a form reasonably acceptable to the Administrative Agent and shall specify (i) a discount to par that must be expressed as a price (the "Reply Discount"), which must be within the Discount Range and (ii) the principal amount of the applicable Loans purchased (the "Reply Amount"). Lenders may only submit one Return Bid per Auction. In addition to the Return Bid, the participating Lender must execute and deliver, to be held in escrow by the Administrative Agent, a form of assignment and acceptance (the "Form of Assignment and Acceptance") in a form reasonably acceptable to the Administrative Agent.

(c) Acceptance Procedures. Based on the Reply Discounts and Reply Amounts received by the Administrative Agent, the Administrative Agent, in consultation with the Borrower, will determine the applicable discount (the "Applicable Discount") for the Auction, which will be the highest Reply Discount for which the Borrower or its Subsidiary, as applicable, can complete the Auction at the Auction Amount; provided that, in the event that the Reply Amounts are insufficient to allow the Borrower or its Subsidiary, as applicable, to complete a purchase of the entire Auction Amount (any such Auction, a "Failed Auction"), the Borrower or its Subsidiary shall either, at its election, (i) withdraw the Auction or (ii) complete the Auction at an Applicable Discount equal to the lowest Reply Discount. The Borrower or its Subsidiary, as applicable, shall purchase the applicable Loans (or the respective portions thereof) from each applicable Lender that submitted a Reply Discount that is equal to or greater than the Applicable Discount ("Qualifying Bids") at the Applicable Discount; provided that if the aggregate proceeds required to purchase all applicable Loans subject to Qualifying Bids would exceed the Auction Amount for such Auction, the Borrower or its Subsidiary, as applicable, shall purchase such Loans at the Applicable Discount ratably based on the principal amounts of such Qualifying Bids (subject to rounding requirements specified by the Administrative Agent). Each participating Lender will receive notice of a Qualifying Bid as soon as reasonably practicable but in no case later than five (5) Business Days following the date the Return Bid was due.

"Eligible Assignee" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; (d) an Affiliated Lender subject to the terms of Section 10.06(h); (e) any other Person (other than a natural person) approved by (i) the Administrative Agent and (ii) unless an Event of Default has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed; and (f) to the extent set forth in Section 10.06(b)(vi), the Borrower or any of its Subsidiaries.

"Environment" means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), land surface or subsurface strata or sediment, natural resources such as flora or fauna or as otherwise defined in any Environmental Law.

"Environmental Laws" means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Environmental Permits" means any and all permits, licenses, registrations, certifications, notifications, exemptions and any other authorization required under any applicable Environmental Law.

"Equity Documents" means, collectively, the Subscription Agreement, the Stockholders Agreement, the Registration Rights Agreement, the Warrant Agreements, the Warrants, the Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws of the Borrower, and each of the other documents and agreements entered into by all or some of the Borrower, the New Equity Holders, the Original Equity Holders and/or other parties in connection with the Equity Transactions, in each case, as in effect on the Closing Date and as amended, supplemented or otherwise modified from time to time.

"Equity Interest" means with respect to any Person, all Capital Stock and all Stock Equivalents of such Person.

"Equity Transactions" means the transactions to occur on or prior to the Closing Date pursuant to the Equity Documents, pursuant to which (a) the beneficial owners of all of the Borrower's Capital Stock will consist of the Original Equity Holders and the New Equity Holders, (b) the Original Equity Holders will own 7.5% of the issued and outstanding common stock of the Borrower, on a Fully-Diluted Basis, immediately after giving effect to the New Equity Issuance (without giving effect to the Warrants), which common stock shall be subject to dilution from time to time as a result of the Permitted Adjustments, (c) the New Equity Holders will own newly issued common stock of the Borrower equal to 92.5% of the issued and outstanding common stock of the Borrower, on a Fully-Diluted Basis, which common stock shall be subject to dilution from time to time as a result of the Permitted Adjustments, (d) 50% of such newly issued common stock will be issued to the Term Loan A Lenders (or their designees) in consideration of the Term Loan A Lenders' agreement to make the Term Loan A and (e) 50% of such newly issued common stock will be issued to all of the Lenders existing as of the Closing Date (or their designees) in exchange for the cancellation of the outstanding balance of the Existing Term Loan other than the portion thereof continued and reconstituted as the Term Loan B.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"Eurocurrency Liabilities" has the meaning specified in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Event of Default" has the meaning specified in Section 8.01.

"Event of Loss" means, with respect to any property or asset (tangible or intangible, real or personal) that constitutes Term Loan Primary Collateral (including any of the Facilities), any of the following:

(a) any loss or destruction of, or damage to, such property or asset;

(b) any institution of any proceedings for the condemnation or seizure of, or for the exercise of any right of eminent domain with respect to, such property or asset;

(c) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or

(d) any settlement in lieu of clauses (b) or (c) above.

"Excepted Leased Real Property" means (a) the Sublease Agreement, dated as of September 23, 2010, between the Borrower and Skywire Software, LLC, and (b) each of the lease agreements described in Schedule 5.17(b)(iii).

"Excess Cash Flow" means, for any period,

(a) the sum of:

(i) Adjusted Consolidated Net Income for such period, plus

(ii) the aggregate amount of all non cash charges deducted in arriving at such Adjusted Consolidated Net Income, plus

(iii) if there was a net increase in Consolidated Current Liabilities during such period, the amount of such net increase, plus

(iv) if there was a net decrease in Consolidated Current Assets (excluding cash and Cash Equivalents) during such period, the amount of such net decrease (expressed as a positive number), less

(b) the sum of:

(i) the aggregate amount of all non cash credits included in arriving at such Adjusted Consolidated Net Income, plus

(ii) if there was a net decrease in Consolidated Current Liabilities during such period, the amount of such net decrease, plus

(iii) if there was a net increase in Consolidated Current Assets (excluding cash and Cash Equivalents) during such period, the amount of such net increase, plus

(iv) the aggregate amount of Capital Expenditures of the Borrower and its Subsidiaries paid in cash during such period solely to the extent permitted by this Agreement, plus

(v) the aggregate amount of all regularly scheduled principal payments of Consolidated Indebtedness made during such period, plus

(vi) the aggregate amount of scheduled payments of principal made during such period on Capital Lease Obligations, plus

(vii) the aggregate amount of mandatory principal payments of Consolidated Indebtedness (including in respect of the Existing ABL Facility) made during such period provided (A) such prepayments are otherwise permitted hereunder and (B) if such Consolidated Indebtedness is revolving in nature, either (1) the commitments under such Consolidated Indebtedness are permanently reduced by the amount of such prepayment or (2) in the case of the Existing ABL Facility, such prepayment is required to be made pursuant to Sections 2.5 and 2.7 of the Existing ABL Facility existing on the date hereof, plus

(viii) the aggregate principal amount of all optional prepayments under the Term Loans and the Existing ABL Facility (to the extent accompanied by a permanent reduction in the commitment thereunder).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

“Excluded General Intangibles” has the meaning set forth in the Security Agreement.

“Excluded Trademark Applications” has the meaning set forth in the Security Agreement.

“Excluded Taxes” means, with respect to any Agent, Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) taxes that are imposed on or measured by its overall net income (including branch profits taxes) by the United States and taxes that are imposed on or measured by its overall net income (and franchise taxes imposed in lieu of net income taxes) by the state or foreign jurisdiction under the laws of which such Agent or Lender (or other such recipient) is organized or any political subdivision thereof and (b) taxes that are imposed on or measured by its overall net income (and franchise taxes imposed in lieu thereof) by the state or foreign jurisdiction of such Lender’s applicable Lending Office or any political subdivision thereof.

"Existing ABL Facility" means that certain Second Amended and Restated Credit Agreement, dated as of the Closing Date, among the Borrower, Aventine Renewable Energy – Aurora West, LLC, Aventine Renewable Energy – Mt Vernon, LLC, Aventine Renewable Energy – Canton, LLC, Aventine Power, LLC and Nebraska Energy, L.L.C., as borrowers, and Wells Fargo Capital Finance, LLC, as lender and agent, as may be amended, restated, supplemented or otherwise modified from time to time.

"Existing ABL Facility Collateral" means all property or assets of the Borrower or any of its Subsidiaries subject to a first priority Lien in favor of the agent under the Existing ABL Facility.

"Existing ABL Forbearance Agreement" means that certain forbearance agreement by and among the Borrower, the Subsidiary Guarantors and the lender and agent under the Existing ABL Facility, dated as of July 27, 2012, as amended on September 5, 2012.

"Existing ABL Incremental Facility" means an incremental facility under the Existing ABL Facility, uncommitted as of the Closing Date, permitting the incurrence of up to an additional $20,000,000 of Indebtedness under the Existing ABL Facility subject to the terms of the Intercreditor Agreement.

"Existing Term Loan" means the term loans under the Original Credit Agreement, including all capitalized interest and fees added to the principal amount of such term loans pursuant to the Forbearance Agreement, plus all accrued interest, fees and other amounts added to the principal amount of such term loans on the Closing Date pursuant to Section 2.01.

"Existing Warrants" has the meaning set forth in Section 5.24.

"Exit Fee" has the meaning set forth in Section 2.05(e).

"Exit Fee Payment Date" means the earlier of (i) the Maturity Date of the Term Loan A and (ii) the date of the prepayment in full of the Term Loan A.

"Extended Term Loans" has the meaning set forth in Section 2.11.

"Extending Term Lender" has the meaning set forth in Section 2.11.

"Extension" has the meaning set forth in Section 2.11.

"Extension Request" has the meaning set forth in Section 2.11.

"Facilities" means the Borrower's and each of its Subsidiaries' ethanol production facilities and, in each case, all improvements thereto.

"Failed Auction" has the meaning set forth in the definition of "Dutch Auction".

"Fair Market Value" means the price that would be paid in an arm's length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Board of Directors, whose determination shall be conclusive if evidenced by a resolution of the Board of Directors.

"FACTA" has the meaning set forth in Section 3.01(e).

"FACTA Documentation" has the meaning set forth in Section 3.01(e).

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Citibank, N.A. on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means the agency fee letter, dated as of December 22, 2010, between the Borrower and Citibank, N.A.

"Financial Officer" means with respect to any Person, the chief financial officer, chief accounting officer, vice president of finance, treasurer, assistant treasurer or controller of such Person.

"Flood Hazard Property" has the meaning specified in Section 6.16(a)(vi).

"Forbearance Agreement" means that certain forbearance agreement by and among the Borrower, the Subsidiary Guarantors, the Lenders and the Agents, dated as of July 27, 2012, entered into under the Original Credit Agreement, as modified by the Restructuring Agreement.

"Foreign Lender" means, with respect to the Borrower, any Lender that is organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

"Foreign Subsidiary" means a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia and any Subsidiary thereof.

"Form of Assignment and Acceptance" has the meaning set forth in the definition of "Dutch Auction".

"Fully-Diluted Basis" means the number of shares of common stock of the Borrower that would be outstanding, as of the date of computation, if all issued and outstanding Stock Equivalents had been converted, exercised or exchanged into common stock of the Borrower.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances as of the date of determination.

"Governmental Authority" means the government of the United States or any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services (unless such purchase arrangements are on arm's length terms and are entered into in the ordinary course of business), to take-or-pay, or to maintain financial statement conditions or otherwise) or (b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"Hazardous Discharge" means any release or threat of release of a reportable quantity of any Hazardous Materials at the Material Owned Real Property or Material Leased Real Property under CERCLA or of a release of a Hazardous Materials that could have a Material Adverse Effect on any Lender.

"Hazardous Materials" means (a) any explosive or radioactive substances or wastes and (b) any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under, or that could reasonably be expected to give rise to liability under, any applicable Environmental Law, including, without limitation, asbestos, polychlorinated biphenyls, urea-formaldehyde insulation, gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any coal ash, coal combustion by-products or waste, boiler slag, scrubber residue or flue desulphurization residue.

"Hedge Bank" means any Person that, at the time it enters into a Secured Hedge Agreement, is (i) a Lender or an Affiliate of a Lender, in its capacity as a party to such Secured Hedge Agreement, (ii) Wells Fargo Capital Finance, LLC or any of its Affiliates or (iii) any other entity which customarily enters into secured hedging agreements in the ordinary course of its business.

"Hedge Termination Value" means, in respect of any one or more Hedging Agreements, after taking into account the effect of any valid netting agreement relating to such Hedging Agreements, for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s).

"Hedge Termination Value" means, as of any date of determination, in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, the sum of (i) the aggregate outstanding amount of ordinary course settlement payments then due and payable by the Loan Parties under such Hedging Agreement plus (ii) the termination amount then due and payable by the Loan Parties under such Hedging Agreement as determined in accordance with its terms and (b) for any date prior to the date referenced in clause (a), the sum of (i) the aggregate outstanding amount of ordinary course settlement payments then due and payable by the Loan Parties under such Hedging Agreement plus (ii) the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Agreements or otherwise determined in accordance with the terms of such Hedging Agreement.

"Hedging Agreement" means any and all agreements with respect to carbon credits, renewable identification numbers and other similar rights issued by the United States Environmental Protection Agency or any other Governmental Authority, rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, cross product hedges, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, carbon credits, renewable identification numbers under the Renewable Fuel Standard program under the Energy Policy Act of 2005 and other similar rights, or any other similar transactions or any combination of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

"Increase Effective Date" has the meaning specified in Section 2.10(d).

"Incremental Amendment" has the meaning specified in Section 2.10(e).

"Indebtedness" means, with respect to any Person at any date of determination (without duplication):

(a) all indebtedness of such Person for borrowed money;

(b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(c) all obligations of such Person in respect of letters of credit or other similar instruments (including reimbursement obligations with respect thereto, but excluding obligations with respect to trade letters of credit securing obligations (other than obligations described in clause (a) or (b) above or (e), (f) or (g) below) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if drawn upon, to the extent such drawing is reimbursed no later than the third Business Day following receipt by such Person of a demand for reimbursement);

(d) all obligations of such Person to pay the deferred and unpaid purchase price of any property or services, which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto or the completion of such services, except Trade Payables;

(e) all Capitalized Lease Obligations and Attributable Debt;

(f) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided that the amount of such Indebtedness shall be the lesser of (i) the Fair Market Value of such asset at such date of determination and (ii) the amount of such Indebtedness;

(g) all Indebtedness of other Persons Guaranteed by such Person to the extent such Indebtedness is Guaranteed by such Person;

(h) to the extent not otherwise included in this definition, obligations under Hedging Agreements (including Interest Rate Agreements); and

(i) all Disqualified Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation; provided that:

(i) the amount outstanding at any time of any Indebtedness issued with original issue discount is the face amount of such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness at such time as determined in conformity with GAAP;

(ii) money borrowed and set aside at the time of the incurrence of any Indebtedness in order to prefund the payment of the interest on such Indebtedness shall not be deemed to be "Indebtedness" so long as such money is held to secure the payment of such interest; and

(iii) Indebtedness shall not include:

(A) any liability for federal, state, local or other taxes;

(B) performance, surety or appeal bonds provided in the ordinary course of business; or

(C) agreements providing for indemnification, adjustment of purchase price or similar obligations, or Guarantees or letters of credit, surety bonds or performance bonds securing any obligations of the Borrower or any of its Subsidiaries pursuant to such agreements, in any case, incurred in connection with the disposition of any business, assets or a Subsidiary (other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition), so long as the principal amount does not exceed the gross proceeds actually received by the Borrower or any Subsidiary in connection with such disposition.

"Indemnified Parties" has the meaning specified in Section 10.04(b).

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indiana Port Lease Agreement" means the Lease Agreement, dated as of October 31, 2006, between the Indiana Port Lessor and the Indiana Port Lessee, as amended as of the Closing Date and as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time after the date hereof in accordance with its terms and the terms of the Loan Documents.

"Indiana Port Lease Collateral" means any inventory, equipment or fixtures of the Indiana Port Lessee that are (a) now or hereafter located on the Indiana Port Leased Premises or (b) at any time used in connection with the business of the Indiana Port Lessee carried out on the Indiana Port Leased Premises.

"Indiana Port Leased Premises" means the real property leasehold interest leased by the Indiana Port Lessee from the Indiana Port Lessor pursuant to the Indiana Port Lease Agreement on which the Mt. Vernon Facility is located.

"Indiana Port Lessee" means Aventine Renewable Energy — Mt Vernon, LLC, a Delaware limited liability company.

"Indiana Port Lessor" means the Indiana Port Commission, a body corporate and politic existing under the laws of the State of Indiana, and its successors and assigns.

"Information" has the meaning specified in Section 10.07.

"Intellectual Property Security Agreement" has the meaning specified in the Security Agreement.

"Intercreditor Agreement" means that certain Second Amended and Restated Intercreditor Agreement dated as of the Closing Date among the Administrative Agent, the Collateral Agent and the agent under the Existing ABL Facility, as the same may be further amended, restated, supplemented or otherwise modified from time to time, which agreement amends and restates the Original Intercreditor Agreement.

"Interest Payment Date" means the last Business Day of each March, June, September and December and the Maturity Date (or, if sooner, the date on which the Obligations become due and payable pursuant to Section 8.02).

"Interest Rate Agreement" means any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement, option or future contract or other similar agreement or arrangement.

"Investment" in any Person means any direct or indirect advance, loan or other extension of credit (including, without limitation, by way of Guarantee or similar arrangement; but excluding (a) payroll, commission, travel and similar advances to officers and employees in the ordinary course of business and (b) advances to customers or suppliers in the ordinary course of business that are, in conformity with GAAP, recorded as accounts receivable, prepaid expenses or deposits on the balance sheet of the Borrower or its Subsidiaries and endorsements for collection or deposit arising in the ordinary course of business) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, bonds, notes, debentures or other similar instruments issued by, such Person and shall include the retention of the Capital Stock (or any other Investment) by the Borrower or any of its Subsidiaries of (or in) any Person that has ceased to be a Subsidiary, including without limitation, by reason of any transaction permitted by clause (c) or (d) of Section 7.12.

"IRS" means the United States Internal Revenue Service.

"Lender" has the meaning specified in the introductory paragraph hereto and includes any Lender that may become a party hereto pursuant to an Assumption and Acceptance, and any New Lender.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Liquidity" means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) Unrestricted Cash and (b) the aggregate amount available to be drawn on under any Credit Facility, including the Existing ABL Facility, as such of date of determination (after giving effect to any borrowing base restrictions).

"Lien" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any kind (including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof or any agreement to give any security interest).

"Loan" means a Term Loan (including a New Term Loan).

"Loan Documents" means, collectively, (a) this Agreement, (b) the Notes, (c) the Subsidiary Guaranty, (d) the Collateral Documents, (e) each Secured Hedge Agreement, (f) each Secured Cash Management Agreement, (g) the Fee Letter and (h) each other document that is deemed in writing by the Borrower and the Administrative Agent to constitute a Loan Document.

"Loan Parties" means, collectively, the Borrower and each of its Subsidiaries.

"Loss Cap" has the meaning set forth in Section 2.03(b)(iv).

"Loan Transactions" means the making or reinstating of the Loans pursuant to the Loan Documents, the granting or confirming the grant of Liens pursuant to the Collateral Documents and the making or confirming the guarantees pursuant to the Subsidiary Guaranty.

"Management Incentive Plan" means the "Management Incentive Plan" of the Borrower, as the same may be adopted after the Closing Date by the Board of Directors of the Borrower, and as the same may thereafter be amended, modified, renewed, restated or replaced, in whole or in part, from time to time by the Board of Directors of the Borrower or in accordance with its terms.

"Material Adverse Effect" means a material adverse effect upon (a) the business, assets, operations, property, condition (financial or otherwise) or material agreements of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Borrower or any of the Subsidiaries to perform their respective obligations under the Loan Documents or (c) the validity or enforceability of this or any of the other Loan Documents, or, as of the Closing Date and thereafter, so long as Lenders (or their Affiliates or Approved Funds) having an aggregate Applicable Percentage of the outstanding principal amount of the Term Loans in excess of 50.01% continue to beneficially own, directly or indirectly, a majority of the common stock of the Borrower, any of the Equity Documents to which the New Equity Holders are a party; the rights or remedies of the Agents or the Lenders hereunder or under the other Loan Documents, or, as of the Closing Date and thereafter, so long as Lenders (or their Affiliates or Approved Funds) having an aggregate Applicable Percentage of the outstanding principal amount of the Term Loans in excess of 50.01% continue to beneficially own, directly or indirectly, a majority of the common stock of the Borrower, the rights or remedies of the New Equity Holders under the Equity Documents.

"Material Contractual Obligation" means any agreement to which any Loan Party is a party that is of the type either referred to as a "material definitive agreement" in Form 8-K or required to be attached as an exhibit to a filing in accordance with Item 601 of Regulation S-K, as promulgated by the SEC.

"Material Leased Real Property" means (a) the real properties leased by any Loan Party listed on Schedule 5.17(b)(ii), and (b) any other real property leased by any Loan Party having a Fair Market Value reasonably estimated by the Borrower to be in excess of $500,000; provided that the leased real property located at 5400 LBJ Freeway, Suite 450, Dallas, Texas 75234 shall not constitute "Material Leased Real Property".

"Material Owned Real Property" means (a) the real properties owned by any Loan Party listed on Schedule 5.17(b)(i), and (b) any other real property owned by any Loan Party having a Fair Market Value reasonably estimated by the Borrower to be in excess of $500,000.

"Maturity Date" means, (a) with respect to the Term Loan A, the date which is the fourth anniversary of the Closing Date, (b) with respect to the Term Loan B, the date which is the fifth anniversary of the Closing Date, and (c) with respect to any New Term Loan, the date specified in the applicable Incremental Amendment for such New Term Loan, in each case subject to extension thereof in accordance with Section 2.11; provided, however, that if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day.

"Maximum Rate" has the meaning set forth in Section 10.09.

"Minimum Extension Condition" has the meaning set forth in Section 2.11(b).

"Mt. Vernon Facility" means that certain ethanol production facility of the Borrower located in Mt. Vernon, Indiana.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means the deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust substantially in the form of Exhibit F (with such changes as may be reasonably satisfactory to the Collateral Agent and its counsel to account for local law matters) and otherwise in form and substance reasonably satisfactory to the Collateral Agent, delivered pursuant to the Original Credit Agreement (and each other Mortgage delivered pursuant to Section 6.13 from time to time), in each case as amended, restated, supplemented or otherwise modified from time to time.

"Mortgage Endorsements" has the meaning set forth in Section 6.16(a)(ii).

"Mortgage Effective Date" has the meaning set forth in Section 6.16.

"Multiple Employer Plan" shall mean a Plan which has two or more contributing sponsors (including the Borrower or any member of the Controlled Group) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"NDA Signatories" means such prospective Lenders or purchasers of Equity Interests of the Borrower that have executed a customary non-disclosure agreement for the benefit of the Borrower and its Subsidiaries.

"Net Cash Proceeds" means:

(a) with respect to any Asset Sale, the aggregate cash proceeds received by the Borrower or any of its Subsidiaries in respect of any Asset Sale (including any cash received (x) upon the sale or other disposition of any non-cash consideration received in any Asset Sale and (y) in respect of deferred payment obligations (to the extent corresponding to the principal, but not the interest, component thereof)), net of

(i) the direct costs relating to such Asset Sale, including legal, accounting and investment banking, broker or finder fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale;

(ii) any taxes paid or payable (within one (1) year) as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements;

(iii) amounts required to be applied to the repayment of Indebtedness, secured by a Lien on the asset or assets that were the subject of such Asset Sale;

(iv) any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP or amount placed in an escrow account for purposes of such an adjustment; and

(v) escrowed amounts and amounts taken by the Borrower or any of its Subsidiaries as a reserve against liabilities associated with such Asset Sale, including pension and other post-employment benefit liabilities, Environmental Liabilities and liabilities under any indemnification obligations associated with such Asset Sale, all as determined in accordance with GAAP, provided that such amounts constituting Term Loan Primary Collateral are deposited into the Collateral Account and such amounts constituting ABL Primary Collateral are deposited into blocked accounts established pursuant to the Existing ABL Facility;

provided that (A) excess amounts set aside for payment of taxes pursuant to clause (ii) above remaining after such taxes have been paid in full or the statute of limitations therefor has expired and (B) amounts escrowed or initially held in reserve pursuant to clauses (iv) and (v) no longer so held, will, in the case of each of subclauses (A) and (B), at that time become Net Cash Proceeds.

(b) with respect to the incurrence or issuance or any Indebtedness by the Borrower or any of its Subsidiaries, the proceeds of such issuance or sale in the form of cash or Cash Equivalents, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not interest, component thereof) when received in the form of cash or Cash Equivalents and proceeds from the conversion of other property received when converted to cash or Cash Equivalents, net of attorney's fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees incurred in connection with such issuance or sale and net of taxes paid or payable (within one year) as a result thereof.

(c) with respect to any Event of Loss, the aggregate cash proceeds received by the Borrower or any of its Subsidiaries in respect of such Event of Loss, including insurance proceeds, condemnation awards or damages awarded by any judgment, net of

(i) the direct costs in recovery of such Net Cash Proceeds (including reasonable legal, accounting, appraisal and insurance adjuster fees and any relocation expenses incurred as a result thereof);

(ii) amounts required to be applied to the repayment of Indebtedness, other than ABL Obligations, secured by a Lien on the asset or assets that were the subject of such Event of Loss;

(iii) any taxes paid or payable (within one year) as a result thereof; and

(iv) amounts taken by the Borrower or any of its Subsidiaries, as the case may be, as a reserve against any liabilities associated with such Event of Loss and retained by the Borrower or any of its Subsidiaries, as the case may be, after such Event of Loss, including liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Event of Loss, all as determined in accordance with GAAP; provided that such amounts are deposited into the Collateral Account.

"New Equity Holders" means the lenders party to the Original Credit Agreement immediately prior to the Closing Date (or any such lender's designee under the Subscription Agreement).

"New Equity Issuance" means the issuance of new shares of common stock of the Borrower on the Closing Date pursuant to the Amended and Restated Certificate of Incorporation of the Borrower, with 50% of such new shares being issued to the Term Loan A Lenders existing as of the Closing Date (or their designees) and 50% of such new shares being issued to all of the Lenders (or their designees), as further set forth in the definition of "Equity Transactions".

"New Lenders" has the meaning specified in Section 2.10(d).

"New Term Loan" has the meaning specified in Section 2.10(a).

"New Term Loan Commitment" has the meaning specified in Section 2.10(e).

"New Term Loan Effective Date" has the meaning specified in Section 2.10(d).

"New Term Loan Facility" has the meaning specified in Section 2.10(a).

"No Undisclosed Information Representation" by a Person means a representation that such Person is not in possession of any material non-public information that has not been disclosed to investors or has not otherwise been disseminated in a manner making it available to investors generally, in each case within the meaning of Regulation FD, prior to such time, with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing.

"Nonconsenting Lender" has the meaning set forth in Section 10.13.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Term Loans, as the case may be, made by such Lender, substantially in the form of Exhibit C-1 or Exhibit C-2.

"Obligations" means, with respect to any Person, any payment, performance or other obligation of such Person of any kind, including, without limitation, any liability of such Person on any claim, whether or not the right of any creditor to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding under Debtor Relief Laws. Without limiting the generality of the foregoing, the Obligations of any Loan Party under the Loan Documents include (a) the obligation to pay principal, interest, letter of credit commissions, participation fees, charges, expenses, fees, attorneys' fees and disbursements, indemnities and other amounts payable by such Loan Party under any Loan Document and (b) the obligation of such Loan Party to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

"Officer's Certificate" means, with respect to any Person, a certificate signed by two Responsible Officers of such Person. Unless otherwise indicated, an Officer's Certificate refers to an Officer's Certificate of the Borrower.

"OID" has the meaning set forth in Section 2.10(b).

"Omnibus Amendment" means the Omnibus Amendment, dated as of the Closing Date, by and among the Borrower, the Subsidiary Guarantors, the Collateral Agent and the Administrative Agent, amending and ratifying (as so amended) the Security Agreement and the Subsidiary Guaranty.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Original Credit Agreement" has the meaning specified in the recitals.

"Original Equity Holders" means the beneficial owners of the Borrower's common stock immediately prior to the Closing Date.

"Original Intercreditor Agreement" means the Amended and Restated Intercreditor Agreement, dated as of July 20, 2011, between the Agents and the agent under the Existing ABL Facility, as the same may have been amended, supplemented or otherwise modified as of the Closing Date.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise, intangible, mortgage recording or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made by the Borrower hereunder or under any other Loan Document or from the execution, delivery, registration or enforcement of, performance under, or otherwise with respect to, this Agreement or any other Loan Document.

"Overnight Rate" means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"Participant" has the meaning specified in Section 10.06(d).

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001, as amended.

"Perfection Certificate" means, with respect to any Loan Party, a certificate substantially in the form of Exhibit B hereto, completed and supplemented with the schedules and attachments contemplated thereby to the reasonable satisfaction of the Collateral Agent and duly executed by a Responsible Officer of such Loan Party.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA, or any successor thereto.

"Pension Benefit Plan" shall mean at any time any employee pension benefit plan (including a Multiple Employer Plan, but not a Multiemployer Plan) which is covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained or to which contributions are required by any member of the Controlled Group for employees of any member of the Controlled Group; or (ii) has at any time within the preceding five years been maintained or to which contributions have been required by any entity which was at such time a member of the Controlled Group for employees of any entity which was at such time a member of the Controlled Group.

"Perfection Certificate" has the meaning specified in Section 4.01(a)(xi).

"Permitted Adjustment" means any of the following from time to time (a) the issuance of shares of common stock of the Borrower as a result of the exercise of the Warrants, and (b) the issuance of shares of common stock of the Borrower or options to purchase common stock of the Borrower pursuant to the Management Incentive Plan.

"Permitted Business" means the business of the Borrower and its Subsidiaries engaged in on the Closing Date and any other activities that are related, ancillary or complementary to such business.

"Permitted Change of Control" means a Change of Control (other than under clause (b) thereof) so long as, after giving effect thereto, the Borrower remains obligated for the Obligations hereunder, the Subsidiary Guarantors remain obligated for the Guaranteed Obligations as such term is defined under the Subsidiary Guaranty and all such obligations remain secured by the Collateral pursuant to the Collateral Documents, in each case to the same extent as was the case immediately prior to such Change of Control.

"Permitted Debt" has the meaning set forth in Section 7.02.

"Permitted Investment" means:

(a) (i) any Investment by the Borrower or a Subsidiary Guarantor in any Subsidiary Guarantor or (ii) any Investment in the Borrower, a Subsidiary Guarantor or any other Person which will, upon the making of such Investment become a Subsidiary Guarantor or be merged or consolidated with or into, or transfer or convey all or substantially of its assets to the Borrower or any Subsidiary Guarantor;

(b) cash or Cash Equivalents;

(c) stock, obligations or securities received in satisfaction of judgments;

(d) Hedging Agreements (including Interest Rate Agreements) to the extent permitted to be entered into pursuant to Sections 7.02 and Section 7.15;

(e) loans and advances to employees and officers of the Borrower and its Subsidiaries made in the ordinary course of business for bona fide business purposes not to exceed $500,000 in the aggregate at any one time outstanding;

(f) any Investments received in compromise or resolution of (i) obligations of any Person or customer that were incurred in the ordinary course of business of the Borrower or any of its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such Person; or (ii) litigation, arbitration or other disputes with Persons who are not Affiliates;

(g) Investments made by the Borrower or its Subsidiaries consisting of consideration received in connection with an Asset Sale made in compliance with Section 7.04;

(h) Investments of a Person or any of its Subsidiaries existing at the time such Person becomes a Subsidiary of the Borrower or at the time such Person merges or consolidates with the Borrower or any of its Subsidiaries, in either case, in compliance with this Agreement; provided that such Investments were not made by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary of the Borrower or such merger or consolidation;

(i) [Intentionally omitted];

(j) any acquisition of assets or Capital Stock (including pursuant to any merger or consolidation of the Borrower in accordance with Section 7.03) solely in exchange for the issuance of Capital Stock (other than Disqualified Stock) of the Borrower;

(k) Investments in existence on the Closing Date and listed on Schedule 7.14;

(l) Investments represented by Guarantees that are otherwise permitted under this Agreement;

(m) endorsements for collection or deposit in the ordinary course of business by any Person of bank drafts and similar negotiable instruments of any other Person received as payment for ordinary course of business trade receivables;

(n) cash or Cash Equivalents or other investment property deposited in the ordinary course of business to secure (or to secure letters of credit securing) the performance of statutory obligations (including obligations under worker's compensation, unemployment insurance or similar legislation), surety or appeal bonds, leases, agreements or other obligations under arrangements with utilities, insurance agreements, construction agreements, performance bonds or other obligations of a like nature incurred in the ordinary course of business, in each case if (but only if) such obligations are not for borrowed money ("ordinary course deposits"); provided that the aggregate amount of such Investments outstanding at any time pursuant to this clause (n), when added to the aggregate outstanding amount of Investments constituting ordinary course deposits in existence on the Closing Date and permitted under clause (k) above, does not exceed $5,000,000 in the aggregate at any time outstanding;

(o) receivables (including pursuant to extensions of trade credit) and prepaid expenses, in each case arising in the ordinary course of business; provided, however, that such receivables or prepaid expenses would be recorded as current assets of such Person in accordance with GAAP;

(p) [Intentionally omitted];

(q) additional Investments (including Investments in joint ventures) not to exceed $1,000,000 at any one time outstanding; provided that, in the event of an Investment in any Person that is not a Subsidiary of the Borrower, such Person shall not use the proceeds of such Investment to purchase, redeem, retire or otherwise acquire for value any shares of the Capital Stock of the Borrower; and

(r) Investments acquired as a capital contribution to, or in exchange for, or out of the proceeds of a substantially concurrent offering of, Capital Stock (other than Disqualified Stock) of the Borrower;

provided, however, that the Investments described above shall only be "Permitted Investments" to the extent that the Borrower or Subsidiary making such Investment is in compliance with Section 6.13 in respect of any assets, property or Capital Stock acquired in connection with such Investment (to the extent applicable); provided further that with respect to any Investment, the Borrower may, in its sole discretion, allocate all or any portion of such Investment to one or more of the above clauses (a) through (r) (and with respect to clause (k), so long as such Investment is listed on Schedule 7.14) so that all or a portion of such Investment would be a Permitted Investment.

"Permitted Liens" means:

(a) Liens created for the benefit of (or to secure) the Obligations of the Borrower and the Subsidiary Guarantors outstanding under this Agreement and the other Loan Documents from time to time (including, without limitation, in respect of the Term Loan A, the Term Loan B, any New Term Loan, under any Secured Cash Management Agreement or under any Secured Hedge Agreement); provided that the Aggregate Principal Amount for all Secured Hedging Agreements shall not at any time exceed the amount permitted to be outstanding pursuant to Section 7.02(a)(ii);

(b) (i) with respect to ABL Primary Collateral, ABL First Priority Liens and (ii) with respect to any other Collateral, ABL Second Priority Liens, in each case for so long as such Liens are subject at all times to the Intercreditor Agreement; provided that the Aggregate Principal Amount of such Indebtedness secured by such Liens shall not exceed the ABL Cap (unless the ABL Cap is exceeded solely as a result of an increase in the Hedge Termination Value of a Hedging Agreement that is a Bank Product Agreement after the date such Hedging Agreement (or a particular transaction under such Hedging Agreement) becomes effective);

(c) Liens in favor of the Borrower or the Subsidiary Guarantors (not securing ABL Obligations);

(d) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Borrower or any Subsidiary of the Borrower; provided that such Liens were in existence prior to, and not incurred in contemplation of, such merger or consolidation and do not extend to any property other than that property of the Person merged into or consolidated with the Borrower or such Subsidiary that were so subject to such Liens (plus improvements and accessions to such property);

(e) Liens on property (including Capital Stock) existing at the time of acquisition of the property, including by way of merger, consolidation or otherwise, by the Borrower or any Subsidiary of the Borrower; provided that such Liens were in existence prior to, and not incurred in contemplation of, such acquisition and do not extend to any other property owned by the Company or any Restricted Subsidiary (plus improvements and accessions to such property);

(f) Liens on cash or Cash Equivalents or other investment property deposited to secure (or to secure letters of credit securing) the performance of statutory obligations (including obligations under worker's compensation, unemployment insurance or similar legislation), surety or appeal bonds, leases, agreements or other obligations under arrangements with utilities, insurance agreements, construction agreements, performance bonds or other obligations of a like nature incurred in the ordinary course of business, in each case if (but only if) such obligations are not for borrowed money;

(g) Liens existing on the Closing Date and set forth on Schedule 7.01 (other than pursuant to the Indiana Port Lease Agreement or clause (b) or (c) of this definition) and any replacement, extension or renewal of any such Lien upon or in the same property theretofore subject thereto in connection with any replacement, extension or renewal (but without any increase in the amount or change in any direct or contingent obligor) of any Obligations secured thereby);

(h) the Lien in favor of the Indiana Port Lessor pursuant to the Indiana Port Lease Agreement on any Indiana Port Lease Collateral securing the obligations of the Indiana Port Lessee under the Indiana Port Lease Agreement;

(i) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(j) Liens imposed by law (such as carriers', warehousemen's and mechanics' Liens), Liens imposed by law in favor of sellers of farm products and Liens of landlords imposed by law securing obligations to pay lease amounts, in each case, that are not due and payable or in default or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, in each case, incurred in the ordinary course of business;

(k) survey exceptions, encumbrances, restrictions, easements, ordinances, subdivisions approvals, leases, statements of claim or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that, in each case, were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(l) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Agreement; provided, however, that: (i) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the Indebtedness being exchanged, refunded, refinanced, replaced, defeased or discharged (plus improvements and accessions to such property or proceeds or distributions thereof); and (ii) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (A) the outstanding principal amount (or accreted value, if applicable) or, if greater, the committed amount of the Indebtedness being exchanged, refunded, refinanced, replaced, defeased or discharged and (B) an amount necessary to pay all accrued interest on such Indebtedness and any fees and expenses, including premiums and tender and defeasance costs, related to such exchange, refunding, refinancing, replacement, defeasance or discharge;

(m) Liens arising pursuant to an order of attachment, condemnation, eminent domain, distraint or similar legal process arising in connection with legal proceedings and any Liens that are required to protect or enforce rights in any administrative, arbitration or other court proceedings in the ordinary course of business, in each case, not giving rise to an Event of Default;

(n) any Lien on property (real or personal), plant or equipment, all or any part of the purchase price or cost of design, development, construction, installation or improvement of which was financed by Indebtedness permitted to be incurred pursuant to Section 7.02(a)(vii) solely to the extent securing such Indebtedness;

(o) leases or subleases granted to others that do not materially interfere with the ordinary course of business of the Borrower and its Subsidiaries, taken as a whole, so long as the aggregate Fair Market Value of all Specified Collateral subject to such Liens pursuant to this clause (o) does not exceed $500,000 at any one time outstanding;

(p) bankers' Liens, rights of setoff and similar Liens with respect to cash and Cash Equivalents on deposit in one or more bank accounts in the ordinary course of business;

(q) Liens securing reimbursement obligations with respect to letters of credit that encumber documents and other property relating to such letters of credit and the products and proceeds thereof, so long as the aggregate amount of obligations secured by Liens incurred pursuant to this clause (q) does not exceed $1.0 million at any one time outstanding;

(r) Liens on goods imported by the Borrower or any of its Subsidiaries in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of such goods;

(s) Liens consisting of conditional sale, title retention, consignment or similar arrangements for the sale of goods acquired by the Borrower or any of its Subsidiaries in the ordinary course of business in accordance with the past practices of the Borrower and its Subsidiaries prior to the Closing Date so long as the aggregate Fair Market Value of all Specified Collateral subject to such Liens pursuant to this clause (s) does not exceed $500,000 at any one time outstanding;

(t) Liens securing insurance premium financing arrangements, provided that such Lien is limited to the applicable insurance contracts;

(u) Liens arising from filing UCC financing statements regarding operating leases;

(v) any interest or title of a lessor, licensor or sublicensor in property leased, licensed or sublicensed to the Borrower or any of its Subsidiaries pursuant to any lease, license or sublicense not constituting a Capital Lease Obligation or other Indebtedness;

(w) Liens in favor of any title company arising from the posting of any bond, or any escrow funds or other expenditures or posting of monies or any indemnification required by such title company, in connection with work performed at, for or relating to the operation of any of the Loan Parties' properties;

(x) [Intentionally omitted]; and

(y) Liens incurred in the ordinary course of business of the Borrower or any of its Subsidiaries with respect to obligations not exceeding $2,500,000 at any one time outstanding that (i) are not incurred in connection with borrowing of money and (ii) do not materially detract from the value of the property or materially impair its use.

"Permitted Refinancing Indebtedness" means any Indebtedness of the Borrower or any of its Subsidiaries issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge, other Indebtedness of the Borrower or any of its Subsidiaries; provided that:

(a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness exchanged, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on such Indebtedness and the amount of all fees and expenses, including premiums and tender and defeasance costs, incurred in connection therewith);

(b) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has an Average Life equal to or greater than the Average Life of, the Indebtedness being exchanged, refunded, refinanced, replaced, defeased or discharged (or, if shorter, has a final maturity date later than the final maturity date of, and has an Average Life equal to or greater than the Average Life of, the Loans);

(c) if the Indebtedness being exchanged, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Obligations of the Borrower and each of its Subsidiaries under the Loan Documents, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the Obligations of the Borrower and each of its Subsidiaries under the Loan Documents, as the case may be, on terms at least as favorable to the Secured Parties as those contained in the documentation governing the Indebtedness being exchanged, refunded, refinanced, replaced, defeased or discharged; and

(d) such Indebtedness has the Borrower or any of its Subsidiaries as an obligor (whether as borrower, guarantor or otherwise) only if the Borrower or such Subsidiary is an obligor (in any capacity) on the Indebtedness being exchanged, refunded, refinanced, replaced, defeased or discharged.

"Person" means any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, limited liability partnership, institution, public benefit corporation, joint venture, entity or Governmental Authority (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

"PIK Interest Amount" has the meaning specified in Section 2.05(a)(ii).

"PIK Rate" has the meaning specified in Section 2.05(a)(ii).

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, by any ERISA Affiliate.

"Plant-Level Financial Statements" means, for each Facility and for any specified period, statements of income and operations (including appropriate operating metrics) of such Facility for such period and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding period of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail.

"Platform" has the meaning specified in Section 6.02.

"Preferred Stock" means, with respect to any Person, Capital Stock issued by such Person that are entitled to a preference or priority over any other Capital Stock issued by such Person upon any distribution of such Person's property and assets, whether by dividend or upon liquidation.

"Primary Collateral Asset Sale" means an Asset Sale consisting of the disposition of assets constituting Term Loan Primary Collateral (including the disposition of Capital Stock of a Subsidiary which results in the disposition of assets constituting Term Loan Primary Collateral); provided that if an Asset Sale results in the disposition of assets constituting Term Loan Primary Collateral and ABL Primary Collateral, the term "Primary Collateral Asset Sale" shall be limited to the portion of the Collateral so disposed of that constitutes Term Loan Primary Collateral.

"Public Filer" means, with respect to the Borrower (x) that the Borrower has filed a registration statement with the SEC for its common stock and such registration statement has been declared to be, and remains, effective, or (y) that the Borrower is otherwise making its quarterly unaudited consolidated financial statements and annual audited financial statements publicly available (through its corporate web-site or otherwise).

"Public Lender" has the meaning specified in Section 6.02.

"Qualified Proceeds" means any of the following or any combination of the following:

(a) Net Cash Proceeds;

(b) the Fair Market Value of any assets (other than Investments) that are used or useful in a Permitted Business; and

(c) the Fair Market Value of any Capital Stock of any Person engaged in a Permitted Business if:

(i) such Person is or in connection with the receipt by the Borrower or any of its Subsidiaries of that Capital Stock becomes a Subsidiary Guarantor; or

(ii) that Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or any of its Subsidiaries.

"Qualifying Bids" has the meaning set forth in the definition of "Dutch Auction".

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as same may be amended from time to time.

"Register" has the meaning specified in Section 10.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Replacement Assets" means any property or assets (other than Indebtedness, Capital Stock, Excluded General Intangibles and Excluded Trademark Applications and other than any assets classified as current assets under GAAP) used or useful in one of the Borrower's existing Facilities.

"Reply Amount" has the meaning set forth in the definition of "Dutch Auction".

"Reply Discount" has the meaning set forth in the definition of "Dutch Auction".

"Reportable Event" shall mean a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder.

"Required Lenders" means the Required Term Loan A Lenders and the Required Term Loan B Lenders.

"Required Term Loan A Lenders" means, as of any date of determination, Lenders holding more than 50% of the sum of (a) prior to the making of the Term Loan A, the Term Loan A Commitments and (b) after the making of the Term Loan A, the outstanding principal amount of the Term Loan A and any New Term Loan. For purposes of the definition of "Required Term Loan A Lenders", (i) the Loans held by any Defaulting Lender and (ii) the Loans held by the Borrower or any of its Affiliates or Subsidiaries, shall, in each case, be excluded for purposes of making a determination of Required Term Loan A Lenders.

"Required Term Loan B Lenders" means, as of any date of determination, Lenders holding more than 50% of the the outstanding principal amount of the Term Loan B (inclusive of all PIK Interest Amounts). For purposes of the definition of "Required Term Loan B Lenders", (i) the Loans held by any Defaulting Lender and (ii) the Loans held by the Borrower or any of its Affiliates or Subsidiaries shall, in each case, be excluded for purposes of making a determination of Required Term Loan B Lenders.

"Responsible Officer" means, with respect to any Person, the chief executive officer, president, any executive officer, any Financial Officer, or any vice president of such Person or, with respect to financial matters, the Financial Officer of such Person. Unless otherwise specified, all references herein to "Responsible Officer" shall refer to a Responsible Officer of the Borrower.

"Restricted Payment" has the meaning set forth in Section 7.05.

"Restricting Information" has the meaning set forth in Section 10.07(b).

"Restructuring Agreement" means the Restructuring Agreement, including the Restructuring Term Sheet attached thereto, dated as of August 17, 2012, by and among the Borrower, the Subsidiary Guarantors, the Lenders, and a majority of the beneficial owners of the Borrower's common stock as of the date thereof.

"Return Bid" has the meaning set forth in the definition of "Dutch Auction".

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

"Sale and Leaseback Transaction" means a transaction whereby a Person sells or otherwise transfers assets or properties and then or thereafter leases such assets or properties or any part thereof or any other assets or properties which such Person intends to use for substantially the same purpose or purposes as the assets or properties sold or otherwise transferred.

"Sale Cap" has the meaning set forth in Section 2.03(b)(ii).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Cash Management Agreement" means any Cash Management Agreement that is entered into by and between the Borrower and any Cash Management Bank.

"Secured Hedge Agreement" means any Hedging Agreement permitted to be entered into pursuant to Section 7.02(a)(x)(A) to the extent such Hedging Agreement is entered into by and between any Loan Party and any Hedge Bank.

"Secured Parties" means, collectively, the Agents, the Lenders, the Hedge Banks, the Cash Management Banks, and each co-agent or sub-agent appointed by any Agent from time to time pursuant to Section 9.05.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Agreement" means that certain Security Agreement, dated as of December 22, 2010, by and among Citibank, N.A., as collateral agent, and each of the Grantors (as defined therein) party thereto, together with each other pledge and security agreement and pledge and security agreement supplement delivered pursuant to Section 6.13, in each case as amended by the Omnibus Amendment and as further amended, restated, supplemented or otherwise modified from time to time.

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities that are probable and estimatable, of such Person; (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured taking into account the possibility of refinancing such obligations and selling assets; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets; (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital and (e) such Person is able to pay its debts and liabilities, contingent obligations that are probable and estimatable and other commitments as they mature in the ordinary course of business taking into account the possibility of refinancing such obligations and selling assets. The amount of contingent liabilities at any time shall be computed taking into account all facts and circumstances existing at such time.

"Specified Assets" shall mean any real property (including any real property leasehold interest) or equipment.

"Specified Plan" has the meaning set forth in Section 5.24.

"Specified Collateral" shall mean any Collateral comprising Specified Assets.

"Stated Maturity" means (a) with respect to any debt security, the date specified in such debt security as the fixed date on which the final installment of principal of such debt security is due and payable and (b) with respect to any scheduled installment of principal of or interest on any debt security, the date specified in such debt security as the fixed date on which such installment is due and payable.

"Stock Equivalents" means any (a) warrants, options or other right to subscribe for, purchase or otherwise acquire any shares of common stock of Borrower or any other class or series of Capital Stock of the Borrower or (b) any securities convertible into or exchangeable for shares of common stock of the Borrower or any other class or series of Capital Stock of the Borrower.

"Stockholders Agreement" means that certain Stockholders Agreement, dated as of the Closing Date, by and among Borrower, the New Equity Holders and each of the other parties identified on the signature pages thereto as "Other Stockholders".

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantors" means, collectively, the subsidiaries of the Borrower listed on Schedule 1.01(a), and each other Subsidiary of the Borrower that guarantees the Obligations pursuant to Section 6.13.

"Subsidiary Guaranty" means the certain Guarantee dated as of December 22, 2010, made by the Subsidiary Guarantors in favor of the Secured Parties, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.13, in each case as amended by the Omnibus Amendment and as further amended, restated, supplemented or otherwise modified from time to time.

"Surviving Person" has the meaning set forth in Section 7.03(i).

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges, and all liabilities with respect thereto imposed by any Governmental Authority, including any interest, additions to tax, expenses and penalties applicable thereto.

"Term Loan A" means, collectively, the loans made by the Term Loan A Lenders to the Borrower on the Closing Date pursuant to Section 2.01(a), in the aggregate principal amount of $30,000,000. Upon the funding of the Term Loan A and thereafter, unless otherwise specified or the context otherwise requires, the Term Loan A shall include the Closing Fee added to the principal amount thereof pursuant to Section 2.05(d).

"Term Loan A Commitment" means, with respect to each Term Loan A Lender, the commitment of such Lender to make a portion of the Term Loan A to the Borrower in the amount set forth in Schedule 1A hereto, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Term Loan A Lender" means a Lender with a Term Loan A Commitment or following the funding of the Term Loan A, holding any portion of the Term Loan A.

"Term Loan A Obligations" means any Obligations with respect to the Term Loan A (including without limitation, the principal thereof, all interest thereon, and the fees and expenses specifically related thereto, including the Closing Fee and the Exit Fee).

"Term Loan B" means, collectively, the loans set forth on Schedule 1B hereto constituting, in the aggregate, $100,000,000 of the principal amount of the Existing Term Loan, which loans are amended, restated, converted and continued as the Term Loan B hereunder pursuant to Section 2.01(b). After the Closing Date, unless the context otherwise requires, the Term Loan B shall include all PIK Interest Amounts.

"Term Loan B Lender" means a lender holding any portion of the Term Loan B.

"Term Loan B Obligations" means any Obligations with respect to the Term Loan B (including without limitation, the principal thereof (including all PIK Interest Amounts), the interest thereon, and the fees and expenses specifically related thereto).

"Term Loan Lenders" means the Term Loan A Lenders and the Term Loan B Lenders.

"Term Loan Obligations" means the Term Loan A Obligations and the Term Loan B Obligations.

"Term Loan Primary Collateral" has the meaning specified in the Intercreditor Agreement.

"Term Loans" means the Term Loan A, the Term Loan B and any New Term Loan.

"Termination Event" shall mean: (i) a Reportable Event with respect to any Pension Benefit Plan; (ii) the withdrawal of the Borrower or any member of the Controlled Group from a Pension Benefit Plan during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA; (iii) the providing of notice of intent to terminate a Pension Benefit Plan in a distress termination described in Section 4041(c) of ERISA; (iv) the institution by the PBGC of proceedings to terminate a Pension Benefit Plan; (v) any event or condition (a) which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Benefit Plan, or (b) that may result in termination of a Multiemployer Plan pursuant to Section 4041A of ERISA; or (vi) the partial or complete withdrawal within the meaning of Section 4203 or 4205 of ERISA, of the Borrower or any member of the Controlled Group from a Multiemployer Plan.

"Trade Payables" means, with respect to any Person, any accounts payable or any other indebtedness or monetary obligation to trade creditors created, assumed or Guaranteed by such Person or any of its Subsidiaries arising in the ordinary course of business in connection with the acquisition of goods or services and not past due for more than ninety (90) days.

"Transaction Date" means, with respect to the incurrence of any Indebtedness, the date such Indebtedness is to be incurred and, with respect to any Restricted Payment, the date such Restricted Payment is to be made.

"Transaction Documents" means the Loan Documents and, as of the Closing Date and thereafter, so long as Lenders (or their Affiliates or Approved Funds) having an aggregate Applicable Percentage of the outstanding principal amount of the Term Loans in excess of 50.01% continue to beneficially own, directly or indirectly, a majority of the common stock of the Borrower, the Equity Documents.

"Transactions" means the Loan Transactions and, as of the Closing Date and thereafter, so long as Lenders (or their Affiliates or Approved Funds) having an aggregate Applicable Percentage of the outstanding principal amount of the Term Loans in excess of 50.01% continue to beneficially own, directly or indirectly, a majority of the common stock of the Borrower, the Equity Transactions.

"UCC" means the Uniform Commercial Code as in effect in the State of New York; provided, that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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

"Unrestricted Cash" means cash or Cash Equivalents of the Borrower or any of its Subsidiaries that would not appear as "restricted" on a consolidated balance sheet of the Borrower and its Subsidiaries.

"Voting Stock" means with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

"Warrant Agreement" means that certain Warrant Agreement, dated as of the Closing Date, between the Borrower and American Stock Transfer & Trust Company, LLC, as warrant agent.

"Warrants" means the five-year warrants, issued by the Borrower to the Original Equity Holders pursuant to the Warrant Agreement, to purchase 787,855 shares of the Borrower's common stock at an exercise price of $61.75 per share.

"Wholly Owned" means, with respect to any Subsidiary of any Person, the ownership of all of the outstanding Capital Stock of such Subsidiary (other than any director's qualifying shares or Investments by foreign nationals mandated by Applicable Law) by such Person or one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) 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."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

SECTION 1.03 Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any Accounting Change or any other change as permitted by Section 7.10 would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such Accounting Change as if such Accounting Change has not been made (subject to the approval of the Required Lenders); provided, that until so amended, all financial covenants, standards, and terms in this Agreement shall continue to be calculated or construed as if such Accounting Change had not occurred.

SECTION 1.04 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time (daylight or standard, as applicable).

ARTICLE II

THE LOANS

SECTION 2.01 The Term Loans.

The Loan Parties hereby acknowledge, confirm and agree that immediately prior to the Closing Date, the aggregate outstanding principal amount of the Existing Term Loans held by the Lenders, inclusive of all fees and interest capitalized in accordance with the Forbearance Agreement, is $227,900,907.99 and such amount is owing to the Lenders without any defense, right of setoff, counterclaim or otherwise, all of which are hereby expressly waived. The Loan Parties further agree that (x) the aggregate amount of accrued and unpaid interest on such principal amount not heretofore capitalized is $4,352,274.29, (y) the aggregate amount of all other fees, expenses and other amounts not representing principal or otherwise being paid in cash on the Closing Date is $0, and (z) all such amounts are owing to the Lenders without any defense, right of setoff, counterclaim or otherwise, all of which are hereby expressly waived.

Subject to the terms and conditions set forth herein, the Lenders hereby agree to capitalize all such amounts set forth in clauses (x) and (y) above immediately prior to giving effect to Sections 2.01(b) and (c) below, and all such amounts shall be deemed to constitute outstanding principal under the Existing Term Loan on the Closing Date.

Subject to the terms and conditions set forth herein:

(a) each Term Loan A Lender severally agrees to make its Applicable Percentage of the Term Loan A to the Borrower on the Closing Date, in an aggregate principal amount not to exceed the amount of such Lender's Term Loan A Commitment;

(b) each Term Loan B Lender severally agrees that on the Closing Date, an amount equal to its Applicable Percentage, as set forth in Schedule IB hereto, of $100,000,000 of the Existing Term Loan in the aggregate shall be amended, restated, converted and continued as its Applicable Percentage of the Term Loan B hereunder;

(c) the Lenders agree that, other than the portion of the Existing Term Loan which is amended, restated, converted and continued as the Term Loan B hereunder pursuant to Section 2.01(b), the Existing Term Loan shall be cancelled and extinguished; and

(d) the Lenders agree that all of the Prospective Defaults, as such term is defined in the Forbearance Agreement, existing immediately prior to the Closing Date under the Original Credit Agreement are hereby permanently waived effective as of the Closing Date, and the parties confirm and agree that all of the other agreements and obligations of the parties under the Forbearance Agreement are hereby terminated effective as of the Closing Date other than those agreements and obligations set forth in Sections 12, 13.04, 13.08, the first sentence of 13.09, and 13.11 thereof.

Any portion of the Term Loans repaid or prepaid may not be reborrowed.

The Borrower agrees to effect the New Equity Issuance in accordance with the Equity Documents and further agrees that, in consideration of the commitments of the Term Loan A Lenders as set forth in Section 2.01(a), 50% of the shares issued pursuant to the New Equity Issuance shall be issued to the Term Loan A Lenders (or their designees), and in consideration of the cancellation and extinguishment of that portion of the Existing Term Loan in excess of the Term Loan B as set forth in Section 2.01(c), and 50% of the shares issued pursuant to the New Equity Issuance shall be issued to all of the Lenders existing as of the Closing Date (or their designees).

SECTION 2.02 Borrowing of Loans. (a) The Borrowing of the Term Loan A or any New Term Loan shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (New York City time) one (1) Business Day prior to the requested date of any Borrowing, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request. Each telephonic notice by the Borrower pursuant to this Section must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing of the Term Loan A pursuant to Section 2.01(a) or a New Term Loan pursuant to Section 2.10, (ii) the requested date of the Borrowing (which shall be a Business Day), and (iii) the principal amount to be borrowed.

(b) Following receipt of a Borrowing Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of such Term Loan. Each Lender with a Commitment in respect of such requested Term Loan shall make the amount of its Term Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Borrowing Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01 with respect to the Borrowing of the Term Loan A on the Closing Date or the conditions set forth in Section 2.10(f) with respect to the Borrowing of a New Term Loan, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Citibank, N.A. with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

SECTION 2.03 Prepayments. (a) Optional. The Borrower, may, upon at least one (1) Business Day's notice to the Administrative Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given, the Borrower shall, prepay the outstanding aggregate principal amount of the Term Loans in whole or ratably in part, together with accrued interest to the date of such prepayment on the aggregate principal amount prepaid; provided, however, that (x) no portion of the Term Loan B may be prepaid so long as any of the Term Loan A Obligations or Obligations in respect of any New Term Loan remain outstanding and (y) each partial prepayment shall be in an aggregate principal amount of $1,000,000 or an integral multiple of $500,000 in excess thereof. Each prepayment of any of the Term Loans pursuant to this Section 2.03 shall, subject to the preceding sentence, be applied ratably to the Term Loans owed to each Term Lender in accordance with the provisions specified in Section 2.03(c).

(b) Mandatory. (i) The Borrower shall, on the ninetieth (90^{th}) day following the end of each of its fiscal years commencing with the fiscal year ending December 31, 2013, prepay an aggregate principal amount of the Term Loans in an amount equal to 50% of the amount of Excess Cash Flow for such fiscal year.

(ii) If the Borrower or any of its Subsidiaries consummates any Asset Sale, then the Borrower (x) may retain the Net Cash Proceeds of such Asset Sale in an aggregate amount for the term of this Agreement not to exceed $10,000,000, so long as such retained Net Cash Proceeds are used for general working capital purposes, and (y) except as provided in the preceding clause (x), shall prepay, within three (3) Business Days (or deposit into the Collateral Account pending prepayment, which shall occur within five (5) Business Days) of the date of such Asset Sale, an aggregate principal amount of the Term Loans equal to 100% of all Net Cash Proceeds received therefrom on or prior to such date; provided, however, that, at the option of the Borrower, and as an alternative to the prepayment requirement set forth in this Section 2.03(b)(ii), the Borrower or such Subsidiary may use up to 50% of such Net Cash Proceeds (A) to reinvest in Replacement Assets for one of the Borrower's or its Subsidiaries' existing Facilities or (B) for other Capital Expenditures for one of the Borrower's or its Subsidiaries' existing Facilities, in each case, in accordance with Section 7.04(b)(i); provided further, however, that to the extent that Net Cash Proceeds from all Asset Sales exceed $50,000,000 in the aggregate for the term of this Agreement (the "Sale Cap"), then the Borrower shall no longer be entitled to use Net Cash Proceeds of Asset Sales to reinvest in Replacement Assets or for Capital Expenditures and must instead apply all Net Cash Proceeds of Asset Sales exceeding the Sale Cap as a mandatory prepayment in accordance with this Section 2.03(b)(ii). For the avoidance of doubt, to the extent any Net Cash Proceeds constitute ABL Primary Collateral, such Term Loans shall not be required to be prepaid to the extent such Net Cash Proceeds are applied to the repayment of the ABL Obligations (other than Excess ABL Obligations (as defined in the Intercreditor Agreement)) and until the ABL Obligations (other than Excess ABL Obligations) are paid in full (in accordance with Section 1.4 of the Existing ABL Credit Facility (excluding clause (f) thereof) as in effect on the date hereof, provided that nothing in this clause (ii) shall require a permanent reduction of revolving commitments under the ABL Credit Facility).

(iii) The Borrower shall, on the date of receipt of any Net Cash Proceeds by the Borrower or any of its Subsidiaries in connection with the incurrence or issuance of any Indebtedness (other than Indebtedness permitted to be incurred under Section 7.02) prepay an aggregate principal amount of the Term Loans equal to 100% of all Net Cash Proceeds received therefrom.

(iv) If the Borrower or any of its Subsidiaries receive Net Cash Proceeds from any Event of Loss, then the Borrower (x) may retain the Net Cash Proceeds of such Event of Loss in an aggregate amount for the term of this Agreement not to exceed $10,000,000, so long as such retained Net Cash Proceeds are used for general working capital purposes, and (y) except as provided in the preceding clause (x), shall prepay, within three (3) Business Days (or deposit into the Collateral Account pending prepayment, which shall occur within five (5) Business Days) of the date of receipt of such Net Cash Proceeds, an aggregate principal amount of the Term Loans equal to 100% of all Net Cash Proceeds received therefrom on or prior to such date; provided, however, that, at the option of the Borrower, and as an alternative to the prepayment requirement set forth in this Section 2.03(b)(iv), the Borrower or such Subsidiary may use up to 50% of such Net Cash Proceeds (A) to reinvest in Replacement Assets for one of the Borrower's or its Subsidiaries' existing Facilities or (B) for other Capital Expenditures for one of the Borrower's or its Subsidiaries' existing Facilities, in each case, in accordance with Section 6.17(a); provided further, however, that to the extent that Net Cash Proceeds from all Events of Loss exceed $50,000,000 in the aggregate for the term of this Agreement (the "Loss Cap"), then the Borrower shall no longer be entitled to use Net Cash Proceeds of Asset Sales to reinvest in Replacement Assets or for Capital Expenditures and must instead apply all Net Cash Proceeds of Asset Sales exceeding the Loss Cap as a mandatory prepayment in accordance with this Section 2.03(b)(iv).

(c) Application of Prepayments. (i) All voluntary prepayments pursuant to Section 2.03(a) and mandatory prepayments pursuant to Section 2.03(b) shall be applied first ratably to the outstanding principal of the Term Loan A and all New Term Loans (or as otherwise specified in clause (ii) below), second ratably to pay the Exit Fee to the Term Loan A Lenders, and third ratably to the outstanding principal of the Term Loan B (with application first to PIK Interest Amounts and second to all other principal) (or as otherwise specified in clause (ii) below), provided that prior to any application under clause "third", the Borrower shall pay (from funds other than Net Cash Proceeds or Excess Cash Flow subject to prepayment under Section 2.03(b)) all accrued and unpaid interest on the Term Loan A and any New Term Loans and all other Term Loan A Obligations and Obligations in respect of New Term Loans.

(ii) In the event that at any time there is more than one Maturity Date applicable to the Term Loans (pursuant to either of Section 2.10 or Section 2.11), then each group of Term Loans shall be treated as a separate "Tranche" of Term Loans and all prepayments under this Section 2.03 (other than mandatory prepayment pursuant to Section 2.03(b)(ii) and Section 2.03(b)(iv)) shall, within the order of priority specified in clause (i) above, be applied, at the Borrower's option, either (A) ratably to each Tranche of Term Loans or (B) to the Tranche (or Tranches) with the earliest Maturity Date; provided that any mandatory prepayment pursuant to Section 2.03(b)(ii) or Section 2.03(b)(iv) shall at all times be applied, within the order of priority specified in clause (i) above, *pro rata* to each Tranche of Term Loans.

SECTION 2.04 Repayment of the Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Lenders the aggregate outstanding principal amount of the Term Loans and all other Obligations on the Maturity Date (or, if sooner, the date on which such principal becomes due and payable pursuant to Section 8.02); provided, further that the aggregate principal amount of any Term Loans which become Extended Term Loans in accordance with Section 2.11 shall become due and payable in accordance with their applicable Extension Request.

SECTION 2.05 Interest and Fees. (a) (i) Term Loan A Interest. Subject to the provisions of Section 2.05(b), the principal amount of the Term Loan A, inclusive of the Closing Fee added to the funded amount of the Term Loan A pursuant to Section 2.05(d), shall bear interest on the amount thereof from time to time outstanding at a rate per annum equal to twelve percent (12%), which interest shall be payable in cash on each Interest Payment Date.

(ii) Term Loan B Interest. Subject to the provisions of Section 2.05(b), the principal amount of the Term Loan B, inclusive of all PIK Interest Amounts, shall bear interest on the amount thereof from time to time outstanding at a rate per annum equal to, at the Borrower's option, (x) fifteen percent (15%) (the "PIK Rate"), which interest shall be capitalized and paid in kind on each Interest Payment Date (the amount thereof as of each Interest Payment Date being referred to as the "PIK Interest Amount"), by adding such PIK Interest Amount to the then outstanding principal amount of Term Loan B, or (y) ten and one-half percent (10.5)% (the "Cash Rate"), which interest shall be payable in cash on each Interest Payment Date.

(iii) Payment Type Election for Term Loan B. Until such time as the Borrower notifies the Administrative Agent in writing that it is electing the Cash Rate, the Borrower will be deemed to have elected the PIK Rate for the Term Loan B. The Borrower shall provide written notice to the Administrative Agent at least ten (10) Business Days prior to the first Interest Payment Date as to which it desires to pay interest on the Term Loan B at the Cash Rate. Subject to Section 2.05(b), once elected, the Cash Rate shall apply to the Term Loan B beginning on the first date of the applicable interest period during which notice of such election is delivered to the Administrative Agent and continuing for each subsequent interest period until the Borrower delivers written notice to the Administrative Agent, provided at least ten (10) Business Days prior to the next succeeding Interest Payment Date, that it desires to pay interest on the Term Loan B at the PIK Rate (and if so elected, the PIK Rate shall apply to the Term Loan B beginning on the first date of the applicable interest period during which notice of such election is delivered to the Administrative Agent). An "interest period" means the period from and including an Interest Payment Date (or initially, from and including the Closing Date) until but not including the next Interest Payment Date (or if earlier, the Maturity Date).

(b) Default Rate.

(i) If any amount of principal or interest of any Term Loan (or any other Obligations) is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Law.

(ii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Law.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Payment. Interest on each Term Loan shall be due and payable in arrears (in cash or, in the case of the Term Loan B, in cash or in kind as elected pursuant to Section 2.05(a)(iii)) on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Term Loan A Closing Fee. On the Closing Date, each Term Loan A Lender shall have fully earned a nonrefundable fee equal to three percent (3%) of such Term Loan A Lender's Applicable Percentage of the Term A Loan (as set forth in Schedule IA hereto), which fee shall be capitalized and paid in kind by being added to the principal amount of the Term A Loan funded by such Term Loan A Lender (the "Closing Fee").

(e) Term Loan A Exit Fee. On the Closing Date, each Term Loan A Lender shall have fully earned a nonrefundable fee equal to three percent (3%) of such Term Loan A Lender's Applicable Percentage of the Term A Loan (as set forth in Schedule IA hereto), which fee shall be shall be due and payable solely to the holder of such portion of the Term Loan A on the Exit Fee Payment Date (the "Exit Fee").

SECTION 2.06 Computation of Interest and Fees. All computations of interest and fees shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Term Loan for the day on which the Term Loan is made, and shall not accrue on a Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid, provided, that any Term Loan that is repaid on the same day on which it is made shall, subject to Section 2.08(a) bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding anything herein to the contrary, no interest shall accrue on the Exit Fee at any time other than interest at the Default Rate if applicable in accordance with Section 2.05(b).

SECTION 2.07 Evidence of Debt. Term Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Term Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Term Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, amount and maturity of its Term Loans and payments with respect thereto.

SECTION 2.08 Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the Term Loans of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of the Term Loan A or any New Term Loan that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to the applicable Term Loan. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.08(b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Term Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the Borrowing set forth in Article IV (or in the case of a New Term Loan, Section 2.10(f)) are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and to make payments pursuant to Section 10.04 are several and not joint. The failure of any Lender to make any Term Loan or to make any payment under Section 10.04 on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Term Loan, to purchase its participation or to make its payment under Section 10.04.

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

SECTION 2.09 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Term Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided, that:

(a) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered (including pursuant to Section 10.05), such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply), (iii) any payments pursuant to the Fee Letters, or (iv) any payments made pursuant to Article III or Section 10.13; (iv) any payment obtained by a Lender as consideration for the assignment of any of its Term Loans to the Borrower or any of its Subsidiaries pursuant to Section 10.06(b)(vi); or (v) any payment made to or obtained by a Term Loan A Lender or New Lender that is not shared with the Term Loan B Lenders in accordance with the priorities specified herein or the terms of the Agreement Among Lenders.

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

SECTION 2.10 Incremental Facilities. (a) Provided there exists no Default or Event of Default, and subject to the conditions set forth in clause (f) below, the Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request (i) one or more tranches of new term loans ("New Term Loans") under one or more new term facilities (each a "New Term Loan Facility") or (ii) one or more increases in the total amount of the Commitments (each an "Additional Term Commitment") and any Loans advanced pursuant to such Additional Term Commitments being Term Loans for all purposes of this Agreement, up to an aggregate total amount with respect to all New Term Loans or Term Loans made as a result of any Additional Term Commitments not to exceed $20,000,000 or a lesser amount in integral multiples of $5,000,000.

(b) (i) Each New Term Loan Facility (A) shall rank pari passu in right of payment with the Term Loan A, shall rank senior in right of payment to the Term Loan B, and shall rank pari passu in right of security and rights under the Subsidiary Guarantees and in and to the Collateral with the other Term Loans and (B) shall not mature prior to the latest Maturity Date applicable to the Term Loan A, shall not have an Average Life shorter than the Average Life of the Term Loan A and shall not be subject to amortization, (ii) the New Term Loans in respect to such New Term Loan Facility shall be entitled to share in all prepayments pursuant to Section 2.03 as specified in Section 2.03(c), (iii) each New Term Loan shall bear interest at a fixed rate per annum, provided that, in the event that such interest rate exceeds the interest rate relating to the Term Loan A immediately prior to the effectiveness of the applicable New Term Loan Facility, the interest rate for the Term Loan A shall be adjusted to be at least equal to the interest rate relating to such New Term Loan Facility, provided further, that in determining the interest rate for the New Term Loan Facility solely for the purpose of this Section, (A) original issue discount ("OID") or upfront fees (which shall be deemed to constitute like amounts of OID) payable to the New Lenders providing New Term Loan Commitments in the initial primary syndication thereof shall be included and equated to interest (with OID or upfront fees being equated to interest based on an assumed four-year life to maturity), and (B) customary arrangement, underwriting, structuring or commitment fees payable to one or more arrangers (or their affiliates) of the New Term Loan Facility shall be excluded, and provided further, that, in the event that the New Lenders are paid or earn any fees in excess of the Closing Fee and Exit Fee payable on the Term Loan A or on better terms, an amount equal to such incremental fees shall be paid to, or such better terms shall be offered to, the Term Loan A Lenders, and (iv) all other terms of such New Term Loans, if not consistent with the terms of the Term Loans, (A) will be as agreed between the Borrower and the New Lenders providing such New Term Loans and (B) shall not be more restrictive than the terms of the existing Term Loans unless the Lenders under the Term Loans also receive the benefit of the more restrictive terms (without any consent being required); provided that the terms of the New Term Facility may include *pro rata* mandatory prepayment requirements for asset sales and other mandatory prepayment events so long as such mandatory prepayment events shall also apply to Term Loans.

(c) Any Term Loans made in connection with or pursuant to any Additional Term Commitments shall have the same terms and conditions as the Term Loans applicable thereto.

(d) Each notice from the Borrower pursuant to this Section 2.10 shall set forth (i) with respect to any Additional Term Commitments, the requested amount of such Additional Term Commitments, the proposed effective date for the making of Term Loans pursuant to such Additional Commitments (the "Additional Commitment Effective Date") and the amount of OID or upfront fees payable in connection with such Additional Term Commitments and (ii) with respect to any New Term Loan Facility, the requested amount of New Term Loans, the proposed terms of the relevant New Term Loan Facility and the proposed effective date for the making of such New Term Loan Facility (the "New Term Loan Effective Date" and together with any Additional Commitment Effective Date, the "Increase Effective Date"). New Term Loans or Additional Term Commitments may be made or provided by any existing Lender (it being understood that no existing Lender will have an obligation to make a portion of any New Term Loan or provide any Additional Term Commitment) or by any other bank or other financial institution (any such other bank or other financial institution being called a "New Lender"); provided any such New Lenders shall be reasonably acceptable to the Administrative Agent and the Borrower.

(e) Commitments in respect of New Term Loans ("New Term Loan Commitments") and Additional Term Commitments shall become Commitments under this Agreement pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each New Lender, any other Lender providing a New Term Loan or Additional Term Commitment and the Administrative Agent. The Incremental Amendment may, without the consent of any other Lender, effect such amendments to this Agreement (including amendments to Schedule IA or IB) and the other Loan Documents as may be necessary, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.10. The Administrative Agent may take any and all action as may be reasonably necessary to ensure that any Term Loans made pursuant to any Additional Term Commitment, when originally made, are included in each Borrowing of outstanding Term Loans on a pro rata basis.

(f) Conditions to Effectiveness of Increase. As a condition precedent to any Incremental Amendment, the Borrower shall deliver to the Administrative Agent (i) a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrower, certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (2) no Default or Event of Default exists; and (ii) executed legal opinions of counsel to the Loan Parties, addressed to the Administrative Agent and the Lenders, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders.

(g) Conflicting Provisions. This Section shall supersede any conflicting provisions in Section 10.01.

SECTION 2.11 Extensions of Term Loans. (a) Notwithstanding anything to the contrary in this Agreement, not less than forty-five (45) days prior to the then-effective Maturity Date, the Borrower may, at its option, by means of a letter (an "Extension Request") addressed to the Administrative Agent (who shall promptly deliver such Extension Request to each Lender), request that all the Lenders of all or a portion of Loans with a like Maturity Date and on the same terms to each such Lender extend their scheduled Maturity Dates and otherwise modify the terms of such Loans pursuant to the terms of the relevant Extension Request (including, without limitation, by increasing the interest rate or fees payable in respect of such Loans) (each, an "Extension", and each group of Loans as so extended, as well as the original Loans (not so extended), being a "tranche"; any Extended Term Loans shall constitute a separate tranche of Loans from the tranche of Loans from which they were converted), so long as the following terms are satisfied: (i) except as to interest rates, fees, final maturity date, premium, required prepayment dates and participation in prepayments (which shall, subject to immediately succeeding clauses (ii), (iii), (iv) and (v), be determined by the Borrower and set forth in the relevant Extension Request), the Term Loans of any Term Lender (an "Extending Term Lender") extended pursuant to any Extension ("Extended Term Loans") shall have the same terms as the tranche of Term Loans subject to such Extension Request, (ii) the final maturity date of any Extended Term Loans shall be no earlier than the Maturity Date applicable to the Loans extended thereby (prior to giving effect to any such Extension), (iii) the Average Life of any Extended Term Loans shall be no shorter than the remaining Average Life of the Loans extended thereby, (iv) any Extended Term Loans may participate on a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments hereunder, in each case as specified in the respective Extension Request, (v) the interest rate for any Extending Term Loan shall not be greater than the interest rate for the Term Loans made on the Closing Date, provided, that in determining the interest rate for the Extended Term Loans solely for the purpose of this Section, (A) OID or upfront fees (which shall be deemed to constitute like amounts of OID) payable to the Extending Term Lenders and the Lenders in the initial primary syndication thereof shall be included and equated to interest (with OID or upfront fees being equated to interest based on an assumed four-year life to maturity), and (B) customary arrangement, underwriting, structuring or commitment fees payable to one or more arrangers (or their affiliates) in connection with the Extended Term Loans and the Term Loans made on the Closing Date shall be excluded, (vi) all documentation in respect of such Extension shall be consistent with the foregoing; (vii) no more than four (4) Maturity Dates shall apply to the outstanding Loans after giving effect to any Extension proposed in such Extension Request and (viii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower. Each Lender electing (in its sole discretion) to extend its scheduled Maturity Date shall execute and deliver not later than the date set by the Borrower and the Administrative Agent in the applicable Extension Request counterparts of such Extension Request to the Administrative Agent, who shall notify the Borrower, in writing, of the Lenders' decisions as soon as possible thereafter, whereupon such Lender's scheduled Maturity Date shall be extended, effective only as of the date that is such Lender's then-current scheduled Maturity Date, for the period as agreed in the Extension Request. Any Lender that declines or fails to respond to an Extension Request shall be deemed to have not extended its scheduled Maturity Date

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.11, no Extension Request is required to be in any minimum amount or any minimum increment; provided, that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Request in the Borrower's sole discretion and may be waived by the Borrower) of Term Loans of any or all applicable tranches be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.11 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Request) and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.11.

(c) The Lenders hereby irrevocably authorize the Administrative Agent and Collateral Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.11. All such amendments entered into with the Borrower by the Administrative Agent or the Collateral Agent hereunder shall be binding and conclusive on the Lenders.

SECTION 2.12 Defaulting Lenders. (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Term Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Term Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (A) such payment is a payment of the principal amount of any Term Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (B) such Term Loans were made at a time when the conditions set forth in Section 4.01 were satisfied or waived, such payment shall be applied solely to pay the Term Loans of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Term Loans owed to that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.12(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) No Commitment of any Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 2.12, performance by the Borrower of its obligations hereunder shall not be excused or otherwise modified as a result of the operation of this Section 2.12. The rights and remedies against a Defaulting Lender under this Section 2.12 are in addition to any other rights and remedies which the Borrower, the Administrative Agent, or any Lender may have against such Defaulting Lender.

(c) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Term Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held on a *pro rata* basis by the Lenders in accordance with their Applicable Percentages, whereupon that Lender will cease to be a Defaulting Lender; provided, that, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. The Borrower shall pay to any applicable Lender any costs of the type referred to in Section 3.05 in connection with the foregoing.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

SECTION 3.01 Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any Obligation of any Loan Party under any Loan Documents shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided, that if the an applicable withholding agent shall be required by Applicable Law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable by the applicable Loan Party shall be increased as necessary so that after making all required deductions have been made including deductions applicable to additional sums payable under this Section 3.01(a) (after payment of all Indemnified Taxes and Other Taxes) the Administrative Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 3.01(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including the full amount of taxes of any kind imposed or asserted by any jurisdiction on or attributable to amounts payable under this Section) paid by the Administrative Agent or each Lender or any of their respective Affiliates, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority, except to the extent any such liability (including additions to tax, penalties, interest and expense) arises from the gross negligence or willful misconduct of the Administrative Agent or such Lender or its Affiliate. A certificate as to the amount of such payment or liability delivered to a Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

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

(e) Status of Lenders. Each Lender that is a "United States Person" as defined in section 7701(a)(30) of the Code that may be treated as an exempt recipient (as defined in section 6049(b)(4) of the Code and the treasury regulations thereunder) shall deliver to the Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement and, in the case where a U.S. Lender changes its applicable Lending Office by designating a new Lending Office, the date upon which such Lender designates the new Lending Office, two duly completed and executed copies of Internal Revenue Service Form W-9 or successor form, certifying that such Lender is on the date of delivery thereof entitled to an exemption from U.S. backup withholding tax.

Any Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement and, in the case where a Foreign Lender changes its applicable Lending Office by designating a new Lending Office, the date upon which such Foreign Lender designates the new Lending Office (but only so long thereafter as such Foreign Lender remains lawfully able to do so), two copies of whichever of the following is applicable or any subsequent version thereof or successor thereto:

(i) duly completed and executed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed and executed copies of Internal Revenue Service Form W-8ECI relating to all payments to be received by such Foreign Lender hereunder or under any other Loan Document, or

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 871(h) or section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (1) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (B) duly completed and executed copies of Internal Revenue Service Form W-8BEN.

In addition to documents delivered pursuant to one of clauses (i) through (iii) above, if a payment made to a Foreign Lender under this Agreement would be subject to U.S. withholding tax imposed by section 1471 through 1474 of the Code and any regulations thereunder or official governmental interpretations thereof ("FATCA"), such Foreign Lender shall deliver to the Borrower and the Administrative Agent such other documentation as reasonably required to permit the Borrower or the Administrative Agent to comply with applicable FATCA reporting requirements (the "FATCA Documentation").

In the event that, pursuant to Section 10.06(d), a Participant is claiming the benefits of this Section 3.01, such Participant shall provide the forms required above to the Lender from which the related participation was purchased, and if such Lender is a Foreign Lender, such Lender shall, promptly upon receipt thereof (but in no event later than the next scheduled payment under this Agreement) forward such documentation to the Borrower and the Administrative Agent, together with such additional forms as are required by law. If, at the effective date of the Assignment and Assumption pursuant to which a Lender becomes a party to this Agreement, such Lender assignor was entitled to payments under subsection (a) of this Section 3.01 in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Indemnified Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Indemnified Taxes) United States withholding tax, if any, applicable with respect to such Lender assignee on such date.

Without limiting the obligations of the Lenders set forth above regarding delivery of certain forms and documents to establish each Lender's status for U.S. withholding tax purposes, each Lender agrees promptly to deliver to the Administrative Agent or the Borrower, as the Administrative Agent or the Borrower shall reasonably request in writing, on or prior to the Closing Date, and in a timely fashion thereafter (including upon any change in circumstances that makes any information required to be on such form previously delivered by such Lender incorrect), such other documents and forms as would reduce or avoid any Indemnified Taxes in respect of all payments to be made to such Lender outside of the United States by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in such other jurisdiction; provided, that if any form or document referred to in this subsection (e) requires the disclosure of information, other than information necessary to compute the tax payable and information required by the Internal Revenue Service Form W 8BEN or W-8ECI (or successor form), that the applicable Lender reasonably considers to be confidential, such Lender shall give notice thereof to the Borrower and the Administrative Agent and shall not be obligated to include in such form or document such confidential information. Each Lender shall promptly notify the Administrative Agent of any change in circumstances which would modify or render invalid any such claimed exemption or reduction. Notwithstanding any other provision of this Section 3.01(e), a Lender shall not be required to deliver any form, document or other information pursuant to this Section 3.01(e) that such Lender is not lawfully able to deliver.

For any period with respect to which a Lender has failed to provide the Borrower and the Administrative Agent with the appropriate form, certificate or other document described in this subsection (e) (unless the Lender is no longer lawfully able to provide such form, certificate or other document due to a change in law, or in the interpretation or application thereof, occurring after the date on which a form, certificate or other document originally was required to be provided or if such form, certificate or other document otherwise is not required under this subsection (e)), such Lender shall not be entitled to the additional sums or indemnification under subsection (a) or (c) of this Section 3.01 with respect to Indemnified Taxes imposed by the United States by reason of such failure; provided, however, that should a Lender become subject to Indemnified Taxes because of its failure to deliver a form, certificate or other document required hereunder, the Borrower shall take steps as such Lender shall reasonably request to assist such Lender to recover such Indemnified Taxes. If, on the date that a Foreign Lender is required to deliver the FATCA Documentation, such Foreign Lender was not in compliance with the applicable FATCA reporting requirements (unless such Foreign Lender is no longer lawfully able to be so compliant due to a change in law, or in the interpretation or application thereof, occurring after the date on which such FATCA Documentation originally was required to be provided), then such Foreign Lender shall not be entitled to the additional sums or indemnification under subsection (a) or (c) of this Section 3.01 with respect to FATCA Taxes imposed by reason of such failure.

(f) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund with respect to Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional sums pursuant to subsection (a) of this Section 3.01, it shall promptly pay such refund (but only to the extent of indemnity payments made or additional sums paid by the Borrower with respect to the Indemnified Taxes or Other Taxes giving rise to such refund) to the Borrower, net of all out-of-pocket expenses of such Administrative Agent or the Lender incurred in obtaining such refund (including any net increase in Taxes imposed with respect to such refund) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that the Borrower agrees to promptly return such amount (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the applicable Administrative Agent or Lender, as the case may be, if it receives notice from the applicable Administrative Agent or Lender that such Administrative Agent or the Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

SECTION 3.02 [Intentionally omitted].

SECTION 3.03 [Intentionally omitted].

SECTION 3.04 Increased Costs. (a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender; or

(ii) impose on any Lender any other condition, cost or expense affecting this Agreement;

and the result of any of the foregoing shall be to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, upon written request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Term Loans made by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time, after submission to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section, describing the basis therefore and showing the calculation thereof in reasonable detail, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided, that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than ninety (90) days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.05 [Intentionally omitted].

SECTION 3.06 Mitigation Obligations; Replacement of Lenders. (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, then such Lender shall use reasonable efforts (consistent with its internal policies and requirements of the Applicable Law) to designate a different Lending Office for funding or booking its Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is at such time a Defaulting Lender, then the Borrower may replace such Lender in accordance with Section 10.13.

SECTION 3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS PRECEDENT TO BORROWING

SECTION 4.01 Conditions of Borrowing. The effectiveness of this Agreement, the obligations of the Term Loan A Lenders to provide the Term Loan A Commitments, and the other agreements of the Lenders under Section 2.01 are subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement;

(ii) Notes executed by the Borrower in favor of each Lender requesting Notes;

(iii) certified copies of (A) the resolutions of the Board of Directors or equivalent governing body of each Loan Party approving the Transactions and the Transaction Documents to which it is or is to be a party and (B) all documents evidencing other necessary corporate action and governmental and other third party approvals and consents, if any, with respect to the Transactions and each Transaction Document to which it is a party;

(iv) a copy of the certificate of the Secretary of State of the jurisdiction of incorporation or formation, as the case may be, of each Loan Party, dated reasonably near the Closing Date, certifying (A) as to a true and correct copy of the charter, article of formation, or such other constitutive document on file in such Secretary's office and (B) that (1) such amendments are the only amendments to such Loan Party's constitutive documents on file in such Secretary's office, (2) such Loan Party has paid all franchise taxes to the date of such certificate and (3) such Loan Party is duly incorporated or formed and in good standing or presently subsisting under the laws of the State of the jurisdiction of incorporation or formation;

(v) a certificate of each Loan Party signed on behalf of such Loan Party by a Responsible Officer, dated the Closing Date (the statements made in which certificate shall be true on and as of the Closing Date), certifying as to (A) the absence of any amendments to the charter or applicable constitutive documents of such Loan Party since the date of the Secretary of State's certificate referred to in Section 4.01(a)(iv), (B) a true and correct copy of the bylaws, limited liability company agreement, or partnership agreement of such Loan Party as in effect on the date on which the resolutions referred to in Section 4.01(a)(iii) were adopted and on the Closing Date and (C) the due incorporation or formation and good standing or valid existence of such Loan Party as a corporation, limited liability company or partnership organized or formed under the laws of the jurisdiction of its incorporation or formation and the absence of any proceeding for the dissolution or liquidation of such Loan Party;

(vi) a certificate of the Secretary or an Assistant Secretary of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign each Loan Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder;

(vii) a certificate of a duly authorized officer of each Loan Party stating that all consents, licenses and approvals required in connection with the consummation of such Loan Party of the Transactions have been received and are in full force and effect;

(viii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the representations and warranties of the Borrower and the other Loan Parties contained in Article V are true and correct in all material respects immediately prior to, and shall be true and correct in all material respects after giving effect to, the Borrowing, (B) that the representations and warranties contained in the other Loan Documents are true and correct in all material respects as though made on and as of the Closing Date (except for representations and warranties made as of a specific date, which shall be true and correct as of such specific date), (C) the absence of any event occurring and continuing, or resulting from the Borrowing, that constitutes a Default or Event of Default, (D) absence of any litigation (other than Disclosed Litigation) that could reasonably likely be expected to result in a Material Adverse Effect, (E) compliance with all Applicable Laws and regulations (including ERISA and Environmental Laws), and (F) the absence of any Material Adverse Effect since August 17, 2012;

(ix) a certificate attesting to the Solvency of the Borrower and its Subsidiaries on a consolidated basis before and after giving effect to the Transactions, from the Borrower's chief financial officer;

(x) the executed opinion of (A) Akin Gump Strauss Hauer & Feld LLP, special New York counsel to the Loan Parties, addressed to the Administrative Agent and each Lender and (B) local Kansas counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in each case, in form and substance reasonably satisfactory to the Administrative Agent;

(xi) a certificate as to the identity, location and other characteristics of the Collateral in form and substance reasonably satisfactory to the Administrative Agent, duly executed by each Loan Party (the "Perfection Certificate");

(xii) evidence that all insurance required to be maintained pursuant to Section 6.08 has been obtained and is in effect, together with the certificates of insurance, naming the Collateral Agent, on behalf of the Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral;

(xiii) each of the Equity Documents (excluding the Warrants) and copies of the Warrant certificates attached to the Warrant Agreement, certified as true and correct copies thereof by a Responsible Officer of the Borrower;

(xiv) the Intercreditor Agreement, in form and substance reasonably satisfactory to the Administrative Agent, duly executed by each party thereto;

(xv) [Intentionally omitted];

(xvi) the Omnibus Amendment with respect to the Security Agreement and the Subsidiary Guarantee, duly executed by each Loan Party, together with:

(A) confirmation from the Collateral Agent that all certificates representing the Initial Pledged Equity referred to therein (to the extent not constituting ABL Primary Collateral) accompanied by undated stock powers executed in blank and instruments evidencing the Initial Pledged Debt referred to therein, accompanied by note transfer powers indorsed in blank, are in the possession of the Collateral Agent;

(B) copies of all UCC financing statements filed pursuant to the Original Credit Agreement, each of which shall remain on file and of record in the appropriate jurisdictions, and any additional UCC financing statements or UCC financing statement amendments reasonably requested by the Collateral Agent in suitable form for filing;

(C) completed requests for information and lien search results, dated on or before the Closing Date, showing the UCC financing statements filed pursuant to the Original Credit Agreement and all other effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements;

(D) evidence of the completion of all other recordings and filings of or with respect to the Security Agreement that the Collateral Agent may reasonably deem necessary or desirable in order to perfect and protect the security interest created thereunder; and

(E) evidence that all other action that the Administrative Agent may reasonably deem necessary or desirable in order to perfect and protect the first priority liens and security interests created under the Security Agreement has been taken.

(b) The representations and warranties of (i) the Borrower contained in Article V and (ii) each Loan Party contained in each other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(c) No Default or Event of Default shall have occurred and be continuing, or would result from the execution of this Agreement or the proposed Borrowing or from the application of the proceeds thereof.

(d) There shall not have occurred, since August 17, 2012, a Material Adverse Effect.

(e) There shall exist no action, suit, investigation, litigation or proceeding affecting the Borrower or any of its Subsidiaries pending or threatened before any court, governmental agency or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect other than the matters described on Schedule 4.01(e) hereto (the "Disclosed Litigation") or (ii) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby.

(f) Any fees, costs and expenses required to be paid on or before the Closing Date to any Agent or the Lenders pursuant to the Fee Letter, the Forbearance Agreement, the Restructuring Agreement or any of the Loan Documents for which invoices have been received at least one Business Day prior to the Closing Date shall have been paid.

(g) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Agents (directly to such counsel if requested by the Agents) and Schulte Roth & Zabel LLP as counsel to the Lenders, to the extent invoiced at least one Business Day prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing and customary post-closing proceedings included in such invoices (provided, that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Agents).

(h) The Existing ABL Facility shall have been amended as of the Closing Date consistent with the Restructuring Agreement and otherwise in a manner reasonably satisfactory to the Required Lenders.

(i) All of the Lenders shall have entered into the Agreement Among Lenders.

(j) All of the Equity Transactions contemplated to occur on or prior to the Closing Date pursuant to the Equity Documents shall have occurred in a manner consistent with the Restructuring Agreement and otherwise in a manner reasonably satisfactory to the Required Lenders.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

SECTION 5.01 Formation and Qualification. (a) The Borrower and each of its Subsidiaries are duly incorporated or formed, as applicable, and in good standing under the laws of the state listed on Schedule 5.01(a) and are qualified to do business and are in good standing in the states listed on Schedule 5.01(a) which constitute all states in which qualification and good standing are necessary for the Borrower or such Subsidiary to conduct its business and own its property and where the failure to so qualify could reasonably be expected to have a Material Adverse Effect. Each of the Borrower and its Subsidiaries has delivered to the Administrative Agent true and complete copies of its certificate of incorporation and by-laws or certificate of formation and operating agreement, as applicable, and will promptly notify the Administrative Agent of any amendment or changes thereto.

(b) The only Subsidiaries of the Borrower are listed on Schedule 5.01(b).

SECTION 5.02 Authority. The Borrower and each of its Subsidiaries has full power, authority and legal right to enter into this Agreement and the other Transaction Documents and to perform all its respective Obligations hereunder and thereunder. This Agreement and the other Transaction Documents have been duly executed and delivered by the Borrower and each of its Subsidiaries, and this Agreement and the other Transaction Documents constitute the legal, valid and binding obligation of the Borrower and such Subsidiaries, enforceable in accordance with their terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered at a proceeding in equity or at law. The execution, delivery and performance of this Agreement and of the other Transaction Documents (a) are within the Borrower's and such Subsidiary's corporate or limited liability company powers, as applicable, have been duly authorized by all necessary corporate or company action, as applicable, are not in contravention of law or the terms of the Borrower's or such Subsidiary's by-laws, certificate of incorporation, operating agreement or certificate of formation, as applicable, or other applicable documents relating to the Borrower's or such Subsidiary's formation or to the conduct of the Borrower's or such Subsidiary's business or of any material agreement or undertaking to which the Borrower or such Subsidiary is a party or by which the Borrower or such Subsidiary is bound, including the Existing ABL Facility, (b) will not conflict with or violate any law or regulation, or any judgment, order or decree of any Governmental Authority, (c) will not require the consent of any Governmental Authority or any other Person, except those consents set forth on Schedule 5.02 hereto, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Liens upon any asset of the Borrower or such Subsidiary under the provisions of any Contractual Obligation to which the Borrower or such Subsidiary is a party or by which it or its property is a party or by which it may be bound.

SECTION 5.03 Entity Names. Except as set forth on Schedule 5.03, the Borrower and each of its Subsidiary have not been known by any other corporate name in the past five (5) years and do not do business under any other name, nor has the Borrower or any of its Subsidiaries been the surviving corporation or company of a merger or consolidation or acquired all or substantially all of the assets of any Person during the preceding five (5) years.

SECTION 5.04 Financial Statements. (a) The financial statements furnished to the Lenders prior to the Closing Date are accurate, complete and correct and fairly reflect the financial condition of the Borrower and its Subsidiaries on a consolidated basis as of the Closing Date, and have been prepared in accordance with GAAP, consistently applied. All financial statements referred to in this Section 5.04, including the related schedules and notes thereto, have been prepared, in accordance with GAAP, except as may be disclosed in such financial statements.

(b) Any financial projections of the Borrower and its Subsidiaries furnished to the Lenders are based on underlying assumptions which provide a reasonable basis for the projections contained therein and reflect the Borrower's judgment based on present circumstances of the most likely set of conditions and course of action for the projected period.

(c) The consolidated and consolidating balance sheets of the Borrower and its Subsidiaries and such other Persons described therein (including the accounts of all Subsidiaries for the respective periods during which a subsidiary relationship existed) as of December 31, 2011, and the related statements of income, changes in stockholder's equity, and changes in cash flow for the period ended on such date, all accompanied by reports thereon containing opinions without qualification by independent certified public accountants, copies of which have been delivered to Administrative Agent, have been prepared in accordance with GAAP, consistently applied (except for changes in application in which such accountants concur) and present fairly the financial position of the Borrower and its Subsidiaries at such date and the results of their operations for such period. Since August 17, 2012, there has been no change in the condition, financial or otherwise, of the Borrower or its Subsidiaries as shown on the consolidated balance sheet as of such date and no change in the aggregate value of machinery, equipment and real property owned by the Borrower and its Subsidiaries, except changes in the ordinary course of business, none of which individually or in the aggregate has had a Material Adverse Effect.

SECTION 5.05 Solvency; No Litigation, Violation, Indebtedness or Default; ERISA Compliance. (a) The Borrower and its Subsidiaries on a consolidated basis are, and after giving effect to the Transactions, will be Solvent.

(b) Other than those listed on Schedule 4.01(e), there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of its Subsidiaries or against any of their properties or revenues that (i) purport to affect or pertain to this Agreement, any other Transaction Document or the consummation of the Transactions, or (ii) as to which there is a reasonable possibility of an adverse determination and that could reasonably be expected to result in a Material Adverse Effect.

(c) Neither the Borrower nor any of its Subsidiaries is in violation of any applicable statute, law, rule, regulation, ordinance or Contractual Obligation in any respect which could reasonably be expected to have a Material Adverse Effect, nor is the Borrower or any of its Subsidiaries in violation of any order of any court, Governmental Authority or arbitration board or tribunal in any respect which could reasonably be expected to have a Material Adverse Effect.

(d) None of the Borrower, its Subsidiaries or any member of the Controlled Group maintains or is required to contribute to any Pension Benefit Plan or Multiemployer Plan other than those listed on Schedule 5.05(d) hereto. (i) The Borrower, its Subsidiaries and each member of the Controlled Group have met all applicable minimum funding requirements under Section 302 of ERISA and Section 412 of the Code in respect of each Plan, and each Plan is in compliance with Sections 412, 430 and 436 of the Code and Sections 206(g), 302 and 303 of ERISA, taking into account waivers, variances and extensions of amortization periods; (ii) each Plan which is intended to be a qualified plan under Section 401(a) of the Code as currently in effect has been determined by the IRS to be qualified under Section 401(a) of the Code and the trust related thereto has been determined to be exempt from federal income tax under Section 501(a) of the Code; (iii) none of the Borrower, its Subsidiaries or any member of the Controlled Group have incurred any liability to the PBGC which remains outstanding other than for the payment of premiums, and there are no premium payments which have become due which are unpaid; (iv) no Plan subject to Title IV of ERISA has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would cause the PBGC to institute proceedings under Title IV of ERISA to terminate any such Plan; (v) none of the Borrower, its Subsidiaries or any member of the Controlled Group has breached any of the material responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan; (vi) none of the Borrower, its Subsidiaries or any member of the Controlled Group nor any fiduciary of any Plan, has engaged in a "prohibited transaction" described in Section 406 of ERISA or Section 4975 of the Code nor taken any action which would constitute or result in a Termination Event with respect to any such Plan which is subject to ERISA; (vii) the Borrower, its Subsidiaries and each member of the Controlled Group has made all contributions required to be made with respect to each Pension Benefit Plan and Multiemployer Plan; (viii) there exists no event described in Section 4043(b) of ERISA, for which the thirty (30) day notice period has not been waived or which could reasonably be expected to result in material liability to the Borrower, its Subsidiaries or any member of the Controlled Group; (ix) except as set forth on Schedule 5.05(d)(ix), none of the Borrower, its Subsidiaries or any member of the Controlled Group maintains or is required to contribute to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code; (x) none of the Borrower, its Subsidiaries or any member of the Controlled Group has an outstanding liability in respect of a complete or partial withdrawal, within the meaning of Section 4203 or 4205 of ERISA, from any Multiemployer Plan and there exists no fact which would reasonably be expected to result in any such liability; and (xi) to the knowledge of the Borrower, no Plan fiduciary (as defined in Section 3(21) of ERISA) has any liability for breach of fiduciary duty or for any failure in connection with the administration or investment of the assets of a Plan.

SECTION 5.06 Licenses and Permits. Except as set forth in Schedule 5.06, or Schedule 5.16 with respect to Environmental Permits, each of the Borrower and its Subsidiaries (a) is in compliance with and (b) has procured and is now in possession of, all licenses or permits required by any applicable federal, state, provincial or local law, rule or regulation for the operation of its business in each jurisdiction wherein it is now conducting or proposes to conduct business and where the failure to procure such licenses or permits could reasonably be expected to have a Material Adverse Effect.

SECTION 5.07 Default of Indebtedness. Neither the Borrower nor any of its Subsidiaries is in default in the payment of the principal of or interest on any material Indebtedness for borrowed money or under any instrument or agreement under or subject to which any such Indebtedness has been issued and no event has occurred under the provisions of any such instrument or agreement which with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.

SECTION 5.08 No Default. Neither the Borrower nor any of its Subsidiaries is in default in the payment or performance of any of its material Contractual Obligations. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

SECTION 5.09 Tax Returns. The Borrower and each of its Subsidiaries' federal tax identification number is set forth on Schedule 5.09. The Borrower and each of its Subsidiaries have timely filed all federal, state and local tax returns and all other tax returns required to be filed and have paid or provided for the payment of all federal, state and local income and franchises Taxes, and other material Taxes due on such returns or pursuant to any assessment received by them, except for Taxes contested in good faith as to which adequate provisions have been made in accordance with GAAP. Federal income tax returns of the Borrower and each of its Subsidiaries have been examined and reported upon by the appropriate taxing authority or closed by applicable statute and satisfied for all fiscal years prior to and including the fiscal year ending December 31, 2010 and state and local income tax returns of each Borrower and each of its Subsidiaries have been examined and reported upon by the appropriate taxing authority or closed by applicable statute and satisfied for all fiscal years prior to and including the fiscal year ending December 31, 2010. The provision for Taxes on the books of the Borrower and each of its Subsidiaries is adequate for all years not closed by applicable statutes, and for its current fiscal year, and the Borrower has no knowledge of any deficiency or additional assessment in connection therewith not provided for on its books.

SECTION 5.10 Disclosure. None of the written information furnished by or on behalf of the Borrower or any of its Subsidiaries to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement, the Forbearance Agreement or the Restructuring Agreement or delivered hereunder or under any other Transaction Document (as modified or supplemented by other information so furnished), taken as a whole with any other information furnished or publicly available (including all of the foregoing as updated, restated or otherwise modified in writing prior to the Closing Date), contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date when made or delivered; provided, that with respect to any forecast, projection or other statement regarding future performance, future financial results or other future developments, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared (it being understood that any such information is subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and that no assurance can be given that the future developments addressed in such information can be realized); provided, no representation or warranty is made with respect to information for which the source is separately identified as a third party source or other person or entity not affiliated with or acting as agent or representative of the Borrower or any of its Subsidiaries.

SECTION 5.11 Margin Regulations. None of the Borrower or its Subsidiaries are engaged, nor will any of them engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. No part of the proceeds of the Borrowing will be used for "purchasing" or "carrying" "margin stock" as defined in Regulation U of such Board of Governors.

SECTION 5.12 No Burdensome Restrictions. None of the Borrower or its Subsidiaries are party to any material Contractual Obligation the performance of which could reasonably be expected to have a Material Adverse Effect. None of the Borrower or its Subsidiaries has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien which is not a Permitted Lien.

SECTION 5.13 Investment Company Act. None of the Borrower or its Subsidiaries is an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, nor is it controlled by such a company.

SECTION 5.14 Insurance. The properties of the Borrower and its Subsidiaries are insured with responsible carriers against such risks and in such amounts, and with such deductibles, retentions, self-insured amounts and co-insurance provisions, as are, in the reasonable judgment, customarily carried by similar businesses of similar size, including property and casualty loss, workers' compensation and interruption of business insurance.

SECTION 5.15 No Labor Disputes. None of the Borrower or its Subsidiaries is involved in any labor dispute; there are no strikes or walkouts or union organization of any of the Borrower's or its Subsidiaries' employees in existence, or, to the knowledge of the Borrower, threatened, and no collective bargaining agreement is scheduled to expire prior to the Maturity Date other than as set forth on Schedule 5.15 hereto.

SECTION 5.16 O.S.H.A. and Environmental Compliance. Except as could not reasonably be expected to have a Material Adverse Effect and except as set forth in Schedule 5.16,

(a) each of the Borrower and its Subsidiaries have duly complied, and their facilities, business, assets, property, leaseholds, real property and equipment are in compliance with, the provisions of the Federal Occupational Safety and Health Act and applicable Environmental Laws; and there have been no outstanding citations, notices or orders of non-compliance issued to the Borrower or any of its Subsidiaries or relating to any of their business, assets, property, leaseholds or equipment under any such laws, rules or regulations.

(b) each of the Borrower and its Subsidiaries have been issued all Environmental Permits necessary to operate the business.

(c) (i) there has not been any Hazardous Discharge on any Material Owned Property or Material Leased Property; (ii) there are no underground storage tanks or electrical equipment containing polychlorinated biphenyls on any Material Owned Property or Material Leased Property; (iii) the Material Owned Property or Material Leases Property has never been used as a treatment, storage or disposal facility of Hazardous Materials permitted under RCRA; and (iv) no Hazardous Materials are present on Material Owned Property or Material Leases Property excepting such quantities as are handled in accordance with all applicable manufacturer's instructions and governmental regulations and in proper storage containers and as are appropriate for the operation of the commercial business of the Borrower, its Subsidiaries or any of their tenants.

SECTION 5.17 Ownership of Property; Liens; Investments, Etc. (a) As of the Closing Date, each of the Borrower and its Subsidiaries has good, marketable and insurable fee simple title to the properties owned by such party free and clear of all Liens, other than Permitted Liens. Each of the Borrower and its Subsidiaries owns and has on the date hereof good and marketable title or subsisting leasehold interest (subject only to Permitted Liens) to, and enjoys on the date hereof peaceful and undisturbed possession of, all such properties that are necessary for the operation and conduct of its business, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There are no Liens of any nature whatsoever on any assets of the Borrower or any of its Subsidiaries other than Permitted Liens.

(b) (i) Schedule 5.17(b)(i) sets forth a complete and accurate list as of the Closing Date of the locations all real property owned by the Borrower or any of its Subsidiaries showing the street address, county or other relevant jurisdiction, state and record owner, (ii) Schedule 5.17(b)(ii) sets forth a complete and accurate list as of the Closing Date of all leases of real property under which any Loan Party is the lessee, showing the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof and each such lease is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms, no such leases have been amended or modified except as set forth on Schedule 5.17(b)(ii), and complete and accurate copies thereof have been provided to the Collateral Agent, and (iii) Schedule 5.17(b)(iii) sets forth a complete and accurate list as of the Closing Date of all leases of real property under which any Loan Party is the lessor, showing the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof.

(c) To the best knowledge of the Borrower after due inquiry and investigation, the legal description attached as Exhibit A to each Mortgage accurately and completely describes the Mortgaged Property intended to be covered thereby.

SECTION 5.18 Patents, Trademarks, Copyrights and Licenses. All patents, patent applications, trademarks, trademark applications, service marks, service mark applications, copyrights, copyright applications, design rights, tradenames, assumed names, trade secrets and licenses owned or utilized by the Borrower or any of its Subsidiaries are set forth on Schedule 5.18, are valid and have been duly registered or filed with all appropriate Governmental Authority and constitute all of the intellectual property rights which are necessary for the operation of its business; there is no objection to or pending challenge to the validity of any such patent, trademark, copyright, design rights, tradename, trade secret or license and the Borrower is not aware of any grounds for any challenge, except as set forth in Schedule 5.18 hereto. Each patent, patent application, patent license, trademark, trademark application, trademark license, service mark, service mark application, service mark license, design rights, copyright, copyright application and copyright license owned or held by the Borrower or any of its Subsidiaries and all trade secrets used by the Borrower or any of its Subsidiaries consist of original material or property developed by the Borrower or such Subsidiary or was lawfully acquired by the Borrower or such Subsidiary from the proper and lawful owner thereof. Each of such items has been maintained so as to preserve the value thereof from the date of creation or acquisition thereof.

SECTION 5.19 Priority. (a) The provisions of the Collateral Documents are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties, and the execution, delivery and performance of this Agreement does not adversely affect the effectiveness of: (i) a legal, valid and enforceable first priority Lien on all right, title and interest of the Loan Parties in the Term Loan Primary Collateral, subject only to Permitted Liens; and (ii) a legal, valid and enforceable second priority Lien on all right, title and interest of the Loan Parties in the ABL Primary Collateral, subject only to Permitted Liens.

(b) Except for filings contemplated hereby and by the Collateral Documents, no filing or other action (other than the taking of possession or control by the Collateral Agent of the Collateral with respect to which a security interest may be perfected only by possession or control) will be necessary to perfect such Liens.

SECTION 5.20 Anti-Terrorism Laws. (a) General. Neither the Borrower nor any of its Affiliates is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Executive Order No. 13224. Neither the Borrower nor any of its Affiliates or their respective agents acting or benefiting in any capacity in connection with the Borrowing or other Transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(iii) a Person or entity with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

(v) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

(vi) a Person or entity who is affiliated or associated with a Person or entity listed above.

Neither the Borrower or its Subsidiaries, nor to the knowledge of the Borrower, any of its agents acting in any capacity in connection with the Borrowing or other Transactions hereunder (a) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (b) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224.

SECTION 5.21 Trading with the Enemy. None of the Borrower or its Subsidiaries has engaged, nor does it intend to engage, in any business or activity prohibited by the Trading with the Enemy Act of 1917 (12 U.S.C. § 95a et seq.).

SECTION 5.22 Use of Proceeds. The Borrower will use the proceeds of the Term Loan A, each New Term Loan and any Additional Term Commitments solely as provided for in Section 6.12.

SECTION 5.23 Swaps. Neither the Borrower or any of its Subsidiaries is a party to, nor will it be a party to, any swap agreement whereby such Borrower or Subsidiary has agreed or will agree to swap interest rates or currencies unless same provides that damages upon termination following an event of default thereunder are payable on an unlimited "two-way basis" without regard to fault on the part of either party.

SECTION 5.24 Capital Stock. After giving effect to the transactions under the Equity Documents, the authorized and outstanding Capital Stock of the Borrower and its Subsidiaries is as set forth on Schedule 5.24 hereto. All of the Capital Stock of the Borrower and its Subsidiaries has been duly and validly authorized and issued and is fully paid (to the extent required by such Person's Organization Documents in the case of a limited liability company) and non-assessable (except as provided under Applicable Law in the case of a limited liability company) and has been sold and delivered to the holders thereof in compliance with, or under valid exemption from, all federal and state laws and the rules and regulations of each Governmental Authority governing the sale and delivery of securities, assuming the truth and accuracy of the New Equity Holder's representations and warranties in the Equity Documents. Except for the rights and obligations set forth on Schedule 5.24, as provided for in the Equity Documents, those warrants issued pursuant to that certain Warrant Agreement, dated as of March 15, 2010, between the Borrower and American Stock Transfer & Trust Company, LLC (the "Existing Warrants"), or in the First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code dated January 13, 2010, as modified prior to the date hereof (together with all related documents, the "Specified Plan"), there are no subscriptions, warrants, options, calls, commitments, rights or agreement by which any of the Borrower or its Subsidiaries or any of the shareholders of the Borrower or its Subsidiaries is bound relating to the issuance, transfer, voting or redemption of shares of its Capital Stock or any pre-emptive rights held by any Person with respect to the Capital Stock of the Borrower or its Subsidiaries. Except as set forth on Schedule 5.24, as provided for in the Equity Documents, the Existing Warrants or the Specified Plan, none of the Borrower or its Subsidiaries have issued any securities convertible into or exchangeable for shares of its Capital Stock or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares.

SECTION 5.25 Equity Transactions. All of the Equity Transactions have been fully consummated on the Closing Date pursuant to the Equity Documents in accordance with all Requirements of Law.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and expenses related thereto not then payable or in existence as of the Maturity Date), the Borrower shall, and shall cause each Subsidiary to:

SECTION 6.01 Financial Statements. Deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver copies thereof to the Lenders, provided that, if the Borrower has become and continues to be a Public Filer, then only the financial statements described in subsections (a) and (b) below, excluding Plant-Level Financial Statements, will be delivered to Public Lenders):

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2012), (i) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit, and (ii) Plant-Level Financial Statements for such fiscal year (such Plant-Level Financial Statements to be certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition and results of operations of the applicable Facility in accordance with GAAP);

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (commencing with the fiscal quarter ended September 30, 2012), (i) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, and (ii) Plant-Level Financial Statements for such fiscal quarter, in each case, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries or applicable Facility in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(c) as soon as available, but in any event within thirty (30) days after the end of each fiscal month of each fiscal year of the Borrower (commencing with the fiscal month ended October 31, 2012), (i) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal month, and the related consolidated statements of income or operations for such fiscal month and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, and (ii) Plant-Level Financial Statements for such fiscal month, in each case, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition and results of operations of the Borrower and its Subsidiaries or applicable Facility in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(d) as soon as available and in any event within sixty (60) days after the end of each fiscal year, forecasts prepared by management of the Borrower, in form reasonably satisfactory to the Administrative Agent, of balance sheets, income statements and cash flow statements on a quarterly basis for the fiscal year following such fiscal year and on an annual basis for each fiscal year thereafter until the Maturity Date together with a budget for the each fiscal quarter and fiscal year, in form reasonably satisfactory to the Administrative Agent.

SECTION 6.02 Certificates; Other Information. Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants reporting on such financial statements and stating that in performing their audit nothing came to their attention that caused them to believe the Borrower failed to comply with the financial covenants set forth in Section 7.08, except as specified in such certificate (which certificate may be limited to the extent required by accounting rules or guidelines and such accounting firm's internal policies and procedures);

(b) (i) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended September 30, 2012), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, which shall include detailed computations of the financial covenants, and (ii) following delivery of the financial statements referred to in Section 6.01(a) and (b), the Borrower shall hold a conference call with all Lenders, Equity Holders and prospective Equity Holders who are subject to the confidentiality provisions under this Agreement or the Stockholders Agreement, or are NDA Signatories, to be scheduled no later than 45 days following the end of each fiscal quarter;

(c) promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of the Borrower or any of its Subsidiaries, or any audit of any of them;

(d) promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports that any Loan Party or any of its Subsidiaries sends to its stockholders, and copies of all regular, periodic and special reports, and all registration statements, that any Loan Party or any of its Subsidiaries files with the SEC or any Governmental Authority that may be substituted therefor, or with any national securities exchange.

(e) unless otherwise required to be delivered to the Lenders hereunder, promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) as soon as available, but in any event prior to the date audited financial statements are required to be delivered, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for the Borrower and its Subsidiaries and containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request;

(g) promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower or any Subsidiary, copies of each material notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any material investigation or possible material investigation or other material inquiry by such agency regarding financial or other operational results of the Borrower or any Subsidiary;

(h) as soon as available, but in any event within the time period in which the Borrower must deliver its annual audited financials under Section 6.01(a), (i) a report supplementing Section 5.17(b)(i), Section 5.17(b)(ii) and Section 5.17(b)(iii), identifying all Material Owned Real Property and Material Leased Real Property acquired or disposed of by any Loan Party during such fiscal year and (ii) updated or supplemental schedules to any Loan Document or Collateral Document updating any information contained therein that must be so updated or supplemented in order to make such information accurate and complete;

(i) promptly, such additional information regarding the business, financial, legal or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(j) not later than ninety (90) days after the end of each fiscal year of the Borrower, a copy of summary projections by the Borrower of the operating budget and cash flow budget of the Borrower and its Subsidiaries for the succeeding fiscal year, such projections to be accompanied by a certificate of a Responsible Officer to the effect that such projections have been prepared based on assumptions believed by the Borrower to be reasonable; and

(k) within five (5) Business Days after the last day of the fiscal quarter of the Borrower or any Subsidiary, such information as is required under Sections 3.10(h) and 4.09(g) of the Security Agreement, if applicable to the Borrower or such Subsidiary during such fiscal quarter.

Documents required to be delivered pursuant to Section 6.01(a), (b), or (c) or Section 6.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; (b) such information is filed on EDGAR or the equivalent thereof with the SEC or (c) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that if the Administrative Agent or any Lender so requests, the Borrower shall provide the Administrative Agent or Lender, as applicable, by electronic mail electronic versions (i.e., soft copies) of the documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) in the event that the Borrower becomes a Public Filer, certain of the Lenders may choose to be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to any Loan Party or their securities) (each, a "Public Lender"). The Borrower hereby agrees that (i) Borrower Materials that are to be made available on the Platform to Public Lenders shall be clearly and conspicuously marked "PUBLIC," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders and the Lenders to treat such Borrower Materials as either publicly available information or not material information (although it may contain sensitive business information and remains subject to the confidentiality undertakings of Section 10.07) with respect to the Borrower or any other Loan Party or its securities for purposes of United States Federal and state securities laws, (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information," and (iv) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." In connection with the foregoing, each party hereto acknowledges and agrees that the foregoing provisions are not in derogation of their confidentiality obligations under Section 10.07.

SECTION 6.03 Notices. Notify the Administrative Agent:

(a) promptly, of the occurrence of any Default or Event of Default;

(b) promptly, of any event which could reasonably be expected to have a Material Adverse Effect;

(c) promptly, of any event that (i) the Borrower or any member of the Controlled Group knows or has reason to know that a Termination Event has occurred, together with a written statement describing such Termination Event and the action, if any, which such Borrower or any member of the Controlled Group has taken, is taking, or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, Department of Labor or PBGC with respect thereto, (ii) the Borrower or any member of the Controlled Group knows or has reason to know that a prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred together with a written statement describing such transaction and the action which such Borrower or any member of the Controlled Group has taken, is taking or proposes to take with respect thereto, (iii) a funding waiver request has been filed with respect to any Plan together with all communications received by the Borrower or any member of the Controlled Group with respect to such request, (iv) any increase in the benefits of any existing Plan or the establishment of any new Plan or the commencement of contributions to any Plan to which the Borrower or any member of the Controlled Group was not previously contributing shall occur, (v) the Borrower or any member of the Controlled Group shall receive from the PBGC a notice of intention to terminate a Plan or to have a trustee appointed to administer a Plan, together with copies of each such notice, (vi) the Borrower or any member of the Controlled Group shall receive any favorable or unfavorable determination letter from the Internal Revenue Service regarding the qualification of a Plan under Section 401(a) of the Code, together with copies of each such letter; (vii) the Borrower or any member of the Controlled Group shall receive a notice regarding the imposition of withdrawal liability, together with copies of each such notice; (viii) the Borrower or any member of the Controlled Group shall fail to make a required installment or any other required payment under Section 412 of the Code on or before the due date for such installment or payment; or (ix) the Borrower or any member of the Controlled Group knows that (A) a Multiemployer Plan has been terminated, (B) the administrator or plan sponsor of a Multiemployer Plan intends to terminate a Multiemployer Plan, or (C) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multiemployer Plan;

(d) promptly after receipt of notice or knowledge of the Borrower thereof, of any action, suit, proceeding or claim alleging any Environmental Liability against or by the Borrower or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect;

(e) promptly after the commencement thereof, notice of all actions, suits, investigations, litigation and proceedings before any Governmental Authority affecting any Loan Party or any of its Subsidiaries of the type described in Section 5.05(b), Section 5.05(d) and Section 5.09 that relates to the Transactions or the Transaction Documents or that could reasonably be expected to have a Material Adverse Effect; and

(f) the occurrence of any event triggering any requirement under Section 6.13 with respect to any additional Subsidiary Guarantor or any additional Collateral.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.04 Payment of Indebtedness. Pay, discharge or otherwise satisfy at or before maturity (subject, where applicable, to specified grace periods and, in the case of the trade payables, to normal payment practices) all its obligations and liabilities of whatever nature, except when the failure to do so could not reasonably be expected to have a Material Adverse Effect or when the amount or validity thereof is currently being properly contested and for which appropriate provisions have been made, subject at all times to any applicable subordination arrangement in favor of the Lenders.

SECTION 6.05 Corporate Existence. Cause to be done all things necessary to preserve and keep in full force and effect its corporate, partnership or other existence (except as otherwise permitted under Section 7.03 and 7.04) in accordance with the respective organizational documents of each such Person and the rights (charter and statutory) and material franchises of the Borrower and each of its Subsidiaries; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to preserve any such right or franchise or in the case of any foreign Subsidiary, its existence, if (in each case) the Board of Directors of the Borrower shall determine that the loss thereof is not, and shall not, result in a Material Adverse Effect.

SECTION 6.06 Maintenance of Properties. Cause all Material Owned Properties and Material Leased Properties used or useful to the conduct of its respective business, taken as a whole, to be maintained and kept in normal condition, repair and working order and supplied with all necessary equipment (ordinary wear and tear excepted and other than as caused by casualty events) and shall cause to be made all repairs, renewals, replacements, and betterments thereof, all as in its judgment may be necessary, so that the business carried on in connection therewith may be properly conducted at all times, except where the failure to do so could not reasonably be expected to adversely affect the use of the corresponding Material Owned Property or Material Leased Property (as applicable) for its intended purpose; provided, however, that, nothing in this Section 6.06 shall prevent the Borrower or any of its Subsidiaries from (a) idling such property in connection with maintenance or to the extent the operation of such property is not at such time commercially viable or (b) discontinuing the use, operation or maintenance of any of such properties, or disposing of any of them, if such property is obsolete, surplus or worn out property or is no longer commercially viable to operate and maintain or desirable in the conduct of the business of the Borrower or any such Subsidiary; provided, further, that nothing in this Section 6.06 shall prevent the Borrower or any of its Subsidiaries from discontinuing or disposing of any properties to the extent otherwise permitted by this Agreement.

SECTION 6.07 Payment of Taxes and Other Claims. Timely pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all material taxes, assessments and governmental charges levied or imposed upon it or upon the income, profits or property of it and (b) all lawful claims which, in each case, if unpaid, might by law become a material liability or Lien upon the property of the Borrower or any of its Subsidiaries; provided, however, that no Loan Party shall be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, (i) the applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate provision has been made or (ii) where the failure to effect such payment or discharge is not adverse in any material respect to the Lenders.

SECTION 6.08 Maintenance of Insurance. Maintain, and shall cause its Subsidiaries to maintain insurance with responsible carriers against such risks and in such amounts, and with such deductibles, retentions, self-insured amounts and co-insurance provisions, as are, in the Administrative Agent's reasonable judgment, customarily carried by similar businesses of similar size, including property and casualty loss, workers' compensation and interruption of business insurance. The Borrower shall, and shall cause each Subsidiary to, use commercially reasonable efforts to cause each such insurance policy to (a) name the Collateral Agent as loss payee with respect to property insurance and additional insured with respect to general liability insurance (without any representation or warranty by or obligation upon the Collateral Agent); (b) contain the agreement by the insurer that any loss thereunder shall be payable to the Collateral Agent notwithstanding any action, inaction or breach of representation or warranty by the Borrower or its Subsidiaries, subject to applicable insurance industry standards; (c) provide that there shall be no recourse against the Collateral Agent for payment of premiums or other amounts with respect thereto; (d) provide that the insurer shall endeavor to give at least ten (10) days' prior written notice of cancellation or of lapse shall be given to the Collateral Agent by the insurer; and (e) allow the Collateral Agent to settle any claims under insurance policies required to be maintained under this Section 6.08 following an Event of Default. The Borrower and its Subsidiaries will, if so requested by the Collateral Agent, duly execute and deliver instruments of assignment of such insurance policies to comply with the requirements of this Section 6.08 and cause the insurers to acknowledge notice of such assignment.

SECTION 6.09 Compliance with Laws. Comply with the requirements of all Applicable Law and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Applicable Law or order, writ, injunction or decree is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

SECTION 6.10 Books and Records. (a) Maintain proper books of record and account, in which in all material respects full, true and correct entries in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Borrower or such Subsidiary, as the case may be.

SECTION 6.11 Inspection Rights. Upon reasonable notice, permit representatives and independent contractors of each Agent and Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss the business, finances and accounts with its officers and independent public accountants at such reasonable times during normal business hours and as often as may be reasonably desired, provided, that such Agent or Lender shall give Borrower reasonable advance notice prior to any contact with such accountants and give the Borrower the opportunity to participate in such discussions, provided further that unless an Event of Default has occurred, the Borrower shall only be responsible for each Agent's and Lenders' expenses in connection with any such inspection once per fiscal year.

SECTION 6.12 Use of Proceeds. Use the proceeds of any Borrowing solely for for transaction costs, fees and expenses related to the Transaction Documents or the Transactions and for general corporate purposes.

SECTION 6.13 Covenant to Guarantee Obligations and Give Security. Upon (a) the request of the Collateral Agent following the occurrence and during the continuance of a Default; (b) the formation or acquisition of any new direct or indirect Subsidiaries by any Loan Party; or (c) the acquisition of any material property by any Loan Party, and such property, in the reasonable judgment of the Collateral Agent, shall not already be subject to a perfected first priority security interest in favor of the Collateral Agent for the benefit of the Lenders (subject only to Permitted Liens), then in each case at the Borrower's expense:

(i) in connection with the formation or acquisition of a Subsidiary, within thirty (30) days after such formation or acquisition, cause each such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Collateral Agent a Subsidiary Guaranty, guaranteeing the other Loan Parties' obligations under the Loan Documents;

(ii) (A) within ten (10) days after such request, furnish to the Collateral Agent a description of the real and personal properties of the Loan Parties and their respective Subsidiaries in detail reasonably satisfactory to the Collateral Agent and (B) within thirty (30) days after such formation or acquisition, furnish to the Collateral Agent a description of the real and personal properties of such Subsidiary or the real and personal properties so acquired, in each case in detail reasonably satisfactory to the Collateral Agent;

(iii) (A) within fifteen (15) days after such request or within sixty (60) days after acquisition of such material property by any Loan Party, duly execute and deliver, and cause each Loan Party to duly execute and deliver, to the Collateral Agent such additional Mortgages (together with all the items set forth in Section 6.16), pledges, assignments, supplements to the Security Agreement, supplements to the Intellectual Property Security Agreements and other security and pledge agreements as specified by, and in form and substance reasonably satisfactory to the Collateral Agent, securing payment of all the Obligations of such Loan Party under the Loan Documents and constituting Liens on (1) with respect to real property, all Material Owned Real Property and Material Owned Leased Property and (2) with respect to all personal property, all such personal property and (B) within sixty (60) days after such formation or acquisition of any new Subsidiary, duly execute and deliver and cause such Subsidiary and each Loan Party acquiring Capital Stock in such Subsidiary to duly execute and deliver to the Collateral Agent Mortgages (together with all the items set forth in Section 6.16), pledges, assignments, supplements to the Security Agreement, supplements to the Intellectual Property Security Agreements and other security and pledge agreements as specified by, and in form and substance reasonably satisfactory to, the Collateral Agent, securing payment of all of the Obligations of such Subsidiary or Loan Party, respectively, under the Loan Documents and constituting Liens on (x) with respect to real property, all Material Owned Real Property and Material Owned Leased Property owned or held by such Subsidiary and (y) with respect to all personal property, all personal property owned or held by such Subsidiary;

(iv) within sixty (60) days after such request, formation or acquisition, take, and cause each Loan Party and each newly acquired or newly formed Subsidiary to take, whatever action (including, without limitation, the recording of mortgages and the satisfaction of the other items set forth in Section 6.16(a), the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the Mortgages, pledges, assignments, supplements to the Security Agreement, supplements to the Intellectual Property Security Agreements and security and pledge agreements delivered pursuant to this Section 6.13, enforceable against all third parties in accordance with their terms (subject only to Permitted Liens);

(v) within sixty (60) days after such request, formation or acquisition, deliver to the Collateral Agent, upon the request of the Collateral Agent in its sole discretion, a signed copy of a favorable opinion (subject to customary assumptions, qualifications, exceptions and limitations), addressed to the Collateral Agent and the other Lenders, of counsel for the Loan Parties reasonably acceptable to the Collateral Agent as to (A) such Guarantees, supplements to Guarantees, Mortgages, including, without limitation, the opinions set forth in Section 6.16(b), pledges, assignments, supplements to the Security Agreement, supplements to the Intellectual Property Security Agreements and security and pledge agreements being legal, valid and binding obligations of each Loan Party party thereto enforceable in accordance with their terms; (B) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such properties; and (C) such other matters as the Collateral Agent may reasonably request;

(vi) as promptly as practicable after such request, formation or acquisition, deliver, upon the request of the Collateral Agent in its reasonable discretion, to the Collateral Agent with respect to each parcel of Material Owned Real Property and Material Owned Leased Property owned or held by each Loan Party or newly acquired or newly formed Subsidiary title reports and the other items set forth in Section 6.16(a), surveys and engineering, soils and other reports, and environmental assessment reports, each in scope, form and substance reasonably satisfactory to the Collateral Agent; and

(vii) at any time and from time to time, promptly execute and deliver, and cause each Loan Party and each newly acquired or newly formed Subsidiary to execute and deliver, any and all further instruments and documents and take, and cause each Loan Party and each newly acquired or newly formed Subsidiary to take, all such other action as the Collateral Agent may reasonably deem necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, Mortgages, pledges, assignments, supplements to the Security Agreement, supplements to the Intellectual Property Security Agreements and other security and pledge agreements.

The foregoing requirements of Section 6.13 shall not apply to (a) those assets over which the granting of security interests in such assets would be prohibited by contract, Applicable Law or regulation not overridden by the UCC or with respect to the assets of any non-wholly owned subsidiary, the organizational documents of such non-wholly owned subsidiary; provided that, at the request of the Collateral Agent, the Borrower shall use its commercially reasonable efforts to obtain the applicable consents to such pledge and security interest, (b) payroll, tax and other trust accounts, (c) motor vehicles and other assets subject to certificates of title, (d) with respect to any interests or assets in respect of a CFC, liens or pledges in excess of 65% of the voting capital stock of any "first-tier" Subsidiary that is not a Domestic Subsidiary and (e) those assets as to which the Administrative Agent and the Borrower reasonably determine that the cost of obtaining such security interest or perfection thereof are excessive in relation to the benefit to the Lenders of the security to be afforded thereby.

SECTION 6.14 Compliance with ERISA. (a) (i) Maintain, or permit any member of the Controlled Group to maintain, or (ii) become obligated to contribute, or permit any member of the Controlled Group to become obligated to contribute, to any Pension Benefit Plan, other than those Pension Benefit Plans disclosed on Schedule 5.05(d); (b) engage, or permit any member of the Controlled Group to engage, in any non-exempt "prohibited transaction", as that term is defined in Section 406 of ERISA or Section 4975 of the Code that could reasonably be expected to have a Material Adverse Effect; (c) terminate, or permit any member of the Controlled Group to terminate, any Pension Benefit Plan where such event could result in any liability in excess of $1,000,000 of the Borrower or any member of the Controlled Group or the imposition of a lien securing obligations in excess of $1,000,000 on the property of the Borrower or any member of the Controlled Group pursuant to Section 4068 of ERISA.

SECTION 6.15 Compliance with Environmental Laws. (a) Comply, and use reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply with all applicable Environmental Laws and Environmental Permits and obtain, to the extent necessary based on its current operations, and renew all Environmental Permits for its operations and properties, except in such instances in which (i) the requirement of an Environmental Permit is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted or (ii) the failure to so comply, obtain or renew could not reasonably be expected to have a Material Adverse Effect, and (b) undertake and perform any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws, except in such instances in which (i) the requirement to undertake or perform is being contested in good faith by the Borrower or any of its Subsidiaries by appropriate proceedings diligently conducted or (ii) the failure to so undertake or perform could not reasonably be expected to have a Material Adverse Effect.

SECTION 6.16 Post-Closing Obligations. Cause the following to be delivered to the Administrative Agent, properly executed by a Responsible Officer of the signing Loan Party, each in form and substance reasonably satisfactory to the Administrative Agent, within 60 days after the Closing Date (as such time period may be extended for a period up to 30 days in the Administrative Agent's reasonable discretion) ("Mortgage Effective Date"):

(a) Amendments to the existing Mortgages, in form and substance satisfactory to the Collateral Agent with respect to each Material Owned Real Property and Material Leased Real Property (other than the Excepted Leased Real Property), in each case duly executed by the appropriate Loan Party, together with:

(i) evidence that counterparts of such Mortgages and such amendments to the existing Mortgages have been duly executed, acknowledged and delivered in form suitable for filing or recording on or before the Mortgage Effective Date, in all filing or recording offices that the Collateral Agent may reasonably deem necessary or desirable in order to create or continue a valid first and subsisting Lien on the property described therein in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid;

(ii) fully paid American Land Title Association Lender's Extended Coverage title insurance Endorsements (the "Mortgage Endorsements") to the following loan policies of title insurance issued by Commonwealth Land Title Insurance Company: (A) policy number 20105167-A dated March 29, 2011, (B) policy number 20105168-A dated March 29, 2011, (C) policy number M-10-005480 dated March 25, 2011, (D) policy number 1401-A00199761-CLT dated April 1, 2011, and (E) policy number 8839008 dated March 29, 2011, in form and substance, reasonably acceptable to the Administrative Agent, issued, coinsured and reinsured by title insurers reasonably acceptable to the Collateral Agent, insuring such Mortgages, as amended or supplemented to date, to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Permitted Liens, and providing for such other affirmative insurance (including endorsements for future advances under the Loan Documents and for mechanics' and materialmen's Liens) and such coinsurance and direct access reinsurance as the Collateral Agent may reasonably deem necessary or desirable and with respect to any property in a state in which a zoning endorsement is not available, a zoning compliance letter from the applicable municipality or a zoning report from Planning and Zoning Resources Corporation, in each case reasonably satisfactory to the Collateral Agent;

(iii) certified updates to the following surveys: (A) in connection with 1300 S. Second Street, Pekin, Tazewell County, Illinois, the ALTA/ACSM Land Title Survey by Austin Engineering Co., Inc. dated February 16, 2011 as Project No. 42-11-011, (B) in connection with 23133 E County Hwy 6, Canton, Fulton County, Illinois, the ALTA/ACSM Land Title Survey dated January 27, 2011 by Maurer & Stutz, Inc. as Project No. 23211001.00, (C) in connection with 7201 Port Road, Mt. Vernon, Posey County, Indiana, the ALTA/ACSM Land Title Survey by Morley & Associates, Inc. dated February 2, 2011 as Project No. 6928, (D) in connection with 2103 Harvest Drive, Aurora, Hamilton County, Nebraska, the ALTA/ACSM Title Survey dated February 3, 2011 by Olsson Associates as Project No. 20110079, and (E) in connection with 1205 S. "O" Road, Aurora, Hamilton County, Nebraska, the ALTA/ACSM Title Survey dated January 17, 2011 by Olsson Associates as Project No. 2011-0079, for which all necessary fees (where applicable) have been paid, and dated no more than thirty (30) days before the Mortgage Effective Date, certified to the Collateral Agent and the issuer of the Mortgage Endorsements in a manner reasonably satisfactory to the Collateral Agent by a land surveyor duly registered and licensed in the States in which the property described in such surveys is located and reasonably acceptable to the Administrative Agent, indicating any material changes to the existing surveys with respect to all buildings and other improvements, any off-site improvements, the location of any easements, parking spaces, rights of way, building set back lines and other dimensional regulations and the absence of encroachments, either by such improvements or on to such property, and other defects, other than encroachments and other defects reasonably acceptable to the Collateral Agent;

(iv) evidence of the insurance required by the terms of such Mortgages, including where applicable, flood zone insurance;

(v) certified copy of the Indiana Port Lease Agreement and all amendments thereto;

(vi) confirmation that the amendment to that certain First Lien Leasehold Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (Indiana), dated as of March 22, 2011 and recorded on March 25th, 2011 as Instrument Number 201101239 in the office of the Posey County Recorder, State of Indiana was delivered to the Indiana Port Lessor;

(vii) tenant estoppel certificate from the Indiana Port Lessee, for the benefit of the Administrative Agent and Fidelity National Title Insurance Company, in form and substance reasonably satisfactory to the Administrative Agent;

(viii) such other consents, agreements and confirmations of lessors and third parties as the Collateral Agent may reasonably deem necessary or desirable and evidence that all other actions that the Collateral Agent may reasonably deem necessary or desirable in order to create valid first and subsisting Liens on the property described in such Mortgages has been taken;

(ix) such other assurances, certificates and documents as the Collateral Agent reasonably may require; and

(x) a Memorandum of Intercreditor Agreement with respect to each Material Owned Real Property and Material Leased Real Property (other than Excepted Leased Real Property), in form and substance reasonably satisfactory to the Collateral Agent, in each case duly executed by the appropriate Loan Party.

(b) The executed opinions of (i) Akin Gump Strauss Hauer & Feld LLP, special New York counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in form and substance acceptable to the Administrative Agent and (ii) local counsel to the Loan Parties in states in which the Material Leased Properties and the Material Owned Properties are located, with respect to the enforceability of the Mortgages delivered pursuant to clause (a) and any related fixture filing, addressed to the Administrative Agent and each Lender, in form and substance acceptable to the Administrative Agent.

SECTION 6.17 Events of Loss. (a) Within twelve (12) months after the date the Borrower or any of its Subsidiaries actually receives any Net Cash Proceeds with respect to an Event of Loss (except for any Net Cash Proceeds (i) applied for general working capital purposes as and to the extent permitted pursuant to Section 2.03(b)(iv)(x) or (ii) required to be applied to prepayment of Term Loans pursuant to Section 2.03(b)(iv)(y)), apply such Net Cash Proceeds, at its option, to:

(i) the rebuilding, repair, replacement or construction of improvements to the assets subject to such Event of Loss so long as the rebuilt, repaired or improved property or replacement property constitutes Replacement Assets (provided that (x) such Replacement Assets shall be limited to only Replacement Assets that no later than the completion of such rebuilding, repair or improvement or the acquisition of such replacement have become Term Loan Primary Collateral; (y) to the extent the assets subject to such Event of Loss constitute Specified Collateral, such Replacement Assets shall be limited to only Replacement Assets constituting Specified Assets that have become Specified Collateral; and (z) the provisions of Section 6.13 have otherwise been complied with respect to such Replacement Assets no later than the completion of such rebuilding, repair or improvement or the acquisition of such replacement);

(ii) (A) acquire Replacement Assets or (B) enter into a binding commitment to acquire Replacement Assets and such Net Cash Proceeds have actually been applied to the purchase of such Replacement Assets within six (6) months of the date on which such binding commitment was entered into (provided that (w) such Replacement Assets shall be used only in an existing Facility of the Borrower or its Subsidiaries, (x) such Replacement Assets shall be limited to only Replacement Assets that simultaneously with the acquisition thereof become Term Loan Primary Collateral; (y) to the extent the assets subject to such Event of Loss constitute Specified Collateral, such Replacement Assets shall be limited to only Replacement Assets constituting Specified Assets that simultaneously with the acquisition thereof become Specified Collateral; and (z) such Replacement Assets are not acquired until and unless the provisions of Section 6.13 have otherwise been complied with respect to such Replacement Assets);

(iii) for Capital Expenditures for existing Facilities of the Borrower and its Subsidiaries; or

(iv) a combination of the actions set forth in the foregoing clauses (i), (ii) and (iii) above.

(b) With respect to any property or asset subject to an Event of Loss pursuant to clause (d) of the definition of "Event of Loss" that has a Fair Market Value (or replacement cost, if greater) in excess of $1,000,000, the Borrower (or the affected Subsidiary, as the case may be), shall be required to receive consideration (i) at least equal to the Fair Market Value (as evidenced by a Board Resolution) of the assets subject to the Event of Loss and (ii) at least 75% of which is in the form of cash or Cash Equivalents.

(c) Unless and until any Net Cash Proceeds from an Event of Loss (other than any Net Cash Proceeds applied for general working capital purposes as and to the extent permitted pursuant to Section 2.03(b)(iv)(x)) are finally applied as specified in clause (a) or in accordance with Section 2.03(b)(iv), the Borrower shall cause such Net Cash Proceeds to be held by the Collateral Agent as cash of Cash Equivalents in the Collateral Account.

SECTION 6.18 Further Assurances. Promptly upon request by any Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and reregister any and all such further acts, deeds, certificates, assurances and other instruments as such Agent or Lender may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Transaction Documents, (ii) to the fullest extent permitted by Applicable Law and Contractual Obligations, subject the Borrower's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, and (iii) perfect and maintain the validity, effectiveness and (subject only to Permitted Liens) priority of any of the Collateral Documents and any of the Liens intended to be created thereunder.

ARTICLE VII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than in respect of contingent obligations, indemnities and costs and expenses related thereto not then payable or in existence as of the Maturity Date), the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly:

SECTION 7.01 Liens. Create, incur, assume or suffer to exist any Lien upon, or exception to title to, any of its property, assets or revenues (including any shares of Capital Stock or Indebtedness of any Subsidiary), whether now owned or hereafter acquired, or sign or file under the UCC of any jurisdiction a financing statement that names the Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than Permitted Liens.

SECTION 7.02 Indebtedness. (a) Create, incur, assume or suffer to exist (for purposes of this Section 7.02, collectively, "incur") any Indebtedness or issue any Preferred Stock. Notwithstanding the foregoing, the Borrower and any Subsidiary (except as specified below) may incur, and the foregoing clause (a) will not prohibit the incurrence of, each and all of the following (clauses (i) through (xviii) comprising the "Permitted Debt" of the Borrower and any Subsidiary):

(i) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 (provided that any Indebtedness incurred under the Existing ABL Facility shall be deemed to be incurred pursuant to Section 7.02(a)(ii) and not this Section 7.02(a)(i));

(ii) (A) Obligations arising in connection with the Credit Facilities (but excluding Obligations owed under this Agreement or any other Loan Documents) and Bank Product Agreements (collectively, the "ABL Obligations"); provided that the Aggregate Principal Amount of the ABL Obligations at any one time outstanding under this clause (ii) shall not exceed the ABL Cap, and (B) Obligations of the Loan Parties under the Loan Documents; provided that (1) any Hedging Agreement or Secured Hedge Agreement shall otherwise be permitted pursuant to Section 7.15; (2) the Aggregate Principal Amount of any such Obligations arising under any Hedging Agreement or Secured Hedge Agreement entitled to the benefit of the Liens under the Collateral Documents or the Existing ABL Facility shall not exceed $25,000,000 at any time; and (3) Secured Hedge Agreements shall be limited to those incurred for the purpose of hedging commodity prices;

(iii) Indebtedness owed to the Borrower or any of its Subsidiaries evidenced by an unsubordinated promissory note; provided that if the Borrower or any of its Subsidiaries is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated in right of payment to the Term Loans, in the case of the Borrower, or the Subsidiary Guaranty, in the case of a Subsidiary;

(iv) Guarantees of the Term Loans and Guarantees of Indebtedness of the Borrower or any Subsidiary by the Borrower or any Subsidiary; provided that such Indebtedness is permitted by and made in accordance with this Section 7.02;

(v) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five (5) Business Days of incurrence;

(vi) Indebtedness in respect of performance bonds, bankers' acceptances, workers' compensation claims, surety or appeal bonds, payment obligations in connection with self-insurance or similar obligations, and bank overdrafts (and letters of credit in respect thereof) incurred in the ordinary course of business;

(vii) Indebtedness (including Indebtedness represented by Capitalized Lease Obligations, mortgage financings or purchase money obligations) incurred or Preferred Stock issued to finance the cost (including the cost of improvement or construction) to acquire real or personal property, plant or equipment (including acquisitions of the Capital Stock of a Person that becomes a Subsidiary, to the extent of the Fair Market Value of the real or personal property so acquired, plus goodwill associated therewith) by the Borrower or any of its Subsidiaries after the Closing Date; provided, however, that the aggregate principal amount of such Indebtedness and/or the liquidation preference of such Preferred Stock outstanding at any time may not exceed $5,000,000;

(viii) [Intentionally Omitted]

(ix) Indebtedness consisting of (A) the financing of insurance premiums in the ordinary course of business or (B) take-or-pay obligations contained in supply arrangements entered into in the ordinary course of business;

(x) (A) Indebtedness comprised of secured Obligations in respect of Hedging Agreements or Secured Hedge Agreements to the extent permitted to be entered into pursuant to the last proviso in Section 7.02(a)(ii); and (B) Indebtedness comprised of unsecured Obligations in respect of Hedging Agreements, in each case to the extent permitted pursuant to Section 7.15;

(xi) endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(xii) the issuance by any of the Borrower's Subsidiaries to the Borrower or to any other Subsidiaries of shares of Disqualified Stock or Preferred Stock;

(xiii) the incurrence of Indebtedness arising from agreements of the Borrower or a Subsidiary providing indemnification, adjustment of purchase price, earn outs or similar obligations, in each case, incurred in connection with the disposition or acquisition of any business, assets or a Subsidiary expressly permitted under the terms of this Agreement, other than Indebtedness or guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition, in an aggregate principal amount at any time outstanding not to exceed $5,000,000; provided, however, in the case of any disposition, the maximum principal amount of such Indebtedness does not exceed the gross cash proceeds actually received by the Borrower or a Subsidiary in connection with such disposition;

(xiv) guarantees in the ordinary course of business of the obligations not constituting Indebtedness of suppliers, customers, distributors, franchisers and licensees;

(xv) the incurrence by the Borrower or any of its Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to extend, renew, refund, refinance, replace, defease or discharge, Indebtedness that was permitted by this Agreement to be incurred under clause (i);

(xvi) [Intentionally omitted];

(xvii) to the extent constituting Indebtedness, indemnification obligations and other similar obligations (including advancement of expenses) of the Borrower or any of its Subsidiaries in favor of directors, officers, employees, consultants or agents of the Borrower or any of its Subsidiaries extended in the ordinary course of business in an aggregate principal amount not to exceed $1,000,000 at any time outstanding; and

(xviii) additional Indebtedness of the Borrower or Indebtedness of or Preferred Stock issued by any Subsidiary (in addition to Indebtedness permitted under clauses (i) through (xvii) above) in an aggregate principal amount and/or liquidation preference of such Preferred Stock outstanding at any time not to exceed $5,000,000.

(b) Notwithstanding any other provision of this Section 7.02, the maximum amount of Indebtedness that may be incurred pursuant to this Section 7.02 shall not be deemed to be exceeded, with respect to any outstanding Indebtedness due solely to the result of fluctuations in exchange rates or currency values.

(c) For purposes of determining any particular amount of Indebtedness under this Section 7.02, Guarantees, Liens or obligations with respect to letters of credit supporting Indebtedness otherwise included in the determination of such particular amount shall not be included. For purposes of determining compliance with this Section 7.02, in the event that an item of Indebtedness, Preferred Stock, or Disqualified Stock meets the criteria of more than one of the types of Indebtedness described in clause (a) of this Section 7.02 (including the first paragraph of such clause (a)), the Borrower, in its sole discretion, may classify, and from time to time may reclassify, such item of Indebtedness, Preferred Stock, or Disqualified Stock or any portion thereof on the date of its incurrence or issuance, and will only be required to include the amount and type of such Indebtedness, Preferred Stock, or Disqualified Stock in one of the above clauses, although the Company may divide and classify an item of Indebtedness, Preferred Stock, or Disqualified Stock in one or more of the categories of Indebtedness, Preferred Stock, or Disqualified Stock described in such clauses. The accrual of interest or dividends, the accretion of accreted value or amortization of original issue discount, and the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms will not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.02.

(d) Neither the Borrower or any of its Subsidiaries shall incur any Indebtedness if such Indebtedness is subordinate in right of payment to any other Indebtedness unless such Indebtedness is also subordinate in right of payment to the Loans (in the case of the Borrower) or the Subsidiary Guaranty (in the case of any Subsidiary Guarantor), in each case, to the same extent.

SECTION 7.03 Fundamental Changes. (a) Solely with respect to the Borrower, consolidate with or merge with or into any Person or permit any Person to merge with or into it, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets (as an entirety or substantially an entirety in one transaction or a series of related transactions) to any Person unless:

(i) it shall be the continuing Person, or the Person (if other than it) formed by such consolidation or into which it is merged or that acquired or leased such property and assets (the "Surviving Person") shall be organized and validly existing under the laws of the United States of America or any jurisdiction thereof and shall expressly assume all of the obligations of the Borrower under this Agreement and the other Loan Documents;

(ii) each of the conditions specified in subsection (c) below is satisfied;

(iii) each Subsidiary Guarantor, unless such Subsidiary Guarantor is the Person with which the Borrower has entered into a transaction under this Section 7.03(a), shall have by amendment to the Subsidiary Guaranty confirmed that its guarantee under the Subsidiary Guaranty shall apply to the obligations of the Borrower or the Surviving Person in accordance with this Agreement and Loan Documents; and

(iv) the Liens in favor of the Collateral Agent on the Collateral remain in full force and effect following the consummation of such transaction and are expressly confirmed and ratified by the parties to such transaction.

(b) Solely with respect to each Subsidiary of the Borrower, consolidate with or merge with or into any Person or permit any Person to merge with or into it, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property and assets (as an entirety or substantially as an entirety in one transaction or a series of related transactions) to any Person, unless:

(i) it shall be the continuing Person, or the Person (if other than it) formed by such consolidation or into which it is merged or that acquired or leased such property and assets shall expressly assume all of such Subsidiary Guarantor obligations under the Subsidiary Guaranty and confirm that such guarantee shall apply to the obligations of the Borrower in accordance with this Agreement and the Loan Documents;

(ii) each of the applicable conditions specified in paragraph (c) below is satisfied; and

(iii) the Liens in favor of the Collateral Agent on the Collateral remain in full force and effect following the consummation of such transaction and are expressly confirmed and ratified by the parties to such transaction.

The foregoing requirements of this subsection (b) shall not apply to (x) a consolidation or merger of any Subsidiary with and into the Borrower or any Subsidiary Guarantor, so long as the Borrower or such Subsidiary survives such consolidation or merger or (y) a sale or other disposition of all of the assets of a Subsidiary, by way of merger, consolidation or otherwise, if (x) the Borrower or any of its Subsidiaries applies the Net Cash Proceeds of that sale or other disposition in accordance with Section 2.03 or (y) to the Borrower or a Subsidiary (but in the case of the assets of a Subsidiary Guarantor, only to the Borrower or another Subsidiary Guarantor).

(c) The following additional conditions shall apply to each transaction described in subsection (a) or (b) above:

(i) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(ii) the Borrower shall have delivered to the Administrative Agent an Officers' Certificate and an opinion of counsel, each stating that such transaction and that all conditions precedent in this Agreement and the Loan Documents relating to such transaction have been satisfied; and

(iii) the Borrower shall have taken whatever additional action (including the recording of mortgages, the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents, execution of account control agreements or such other control agreements in form and substance reasonably satisfactory to the Collateral Agent) and obtained any necessary consents to assignments on assigned agreements) as may be necessary in the reasonable opinion of the Collateral Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the deeds of trust, trust deeds, deeds to secure debt and/or mortgages, leasehold mortgages or leasehold deeds of trust, supplements to the Security Agreement, supplements to the Intellectual Property Security Agreements and security and pledge agreements delivered pursuant to the Loan Documents, enforceable against all third parties (subject only to Permitted Liens), in all such cases to the same extent that such action was required to have been taken by such Subsidiary on the Closing Date.

SECTION 7.04 Limitations on Asset Sales. (a) Consummate an Asset Sale unless:

(i) the Borrower or any of its Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Capital Stock issued or sold or otherwise disposed of;

(ii) at least 50% of the consideration received in the Asset Sale by the Borrower or such Subsidiary is in the form of cash or Cash Equivalents; provided, however, that (x) the portion of such consideration that is not in the form of cash or Cash Equivalents shall be evidenced by promissory notes that are delivered to the Collateral Agent, together with instruments of transfer executed in blank to hold as Collateral and (y) for purposes of this Section 7.04, the Fair Market Value of each of the following will be deemed to be cash:

(A) solely in the case of any Asset Sale of assets other than Specified Collateral, any liabilities of the Borrower or any of its Subsidiaries that would otherwise be required to be included on the Borrower's consolidated balance sheet (other than contingent liabilities and liabilities that are by their terms subordinated in right of payment of the Obligations of each Loan Party under the Loan Documents) that are assumed by the transferee of any such assets pursuant to a customary novation or assignment and assumption agreement that releases the Borrower or such Subsidiary from further liability;

(B) solely in the case of any Asset Sale of assets other than Specified Collateral, any securities, notes or other obligations received by the Borrower or any such Subsidiary from such transferee that are converted by the Borrower or such Subsidiary into cash or Cash Equivalents within 180 days of the receipt thereof, to the extent of the cash or Cash Equivalents received in that conversion; and

(C) any Replacement Assets (provided, that (x) if such Asset Sale constitutes a Primary Collateral Asset Sale, (A) to the extent the assets disposed of constitute Term Loan Primary Collateral, this clause (c) shall be limited to only Replacement Assets that simultaneously with the acquisition thereof will become Term Loan Primary Collateral or (B) to the extent the assets disposed of constitute Specified Collateral, this clause (c) shall be limited to only Replacement Assets constituting Specified Assets that simultaneously with the acquisition thereof will become Specified Collateral and (y) to the extent such Asset Sale includes any Collateral, such Asset Sale does not occur unless such Replacement Assets become Collateral prior to or simultaneously with the acquisition thereof and until and unless the provisions of Section 6.13 have otherwise been complied with respect to the Replacement Assets being received as consideration for the Asset Sale of such Collateral);

provided further, however, that the 50% requirement referred to in this clause (ii) will not apply to any Asset Sale that is not a Primary Collateral Asset Sale if the cash or Cash Equivalents portion of the consideration received therefrom, determined in accordance with subclauses (A), (B) and (C) above, is equal to or greater than what the after-tax proceeds would have been had that Asset Sale complied with the aforementioned 50% limitation;

(iii) if such Asset Sale involves the disposition of ABL Primary Collateral, the proceeds are applied in accordance with the Intercreditor Agreement to the extent required therein;

(iv) in the event of a Primary Collateral Asset Sale, the Net Cash Proceeds corresponding to the Term Loan Primary Collateral sold shall be paid directly to the Collateral Agent for deposit into the Collateral Account which shall become part of the Term Loan Primary Collateral and be subject to the Term Loan First-Priority Lien in favor of the Secured Parties;

(v) if such Asset Sale includes any issuance, sale or other disposition of any Capital Stock of any of the Borrower's Subsidiaries, (A) such Asset Sale is of all Capital Stock of such Subsidiary and (B) any Investment by the Borrower or any of its Subsidiaries in such Person existing immediately after giving effect to such Asset Sale would have been permitted to be made pursuant to Sections 7.05 or 7.14 if made at such time; and

(vi) if such Asset Sale is of the Facility located in Pekin, Illinois, obtain the approval of the Required Lenders, such consent not to be unreasonably withheld or delayed;

provided, however, that, in the case of any Asset Sale (other than a Primary Collateral Asset Sale), clauses (i) and (ii) above need not be satisfied (I) to the extent the Collateral to be released consists solely of ABL Primary Collateral with respect to which the required lenders under the Existing ABL Facility have given their consent and authorized the release of same or to the extent the ABL Primary Collateral to be released is disposed of by such agent on behalf of the lenders in connection with the exercise of rights or remedies under the Existing ABL Facility, in each case so long as (x) the Collateral Agent is required to release its lien thereon pursuant to the terms of the Intercreditor Agreement and (y) the proceeds therefrom are applied in accordance with the Intercreditor Agreement or (II) to the extent such Asset Sale results from the loss, destruction, damage, condemnation, confiscation, requisition, seizure, forfeiture or taking of title to or use of ABL Primary Collateral.

(b) Within twelve (12) months after the date the Borrower or any of its Subsidiaries actually receives any Net Cash Proceeds from an Asset Sale (except for any Net Cash Proceeds (i) applied for general working capital purposes as and to the extent permitted pursuant to Section 2.03(b)(ii)(x) or (ii) required to be applied to prepayment of Term Loans pursuant to Section 2.03(b)(ii)(y)), the Borrower may, or may cause such Subsidiary to, apply those Net Cash Proceeds, at its option:

(i) to (A) acquire Replacement Assets for existing Facilities, (B) enter into a binding commitment to acquire Replacement Assets for existing Facilities and such Net Cash Proceeds have actually been applied to the purchase of such Replacement Assets for existing Facilities within six (6) months of the date on which such binding commitment was entered into (provided that (x) if such Asset Sale constitutes a Primary Collateral Asset Sale, (1) to the extent the assets disposed of constitute Term Loan Primary Collateral, such Replacement Assets shall be limited to only Replacement Assets that simultaneously with the acquisition thereof become Term Loan Primary Collateral or (2) to the extent the assets disposed of constitute Specified Collateral, such Replacement Assets shall be limited to only Replacement Assets constituting Specified Assets that simultaneously with the acquisition thereof become Specified Collateral and (y) to the extent the assets that were the subject of such Asset Sale includes any Collateral, such Replacement Assets are not acquired unless such Replacement Assets become Collateral prior to or simultaneously with the acquisition thereof and until and unless the provisions of Section 6.13 have otherwise been complied with respect to such Replacement Assets) or (C) make Capital Expenditures for existing Facilities (or a combination of the foregoing);

(ii) solely in the case of Net Cash Proceeds from any Asset Sale other than a Primary Collateral Asset Sale, to satisfy all mandatory repayment obligations under any Credit Facilities secured by the assets disposed of that arise by reason of such Asset Sale; or

(iii) solely in the case of Net Cash Proceeds from any Asset Sale other than a Primary Collateral Asset Sale, to any combination of the actions set forth in the foregoing clauses (i) and (ii).

(c) Unless and until any Net Cash Proceeds from a Primary Collateral Asset Sale (other than any Net Cash Proceeds applied for general working capital purposes as and to the extent permitted pursuant to Section 2.03(b)(ii)(x)) are finally applied as specified in the preceding paragraph or in accordance with Section 2.03(b)(ii), the Borrower shall cause such Net Cash Proceeds to be held by the Collateral Agent as cash or Cash Equivalents in the Collateral Account.

SECTION 7.05 Restricted Payments. (a) Declare or pay any dividend or make any distribution on or with respect to its Capital Stock (other than (i) dividends or distributions payable solely in shares of its Capital Stock (other than Disqualified Stock) or in options, warrants or other rights to acquire shares of such Capital Stock and (ii) *pro rata* dividends or distributions on common stock of Subsidiaries held by minority stockholders) held by Persons other than the Borrower or any of its Subsidiaries, (b) purchase, call for redemption or redeem, retire or otherwise acquire for value any shares of Capital Stock of (A) the Borrower (including options, warrants or other rights to acquire such shares of Capital Stock) held by any Person or (B) any Subsidiary (other than any Wholly-Owned Subsidiary) (including options, warrants or other rights to acquire such shares of Capital Stock) or (c) make any voluntary or optional principal payment, or voluntary or optional redemption, repurchase, defeasance, or other acquisition or retirement for value, of Indebtedness of the Borrower that is subordinated in right of payment to the Term Loans or any Indebtedness of a Subsidiary that is subordinated in right of payment to such Subsidiary Guarantor's Guarantee under the Collateral Documents (other than any intercompany Indebtedness owed to the Borrower or any of its Subsidiaries) (such payments or any other actions described in clauses (a) through (c) above being collectively "Restricted Payments"), except as provided in the next paragraph.

The foregoing shall not be violated by reason of:

(A) payment in cash to holders of the Borrower's common stock in lieu of fractional shares in connection with the reverse stock split contemplated in the Equity Documents;

(B) [intentionally omitted];

(C) the making of any principal payment or the repurchase, redemption, retirement, defeasance or other acquisition or retirement for value of Indebtedness that is subordinated in right of payment to the Term Loans and the Subsidiary Guaranty including premium, if any, and accrued interest, with the proceeds of, or in exchange for, Indebtedness incurred under Section 7.02(a)(xv);

(D) the repurchase, redemption or other acquisition of Capital Stock of the Borrower or any Subsidiary (or options, warrants or other rights to acquire such Capital Stock) in exchange for, or out of the proceeds of a capital contribution or a substantially concurrent offering of, shares of Capital Stock (other than Disqualified Stock) of the Borrower (or options, warrants or other rights to acquire such Capital Stock); provided that such options, warrants or other rights are not redeemable at the option of the holder, or required to be redeemed, prior to the Maturity Date of the Term Loans;

(E) the making of any principal payment or the repurchase, redemption, retirement, defeasance or other acquisition or retirement for value of Indebtedness (including premium, if any, and accrued interest) which is subordinated in right of payment to the Term Loans or any Subsidiary Guaranty in exchange for, or out of the proceeds of a capital contribution or a substantially concurrent offering of, shares of the Capital Stock (other than Disqualified Stock) of the Borrower (or options, warrants or other rights to acquire such Capital Stock); provided that such options, warrants or other rights are not redeemable at the option of the holder, or required to be redeemed, prior to the Maturity Date of the Term Loans;

(F) payments or distributions, to dissenting stockholders pursuant to Applicable Law, pursuant to or in connection with a consolidation, merger or transfer of assets of the Borrower that complies with the provisions of Section 7.03;

(G) the repurchase of Capital Stock deemed to occur upon the exercise of options or warrants if such Capital Stock represents all or a portion of the exercise price thereof;

(H) the repurchase or other acquisition of Capital Stock of the Borrower or any of its Subsidiaries from employees, former employees, directors or former directors of the Borrower or any of its Subsidiaries (or permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell, or are granted the option to purchase or sell, such Capital Stock; provided, however, that the aggregate amount of such repurchases and other acquisitions shall not exceed the sum of (1) $1,500,000 in any calendar year and (2) an additional $1,500,000 during the period between the Closing Date and the final Maturity Date;

(I) dividends paid in respect of Disqualified Stock or Preferred Stock of the Borrower or any Subsidiary of the Borrower which is permitted to be issued pursuant to Section 7.02; provided, however, that the aggregate amount of dividends paid in respect of Preferred Stock of the Borrower (other than Disqualified Stock of the Borrower) pursuant to this clause (I) shall not exceed the amount of Net Cash Proceeds from the issuance of such Preferred Stock;

(J) the withholding pursuant to the Management Incentive Plan of amounts of common stock from the vested portion of restricted stock awards in an amount equal to withholding obligations; and

(K) change of control payments calculated in accordance with the Warrant Agreement paid to the holders of the Warrants to the extent such Warrants could be exercised at such time, provided that (x) no Change of Control, other than a Permitted Change of Control, has occurred hereunder unless all Obligations are paid in full prior to such payments and (y) any such payments made prior to payment in full of the Obligations shall be made solely from the proceeds of the issuance of new Equity Interests (other than Preferred Stock) or other equity contributions to the Borrower and shall not be made with the proceeds of any Collateral;

provided that, except in the case of clause (D), no Default or Event of Default shall have occurred and be continuing or occur as a consequence of the actions or payments set forth therein.

For purposes of determining compliance with this Section 7.05, (x) the amount, if other than in cash, of any Restricted Payment shall be determined in good faith by the Board of Directors, whose determination shall be conclusive and evidenced by a Board Resolution and (y) in the event that a Restricted Payment meets the criteria of more than one of the types of Restricted Payments described in the above clauses, including the first paragraph of this Section 7.05, the Borrower, in its sole discretion, may order and classify, and from time to time may reclassify, all or any portion of such Restricted Payment if it would have been permitted at the time such Restricted Payment was made and at the time of such reclassification.

Not later than the date of making any Restricted Payment, the Borrower shall deliver to the Administrative Agent an Officers' Certificate stating that such Restricted Payment complies with this Agreement and setting forth in reasonable detail the basis upon which the required calculations were computed, which calculations may be based upon the Borrower's latest available internal quarterly financial statements.

SECTION 7.06 Change in Nature of Business. (i) Engage in any business other than a Permitted Business, except to such extent as would not be material to the Borrower and its Subsidiaries taken as a whole, (ii) acquire any new Facility or (iii) acquire all or substantially all of the assets or the Capital Stock of another Person other than a Subsidiary.

SECTION 7.07 Transactions with Affiliates. Enter into, renew or extend any transaction (including, without limitation, the purchase, sale, lease or exchange of property or assets, or the rendering of any service) with any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Borrower or with any Affiliate of the Borrower, except upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than could be obtained, at the time of such transaction or, if such transaction is pursuant to a written agreement, at the time of the execution of the agreement providing therefor, in a comparable arm's length transaction with a Person that is not such a holder or an Affiliate. The foregoing restrictions shall not apply to the following:

(a) transactions (i) approved by a majority of the disinterested members of the Board of Directors or (ii) for which the Borrower or a Subsidiary delivers to the Administrative Agent a written opinion of a nationally recognized investment banking, accounting, valuation or appraisal firm stating that the transaction is fair to the Borrower or such Subsidiary from a financial point of view;

(b) any transaction solely between the Borrower and any of its Subsidiaries or solely among Subsidiaries;

(c) the payment of compensation (including awards or grants in cash, securities or other payments) for the personal services of, and expense reimbursement and indemnity provided on behalf of, officers, directors (including the payment of, or an agreement providing for the payment of, reasonable directors' fees), consultants and employees of the Borrower or any of its Subsidiaries, in each case in the ordinary course of business;

(d) any payments or other transactions pursuant to any tax-sharing agreement between the Borrower and any other Person with which the Borrower files a consolidated tax return or with which the Borrower is part of a consolidated group for tax purposes;

(e) any sale of shares of Capital Stock (other than Disqualified Stock) of the Borrower;

(f) any Investments or any Restricted Payments not prohibited by Section 7.05;

(g) the Transactions in accordance with the Transaction Documents and other agreements set forth on Schedule 7.07(g) as in effect as of the Closing Date or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) in any replacement agreement thereto so long as any such amendment or replacement agreement is not more disadvantageous to the Lenders in any material respect than the original agreement as in effect on the Closing Date;

(h) the issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to or the funding of, employment arrangements, stock options and stock ownership plans or similar employee benefit plans approved by the Board of Directors in good faith and loans to employees of the Borrower and its Subsidiaries which are approved by the Board of Directors in good faith;

(i) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case on ordinary business terms and otherwise in compliance with the terms of this Agreement, which are fair to the Borrower or its Subsidiaries, in the reasonable determination of the Board of Directors of the Borrower or the senior management thereof, or are on terms at least as favorable as could reasonably have been obtained at such time from an unaffiliated party;

(j) any transaction with a joint venture or similar entity which would be subject to this covenant solely because the Borrower or a Subsidiary of the Borrower owns an equity interest in or otherwise controls such joint venture or similar entity; or

(k) payments and transactions in connection with any Credit Facilities (including commitment, syndication and arrangement fees payable thereunder) and this Agreement (including upfront, syndicate and arrangement fees payable in connection therewith), and the application of the proceeds of each, and the payment of fees and expenses with respect thereto.

Notwithstanding the foregoing, any transaction or series of related transactions covered by the first paragraph of this Section 7.07 and not covered by clauses (b) through (l), (A) the aggregate amount of which exceeds $5,000,000 in value, must be approved or determined to be fair in the manner provided for in clause (a)(i) or (a)(ii) above and (B) the aggregate amount of which exceeds $15,000,000 in value must be determined to be fair in the manner provided for in clause (a)(ii) above.

SECTION 7.08 Financial Covenants. (a) Minimum Liquidity. Permit Liquidity to be less than $5,000,000 on the Closing Date and for a period of five (5) consecutive Business Days thereafter at any time.

SECTION 7.09 [Reserved].

SECTION 7.10 Accounting Changes. Make any change in (a) its accounting policies or reporting practices, except as required or permitted by GAAP, or (b) its fiscal year.

SECTION 7.11 Limitation on Dividend and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to (a) pay dividends or make any other distributions permitted by Applicable Law on any Capital Stock of such Subsidiary owned by the Borrower or any other Subsidiary, (b) pay any Indebtedness owed to the Borrower or any other Subsidiary, (c) make loans or advances to the Borrower or any other Subsidiary or (d) transfer any of its property or assets to the Borrower or any other Subsidiary; provided, however, that the foregoing clause shall not apply to encumbrances and restrictions:

(a) existing on the Closing Date (including pursuant to the Existing ABL Facility and the Equity Documents), and any extensions, refinancings, renewals or replacements thereof; provided that the encumbrances and restrictions in any such extensions, refinancings, renewals or replacements taken as a whole are, in the good faith judgment of the Board of Directors, no less favorable in any material respect to the Lenders than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;

(b) existing under or by reason of Applicable Law;

(c) existing with respect to any Person or the property or assets of such Person acquired by the Borrower or any Subsidiary, existing at the time of such acquisition and not incurred in contemplation thereof, which encumbrances or restrictions are not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person so acquired and any extensions, refinancings, renewals or replacements thereof; provided that the encumbrances and restrictions in any such extensions, refinancings, renewals or replacements taken as a whole are, in the good faith judgment of the Board of Directors, no less favorable in any material respect to the Lenders than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;

(d) in the case of clause (d) of the first paragraph of this Section 7.11:

(i) that restrict in a customary manner the subletting, assignment or transfer of any property or asset that is a lease, license, conveyance or contract or similar property or asset,

(ii) existing by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Borrower or any Subsidiary not otherwise prohibited by this Agreement,

(iii) arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Borrower or any Subsidiary in any manner material to the Borrower or any Subsidiary, or

(iv) arising under purchase money obligations for property acquired in the ordinary course of business or Capitalized Lease Obligations;

(e) with respect to a Subsidiary and imposed pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock of, or property and assets of, such Subsidiary;

(f) arising from customary provisions in joint venture agreements, asset sale agreements, limited liability company organizational documents, sale-leaseback agreements, stock sale agreements, stockholder agreements and other similar agreements entered into in the ordinary course of business;

(g) on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(h) arising in connection with any Indebtedness, Disqualified Stock or Preferred Stock of the Borrower or any Subsidiary of the Borrower permitted to be incurred subsequent to the date of the Closing Date pursuant to the provisions of Section 7.02; and

(i) restrictions on cash or other deposits or net worth imposed by suppliers, landlords or customers or required by insurance, surety or bonding companies, in each case under contracts entered into in the ordinary course of business.

Nothing contained in this Section 7.11 shall prevent the Borrower or any Subsidiary from (a) creating, incurring, assuming or suffering to exist any Liens otherwise permitted under Section 7.01 or (b) restricting the sale or other disposition of property or assets of the Borrower or any of its Subsidiaries that secure Indebtedness of the Borrower or any of its Subsidiaries.

SECTION 7.12 Limitation on the Issuance and Sale of Capital Stock of Subsidiaries. Issue or sell, directly or indirectly, any shares of Capital Stock of a Subsidiary (including options, warrants or other rights to purchase shares of such Capital Stock) except:

(a) to the Borrower or a Wholly Owned Subsidiary;

(b) issuances of director's qualifying shares or sales to foreign nationals of shares of Capital Stock of foreign Subsidiaries, to the extent required by Applicable Law;

(c) except in the case of a Subsidiary Guarantor, if, immediately after giving effect to such issuance or sale, such Subsidiary would no longer constitute a Subsidiary and any Investment in such Person remaining after giving effect to such issuance or sale would have been permitted to be made under Section 7.05 if made on the date of such issuance or sale;

(d) sales of common stock (including options, warrants or other rights to purchase shares of such common stock) of a Subsidiary by the Borrower or a Subsidiary, provided that the Borrower or such Subsidiary applies the Net Cash Proceeds of any such sale in accordance with Sections 2.03(b)(ii) and 7.04(b); and

(e) the New Equity Issuance, the issuance of the Warrants and shares of common stock upon exercise of the Warrants, the issuance of Stock Equivalents pursuant to the Management Incentive Plan and the issuance of common stock pursuant to such Stock Equivalents.

SECTION 7.13 Limitation on Sale and Leaseback Transactions. Enter into any Sale and Leaseback Transaction involving any of its assets or properties whether now owned or hereafter acquired; provided, however, that the Borrower or any Subsidiary may enter into a Sale and Leaseback Transaction if:

(a) the consideration received in such Sale and Leaseback Transaction is at least equal to the Fair Market Value of the property so sold or otherwise transferred, as determined by a resolution of the Board of Directors;

(b) the Borrower or such Subsidiary, as applicable, would be permitted to grant a Lien to secure Indebtedness under Section 7.01 in the amount of the Attributable Debt in respect of such Sale and Leaseback Transaction;

(c) prior to and after giving effect to the Attributable Debt in respect of such Sale and Leaseback Transaction, the Borrower and such Subsidiary comply with Section 7.02; and

(d) the Borrower or such Subsidiary applies an amount not less than the net proceeds received from such sale in accordance with Section 2.03.

SECTION 7.14 Investments. Make any Investment, other (i) than a Permitted Investment, in any Person and (ii) Investments made with sums which, if distributed, would constitute permitted Restricted Payments under Section 7.05.

SECTION 7.15 Hedging Agreements. Enter into any Hedging Agreements other than in the ordinary course of business, directly or indirectly, to hedge commodity prices (including both inputs and outputs), currency or interest rate risks and other business risks, in each case, solely to the extent permitted under Sections 7.01 (to the extent such Hedging Agreement is secured) and 7.02 and reasonably related to the Borrower's and its Subsidiaries' projected activities and consistent with prudent industry practices.

SECTION 7.16 Amendments of Certain Documents. The Borrower shall not (and shall cause each of its Subsidiaries to not), directly or indirectly, without the prior written consent of the Required Lender, (x) amend, modify, or change any of the terms or provisions of the Existing ABL Facility or any "Loan Document" (as defined therein) in any manner that is not permitted by the terms of the Intercreditor Agreement or (y) amend, waive or otherwise modify, or surrender any rights, or increase the obligations, of the Borrower or such Subsidiary, respectively, under the Indiana Port Lease Agreement (or any agreements entered into in accordance therewith), unless the terms of the Indiana Port Lease Agreement (or any such agreements entered into in accordance therewith), as so amended, waived or modified, or the rights and obligations of the Borrower and its Subsidiaries established thereunder after giving effect to such surrender or increase, as applicable, are not materially less favorable to the Secured Parties as those contained in the Indiana Port Lease Agreement (or any such agreements entered into in accordance therewith), immediately before such amendment, waiver, modification or as those rights and obligations established thereunder immediately before such surrender or increase.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Term Loan or (ii) within five (5) days after the same becomes due, any interest on any Loan, any fee due hereunder or any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. (i) The Borrower fails to perform or observe any term, covenant or agreement contained in any o f Section 6.03(a), Section 6.03(b), Section 6.03(f), Section 6.05 (with respect to the Borrower's existence), Section 6.11, Section 6.12, Section 6.13, Section 6.16, Section 6.17 or Article VII, (ii) any of the Subsidiary Guarantors fails to perform or observe any term, covenant or agreement contained in Section 8 of the Subsidiary Guaranty (but only to the extent it relates to a default under one of the covenants listed in clause (i) above) or (iii) any of the Loan Parties fails to perform or observe any term, covenant or agreement contained in Article IV of the Security Agreement; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days; or

(d) Representations and Warranties. Any representation or warranty made or deemed made by the Borrower or any of its Subsidiaries in this Agreement, any other Loan Document or any related agreement or in any certificate, document or financial or other statement furnished at any time in connection herewith or therewith shall prove to have been misleading in any material respect on the date when made or deemed to have been made; or

(e) Cross-Default. There occurs with respect to any Indebtedness of the Borrower or any of its Subsidiaries, whether such Indebtedness now exists or shall hereafter be created, (i) an event of default that has caused the lender or holder thereof to declare, or permitted the lender or holder thereof to declare, such Indebtedness to be due and payable prior to its Stated Maturity and such event of default has not been cured or waived within thirty (30) days or such Indebtedness has been accelerated (ii) except as provided in clause (iii) below, the failure to make a principal payment (after giving effect to any applicable grace period provided in such Indebtedness) and such defaulted payment shall not have been made, waived or extended within thirty (30) days of such payment default or (iii) the failure to make a principal payment at the final (but not any interim) fixed maturity; provided that the foregoing shall only apply to the extent such event of default or failure to pay related to (a) Indebtedness outstanding in an aggregate principal amount of $10,000,000 or more or (b) any Contractual Obligations evidencing Indebtedness (whether funded or unfunded), which, if fully funded, would be equal or exceed $10,000,000; or

(f) Insolvency Proceedings, Etc. A court having jurisdiction in the premises enters a decree or order for (i) relief in respect of the Borrower or any of its Subsidiaries in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or any of its Subsidiaries or for all or substantially all of the property and assets of the Borrower or any of its Subsidiaries or (iii) the winding up or liquidation of the affairs of the Borrower or any of its Subsidiaries and, in each case, such decree or order shall remain unstayed and in effect for a period of thirty (30) consecutive days; or

(g) Inability to Pay Debts; Attachment. The Borrower or any of its Subsidiaries (i) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (ii) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Borrower or any of its Subsidiaries or for all or substantially all of the property and assets of the Borrower or any of its Subsidiaries or (iii) effects any general assignment for the benefit of creditors; or

(h) Judgments. Any final judgment or order (not covered by insurance as to which the insurance carrier has acknowledged coverage in writing) for the payment of money in excess of $10,000,000 in the aggregate for all such final judgments or orders against all such Persons (treating any deductibles, self-insurance or retention as not so covered) shall be rendered against the Borrower or any of its Subsidiaries and shall not be paid or discharged, and there shall be any period of thirty (30) consecutive days following entry of the final judgment or order that causes the aggregate amount for all such final judgments or orders outstanding and not paid or discharged against all such Persons to exceed $10,000,000 during which a stay of enforcement of such final judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(i) ERISA. An event or condition specified in Section 6.03(c) or Section 6.14 hereof shall occur or exist with respect to any Plan and, as a result of such event or condition, together with all other such events or conditions, the Borrower, any of its Subsidiaries or any member of the Controlled Group shall incur, or in the opinion of Administrative Agent be reasonably likely to incur, a liability to a Plan or the PBGC (or both) which could reasonably be expected to have a Material Adverse Effect; or

(j) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (or as waived by the Lenders in accordance with Section 10.01) or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) Change of Control. There occurs any Change of Control other than a Permitted Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.13 shall for any reason (other than pursuant to the terms hereof or thereof, including as a result of a transaction permitted by Section 7.03 cease to create a valid and perfected Lien, with the priority required hereby or thereby (subject to Liens permitted by Section 7.01), on the Collateral purported to be covered thereby, except to the extent that any such loss of perfection or priority results from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Collateral Documents or to file UCC continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied or failed to acknowledge coverage.

SECTION 8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may, and at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the commitment of each Lender to make Term Loans to be terminated, whereupon such commitments and obligation shall be terminated; and

(b) declare the unpaid principal amount of all outstanding Term Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Debtor Relief Laws of the United States, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

SECTION 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agents and amounts payable under Article III) payable to each of the Agents in their capacities as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Term Loan A Lenders and New Lenders (including the Exit Fee and fees, charges and disbursements of counsel to the respective Term Loan A Lenders and New Lenders (including fees for attorneys who may be employees of any Term Loan A Lender or New Lender)) and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on (x) the Term Loan A (including interest accrued on the Closing Fee) and (y) all New Term Loans, and other Term Loan A Obligations and Obligations in respect of New Term Loans (other than principal), ratably among the Term Loan A Lenders and New Lenders, in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the principal of the Term Loan A constituting the Closing Fee, ratably among the Term Loan A Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of that portion of the Obligations constituting the remaining unpaid principal of the Term Loan A, all New Term Loans, Obligations under Secured Cash Management Agreements and Obligations under Secured Hedge Agreements, ratably among the Term Loan A Lenders, the New Lenders, the Cash Management Banks and the Hedge Banks, in proportion to the respective amounts described in this clause Fifth held by them;

Sixth, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Term Loan B Lenders (including fees, charges and disbursements of counsel to the respective Term Loan B Lenders (including fees for attorneys who may be employees of any Term Loan B Lender) and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Sixth payable to them;

Seventh, to payment of that portion of the Obligations constituting accrued and unpaid and uncapitalized interest on the Term Loan B (including uncapitalized interest on the PIK Interest Amounts) and other Obligations (other than principal), ratably among the Term Loan B Lenders, in proportion to the respective amounts described in this clause Seventh payable to them;

Eighth, to payment of that portion of the principal of the Term Loan B constituting PIK Interest Amounts, ratably among the Term Loan B Lenders in proportion to the respective amounts described in this clause Eighth held by them;

Ninth, to payment of that portion of the Obligations constituting the remaining unpaid principal of the Term Loan B, ratably among the Term Loan B Lenders in proportion to the respective amounts described in this clause Ninth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

ARTICLE IX

AGENTS

SECTION 9.01 Appointment and Authority. (a) Each of the Lenders hereby irrevocably appoints Citibank, N.A. to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its and the other Secured Parties' behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the other Secured Parties, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the Collateral Agent under the Loan Documents, and each of the Lenders (in its capacities as a Lender and potential Cash Management Bank) hereby irrevocably appoints and authorizes Citibank, N.A. to act as the collateral agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 9.02 Rights as a Lender. (a) The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender understands that the Person serving as Administrative Agent, acting in its individual capacity, and its Affiliates (collectively, the "Agent's Group") are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 9.02(b) as "Activities") and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Borrower, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender understands and agrees that in engaging in the Activities, the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders that are not members of the Agent's Group. None of the Administrative Agent nor any member of the Agent's Group shall have any duty to disclose to any Lender or use on behalf of the Lender, and shall not be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Administrative Agent shall deliver or otherwise make available to each Lender such documents as are expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders.

(c) Each Lender further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders (including the interests of the Lenders hereunder and under the other Loan Documents). Each Lender agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of the Person serving as Administrative Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification to any Lender. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the Agent's Group of information (including Information) concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) owing by the Administrative Agent or any member of the Agent's Group to any Lender including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

SECTION 9.03 Exculpatory Provisions. The duties of the Agents hereunder and under the other Loan Documents are solely ministerial and administrative in nature and no Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent:

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

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or Applicable Law; and

(c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and no Agent shall be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, Collateral Agent or any of their respective Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.01 and Section 8.02) or (b) in the absence of its own gross negligence or willful misconduct. Each of the Administrative Agent and the Collateral Agent shall be deemed not to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until notice describing such Default is given to such Agent by the Borrower or a Lender.

No Agent shall be responsible for or have any duty to ascertain or inquire into (a) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (b) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (c) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (d) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (e) the value or the sufficiency of any Collateral, or (f) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than (but subject to the foregoing clause (b)) to confirm receipt of items expressly required to be delivered to such Agent.

Nothing in this Agreement or any other Loan Document shall require the Administrative Agent or any of its Related Parties to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Administrative Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Administrative Agent or any of its Related Parties.

Notwithstanding any provision contained in this Agreement or any other Loan Document providing for any action by any Agent in its reasonable discretion or approval of any action or matter in such Agent's reasonable satisfaction, such Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided, that, no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or Applicable Law. The Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any other Loan Party or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, Collateral Agent or any other Agent in any capacity.

SECTION 9.04 Reliance by Administrative Agent and Collateral Agent. Each of the Administrative Agent and the Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each of the Administrative Agent and Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Agents may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by such Agent in accordance with the advice of any such counsel, accountants or experts.

SECTION 9.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by such Agent. The Administrative Agent, Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and Collateral Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent or the Collateral Agent.

SECTION 9.06 Resignation of Administrative Agent and Collateral Agent. Each Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower (such approval not to be unreasonably withheld), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders appoint a successor Agent meeting the qualifications set forth above; provided, that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by such Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

SECTION 9.07 Non-Reliance on Agents and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 9.08 [Intentionally Omitted].

SECTION 9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Term Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.08 and Section 10.04) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.08 and Section 10.04.

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

SECTION 9.10 Collateral and Guarantee Matters. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 10.01; and

(b) to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Lien or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Subsidiary Guarantor from its obligations under the Guarantee, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

SECTION 9.11 Indemnification. If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender due to a failure on the part of such Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify and hold the Administrative Agent harmless for all amounts paid, directly or indirectly, by the Administrative Agent, as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to the Administrative Agent under this Section 9.11, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders under this subsection shall survive the payment of all Obligations hereunder and the resignation or replacement of the Administrative Agent.

ARTICLE X

MISCELLANEOUS

SECTION 10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of each Lender (other than pursuant to Section 2.10 or 2.11);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) or any mandatory reduction of the Aggregate Commitments hereunder without the written consent of each Lender directly adversely affected thereby;

(c) reduce the principal of, or the stated rate of interest specified herein on, any Term Loan, any fees or other amounts payable hereunder (including pursuant to Section 2.03(a)) without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Term Loan or to reduce any fee payable hereunder;

(d) change Section 2.03, Section 2.09 or Section 8.03 in a manner that would alter the *pro rata* sharing of payments required thereby without the written consent of each Lender;

(e) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(f) other than as permitted by Section 9.10, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(g) release any Subsidiary Guarantor, without the written consent of each Lender, except to the extent the release of any Subsidiary Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

and provided, further, that (a) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (b) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder and the Commitment of and Loans owed to such Defaulting Lender shall not be counted for purposes of determining whether the Required Lenders have approved any amendment, waiver or consent hereunder (including for purposes of determining the aggregate amount of the Commitments or Loans outstanding for purposes of any such calculation or determination), except that (i) the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (ii) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding the foregoing, the consent of the Required Lenders shall not be required to make any changes necessary to be made in connection with any borrowing of New Term Loans thereunder in accordance with Section 2.10 or in connection with any Extension in accordance with Section 2.11.

Notwithstanding the foregoing, any contrary voting provisions set forth in the Agreement Among Lenders shall be controlling as among the Lenders.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrower may replace each non-consenting Lender in accordance with Section 10.13; provided, that such amendment, waiver, consent or release can be effected as a result of all such assignments.

Any waiver, consent, amendment, release or modification pursuant to this Section 10.01 shall apply equally to each of the Lenders and shall be binding upon the Borrower, the Lenders, the Administrative Agent and all future holders of the Term Loans. In the case of any waiver, the Borrower, the Lenders and the Administrative Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default that is waived pursuant to this Section 10.01 shall be deemed to be cured and not continuing during the period of such waiver.

SECTION 10.02 Notices; Effectiveness; Electronic Communications. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 6.02 and subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or the Administrative Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

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

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided, that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (a) notices and other communications sent to the Lenders to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (b) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

SECTION 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

SECTION 10.04 Expenses; Indemnity; Damage Waiver. (a) Reimbursement by the Borrower. The Borrower shall pay, or reimburse (x) the Administrative Agent (and any sub-agent thereof) for, all of the Administrative Agent's (or such sub-agent's) internal and external audit, legal, appraisal, valuation, filing, document duplication and reproduction and investigation expenses and for all other reasonable out-of-pocket costs and expenses of every type and nature (including the reasonable fees, expenses and disbursements of the Administrative Agent's counsel, Shearman & Sterling LLP, local legal counsel, auditors, accountants, appraisers, printers, insurance and environmental advisors, and other consultants and agents) incurred by the Administrative Agent (or such sub-agent), and (y) for all costs incurred on or prior to the Closing Date and for related post-closing matters and in connection with any enforcement action, work-out or restructuring, the Lenders and their counsel, Schulte Roth & Zabel LLP, in connection with any of the following: (i) the extension of the Term Loans provided for herein, the

preparation, negotiation, execution, delivery, interpretation and administration of this Agreement and the other Loan Documents and Equity Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) the creation, perfection or protection of the Liens under any Loan Document (including any reasonable fees, disbursements and expenses for local counsel in various jurisdictions), (iii) the commencement, defense or intervention in any court proceeding relating in any way to the Obligations hereunder, any Loan Party, this Agreement or any other Loan Document or any of the transactions contemplated hereby or thereby, (iv) the response to, and preparation for, any subpoena or request for document production with which the Administrative Agent (or any sub-agent thereof) is served or deposition or other proceeding in which the Administrative Agent (or any sub-agent thereof) is called to testify, in each case, relating in any way to the Obligations, any Loan Party, this Agreement or any other Loan Document or any of the transactions contemplated hereby or thereby and (v) all costs and expenses incurred by the Administrative Agent (or any sub-agent thereof) or the Lenders (including the fees, charges and disbursements of any counsel), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Term Loans made hereunder, including all such costs and expenses incurred during any workout, restructuring or negotiations in respect of such Term Loans whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally. The Borrower further agrees to pay or reimburse the Administrative Agent (and any sub-agent thereof) and each Lender for all out-of-pocket costs and expenses, including reasonable attorneys' fees (including costs of settlement), incurred by the Administrative Agent (or such sub-agent) or such Lender in connection with any of the following: (1) in enforcing any Loan Document or Obligation or any security therefor or exercising or enforcing any other right or remedy available by reason of an Event of Default, including all such costs and expenses incurred during any workout, restructuring or negotiations in respect of such Term Loans whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affected creditors' rights generally, (2) in defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to the Obligations or any Loan Party and related to or arising out of the transactions contemplated hereby or by any other Loan Document or (3) in taking any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) described in any of the foregoing clauses (i), (ii) and (iii).

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnified Party") against, and hold each Indemnified Party harmless from, any and all losses, claims, damages, liabilities, obligations, penalties, actions, judgments, suits, costs, disbursements and expenses, joint or several, of any kind or nature (including the fees, charges and disbursements of any advisor or counsel for any Indemnified Party), incurred by any Indemnified Party, asserted against any Indemnified Party by the Borrower, any other Loan Party or any other Person or awarded against any Indemnified Party, in each case, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by an Indemnified Party, a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnified Party is a party thereto and whether or not any of the transactions contemplated hereby are consummated; provided that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities, obligations, penalties, actions, judgments, suits, costs, disbursements and expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party or (B) result from a claim brought by the Borrower or any other Loan Party against such Indemnified Party for breach in bad faith of such Indemnified Party's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. Each Lender severally agrees to indemnify the Administrative Agent and each sub-agent thereof (in each case, to the extent not promptly reimbursed by the Borrower) from and against such Lender's Applicable Percentage of any and all losses, claims, damages, liabilities, obligations, penalties, actions, judgments, suits, costs, disbursements and expenses, joint or several, of any kind or nature (including the fees, charges and disbursements of any advisor or counsel for such Person that may be imposed on, incurred by, or asserted against the Administrative Agent or any such sub-agent, as the case may be, in any way relating to or arising out of the Loan Documents or any action taken or omitted by the Administrative Agent or any such sub-agent under the Loan Documents; provided, however, that no Lender shall be liable for any portion of such losses, claims, damages, liabilities, obligations, penalties, actions, judgments, suits, costs, disbursements or expenses resulting from the Administrative Agent's or such sub-agent's gross negligence or willful misconduct as found in a final, non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Administrative Agent and each sub-agent thereof for its Applicable Percentage of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Borrower under Section 10.04(a), to the extent that the Administrative Agent or such sub-agent is not promptly reimbursed for such costs and expenses by the Borrower.

(d) Waiver of Consequential Damages, Etc. The Borrower agrees that no Indemnified Party shall have any liability (whether in contract, tort or otherwise) to the Borrower or any other Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnified Party's gross negligence or willful misconduct. In no event, however, shall any Indemnified Party be liable to any Person on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or and each such Loan Party's respective anticipated savings). The Borrower hereby waives, releases and agrees (each for itself and on behalf of each other Loan Party) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(e) Payments. All amounts due under this Section shall be payable promptly upon demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

SECTION 10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 10.06 Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(f). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Term Loans at the time owing to it); provided, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Term Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Term Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Term Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 and in increments of $1,000,000 in excess thereof, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed and not required in connection with an assignment by a Lender to another Lender or to an Affiliate or Approved Fund of a Lender); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loans or the Commitment assigned;

(iii) any assignment of a Commitment must be approved by the Administrative Agent unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee);

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Term Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full *pro rata* share of all Term Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vi) Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Loans hereunder to the Borrower or any of its Subsidiaries; provided that the aggregate principal amount of the Term Loans assigned to the Borrower or any of its Subsidiaries pursuant to this Section 10.06(b)(vi) shall not exceed 33% of the original principal amount of the Term Loans and any New Term Loans in the aggregate, but only if:

(A) such assignment is made pursuant to a Dutch Auction open to all Lenders on a pro rata basis;

(B) immediately prior to and after giving effect to such assignment, no Default or Event of Default has occurred or is continuing or would result therefrom;

(C) the Borrower or its Subsidiary, as applicable, shall at the time of such assignment affirm the No Undisclosed Information Representation;

(D) the Borrower shall, at the time of such assignment and upon giving effect thereto, be in pro forma compliance with the financial covenants set forth in Section 7.08; and

(E) any such Loans shall be automatically and permanently cancelled immediately upon acquisition thereof by the Borrower or any of its Subsidiaries;

Notwithstanding anything to the contrary contained herein, neither the Borrower or any of its Subsidiaries shall have any right to (1) attend (including by telephone) any meeting or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of the Borrower are not then present or (2) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among Administrative Agent and one or more Lenders, except to the extent such information or materials have been made available to the Borrower or its representatives.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, Section 3.04, and Section 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Term Loans owing to it); provided, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (a), through (f) of the first proviso to Section 10.01 that directly affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, and Section 3.04 to the same extent as if it were a Lender and had acquired its interest by assignment; provided, that in the case of Section 3.01, such Participant shall have complied with the requirements of such section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.09 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or Section 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(d) as though it were a Lender.

(f) Certain Pledges. Notwithstanding any other provision set forth in this Agreement, any Lender may at any time create a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System, and this Section shall not apply to any such pledge or assignment of a security interest; provided, that, no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Applicable Laws based on the Uniform Electronic Transactions Act.

(h) Affiliate Assignments. Notwithstanding anything to the contrary contained herein, the Term Loans may be assigned to Affiliates of the Borrower (such Affiliate, an "Affiliated Lender"); provided that such Affiliate shall have no right whatsoever so long as such Person is an Affiliate of the Borrower (i) to consent to any amendment, modification, waiver, consent or other such action with respect to any of the terms of this Agreement or any other Loan Document, (ii) to require any Agent or other Lender to undertake any action (or refrain from taking any action) with respect to this Agreement or any other Loan Document, (iii) otherwise vote on any matter related to this Agreement or any other Loan Document, (iv) to attend (or receive any notice of) any meeting, conference call or correspondence with any Agent or Lender or receive any information from any Agent or Lender, (v) to have access to the Platform (including, without limitation, that portion of the Platform that has been designated for "private-side" Lenders) or (vi) to make or bring any claim, in its capacity as Lender, against the Agent or any Lender with respect to the duties and obligations of such Persons under the Loan Documents; and provided further that the aggregate principal amount of the Term Loans assigned to Affiliated Lenders pursuant to this Section 10.06(h) shall not exceed 33% of the original principal amount of the Term Loans and any New Term Loans in the aggregate.

SECTION 10.07 Treatment of Certain Information; Confidentiality. (a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of Information, except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives with a need to know such Information (it being understood that the Persons to whom such

disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); provided, the Administrative Agent or applicable Lender shall provide the Borrower with prompt notice prior to such disclosure to the extent permitted by law to do so, (iii) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document, any action or proceeding relating to this Agreement or any other Loan Document, the enforcement of rights hereunder or thereunder or any litigation or proceeding to which the Administrative Agent or any Lender or any of its Affiliates may be a party, (vi) to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (B) any actual or prospective counterparty, surety, reinsurer, guarantor or credit liquidity enhancer (or their advisors) to or in connection with any swap, derivative or other protective transaction relating to the Obligations or to the Borrower and its obligations, (C) to any rating agency when required by it or (D) the CUSIP Service Bureau or any similar organization, in each case, which is informed of the confidential nature of such information, (vii) with the consent of the Borrower or (viii) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source (other than a Loan Party) not known by the Administrative Agent or applicable Lender to be bound by a confidentiality duty or obligation.

For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided, that in the case of information received from the Borrower or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised reasonable care to protect such Information, and in no event less than the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT UNITED STATES FEDERAL AND STATE SECURITIES LAWS PROHIBIT ANY PERSON WITH MATERIAL, NON-PUBLIC INFORMATION ABOUT AN ISSUER FROM PURCHASING OR SELLING SECURITIES OF SUCH ISSUER OR, SUBJECT TO CERTAIN LIMITED EXCEPTIONS, FROM COMMUNICATING SUCH INFORMATION TO ANY OTHER PERSON. EACH LENDER AGREES TO COMPLY WITH APPLICABLE LAW AND ITS RESPECTIVE CONTRACTUAL OBLIGATIONS WITH RESPECT TO CONFIDENTIAL AND MATERIAL NON-PUBLIC INFORMATION. Each Lender that is not a Public Lender confirms to the Administrative Agent that such Lender has adopted and will maintain internal policies and procedures reasonably designed to permit such Lender to take delivery of Restricting Information (as defined below) and maintain its compliance with Applicable Law and its respective contractual obligations with respect to confidential and material non-public information. A Public Lender may elect not to receive Borrower Materials and Information that contains material non-public information with respect to the Loan Parties or their securities (such Borrower Materials and Information, collectively, "Restricting Information"), in which case it will identify itself to the Administrative Agent as a Public Lender. Such Public Lender shall not take delivery of Restricting Information and shall not participate in conversations or other interactions with the Agents, any Lender or any Loan Party concerning the Term Loans in which Restricting Information is likely to be discussed. No Agent, however, shall by making any Borrower Materials and Information (including Restricting Information) available to a Lender (including any Public Lender), by participating in any conversations or other interactions with a Lender (including any Public Lender) or otherwise, be responsible or liable in any way for any decision a Lender (including any Public Lender) may make to limit or to not limit its access to Borrower Materials and Information. In particular, no Agent shall have, and the Administrative Agent, on behalf of each Agent, hereby disclaims, any duty to ascertain or inquire as to whether or not a Lender (including any Public Lender) has elected to receive Restricting Information, such Lender's policies or procedures regarding the safeguarding of material nonpublic information or such Lender's compliance with Applicable Law related thereto. Each Public Lender acknowledges that circumstances may arise that requires it to refer to Borrower Materials and Information that might contain Restricting Information. Accordingly, each Public Lender agrees that it will nominate at least one designee to receive Borrower Materials and Information (including Restricting Information) on its behalf and identify such designee (including such designee's contact information) on such Public Lender's Administrative Questionnaire. Each Public Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Public Lender's designee's e-mail address to which notice of the availability of Restricting Information may be sent by electronic transmission. Each Public Lender confirms to the Administrative Agent and the Lenders that are not Public Lenders that such Public Lender understands and agrees that the Administrative Agent and such other Lenders may have access to Restricting Information that is not available to such Public Lender and that such Public Lender has elected to make its decision to enter into this Agreement and to take or not take action under or based upon this Agreement, any other Loan Document or related agreement knowing that, so long as such Person remains a Public Lender, it does not and will not be provided access to such Restricting Information. Nothing in this Section 10.07(b) shall modify or limit a Lender's (including any Public Lender) obligations under Section 10.07 with regard to Borrower Materials and Information and the maintenance of the confidentiality of or other treatment of Borrower Materials or Information.

(c) This Section 10.07 terminates and supersedes any and all prior agreements and understandings (whether written or oral) between the parties with respect to the confidentiality obligations other than as set forth in the Stockholders Agreement. For the avoidance of doubt, any obligation of the Borrower or its Subsidiaries to make a "Cleansing Disclosure" or otherwise publicly disclose material non-public information pursuant to the terms of any prior confidentiality agreement is hereby waived by the Lenders.

SECTION 10.08 Right of Setoff. Upon any amount becoming due and payable hereunder (whether at stated maturity, by acceleration or otherwise), each Lender and its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided, that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time the Borrowing, and shall continue in full force and effect as long as any Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.13 Replacement of Lenders. If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) any Lender is at such time a Defaulting Lender or has given notice pursuant to Section 3.02 or (d) any Lender becomes a "Nonconsenting Lender" (hereinafter defined), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to (and such Lender shall) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee selected by the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided, that:

(a) the Administrative Agent shall have received the assignment fee specified in Section 10.06(b);

(b) such replacement shall be deemed a voluntary prepayment of such Lender's Loans and such Lender shall have received payment of an amount equal to the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.03) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with Applicable Law; and

(e) neither the Administrative Agent nor any Lender shall be obligated to be or to find the assignee.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. In the event that (a) the Borrower or the Administrative Agent has requested the Lenders to consent to a departure or waiver of any provisions of the Loan Documents or to agree to any amendment thereto that in each case requires the consent of all of the Lenders or all affected Lenders and (b) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "Nonconsenting Lender." Any such replacement shall not be deemed a waiver of any rights that the Borrower shall have against the replaced Lender.

SECTION 10.14 Governing Law; Jurisdiction; Etc. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(a) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN Section 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

SECTION 10.15 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (ii) the Administrative Agent has no obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and the Administrative Agent has no obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.17 USA PATRIOT Act Notice. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the PATRIOT Act.

SECTION 10.18 Time of the Essence. Time is of the essence of the Loan Documents.

SECTION 10.19 Intercreditor Legend. The Collateral Agent, for itself and on behalf of the Secured Parties, (a) acknowledges that it has received a copy of the Intercreditor Agreement, (b) consents to the subordination of Liens on the ABL Primary Collateral as defined, and provided for, in the Intercreditor Agreement, (c) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (d) solely with respect to each Secured Party, authorizes and instructs the Collateral Agent to enter into the Intercreditor Agreement as agent for and representative of such Secured Party. The foregoing provisions are intended as an inducement to the ABL Secured Parties under the ABL Loan Documents (each such terms as defined in the Intercreditor Agreement) to extend credit to the Borrowers and such ABL Secured Parties are intended third party beneficiaries of such provisions.

SECTION 10.20 No Novation. This Agreement does not extinguish the obligations for the payment of money outstanding under the Original Credit Agreement or discharge or release the Obligations under, and as defined in, the Original Credit Agreement or the creation, perfection or priority of any mortgage, pledge, security agreement or any other security therefor except as expressly provided herein or in instruments executed concurrently herewith or after the execution of the Original Credit Agreement and prior to the Closing Date. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under, and as defined in, the Original Credit Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby or by instruments executed concurrently herewith or after the execution of the Original Credit Agreement and prior to the Closing Date. All interest and fees and expenses, if any, owing or accruing under or in respect of the Original Credit Agreement through the Closing Date shall be calculated as of the Closing Date (prorated in the case of any fractional periods), and shall be capitalized and thereupon amended, restated, converted and continued or cancelled, as applicable, pursuant to Section 2.01. Nothing expressed or implied in this Agreement shall be construed as a release or other discharge of any Loan Party under the Original Credit Agreement from any of its obligations and liabilities as a "Borrower" or "Guarantor" thereunder except as expressly provided in Section 2.01 hereof or elsewhere herein or in instruments executed concurrently herewith or after the execution of the Original Credit Agreement and prior to the Closing Date. Each Loan Party hereby (i) confirms and agrees that except as expressly provided in Section 2.01 hereof or elsewhere herein or in instruments executed concurrently herewith or after the execution of the Original Credit Agreement and prior to the Closing Date, each Loan Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the Closing Date all references in any such Loan Document to "the Agreement," "thereto," "thereof," "thereunder" or words of like import referring to the Original Credit Agreement shall mean the Original Credit Agreement as amended and restated by this Agreement and (ii) confirms and agrees that to the extent that any such Loan Document purports to assign or pledge to the Agent a security interest in or Lien on any collateral as security for the obligations of the Borrowers or the Guarantors from time to time existing in respect of the Original Credit Agreement and the Loan Documents, such pledge, assignment and/or grant of the security interest or lien is hereby ratified and confirmed in all respects except as otherwise expressly provided herein. The Lenders hereby authorize the execution, delivery and performance of the Omnibus Amendment by the Borrower, the Subsidiary Guarantors and the Collateral Agent, and the amendments made to the Security Agreement and the Subsidiary Guaranty pursuant thereto are hereby consented to by the Lenders.

SECTION 10.21 Release and Covenant Not to Sue.

(a) The Borrower and each other Loan Party hereby absolutely and unconditionally release and forever discharge the Agents, the Lenders, and any and all of their respective participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees of any of the foregoing (each a "Released Party"), from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which the Borrower or any other Loan Party, has had, now has or has made claim to have against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to and including the date of this Agreement, whether such claims, demands and causes of action are matured or unmatured or known or unknown, and in each case, arising for or on account of, in relation to, or in any way in connection with, any of this Agreement, any other Loan Document, the Forbearance Agreement, the Restructuring Agreement, the Equity Documents and/or the transactions thereunder or related thereto, other than any claims, demands or causes of action resulting from fraud of a Released Party, as determined by the final, non-appealable judgment of a court of competent jurisdiction. It is the intention of the Borrower and each other Loan Party in providing this release that the same shall be effective as a bar to each and every claim, demand and cause of action specified, and in furtherance of this intention it waives and relinquishes all rights and benefits under any applicable law, which provides that:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him might have materially affected his settlement with the debtor."

(b) The Borrower and each other Loan Party acknowledge that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to such claims, demands, or causes of action and agrees that this instrument shall be and remain effective in all respects notwithstanding any such differences or additional facts. The Borrower and each other Loan Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) The Borrower and each other Loan Party, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Released Party above that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Released Party on the basis of any claim released, remised and discharged by the Borrower or any other Loan Party pursuant to the above release. If any Borrower, any Subsidiary Guarantor or any of their respective successors, assigns, or officers, directors, employees, agents or attorneys, or any Person acting for or on behalf of, or claiming through it violate the foregoing covenant, such Person, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Released Party may sustain as a result of such violation, all attorneys' fees and costs incurred by such Released Party as a result of such violation.

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

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: /s/ Calvin Stewart
Name: Calvin Stewart
Title: Chief Financial Officer

CITIBANK, N.A., as Administrative Agent

By: /s/ Kirkwood Roland
Name: Kirkwood Roland
Title: Director & Vice President

CITIBANK, N.A., as Collateral Agent

By: /s/ Kirkwood Roland
Name: Kirkwood Roland
Title: Director & Vice President

LJR Capital L.P.,
as a Term Loan A Lender

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALJ Capital I, L.P.,
as a Term Loan A Lender

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALJ Capital II, L.P.,
as a Term Loan A Lender

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALLIANCEBERNSTEIN STRATEGIC OPPORTUNITIES FUND, L.P.
as a Term Loan A Lender

By: AllianceBernstein, L.P.,
as Investment Adviser

/s/ Jack Kelley
Name: Jack Kelley
Title: SVP

ALLIANCEBERNSTEIN EVENT DRIVEN OPPORTUNITIES FUND (DELAWARE), L.P.
as a Term Loan A Lender

By: AllianceBernstein, L.P.,
as Investment Adviser

/s/ Jack Kelley
Name: Jack Kelley
Title: SVP

ALTAI CAPITAL MASTER FUND, LTD.
as a Term Loan A Lender

By: Altai Capital Management, L.P.,
as Investment Adviser

/s/ Toby E. Symonds
Name: Toby E. Symonds
Title: Managing Principal of the Investment Adviser
to Altai Capital Master Fund, Ltd.

APOLLO INVESTMENT CORPORATION,
as a Term Loan A Lender

By: Apollo Investment Management, L.P., as Advisor
By: ACC Management, LLC, as its General Partner

/s/ Ted J. Goldthorpe
Name: Ted J. Goldthorpe
Title: Chief Investment Officer

CREDIT SUISSE LOAN FUNDING LLC,
as a Term Loan A Lender

By:
/s/ Robert Healey
Name: Robert Healey
Title: Authorized Signatory

By:
/s/ Michael Wotanowski
Name: Michael Wotanowski
Title: Authorized Signatory

MIDTOWN ACQUISITIONS L.P.,
as a Term Loan A Lender

By: Midtown Acquisitions GP LLC, its general partner

/s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Manager

MACQUARIE BANK LIMITED,
as a Term Loan A Lender

By:
/s/ Nathan Booker
Name: Nathan Booker
Title: Associate Director
Legal Risk Management

By:
/s/ Alan D. Cameron
Name: Alan D. Cameron
Title: Executive Director
Fixed Income & Currencies

REDWOOD MASTER FUND, LTD.,
as a Term Loan A Lender

By: REDWOOD CAPITAL MANAGEMENT, LLC,
its Investment Advisor

/s/ Jed Nussbaum
Name: Jed Nussbaum
Title: Authorized Signatory

SENATOR GLOBAL OPPORTUNITY MASTER FUND L.P.,
as a Term Loan A Lender

By: Senator Master GP LLC,
its general partner

/s/ Evan Gartenlaub
Name: Evan Gartenlaub
Title: General Counsel

TCS II Debt Solutions II (Offshore), LLC,
as a Term Loan A Lender

By:
/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TCS II Opportunities Debt Solutions II (Offshore), LLC,
as a Term Loan A Lender

By:
/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

LJR Capital L.P.,
as a Term Loan B Lender

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALJ Capital I, L.P.,
as a Term Loan B Lender

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALJ Capital II, L.P.,
as a Term Loan B Lender

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALLIANCEBERNSTEIN STRATEGIC OPPORTUNITIES FUND, L.P.
as a Term Loan B Lender

By: AllianceBernstein, L.P.,
as Investment Adviser

/s/ Jack Kelley
Name: Jack Kelley
Title: SVP

ALLIANCEBERNSTEIN EVENT DRIVEN OPPORTUNITIES FUND (DELAWARE), L.P.
as a Term Loan B Lender

By: AllianceBernstein, L.P.,
as Investment Adviser

/s/ Jack Kelley
Name: Jack Kelley
Title: SVP

ALTAI CAPITAL MASTER FUND, LTD.
as a Term Loan B Lender

By: Altai Capital Management, L.P.,
as Investment Adviser

/s/ Toby E. Symonds
Name: Toby E. Symonds
Title: Managing Principal of the Investment Adviser
to Altai Capital Master Fund, Ltd.

APOLLO INVESTMENT CORPORATION,
as a Term Loan B Lender

By: Apollo Investment Management, L.P., as Advisor
By: ACC Management, LLC, as its General Partner

/s/ Ted J. Goldthorpe
Name: Ted J. Goldthorpe
Title: Chief Investment Officer

CREDIT SUISSE LOAN FUNDING LLC,
as a Term Loan B Lender

By:
/s/ Robert Healey
Name: Robert Healey
Title: Authorized Signatory

By:
/s/ Michael Wotanowski
Name: Michael Wotanowski
Title: Authorized Signatory

MIDTOWN ACQUISITIONS L.P.,
as a Term Loan B Lender

By: Midtown Acquisitions GP LLC, its general partner

/s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Manager

MACQUARIE BANK LIMITED,
as a Term Loan B Lender

By:
/s/ Nathan Booker
Name: Nathan Booker
Title: Associate Director
Legal Risk Management

By:
/s/ Alan D. Cameron
Name: Alan D. Cameron
Title: Executive Director
Fixed Income & Currencies

REDWOOD MASTER FUND, LTD.,
as a Term Loan B Lender

By: REDWOOD CAPITAL MANAGEMENT, LLC,
its Investment Advisor

/s/ Jed Nussbaum
Name: Jed Nussbaum
Title: Authorized Signatory

ROCHDALE FIXED INCOME PORTFOLIOS,
as a Term Loan B Lender

By: Seix Investment Advisors LLC,
in its capacity as Sub-Adviser

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

RIDGEWORTH SEIX FLOATING RATE HIGH INCOME FUND,
as a Term Loan B Lender

By: Seix Investment Advisors LLC,
in its capacity as Sub-Adviser

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

RIDGEWORTH HIGH INCOME FUND,
as a Term Loan B Lender

By: Seix Investment Advisors LLC,
in its capacity as Sub-Adviser

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

SEIX MULTI-SECTOR ABSOLUTE RETURN FUND LP,
as a Term Loan B Lender

By: Seix Investment Advisors LLC,
in its capacity as Investment Manager

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

UNIVERSITY OF ROCHESTER,
as a Term Loan B Lender

By: Seix Investment Advisors LLC,
in its capacity as Investment Manager

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

SENATOR GLOBAL OPPORTUNITY MASTER FUND L.P.,
as a Term Loan B Lender

By: Senator Master GP LLC,
its general partner

/s/ Evan Gartenlaub
Name: Evan Gartenlaub
Title: General Counsel

TPG CREDIT OPPORTUNITIES INVESTORS, L.P.,
as a Term Loan B Lender

By: TPG Credit Opportunities Fund GP, L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TPG CREDIT STRATEGIES FUND, L.P.,
as a Term Loan B Lender

By: TPG Credit Strategies GP, L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TPG Credit Strategies Fund II, L.P.,
as a Term Loan B Lender

By: TPG Credit Strategies II GP., L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TCS II Opportunities, L.P.,
as a Term Loan B Lender

By: TPG Credit Strategies II GP, L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TPG CREDIT OPPORTUNITIES FUND L.P.,
as a Term Loan B Lender

By: TPG Credit Opportunities Fund GP, LP
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

Exhibit 10.2

INCREMENTAL AMENDMENT

This **INCREMENTAL AMENDMENT** (this "**Amendment**") is dated as of June 18, 2013 (the "**Incremental Amendment Effective Date**") and entered into by and among AVENTINE RENEWABLE ENERGY HOLDINGS, INC., a Delaware corporation ("**Borrower**"), each of the Lenders listed on the signature pages hereto, and acknowledged by CITIBANK, N.A., ("**Citibank**"), as administrative agent (in such capacity, "**Administrative Agent**") and as collateral agent (in such capacity, the "**Collateral Agent**" and together with the Administrative Agent, each an "**Agent**" and collectively, the "**Agents**"). Capitalized terms used but not defined herein have the meanings given them in the Credit Agreement, hereinafter defined.

Recitals

Whereas, the Borrower, the Lenders from time to time party thereto, the Agents and the other parties thereto have entered into that certain Amended and Restated Senior Secured Term Loan Credit Agreement dated as of September 24, 2012 (as amended, amended and restated, extended, supplemented or otherwise modified from time to time, including pursuant to this Amendment, the "**Credit Agreement**");

Whereas, the Borrower has notified the Administrative Agent and the Lenders that the Borrower requests one additional tranche of Term Loans in an aggregate principal amount of $35,000,000, which will be structured in the form of an incremental Term Loan with those Lenders that agree to extend commitments under the New Term Loan (each, a "**Term Loan A-1 Lender**"), which incremental Term Loan will be referred to herein as the "Term Loan A-1" and constitute a "New Term Loan" for all purposes under, and as defined in, the Credit Agreement, pursuant to and in accordance with Section 2.10 of the Credit Agreement;

Whereas, in connection with the Term Loan A-1 and upon consummation of the transactions set forth in this Amendment, there will be three tranches of Term Loans under the Credit Agreement: the Term Loan A-1, the Term Loan A and the Term Loan B;

Whereas, in connection with the Term Loan A-1, the Borrower has also requested certain amendments to the Credit Agreement, pursuant to and in accordance with Section 10.01 of the Credit Agreement;

Whereas, the Agents, Lenders and the agent under the Existing ABL Facility wish to amend the Second Amended and Restated Intercreditor Agreement dated as of September 24, 2012 as amended, amended and restated, extended, supplemented and otherwise modified from time to time (the "**Intercreditor Agreement**") to the extent necessary to effect the implementation of the Term Loan A-1;

Whereas, the Lenders are willing to agree to provide the Term Loan A-1 and the amendments requested by the Borrower, as well as the amendments to the Intercreditor Agreement on the terms and conditions set forth in this Amendment;

Now Therefore, in consideration of the premises and the mutual agreements set forth herein, the Borrower and the Lenders (including the Term Loan A-1 Lenders) agree as follows:

1. **AMENDMENTS**. Pursuant to Section 10.01 of the Credit Agreement, upon satisfaction (or waiver) of the conditions set forth in Section 4 hereof, the Credit Agreement hereby is amended as follows:

1.1. Additional Defined Terms. The following new defined terms are hereby added to Section 1.01 of the Credit Agreement in their appropriate alphabetical location:

(a) "Cumulative Compounded PIK Amount" has the meaning specified in Section 2.05(a)(iv).

(b) "Incremental Amendment" means that certain Incremental Amendment dated as of June ___, 2013 by and among the Borrower, the Lenders and the Agents.

(c) "Incremental Amendment Effective Date" means June ___, 2013.

(d) "Incremental Amendment Transactions" means (1) the execution, delivery and performance of the transactions contemplated by the Incremental Amendment; and (2) the execution, delivery and performance of the transactions contemplated by the Incremental Amendment Warrant Documents.

(e) "Incremental Amendment Warrant Agreement" means that certain Warrant Agreement, dated as of the Incremental Amendment Effective Date, between the Borrower and American Stock Transfer & Trust Company, LLC, as warrant agent.

(f) "Incremental Amendment Warrants" means the three-year warrants, issued by the Borrower to the Term Loan A-1 Lenders pursuant to the Incremental Amendment Warrant Agreement, to purchase 11,853,453 shares of the Borrower's common stock at an exercise price of $0.01 per share.

(g) "Incremental Amendment Warrant Documents" means collectively the following: (i) the Incremental Amendment Warrant Agreement, (ii) the Incremental Amendment Warrants and (iii) the Incremental Amendment Warrant Subscription Agreements.

(h) "Incremental Amendment Warrant Subscription Agreements" means each Subscription Agreement dated on or about the Incremental Amendment Effective Date between each Term Loan A-1 Lender and the Borrower.

(i) "Incremental Facility Amount" has the meaning specified in Section 2.10(a).

(j) "May 2013 Waiver" means the Waiver Regarding Amended and Restated Senior Secured Term Loan Credit Agreement, dated as of May 13, 2013, by and among the Borrower, the Subsidiary Guarantors and the Lenders party thereto and acknowledged by the Agents.

(k) "Prepaid Amount" has the meaning specified in Section 2.05(a)(iv).

(l) "Pre-PIK Principal Amount" has the meaning specified in Section 2.05(a)(iv).

(m) "Term Loan A-1" means, collectively, the Term Loan A-1 made by the Term Loan A-1 Lenders to the Borrower on the Incremental Amendment Effective Date pursuant to Section 2.10 of the Credit Agreement in the aggregate principal amount of $35,000,000.

(n) "Term Loan A-1 Commitment" means, with respect to each Term Loan A-1 Lender, the commitment of such Lender to make a portion of the Term Loan A-1 to the Borrower in the amount set forth opposite such Term Loan A-1 Lender's name on Schedule IC.

(o) "Term Loan A-1 Lender" means a Lender with a Term Loan A-1 Commitment or following the funding of the Term Loan A-1, holding any portion of the Term Loan A-1.

(p) "Term Loan A-1 Obligations" means any Obligations with respect to the Term Loan A-1, including without limitation the principal thereof (including all Term Loan A-1 PIK Interest), all interest thereon, and the fees and expenses specifically related thereto.

(q) "Term Loan A-1 PIK Interest" has the meaning specified in Section 2.05(a)(iv).

(r) "Term Loan A PIK Interest" has the meaning specified in Section 2.05(a)(i).

1.2. Amendment to Certain Defined Terms.

(a) The definition of "Affiliate" hereby is amended and restated in its entirety to read as follows:

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Notwithstanding the foregoing, solely for the purpose of (x) the definitions of "Required Term Loan A Lenders", "Required Term Loan B Lenders" and "Required Lenders" and (y) Sections 10.06(d) and 10.06(h), no Lender shall be deemed to Control the Borrower solely because such Lender (or an Affiliate of an Approved Fund of such Lender), in its capacity as a New Equity Holder or as holder of Incremental Amendment Warrants: (i) has the right to, or otherwise participates in, the selection of the Board of Directors of the Borrower; (ii) has the right to, or otherwise participates in, the selection of any observer to the Board of Directors of the Borrower from time to time; (iii) is the owner of common stock of the Borrower so long as such Lender, together with its Affiliates and Approved Funds, owns less than 40% of the common stock of the Borrower on a Fully-Diluted Basis; or (iv) may be deemed to be acting together with other New Equity Holders and/or holders of Incremental Amendment Warrants as a group (within the meaning of Section 13(d) of the Exchange Act).

(b) The definition of "Applicable Percentage" hereby is amended and restated in its entirety to read as follows:

"Applicable Percentage" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan A, Term Loan B or Term Loan A-1 represented by such Lender's Commitment (if any) or outstanding principal amount of such Term Loan A, Term Loan B or Term Loan A-1 (as applicable) at such time. The Applicable Percentage of each Lender as of the Incremental Amendment Effective Date in respect of the Term Loans is set forth on Schedule IA, Schedule 1B and Schedule 1C hereto or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

(c) The definition of "Excess Cash Flow" hereby is amended to (i) delete the period at the end of clause (b)(viii) thereof and in lieu thereof add ", plus"; and (ii) add a new clause (b)(ix) to the definition thereof to read as follows "the aggregate amount of costs, fees, taxes, and expenses incurred by the Loan Parties (including any third party costs reimbursed or reimbursable by the Loan Parties) in connection with the Incremental Amendment Transactions."

(d) The definition of "Permitted Adjustment" hereby is amended and restated in its entirety to read as follows:

"Permitted Adjustment" means any of the following from time to time (a) the issuance of shares of common stock of the Borrower as a result of the exercise of the Warrants and/or the Incremental Amendment Warrants and (b) the issuance of shares of common stock of the Borrower or options to purchase common stock of the Borrower pursuant to the Management Incentive Plan.

(e) The definition of "Solvent" and "Solvency" hereby is amended and restated in its entirety to read as follows:

"Solvent" and "Solvency" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person (determined on a going concern basis) is greater than the total amount of liabilities, including contingent liabilities that are probable and estimatable, of such Person; (b) the present fair salable value of the assets of such Person (determined on a going concern basis) is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured taking into account the possibility of refinancing such obligations and selling assets; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets; (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital and (e) such Person is able to pay its debts and liabilities, contingent obligations that are probable and estimatable and other commitments as they mature in the ordinary course of business taking into account the possibility of refinancing such obligations and selling assets. The amount of contingent liabilities at any time shall be computed taking into account all facts and circumstances existing at such time.

(f) The definition of "Term Loan Lenders" hereby is amended and restated in its entirety to read as follows:

"Term Loan Lenders" means any Lenders of New Term Loans (including the Term Loan A-1 Lenders), the Term Loan A Lenders and the Term Loan B Lenders."

(g) The definition of "Term Loan Obligations" hereby is amended and restated in its entirety to read as follows:

"Term Loan Obligations" means the Obligations under any New Term Loans (including the Term Loan A-1 Obligations), the Term Loan A Obligations and the Term Loan B Obligations."

(h) The definitions of "Existing Warrants" and "Specified Plan" hereby are deleted in their entirety.

1.3. Amendment to Section 2.03(b)(i). Section 2.03(b)(i) of the Credit Agreement hereby is amended by replacing the reference to "December 31, 2013" with "December 31, 2014".

1.4. Amendment to Section 2.05.

(a) Section 2.05(a)(i) of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"(a)(i) Term Loan A Interest. Subject to the provisions of Section 2.05(b), the principal amount of the Term Loan A, inclusive of (x) the Closing Fee added to the funded amount of the Term Loan A pursuant to Section 2.05(d) and (y) the capitalized Term Loan A PIK Interest (as defined below), shall bear interest on the amount thereof from time to time outstanding, at a rate per annum equal to the sum of twelve percent (12%), which interest shall be payable in cash on each Interest Payment Date, plus, from and after the Incremental Amendment Effective Date, interest paid-in-kind at a rate per annum of three percent (3%) ("Term Loan A PIK Interest"), which Term Loan A PIK Interest shall be capitalized and added to the then outstanding principal amount of the Term Loan A, on each Interest Payment Date. The Term Loan A PIK Interest then outstanding shall be due and payable in cash on September 24, 2016, or if such date is not a Business Day, then the immediately preceding Business Day, and provided that such date is subject to extension in conjunction with any extension of the Maturity Date applicable to the Term Loan A in accordance with Section 2.11."

(b) Section 2.05(a) of the Credit Agreement hereby is amended by inserting a new paragraph (iv) immediately following paragraph (iii) thereof as follows:

"(iv) Term Loan A-1 Interest. Subject to the provisions of Section 2.05(b), the principal amount of the Term Loan A-1, inclusive of capitalized Term Loan A-1 PIK Interest (as defined below), shall bear interest on the amount thereof from time to time outstanding at a rate per annum, from and after the Incremental Amendment Effective Date, equal to twenty-five percent (25%) per annum paid-in-kind ("Term Loan A-1 PIK Interest"), which interest shall be capitalized and added to the then outstanding principal amount of the Term Loan A-1, on each Interest Payment Date. Term Loan A-1 PIK Interest then outstanding shall be due and payable in cash on September 24, 2016, or if such date is not a Business Day, then the immediately preceding Business Day, and provided that such date is subject to extension in conjunction with any extension of the Maturity Date applicable to the Term Loan A-1 in accordance with Section 2.11; provided, however, in the event of a prepayment of the Term Loan A-1, in whole or in part, pursuant to Section 2.03 hereof, on or prior to the first anniversary of the Incremental Amendment Effective Date, the Borrower shall pay a prepayment premium equal to twenty-five percent (25%) of the original principal amount of the Term Loan A-1 as of the Incremental Amendment Effective Date so prepaid (the "Pre-PIK Principal Amount") (for the avoidance of doubt, such Pre-PIK Principal Amount excludes any capitalized interest added and/or compounded since the Incremental Amendment Effective Date (the amount of such capitalized interest added and/or compounded since the Incremental Amendment Effective Date being the "Cumulative Compounded PIK Amount")). Upon the repayment of the Pre-PIK Principal Amount and the premium pursuant to the preceding sentence, the then outstanding principal amount of the Term Loan A-1 shall be reduced by an amount equal to the sum of the Pre-PIK Principal Amount and the Cumulative Compounded PIK Amount (the "Prepaid Amount") and the amount of the accrued and uncapitalized interest shall be reduced by an amount equal to the interest accruing on the Prepaid Amount since the most recent Interest Payment Date through the date of prepayment."

1.5. Amendment to Section 2.10(a). Section 2.10(a) hereby is amended and restated in its entirety to read as follows:

"(a) Provided there exists no Default or Event of Default, and subject to the conditions set forth in clause (f) below, the Borrower may at any time or from time to time after the Closing Date, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request (i) one or more tranches of new term loans ("New Term Loans," which New Term Loans include the Term Loan A-1) under one or more new term facilities (each a "New Term Loan Facility") or (ii) one or more increases in the total amount of the Commitments (each an "Additional Term Commitment") and any Loans advanced pursuant to such Additional Term Commitments being Term Loans for all purposes of this Agreement, up to an aggregate total amount with respect to all New Term Loans or Term Loans made as a result of any Additional Term Commitments not to exceed $35,000,000 (the "Incremental Facility Amount") or a lesser amount in integral multiples of $5,000,000."

1.6. Amendment to Section 5.24. Section 5.24 of the Credit Agreement is amended and restated in its entirety to read as follows:

"SECTION 5.24 Capital Stock. All of the Capital Stock of the Borrower and its Subsidiaries has been duly and validly authorized and issued and is fully paid (to the extent required by such Person's Organization Documents in the case of a limited liability company) and non-assessable (to the extent shares in a corporation) and has been sold and delivered to the holders thereof in compliance with, or under valid exemption from, all federal and state laws and the rules and regulations of each Governmental Authority governing the sale and delivery of securities, assuming the truth and accuracy of the New Equity Holder's and of the holders of Incremental Amendment Warrants representations and warranties in the Equity Documents and the Incremental Amendment Warrant Documents."

1.7. Amendment to Section 6.01.

(a) Section 6.01(a) of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"(a) as soon as available, but in any event within one-hundred and twenty (120) days after the end of each fiscal year of the Borrower (commencing with the fiscal year ended December 31, 2012), a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (except any such qualification in such auditors' report or opinion resulting from the regularly scheduled maturity date of any Indebtedness (including the Credit Agreement) which qualification shall be permissible); provided, that solely with respect to the fiscal year of the Borrower ended December 31, 2012, the balance sheet, consolidated statements and accompanying opinion and report required under this Section 6.01(a) shall be delivered not later than the applicable date specified in the May 2013 Waiver;"

(b) The text of clause (b)(ii) and the text of (c)(ii) of Section 6.01 of the Credit Agreement to the extent requiring delivery of Plant-Level Financial Statements for any fiscal quarter or fiscal month, as applicable, each hereby is deleted and each hereby is replaced with the following text "[Reserved.]".

1.8. Amendment to Section 6.02. Section 6.02(b) of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"(b)(i) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended September 30, 2012), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower, which shall include detailed computations of the financial covenants, and (ii) following delivery of the financial statements referred to in Section 6.01(a) and (b), the Borrower shall hold a conference call with all Lenders, Equity Holders and prospective Equity Holders who are subject to the confidentiality provisions under this Agreement or the Stockholders Agreement, or are NDA Signatories, to be scheduled, with respect to financial statements referred to in Section 6.01(a), no later than 150 days following the end of each fiscal year, or with respect to financial statements referred to in Section 6.01(b), no later than 45 days following the end of each fiscal quarter;"

1.9. Amendment to Section 6.12. Section 6.12 of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"SECTION 6.12 Use of Proceeds. Use the proceeds of any Borrowing solely for transaction costs, fees and expenses related to the execution, delivery and performance of the transactions contemplated by the Incremental Amendment, the Loan Documents, the Equity Documents, and the Incremental Amendment Warrant Documents and for general corporate purposes."

1.10. Amendment to Section 7.05(K). Section 7.05(K) of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"(K) change of control payments calculated in accordance with the Warrant Agreement or the Incremental Amendment Warrant Documents (as applicable) paid to the holders of the Warrants or the Incremental Amendment Warrants (as applicable) to the extent such Warrants or Incremental Amendment Warrants (as applicable) could be exercised at such time, provided, that (x) no Change of Control, other than a Permitted Change of Control, has occurred hereunder unless all Obligations are paid in full prior to such payments and (y) any such payments made prior to payment in full of the Obligations shall be made solely from the proceeds of the issuance of new Equity Interests (other than Preferred Stock) or other equity contributions to the Borrower and shall not be made with the proceeds of any Collateral;"

1.11. Amendment to Section 7.07. Section 7.07 of the Credit Agreement is amended by deleting "or" at the end of clause (j), inserting ";or" at the end of clause (k) and inserting a new clause (l) to read as follows:

"(l) the Incremental Amendment Transactions."

1.12. Amendment to Section 7.08. Section 7.08 of the Credit Agreement hereby is amended to reduce the Minimum Liquidity test by replacing the reference to "$5,000,000" with "$2,000,000".

1.13. Amendment to Section 7.11(a). Section 7.11(a) of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"(a) existing on the Incremental Amendment Effective Date (including pursuant to the Existing ABL Facility, the Equity Documents, and the Incremental Amendment Warrant Documents) and any extensions, refinancings, renewals or replacements thereof; provided that the encumbrances and restrictions in any such extensions, refinancings, renewals or replacements taken as a whole are, in the good faith judgment of the Board of Directors, no less favorable in any material respect to the Lenders than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;"

1.14. Amendment to Section 7.12. (i) The lead-in to Section 7.12 of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"SECTION 7.12 Limitation on the Issuance and Sale of Capital Stock of Subsidiaries. Issue or sell any shares of Capital Stock of a Subsidiary (including options, warrants or other rights to purchase shares of such Capital Stock) except:"

(ii) Section 7.12(e) of the Credit Agreement hereby is amended and restated in its entirety to read as follows:

"(e) the New Equity Issuance, the issuance of the Warrants and the Incremental Amendment Warrants and shares of common stock upon exercise of the Warrants or the Incremental Amendment Warrants, the issuance of Stock Equivalents pursuant to the Management Incentive Plan and the issuance of common stock pursuant to such Stock Equivalents."

(iii) The following paragraph hereby is inserted at the end of Section 7.12:

"For the avoidance of doubt, nothing in this Section 7.12 will prohibit or restrict the issuance of the Incremental Amendment Warrants by the Borrower."

1.15. New Section 10.22. (i) A new section is inserted as Section 10.22 of the Credit Agreement to read as follows:

"Section 10.22 Hedging Agreements. Notwithstanding any provision hereof or in any other Loan Document to the contrary, in the event that any Loan Party is not an "eligible contract participant" as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, at the time (a) any transaction is entered into under a Hedging Agreement or (b) such Loan Party becomes a Loan Party hereunder, the Obligations of such Loan Party shall not include (i) in the case of clause (a) above, such transaction and (ii) in the case of clause (b) above, any transactions outstanding under any Hedging Agreements as of the date such Loan Party becomes a Loan Party under the Loan Documents; provided, however, that at the time any Loan Party becomes an "eligible contract participant" as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, the Obligations of such Loan Party shall include (x) any transaction then outstanding under any Hedging Agreements and (y) any later transaction under any Hedging Agreements if at the time of the later transaction such Loan Party is an "eligible contract participant"."

1.16. Amendment to Schedules.

(a) Schedule IA and Schedule IB of the Credit Agreement hereby are deleted in their entirety and replaced with Schedule IA and Schedule IB, respectively, attached hereto.

(b) The Credit Agreement hereby is amended by adding a new Schedule 1C in the form of Schedule IC attached hereto.

2. **NEW TERM LOANS**. Pursuant to Section 2.10 of the Credit Agreement, and subject to the satisfaction of the conditions set forth in Section 4 hereof, on and as of the Incremental Amendment Effective Date:

Each Term Loan A-1 Lender that is, prior to the Incremental Amendment Effective Date, a Lender under the Credit Agreement agrees that upon, and subject to, the occurrence of the Incremental Amendment Effective Date, such Term Loan A-1 Lender's Commitment shall be increased, as contemplated by Section 2.10 of the Credit Agreement, by the amount set forth opposite such Term Loan A-1 Lender's name under the heading "Term Loan A-1 Commitment" on Schedule 1C to this Amendment. From and after the Incremental Amendment Effective Date, each reference in the Credit Agreement to any Term Loan A-1 Lender's Commitment shall mean its Commitment, as increased by the amount set forth opposite such Term Loan A-1 Lender's name under the heading "Term Loan A-1 Commitment" on Schedule IC to this Amendment.

Upon satisfaction (or waiver) of the conditions set forth in Section 4 hereof, (1) the Lenders hereby agree and consent to the incurrence by the Borrower and the other Loan Parties (after giving effect to the amendment to Section 2.10 of the Credit Agreement set forth in Section 1.5 herein) of the Term Loan A-1 and that for all purposes under the Credit Agreement and the other Loan Documents, the Term Loan A-1 shall (x) except as otherwise set forth in this Amendment, have the same terms and conditions as the Term Loan A (including, if applicable, as to maturity, optional and mandatory prepayments, and amortization) and (y) be a "Term Loan A-1", a "New Term Loan" and a "Term Loan" under and as defined in the Credit Agreement, and for all purposes under the Credit Agreement and the other Loan Documents and (2) each Term Loan A Lender hereby waives the terms and conditions of Section 2.10(b)(iii) of the Credit Agreement in respect of interest payable on, and the prepayment premium applicable to, the Term Loan A-1 as set forth in Section 2.05(a)(iv) of the Credit Agreement (as amended hereby). For purposes of the definition of "Maturity Date" in the Credit Agreement, the date specified as the "Maturity Date" of the Term Loan A-1 as the "New Term Loan" referred to therein shall be September 24, 2016, or if such date is not a Business Day, then the immediately preceding Business Day, which date is subject to extension in accordance with Section 2.11.

Each Term Loan A-1 Lender, severally and not jointly agrees, on the terms and subject to the conditions set forth herein, to make term loans to the Borrower on the Incremental Amendment Effective Date, in each case in an aggregate principal amount not to exceed the amount set forth opposite such Term Loan A-1 Lender's name on Schedule IC hereto under the heading "Term Loan A-1 Commitment" (the "**Term Loan A-1**"). Such Term Loan A-1 shall be deemed to be made in addition to the Term Loan A and the Term Loan B and not in repayment thereof, and shall constitute a part of the Term Loan for all purposes under the Credit Agreement and each other Loan Document. The Term Loan A-1 may only be incurred on the Incremental Amendment Effective Date. Any portion of the Term Loan A-1 borrowed on the Incremental Amendment Effective Date shall reduce the Incremental Facility Amount dollar-for-dollar, and if the Term Loan A-1 is borrowed in full, the Incremental Facility Amount shall be reduced to zero immediately after giving effect to such borrowing unless subsequently amended after the Incremental Amendment Effective Date in accordance with Section 10.01 of the Credit Agreement. Once repaid, the Term Loan A-1 may not be re-borrowed.

Without limiting the generality of the foregoing, the Term Loan A-1 made pursuant to this Section 2 and the "Term Loan A-1 Obligations" shall (i) constitute Obligations and Term Loan Obligations under the Loan Documents, (ii) be subject to all of the rights, remedies, privileges and protections applicable to the other Term Loans under the Credit Agreement and the other Loan Documents, (iii) be secured by the Liens granted to the Collateral Agent under all Loan Documents, (iv) be evidenced by Notes (if any), (v) bear interest at rates and have all other terms otherwise applicable to the Term Loan A-1 pursuant to Section 1.4(b) of this Amendment and Section 2.05(a)(iv) of the Credit Agreement, and (vi) be payable in the manner set forth in the Credit Agreement. From and after the Incremental Amendment Effective Date, (i) all references to the "Term Loan" or "Term Loans" contained in the Credit Agreement, the Collateral Documents and the other Loan Documents shall be deemed to refer to all Term Loans (including, but not limited to, the Term Loan A-1); (ii) all references to the "New Term Loan" or the "New Term Loans" contained in the Credit Agreement, the Collateral Documents and the other Loan Documents shall be deemed to refer to the Term Loan A-1; (iii) all references to "New Lender" or "New Lenders" contained in the Credit Agreement, the Collateral Documents and the other Loan Documents shall be deemed to refer to the Term Loan A-1 Lenders; and (iv) all references to "New Term Loan Commitment" or "New Term Loan Commitments" contained in the Credit Agreement, the Collateral Documents and the other Loan Documents shall be deemed to refer to the "Term Loan A-1 Commitment". Each Loan Party hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no defense, set off, claim or counterclaim against the Administrative Agent, the Collateral Agents or the Lenders with regard to its Obligations in respect of the Term Loans (including, without limitation, the Term Loan A-1) and (y) reaffirms its obligation to repay the Term Loan (including, without limitation, the Term Loan A-1) in accordance with the terms and provisions of this Amendment and the other Loan Documents.

The parties hereto agree that this Amendment shall be deemed to constitute the required notice by the Borrower for purposes of the requirements of Sections 2.10(a) and 2.10(d) of the Credit Agreement. The Borrower and the Administrative Agent each hereby acknowledge that each Term Loan A-1 Lender is reasonably acceptable to such party.

3. **REPRESENTATIONS AND WARRANTIES.** In order to induce the Lenders to enter into this Amendment and, in the case of the Term Loan A-1 Lenders, to make the Term Loan A-1, the Borrower represents and warrants to each Lender party hereto as follows:

3.1. ***Power and Authority.*** It has full power, authority and legal right to enter into this Amendment and to perform all its obligations hereunder and under the Credit Agreement and the other Loan Documents after giving effect to this Amendment.

3.2. ***Execution, Delivery and Enforceability.*** This Amendment has been duly executed and delivered by the Borrower and this Amendment, and the Credit Agreement and each other Loan Document to which it is a party, constitute its legal, valid, and binding obligation, enforceable in accordance with their respective terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered at a proceeding in equity or at law.

3.3. ***Corporate Action, No Conflict or Violation or Required Consent or Approval.*** The execution and delivery and performance of this Amendment and the Consent, and the performance of the Credit Agreement and each other Loan Document after giving effect to this Amendment, (a) are within the Borrower's and each Subsidiary Guarantor's corporate powers, have been duly authorized by all necessary corporate action, are not in contravention of law or the terms of the Borrower's and the Subsidiary Guarantor's by-laws, certificate of incorporation or other applicable documents relating to the Borrower's or the Subsidiary Guarantor's formation or to the conduct of the Borrower's or the Subsidiary Guarantor's business or of any material agreement or undertaking to which the Borrower or any Subsidiary Guarantor is bound, including the Existing ABL Facility, (b) will not conflict with or violate any law or regulation, or any judgment, order or decree of any Governmental Authority, (c) will not require the consent of any Governmental Authority or any other Person, except those consents which have been obtained and are in full force and effect or approvals or consents the failure to obtain would not reasonably be expected to have a Material Adverse Effect or which are not material to the consummation of the transactions or performance of the obligations contemplated hereby, and (d) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Liens upon any asset of the Borrower or any of the Subsidiary Guarantors under the provisions of any Contractual Obligation to which the Borrower or any of the Subsidiary Guarantors is a party or by which it or its property is a party or by which it may be bound.

3.4. ***Capitalization.*** As of the Incremental Amendment Effective Date, after giving effect to the transactions under the Equity Documents and the Incremental Amendment Warrant Documents, the authorized and outstanding Capital Stock of the Borrower and its Subsidiaries is as set forth on Schedule 3.4 hereto. As of the Incremental Amendment Effective Date, except for the rights and obligations set forth on Schedule 3.4 hereto and as provided for in the Equity Documents and in the Incremental Amendment Warrant Documents, there are no subscriptions, warrants, options, calls, commitments, rights or agreement by which any of the Borrower or its Subsidiaries or any of the shareholders of the Borrower or its Subsidiaries is bound relating to the issuance, transfer, voting or redemption of shares of its Capital Stock or any pre-emptive rights held by any Person with respect to the Capital Stock of the Borrower or its Subsidiaries. As of the Incremental Amendment Effective Date, except as set forth on Schedule 3.4 hereto, as provided for in the Equity Documents or the Incremental Amendment Warrant Documents, none of the Borrower or its Subsidiaries have issued any securities convertible into or exchangeable for shares of its Capital Stock or any options, warrants or other rights to acquire such shares or securities convertible into or exchangeable for such shares.

3.5. ***Representations, No Default, Event of Default or Material Adverse Effect.*** (1) The representations and warranties contained in Article V of the Credit Agreement and the other Loan Documents are true and correct in all material respects (after giving effect to the Incremental Amendment Transactions) on and as of the Incremental Amendment Effective Date, except to the extent such representations and warranties specifically refer to an earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date; (2) no Default or Event of Default has occurred and is continuing; and (3) no event has occurred since September 24, 2012 that has had or could reasonably be expected to have, individually or other with other events, a Material Adverse Effect.

4. **CONDITIONS TO EFFECTIVENESS OF THIS AMENDMENT.** This Amendment, and the consents and approvals contained herein, shall be effective only if and when signed by, and when counterparts hereof shall have been delivered to the Agents (by hand delivery, mail, telecopy or other electronic transmission) by the Borrower, the Required Lenders, each Term Loan A-1 Lender and each Term Loan A Lender, and only if and when each of the following conditions is satisfied or waived:

4.1. ***Delivery of Loan Documents and Other Deliverables.*** The Administrative Agent (or its counsel) shall have received the following documents:

(a) From the Borrower, the Lenders, and the Administrative Agent an executed counterpart of this Amendment on behalf of such party;

(b) From the Subsidiary Guarantors, an executed counterpart of the Consent in the form attached hereto as Annex I;

(c) From the Borrower, an executed borrowing notice in form attached hereto as Exhibit 4.1(c).

(d) A certificate of each Loan Party dated as of the Incremental Amendment Effective Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to this Amendment, (B) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to the Incremental Amendment Transactions, and (C) in the case of the Borrower, certifying that, immediately before and after giving effect to such Incremental Amendment Transactions, (1) the representations and warranties contained in Article V of the Credit Agreement and the other Loan Documents are true and correct in all material respects (after giving effect to the Incremental Amendment Transactions) on and as of the Incremental Amendment Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, (2) no Default or Event of Default has occurred and is continuing and (3) no event has occurred since September 24, 2012 that has had or could reasonably be expected to have, individually or together with other events, a Material Adverse Effect;

(e) An executed legal opinion of Akin, Gump, Strauss, Hauer & Feld, L.L.P. and Bryan Cave LLP, counsel to the Loan Parties, solely as to (i) corporate existence and good standing, (ii) due authorization and due execution and delivery, (iii) enforceability and valid and binding nature of this Amendment and the other Loan Documents, (iv) no conflicts with organizational documents, certain applicable laws and the Existing ABL Facility, (v) security interest matters, (vi) Investment Company Act 1940, (vii) margin loan regulations, in form and substance reasonably satisfactory to the Administrative Agent, and (viii) such other matters as reasonably agreed, in each case, in the forms attached hereto as Exhibit 4.1(d)-1 and Exhibit 4.1(d)-2;

(f) From each party thereto, the Intercreditor and ABL Amendments (as defined below); and

(g) UCC, tax and judgment lien search results showing that the UCC filings of the Collateral Agent with respect to the Collateral continue to be effective and of record and the absence of any Liens on the Collateral other than Permitted Liens.

4.2. ***Accuracy of Representations and Warranties.*** At the time of and immediately after giving effect to this Amendment, each of the representations and warranties made herein and in the Credit Agreement (assuming consummation of the transactions set forth in this Amendment) and the other Loan Documents (except, in each case, to the extent applicable to an earlier date, in which case, they shall be true and correct in all material respects as of such earlier date) shall be true and correct in all material respects (assuming consummation of the transactions set forth in this Amendment).

4.3. ***Payment of Fees and Expenses.*** The Administrative Agent shall have received all fees due and payable to the Administrative Agent and to any Lenders on or prior to the Incremental Amendment Effective Date and, to the extent invoiced, all other amounts due and payable pursuant to the Loan Documents on or prior to the Incremental Amendment Effective Date, including, to the extent invoiced, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including reasonable fees, charges and disbursements of Schulte Roth and Zabel LLP and Shearman & Sterling LLP) required to be reimbursed or paid by the Borrower hereunder or under any Loan Document.

5. **CONSENTS, INSTRUCTIONS AND ACKNOWLEDGEMENTS.** (a) The Lenders hereby agree and consent to the transactions set forth in this Amendment and the amendments to the Credit Agreement and other Loan Documents set forth herein, and instruct the Administrative Agent to execute and deliver this Amendment. In addition, the Lenders hereby agree to an amendment to the Intercreditor Agreement, and hereby direct the Administrative Agent to (i) enter into an amendment to the Intercreditor Agreement pursuant to which the definition of "Term Loan Cap" is modified to account for the "Term Loan A-1 PIK Interest" and the "Term Loan A PIK Interest," and to such other amendments as are consistent with the amendments to the Credit Agreement and the Existing ABL Facility and are necessary or desirable to be made to the Intercreditor Agreement in connection therewith and (ii) consent to an amendment to the Existing ABL Facility to permit the Term Loan A-1 and the other amendments to the Credit Agreement made pursuant hereto and to make any conforming amendments and other amendments to the Existing ABL Facility as are consistent with the amendments to the Credit Agreement and are necessary or desirable to be made to the Existing ABL Facility in connection therewith, in each case in the forms, attached hereto as Exhibit 5-1 and Exhibit 5-2 (the "**Intercreditor and ABL Amendments**"). The Administrative Agent hereby acknowledges receipt of such instruction and agrees to execute and deliver this Amendment for purposes of Section 10.01 of the Credit Agreement and to execute and deliver or consent to (as applicable) the Intercreditor and ABL Amendments.

After the Incremental Amendment Effective Date, the Borrower shall, and shall cause the Subsidiary Guarantors to, execute and deliver all agreements, documents and instruments as may be reasonably requested by the Lenders, in form and substance reasonably satisfactory the Lenders, to perfect and maintain the perfection and priority of the security interests in favor of the Collateral Agent for the benefit of the Secured Parties in the Mortgages.

The Agents and the Lenders hereby authorize and grant authority to the Administrative Agent to, promptly upon request by any Agent, or any Lender through the Administrative Agent, (i) to correct any defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, (ii) to enter into such additional amendments to any Loan Documents and the Intercreditor Agreement and to consent to such amendments to the Existing ABL Facility as are consistent with the amendments to the Credit Agreement set forth in this Amendment and are necessary or desirable to be reflected in any of the Loan Documents, the Intercreditor Agreement and the Existing ABL Facility, and (iii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as such Agent or Lender may reasonably require from time to time in order to (A) carry out more effectively the purposes of the this Amendment, and (B) perfect and maintain the validity, effectiveness and (subject only to Permitted Liens) priority of any of the Collateral Documents and any of the Liens intended to be created thereunder.

6. **EFFECTIVE DATE.** This Amendment shall become effective on the date of the satisfaction or waiver of the conditions set forth in Section 4 of this Amendment.

7. **COSTS AND EXPENSES.** The Borrower reaffirms its obligations to pay, in accordance with the terms of Section 10.04 of the Credit Agreement and to the extent set forth therein, all costs and expenses of Agents and Lenders in connection with the preparation, negotiation, execution and delivery of this Amendment.

8. **EFFECT OF AMENDMENT; RATIFICATION.** This Amendment is a Loan Document. From and after the date on which this Amendment becomes effective, all references in the Loan Documents to the Credit Agreement and other Loan Documents shall mean the Credit Agreement as modified hereby. Except as expressly modified hereby or waived herein, the Credit Agreement and the other Loan Documents, including the Liens granted thereunder, shall remain in full force and effect, and all terms and provisions thereof are hereby ratified and confirmed. Upon the satisfaction of the conditions precedent set forth in Section 4 of this Amendment, the provisions of this Amendment will become effective and binding upon, and enforceable against, the Borrower and each of the Administrative Agent, the Collateral Agent and each of the Lenders.

9. **APPLICABLE LAW.** THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

10. **NO WAIVER.** The execution, delivery and effectiveness of this Amendment does not constitute a waiver of any Default or Event of Default, amend or modify any provision of any Loan Document except as expressly set forth herein or constitute a course of dealing or any other basis for altering the Obligations of any Loan Party.

11. **COMPLETE AGREEMENT.** This Amendment sets forth the complete agreement of the parties in respect of the modification to the provisions of the Loan Documents or any waiver thereof to be consummated on the date hereof.

12. **CAPTIONS; COUNTERPARTS.** The catchlines and captions herein are intended solely for convenience of reference and shall not be used to interpret or construe the provisions hereof. This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts (including by telecopy or other electronic transmission), all of which taken together shall constitute but one and the same instrument.

13. **SUBMISSION TO JURISDICTION; WAIVER OF VENUE; WAIVER OF JURY TRIAL**.

(a) THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AMENDMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (a) OF THIS SECTION 13. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.

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

15. **RELEASE**. The Borrower hereby absolutely and unconditionally releases and forever discharges the Agents, the Lenders, and any and all of their respective participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees acting in any capacity whatsoever, including without limitation as a director of the Borrower, of any of the foregoing (each a "**Released Party**"), from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which the Borrower, has had, now has or has made claim to have against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to and including the date of this Amendment, whether such claims, demands and causes of action are matured or unmatured or known or unknown, and in each case, arising for or on account of, in relation to, or in any way in connection with, any of this Amendment, the Credit Agreement, any other Loan Document and/or the transactions hereunder or thereunder or related thereto, other than any claims, demands or causes of action resulting from fraud of a Released Party, as determined by the final, non-appealable judgment of a court of competent jurisdiction. It is the intention of the Borrower in providing this release that the same shall be effective as a bar to each and every claim, demand and cause of action specified, and in furtherance of this intention it waives and relinquishes all rights and benefits under any applicable law, which provides that:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him might have materially affected his settlement with the debtor."

The Borrower acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to such claims, demands, or causes of action and agrees that this instrument shall be and remain effective in all respects notwithstanding any such differences or additional facts. The Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

The Borrower, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Released Party above that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Released Party on the basis of any claim released, remised and discharged by the Borrower pursuant to the above release. If Borrower, any Subsidiary Guarantor or any of their respective successors, assigns, or officers, directors, employees, agents or attorneys, or any Person acting for or on behalf of, or claiming through it violates the foregoing covenant, such Person, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Released Party may sustain as a result of such violation, all attorneys' fees and costs incurred by such Released Party as a result of such violation.

[*signatures follow; remainder of page intentionally left blank*]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Amendment as of the date set forth above.

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.,
as the Borrower

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

ALJ CAPITAL I, L.P.

By: /s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

ALJ CAPITAL II, L.P.

By: /s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

LJR CAPITAL, L.P.

By: /s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

THEODORE D. MANN

By: /s/ Theodore D. Mann
Name: Theodore D. Mann
Title: Assistant Vice President

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☐ Term Loan A-1 Lender
☑ Term Loan B Lender

ALLIANCEBERNSTEIN STRATEGIC OPPORTUNITIES FUND, L.P.
(Alliance Bernstein, L.P.)

By: /s/ Theodore D. Mann
Name: Theodore D. Mann

ALLIANCEBERNSTEIN EVENT DRIVEN OPPORTUNITIES MASTER FUND, L.P.

By: /s/ Theodore D. Mann
Name: Theodore D. Mann

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

ALTAI CAPITAL MASTER FUND, LTD.

By: Altai Capital Management, L.P.,
as Investment Adviser

By: /s/ Toby E. Symonds
Name: Toby E. Symonds
Title: President

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

APOLLO INVESTMENT CORPORATION

By: Apollo Investment Management, L.P.,
its Advisor

By: ACC Management, LLC, its General Partner

By: /s/ Ted J. Goldthorpe
Name: Ted J. Goldthorpe
Title: Chief Investment Officer

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

CREDIT SUISSE LOAN FUNDING LLC

By: /s/ Barry Zamore
Name: Barry Zamore
Title: Managing Director

By: /s/ Robert Healy
Name: Robert Healey
Title: Authorized Signatory

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☐ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

MIDTOWN ACQUISITIONS L.P.

By: Midtown Acquisitions GP LLC

By: /s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Manager

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

SG I&A FUND, LTD.

By: Standard General L.P.,
its Investment Manager

By: /s/ Soohyung Kim
Name: Soohyung Kim
Title: Chief Executive Officer

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☐ Term Loan A-1 Lender
☐ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

MACQUARIE BANK LIMITED

By: /s/ Nathan Booker
Name: Nathan Booker
Title: Associate Director
(Signed in Sydney, POA Ref.#938
dated 22nd November 2012)

By: /s/ Alan D. Cameron
Name: Alan D. Cameron
Title: Executive Director
Fixed Income & Currencies

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

REDWOOD MASTER FUND, LTD.

By: REDWOOD CAPITAL MANAGEMENT, LLC,
its Investment Advisor

By: /s/ Jed Nussbaum
Name: Jed Nussbaum
Title: Authorized Signatory

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

SENATOR GLOBAL OPPORTUNITY MASTER FUND L.P

By: /s/ Evan Gartenlaub
Name: Evan Gartenlaub
Title: General Counsel

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☐ Term Loan A-1 Lender
☑ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

STANDARD GENERAL MASTER FUND L.P.

By: Standard General L.P.,
its Investment Manager

By: /s/ Soohyung Kim
Name: Soohyung Kim
Title: Chief Executive Officer

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☐ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

TCS II DEBT SOLUTIONS II (OFFSHORE), LLC

By: /s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☐ Term Loan B Lender

The Lender acknowledges and agrees that this signature page shall be fully valid and binding upon the Lender upon its execution and delivery by the Lender to the Administrative Agent and may not thereafter be revoked, terminated or cancelled by the Lender.

TCS II OPPORTUNITIES DEBT SOLUTIONS II
(OFFSHORE), LLC

By: /s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

The signatory Lender is (check as applicable):

☑ Term Loan A Lender
☑ Term Loan A-1 Lender
☐ Term Loan B Lender

By its signature below, the Administrative Agent and Collateral Agent hereby acknowledge the Incremental Amendment to Amended and Restated Senior Secured Term Loan Credit Agreement.

CITIBANK, N.A., as Administrative Agent and
as Collateral Agent

By: /s/ Christopher Abbate
Name: Christopher Abbate
Title: Vice President

SCHEDULE IA

TERM A LENDERS AND TERM A LENDERS' COMMITMENTS

Term Loan A Lender	Term Loan A Commitment	Applicable Percentage
ALJ CAPITAL I LP	$293,735.00	0.95%
ALJ CAPITAL II LP	$1,553,005.00	5.03%
LJR CAPITAL LP	$1,749,760.00	5.66%
ALLIANCEBERNSTEIN EVENT DRIVEN OPPORTUNITIES MASTER FUND L P	$162,584.77	0.53%
ALLIANCEBERNSTEIN STRATEGIC OPPORTUNITIES FUND LP (ALLIANCEBERNSTEIN LP)	$403,915.23	1.31%
ALTAI CAPITAL MASTER FUND LTD	$1,081,500.00	3.50%
APOLLO INVESTMENT CORPORATION	$3,965,500.00	12.83%
CREDIT SUISSE LOAN FUNDING LLC	$154,500.00	0.50%
MIDTOWN ACQUISITIONS LP (FKA) DK ACQUISITIONS PARTNERS LP	$2,424,500.00	7.85%
SG I AND A FUND LTD	$2,000,000.00	6.47%
MACQUARIE BANK LTD-SYDNEY HEAD OFFICE	$2,266,000.00	7.33%
REDWOOD MASTER FUND, LTD (REDWOOD CAPITAL MGMT)	$3,759,500.00	12.17%
SENATOR GLOBAL OPPORTUNITY MASTER FUND LP (SENATOR INVESTMENT GROUP LP)	$1,236,000.00	4.00%
STANDARD GENERAL MASTER FUND L.P.	$3,000,000.00	9.71%
TCS II DEBT SOLUTIONS II OFFSHORE LLC	$6,507,025.00	21.06%
TCS II OPPORTUNITIES DEBT SOLUTIONS II OFFSHORE LLC	$342,475.00	1.11%
TOTAL:	**$30,900,000.00**	**100%**

SCHEDULE IB

TERM B LENDERS AND TERM B LENDERS' LOANS

Term Loan B Lender	Term Loan B Commitment	Applicable Percentage
ALJ CAPITAL I LP	$423,312.32	0.39%
ALJ CAPITAL II LP	$2,239,238.33	2.08%
LJR CAPITAL LP	$2,202,996.33	2.04%
ALLIANCEBERNSTEIN EVENT DRIVEN OPPORTUNITIES MASTER FUND LP	$483,488.62	0.45%
ALLIANCEBERNSTEIN STRATEGIC OPPORTUNITIES FUND LP (ALLIANCEBERNSTEIN LP)	$1,201,148.32	1.11%
ALTAI CAPITAL MASTER FUND LTD	$3,354,807.24	3.11%
APOLLO INVESTMENT CORPORATION	$12,102,453.70	11.22%
CREDIT SUISSE LOAN FUNDING LLC	$479,258.18	0.44%
MIDTOWN ACQUISITIONS LP (FKA) DK ACQUISITIONS PARTNERS LP	$29,004,128.34	26.89%
MACQUARIE BANK LTD-SYDNEY HEAD OFFICE	$6,964,257.92	6.46%
REDWOOD MASTER FUND, LTD (REDWOOD CAPITAL MGMT)	$11,533,105.72	10.69%
CNI CHARTER FUNDS - FIXED INCOME OPPORTUNITIES FUND (FKA ROCHDALE FIXED INCOME OPPORTUNITIES PORTFOLIO)	$378,613.96	0.35%
RIDGEWORTH FUNDS SEIX FLOATING RATE HIGH INCOME FUND FKA STI CLASSIC - SEIX FLOATING RATE HIGH INCOME FUND	$6,812,660.99	6.32%
RIDGEWORTH FUNDS HIGH INCOME FUND FKA STI CLASSIC HIGH INCOME FUND	$5,227,517.58	4.85%
SEIX MULTI SECTOR ABSOLUTE RETURN FUND LP (FKA) SEIX CREDIT DISLOCATION FUND LP	$479,258.18	0.44%
UNIVERSITY OF ROCHESTER	$47,925.81	0.04%
SENATOR GLOBAL OPPORTUNITY MASTER FUND LP(SENATOR INVESTMENT GROUP LP)	$3,834,065.42	3.55%
TCS II OPPORTUNITIES LP	$906,881.88	0.84%
TPG CREDIT OPPORTUNITIES FUND LP (TPG CREDIT MANAGEMENT)	$2,146,118.11	1.99%
TPG CREDIT OPPORTUNITIES INVESTORS L.P. (TPG CREDIT OPPORTUNITIES INVESTORS, L.P.)	$2,396,290.88	2.22%
TPG CREDIT STRATEGIES FUND II LP	$14,207,816.20	13.17%
TPG CREDIT STRATEGIES FUND, LP	$1,437,774.54	1.33%
TOTAL:	**$107,863,118.58**	**100%**

SCHEDULE IC

TERM LOAN A -1 LENDERS AND TERM LOAN A-1 COMMITMENTS

Term Loan A-1 Lender	Term Loan A-1 Commitment	Applicable Percentage
MIDTOWN ACQUISITIONS LP (FKA) DK ACQUISITIONS PARTNERS LP	$2,746,197.41	7.85%
MACQUARIE BANK LTD-SYDNEY HEAD OFFICE	$2,566,666.67	7.33%
REDWOOD MASTER FUND, LTD (REDWOOD CAPITAL MGMT)	$4,258,333.33	12.17%
ALJ CAPITAL I LP	$332,709.55	0.95%
ALJ CAPITAL II LP	$1,759,067.15	5.03%
CREDIT SUISSE LOAN FUNDING LLC	$175,000.00	0.50%
STANDARD GENERAL MASTER FUND L.P.	$5,663,430.42	16.18%
APOLLO INVESTMENT CORPORATION	$4,491,666.67	12.83%
ALTAI CAPITAL MASTER FUND LTD	$1,225,000.00	3.50%
LJR CAPITAL LP	$1,981,928.80	5.66%
TCS II DEBT SOLUTIONS II OFFSHORE LLC	$9,310,000.00	26.60%
TCS II OPPORTUNITIES DEBT SOLUTIONS II OFFSHORE LLC	$490,000.00	1.40%
TOTAL:	**$35,000,000.00**	**100%**

Schedule 3.4

Capital Stock of the Borrower and its Subsidiaries

a. Authorized and outstanding Capital Stock of the Borrower and its Subsidiaries:

Entity	**Capital Stock**
Borrower	2,354,201 shares of Capital Stock outstanding
Aventine Renewable Energy, Inc.	1,000 shares of common stock; 100% owned by Borrower
Aventine Renewable Energy – Aurora West, LLC	Membership interests, 100% owned by Borrower
Aventine Renewable Energy – Mt Vernon, LLC	Membership interests, 100% owned by Borrower
Aventine Power, LLC	Membership interests, 100% owned by Borrower
Nebraska Energy, L.L.C.	Membership interests, 78.414% owned by Borrower and 21.586% owned by Aventine Renewable Energy, Inc.
Aventine Renewable Energy – Canton, LLC	Membership interests, 100% owned by Borrower

b. Agreements relating to issuance, transfer, voting or redemption of shares of Capital Stock:

(i) Subscriptions: None.

(ii) Warrants: Warrants to purchase up to an aggregate of 787,855 shares of the Borrower's common stock, par value $0.001 per share, at an exercise price of $61.75, expiring on September 24, 2017.

(iii) Options: 2,705 outstanding options to purchase common stock.

(iv) Calls: None.

(v) Commitments: 580 restricted stock units for settlement in common stock.

(vi) Other rights or agreements:

a. Stockholders Agreement, dated as of September 24, 2012, among the Borrower, each of the investors identified on Schedule A thereto as "Investors" and each of the other parties identified on Schedule A thereto as "Existing Stockholders."

b. Hybrid Equity Units – certain employees were granted hybrid equity units which would entitle them to potential common shares if the stock price reaches a certain threshold level on December 31, 2014. There are 1,206 units outstanding, with a threshold price of $980.00 expiring on December 31, 2014.

(vii) Pre-emptive rights: None.

c. Rights to acquire Capital Stock:

(i) Convertible securities: None.

(ii) Options: 2,705 outstanding options to purchase common stock.

(iii) Warrants: Warrants to purchase up to an aggregate of 787,855 shares of the Borrower's common stock, par value $0.001 per share, at an exercise price of $61.75, expiring on September 24, 2017.

(iv) Commitments: 580 restricted stock units for settlement in common stock.

(v) Other rights to acquire Capital Stock:

a. Stockholders Agreement, dated as of September 24, 2012, among the Borrower, each of the investors identified on Schedule A thereto as "Investors" and each of the other parties identified on Schedule A thereto as "Existing Stockholders."

b. Hybrid Equity Units – certain employees were granted hybrid equity units which would entitle them to potential common shares if the stock price reaches a certain threshold level on December 31, 2014. There are 1,206 units outstanding, with a threshold price of $980.00 expiring on December 31, 2014.

CONSENT AND RELEASE (this "Consent")

Dated as of June [___], 2013

Reference is made to that certain Amended and Restated Senior Secured Term Loan Credit Agreement, dated as of September 24, 2012, among Aventine Renewable Energy Holdings, Inc., as Borrower (the "Borrower"), the Lenders from time to time party thereto, Citibank, N.A., as Collateral Agent and Administrative Agent (the "Agent") (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement") and that certain Incremental Amendment, dated as of the date hereof, among the Borrower, the Agent, and the Lenders (the "Amendment") (capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Credit Agreement and the Amendment, as applicable).

The undersigned, Aventine Renewable Energy, Inc., a corporation organized under the laws of Delaware, Nebraska Energy, L.L.C., a limited liability company organized under the laws of Kansas, Aventine Renewable Energy – Aurora West, LLC, a limited liability company organized under the laws of Delaware, Aventine Renewable Energy – Mt Vernon, LLC, a limited liability company organized under the laws of Delaware, Aventine Power, LLC, a limited liability company organized under the laws of Delaware, and Aventine Renewable Energy – Canton, LLC, a limited liability company organized under the laws of Delaware, as Subsidiary Guarantors under the Subsidiary Guaranty, dated as of December 22, 2010, as amended by that certain Omnibus Amendment to Security Agreement and Subsidiary Guaranty dated as of September 24, 2012 (the "Guaranty"), in favor of the Secured Parties, hereby consent to such Amendment and hereby: (a) confirm and agree that each Loan Document, after giving effect to the Amendment, is and shall continue to be in full force and effect and hereby is in all respects ratified and confirmed, except that, on and after the effectiveness of the Amendment, each reference in each of the Loan Documents (including the Subsidiary Guaranty and the other Collateral Documents) to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement, as amended by, and after giving effect to, the Amendment; provided that, without limiting the generality of the foregoing, the Collateral Documents and all of the Collateral described therein do and shall continue to secure the payment of all Obligations of the Loan Parties under the Loan Documents, as amended by, and after giving effect to, the Amendment, in each case subject to the terms thereof; and (b) ratify and reaffirm (i) all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party; (ii) each grant of a lien on, or security interest in, its property made pursuant to the Loan Documents (including, without limitation, that grant of security made by the undersigned pursuant to the Security Agreement) and confirms that such liens and security interest continue to secure the Obligations under the Loan Documents, including, without limitation, all Obligations resulting from or incurred pursuant to the Term Loan A-1 Commitment, in each case subject to the terms thereof; and (iii) its guaranty of the Obligations pursuant to Article II of the Subsidiary Guaranty. Each of the undersigned agrees that this Consent constitutes a Loan Document and is a supplement to the Subsidiary Guaranty and the Security Agreement.

Each Subsidiary Guarantor acknowledges and agrees that notwithstanding any provision in any Loan Document to the contrary, in the event that any Loan Party is not an "eligible contract participant" as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, at the time (a) any transaction is entered into under a Hedging Agreement or (b) such Loan Party becomes a Loan Party under the Loan Documents, the Obligations of such Loan Party shall not include (i) in the case of clause (a) above, such transaction and (ii) in the case of clause (b) above, any transactions outstanding under any Hedging Agreements as of the date such Loan Party becomes a Loan Party under the Loan Documents; provided, however, that at the time any Loan Party becomes an "eligible contract participant" as such term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, the Obligations of such Loan Party shall include (x) any transaction then outstanding under any Hedging Agreements and (y) any later transaction under any Hedging Agreements if at the time of the later transaction such Loan Party is an "eligible contract participant".

The representations and warranties set forth in Section 3.1 through 3.3 and in Section 3.5 of the Amendment, each of which hereby is incorporated herein by reference, as they relate to such Subsidiary Guarantor or to the Loan Documents to which such Subsidiary Guarantor is a party, are true and correct as of the date hereof, except to the extent such representations and warranties specifically refer to an earlier date, in which case such representations and warranties are true and correct as of such earlier date; provided that each reference in each such representation and warranty to the Borrower's knowledge shall, for the purposes of this Consent, be deemed to be a reference to such Subsidiary Guarantor's knowledge.

Each Subsidiary Guarantor hereby absolutely and unconditionally releases and forever discharges the Agents, the Lenders, and any and all of their respective participants, parent corporations, subsidiary corporations, affiliated corporations, insurers, indemnitors, successors and assigns thereof, together with all of the present and former directors, officers, agents and employees acting in any capacity whatsoever, including without limitation as a director of the Borrower, of any of the foregoing (each a "Released Party"), from any and all claims, demands or causes of action of any kind, nature or description, whether arising in law or equity or upon contract or tort or under any state or federal law or otherwise, which such Subsidiary Guarantor, has had, now has or has made claim to have against any such person for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to and including the date of this Consent, whether such claims, demands and causes of action are matured or unmatured or known or unknown, and in each case, arising for or on account of, in relation to, or in any way in connection with, any of the Amendment, this Consent, the Credit Agreement, any other Loan Document and/or the transactions hereunder or thereunder or related thereto, other than any claims, demands or causes of action resulting from fraud of a Released Party, as determined by the final, non-appealable judgment of a court of competent jurisdiction. It is the intention of such Subsidiary Guarantor in providing this release that the same shall be effective as a bar to each and every claim, demand and cause of action specified, and in furtherance of this intention it waives and relinquishes all rights and benefits under any applicable law, which provides that:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him might have materially affected his settlement with the debtor."

Each Subsidiary Guarantor acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to such claims, demands, or causes of action and agrees that this instrument shall be and remain effective in all respects notwithstanding any such differences or additional facts. Each Subsidiary Guarantor understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

Each Subsidiary Guarantor, on behalf of itself and its successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Released Party above that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Released Party on the basis of any claim released, remised and discharged by such Subsidiary Guarantor pursuant to the above release. If Borrower, any Subsidiary Guarantor or any of their respective successors, assigns, or officers, directors, employees, agents or attorneys, or any Person acting for or on behalf of, or claiming through it violates the foregoing covenant, such Person, for itself and its successors, assigns and legal representatives, agrees to pay, in addition to such other damages as any Released Party may sustain as a result of such violation, all attorneys' fees and costs incurred by such Released Party as a result of such violation.

The provisions of Sections 9, 12, 13 and 14 of the Amendment shall apply to this Consent mutatis mutandis.

[*signatures follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be executed by their respective officers thereunto duly authorized, as of the date first above written.

AVENTINE RENEWABLE ENERGY, INC.
AVENTINE RENEWABLE ENERGY – AURORA WEST, LLC
AVENTINE RENEWABLE ENERGY – MT VERNON, LLC
AVENTINE POWER, LLC
AVENTINE RENEWABLE ENERGY – CANTON, LLC

By:_____
Name:
Title:

NEBRASKA ENERGY, L.L.C.

By:_____
Name:
Title:

EXHIBIT 4.1(C)

INCREMENTAL AMENDMENT BORROWING NOTICE

Date: June __, 2013

To: Citibank, N.A., as Administrative Agent
1615 Brett Road, Building No. 3
New Castle, DE 19720
Attn: Thomas Schmitt
Fax: 212-994-0961
E-mail: thomas.schmitt@citi.com

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Senior Secured Term Loan Credit Agreement, dated as of September 24, 2012, among Aventine Renewable Energy Holdings, Inc., a Delaware corporation (the "***Borrower***"), the Lenders from time to time party thereto, and Citibank, N.A., as Administrative Agent and Collateral Agent (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "***Credit Agreement***"). Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Credit Agreement.

Pursuant to Section 2.10 of the Credit Agreement, the undersigned hereby requests a Borrowing of the Term Loan A-1 on the following terms:

1. Aggregate principal amount $35,000,000;

2. Borrowing Date: June __, 2013;

3. Interest Rate: Term Loan A-1 PIK Interest; and

4. Lenders: The Term Loan A-1 Lenders as per Schedule IC of the Incremental Amendment.

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President

EXHIBIT 4.1(D)-1

FORM OF OPINION OF AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

EXHIBIT 4.1(D)-2

FORM OF OPINION OF BRYAN CAVE LLP

EXHIBIT 5-1

INTERCREDITOR AMENDMENT

EXHIBIT 5-2

ABL AMENDMENT

Exhibit 10.3

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (together with all schedules, riders and exhibits annexed hereto from time to time, this "Agreement") is entered into this 17th day of September, 2014, by and among **AVENTINE RENEWABLE ENERGY, INC.**, a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as Lenders, **MIDCAP FINANCIAL, LLC**, as Collateral Agent, and **ALOSTAR BANK OF COMMERCE**, a state banking institution incorporated or otherwise organized under the laws of the State of Alabama, as Administrative Agent. All schedules, riders and exhibits annexed hereto are incorporated herein and made a part hereof.

SECTION 1. **DEFINITIONS**

1.1 Defined Terms. When used in this Agreement or in any schedule or rider hereto, the following terms shall have the following meanings (terms defined in the singular to have the same meaning when used in the plural and *vice versa*):

"Account Debtor" means a Person obligated to pay an Account.

"Accounts Formula Amount" means, on any date of determination thereof, an amount equal to the percentage set forth in Item 1 of the Terms Schedule of the net amount of Eligible Accounts on such date. As used herein, the phrase "net amount of Eligible Accounts" shall mean the face amount of such Accounts on any date less any and all Taxes at any time owing by Account Debtors, or any interest accrued on the amount of, such Accounts at such date.

"Administrative Agent" means AloStar Bank of Commerce, acting as administrative agent for the Lender Group, and any successor Administrative Agent appointed pursuant to **Section 11.12**.

"Administrative Agent Account" means the Deposit Account of Administrative Agent identified in Item 19 of the Terms Schedule.

"Administrative Agent's Office" means the office of Administrative Agent located at 3630 Peachtree Road, N.E., Suite 1050, Atlanta, GA 30326, Attention: Aventine Portfolio Manager, or such other office as may be designated by Administrative Agent pursuant to the provisions of **Section 12.1.**

"Administrative Questionnaire" means a questionnaire in form and substance satisfactory to Administrative Agent**.**

"Affiliate" means a Person (a) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, another Person; (b) which beneficially owns or holds 10% or more of any class of the Equity Interests of a Person; or (c) 10% or more of the Equity Interests with power to vote of which is beneficially owned or held by another Person or a Subsidiary of another Person. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of any Equity Interest, by contract or otherwise. As used herein (other than in subsection (a) of the definition of Change of Control), the term "Affiliate" shall not include any Persons controlled by any holder of 10% or more of any class of the Equity Interests of Parent.

"Agents" means the Administrative Agent and the Collateral Agent.

"Aggregate Commitment Ratio" means, with respect to any Lender, the ratio, expressed as a percentage, of (a) the unutilized portion of the Commitments plus Loans (other than Agent Advances and Swing Loans) outstanding plus participation interests in LC Credit Support Obligations, Swing Loans and Agent Advances outstanding of such Lender, divided by (b) the sum of the aggregate unutilized Commitments plus Loans (other than Agent Advances and Swing Loans) outstanding plus participation interests in LC Credit Support Obligations, Swing Loans and Agent Advances of all Lenders, which Aggregate Commitment Ratios, as of the Closing Date, are set forth (together with Dollar amounts thereof) on Item 20 of the Terms Schedule.

"Agricultural Liens" means statutory liens imposed on, through or by corn producers and other like agricultural liens imposed by law.

"Anti-Terrorism Laws" means any laws relating to terrorism or money laundering, including Executive Order No. 13224 and the USA PATRIOT ACT.

"Applicable Variable Rate" shall have the meaning given to it in Item 8(a) of the Terms Schedule.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity that administers or manages a Lender.

"Assignment and Acceptance" shall mean that certain form of Assignment and Acceptance attached hereto as Exhibit E, pursuant to which each Lender may, as further provided in **Section 12.3**, sell a portion of its Loans or a portion of the Commitments.

"Authorized Officer" means each Senior Officer, each person identified in Item 2 of the Terms Schedule (if any), and each other person designated in writing by Borrower to Administrative Agent as an authorized officer to make requests for Loans or other extensions of credit hereunder.

"Availability" means, on any date of determination thereof, the amount that Borrower is entitled to borrow as Revolver Loans or Swing Loans on such date, such amount being the difference derived when the sum of the principal amount of Revolver Loans plus Agent Advances plus Swing Loans then outstanding is subtracted from the Borrowing Base on such date. If the amount outstanding is equal to or greater than the Borrowing Base, then there shall be no Availability.

"Availability Reserve" means, on any date of determination thereof, an amount equal to the sum of the following (without duplication, and, in each case, determined by Agents exercising their Permitted Discretion): (a) the in-transit freight rail reserve; (b) (i) the aggregate amount of past due rent, fees or other charges owing at such time by any Obligor to any landlord of any premises where any of the Collateral is located or to any processor, repairman, mechanic or other Person who is in possession of any Collateral or has asserted or is able to assert any Lien or claim thereto and (ii) any Availability Reserve established pursuant to **Section 5.1(a)** or any other provision of this Agreement; (c) any amounts which any Obligor is obligated to pay pursuant to the provisions of any of the Loan Documents that Agents elect to pay for the account of such Obligor in accordance with authority contained in any of the Loan Documents; (d) additional reserves described in Item 3 of the Terms Schedule; (e) the amount of any outstanding Bank Product Obligations due and owing to any Lender or any Affiliate of any Lender; (f) reserves with respect to (x) any potential claims against Borrower or its property pursuant to PACA and (y) payables to vendors entitled to benefits of PACA, or any similar statute or regulation; and (g) such additional reserves, in such amounts and with respect to such matters, as Agents in their Permitted Discretion may elect to impose from time to time.

"Bank Product Obligations" means all indebtedness or other obligations arising out of or relating in any way to Bank Products.

"Bank Products" means any one or more of the following types of products, services or facilities extended to Borrower by any Lender or any Affiliate of any Lender (whether or not in reliance on such Lender's agreement to indemnify such Affiliate): (i) commercial credit or debit cards; (ii) merchant card services; (iii) cash management services for operating, collections, payroll and trust accounts of Borrower that are provided by any Lender or any of their respective Affiliates, including automated clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services; (iv) products consisting of interest rate protection agreements, foreign currency exchange agreements, forward contracts, currency swap agreements, commodity price protection agreements for other interest or currency exchange rate or commodity price hedging arrangements; (v) equipment leasing arrangements between Borrower and any Lender or any Affiliate of any Lender; and (vi) such other banking products or services provided by any Lender or any Affiliate of any Lender as may be requested by Borrower, other than Letters of Credit.

"Bankruptcy Code" means title 11 of the United States Code.

"Borrower's Books" means all of Borrower's books and records relating to its existence, governance, assets, liabilities or financial condition or any of the Collateral, including minute books; ledgers and records indicating, summarizing or evidencing Borrower's assets or liabilities; all information relating to Borrower's business operations; and all computer records, programs, discs or tape files, printouts, runs, and other information prepared or stored electronically, including the equipment or any website or third party storage provider containing or hosting such information.

"Borrowing Base" means, on any date of determination thereof, an amount equal to the lesser of: (a) an amount equal to the Maximum Revolver Facility Amount on such date and (b) an amount equal to (i) the sum of the Accounts Formula Amount plus the Inventory Formula Amount on such date minus (ii) the Availability Reserve on such date.

"Borrowing Base Certificate" means a certificate, substantially in the form attached hereto as Exhibit C, with appropriate insertions, to be submitted to Administrative Agent by Borrower Agent pursuant to this Agreement.

"Borrowing Request" means a certificate, substantially in the form attached hereto as Exhibit D, with appropriate insertions, to be submitted to Administrative Agent by Borrower Agent pursuant to this Agreement.

"Business Day" means any day of the week, excluding Saturdays, Sundays, each day that is a legal holiday under the laws of the State of Georgia and each day on which Administrative Agent is otherwise closed for transacting business with the public.

"Canton" means Aventine Renewable Energy – Canton, LLC, a Delaware limited liability company.

"Change in Law" means the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any governmental authority; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any governmental authority. For the avoidance of doubt, "Change in Law" shall include (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directions issued thereunder or in connection therewith or in implementation thereof and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, in each case regardless of the date enacted, adopted, issued or implemented.

"Change of Control" means (a) the occurrence of any event (whether in one or more transactions) which results in a transfer of Control of Borrower to a Person who is not an original owner (or an Affiliate thereof) of Equity Interests in Borrower on the Closing Date or (b) any merger or consolidation of or with Borrower or sale of all or substantially all of the property of Borrower, other than any merger or consolidation between Obligors and any merger or consolidation of any Subsidiary with or into Borrower. For purposes of this definition, "Control of Borrower" shall mean the power, direct or indirect, (i) to vote 50% or more of the Equity Interests having ordinary voting power for the election of directors or managing agents of Borrower or (ii) to direct or cause the direction of the management and the policies of Borrower by contract or otherwise.

"Closing Date" means the date on which the initial Loan is funded hereunder.

"Collateral" means all of the property and interests in property described in **Section 4.1** of this Agreement, all property described in any of the Security Documents as security for the payment or performance of any of the Obligations, and all other property and interests in property that now or hereafter secure (or are intended to secure) the payment or performance of any of the Obligations.

"Collateral Agent" means MidCap Financial, LLC, and any successor Collateral Agent.

"Collections Account" means any Deposit Account maintained by Borrower at a bank or other financial institution to which collections, deposits and other payments on or with respect to the Collateral are to be made pursuant to the terms hereof and in respect of which only Administrative Agent shall have access to withdraw or otherwise direct the disposition of the funds on deposit therein.

"Commitment Termination Date" means the date that is the sooner to occur of (i) the last day of the Term or (ii) the date on which the Commitments are terminated pursuant to **Section 3.2**.

"Commitments" means all commitments and other undertakings of Lenders in this Agreement to make Loans or other extensions of credit to or for the benefit of Borrower in accordance with the terms of this Agreement and of the other Loan Documents.

"Commodity Account Control Agreement" means a commodity account control agreement among Borrower, Administrative Agent and the Commodity Intermediary named therein, pursuant to which Administrative Agent, for the benefit of the Lender Group, shall have obtained "control" (as contemplated by Section 9-106 of the UCC) of such Commodity Account.

"Commodity Hedging Arrangements" means any arrangement to hedge the price of corn purchases, ethanol sales, WDG or DDG sales or natural gas purchases, including crush spread hedges, corn future contracts, and ethanol future contracts.

"Commodity Risk Management Plan" means the risk management plan prepared by Borrower setting forth terms and conditions relating to any Commodity Hedging Arrangements from time to time proposed to be entered into by Borrower (as the same may be amended from time to time after the date hereof; provided, that Borrower shall promptly notify the Agents of any material amendment thereto).

"Compliance Certificate" means a Compliance Certificate, in the form of Exhibit B attached hereto, with appropriate insertions, to be submitted to Administrative Agent by Borrower Agent pursuant to this Agreement and certified as true and correct by a Senior Officer.

"Credit Support" means any guaranty, indemnity, security or other assurance of payment or performance provided by Lenders to induce a Person to extend credit to or for the benefit of any Obligor, including the issuance of any Letter of Credit by such Person for the account of any Obligor.

"DDG" means dried distillers grains produced by Borrower.

"Debt" means, as applied to a Person, without duplication: (a) all items which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet of such Person as of the date as of which Debt is to be determined, including capitalized lease obligations (other than any troubled debt restructuring adjustments that resulted from the debt refinancing that occurred on September 24, 2012); (b) all contingent obligations of such Person (other than under any Commodity Hedging Arrangements so long as the amount payable by such Person if such arrangements are terminated is cash collateralized); (c) all reimbursement obligations in connection with letters of credit issued for the account of such Person; and (d) in the case of Borrower (without duplication), the Obligations. The Debt of a Person shall include any recourse Debt of any partnership or joint venture in which such Person is a general partner or joint venturer.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default.

"Defaulting Lender" shall mean any Lender, as determined by Agents, that (a) has failed to fund any portion of its Loans or participations in Swing Loans or LC Credit Support Obligations required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder, (b) has notified Administrative Agent, the Swing Bank any Lender and/or the Borrower in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by Agents prompted by any evidence of facts described in clause (b) with respect to such Lender, to confirm in writing that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding LC Credit Support Obligations and Swing Loans, (d) has otherwise failed to pay over to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) shall take, or is the Subsidiary of any Person that has taken, any action or be (or is) the subject of any Insolvency Proceeding (or any comparable proceeding initiated by a regulatory authority having jurisdiction over such Lender or such Person).

"Deposit Account Control Agreement" means a deposit account control agreement among Borrower, Administrative Agent and the financial institution named therein, pursuant to which Administrative Agent, for the benefit of the Lender Group, shall have obtained "control" (as contemplated by Section 9.104 of the UCC) of such deposit account.

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 90 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrower's Accounts during such period, by (b) Borrower's billings with respect to Accounts during such period.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by one (1) percentage point for each percentage point by which Dilution is in excess of five percent (5%), rounded up to the nearest one tenth of a percentage point (0.10%).

"Disbursement Account" means each Deposit Account maintained by Borrower with a financial institution for the purpose of receiving and disbursing the proceeds of Loans made pursuant hereto.

"Disclosure Schedule" means the Disclosure Schedule annexed hereto.

"Disqualified Equity Interests" shall mean any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after maturity.

"Distribution" means, in respect of any entity, (i) any payment of dividends or other distributions on Equity Interests of the entity (except distributions consisting of such Equity Interests) and (ii) any purchase, redemption or other acquisition or retirement for value of any Equity Interests of the entity or an Affiliate of the entity unless made contemporaneously from the net proceeds of the sale of Equity Interests.

"Dollars" and the sign "$" means lawful money of the United States of America.

"Early Termination Fee" means a fee to be paid by Borrower to Administrative Agent, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, pursuant to Items 4 and 9(a)(iv) of the Terms Schedule.

"EFS" means an effective financing statement under the FSA that is filed against a Producer.

"Eligible Account" means an Account which arises in the Ordinary Course of Business of Borrower from the sale of goods, is payable in Dollars, is subject to the Administrative Agent's duly perfected Lien, and has not been deemed by the Agents, in their Permitted Discretion, to not be an Eligible Account. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if: (a) it arises out of a sale made by Borrower to a Subsidiary or an Affiliate of Borrower or to a Person controlled by an Affiliate of Borrower; (b) it is due or unpaid for more than 60 days after the original due date shown on the invoice; (c) it is unpaid more than 90 days after the original invoice date; (d) 50% or more of the Accounts from the Account Debtor are not deemed Eligible Accounts hereunder; (e) the total unpaid Accounts of any Account Debtor exceed 30% of the aggregate amount of all Accounts, in each case, to the extent of such excess; (f) any covenant, representation or warranty contained in this Agreement with respect to such Account has been breached; (g) the Account Debtor is also Borrower's creditor or supplier, or the Account Debtor has disputed liability with respect to such Account, or the Account Debtor has made any claim with respect to any other Account due from such Account Debtor to Borrower, or the Account otherwise is or may become subject to any right of setoff, counterclaim, recoupment, reserve, defense or chargeback, provided that, the Accounts of such Account Debtor shall be ineligible only to the extent of such dispute or right of offset, counterclaim, recoupment, reserve, defense or chargeback; (h) an Insolvency Proceeding has been commenced by or against the Account Debtor or the Account Debtor has failed, suspended or ceased doing business; (i) the Account Debtor is not or has ceased to be Solvent; (j) it arises from a sale to an Account Debtor that is organized under the laws of any jurisdiction outside of the United States or Canada or that has its principal office, assets or place of business outside the United States or Canada, except to the extent that the sale is supported or secured by a letter of credit or credit insurance that is acceptable in all respects to the Agents and duly assigned to the Administrative Agent; (k) it arises from a sale to the Account Debtor on a bill-and-hold, guaranteed sale, sale or return, sale on approval, consignment or any other repurchase or return basis; (l) the Account Debtor is the United States of America or any department, agency or instrumentality thereof, unless Borrower is not prohibited from assigning the Account and does assign its right to payment of such Account to the Administrative Agent, in a manner satisfactory to Agents, so as to comply with the Assignment of Claims Act of 1940 (31 U.S.C. Sec.3727 and 41 U.S.C. Sec.15), or is a state, county or municipality, or a political subdivision or agency thereof and applicable law disallows or restricts an assignment of Accounts on which it is the Account Debtor; (m) the Account Debtor is located in a state in which Borrower is deemed to be doing business under the laws of such state and which denies creditors access to its courts in the absence of qualification to transact business in such state or of the filing of any reports with such state, unless Borrower has qualified as a foreign entity authorized to transact business in such state or has filed all required reports or could receive access to its courts by paying minimal amounts to so qualify to transact business in such state; (n) the Account is subject to a Lien other than (x) Liens in favor of the Administrative Agent, (y) Liens securing the Term Loan Indebtedness so long as the Administrative Agent has entered into the Intercreditor Agreement or (z) Permitted Liens identified in clause (b) and (c) in the definition thereof; (o) the goods giving rise to such Account have not been delivered to and accepted by the Account Debtor or the Account otherwise does not represent a final sale; (p) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (q) the Account represents a progress billing or a retainage or arises from a sale on a cash-on-delivery basis; (r) Borrower has made any agreement with the Account Debtor for any deduction therefrom, except for discounts or allowances which are made in the Ordinary Course of Business for prompt payment and which discounts or allowances are reflected in the calculation of the face value of each invoice related to such Account; (s) Borrower has made an agreement with the Account Debtor to extend the time of payment thereof beyond the later of (x) 60 days after the original due date shown on the invoice, or (y) 90 days after the original invoice date; (t) the Account represents, in whole or in part, a billing for interest, fees or late charges, provided that such Account shall be ineligible only to the extent of the amount of such billing; (u) the Account Debtor has made a partial payment with respect to such Account; or (v) it arises from a retail sale of Inventory to a Person who is purchasing the same primarily for personal, family or household purposes.

"Eligible Assignee" shall mean (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; or (d) any other Person approved by the Agents and, in the absence of an Event of Default, Borrower (such consent not to be unreasonably withheld, conditioned or delayed; provided that the Borrower shall be deemed to have approved such Person unless the Borrower shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof)**.**

"Eligible Inventory" means Inventory which is owned by Borrower (other than packaging or shipping materials, labels, samples, display items, bags, replacement parts and manufacturing supplies, including, without limitation, chemicals, enzymes, denaturants, coal and natural gas) and which Agents, in their Permitted Discretion, does not deem to not be Eligible Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory unless: (a) it is owned by Borrower and it is not held by Borrower on consignment from or subject to any guaranteed sale, sale-or-return, sale-on-approval or repurchase agreement with any supplier; (b) it is in good, new and saleable condition and is not damaged, defective, shopworn or otherwise unfit for sale (other than with respect to any co-products (including, but not limited to WDG, DDG or feed) that may be sold to Account Debtors at a discount; provided, that the amount of such co-products included in the value of Eligible Inventory may not exceed $500,000); (c) it is not slow-moving, obsolete or unmerchantable and is not goods returned to Borrower by or repossessed from an Account Debtor; (d) it meets all standards imposed by any governmental authority and is not a Hazardous Material (other than ethanol and anhydrous ammonia) to the extent such goods can be transported or sold only with licenses or permits that are not readily available; (e) it conforms in all respects to the warranties and representations set forth in this Agreement and is fully insured in the manner required by this Agreement; (f) it is at all times subject to Administrative Agent's duly perfected, first priority security interest and no other Lien other than Liens securing the Term Loan Indebtedness so long as the Administrative Agent has entered into the Intercreditor Agreement and Permitted Liens identified in clause (b) and (c) in the definition thereof; (g) it is in Borrower's possession and control at a location listed on the Disclosure Schedule (including any update to such Disclosure Schedule delivered in compliance with this Agreement), is not in transit or outside the continental United States and is not consigned to any Person; (h) it is not the subject of a negotiable warehouse receipt or other negotiable document (other than, for the period commencing on the Closing Date and ending on the 180th day thereafter, any receipt related to sugar stored in certain USDA approved facilities); and (i) it has not been sold or leased and Borrower has not received any deposit or downpayment in respect thereof in anticipation of a sale.

"Environmental Laws" means all federal, state, local and foreign laws, rules, regulations, codes, ordinances, orders and consent decrees (together with all programs, permits and guidance documents promulgated by regulatory agencies, to the extent having the force of law), now or hereafter in effect, that relate to public health (but excluding occupational safety and health, to the extent regulated by OSHA) or the protection or pollution of the environment, whether now or hereafter in effect, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Clean Water Act, the Clean Air Act, the Toxic Substances Act, and the Resource Conservation and Recovery Act.

"Equity Interest" means the interest of (a) a shareholder in a corporation, (b) a partner (whether general or limited) in a partnership (whether general, limited or limited liability), (c) a member in a limited liability company, or (d) any other Person having any other form of equity security or ownership interest.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"Event of Default" means the occurrence of any one of the events set forth in **Section 10.**

"Excluded Real Property Collateral" means the real property in Canton, Illinois owned by Canton.

"Executive Order No. 13224" means executive order no. 13224 effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Fees" means all fees payable pursuant to **Section 2.4(a)**.

"Fiscal Year" means the fiscal year of Borrower and its Subsidiaries for accounting and tax purposes, which is described in the Disclosure Schedule.

"FSA" means the Food Security Act of 1985 (codified in 7 U.S.C. Sec. 1631) (as amended from time to time).

"FSA Producer Payables" means all payables and accrued payables by Borrower to Producers against whom an EFS has been filed or a FSA Notice has been given to Borrower by a Producer's Lender.

"FSA Notice" means a written notice received by Borrower from a Producer or a Producer's Lender within 1 year before the most recent purchase of, or marketing for, farm products from a given Producer indicating that the Producer's Lender has a security interest in the farm products of such Producer being purchased by Borrower and/or the proceeds of such farm products.

"FSA Reserve" means an amount determined by the Agents in their Permitted Discretion after inspection of the records of Borrower and information obtained from the Master Lists of the States in which Producers are located equal to the FSA Producer Payables. Any FSA Producer Payable shall be excluded from the FSA Reserve if Borrower receives a waiver, release or subordination agreement from such Producer's Lender waiving, releasing or subordinating any security interest such Producer's Lender may have in Borrower's Inventory and/or Accounts to the security interest granted by Borrower to Lender. Any FSA Producer Payable shall be limited to the specific portion of such FSA Producer Payable claimed by a Producer's Lender to the extent that Borrower has received a signed acknowledgment from such Producer's Lender stating the specific amount claimed by such Producer's Lender and that such Producer's Lender will not increase such amount without giving the Borrower or Lender at least 30 days' prior written notice of such increase.

"Full Payment" means the full and final payment in full in cash of all of the Obligations (or, in the case of any contingent Obligations, such as Letters of Credit or Bank Products, the cash collateralization of such contingent Obligations in a manner satisfactory to Agents and to the extent of 103% of the liquidated or estimated amount of such contingent Obligations with respect to Letters of Credit or cash collateralization in an amount sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations); termination of the Commitments; and release by each Obligor (and by any representative of creditors of such Obligor in any Insolvency Proceeding of such Obligor) of any then existing claims that such Obligor has or asserts to have against Agents, Lenders or any of their respective Affiliates, other than such claims resulting from gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction.

"Fund" means any Person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means generally accepted accounting principles in the United States of America in effect from time to time.

"Governing Rate" shall have the meaning given to it in Section 2.3(a).

"Guarantor" means individually, and "Guarantors" means collectively, each Person who at any time guarantees the payment or performance of any Obligations, including each Person listed on Item 5 of the Terms Schedule as a Guarantor.

"Guaranty" means each guaranty agreement at any time executed by a Guarantor with respect to any of the Obligations.

“Hazardous Material” means any substance, material, pollutant, contaminant, chemical or waste, the presence, emission or exposure to which is regulated under any applicable Environmental Law.

"Indemnified Claim" means any and all claims, demands, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, awards, remedial response costs, expenses or disbursements of any kind or nature whatsoever (including reasonable attorneys', accountants', consultants' or paralegals' fees and expenses), whether arising under or in connection with any of the Loan Documents, any applicable law (including any Environmental Laws) or otherwise, that may now or hereafter be suffered or incurred by any Indemnitee and whether suffered or incurred in or as a result of any investigation, litigation, arbitration or other judicial or non-judicial proceedings or any appeals related thereto.

"Indemnitees" means each member of the Lender Group, each Affiliate thereof and each of their respective officers, directors, employees and agents (including legal counsel).

"Insolvency Proceeding" means any action, case or proceeding commenced by or against a Person under any state, federal or foreign law, or any agreement of such Person, for (a) the entry of an order for relief under any chapter of the Bankruptcy Code or other insolvency or debt adjustment law (whether state, federal or foreign), (b) the appointment of a receiver (or administrative receiver), trustee, liquidator administrator, conservator or other custodian for such Person or any part of its property, (c) an assignment or trust mortgage for the benefit of creditors of such Person, or (d) the liquidation, dissolution or winding up of the affairs of such Person.

“Intercreditor Agreement” means that certain Second Amended and Restated Intercreditor Agreement, dated as of September 24, 2012, executed by and among the Term Loan Agent and Wells Fargo, as Revolver Agent, and acknowledged by Borrowers, in form and substance reasonably satisfactory to the Agents, and as the same may be further amended, modified or restated in accordance with the terms hereof.

"Inventory Formula Amount" means, on any date of determination thereof, an amount equal to the percentage set forth in Item 6 of the Terms Schedule of the lower of (a) the cost of such Eligible Inventory or (b) the market value of such Eligible Inventory; provided that (i) the market value of such Eligible Inventory consisting of corn and ethanol shall be based on the price of corn and ethanol, as applicable, as listed by the Chicago Board of Trade at the close of business on the date immediately prior to the date of delivery of each Borrowing Base Certificate pursuant to Section 2.6 adjusted by the local basis and (ii) the market value of any other Eligible Inventory shall be determined by GAAP.

“Lender Agreement” means a lender joinder agreement, in form and substance satisfactory to the Agents.

"Lender Group" means, collectively, Administrative Agent and Lenders.

"Lender Group Expenses" means all of the following: (a) Taxes and insurance premiums required to be paid by Borrower under this Agreement or any of the other Loan Documents which are paid or advanced by the Lender Group, or any of them; (b)reasonable filing, recording, publication and search fees paid or incurred by the Lender Group, or any of them, including all recording taxes and indebtedness taxes; (c) the costs, fees (including reasonable attorneys' and paralegals' fees) and reasonable expenses incurred by Agents, in accordance with this Agreement and the other Loan Documents and subject to any limitations included in this Agreement (i) to inspect, copy, audit or examine Borrower or any of Borrower's Books or inspect, verify, count or appraise any Collateral; (ii) to cure any Default or enforce any provision of any of the Loan Documents, whether or not litigation is commenced; (iii) in gaining possession of, maintaining, handling, preserving, insuring, storing, shipping, preparing for sale, advertising for sale, selling or foreclosing a Lien upon any of the Collateral, whether or not a sale is consummated; (iv) in collecting any Accounts or Payment Intangibles or recovering any of the Obligations; (v) in structuring, drafting, reviewing, implementing or preparing any of the Loan Documents and any amendment, modification or waiver of this Agreement or any of the other Loan Documents; (vi) in defending the validity, priority or enforceability of Administrative Agent Liens; and (vii) in monitoring or seeking any relief in any Insolvency Proceeding involving an Obligor; and (d) all other reasonable out-of-pocket costs and expenses incurred by the Lender Group, or any of them and described in **Section 2.4(b)**.

"Lenders" shall mean those lenders whose names are set forth on the signature pages to this Agreement under the heading "Lenders" and any assignees of Lenders who hereafter become parties hereto pursuant to and in accordance with **Section 12.3**; and "Lender" shall mean any one of the foregoing Lenders.

"Letter of Credit" means a standby letter of credit issued by a Lender or an Affiliate of a Lender or by another Person in reliance (in whole or in part) upon Credit Support provided by Lenders.

"Lien" means any interest in property securing an obligation owed to, or a claim by, a Person other than the owner of the property, whether such interest is based on common law, statute or contract. The term "Lien" shall also include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting property. For the purpose hereof, Borrower shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other Person for security purposes.

"Lien Waiver/Access Agreement" means an agreement in favor of Administrative Agent, for the benefit of the Lender Group, providing for the waiver or subordination of Liens from any lessor, mortgagee, warehouse operator, processor, customs broker, carrier, or other Person that may have lienholders' enforcement rights with respect to any Collateral, by which such Person shall waive or subordinate its Liens and claims with respect to any Collateral in favor of Administrative Agent's Liens and shall assure Administrative Agent's access to any Collateral in such Person's possession for the purpose of allowing Administrative Agent to enforce the Lender Group’s rights and Liens with respect to such Collateral.

"Loan" means an advance of money made by Lenders or the Swing Bank to Borrower pursuant to the terms of this Agreement, including any Rider.

"Loan Documents" means, collectively, this Agreement, each Note, the Security Documents, Lien Waiver/Access Agreements, and any other agreements entered into between the Lender Group, or any of them, and any Obligor in connection with this Agreement or to evidence or govern the terms of any of the Obligations, including letter of credit agreements, mortgages, deeds of trust, guaranties, assignments, pledge agreements, subordination agreements, agreements relating to Bank Products entered into between Borrower and the Lender Group or any of them, and any and all other documents, agreements, certificates and instruments executed and/or delivered by any Obligor pursuant hereto or in connection herewith.

“Lockbox Agreement” means each agreement between Borrower and a bank concerning the establishment of the lockbox and related bank Deposit Account for the collection of and remittance to Administrative Agent of payments received with respect to the Accounts.

"Majority Lenders" shall mean, as of any date of calculation, Lenders the sum of whose unutilized portions of Commitments plus Loans (other than Agent Advances and Swing Loans) outstanding plus participation interests in LC Credit Support Obligations, Swing Loans and Agent Advances outstanding on such date of calculation exceeds fifty percent (50%) of the sum of the aggregate unutilized Commitments plus Loans (other than Agent Advances and Swing Loans) outstanding plus participation interests in LC Credit Support Obligations, Swing Loans and Agent Advances outstanding of all of Lenders as of such date of calculation; provided, so long as there are two or more Lenders which are not Affiliates party to this Agreement, Majority Lenders shall require at least two Lenders; provided, further, so long as there are three or more Lenders which are not Affiliates party to this Agreement, Majority Lenders shall mean Lenders the sum of whose unutilized portions of Commitments plus Loans (other than Agent Advances and Swing Loans) outstanding plus participation interests in LC Credit Support Obligations, Swing Loans and Agent Advances outstanding on such date of calculation is equal or greater than sixty-six percent (66%) of the sum of the aggregate unutilized Commitments plus Loans (other than Agent Advances and Swing Loans) outstanding plus participation interests in LC Credit Support Obligations, Swing Loans and Agent Advances outstanding of all of Lenders as of such date of calculation; provided, further, Defaulting Lenders and their portion of the Commitments, Loans and participation interests in LC Credit Support Obligations, Swing Loans and Agent Advances shall be excluded for purposes of determining "Majority Lenders" hereunder.

"Margin Stock" shall have the meaning ascribed to it in Regulation U of the Board of Governors of the Federal Reserve System.

“Master List” means the master list maintained and distributed by the applicable Secretary of State or equivalent governmental authority in which a Producer is located, as described in the FSA.

"Material Adverse Effect" means the effect of any event, condition, action, omission or circumstance, which, alone or when taken together with other events, conditions, actions, omissions or circumstances occurring or existing concurrently therewith, (a) has, or with the passage of time could be reasonably expected to have, a material adverse effect upon the business, operations, properties or condition (financial or otherwise) of any Obligor; (b) has or could be reasonably expected to have any material adverse effect upon the validity or enforceability of this Agreement or any of the other Loan Documents; (c) has any material adverse effect upon the value of the whole or any material part of the Collateral, the Liens of Administrative Agent with respect to any material part of the Collateral or the priority of any such Liens as a result of any action or inaction on the part of an Obligor; (d) materially impairs the ability of any Obligor to perform its obligations under this Agreement or any of the other Loan Documents, including repayment of any of the Obligations when due; or (e) materially impairs the ability of Administrative Agent to enforce or collect the Obligations or realize upon any of the Collateral in accordance with the Loan Documents or applicable law.

"Material Agreement" means any agreement, instrument or arrangement to which Borrower or any Subsidiary is a party for which default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained therein could reasonably be expected to have a Material Adverse Effect.

"Maximum Revolver Facility Amount" means an amount equal to the amount shown on Item 7(a) of the Terms Schedule.

"Money Borrowed" means, as applied to any Obligor, without duplication: (a) Debt arising from the lending of money by any other Person to such Obligor; (b) Debt, whether or not in any such case arising from the lending of money by another Person to such Obligor, (i) which is represented by notes payable or drafts accepted that evidence extensions of credit, (ii) which constitutes obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) upon which interest charges are customarily paid (other than accounts payable) or that was issued or assumed as full or partial payment for property; (c) Debt under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP as in effect on the date hereof; (d) reimbursement obligations with respect to letters of credit or guarantees relating thereto; and (e) Debt of such Obligor under any guaranty of obligations that would constitute Debt for Money Borrowed under clauses (a) through (d) hereof, if owed directly by such Obligor.

"Minimum Availability Block" means an amount equal to the amount shown on Item 7(b) of the Terms Schedule.

"Multiemployer Plan" shall have the meaning set forth in Section 4001(a)(3) of ERISA.

"Note" means a promissory note executed by Borrower at a Lender's request to evidence any of the Obligations, including the Revolver Note.

"Obligations" means all Debts, liabilities, obligations, covenants, and duties at any time or times owing by Borrower to the Lender Group, or any of them, of any kind and description, whether incurred pursuant to or evidenced by any of the Loan Documents or pursuant to any other agreement between the Lender Group, or any of them, and Borrower or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, or joint or several, including the principal of and interest on the Loans, all Bank Product Obligations, all Fees, all obligations of Borrower under any indemnification of the Lender Group, or any of them, all obligations of Borrower to reimburse the Lender Group, or any of them, in connection with any Letter of Credit or bankers acceptances, all obligations of Borrower to reimburse the Lender Group, or any of them, for any Credit Support, and all Lender Group Expenses. Without limiting the generality of the foregoing, the term "Obligations" shall include all Debts, liabilities and obligations incurred by Borrower to the Lender Group, or any of them, in any bankruptcy case of Borrower and any interest, fees or other charges accrued in any such bankruptcy case, whether or not any such interest, fees or other charges are recoverable from Borrower or its estate under 11 U.S.C. Sec.506.

"Obligor" means Borrower, each Guarantor, and each other Person that is at any time liable for the payment of the whole or any part of the Obligations or that has granted in favor of Administrative Agent, for the benefit of the Lender Group, a Lien upon any of such Person's assets to secure payment of any of the Obligations.

"Ordinary Course of Business" means, with respect to any transaction involving any Person, the ordinary course of such Person's business, as conducted by such Person in accordance with past practices and undertaken by such Person in good faith and not for the purpose of evading any covenant or restriction in any Loan Document.

"Organic Documents" means, with respect to any entity, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust, or similar agreement or instrument governing the formation or operation of such Person.

"OSHA" means the Occupational Safety and Hazard Act of 1970.

"Overadvance" shall have the meaning given to it in **Section 2.1(d)**.

"PACA" means the Perishable Agricultural Commodities Act, 17 U.S.C. 499.e(c) (or any successor legislation thereto), as amended from time to time, and any regulations promulgated thereunder.

"Parent" means Aventine Renewable Energy Holdings, Inc., a Delaware corporation.

"Permitted Asset Disposition" means a sale, lease, license, consignment or other transfer or disposition of assets (real or personal, tangible or intangible) of Borrower, including a disposition of property of Borrower in connection with a sale-leaseback transaction or synthetic lease, in each case only if such disposition (a) consists of the sale of Inventory of Borrower in the Ordinary Course of Business or the sale of Accounts in the Ordinary Course of Business in connection with the compromise or collection thereof; (b) is a disposition of Equipment permitted by **Section 5.4(b)**; (c)on or prior to December 31, 2014, is the sale of Borrower's Equity Interest in Canton and all assets owned by Canton; (d) arises solely from a termination of a lease of real or personal property that is not necessary in an Obligor's Ordinary Course of Business, could not reasonably be expected to have a Material Adverse Effect and does not result from such Obligor's default or failure to perform under such lease; (e) is the licensing, on a non-exclusive basis, or patents, trademarks, copyrights and other Intellectual Property rights in the Ordinary Course of Business; (f) is the granting of Permitted Liens; (g) is any involuntary loss, damage or destruction of property or condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise or confiscation or requisition of use of property; (h) is the leasing or subleasing of assets in the Ordinary Course of Business; (i) is the lapse of registered Intellectual Property to the extent not economically desirable in the conduct of Borrower's business or the abandonment of Intellectual Property Rights in the Ordinary Course of Business; (j) consists of transfers of assets among Obligors; or (k) consists of sales or dispositions of assets (other than Accounts, Inventory or Equity Interests of Subsidiaries of Parent) in the Ordinary Course of Business not otherwise permitted above so long as made at fair market value.

"Permitted Change of Control" means a Change of Control so long as, after giving effect thereto, Borrower remains obligated for the Obligations hereunder and all such Obligations remain secured by the Collateral, in each case to the same extent as was the case immediately prior to such Change of Control.

"Permitted Discretion" shall mean a determination made in the exercise of reasonable commercial discretion (from the perspective of a secured asset-based lender) in accordance with the applicable Agent's customary and generally applicable credit policies.

"Permitted Lien" means any of the following: (a) Liens at any time granted in favor of Administrative Agent, for the benefit of the Lender Group; (b) Liens for Taxes (excluding any Lien imposed pursuant to the provisions of ERISA) not yet due or being Properly Contested; (c) statutory Liens (excluding any Lien for Taxes) arising in the Ordinary Course of Business of Borrower or a Subsidiary, but only if and for so long as payment in respect of such Liens is not at the time required or the Debt secured by any such Liens is being Properly Contested and such Liens do not materially detract from the value of the property of Borrower or such Subsidiary and do not materially impair the use thereof in the operation of Borrower's or such Subsidiary's business; (d) purchase money Liens securing Debt incurred for the purchase of fixed assets, provided that such Liens are confined to the property so acquired and secure only the Debt incurred to acquire such property; (e) Liens arising from the rendition, entry or issuance against Borrower or any Subsidiary, or any property of Borrower or any Subsidiary, of any judgment, writ, order, or decree for so long as each such Lien is in existence for less than 30 consecutive days after it first arises or the judgment is being Properly Contested and is at all times junior in priority to any Liens in favor of Administrative Agent; (f) normal and customary rights of setoff upon deposits of cash in favor of banks and other depository and financial institutions and Liens of a collecting bank arising under the UCC on payment items in the course of collections; (g) Liens in existence immediately prior to the Closing Date that are satisfied in full and released on the Closing Date as a result of the application of Borrower's cash on hand at the Closing Date or the proceeds of Loans made on the Closing Date; (h) Liens securing the Term Loan Indebtedness so long as the Administrative Agent has entered into the Intercreditor Agreement; (i) Liens securing the Excluded Real Property Collateral; (j) the interests of lessors under operating leases and non-exclusive licensors under license agreements; (k) Liens on amounts deposited to secure Parent's and its Subsidiaries' obligations in connection with worker's compensation or other unemployment insurance; (l) Liens on amounts deposited to secure Parent's and its Subsidiaries' obligations in connection with the making or entering into of bids, tenders, or leases in the Ordinary Course of Business and not in connection with the borrowing of money; (m) Liens on amounts deposited to secure Parent's and its Subsidiaries' reimbursement obligations with respect to surety or appeal bonds obtained in the Ordinary Course of Business; (n) with respect to any single tract or parcel of, or multiple contiguous tracts or parcels of, real property, (i) survey exceptions, easements, ordinances, subdivision approvals, restrictive covenants, and dedications for public use, (ii) reservations of, or rights of others or, licenses and rights-of-way for sewers, electric lines, telegraph and telephone lines, and other similar purposes, (iii) zoning or other restrictions as to the use of such real property, and (iv) mineral leases which are in effect as of the date hereof and disclosed in any mortgagee policy of title insurance issues or endorsed to Agents relating to any portion of the Real Property Collateral, that, in each case, were not incurred in connection with Debt and do not in the aggregate have a materially adverse effect on the value of such real property or materially impair or negatively affect the current or hereafter contemplated use or operation of such real property; (o) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the Ordinary Course of Business; (p) Liens that are replacements of Permitted Liens to the extent that the original Debt is the subject of permitted refinancing Debt and so long as the replacement Liens only encumber those assets that secured the original Debt; (q) rights of setoff or bankers' liens upon deposits of funds in favor of (i) banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such Deposit Accounts in the Ordinary Course of Business, and Jefferies Bache, LLC, solely to the extent incurred in connection with the maintenance of the Commodity Hedging Arrangements referenced in the Disclosure Schedules in the Ordinary Course of Business; (r) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under Section 9.2; (s) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (t) leases or subleases granted to others that do not materially interfere with the Ordinary Course of Business of Parent and its Subsidiaries taken as a whole so long as the aggregate fair market value of all Collateral subject to such Liens pursuant to this clause does not exceed $500,000 at any one time; (u) Liens securing reimbursement Obligations with respect to letters of credit that encumber documents and other property relating to such letters of credit and the products and proceeds thereof so long as the aggregate amount of obligations secured by Liens incurred pursuant to this clause does not exceed $500,000 at any one time outstanding; (v) Liens consisting of conditional sale, title retention, consignment or similar arrangements for the sale of goods acquired by Parent or any of its Subsidiaries in the ordinary course of business in accordance with the past practices of Parent and its Subsidiaries prior to the Closing Date so long as the aggregate fair market value of all Collateral subject to such Liens pursuant to this clause does not exceed $500,00 at any one time; (w) other Liens which do not secure Debt for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed $250,000 at any one time; and (x) such other Liens as appear on the Disclosure Schedule, to the extent provided therein.

"Person" means an individual, partnership, corporation, limited liability company, limited liability partnership, joint stock company, land trust, business trust, or unincorporated organization, or a governmental authority.

"Plan" means 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 Internal Revenue Code and that is either (a) maintained by Borrower for employees or (b) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which Borrower is then making or accruing an obligation to make contributions or has within the preceding 5 years made or accrued such contributions.

"Plant-Level Financial Statements" means, for each of Borrower's ethanol production facilities and for any specified period, statements of income and operations (including appropriate operating metrics) of each such facility for such period and for the portion of Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding period of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail.

“Producer” means any entity from which the Borrower obtains corn or corn products, in each case, which would be deemed farm products under the UCC.

“Producer’s Lender” means a creditor of a Producer that has a security interest in the Producer’s farm products that has filed an EFS that appears on the Master List under applicable state law or has given a FSA Notice to Borrower naming that Producer.

"Properly Contested" means, in the case of any Debt of an Obligor (including any Taxes) that is not paid as and when due or payable by reason of such Obligor's bona fide dispute concerning its liability to pay same or concerning the amount thereof, (a) such Debt is being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such Obligor has established appropriate reserves as shall be required in conformity with GAAP; (c) the non-payment of such Debt will not have a Material Adverse Effect and will not result in a forfeiture or sale of any assets of such Obligor; (d) no Lien is imposed upon any of such Obligor's assets with respect to such Debt unless such Lien is at all times junior and subordinate in priority to the Liens in favor of Administrative Agent (except only with respect to property taxes that have priority as a matter of applicable state law) and enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute; (e) if the Debt results from, or is determined by the entry, rendition or issuance against an Obligor or any of its assets of a judgment, writ, order or decree, enforcement of such judgment, writ, order or decree is at all times stayed pending a timely appeal or other judicial review; and (f) if such contest is abandoned, settled or determined adversely (in whole or in part) to such Obligor, such Obligor forthwith pays such Debt and all penalties, interest and other amounts due in connection therewith.

"Qualified Equity Interest" means and refers to any Equity Interests issued by Parent (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

“Real Property Collateral” means the real property set forth on the Disclosure Schedule as owned by Borrower and any Real Property hereafter acquired by Borrower, other than the Excluded Real Property Collateral.

“Release” means any release, spill, leak, discharge, presence of, abandonment, disposal, pumping, pouring, emitting, emptying, injecting, leaching, dumping, depositing, dispersing, allowing to escape or migrate into or otherwise enter the environment (including ambient air, surface water, groundwater, wetlands, land, surface, and subsurface strata or within any building, structure, facility or fixture) of any Hazardous Material.

"Revolver Note" means the Revolver Note to be executed by Borrower in favor of a Lender, if requested by such Lender, in the form of Exhibit A attached hereto, which shall be in the face amount of such Lender’s ratable share (based upon such Lender’s Aggregate Commitment Ratio) of the Maximum Revolver Facility Amount and which shall evidence all Revolver Loans made by Lender to Borrower pursuant to this Agreement.

"Rider" means any Rider to this Agreement from time to time.

"Schedules" means the Terms Schedule and the Disclosure Schedule.

"Security Documents" means each instrument or agreement now or at any time hereafter securing or assuring payment of the whole or any part of the Obligations, including each Deposit Account Control Agreement, Commodity Account Control Agreement, Mortgage and assignments of any of the foregoing.

"Senior Officer" means, on any date, any person occupying any of the following positions with Borrower: the chairman of the board of directors, president, chief executive officer, chief financial officer, treasurer or secretary of Borrower.

"Solvent" means, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person (determined on a going concern basis) is greater than the total amount of liabilities, including contingent liabilities that are probable and estimable, of such Person; (b) the present fair salable value of the assets of such Person (determined on a going concern basis) is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured taking into account the possibility of refinancing such obligations and selling assets; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets; (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital and (e) such Person is able to pay its debts and liabilities, contingent obligations that are probable and estimable and other commitments as they mature in the ordinary course of business taking into account the possibility of refinancing such obligations and selling assets. The amount of contingent liabilities at any time shall be computed taking into account all facts and circumstances existing at such time.

"Subordinated Debt" means all of the indebtedness owed by Borrower to any Person the repayment of which is subordinated to the repayment of the Obligations pursuant to the terms of a debt subordination agreement approved by the Agents in their Permitted Discretion.

"Subsidiary" means any Person in which 50% or more of all Equity Interests (or 50% of all Equity Interests having a power to vote) is owned, directly or indirectly, by Borrower, one or more other Subsidiaries of Borrower or Borrower and one or more other Subsidiaries.

"Swing Bank" shall mean AloStar Bank of Commerce, or any other Lender who shall agree with the Agents to act as Swing Bank.

'Swing Loans" shall mean, collectively, the amounts advanced from time to time by the Swing Bank to the Borrower under the Commitments in accordance with **Section 2.1(g)**.

"Taxes" means any present or future taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges of whatever nature, including income, receipts, excise, property, sales, use, transfer, license, payroll, withholding, social security and franchise taxes now or hereafter imposed or levied by the United States or any other governmental authority and all interest, penalties, additions to tax and similar liabilities with respect thereto, but excluding, in the case of any Lender, taxes imposed on or measured by the net income or overall gross receipts of such Lender.

"Term Loan Agent" means collectively the "Administrative Agent" and "Collateral Agent" as such terms are defined in the Term Loan Agreement and any Person acting in a similar capacity under any amendment, restatement, supplement, replacement or refinancing thereof. The Term Loan Agent on the date hereof is Citibank, N.A.

"Term Loan Agreement" means that certain Amended and Restated Senior Secured Term Loan Credit Agreement, dated as of September 24, 2012, by and among Aventine Renewable Energy Holdings, Inc., as borrower, the Term Loan Lenders, the Term Loan Agent and the other parties thereto, as such is amended, modified, supplemented, restated, replaced or refinanced from time to time if and to the extent not prohibited pursuant to the Intercreditor Agreement.

"Term Loan Documents" means the "Loan Documents" as such term is defined in the Term Loan Agreement and any documents, instruments and agreements entered into in connection with any amendment, supplement, restatement, replacement or refinancing thereof, as amended, modified supplemented or restated from time to time if and to the extent not prohibited pursuant to the Intercreditor Agreement.

"Term Loan Indebtedness" means the Debt incurred by Borrower under the Term Loan Documents.

"Term Loan Lenders" means the lenders from time to time party to the Term Loan Agreement.

"Terms Schedule" means the Terms Schedule annexed hereto.

"UCC" means the Uniform Commercial Code (or any successor statute) as adopted and in force in the State of New York from time to time or, when the laws of any other state govern the method or manner of the perfection or enforcement of any security interest in any of the Collateral, the Uniform Commercial Code (or any successor statute) of such state.

"Unused Line Fee" shall have the meaning given to it in Item 9(a)(ii) of the Terms Schedule.

"USA PATRIOT ACT" means 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).

"Warrant Agreement (2012)" means that certain Warrant Agreement, dated as of September 24, 2012, between Parent and American Stock Transfer & Trust Company, LLC, as warrant agent.

"Warrant Agreement (2013)" means that certain Warrant Agreement, dated as of June 18, 2013 between Parent and American Stock Transfer & Trust Company, LLC, as warrant agent.

"Warrants (2012)" means the five-year warrants, issued by Parent to the beneficial owners of all of Parent's Equity Interests issued and outstanding immediately prior to the September 24, 2012, pursuant to the Warrant Agreement (2012), to purchase 787,855 shares of Parent's Equity Interests at an exercise price of $61.75 per share.

"Warrants (2013)" means the three-year warrants issued pursuant to the Warrant Agreement (2013) to purchase 11,853,453 shares of Parent's Equity Interests at an exercise price of $0.01 per share.

"WDG" means wet distillers grains produced by Borrower.

"Wells Fargo" means Wells Fargo Capital Finance, LLC.

1.2 Other Terms Defined in this Agreement. The following terms are defined in the applicable provisions of this Agreement:

Agent Indemnified Person	**Section 11.10**
Agent Advance	**Section 2.1(f)(i)**
Default Rate	**Section 2.3(a)**
Excess	**Section 2.5**
Excluded Property	**Section 4.1(a)**
Governing Rate	**Section 2.3(a)**
Interest	**Section 2.5**
Loan Register	**Section 2.8**
Mortgages	**Section 8.15**
Mortgage Policy	**Item 15(j) of the Terms Schedule**
Overadvance	**Section 2.1(d)**
Participant	**Section 12.3(d)**
Permitted Debt	**Section 9.2**
Register	**Section 12.3(c)**
Replacement Event	**Section 12.9**
Replacement Lender	**Section 12.9**
Revolver Loan	**Section 2.1(a)**
Schedule of Accounts	**Section 5.2(a)**
Term	**Section 3.1**

1.3 UCC Terms. All other capitalized terms contained in this Agreement and not otherwise defined herein shall have, when the context so indicates, the meanings provided for by the UCC to the extent the same are used or defined therein. Without limiting the generality of the foregoing, the following terms shall have the meaning ascribed to them in the UCC: Accessions, Account, Chattel Paper, Commercial Tort Claim, Commodity Account, Commodity Intermediary, Deposit Account, Document, Electronic Chattel Paper, Equipment, Fixtures, Goods, General Intangible, Instrument, Inventory, Investment Property, Letter-of-Credit Right, Payment Intangible, Proceeds, Securities, Securities Account, and Software.

1.4 Accounting Terms. Unless otherwise specified herein, all terms of an accounting nature used in this Agreement shall be interpreted, all accounting determinations under this Agreement shall be made, and all financial statements required to be delivered under this Agreement shall be prepared in accordance with GAAP, applied on a basis consistent with the most recent audited financial statements of Borrower and its Subsidiaries delivered to Administrative Agent prior to the Closing Date and using same method for inventory valuation as used in such audited financial statements, except for any changes required by GAAP.

1.5 Certain Matters of Construction. The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All references to statutes shall include all amendments of same and implementing regulations and any amendments of same and any successor statutes and regulations; to any instrument, agreement or other documents (including any of the Loan Documents) shall include all modifications and supplements thereto and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms thereof and not prohibited by the terms of this Agreement; to any Person (including Borrower or any Lender) shall mean and include the successors and permitted assigns of such Person; to "including" and "include" shall be understood to mean "including, without limitation"; or to the time of day shall mean the time of day on the day in question in Atlanta, Georgia, unless otherwise expressly provided in this Agreement. A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default first occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing. All calculations of value shall be in Dollars, all Loans shall be funded in Dollars and all Obligations shall be repaid in Dollars. Whenever in any provision of this Agreement Agents are authorized to take or decline to take any action (including making any determination) in the exercise of their "discretion," such provision shall be understood to mean that Agents may take or refrain to take such action in their sole and absolute Permitted Discretion. Whenever the phrase "to the best of Borrower's knowledge" or words of similar import relating to the knowledge or the awareness of Borrower are used in this Agreement or other Loan Documents, such phrase shall mean and refer to (i) the actual knowledge of a Senior Officer of Borrower or (ii) the knowledge that a Senior Officer would have obtained if such Senior Officer had engaged in good faith and diligent performance of his or her duties, including the making of such reasonably specific inquiries as may be necessary of the officers, employee or agents of Borrower and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates.

SECTION 2. **LOANS AND TERMS OF REPAYMENT**

2.1 Revolver Loans.

(a) Subject to all of the terms and conditions in this Agreement, Lenders agree, severally in accordance with their respective Aggregate Commitment Ratios, and not jointly, to make advances to Borrower (each a "Revolver Loan") on any Business Day during the period from the Closing Date through the Business Day before the last day of the Term, not to exceed in aggregate principal amount outstanding at any time the Maximum Revolver Facility Amount minus the aggregate principal amount of all Agent Advances and Swing Loans then outstanding, which Revolver Loans may be repaid and reborrowed in accordance with the provisions of this Agreement; provided, however, that each Lender shall have no obligation to honor any request for a Revolver Loan (i) on or after the Commitment Termination Date; or (ii) if at the time of the proposed funding thereof the aggregate principal amount of all Revolver Loans plus Agent Advances and Swing Loans then outstanding (together with the amount of any Revolver Loans for which a request is pending) exceeds, or would exceed after the funding of such Revolver Loan, such Lender's ratable share (based upon such Lender's Aggregate Commitment Ratio) of the Borrowing Base. The proceeds of Revolver Loans shall be used by Borrower solely for one or more of the following purposes: (i) repay Debt owing on the Closing Date; (ii) to pay the Fees and transaction expenses associated with the closing of the transaction described herein; (iii) to pay any of the Obligations in accordance with this Agreement; and (iv) to make expenditures for other lawful purposes of Borrower to the extent such expenditures are not prohibited by this Agreement or applicable law. In no event may any Revolver Loan proceeds be used to purchase or to carry, or to reduce, retire or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose that violates the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System. The Revolver Loans made by Lenders and interest accruing thereon shall be evidenced by the records of Administrative Agent (including the Loan Register) and, upon request by any Lender, by a Revolver Note. The Revolver Loans shall bear interest as set forth in **Section 2.3**.

(b) Whenever Borrower desires to obtain funding of a Revolver Loan hereunder, Borrower shall deliver to Administrative Agent a Borrowing Request (or telephonic notice promptly confirmed in writing), provided that an email shall be sufficient, and signed by a Senior Officer. Such Borrowing Request shall be given by Borrower no later than 11:00 a.m. on the Business Day of the requested borrowing at the office designated by Administrative Agent from time to time, and notices received by Administrative Agent after 11:00 a.m. shall be deemed received on the next Business Day. Each such Borrowing Request (or telephonic notice thereof) shall be irrevocable and shall specify (A) the principal amount of the requested borrowing, (B) the date of requested borrowing (which shall be a Business Day) and (C) the account of Borrower to which the proceeds of such requested borrowing are to be disbursed. Unless payment is otherwise timely made by Borrower, the becoming due of any amount required to be paid with respect to any of the Obligations (including any interest thereon) shall be deemed irrevocably to be a request (without any requirement for the submission of a notice of borrowing) for a Revolver Loan on the due date of and in an aggregate amount required to pay such Obligations and the proceeds of such Revolver Loan may be disbursed by way of direct payment of the relevant Obligations; provided, however, that Administrative Agent shall have no obligation to honor any deemed request for a Revolver Loan on or after the Commitment Termination Date, when an Overadvance exists or would result from such funding or when any applicable condition precedent set forth in **Section 6** hereof is not satisfied, but, with the consent of the Majority Lenders, Administrative Agent may do so in its Permitted Discretion and without regard to the existence of, and without being deemed to have waived, any Default or Event of Default and regardless of whether such Revolver Loans is funded on or after the Commitment Termination Date.

(c) Upon receipt of (i) a Borrowing Request or a telephone, telecopy or deemed request for a Revolver Loan, or (ii) notification from the LC Issuer that a draw has been made under any Letter of Credit, Administrative Agent shall promptly notify each Lender by telephone or telecopy of the contents thereof and the amount of each Lender's portion of any such Revolver Loan. Each Lender shall, not later than 3:00 p.m. (Atlanta, Georgia time) on the date specified for such Revolver Loan in such notice, make available to Administrative Agent at Administrative Agent's Office, or at such account as Administrative Agent shall designate, the amount of such Lender's portion of the Revolver Loan in immediately available funds. Unless Administrative Agent shall have received notice from a Lender prior to 12:00 noon (Atlanta, Georgia time) on the date of any Revolver Loan that such Lender will not make available to Administrative Agent such Lender's ratable portion of such Revolver Loan, Administrative Agent may assume that such Lender has made or will make such portion available to Administrative Agent on the date of such Revolver Loan and Administrative Agent may, in its Permitted Discretion and in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If and to the extent such Lender shall not have so made such ratable portion available to Administrative Agent, such Lender agrees to repay to Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to Administrative Agent, (x) for the first two (2) Business Days, at the Federal Funds Rate for such Business Days, and (y) thereafter, at the Governing Rate. If such Lender shall repay to Administrative Agent such corresponding amount, such amount so repaid shall constitute such Lender's portion of the applicable Revolver Loan for purposes of this Agreement and if both such Lender and Borrower shall pay and repay such corresponding amount, Administrative Agent shall promptly relend to Borrower such corresponding amount. If such Lender does not repay such corresponding amount immediately upon Administrative Agent's demand therefor, Administrative Agent shall notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent. The failure of any Lender to fund its portion of any Revolver Loan shall not relieve any other Lender of its obligation, if any, hereunder to fund its respective portion of the Revolver Loan on the date of such borrowing, but no Lender shall be responsible for any such failure of any other Lender. In the event that a Lender for any reason fails or refuses to fund its portion of a Revolver Loan in violation of this Agreement, then, until such time as such Lender has funded its portion of such Revolver Loan, or all other Lenders have received payment in full (whether by repayment or prepayment) of the principal and interest due in respect of such Revolver Loan, such non-funding Lender shall not (i) have the right to vote regarding any issue on which voting is required or advisable under this Agreement or any other Loan Document and, with respect to any such Lender, the amount of the Commitment or Loans, as applicable, held by such Lender shall not be counted as outstanding for purposes of determining "Majority Lenders" hereunder, and (ii) be entitled to receive any payments of principal, interest or fees from Borrower or Administrative Agent (or the other Lenders) in respect of its Loans..

(d) If the unpaid balance of Revolver Loans plus Agent Advances plus Swing Loans outstanding at any time should exceed the Borrowing Base at such time (such excess referred to as an "Overadvance"), such Revolver Loans, Agent Advances and Swing Loans shall nevertheless constitute Obligations that are secured by all of the Collateral and entitled to all the benefits of the Loan Documents. All Overadvances shall be payable **on demand** and shall bear interest as provided in **Section 2.3** of this Agreement.

(e) Borrower irrevocably authorizes Administrative Agent to disburse the proceeds of each Revolver Loan requested, or deemed to be requested, pursuant to **Section 2.1(b)**, as follows: (i) the proceeds of each Revolver Loan requested by Borrower and made available to Administrative Agent by Lenders shall be disbursed by Administrative Agent in immediately available funds, in the case of the initial borrowing, in accordance with the terms of the written disbursement letter from Borrower, and in the case of each subsequent borrowing, by wire transfer to the Disbursement Account or such other bank account as may be agreed upon by Borrower and Administrative Agent from time to time; and (ii) the proceeds of each Revolver Loan deemed requested by Borrower shall be disbursed by Administrative Agent by way of direct payment of the relevant Obligation.

(f) Agent Advances.

(i) Subject to the limitations set forth below and notwithstanding anything else in this Agreement to the contrary, Administrative Agent is authorized by Borrower and Lenders, from time to time in Administrative Agent's sole discretion, (A) at any time that a Default or Event of Default exists, (B) at any time that any of the other conditions precedent set forth in **Section 6** have not been satisfied, or (C) at any time an Overadvance exists or would result from any Agent Advance (as defined below), to make Loans to Borrower on behalf of Lenders in an aggregate amount outstanding at any time not to exceed $4,000,000, which Administrative Agent**,** in its reasonable business judgment, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, (2) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (3) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including costs, fees and expenses as provided under this Agreement (any of such advances are herein referred to as "Agent Advances"); provided, that Administrative Agent shall not make any such Agent Advance without the prior written consent of the Collateral Agent (which such consent shall be deemed given if the Collateral Agent does not object to such Agent Advance within 2 hours of its receipt of written notice from the Administrative Agent of its intent to make such Agent Advance); provided, further, that the Majority Lenders may at any time revoke Administrative Agent's authorization to make Agent Advances. Any such revocation must be in writing and shall become effective prospectively upon Administrative Agent's receipt thereof. Administrative Agent shall promptly provide to Borrower written notice of any Agent Advance. In no event shall the aggregate amount of all outstanding Revolver Loans plus the aggregate amount of all outstanding Letters of Credit, Agent Advances, and Swing Loans, after giving effect to any Agent Advance, exceed the Commitments.

(ii) The Agent Advances shall be secured by the Collateral and shall constitute Obligations hereunder. Each Agent Advance shall bear interest at the Default Rate. Each Agent Advance shall be subject to all terms and conditions of this Agreement and the other Loan Documents applicable to Revolver Loans, except that all payments thereon shall be made to Administrative Agent solely for its own account and the making of any Agent Advance shall not require the consent of Borrower. Administrative Agent shall have no duty or obligation to make any Agent Advance hereunder.

(iii) Administrative Agent shall notify each Lender no less frequently than weekly, as determined by Administrative Agent, of the principal amount of Agent Advances outstanding as of 12:00 noon (Atlanta, Georgia time) as of such date, and each Lender's pro rata share thereof. Each Lender shall before 2:00 p.m. (Atlanta, Georgia time) on such Business Day make available to Administrative Agent, in immediately available funds, the amount of its pro rata share of such principal amount of Agent Advances outstanding. Upon such payment by a Lender, such Lender shall be deemed to have made a Revolving Loan to Borrower, notwithstanding any failure of Borrower to satisfy the conditions in **Section 6.2**. Administrative Agent shall use such funds to repay the principal amount of Agent Advances. Additionally, if at any time any Agent Advances are outstanding, any of the events described in **Section 10.1(e)** shall have occurred, then each Lender shall automatically, upon the occurrence of such event, and without any action on the part of Administrative Agent, Borrower or Lenders, be deemed to have purchased an undivided participation in the principal and interest of all Agent Advances then outstanding in an amount equal to such Lender's Aggregate Commitment Ratio and each Lender shall, notwithstanding such Event of Default, immediately pay to Administrative Agent in immediately available funds, the amount of such Lender's participation (and upon receipt thereof, Administrative Agent shall deliver to such Lender, a loan participation certificate dated the date of receipt of such funds in such amount). The disbursement of funds in connection with the settlement of Agent Advances hereunder shall be subject to the terms and conditions of **Section 2.1(c)**.

(g) Swing Loans.

(i) Subject to the terms and conditions of this Agreement, the Swing Bank, in its sole discretion, during the period from the Closing Date through the Business Day before the last day of the Term, may make Swing Loans to the Borrower (i) in an amount not to exceed Availability, to the extent in effect at such time of determination, as of such Business Day and (ii) in an aggregate amount (including all Swing Loans outstanding as of such Business Day) not to exceed the lesser of (A) the excess of (1) the Swing Bank's ratable share (in accordance with its Aggregate Commitment Ratio) of the Commitments less (2) the sum of the aggregate outstanding principal amount of Swing Loans, its participations in Agent Advances and other Revolving Loans made by it, or (B) $5,000,000.

(ii) The Borrower shall give the Swing Bank written notice in the form of a Borrowing Request, or notice by telephone no later than 12:00 noon (Atlanta, Georgia time) on the date on which the Borrower wishes to receive any Swing Loan followed immediately by a written Borrowing Request, with a copy to the Administrative Agent; provided, however, that the failure by the Borrower to confirm any notice by telephone with a written Borrowing Request shall not invalidate any notice so given. Each Swing Loan shall bear interest as set forth in **Section 2.3**. If the Swing Bank, in its sole discretion, elects to make the requested Swing Loan, the Swing Loan shall be made on the date specified in the notice or the Borrowing Request and such notice or Borrowing Request shall specify (i) the amount of the requested Swing Loan and (ii) instructions for the disbursement of the proceeds of the requested Swing Loan. Each Swing Loan shall be subject to all the terms and conditions applicable to Revolving Loans, except that all payments thereon shall be payable to the Swing Bank solely for its own account. The Swing Bank shall have no duty or obligation to make any Swing Loans hereunder. The Swing Bank shall not make any Swing Loans if the Swing Bank has received written notice from any Lender or the Borrower (or the Swing Bank has actual knowledge) that one or more applicable conditions precedent set forth in **Section 6.2** will not be satisfied (or waived pursuant to the last sentence of **Section 6.2**) on the requested Swing Loan date. In the event the Swing Bank in its sole and absolute discretion elects to make any requested Swing Loan, the Swing Bank shall make the proceeds of such Swing Loan available to the Borrower by deposit of Dollars in same day funds by wire transfer to the Disbursement Account (or such other account requested by the Borrower in writing). In the event that the Swing Bank informs the Administrative Agent that it will not make the requested Swing Loan, then such request will be deemed a request for a Revolving Loan.

(iii) The Swing Bank shall notify the Administrative Agent and each Lender no less frequently than weekly, as determined by the Administrative Agent, of the principal amount of Swing Loans outstanding as of noon (12:00 p.m.) (Atlanta, Georgia time) as of such date and each Lender's pro rata share (based on its Aggregate Commitment Ratio) thereof. Each Lender shall before 2:00 p.m. (Atlanta, Georgia time) on such Business Day make available to the Administrative Agent, in immediately available funds, the amount of its pro rata share (based on its Aggregate Commitment Ratio) of such principal amount of Swing Loans outstanding. Upon such payment by a Lender, such Lender shall be deemed to have made a Revolving Loan to the Borrower, notwithstanding any failure of the Borrower to satisfy the conditions in **Section 6.2**. The Administrative Agent shall use such funds to repay the principal amount of Swing Loans to the Swing Bank. Additionally, if at any time any Swing Loans are outstanding, any of the events described in **Section 10.1(e)** shall have occurred, then each Lender shall automatically upon the occurrence of such event and without any action on the part of the Swing Bank, the Borrower, the Administrative Agent or the Lenders be deemed to have purchased an undivided participation in the principal and interest of all Swing Loans then outstanding in an amount equal to such Lender's Aggregate Commitment Ratio of the principal and interest of all Swing Loans then outstanding and each Lender shall, notwithstanding such Event of Default, immediately pay to the Administrative Agent for the account of the Swing Bank in immediately available funds, the amount of such Lender's participation (and upon receipt thereof, the Swing Bank shall deliver to such Lender a loan participation certificate dated the date of receipt of such funds in such amount). The disbursement of funds in connection with the settlement of Swing Loans hereunder shall be subject to the terms and conditions of **Section 2.1(c)**.

2.2 Payments. (a) All payments with respect to any of the Obligations shall be made to Administrative Agent, for the account of the Lender Group, on the date when due, in immediately available funds, without any offset or counterclaim. In the case of a payment for the account of a Lender, Administrative Agent will promptly thereafter distribute the amount so received in like funds to such Lender. If Administrative Agent shall not have received any payment from Borrower as and when due, Administrative Agent will promptly notify Lenders accordingly. Except where evidenced by a Note or other instrument issued or made by Borrower to a Lender or its order specifically containing payment provisions that are in conflict with this Section 2.2 (in which event the conflicting provisions of said Note or other instrument shall govern and control), the Obligations shall be due and payable as follows:

(i) Principal payable on account of the Loans shall be payable by Borrower to Administrative Agent, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, immediately upon the earliest of (A) the receipt by Administrative Agent or Borrower of any proceeds of any of the Collateral, to the extent of such proceeds, (B) the occurrence of an Event of Default in consequence of which the maturity and payment of the Obligations is accelerated, and (C) the Commitment Termination Date; provided, however, that if an Overadvance shall exist at any time, Borrower shall, **on demand**, repay the Obligations in accordance with **Section 2.1(d)** to the extent necessary to eliminate the Overadvance.

(ii) Interest accrued on the principal balance of the Loans shall be due and payable on each of (A) the first day of each month, computed through the last day of the preceding month; (B) upon demand by Administrative Agent after the occurrence of an Event of Default in consequence of which the maturity and payment of the Obligations is accelerated; and (C) the Commitment Termination Date.

(iii) The balance of the Obligations requiring the payment of money, if any, shall be payable by Borrower to Administrative Agent, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, as and when provided in the Loan Documents, or, if the date of payment is otherwise not specified in the Loan Documents, **on demand**.

(b) Whenever any payment of any of the Obligations shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day and, if the day for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended period of time.

(c) To the extent that Borrower makes a payment to Administrative Agent, or any member of the Lender Group receives payment from the proceeds of any Collateral or exercises its right of setoff, and such payment or the proceeds of such Collateral or setoff (or any part thereof) are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person, then to the extent of any loss of any member of the Lender Group, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment or proceeds have not been made or received and any such enforcement or setoff had not occurred. The provisions hereof shall survive the Commitment Termination Date and Full Payment of the Obligations.

2.3 Interest Rates.

(a) Except where otherwise provided in a Note or other instrument issued or made by Borrower to a Lender or its order specifically containing interest rate provisions that are in conflict with this **Section 2.3** (in which event the conflicting provisions of said Note or other instrument shall govern and control), the principal balance of Revolver Loans, Swing Loans and other Obligations outstanding from time to time shall bear interest from the respective dates such principal amounts are advanced or incurred until paid at the Governing Rate. "Governing Rate" means, on any date, a rate per annum equal to the greater of (i) the minimum interest rate floor set forth in Item 8(c) of the Terms Schedule and (ii) the sum of (A) the Applicable Variable Rate in effect on such date plus (B) the interest margin set forth in Item 8(b) of the Terms Schedule. The Applicable Variable Rate shall be adjusted daily, with each change to the Applicable Variable Rate, with any adjustments to be effective as of the opening of business on the day that any change in the Applicable Variable Rate becomes effective. Upon and after the occurrence of an Event of Default and during the continuation thereof, the principal balance of the Loans shall, at the election of the Agents and without the necessity of declaring the Obligations immediately due and payable and without the necessity of providing any prior notice Borrower, bear interest at the rate (the "Default Rate") equal to the lesser of (i) the Governing Rate in effect from time to time plus the default margin set forth in Item 8(d) of the Terms Schedule and (ii) the highest rate allowed by applicable law. The amount of any Overadvance shall bear interest at the Default Rate. All interest chargeable under this Agreement shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(b) The Applicable Variable Rate on the date hereof is the per annum rate set forth in Item 8(e) of the Terms Schedule, and therefore the rate of interest in effect hereunder with respect to Revolver Loans and other Obligations that bear interest at the Governing Rate, expressed in simple interest terms as of the date hereof, is the per annum rate set forth in Item 8(f) of the Terms Schedule.

2.4 Fees and Reimbursement of Expenses.

(a) Borrower shall pay to Agents and Lenders, as applicable, the Fees set forth in Item 9(a) of the Terms Schedule and shall reimburse Agents for all reasonable costs and expenses incurred in connection with examinations of Borrower's Books and appraisals of the Collateral and such other matters as Agents shall deem reasonable and appropriate in their Permitted Discretion, as set forth in Item 9(b) of the Terms Schedule.

(b) If, at any time or times regardless of whether or not any Event of Default then exists, Administrative Agent or any other member of the Lender Group, as applicable, incurs legal or accounting expenses or any other reasonable costs or out-of-pocket expenses in connection with the loan transaction described herein, including fees and expenses incurred in connection with: (i) the negotiation and preparation of any amendment of or modification of this Agreement or any of the other Loan Documents or documents evidencing or otherwise relating to any workout, restructuring or forbearance with respect to any Loan Documents or any Obligations; (ii) the administration by Administrative Agent of this Agreement or any of the Loan Documents and the transactions contemplated hereby and thereby; (iii) any litigation, contest, dispute, suit, proceeding (including any Insolvency Proceeding) or action (whether instituted by Administrative Agent, any Lender, Borrower or any other Person) in any way relating to the Collateral, this Agreement or any or the other Loan Documents or Borrower; or (iv) any attempt to enforce any rights of the Lender Group against Borrower or any other Person which may be obligated to the Lender Group by virtue of this Agreement or any of the other Loan Documents, including any Obligor; or (v) any consultations regarding any Loan Documents or preparation thereof, or financing extended thereunder; then all such reasonable legal and accounting expenses, other reasonable costs and out-of-pocket expenses of any member of the Lender Group, shall be charged to Borrower, shall be Obligations secured by all of the Collateral, shall be payable to Administrative Agent or the Lender Group, as applicable, on demand, and shall bear interest from the date such demand is made until paid in full at the rate applicable to Revolver Loans from time to time.

(c) All Fees shall be fully earned by Administrative Agent or Lenders, as applicable, when due and payable and, except as otherwise set forth herein or required by applicable law, shall not be subject to rebate, refund or proration. All Fees provided for in this **Section 2.4** are and shall be deemed to be for compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money.

2.5 Maximum Interest. Regardless of any provision contained in this Agreement or any other Loan Document, in no contingency or event whatsoever shall the aggregate of all amounts that are contracted for, charged or received by the Lender Group pursuant to the terms of this Agreement or any other Loan Document and that are deemed interest under applicable law exceed the highest rate permissible under any applicable law, which a court of competent jurisdiction shall, in a final determination, deem applicable hereto or thereto. No agreements, conditions, provisions or stipulations contained in any of the Loan Documents or the exercise by the Lender Group of the right to accelerate the payment or the maturity of all or any portion of the Obligations or the exercise of any option whatsoever contained in any of the Loan Documents, or the prepayment by Borrower of any of the Obligations, or the occurrence of any contingency whatsoever, shall entitle the Lender Group to charge or receive, in any event, interest or charges, amounts, premiums or fees deemed interest by applicable law (such interest, charges, amounts, premiums and fees referred to collectively as "Interest") in excess of the maximum rate allowable under applicable law and in no event shall any Obligor be obligated to pay Interest exceeding such maximum rate, and all agreements, conditions, or stipulations, if any, which may in any event or contingency whatsoever operate to bind, obligate or compel any Obligor to pay Interest exceeding the maximum rate allowable under applicable law shall be without binding force or effect, at law or in equity, to the extent only of the excess of Interest over such maximum rate. If any Interest is charged or received in excess of the maximum rate allowable under applicable law ("Excess"), Borrower acknowledges and stipulates that any such charge or receipt shall be the result of an accident and bona fide error, and such Excess, to the extent received, shall be applied first to reduce the principal Obligations and the balance, if any, returned to Borrower, it being the intent of the parties hereto not to enter into a usurious or other illegal relationship. The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not otherwise accrued on the date of such acceleration, and the Lender Group does not intend to collect any unearned interest in the event of any such acceleration. For the purpose of determining whether or not any Excess has been contracted for, charged or received by the Lender Group, all Interest at any time contracted for, charged or received from Borrower in connection with any of the Loan Documents shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Obligations. The provisions of this Section shall be deemed to be incorporated into every Loan Document (whether or not any provision of this Section is referred to therein).

2.6 Borrowing Base Certificate; Authorizations. (a) (i) For the period commencing on the Closing Date and ending on January 4, 2015, on or prior to 11:00 a.m. on the first Business Day of each calendar week and (ii) thereafter less frequently as the Agents may agree in their Permitted Discretion (in each case, or more frequently as Agents shall request in their Permitted Discretion), Borrower shall deliver to Agents a fully completed Borrowing Base Certificate certified by a Senior Officer of Borrower as being true and correct. In addition, within 20 days after the end of each month Borrower shall deliver to the Agents a fully completed Borrowing Base Certificate calculated as of the end of such prior month, with reconciliations of the calculations set forth therein to the last Borrowing Base Certificate delivered during such month, and certified by a Senior Officer of Borrower as being true and correct. Concurrent with the delivery of the Borrowing Base Certificate, Borrower shall provide a written report to Agents of all returns and all material disputes, claims and other deductions, together with sales and other reports and supporting information relating to the Accounts and Inventory, as reasonably required by Agents. Agents shall have the right to review and adjust any calculations made in a Borrowing Base Certificate (i) to reflect Agents' estimate of declines in value of any of the Collateral described therein and (ii) to the extent that such calculation is not in accordance with this Agreement or does not accurately reflect the amount of the Availability Reserve. In no event shall the Borrowing Base on any date be deemed to exceed the amount of the Borrowing Base shown on the Borrowing Base Certificate last received by Agents prior to such date, as such Borrowing Base Certificate may be adjusted from time to time by Agents as authorized herein. If Borrower fails to deliver to Agents the Borrowing Base Certificate on the date when due, then notwithstanding any of the provisions contained in Section 2.1 or in any other Loan Document to the contrary and in addition to any other rights or remedies the Administrative Agent or Lenders may have under this Agreement, Administrative Agent may suspend honoring any requests for Revolver Loans until a current Borrowing Base Certificate is delivered to Agents.

(b) The Lender Group is hereby authorized to make Loans and other extensions of credit under this Agreement based on telecopied, electronically communicated or other instructions and transaction reports received from any individual believed to be an Authorized Officer of Borrower, or, at the Permitted Discretion of Agents, if such extensions of credit are necessary to satisfy any Obligations that are past due. Although Administrative Agent shall make a reasonable effort to determine the individual's identity, Administrative Agent shall not be responsible for determining the authenticity of any such telecopied or electronically communicated instructions and Administrative Agent may act on the instructions of any individual whom Administrative Agent believes to be an Authorized Officer.

2.7 Collections. All payments owed to or to be received by Borrower with respect to the Accounts and other Collateral shall be deposited (either directly by the Account Debtors or by Borrower) in the Collections Account; provided that Borrower shall establish a lockbox under the control of Administrative Agent to which all Account Debtors shall be directed to forward payments with respect to the Accounts. Administrative Agent shall have the right, at any time after the occurrence and during the continuance of an Event of Default, to contact directly any or all Account Debtors to ensure that payments on the Accounts are directed to Administrative Agent or to the lockbox. To expedite collection, Borrower shall endeavor to make collection of its Accounts for the Lender Group. All payment items received by Borrower with respect to the Accounts and other Collateral shall be held by Borrower, as trustee of an express trust, for the Lender Group's benefit and shall not be commingled with Borrower's other funds and shall be deposited promptly by Borrower to the Collections Account. All such payment items shall be the exclusive property of Administrative Agent, for the benefit of the Lender Group, upon the earlier of the receipt thereof by Administrative Agent or by Borrower. Borrower hereby grants to Administrative Agent, for the benefit of the Lender Group, a Lien upon all items and balances held in any lockbox and the Collections Account as security for the payment of the Obligations, in addition to and cumulative with the general security interest in all other assets of Borrower (including all Deposit Accounts) as provided elsewhere in this Agreement or any other Loan Document. All funds in the Collections Account shall be automatically deposited into the Administrative Agent Account on a daily basis in immediately available funds. Administrative Agent shall be entitled to apply immediately to the Obligations any wire transfer, check or other item of payment received by Administrative Agent, but interest shall continue accruing on the amount of such wire transfer, check or other payment item for the number of collection days set forth in Item 11 of the Terms Schedule after the date that the proceeds of such wire transfer, check or other payment item become good, collected funds

2.8 *Loan Register; Account Stated*. Administrative Agent shall maintain in accordance with its usual and customary practices an account or accounts (collectively, the "Loan Register") evidencing the Loans, including the amount of principal and interest payable to the Lender Group from time to time hereunder. Any failure of Administrative Agent to make an entry in the Loan Register, or any error in doing so, shall not limit or otherwise affect the obligation of Borrower under the Loan Documents to pay any amount owing to Administrative Agent or Lenders. The entries made in the Loan Register shall constitute rebuttably presumptive evidence of the information contained therein, provided that if a copy of information contained in the Loan Register is provided to Borrower or any other Obligor, or Borrower or any other Obligor inspects the Loan Register, at any time or from time to time, then the information contained in the Loan Register shall be conclusive and binding on such Person for all purposes, absent manifest error, unless such Person notifies Administrative Agent in writing within 30 days after such Person's receipt of such copy or such Person's inspection of the Loan Register of its intention to dispute the information contained therein.

2.9 Application of Payments and Collections. Borrower irrevocably waives the right to direct the application of any and all payments and collections at any time or times hereafter received by Administrative Agent from or on behalf of Borrower.

(a) At all times during which an Event of Default has not occurred, Borrower does hereby irrevocably agree that Administrative Agent shall have the continuing exclusive right to distribute any and all such payments and collections received by Administrative Agent or its agent in the following order of priority:

FIRST, pro rata, to the payment of (i) out-of-pocket costs and expenses (including reasonable attorneys' fees) of Administrative Agent incurred by Administrative Agent in connection with the enforcement of the rights of the Lender Group under the Loan Documents and (ii) any Agent Advances made by Administrative Agent under or pursuant to the terms of the Loan Documents and interest accrued thereon;

SECOND, pro rata, to the payment of any fees then due and payable to Administrative Agent or Swing Bank hereunder or under any other Loan Documents;

THIRD, pro rata, to the payment of all Obligations consisting of accrued fees and interest then due and payable to Lenders hereunder;

FOURTH, to the payment of principal then due and payable on the Swing Loans;

FIFTH, to the payment of principal then due and payable on the Revolver Loans;

SIXTH, to the payment of the Obligations arising in respect of Bank Products then due and payable; and

SEVENTH, to the payment of all other Obligations not otherwise referred to in this **Section 2.9(a)** then due and payable.

(b) Notwithstanding anything in this Agreement or any other Loan Document which may be construed to the contrary, subsequent to the occurrence and during the continuance of an Event of Default, payments and prepayments with respect to the Obligations made to the Lender Group, or any of them, or otherwise received by any member of the Lender Group (from realization on Collateral or otherwise) shall be distributed in the following order of priority (subject, as applicable, to **Section 2.13**):

FIRST, pro rata, to the payment of (i) out-of-pocket costs and expenses (including reasonable attorneys' fees) of Administrative Agent incurred in connection with the enforcement of the rights of the Lender Group under the Loan Documents, and (ii) any Agent Advances made by Administrative Agent under or pursuant to the terms of the Loan Documents (including any costs incurred in connection with the sale or disposition of any Collateral);

SECOND, pro rata, to payment of any fees owed to Administrative Agent or Swing Bank hereunder or under any other Loan Document;

THIRD, to the payment of out-of-pocket costs and expenses (including reasonable attorneys' fees) of Lenders incurred in connection with the enforcement of their respective rights under the Loan Documents;

FOURTH, to the payment of all Obligations consisting of accrued fees and interest payable to Lenders hereunder;

FIFTH, to the payment of principal then due and payable on the Swing Loans;

SIXTH, pro rata, to (i) the payment of principal on the Revolving Loans then outstanding, and (ii) the Cash Collateral Account to the extent of one hundred three percent (103%) of any LC Credit Support Obligations then outstanding;

SEVENTH, to the payment of any Obligation arising in respect of the Bank Products;

EIGHTH, to any other Obligations not otherwise referred to in this **Section 2.9(b)**; and

NINTH, upon satisfaction in full of all Obligations, to Borrower or as otherwise required by law.

If as the result of collections of Borrower's Accounts or other proceeds of Collateral a credit balance exists in the Loan Register, such credit balance shall not accrue interest in favor of Borrower, but shall be available to Borrower at any time or times for so long as no Default or Event of Default exists.

2.10 All Loans to Constitute One Obligation. All Loans shall constitute one general obligation of Borrower and shall be secured by Administrative Agent's Liens upon all of the Collateral.

2.11 Capital Requirements. If either (a) the introduction of, or any Change in Law or the interpretation thereof or (b) compliance with any guideline or request from any central bank or comparable agency or other governmental authority (whether or not having the force of law), in each case, occurs or takes effect after the date of this Agreement, has or would have the effect of reducing the rate of return on the capital of, or has affected or would affect the amount of capital required to be maintained by, any Lender as a consequence of, or with reference to, the credit facility or commitments hereunder, below the rate which such Lender or such other corporation could have achieved but for such introduction, change or compliance, then within 5 Business Days after written demand by such Lender, Borrower shall pay such Lender from time to time as specified by such Lender additional amounts sufficient to compensate such Lender or such other corporation for such reduction. A certificate as to such amounts submitted to Borrower by such Lender shall, in the absence of manifest error, be presumed to be correct and binding for all purposes.

2.12 Increased Costs. If any Change in Law shall: (a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender, (b) subject any Lender to any Tax with respect to any Loan or Loan Document or change the basis of taxation of payments to any Lender in respect thereof, or (c) impose on any Lender any other condition, cost or expense affecting any Loan or Loan Document, and the result thereof shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request by such Lender, Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

2.13 Pro Rata Treatment.

(a) Each Revolver Loan from Lenders under this Agreement shall be made pro rata on the basis of their respective Aggregate Commitment Ratios.

(b) Each payment and prepayment of the principal of the Revolving Loans and each payment of interest on the Revolving Loans received from the Borrower shall be made by Administrative Agent to Lenders pro rata on the basis of their respective unpaid principal amounts thereof outstanding immediately prior to such payment or prepayment (except in cases when a Lender's right to receive payments is restricted pursuant to **Section 2.1(c)**). If any Lender shall obtain any payment (whether involuntary, through the exercise of any right of set-off or otherwise) on account of the Loans (other than (x) any payment received by a Lender as consideration for the assignment of a sale of a participation in any of its Loans to any assignee or Participant or (y) as otherwise expressly provided elsewhere herein) in excess of its ratable share of Loans under its Aggregate Commitment Ratio (or in violation of any restriction set forth **in Section 2.1(c)**), such Lender shall forthwith purchase from the other Lenders such participation in the Loans made by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery without interest thereon unless the Lender obligated to repay such amount is required to pay interest. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this **Section 2.13(b)** may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

2.14 Reserved.

2.15 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) the Unused Line Fee shall cease to accrue on the portion of the Commitments held by such Lender so long as it is a Defaulting Lender;

(b) if any Swing Loans or LC Credit Support Obligations exist at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such Swing Loans or LC Credit Support Obligations shall be reallocated among the non-Defaulting Lenders in accordance with their respective Aggregate Commitment Ratio but only to the extent the aggregate Revolver Loans and LC Credit Support Obligations held by all non-Defaulting Lenders' plus the Aggregate Commitment Ratio of the such Defaulting Lender's Swing Loan and LC Credit Support Obligations does not exceed the portion of the Commitments held by the non-Defaulting Lenders;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, Borrower shall within one Business Day following notice by Administrative Agent, (A) prepay such Defaulting Lender's pro rata share of the Swing Loans and (B) Cash Collateralize such Defaulting Lender's pro rata share of the LC Credit Support Obligations (after giving effect to any partial reallocation pursuant to clause (i) above) in an amount equal to one hundred three percent (103%) of the LC Credit Support Obligations for so long as such LC Credit Support Obligations are outstanding;

(iii) if any portion of such Defaulting Lender's pro rata share of the LC Credit Support Obligations is cash collateralized pursuant to clause (ii) above, Borrower shall not be required to pay the Letter of Credit fees set for in Section 7(a) of the Letter of Credit Rider with respect to such portion of such Defaulting Lender's LC Credit Support Obligations so long as it is cash collateralized.

(iv) if any portion of such Defaulting Lender's LC Credit Support Obligations is reallocated to the non-Defaulting Lenders pursuant to clause (i) above, then the Letter of Credit fees set for in Section 7(a) of the Letter of Credit Rider with respect to such portion shall be allocated among the non-Defaulting Lenders in accordance with their Aggregate Commitment Ratio;

(v) if any portion of such Defaulting Lender's pro rata share of the LC Credit Support Obligations is neither cash collateralized nor reallocated pursuant to this **Section 2.15(b)**, then, without prejudice to any rights or remedies of any Lender hereunder, the Unused Line Fee that otherwise would have been payable to such Defaulting Lender (with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Credit Support Obligations) and the Letter of Credit fees set for in Section 7(a) of the Letter of Credit Rider payable with respect to such Defaulting Lender's LC Credit Support Obligations shall be payable to Administrative Agent until such LC Credit Support Obligations are cash collateralized and/or reallocated in accordance herewith;

(vi) so long as any Lender is a Defaulting Lender, the Swing Bank shall not be required to fund any Swing Loan, unless it is satisfied that the related expenses will be 100% covered by the Commitments of the non-Defaulting Lenders, and participations in any such newly made Swing Loan shall be allocated among non-Defaulting Lenders in accordance with their respective Aggregate Commitment Ratio (and Defaulting Lenders shall not participate therein); and

(c) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise) may, in lieu of being distributed to such Defaulting Lender, be retained by Administrative Agent in a segregated non-interest bearing account and, subject to any applicable law, be applied at such time or times as may be determined by Agents (i) first, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder, (ii) second, to the funding of any Loan or the funding or cash collateralization of any participation in any LC Credit Support Obligation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Agents, (iii) third, if so determined by Agents and Borrower, held in such account as cash collateral for future funding obligations of Defaulting Lender under this Agreement, (iv) fourth, pro rata, to the payment of any amounts owing to Borrower or Lenders as a result of any judgment of a court of competent jurisdiction obtained by the Borrower or any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement and (v) fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is (x) a prepayment of the principal amount of any Loans or LC Credit Support Obligations in respect of Letters of Credit which a Defaulting Lender has funded its participation obligations and (y) made at a time when the conditions set forth in Section 6.2 are satisfied, such payment shall be applied solely to prepay the Loans of, and LC Credit Support Obligations owed to, all non-Defaulting Lenders, based on their Aggregate Commitment Ratio, prior to being applied to the prepayment of any Loans, or LC Credit Support Obligations owed to, any Defaulting Lender.

In the event that Agents and the Borrower and, in the case of Swing Loans, the Swing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the LC Credit Support Obligations of Lenders shall be readjusted to reflect the inclusion of such Lender's portion of the Commitments and on such date such Lender shall purchase at par such of the Loans of the other Lenders as Agents shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Aggregate Commitment Ratio. The rights and remedies against a Defaulting Lender under this **Section 2.15** are in addition to other rights and remedies that Borrower, Agents, the Swing Bank and the non-Defaulting Lenders may have against such Defaulting Lender. The arrangements permitted or required by this **Section 2.15** shall be permitted under this Agreement, notwithstanding any limitation on Liens or the pro rata sharing provisions or otherwise.

SECTION 3. **TERM AND TERMINATION**

3.1 Term. All Commitments hereunder shall, subject to the satisfaction (or waiver by the Majority Lenders) of each condition set forth in Section 4 hereof, become effective on the date of this Agreement and shall expire at the close of business on the day specified in Item 12 of the Terms Schedule (the "Term"), unless sooner terminated as provided in Section 3.2 hereof.

3.2 Termination. At any time that an Event of Default exists, the Majority Lenders may terminate the Commitments without notice, and all of the Commitments shall automatically terminate upon the occurrence of an Event of Default resulting from the commencement of an Insolvency Proceeding by or against Borrower. Upon at least 10 days prior written notice to Administrative Agent, Borrower may, at its option, terminate all or any portion of the Commitments; provided, however, no such termination of the Commitments by Borrower shall be effective until Full Payment of the Obligations being so prepaid (including the applicable Early Termination Fee, if any); provided, further, after giving effect to any partial reduction in the Commitments, the aggregate Commitments will be no less than $20,000,000. Any notice of termination given by Borrower shall be irrevocable unless Agents otherwise agree in writing.

3.3 Effect of Termination. On the effective date of any termination of all or any part of the Commitments, (a) all applicable Obligations (including the Early Termination Fee) shall become immediately due and payable without notice to or demand upon Borrower and shall be paid to Administrative Agent, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, in cash or by a wire transfer of immediately available funds and (b) the Lenders' Commitments shall be reduced pro rata on the basis of their respective Aggregate Commitment Ratios immediately prior to giving effect to any such Commitment reduction. No termination of all or any part of the Commitments shall in any way affect any of Administrative Agent's or Lenders' respective rights or remedies hereunder, any of Borrower's duties or obligations hereunder (including its obligation to pay all of the Obligations (including the Early Termination Fee) on the effective date of such termination) or any Liens held by Administrative Agent, except that all Liens shall be immediately released upon Full Payment of the Obligations.

SECTION 4. **CREATION OF SECURITY INTEREST**

4.1 Grant of Security Interest. To secure the prompt payment and performance of all of the Obligations, Borrower hereby grants to Administrative Agent, for the benefit of the Lender Group, a continuing security interest in and Lien upon all property of Borrower, including all of the following property and interests in property of Borrower, whether now owned or existing or hereafter created, acquired or arising and wheresoever located: all Accounts; all Goods, including all Inventory and Equipment (including Fixtures); all Instruments; all Chattel Paper; all Documents (including bills of lading); all General Intangibles, including Intellectual Property, Payment Intangibles and Software; all Deposit Accounts; all Investment Property (including all Commodity Accounts, Securities and Securities Accounts, but excluding any Securities that constitute Margin Stock unless otherwise expressly provided in any Security Document and, in the case of Securities in a Subsidiary organized under a law other than a state of the United States or the District of Columbia, limited to 65% of such Securities); all Letter-of-Credit Rights; all Supporting Obligations; all Commercial Tort Claims; all monies now or at any time or times hereafter in the possession or under the control of Administrative Agent; all Accessions to, substitutions for and replacements, Products and cash and non-cash Proceeds of any of the foregoing, including Proceeds of and unearned premiums with respect to insurance policies insuring any of the Collateral and claims against any Person for loss of, damage to or destruction of any of the Collateral; and all of Borrower's Books, other than Excluded Property. "Excluded Property" means (i) any permit, license, agreement or asset subject to any such agreement to the extent that the grant of a security interest therein constitutes a breach of, grounds for termination of, or a default under, such permit, license or agreement (other than to the extent that such terms would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any applicable jurisdiction or by any other applicable law or principles of equity), (ii) property owned by Borrower that is subject to a purchase money Lien or a capital lease permitted under this Agreement if the agreement pursuant to which such Lien is granted (or providing for such capital lease) prohibits or requires the consent of any Person other than Borrower which has not been obtained as a condition to the creation of any other Lien on such property, and (iii) any "intent to use" trademark applications for which a statement of use has not been filed (but only until such statement is filed); provided, however, the term "Excluded Property" shall not include any proceeds, products, substitutions or replacements of Excluded Property (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property); provided, further, the exclusions set forth in the preceding clause (i) shall not apply if such prohibition has been waived or such applicable Person party to such agreements has otherwise consented to the creation hereunder of a security interest in such Excluded Property. In addition, with respect to clauses (i) and (ii) above, immediately upon the ineffectiveness, lapse or termination of the provisions of such agreements or laws which prohibit or require the consent of any Person as a condition to the creation by Borrower of a security interest or Lien thereon or that would be breached or give the other party the right to terminate it as a result thereof, Borrower shall be deemed to have granted a security interest in, and all of its rights, titles and interests in and to, such Excluded Property.

4.2 Other Collateral; Setoff. Administrative Agent shall have, in addition to Liens upon the property of Borrower described in Section 4.1, Liens, for the benefit of the Lender Group, upon all other property of Borrower and each other Person as described in the Security Documents. All sums at any time standing to Borrower's credit balance on any Lender's books and all of Borrower's property at any time in Administrative Agent's or any Lender's possession, or upon or in which Administrative Agent or any Lender has a lien or security interest shall be security for all Obligations. In addition to and not in limitation of the above, with respect to any deposits of property of Borrower in Administrative Agent's or any Lender's possession or control, now or in the future, Administrative Agent's and each Lender shall have the right to set off all or any portion thereof, at any time, against any Obligations, even if unmatured upon the occurrence and during the continuance of an Event of Default without prior notice or demand to Borrower.

4.3 Continuation of Security Interest. Notwithstanding termination of this Agreement or of Lenders' commitments to extend Loans hereunder, until Full Payment of the Obligations, Administrative Agent shall retain its security interest in all presently owned and hereafter arising or acquired Collateral, and Borrower shall continue to immediately deliver to Administrative Agent, in kind, all collections received respecting the Accounts and other Collateral.

4.4Perfection of Security Interest. Promptly after Administrative Agent's request therefor, Borrower shall execute or cause to be executed and delivered to Administrative Agent such instruments, assignments, title certificates or other documents as are necessary under the UCC or other applicable law (including any motor vehicle certificates of title act for any motor vehicles with a value in excess of $50,000) to perfect (or continue the perfection of) Administrative Agent's Liens upon the Collateral and shall take such other action as may be requested by Administrative Agent to give effect to or carry out the intent and purposes of this Agreement. Unless prohibited by applicable law, Borrower hereby irrevocably authorizes Administrative Agent to execute and file in any jurisdiction any financing statement or amendment thereto on Borrower's behalf, including financing statements that indicate the Collateral (i) as all assets or all personal property of Borrower or words to similar effect or (ii) as being of equal or lesser scope, or with greater or lesser detail, than as set forth in this Section 4. Borrower also hereby ratifies its authorization for Administrative Agent to have filed in any jurisdiction any like financing statement or amendment thereto if filed prior to the date hereof.

4.5 Access to Borrower's Books and Computer Records. Administrative Agent and its agents, including external field examiners reasonably satisfactory to the Agents, shall have the right to conduct inspections, verifications (of accounts and otherwise), appraisals, and field examinations of the Collateral and such Person's other property and books and records at any time or times hereafter, during Borrower's usual business hours, or during the usual business hours of any Obligor having control over any Collateral or the records of Borrower, and with such frequency as Agents may request from time to time, with (a) when no Default or Event of Default is in existence, reasonable notice thereof and (b) when any Default or Event of Default is in existence, no notice thereof, and Borrower shall provide Administrative Agent access to any such information stored online, together with access to any computer programs used by Borrower to compile, analyze or otherwise manipulate such information. Borrower shall pay the cost of such inspections, verifications, appraisals, and field examinations in accordance with Item 9(b) of the Terms Schedule. Borrower shall, at its expense, conduct physical inventories of its and its Subsidiaries' Inventory with such frequency as Agents shall reasonably request from time to time and, before conducting any such physical inventory, shall provide reasonable written notice thereof to Administrative Agent and allow Administrative Agent or its agents to witness such physical inventory.

4.6 Power of Attorney. Borrower hereby irrevocably makes, constitutes and appoints Administrative Agent (and any of Administrative Agent's officers, employees or agents designated by Administrative Agent) as Borrower's true and lawful attorney with power:

(a) To sign the name of Borrower on any of the documents described in **Section 4.4** or on any other similar documents that need to be executed, recorded and/or filed in order to perfect or continue perfected Administrative Agent's Liens upon any of the Collateral, if Borrower fails or refuses to comply, or delays in complying, with its undertakings contained in **Section 4.4**;

(b) To endorse Borrower's name on any checks, notes, acceptances, money orders, drafts or other forms of payment or security that may come into Administrative Agent's possession;

(c) To sign Borrower's name on drafts against Account Debtors, on schedules and assignments of Accounts, on notices to Account Debtors and on any invoice or bill of lading relating to any Account;

(d) To do all things necessary to carry out this Agreement.

(e) After the occurrence and during the continuance of an Event of Default, to notify the post office authorities to change the address for delivery of Borrower's mail to any address designated by Administrative Agent, to receive and open all mail addressed to Borrower, and to retain all mail relating to the Collateral and forward, within 2 Business Days of Administrative Agent's receipt thereof, all other mail to Borrower; and

(f) To send requests for verification of Accounts, and to contact Account Debtors in any other manner in order to verify the Accounts.

The appointment of Administrative Agent as Borrower's attorney and each and every one of Administrative Agent's rights and powers, being coupled with an interest, are irrevocable so long an any Accounts in which Administrative Agent has a security interest remain unpaid or unfinished, as the case may be, and until all of the Obligations have been fully paid and performed. Borrower ratifies and approves all acts of the attorney. Neither Administrative Agent nor its employees, officers, or agents shall be liable for any acts or omissions or for any error in judgment or mistake of fact or law made in good faith except for gross negligence or willful misconduct.

4.7 Commercial Tort Claims. Borrower shall promptly notify Administrative Agent in writing upon Borrower's obtaining a Commercial Tort Claim in an amount that could reasonably be expected to result in a recovery to Borrower in excess of $50,000 after the Closing Date against any Person and, upon Administrative Agent's written request, promptly enter into an amendment to this Agreement (or any of the other Loan Documents) and do such other acts or things deemed appropriate by Administrative Agent to confer upon Administrative Agent a security interest, for the benefit of the Lender Group, in each such Commercial Tort Claim.

SECTION 5. **COLLATERAL ADMINISTRATION**

5.1 General Provisions.

(a) All tangible items of Collateral, other than Inventory in transit, shall at all times be kept by Borrower at one or more of the business locations of Borrower set forth in the Disclosure Schedule and shall not be moved therefrom, without the prior written approval of Agents, except that in the absence of an Event of Default and acceleration of the maturity of the Obligations in consequence thereof, Borrower may (i) make sales or other dispositions of any Collateral to the extent not prohibited by **Section 9.2** hereof and (ii) move Inventory or Equipment or any record relating to any Collateral to a location in the United States other than those shown on the Disclosure Schedule so long as Borrower has given Administrative Agent at least 10 days prior written notice of such new location. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be permitted to keep, store or otherwise maintain any Collateral at any location, unless (i) Borrower is the owner of such location, (ii) Borrower leases such location and the landlord has executed in favor of Administrative Agent a Lien Waiver/Access Agreement (or, if Agents agree in their Permitted Discretion, Administrative Agent has established an Availability Reserve with respect to such location), or (iii) the Collateral consists of Inventory placed with a warehouseman, bailee or processor, Administrative Agent has received from such warehouseman, bailee or processor an acceptable Lien Waiver/Access Agreement (or, if Agents agree in their Permitted Discretion, Administrative Agent has established an Availability Reserve with respect to such warehouseman, bailee or processor); provided, however, that Borrower may store sugar at certain USDA approved warehouses without having to receive a Lien Waiver/Access Agreement and without establishment of an Availability Reserve so long as such product will be shipped to a location owned by Borrower within 180 days after the Closing Date.

(b) Borrower shall maintain and pay for insurance upon all Collateral (including personal property and marine cargo coverage), wherever located, covering casualty, hazard, public liability, theft, malicious mischief, and such other risks in such amounts and with such insurance companies as are reasonably satisfactory to Agents. The Disclosure Schedule describes all property insurance of Borrower in effect on the date hereof. All proceeds payable under each such policy shall be payable to Administrative Agent for application to the Obligations, subject to the terms of the Intercreditor Agreement. Borrower shall deliver copies of such policies to Administrative Agent with satisfactory lender's loss payable endorsements reasonably satisfactory to Agents naming Administrative Agent as a lender loss payee, assignee or additional insured, as appropriate. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give not less than 30 days prior written notice to Administrative Agent in the event of cancellation of the policy for any reason whatsoever and a clause specifying that the interest of Administrative Agent shall not be impaired or invalidated by any act or neglect of Borrower or the owner of the property or by the occupation of the premises for purposes more hazardous than are permitted by said policy. If Borrower fails to provide and pay for such insurance, Administrative Agent may, at its option, but shall not be required to, procure the same and charge Borrower therefor. Borrower agrees to deliver to Administrative Agent, promptly as rendered, true copies of all reports made in any reporting forms to insurance companies. For so long as no Event of Default exists, Borrower shall have the right to settle, adjust and compromise any claim with respect to any insurance maintained by Borrower, provided that all proceeds thereof are applied in the manner specified in this Agreement, and Administrative Agent agrees promptly to provide any necessary endorsement to any checks or drafts issued in payment of any such claim. At any time that an Event of Default exists, Administrative Agent shall be authorized to settle, adjust and compromise such claims and Administrative Agent shall have all rights and remedies with respect to such policies of insurance as are provided for in this Agreement and the other Loan Documents, subject to the terms of the Intercreditor Agreement.

(c) All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes imposed under any applicable law on any of the Collateral or in respect of the sale thereof, and all other payments required to be made by Administrative Agent to any Person to realize upon any Collateral shall be borne and paid by Borrower. Administrative Agent shall not be liable or responsible in any way for the safekeeping of any of the Collateral or for any loss or damage thereto (except for reasonable care in the custody thereof while any Collateral is in Administrative Agent's or Administrative Agent's agent's actual possession) or for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whomsoever, but the same shall be at Borrower' sole risk.

5.2 Administration of Accounts.

(a) Borrower shall keep accurate and complete records of its Accounts and all payments and collections thereon and shall submit to Administrative Agent on such periodic basis as Agents shall request a sales and collections report for the preceding period, in form reasonably satisfactory to Agents. Borrower shall also provide to Administrative Agent, on or before the 20th day of each month, a detailed aged trial balance of all Accounts existing as of the last day of the preceding month, specifying the names, addresses, face value, dates of invoices and due dates for each Account Debtor obligated on an Account so listed ("Schedule of Accounts"), and, upon Agents' request therefor, copies of proof of delivery and a copy of all documents, including repayment histories and present status reports relating to the Accounts so scheduled and such other matters and information relating to the status of then existing Accounts as Agents shall reasonably request. Borrower shall deliver to Administrative Agent, promptly upon Agents' request, copies of invoices or invoice registers related to all of its Accounts.

(b) If Borrower grants any discounts, allowances or credits that are not shown on the face of the invoice for the Account involved, Borrower shall report such discounts, allowances or credits, as the case may be to Administrative Agent as part of the next required Schedule of Accounts. If any amounts due and owing in excess of $200,000 are in dispute between Borrower and any Account Debtor, or if any returns are made in excess of $200,000 with respect to any Accounts owing from an Account Debtor, Borrower shall provide the Administrative Agent with written notice thereof at the time of submission of the next Schedule of Accounts, explaining in detail the reason for the dispute or return, all claims related thereto and the amount in controversy.

(c) If an Account of Borrower includes a charge for any Taxes payable to any governmental authority, Administrative Agent is authorized, in its Permitted Discretion, to pay the amount thereof to the proper governmental authority for the account of Borrower and to charge Borrower therefor as a Lender Group Expense, provided that Administrative Agent shall be not liable for any Taxes that may be due by Borrower.

(d) Whether or not a Default or an Event of Default exists, Administrative Agent shall have the right at any time, in the name of Administrative Agent, any designee of Administrative Agent or Borrower to verify the validity, amount or any other matter relating to any Accounts of Borrower by mail, telephone, telegraph or otherwise. Borrower shall cooperate fully with Administrative Agent in an effort to facilitate and promptly conclude any such verification process. Administrative Agent retains the right at all times that an Event of Default exists to notify Account Debtors of Borrower that Accounts have been assigned to Administrative Agent and to collect Accounts directly in its own name and to charge to Borrower the reasonable collection costs and expenses incurred by Administrative Agent, including reasonable attorneys' fees, as Lender Group Expenses.

5.3 Administration of Inventory.

(a) Borrower shall keep accurate and complete records of its Inventory (including records showing the cost thereof and daily withdrawals therefrom and additions thereto) and shall furnish Administrative Agent on or before the 20th day of each month inventory reports respecting such Inventory in form and detail satisfactory to Agents as of the last day of the preceding month, or at such other times as Agents may reasonably request, but so long as no Default or Event of Default exists, no more frequently than once each month. Borrower shall, at its own expense, conduct a physical inventory no less frequently than annually (and on a more frequent basis if requested by Agents when an Event of Default exists) and periodic cycle counts consistent with Borrower's historical practices and shall provide to Administrative Agent a report based on each such physical inventory and cycle count promptly after completion thereof, together with such supporting information as Agents shall reasonably request. Agents may participate in and observe each physical count or inventory, which participation by the Administrative Agent shall be at Borrower' expense at any time that an Event of Default exists.

(b) Borrower shall not return any of its Inventory to a supplier or vendor thereof, or any other Person, whether for cash, credit against future purchases or then existing payables, or otherwise, unless (i) such return is in the Ordinary Course of Business of Borrower and such Person; (ii) no Default or Event of Default exists or would result therefrom; (iii) the return of such Inventory will not result in an Overadvance; (iv) Borrower promptly notifies the Administrative Agent thereof if the aggregate value of all Inventory returned in any month exceeds $200,000; and (v) any payments received by Borrower in connection with any such return are promptly turned over to Administrative Agent for application to the Obligations.

(c) Borrower shall not acquire or accept any Inventory on consignment or approval and will use its best efforts to insure that all Inventory that is produced in the United States of America will be produced in accordance with the Fair Labor Standards Act. Borrower shall not sell or deliver any Inventory to any customer on approval or any other basis upon which the customer has a right to return or obligates Borrower to repurchase such Inventory.

(d) Borrower shall produce, use, store and maintain all Inventory with all reasonable care and caution in accordance with applicable standards of any insurance and in conformity with applicable law (including the requirements of the Fair Labor Standards Act) and will maintain current rent payments (within applicable grace periods provided for in leases) at all locations at which any Inventory is maintained or stored.

5.4 Administration of Equipment.

(a) Borrower shall keep accurate records itemizing and describing the kind, type, quality, quantity and cost of its Equipment and all dispositions made in accordance with **Section 5.4(b)**, and shall furnish Administrative Agent with a current schedule containing the foregoing information on an annual basis.

(b) Borrower shall not sell, lease or otherwise dispose of or transfer any of the Equipment or any part thereof, whether in a single transaction or a series of related transactions, other than (i) a disposition of Equipment that is no longer useful in Borrower's business and (ii) a replacement of Equipment that is substantially worn, damaged or obsolete with Equipment of like kind, function and value, provided that the replacement Equipment shall be acquired prior to or concurrently with any disposition of the Equipment that is to be replaced and the replacement Equipment shall be free and clear of Liens other than Permitted Liens.

(c) The Equipment is in good operating condition and repair, and all necessary replacements of and repairs thereto shall be made so that the value and operating efficiency of the Equipment shall be maintained and preserved, ordinary wear and tear excepted. Borrower shall ensure that the Equipment shall be mechanically and structurally sound, capable of performing the functions for which the Equipment was originally designed, in accordance with the manufacturer's published and recommended specifications. Borrower will not permit any of the Equipment to become affixed to any real property leased to Borrower so that an interest arises therein under applicable law unless the landlord of such real property has executed a Lien Waiver/Access Agreement in favor of and in form acceptable to Agents**,** and Borrower will not permit any of the Equipment to become an accession to any personal property that is subject to a Lien unless the Lien is a Permitted Lien.

SECTION 6. **CONDITIONS PRECEDENT**

6.1 Initial Conditions Precedent. The Lenders shall not be obligated to fund any Loan or make any other extension of credit hereunder unless, on or before the date hereof each of the following conditions has been satisfied, in the sole opinion of Agents:

(a) Borrower and each other Person that is to be a party to any Loan Document shall have executed and delivered each such Loan Document, all in form and substance satisfactory to Agents.

(b) Borrower shall cause to be delivered to the Agents the following documents, each in form and substance reasonably satisfactory to Agents**:**

(i) A copy of the Organic Documents of Borrower;

(ii) An incumbency certificate and certified resolutions of the board of directors (or other appropriate governing body) of Borrower, signed by a Senior Officer of Borrower, authorizing the execution, delivery and performance of the Loan Documents;

(iii) A favorable legal opinion of each Obligor's outside legal counsel addressed to Agents regarding such matters as Agents and their counsel may request;

(iv) A satisfactory Borrowing Base Certificate duly completed by Borrower, together with all supporting statements, schedules and reconciliations as required by Agents;

(v) Evidence of insurance, reasonably satisfactory to Agents and otherwise meeting the requirements of the Loan Documents;

(vi) Duly executed Lien Waiver/Access Agreements as required by this Agreement or any of the other Loan Documents;

(vii) Borrower's financial statements for its most recently concluded Fiscal Year and for the fiscal month ended July 2014 and such other financial reports and information concerning Borrower as Agents shall reasonably request; and

(viii) All additional opinions, documents, certificates and other assurances that Agents or their counsel may reasonably require.

(c) Agents shall have received, by virtue of UCC searches and/or other Lien searches, evidence satisfactory to it that there are no existing Liens with respect to any of the Collateral other than Permitted Liens.

(d) Agents shall have received a final payoff letter from any Person whose outstanding Debt is to be satisfied by remittance of proceeds from the Loans hereunder, and, if applicable, a disbursement letter shall be required to direct the payment of Loan proceeds to such Person.

(e) Agents shall have received, in form and content reasonably satisfactory to them, all appraisals of any of the Collateral that may be reasonably required by Agents and all field exams with respect to Borrower or any of the Collateral as may be required by Agents.

(f) Agents shall have received assurances, satisfactory to them, that no litigation is pending or threatened against any Obligor which could reasonably be expected to have a Material Adverse Effect.

(g) Agents shall have determined, based upon their review of a current Borrowing Base Certificate submitted to it, that after giving effect to the initial Loans and any other extensions of credit to be made by Lenders to Borrower (including Loans in an amount sufficient to satisfy any Debt that is secured by a Lien and is to be satisfied at closing) and the payment of all Fees to Agents and Lenders as required by this Agreement and the reimbursement of all expenses pursuant to the Loan Documents, Borrower will have Availability (after deducting therefrom the aggregate amount of all of Borrower's accounts payable that are more than 60 days past due) plus unrestricted cash and cash equivalents of not less than the amount shown in Item 14 of the Terms Schedule.

(h) Borrower shall have satisfied such additional conditions precedent as are set forth in Item 15 of the Terms Schedule.

6.2 Ongoing Conditions Precedent. The Lenders shall not be obligated to fund any Loan or make any other extension of credit hereunder (including the initial Loans, but excluding Loans, the proceeds of which are to reimburse the Swing Bank for Swing Loans) unless and until each of the following conditions is satisfied, in the opinion of Agents, and each request by Borrower for an extension of credit hereunder shall be deemed to be a representation that all such conditions have been satisfied:

(a) Agents shall have received from Borrower a Notice of Borrowing and such other information (including Borrowing Base Certificates) as Agents may request in connection with the funding of any Loan or other extension of credit.

(b) No Default or Event of Default shall exist.

(c) All representations and warranties made by any Obligor in any of the Loan Documents, or otherwise in writing to the Lender Group, or any of them, shall be true and correct in all material respects (without duplication of any materiality qualifier contained herein) with the same effect as though the representations and warranties have been made on and as of the date of the funding of the requested Loan or other extension of credit, other than any representation and warranty that relates solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (without duplication of any materiality qualifier contained herein) as of such earlier date.

(d) No event shall have occurred and no conditions shall exist which could reasonably be expected to have a Material Adverse Effect.

(e) No Overadvance exists at the time of, or would result from funding, the proposed Loan or other extension of credit.

Notwithstanding the foregoing, if the conditions or any of them, set forth above are not satisfied, such conditions may be waived by the requisite Lenders under **Section 12.8** and, in any event the Majority Lenders may waive the condition set forth in **Section 6.2(b)**.

SECTION 7. **BORROWER'S REPRESENTATIONS AND WARRANTIES**

To induce the Lender Group to enter into this Agreement and to make Loans or otherwise extend credit as provided in any of the Loan Documents, Borrower makes the following representations and warranties, all of which shall survive the execution and delivery of the Loan Documents, and, unless otherwise expressly provided herein, such representations and warranties shall be deemed made as of the date hereof and as of the date of each request for a Loan or other extension of credit:

7.1 Existence and Rights; Predecessors. Each of Borrower and its Subsidiaries is an entity as described in the Disclosure Schedule, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and as duly qualified or licensed to transact businesses in all places where the failure to be so qualified could reasonably be expected to have a Material Adverse Effect; has the right and power to enter into, and discharge all of its obligations under the Loan Documents, each of which constitutes a legal, valid and binding obligation of such Person, enforceable against it and accordance with their respective terms, subject only to bankruptcy and similar laws affecting creditors' rights generally; and has the power, authority, rights and franchises to own its property and to carry on its business as presently conducted. Except as provided in the Disclosure Schedule, neither Borrower nor any Subsidiary has changed its legal status or the jurisdiction in which it is organized within the 5-year period immediately preceding the date of this Agreement; and, during the 5 year period prior to the date of this Agreement, Borrower has not been a party to any merger, consolidation or acquisition of all or substantially all of the assets or equity interests of any other Person.

7.2 Authority. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and each other Person (other than the Lender Group) executing any Loan Document have been duly authorized by all necessary actions of such Person, and do not and will not violate any provision of law, or any writ, order or decree of any court or governmental authority or agency or any provision of the Organic Documents of such Person or any Material Agreement to which such Person is a party, and do not and will not, with the passage of time or the giving of notice, result in a breach of, or constitute a default or require any consent under, or result in the creation of any Lien (other than Administrative Agent's Lien) upon any property or assets of such Person pursuant to, any law, regulation, instrument or agreement to which any such Person is a party or by which any such Person or its properties may be subject, bound or affected.

7.3 Litigation. Except as set forth in the Disclosure Schedule, there are no actions or proceedings pending, or to the knowledge of Borrower threatened, against any Obligor before any court or administrative agency, and Borrower has no knowledge or belief or any pending, threatened or imminent, governmental investigations or claims, complaints, actions or prosecutions involving Borrower or any Obligor that could reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any Obligor is in default with respect to any order, writ, injunction, decree or demand of any court or any governmental or regulatory authority that could reasonably be expected to have a Material Adverse Effect.

7.4 Financial Condition. All financial statements and information relating to Borrower and its Subsidiaries which have been delivered by Borrower to Administrative Agent have been prepared in accordance with GAAP, unless otherwise stated therein, and fairly and reasonably present Borrower's and its Subsidiaries' financial condition in all material respects. There has been no material adverse change in the financial condition of Borrower or any Subsidiary since the date of the most recent of such financial statements submitted to Administrative Agent. Borrower has no knowledge of any material liabilities, contingent or otherwise, which are not reflected in such financial statements and information, and neither Borrower nor any Subsidiary has entered into any special commitments or contracts which are not reflected in such financial statements or information which may have a Material Adverse Effect upon Borrower's financial condition, operations or business as now conducted. Taken as a whole, Borrower and its Subsidiary are, and after consummating the transactions described in the Loan Documents will be, Solvent.

7.5 Taxes. Each of Borrower and its Subsidiaries has filed all federal, state and other tax returns that are required to be filed, and have paid all Taxes shown on said returns as well as all Taxes (including withholding, FICA and ad valorem Taxes) shown on all assessments received by it to the extent that such Taxes are not being Properly Contested; and neither Borrower nor any Subsidiary is subject to any federal, state or local tax Liens and, as of the date hereof, has not received any notice of deficiency or other official notice to pay any Taxes.

7.6 Title to Assets. Borrower and its Subsidiaries have good title to their assets (including those shown or included in its financial statements and Borrowing Base Certificates) and the same are not subject to any Liens other than Permitted Liens.

7.7 Material Agreements. Each Material Agreement of the Borrower and its Subsidiaries' is in full force and effect and no such Person is in default thereunder. The Borrower does not have any knowledge of any threatened termination of any Material Agreement.

7.8 Intellectual Property. Borrower possesses all necessary trademarks, trade names, copyrights, patents, patent rights and licenses to conduct its business as now operated, without any known conflict with the rights of others, including, as of the date hereof, those described in the Disclosure Schedule.

7.9 Compliance With Laws. Each of Borrower and its Subsidiaries has duly complied with, and its properties, business operations and leaseholds are in compliance with, the provisions of all applicable laws, including all Environmental Laws, OSHA and the Fair Labor Standards Act, except for any non-compliance that could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

7.10 Environmental Matters.

(a) There have been no Releases of Hazardous Materials to any property, arising from the business operations of Borrower that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(b) Borrower has obtained, and is in material compliance with, all permits, authorizations, credits, license and approvals required under any Environmental Laws for the ownership, operation and maintenance of its business operations, including all permits, authorizations registrations, credits, license or approvals required for the sale or transfer of ethanol or any other product for use as a renewable fuel or renewable fuel component.

(c) Borrower has not received (i) any written notice from any governmental authority of alleged or actual material liability under, or material noncompliance with, Environmental Laws or (ii) any written notice from any third party alleging material liability under Environmental Laws.

7.11 Business and Collateral Locations. Borrower's chief executive office, principal place of business, office where Borrower's tangible business records are located and all other places of business of Borrower (including places of business where any tangible items of Collateral are kept or maintained) are all correctly and completely described in the Disclosure Schedule; and except as otherwise described in the Disclosure Schedule, none of the Collateral (other than Collateral in transit) is in the possession of any Person other than Borrower and all tangible items of the Collateral are located in, on or about the business premises of Borrower described in the Disclosure Schedule.

7.12 Accounts and Other Payment Rights. Each Document, Instrument, Chattel Paper or other writing evidencing or relating to any Account or Payment Intangible of Borrower (a) is genuine and enforceable in accordance with its terms except for such limits thereon arising from bankruptcy or similar laws relating to creditors' rights; (b) is not subject to any reduction or discount (other than as stated in the invoice applicable thereto and disclosed to Administrative Agent), defense, setoff, claim or counterclaim of a material nature against Borrower except as to which Borrower has notified Administrative Agent in writing; (c) is not subject to any other circumstances that would impair the validity, enforceability or amount of such Collateral except as to which Borrower has notified Administrative Agent in writing; (d) arises from a *bona fide* sale of goods or delivery of services in the Ordinary Course of Business and in accordance with the terms and conditions of any applicable purchase, or a, contract or agreement; (e) is free of all Liens other than Permitted Liens; and (f) is for a liquidated amount maturing as stated in the applicable invoice or other document pertaining thereto. Each Account included in any Borrowing Base Certificate, report or other document as an Eligible Account meets all of the requirements of an Eligible Account as set forth in the definition of that term (other than Agent-discretionary criteria).

7.13 Deposit Accounts and Commodity Accounts. As of the Closing Date, neither Borrower nor any of its Subsidiaries has any Deposit Accounts or Commodity Accounts other than those listed in the Disclosure Schedule.

7.14 Brokers. There has been no mortgage or loan broker in connection with this loan transaction, and Borrower agrees to indemnify and hold the Lender Group harmless from any claim of compensation payable to any mortgage or loan broker in connection with this loan transaction.

7.15 ERISA. Except as otherwise set forth in the Disclosure Schedule, neither Borrower nor any of its Subsidiaries has any Plan. For each Plan established or maintained by Borrower which is subject to Part 3 of Subtitle B of Title I of ERISA, Borrower has timely made all minimum funding contributions as determined under Section 302 of ERISA, and no funding waiver has been requested or granted under Section 302(c) of ERISA, and no material liability to the Pension Benefit Guaranty Corporation, has been or is expected by Borrower to be, incurred with respect to any such Plan by Borrower. Borrower is not required to contribute to and is not contributing to a Multiemployer Plan. Borrower has no withdrawal liability to any Multiemployer Plan, nor has any reportable event referred to in Section 4043(b) of ERISA occurred with respect to a Multiemployer Plan that has resulted or could result in material liability of Borrower; and Borrower does not have any reason to believe that any other event has occurred that has resulted or could result in material liability of Borrower as set forth above.

7.16 Labor Relations. Except as described in the Disclosure Schedule, neither Borrower nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, management agreement or consulting agreement. On the date hereof, there are no grievances, disputes or controversies with any union or any other organization of Borrower's or any Subsidiary's employees that could reasonably be expected to result in a Material Adverse Effect, or, to Borrower's knowledge, any threats of strikes, work stoppages or any asserted pending demands for collective bargaining by any union or organization.

7.17 Anti-Terrorism Laws. Neither Borrower nor any of its Affiliates is in violation of any Anti-Terrorism Law; engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law; or is any of the following (each a "Blocked Person"): (1) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (2) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (3) a Person or entity with which any bank or other financial institution is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (4) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; (5) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (6) a Person who is affiliated with a Person listed above. Neither Borrower nor any of its Affiliates conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person or deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

7.18 Not a Regulated Entity. Neither Borrower nor any Subsidiary is (a) an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" each as defined in the Investment Company Act of 1940 or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other applicable law relating to its authority to incur Debt. None of the Borrowers are in the business of producing electric power for delivery to a transmission grid or natural gas to be shipped by interstate pipeline.

7.19 No Insider Status. Borrower is not an "executive officer," "director," or "principal shareholder" (as those terms are defined in 12 U.S.C. Sec.375(b) or in regulations promulgated pursuant thereto) of Administrative Agent or any Lender.

7.20 Capital Structure. As of the date hereof, the Disclosure Schedule sets forth (a) the correct name of each Subsidiary, its jurisdiction or organization and the percentage of its Equity Interests owned by each Person, (b) the identity of each Person owning any of the Equity Interests of Borrower and each Subsidiary, and (c) the number of authorized and issued Equity Interests (and treasury shares) of Borrower and each Subsidiary. Borrower has good title to all of the Equity Interests it purports to own in each of its Subsidiaries, free and clear of any Lien other than Permitted Liens. As of the date hereof and except as set forth in the Disclosure Schedule or provided to the Agents on the date hereof, since the date of the last audited financial statements of Borrower, Borrower has not made, or obligated itself to make, any Distributions. As of the date hereof and except as set forth in the Disclosure Schedule, there are no outstanding options to purchase, or any rights or warrants to subscribe for, or any commitments or agreements to issue or sell, or any Equity Interests or obligations convertible into, or any powers of attorney relating to, Equity Interests of Borrower or any Subsidiary. As of the date hereof and except as set forth in the Disclosure Schedule, there are no outstanding agreements or instruments binding upon the holders of Borrower's Equity Interests relating to the ownership of such Equity Interests.

7.21 Compliance with Regulations T, U, and X. 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 part of the proceeds of the Loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

7.22 PACA. Borrower is not a “dealer”, “commission merchant” or “broker” under PACA, and Borrower’s assets are not subject to the trust provisions provided for under PACA. Except as set forth on Section 7.22 of the Disclosure Schedules as of the Closing Date and as disclosed under Section 8.6(e) hereof, Borrower has not received any notice pursuant to the applicable provisions of PACA, the FSA, the UCC or any other applicable laws from (a) any supplier or seller of farm products or (ii) any lender to any such supplier or seller or any other Person with a security interest in the assets of any such supplier or seller or (iii) the Secretary of State (or equivalent official) or other Governmental Authority of any State, Commonwealth or political subdivision thereof in which any farm products purchased by Borrower are produced, in any case advising or notifying such Borrower of the intention of such supplier or seller or other Person to preserve the benefits of any trust applicable to any assets of any Borrower established in favor of such supplier, seller or other Person under the provisions of any law or claiming a Lien with respect to any perishable agricultural commodity or any other Farm Products which may be or have been purchased by a Borrower or any related or other assets of such Borrower.

7.23 Inventory. All Inventory included in any Borrowing Base Certificate, report or other document as Eligible Inventory meets all of the requirements of Eligible Inventory as set forth in the definition of that term.

7.24 Disclosure Schedule. All of the representations and warranties in the Disclosure Schedule are true and correct on the date of this Agreement and will remain true after the date of this Agreement; provided that Borrower may update the Disclosure Schedule from time to time by delivering written notice thereof to Administrative Agent so long as any changes set forth in any such update are not otherwise violative of this Agreement.

SECTION 8. **AFFIRMATIVE COVENANTS**

At all times prior to the Commitment Termination Date and Full Payment of all of the Obligations, Borrower covenants that it shall, and shall cause each of its Subsidiaries to:

8.1 Notices. Notify each member of the Lender Group, promptly after Borrower's obtaining knowledge thereof, of (i) any Default or Event of Default hereunder; (ii) the commencement of any action, suit or other proceeding against, or any demand for arbitration with respect to, any Obligor that (x) relates to the Loan Documents or (y) could reasonably be expected to result in claims or liability to such Obligor in an amount in excess of $500,000 if adversely determined; (iii) the occurrence or existence of any default (or claimed default) by an Obligor under any agreement relating to Debt for Money Borrowed in an amount in excess of $500,000; (iv) any transaction that could result in claims against Borrower or its property pursuant to PACA, including, without limitation, receipt by Borrower of an invoice containing language providing that such transaction is subject to the trust provisions provided for under PACA; (v) the receipt by Borrower of any notice from a Person asserting an intent to preserve such Person's trust benefits provided for under PACA; (vi) the receipt of any notice of deficiency or other official notice to pay any Taxes or (vii) any other event or transaction which has or could reasonably be expected to have a Material Adverse Effect.

8.2 Rights and Facilities. Maintain and preserve all material rights (including all material rights related to Intellectual Property), franchises and other authority adequate for the conduct of its business; maintain its properties, equipment and facilities in good order and repair, ordinary wear, tear, casualty and condemnation and Permitted Asset Dispositions excepted; conduct its business in an orderly manner without voluntary interruption; and maintain and preserve its existence except as otherwise permitted by this Agreement.

8.3 Insurance. In addition to the insurance required by the Loan Documents with respect to the Collateral, maintain with its current insurers or with other financially sound and reputable insurers having a rating of at least "A-" or better by *Best's Ratings*, a publication of A.M. Best Company, (i) insurance with respect to its properties and business against such casualties and contingencies of such type (including product liability, workers' compensation, larceny, embezzlement or other criminal misappropriation insurance) and in such amounts and with such coverages, limits and deductibles as is customary in the business of Borrower or such Subsidiary, (ii) marine cargo coverage, in such amounts and with such coverages, limits and deductibles as is customary in the business of Borrower or such Subsidiary, and (iii) business interruption insurance, in an amount customary in the business of Borrower or such Subsidiary.

8.4 Visits and Inspections. Permit representatives of Agents from time to time, as often as may be reasonably requested, but only during normal business hours and (except when a Default or Event of Default exists) upon reasonable prior notice to Borrower to: visit and inspect properties of Borrower and each of its Subsidiaries; inspect, audit and make extracts from Borrower's and each Subsidiary's books and records; and discuss with its officers, employees and independent accountants Borrower's and each Subsidiary's business, financial conditions, business prospects and results of operations. Any other member of the Lender Group may, at its expense (unless an Event of Default has occurred and is continuing), accompany Agents on any regularly scheduled visit (or at any time that a Default exists any visit regardless of whether it is regularly scheduled) to the Borrower‘s properties.

8.5 Taxes; Other Charges. Pay and discharge all Taxes and other charges the non-payment of which could result in a Lien on Borrower's assets prior to the date on which such Taxes or other charges, as applicable, become delinquent or any penalties attached thereto, except and to the extent only that such Taxes or other charges, as applicable, are being Properly Contested or for any Taxes in an aggregate amount of not more than $250,000 at any one time outstanding, and, if requested by Agents, shall provide proof of payment or, in the case of withholding or other employee taxes, deposit of payments required by applicable law. If requested by the Administrative Agent, Borrower shall, and shall cause each of its Subsidiaries to, deliver to Administrative Agent copies of all of Tax returns (and amendments thereto) promptly after the filing thereof.

8.6 Financial Statements and Other Information. (a) Keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with GAAP reflecting all its financial transactions; and cause to be prepared and furnished to Administrative Agent, with copies to Lenders, the following (all to be prepared in accordance with GAAP applied on a consistent basis):

(i) as soon as available, and in any event within 120 days after the close of each Fiscal Year, unqualified audited balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Year and the related statements of income, shareholders' equity and cash flow, on a consolidated basis, certified without qualification (except any such qualification in such auditors’ report or opinion resulting from the regularly scheduled maturity date of any Debt for Borrowed Money which qualification shall be permissible) by a firm of independent certified public accountants of recognized national or regional standing selected by Borrower setting forth in each case in comparative form the corresponding consolidated figures for the preceding Fiscal Year;

(ii) (A) as soon as available, and in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year hereafter, unaudited balance sheets of Borrower and its Subsidiaries as of the end of such fiscal quarter and the related unaudited consolidated statements of income and cash flow for such fiscal quarter and for the portion of Borrower's Fiscal Year then elapsed, on a consolidated basis, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year and certified by the principal financial officer of Borrower as prepared in accordance with GAAP and fairly presenting the consolidated financial position and results of operations of Borrower and its Subsidiaries for such fiscal quarter and period subject only to changes from audit and year-end adjustments and except that such statements need not contain notes; and (B) concurrently with delivery of the financial statements under this subclause, Borrower shall deliver to the Agents a report prepared by a Senior Officer of Borrower analyzing the results set forth in such financial statements, including a comparison of the actual results and explanation of variances versus the projected results for such quarter and for the portion of Borrower's Fiscal Year then elapsed as set forth in the projected balance sheet and income statement and statement of cash flows for such Fiscal Year as provided by Borrower to the Agents in accordance with subclause (iv) hereof;

(iii) (A) as soon as available, and in any event within 30 days after the end of each month hereafter, excluding the last month of Borrower's Fiscal Year, unaudited balance sheets of Borrower and its Subsidiaries as of the end of such month and the related unaudited consolidated statements of income and cash flow for such month and for the portion of Borrower's Fiscal Year then elapsed, on a consolidated basis, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year and certified by the principal financial officer of Borrower as prepared in accordance with GAAP and fairly presenting the consolidated financial position and results of operations of Borrower and its Subsidiaries for such month and period subject only to changes from audit and year-end adjustments and except that such statements need not contain notes; and (B) concurrently with delivery of the financial statements under this subclause, Borrower shall deliver to Agents a report of the ethanol production during the trailing 12 month period ending as of such calendar month, in the aggregate for all Borrower's ethanol production plants;

(iv) as soon as available, and in any event no later than 60 days after the beginning of each Fiscal Year (beginning with Fiscal Year ending December 31, 2015), Borrower's projected balance sheet and income statement and statement of cash flows for each month of the next Fiscal Year, accompanied by a statement of assumptions and supporting schedules and information, and are commercially reasonable and in a form reasonably acceptable to Agents in their Permitted Discretion; and

(v) promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports which Borrower has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses which Borrower files with the SEC or any governmental authority which may be substituted therefor, or any national securities exchange; and copies of any press releases or other statements made available by Borrower to the public concerning material changes to or developments in the business of Borrower.

Concurrently with the delivery of the financial statements described in clauses (i), (ii) and (iii) of this Section, or more frequently if requested by Agents during any period that a Default or Event of Default exists, Borrower shall cause to be prepared and furnished to Administrative Agent, with copies to Lenders, a Compliance Certificate, which shall include a list of any new trademarks, trade names, copyrights, patents, patent rights and licenses acquired after delivery of the previous Compliance Certificate most recently delivered to the Administrative Agent.

(b) Promptly after the sending or filing thereof, Borrower shall also provide to Administrative Agent copies of any annual report to be filed in accordance with ERISA in connection with each Plan and such other data and information (financial and otherwise) as Agents, from time to time, may reasonably request, bearing upon or related to the Collateral or Borrower's and any of its Subsidiaries' financial condition or results of operations.

(c) Borrower shall also provide to Administrative Agent, not later than 20 days after each calendar month, (i) a listing of all of Borrower's trade payables as of the last Business Day of such month, specifying the name of and balance due each trade creditor, (ii) a monthly detailed trade payable aging, and (iii) a monthly detailed held checks aging, each in form reasonably acceptable to Agents.

(d) Borrower shall also provide to Administrative Agent, not later than 30 days after each calendar month, Plant-Level Financial Statements.

(e) Borrower shall also provide to Administrative Agent, not later than 30 days after each calendar month, (i) reports describing any Agricultural Liens on the Collateral or other collateral securing the Obligations, (ii) all FSA Notices received by Borrower during such month, (iii) a report detailing any notices of liens, claims of liens or any other notices from a supplier, seller or agent pursuant to the FSA or PACA of the intention of such Person to preserve the benefits of any trust applicable to any assets of Borrower under the provisions of PACA or any other statute, which report shall indicate any additions or deletions to the prior report delivered by Borrower pursuant to this clause (e) (together with copies of any such notices, upon the request of Administrative Agent), and (iv) a report of all additions or deletions to the list of Producers with which Borrower transacts business, each in form acceptable to Lender.

(e) Borrower shall also provide to Lender not later than 30 days after each calendar month the most recent Master Lists from all states that have a central filing system under the FSA in which a Producer for Borrower is located and reports describing the EFS filings against Producers compiled from the Master Lists in form acceptable to Lender.

The Administrative Agent hereby agrees to deliver copies of all financial statements, collateral reports, agings, Compliance Certificates and other notices received hereunder to the Collateral Agent promptly upon receipt thereof.

8.7 Compliance with Laws. Comply, in all material respects, with all laws relating to Borrower, the conducts of its business and the ownership and use of its Assets, including ERISA, all Environmental Laws, OSHA, the Fair Labor Standards Act and all other laws regarding the collection, payment and deposit of the Taxes, and shall obtain and keep in full force and effect any and all governmental and regulatory approvals necessary to the ownership of its properties or the conduct of its business and shall promptly report any non-compliance to Administrative Agent.

8.8 Reimbursement for Lender Group Expenses. Upon the demand of Administrative Agent, promptly reimburse the Lender Group for all sums expended by the Lender Group, or any of them, which constitute Lender Group Expenses, and Borrower hereby authorizes and approves all Loans by Lenders in payment of items constituting Lender Group Expenses.

8.9 Financial Covenants. Comply with all of the financial covenants set forth in Item 16 of the Terms Schedule.

8.10 After-Acquired Collateral. Borrower shall promptly notify Administrative Agent in writing if, after the Closing Date, any Obligor obtains any interest in any Collateral consisting of Real Property Collateral, Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Administrative Agent's request, shall promptly take such actions as Administrative Agent deems appropriate to effect Administrative Agent's duly perfected, Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver/Access Agreement, all subject to the terms and conditions of the Intercreditor Agreement. If any Collateral is in the possession of a third party, at Administrative Agent's request, Obligors shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Administrative Agent.

8.11 Commodity Hedging Programs. Borrower at all times shall comply in all material respects with, and shall ensure that all Commodity Hedging Arrangements comply with, the Commodity Risk Management Plan.

8.12 Environmental Matters.

(a) Keep any property either owned or operated by Borrower free of any environmental liens.

(b) Promptly notify Administrative Agent of any Release of a Hazardous Material in any reportable quantity from or onto property owned or operated by Borrower and take all actions required to abate said Release or otherwise to come into compliance with applicable Environmental Law.

(c) Promptly notify Administrative Agent of any (i) notice that an environmental lien has been filed against any of the real or personal property of Borrower, (ii) any written notice from any party alleging liability under, or non-compliance with, Environmental Laws which could reasonably be expected to result in a Material Adverse Effect.

8.13 Sale of Canton. If the sale of Canton does not occur on or prior to December 31, 2014, the Borrower shall take all actions reasonably requested by the Agents to join Canton to this Agreement as a Borrower and grant to the Administrative Agent a duly perfected Lien on all Collateral owned by Canton**,** other than the Excluded Real Property Collateral.

8.14 FSA. With respect to any farm products purchased by Borrower which are produced in a state with a central filing system, Borrower will register as a buyer and as a seller with the Secretary of State or equivalent governmental authority of such state prior to the purchase or marketing of such farm products and will otherwise comply with the requirements of such system. Terms used in this Section 8.14 and defined in the FSA shall have the meanings ascribed to such terms therein. Borrower shall comply with any payment obligations imposed by a secured party as a condition to the waiver and release of a security interest under the FSA or other applicable laws.

8.15 Post-Closing Obligations.

(a) No later than 60 days after the Closing Date (or such later date as may be agreed to by Agents in their sole discretion) the Borrower's accounts maintained by any depositary bank other than Administrative Agent shall be closed and replaced with an account maintained by Administrative Agent.

(b) On or before September 30, 2014 (or such later date as may be agreed to by Agents in their sole discretion), the Borrower shall deliver to the Agents (i) Agents shall have received a mortgage, security agreement, assignment of rents and leases, and fixture filings, of even date herewith from Borrower in favor of Administrative Agent with respect to each piece of Real Property Collateral (the "Mortgages"), and (ii) a mortgagee title insurance policy (or a marked commitment to issue the same) for each piece of Real Property Collateral issued by a title insurance company satisfactory to Agents (a "Mortgage Policy") in amounts satisfactory to Agents assuring Agents that the applicable Mortgage is a valid and enforceable second priority mortgage Lien on each piece of Real Property Collateral free and clear of all defects and encumbrances except Permitted Liens, and the Mortgage Policy otherwise shall be in form and substance satisfactory to Agents.

(c) On or before September 30, 2014 (or such later date as may be agreed to by Agents in their sole discretion), the Borrower shall deliver to the Agents a fully executed Commodity Account Control Agreement for each of the following Commodity Accounts of Borrower: the Commodity Accounts maintained by Borrower with Jefferies, LLC that are listed on the Disclosure Schedule.

(d) On or before September 30, 2014 (or such later date as may be agreed to by Agents in their sole discretion), the Borrower shall have delivered to the Agents a fully executed Deposit Account Control Agreement for each of the Deposit Accounts of Borrower maintained by Borrower with Wells Fargo Bank that are listed on the Disclosure Schedules.

SECTION 9. **NEGATIVE COVENANTS**

At all times prior to the Commitment Termination Date and Full Payment of the Obligations, Borrower shall not and shall not permit any Subsidiary to:

9.1 Fundamental Changes. Merge, reorganize, or consolidate with any Person, or liquidate, wind up its affairs or dissolve itself, in each case whether in a single transaction or in a series of related transactions, except for mergers or consolidations of any Subsidiary with another Subsidiary so long as any merger or consolidation involving a Borrower results in Aventine Renewable Energy, Inc. being the surviving entity; change its name or conduct business under any fictitious name except for any fictitious name shown in the Disclosure Statement; change its federal employer identification number, organizational identification number or state of organization; relocate its chief executive office or principal place of business without having first provided 30 days prior written notice to Administrative Agent; or amend, modify or otherwise change any of the terms or provisions in any of its Organic Documents, except for changes that do not affect in any way Borrower's authority to enter into and perform the Loan Documents to which it is a party, the perfection of Administrative Agent's Liens in any of the Collateral, or Borrower's authority or obligation to perform and pay the Obligations; or amend, modify or otherwise change any of the terms or provisions of any Material Agreement in a manner which would be materially adverse to Borrower or Lenders.

9.2 Conduct of Business. Sell, lease or otherwise dispose of any of its assets (including any Collateral but excluding any Equity Interests of Parent) other than a Permitted Asset Disposition; suspend or otherwise discontinue all or any material part of its business operations; engage in any business other than the business engaged in by it on the Closing Date and any business or activities that are substantially similar, related or incidental thereto; create, incur or suffer to exist any Lien on any of its assets other than Permitted Liens; make any loans, advances or other transfers of assets to any other Person, except transfers in the Ordinary Course of Business by one Subsidiary that is an Obligor to Borrower or to another Subsidiary that is an Obligor and transfers permitted by Section 9.9; guarantee or otherwise become in any way liable for any Debt of another Person other than with respect to Permitted Debt; or create, incur, assume or suffer to exist any Debt except for Permitted Debt. As used herein, "Permitted Debt" means (a) the Obligations, (b) the Term Loan Indebtedness and Subordinated Debt existing on the Closing Date or incurred after the Closing Date on terms reasonably acceptable to Agents, (c) accounts payable to trade creditors that are not aged more than 90 days from billing date or more than 30 days from the due date to the extent incurred in the Ordinary Course of Business and paid within such time period (unless the same are being Properly Contested), (d) purchase money obligations secured by Liens that are Permitted Liens, (e) Debt for accrued payroll, Taxes and other operating expenses incurred in the Ordinary Course of Business so long as payment thereof is not past due and payable unless, in the case of Taxes, such Taxes are being Properly Contested, (f) Debt owed to any Person providing insurance to Parent or any of its Subsidiaries, so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Debt is incurred and such Debt is outstanding only during such year, (g) Debt incurred in the Ordinary Course of Business in respect of credit cards, credit card processing services, debit cards, stored value cards or purchase cards, (h) unsecured Debt of Parent owing to former employees, officers or directors incurred in connection with the repurchase by Parent of the Equity Interests of Parent that has been issued to such Persons, in an aggregate amount not to exceed $5,000,000; provided, that, at the time of such incurrence (x) no Event of Default shall exist or be caused thereby and (y) the holder of such Debt shall enter into a subordination agreement with the Administrative Agent, in form and substance reasonably acceptable to the Agents, (i) Debt composing investments permitted by this Agreement, (j) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Debt that otherwise constitutes Permitted Debt, (k) Debt related to a mortgage on the Excluded Real Property Collateral, and (l) any other unsecured Debt incurred by Parent or any of its Subsidiaries in an aggregate amount not to exceed $10,000,000 at any one time.

9.3 Agreements with Account Debtors. Grant any discount, credit or allowance to any Account Debtor or accept any return of merchandise without Agents' consent, except, when no Event of Default exists, in the Ordinary Course of Business. Administrative Agent may, during the continuance of an Event of Default, settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms which Administrative Agent considers advisable, and in such cases, Administrative Agent will credit Borrower's account with only the net amounts received by Administrative Agent in payment of such disputed Accounts, after deducting all Lender Group Expenses incurred or expended in connection therewith.

9.4 Distributions. Declare or make any Distribution other than (a) Parent may make Distributions to employees, former employees, officers, directors or former directors of Parent (or permitted transferees of any of the foregoing, including any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Equity Interests of Parent held by such Persons or pursuant to the terms of the agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors; provided, that (i) prior to and after giving effect to such Distributions, Availability is at least $5,000,000, (ii) the aggregate amount of such redemptions made by Parent during any fiscal year of Parent does not exceed $2,500,000, and (iii) the aggregate amount of such redemptions made by Parent during the term of this Agreement does not exceed $5,000,000, (b) Parent may purchase Equity Interests from its or its Subsidiaries' employees, in an aggregate amount not to exceed $1,000,000 in any fiscal year of Parent, in connection with the satisfaction of such employees' tax withholding obligations pursuant to employee benefit plans or outstanding awards, and payment of any corresponding requisite amounts to the appropriate governmental authority, and (c) Parent may issue any Equity Interests required by the exercise of the Warrants (2012) or any change of control payments calculated in accordance with the Warrant Agreement (2013) paid to the holders of the Warrants (2013) to the extent such Warrants (2013) could be exercised at such time, provided that (x) no Change of Control other than a Permitted Change of Control (as such term is defined in the Term Loan Agreement as in effect as of the Closing Date), has occurred unless all Obligations are paid in full prior to such payments and (y) any such payments made prior to payment in full of the Obligations shall be made solely from the proceeds of the issuance of new Equity Interests (other than Disqualified Equity Interests) or other equity contributions to Parent and shall not be made with the proceeds of any Collateral; provided, that, in each case of (a) through (c), no Default or Event of Default has occurred and is continuing.

9.5 Other Debt. Amend or modify (a) any provision of any instrument or agreement evidencing or securing any Subordinated Debt or (b) the Term Loan Indebtedness in violation of the Intercreditor Agreement; or pay any principal of or interest on any Subordinated Debt other than in accordance with the applicable Subordination Agreement.

9.6 ERISA. Withdraw from participation in, permit the termination or partial termination of, or permit the occurrence of any other event with respect to any Plan maintained for the benefit of Borrower's employees under circumstances that could result in liability to the Pension Benefit Guaranty Corporation, or any of its successors or assigns, or in any liability that in aggregate amount in excess of $200,000 to Borrower or any Subsidiary which provides funds for such Plan; or withdraw from any Multiemployer Plan described in Section 4001(a)(3) of ERISA which covers Borrower's employees.

9.7 Certain Tax and Accounting Matters. File or consent to the filing of any consolidated income tax return with any Person other than a Subsidiary; make any significant change in accounting treatment or reporting practices, except as may be required by GAAP; or establish a fiscal year different from the Fiscal Year.

9.8 Subsidiaries. Form or acquire any additional Subsidiary.

9.9 Restricted Investments. Make or have any Restricted Investments. As used herein, the term "Restricted Investment" shall mean (a) any acquisition of property by Borrower or any of its Subsidiaries in exchange for cash or other property, whether in the form of an acquisition of Equity Interests or Debt, or (b) the purchase or acquisition by Borrower or any Subsidiary of any other property, or (c) a loan, advance, capital contribution or subscription, except the following: (i) acquisitions of fixed assets to be used in the Ordinary Course of Business of Borrower so long as the acquisition costs thereof constitute Capital Expenditures and do not violate any financial covenant contained in this Agreement; (ii) acquisitions of Goods held for sale or lease or to be used in the manufacture of goods or the provision of services by Borrower in the Ordinary Course of Business; (iii) acquisitions of current assets arising from the sale or lease of Goods or the rendition of services in the Ordinary Course of Business by Borrower or any Subsidiary; (iv) investments by Borrower in any Subsidiary existing on the date hereof and any other investment to the extent existing on the Closing Date and fully disclosed in the Disclosure Schedule; (v) acquisition of cash and cash equivalents, including marketable direct obligations issued or unconditionally guaranteed by the United States government and backed by the full faith and credit of the United States government having maturities of not more than 12 months from the date of acquisition, and domestic certificates of deposit and time deposit having maturities of not more than 12 months from the date of acquisition, to the extent they are not subject to rights of offset in favor of any Person other than Administrative Agent; (vi) Commodity Hedging Arrangements permitted by Section 8.11; (vii) loans between Borrower and any Subsidiary who is an Obligor; (viii) Equity Interests or other securities acquired in connection with the satisfaction or enforcement of Debt or claims due or owing to Borrower or its Subsidiaries (in bankruptcy of customers or suppliers); (ix) deposits of cash made in the Ordinary Course of Business to secure performance of operating leases; (x) loans and advances to employees, officers and directors in the Ordinary Course of Business in an aggregate amount not to exceed $1,000,000; (xi) investments resulting from entering into any Permitted Debt; (xii) investments held by a Person acquired as consideration in a disposition of Term Loan Primary Collateral (as such term is defined in the Intercreditor Agreement) to the extent such Investments are permitted under the Term Loan Agreement; and (xii) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments in an aggregate amount not to exceed $1,000,000 during the term of this Agreement

9.10 Deposit Accounts. Open or maintain any Deposit Accounts except for (a) Deposit Accounts listed in the Disclosure Schedule, (b) such other Deposit Accounts as shall be necessary for payroll, petty cash, local trade payables and other occasional needs of Borrower, and (c) the Cash Collateral Account (as defined in the Term Loan Agreement); provided that the aggregate balance of all Deposit Accounts (other than the Cash Collateral Account, the letter of credit cash collateral account, number 4945660959 maintained by Borrower with Wells Fargo Bank, N.A., and account number 4123507220 maintained by Borrower with Wells Fargo Bank, N.A.) which are not subject to a Deposit Account Control Agreement on terms satisfactory to Agents may not at any time exceed $25,000; provided, further that the aggregate balance of account number 4123507220 maintained by Borrower with Wells Fargo Bank, N.A. may not at any time exceed $8,000,000 unless such account is subject to a Deposit Account Control Agreement on terms satisfactory to the Agents.

9.11 Affiliate Transactions. Enter into or be party to any transaction with an Affiliate of an Obligor, except (a) transactions contemplated by the Loan Documents, (b) payment of reasonable compensation to officers, employees and advisors for services actually rendered, (c) payment of customary directors' fees and indemnities, (d) transactions with Affiliates that were consummated prior to the Closing Date and fully disclosed in the Disclosure Schedule, and (e) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms fully disclosed to Administrative Agent and no less favorable than would be obtained in comparable arm's length transaction with a non-Affiliate; provided, however that in the case of clause (b) and (c) above no such payments shall be made by a Borrower to any Subsidiary who is not also a Borrower hereunder.

9.12 Restrictions on Payment of Certain Debt. In addition to the restrictions contained in Section 9.5, make any payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any Money Borrowed (other than the Obligations) prior to its due date under the agreements evidencing such Debt as in effect on the Closing Date (or as amended thereafter with the prior written consent of Agents); provided, however, that Borrower may prepay any Money Borrowed (other than Subordinated Indebtedness) so long as prior to and after giving effect to such prepayment (x) no Event of Default exists, (y) Borrower is in pro forma compliance with the financial covenants set forth in Item 16 of the Terms Schedule, such compliance to be determined on the basis of the financial information most recently delivered to the Agents pursuant to Section 8.6(a)(i), (ii) or (iii) and (z) Availability is at least $2,500,000.

9.13 Hedging Agreements. Enter into any hedging agreement, except to hedge risks arising in the Ordinary Course of Business.

9.14 Commodity Accounts. Open or maintain any Commodity Accounts except for Commodity Accounts listed in the Disclosure Schedule as such Disclosure Schedule may be updated pursuant to Section 7.24 and subject to a Commodity Account Control Agreement.

SECTION 10. **EVENTS OF DEFAULTS; REMEDIES**

10.1 **Events of Default**. The occurrence or existence of any one or more of the following events or conditions shall constitute an Event of Default:

(a) Borrower shall fail to pay any of the Obligations on the due date thereof (whether due at stated maturity, on demand, upon acceleration or otherwise);

(b) Any Obligor fails or neglects to perform, keep or observe any term, provision, condition, covenant or agreement, in this Agreement, in any of the other Loan Documents, or in any other present or future agreement between Borrower and Lender Group, or any of them, not otherwise constituting an Event of Default under this **Section 10.1**, provided that Borrower shall have the right to cure any such failure or neglect within 30 days after any Senior Officer obtains knowledge of such failure or neglect if such failure or neglect does not consist of Borrower's breach of or default under Sections 2.1(d), 2.6(a), 2.7, 4.4, 4.5, 8.4, 8.6(i), 8.9 or 9; provided, further that Borrower shall have the right to cure any failure to deliver a Borrowing Base Certificate within 1 Business Day after such Borrowing Base Certificate becomes due pursuant to Section 2.6(a);

(c) Any representation, statement, report, or certificate made or delivered by or on behalf of Borrower or any Obligor to Agents, including any Borrowing Base Certificate, any aged trial balance of all Accounts, or any accounts payable aging is not true and correct, in any material respect, when made or furnished;

(d) [Reserved];

(e) An Insolvency Proceeding is commenced by an Obligor or is commenced against an Obligor and is not dismissed within 45 days thereafter;

(f) Borrower is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs or Borrower voluntarily ceases to continue to conduct all or any material part of its business;

(g) One or more judgments or orders for the payment of money shall be entered against any Obligor for an amount in excess of $2,500,000 in aggregate for all such judgments outstanding at any time and (i) there shall have been commenced by any creditor an enforcement proceeding upon such judgment or order, (ii) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect, or (iii) such judgment or order results in the creation or imposition of a Lien upon any of the Collateral that is not a Permitted Lien;

(h) There shall occur any default or event of default on the part of any Obligor under any agreement, document or instrument to which such Obligor is a party or by which such Obligor or any of its properties is bound, creating or relating to (i) any Bank Product Obligations or (ii) any other Debt (other than the Obligations) in excess of $2,500,000, if the payment or maturity of such Debt may be accelerated in consequence of such default or event of default or if demand for payment of such Debt may be made;

(i) Any Guarantor shall revoke or attempt to revoke the Guaranty signed by such Guarantor, shall repudiate or dispute such Guarantor's liability thereunder, shall be in default under the terms thereof, or shall fail to confirm in writing, promptly after receipt of Administrative Agent's written request therefor, such Guarantor's ongoing liability under the Guaranty in accordance with the terms thereof;

(j) A Reportable Event (consisting of any of the events set forth in Section 4043(b) of ERISA for which the notice provisions have not been waived by applicable guidance) shall occur which Agents, in their Permitted Discretion, shall determine constitutes grounds for the termination by the Pension Benefit Guaranty Corporation of any Plan (under Section 4042 of ERISA) or the appointment by the appropriate United States district court of a trustee for any Plan, or if any Plan shall be terminated by the Pension Benefit Guaranty Corporation (under Section 4042 of ERISA) or any such trustee shall be requested or appointed, or if Borrower or any other Obligor is in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan resulting from Borrower's, or such other Obligor's complete or partial withdrawal from such Multiemployer Plan;

(k) [Reserved];

(l) Any Obligor shall challenge in any action, suit or other proceeding the validity or enforceability of any of the Loan Documents, the legality or enforceability of any of the Obligations or the perfection or priority of any Lien granted to Administrative Agent, or any of the Loan Documents ceases to be in full force or effect for any reason other than a full or partial waiver or release by the Lender Group in accordance with the terms thereof;

(m) A Change of Control shall occur; or

(n) There shall occur any event set forth in Item 17 of the Terms Schedule.

10.2 Remedies. Upon and after the occurrence of an Event of Default, Agents may, at their election (unless otherwise instructed by the Majority Lenders) or shall at the direction of the Majority Lenders, without notice of such election and without notice to or demand upon any Obligor, do any one or more of the following:

(a) Declare all Obligations, whether arising pursuant to this Agreement or otherwise, to be due, whereupon the same shall become without further notice or demand (all of which notice and demand Borrower expressly waives) forthwith due and payable and Borrower shall forthwith pay to Administrative Agent, for the account of Administrative Agent and Lenders in accordance with their respective Aggregate Commitment Ratios, the entire principal of and accrued and unpaid interest on the Loans and other Obligations plus reasonable attorneys' fees and its court costs if such principal and interest are collected by or through an attorney-at-law;

(b) Cease advancing money or otherwise extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Lender Group, or any of them;

(c) Terminate the Commitments, but without affecting the Lender Group's rights and security interest in the Collateral and without affecting the Obligations owing by Borrower to the Lender Group;

(d) Notify Account Debtors of Borrower that the Accounts have been assigned to Administrative Agent and that Administrative Agent has a security interest therein, collect them directly, and charge the collection costs and expenses to the Loan Register;

(e) Take immediate possession of any of the Collateral, wherever located; require Borrower to assemble the Collateral, at Borrower's expense, and make it available to Administrative Agent at a place designated by Administrative Agent which is reasonably convenient to both parties; and enter any premises where any of the Collateral should be located and keep and store the Collateral on said premises until sold (and if said premises are the property of Borrower, then Borrower agrees not to charge Administrative Agent for storage thereof);

(f) Sell or otherwise dispose of all or any part of the Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sales, with such notice as may be required by applicable law, in lots or in bulk, for cash or on credit, all as Agents in their Permitted Discretion may deem advisable; and Borrower agrees to any requirement of notice to Borrower or any other Obligor of any proposed public or private sale or other disposition of Collateral by Administrative Agent shall be deemed reasonable notice thereof if given at least 10 days prior thereto, and such sale may be at such locations as Administrative Agent may designate in said notice;

(g) Petition for and obtain the appointment of a receiver, without notice of any kind whatsoever, to take possession of any or all of the Collateral and business of Borrower and to exercise such rights and powers as the court appointing such receiver shall confer upon such receiver, Borrower hereby waiving any requirement under applicable law that Administrative Agent post a bond in connection with the appointment of any such receiver;

(h) Set off any Deposit Account or Commodity Account maintained by Borrower over which Administrative Agent has control and apply the balances therein to the payment of the Obligations;

(i) Conduct all appraisals, field examinations and other assessments of the Collateral as deemed necessary by Agents; engage or require Borrower to engage one or more financial consultants or workout professionals as approved by Agents in advance; take such additional collateral as security for the Obligations as required by Agents and do all such other acts and things deemed necessary by Agents to preserve its collateral security position hereunder; and

(j) Exercise all other rights and remedies available to Administrative Agent under any of the Loan Documents or applicable law.

Administrative Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (exercisable without payment of royalty or other compensation to any Obligor or any other Person) any or all of Borrower's Intellectual Property and all Borrower's computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, and packaging materials, and any property of a similar nature, in advertising for sale, marketing, selling and collecting and in completing the manufacturing of any Collateral, and Borrower's rights under all licenses and franchise agreements shall inure to Administrative Agent's benefit. The proceeds realized from any sale or other disposition of any Collateral may be applied, after allowing 2 Business Days for collection, first to any Lender Group Expenses and then to the remainder of the Obligations in such order of application as set forth in **Section 2.9**, with Borrower and each of the Obligors remaining liable for any deficiency.

10.3 Cumulative Rights; No Waiver. All covenants, conditions, warranties, guaranties, indemnities and other undertakings of Borrower in this Agreement or any of the other Loan Documents shall be deemed cumulative, and the Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the UCC or other applicable law. No exercise by the Lender Group, or any of them of one right or remedy shall be deemed an election, and no waiver by Lender Group, or any of them, of any Default or Event of Default on one occasion shall be deemed to be a continuing waiver or applicable to any other occasion. No waiver or course of dealing shall be established by the failure or delay of Lender Group, or any of them, to require strict performance by Borrower with any term of the Loan Documents, or to exercise any rights or remedies with respect to the Collateral or otherwise.

SECTION 11. **ADMINISTRATIVE AGENT**

11.1 Appointment and Authorization. Each member of the Lender Group hereby irrevocably appoints and authorizes, and hereby agrees that it will require any transferee of any of its interest in this Agreement and the other Loan Documents and its Loans, its portion of the Commitments irrevocably to appoint and authorize, Administrative Agent to take such actions as its agent on its behalf and to exercise such powers hereunder and under the other Loan Documents as are delegated by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Without limiting the foregoing, each member of the Lender Group hereby authorizes Administrative Agent to execute and deliver each Loan Document to which Administrative Agent is, or is required to be, a party. Neither Administrative Agent nor any of its directors, officers, employees, or agents shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith, except for its own gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction.

11.2 Interest Holders. Administrative Agent may treat each Lender, or the Person designated in the last notice filed with Administrative Agent under this Section 11.2, as the holder of all of the interests of such Lender in this Agreement and the other Loan Documents, its Loans and its portion of the Commitments until written notice of transfer, signed by such Lender (or the Person designated in the last notice filed with Administrative Agent) and by the Person designated in such written notice of transfer, in form and substance satisfactory to Administrative Agent, shall have been filed with Administrative Agent.

11.3 Consultation with Counsel. Administrative Agent may consult with legal counsel selected by it and shall not be liable to any Lender for any action taken or suffered by it in good faith in reliance on the advice of such counsel.

11.4 Documents. Administrative Agent shall not be under any duty to examine, inquire into, or pass upon the validity, effectiveness, or genuineness of this Agreement, any other Loan Document, or any instrument, document, or communication furnished pursuant hereto or in connection herewith, and Administrative Agent shall be entitled to assume that they are valid, effective, and genuine, have been signed or sent by the proper parties, and are what they purport to be.

11.5 Administrative Agent and Affiliates. With respect to the Commitments and Loans, Administrative Agent shall have the same rights and powers hereunder as any other Lender, and Administrative Agent and its Affiliates, as the case may be, may accept deposits from, lend money to, and generally engage in any kind of business with Borrower or any Affiliates of, or Persons doing business with, Borrower, as if it were not Administrative Agent or affiliated with Administrative Agent and without any obligation to account therefor. The Lenders acknowledge that Administrative Agent and its Affiliates have other lending and investment relationships with Borrower and their Affiliates and in the future may enter into additional such relationships.

11.6 Responsibility of Administrative Agent. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Administrative Agent have or be deemed to have any fiduciary relationship with any other member of the Lender Group, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Administrative Agent shall be entitled to assume that no Default exists unless it has actual knowledge, or has been notified by Borrower, of such fact, or has been notified by a Lender that such Lender considers that a Default exists, and such Lender shall specify in detail the nature thereof in writing. Administrative Agent shall provide each Lender with copies of such documents received from Borrower as such Lender may reasonably request.

11.7 Action by Administrative Agent.

(a) Administrative Agent shall be entitled to use its Permitted Discretion with respect to exercising or refraining from exercising any rights which may be vested in it by, and with respect to taking or refraining from taking any action or actions which it may be able to take under or in respect of, this Agreement, unless Administrative Agent shall have been instructed by the Majority Lenders to exercise or refrain from exercising such rights or to take or refrain from taking such action. Administrative Agent shall incur no liability under or in respect of this Agreement with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances.

(b) Administrative Agent shall not be liable to Lenders, or any of them, in acting or refraining from acting under this Agreement or any other Loan Document in accordance with the instructions of the Majority Lenders (or all Lenders if expressly required by **Section 12.8**), and any action taken or failure to act pursuant to such instructions shall be binding on all Lenders.

11.8 Notice of Default. In the event that any member of the Lender Group shall acquire actual knowledge, or shall have been notified in writing, of any Default, such member of the Lender Group shall promptly notify the other members of the Lender Group, and Administrative Agent shall take such action and assert such rights under this Agreement as the Majority Lenders shall request in writing, and Administrative Agent shall not be subject to any liability by reason of its acting pursuant to any such request. If the Majority Lenders shall fail to request Administrative Agent to take action or to assert rights under this Agreement in respect of any Default after their receipt of the notice of any Default from a member of the Lender Group, or shall request inconsistent action with respect to such Default, Administrative Agent may (with the prior written consent of the Collateral Agent), but shall not be required to, take such action and assert such rights (other than rights under **Section 10**) as it deems in its Permitted Discretion to be advisable for the protection of the Lender Group, except that, if the Majority Lenders have instructed Administrative Agent not to take such action or assert such right, in no event shall Administrative Agent act contrary to such instructions.

11.9 Responsibility Disclaimed. Administrative Agent shall not be under any liability or responsibility whatsoever as Administrative Agent:

(a) To Borrower or any other Person or entity as a consequence of any failure or delay in performance by or any breach by, any member of the Lender Group of any of its obligations under this Agreement;

(b) To any member of the Lender Group, or any of them, as a consequence of any failure or delay in performance by, or any breach by, Borrower or any other obligor of any of its obligations under this Agreement or any other Loan Document; or

(c) To any member of the Lender Group, or any of them, for any statements, representations, or warranties in this Agreement, or any other document contemplated by this Agreement or any information provided pursuant to this Agreement, any other Loan Document, or any other document contemplated by this Agreement, or for the validity, effectiveness, enforceability, or sufficiency of this Agreement, any other Loan Document, or any other document contemplated by this Agreement.

11.10 Indemnification. The Lenders agree to indemnify (to the extent not reimbursed by the Borrowers) and hold harmless Administrative Agent, Collateral Agent and each of their respective Affiliates, employees, representatives, officers and directors (each an "Agent Indemnified Person") pro rata in accordance with their Aggregate Commitment Ratios from and against any and all claims, liabilities, investigations, losses, damages, actions, demands, penalties, judgments, suits, investigations, costs, expenses (including fees and expenses of experts, agents, consultants and counsel) and disbursements, in each case, of any kind or nature (whether or not an Agent Indemnified Person is a party to any such action, suit or investigation) whatsoever which may be imposed on, incurred by, or asserted against an Agent Indemnified Person resulting from any breach or alleged breach by Borrower, or any of them, of any representation or warranty made hereunder, or otherwise in any way relating to or arising out of the Commitments, the Loans, the Letters of Credit, this Agreement, the other Loan Documents or any other document contemplated by this Agreement or any action taken or omitted by Administrative Agent or Collateral Agent under this Agreement, any other Loan Document, or any other document contemplated by this Agreement (other than agreements relating to Bank Products entered into between Borrower and any Lender), the making, administration or enforcement of the Loan Documents and the Loans or any transaction contemplated hereby or any related matters unless, with respect to any of the above, such Agent Indemnified Person is determined by a final non-appealable judgment of a court of competent jurisdiction to have acted or failed to act with gross negligence or willful misconduct. This **Section 11.10** is for the benefit of each Agent Indemnified Person and shall not in any way limit the obligations of Borrower under **Section 12.4**. The provisions of this **Section 11.10** shall survive the termination of this Agreement.

11.11 Credit Decision. Each member of the Lender Group represents and warrants to each other member of the Lender Group that:

(a) In making its decision to enter into this Agreement and to make its Loans it has independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of Borrower and that it has made an independent credit judgment, and that it has not relied upon information provided by Administrative Agent or any of its Affiliates;

(b) So long as any portion of the Obligations remains outstanding, it will continue to make its own independent evaluation of the financial condition and affairs of Borrower; and

(c) Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Administrative Agent, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower which may come into the possession of any of Administrative Agent or any Affiliates of Administrative Agent.

11.12 Successor Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, Administrative Agent may resign at any time by giving written notice thereof to Lenders and Borrower. Upon any such resignation, the Majority Lenders shall have the right to appoint a successor Administrative Agent (with the consent of Borrower if no Event of Default then exists). If no successor Administrative Agent shall have been so appointed by the Majority Lenders, and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of Lenders, appoint a successor Administrative Agent which shall be any Lender or a Person organized under the laws of the US, a State or any political subdivision thereof which has combined capital and reserves in excess of $150,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties, and obligations of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this **Section 11** shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

11.13 Administrative Agent May File Proofs of Claim. Administrative Agent may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent, its agents, financial advisors and counsel) and Lenders allowed in any judicial proceedings relative to Borrower, or its creditors or property, and shall be entitled and empowered to collect, receive and distribute any monies, securities or other property payable or deliverable on any such claims and any custodian in any such judicial proceedings is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due to Administrative Agent for the reasonable compensation, expenses, disbursements and advances of Administrative Agent, its agents, financial advisors and counsel, and any other Lender Group Expenses. Nothing contained in this Agreement or the Loan Documents shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting this Agreement, the Notes, the Letters of Credit or the rights of any holder thereof, or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

11.14 Collateral. Administrative Agent is hereby authorized to hold all Collateral pledged pursuant to any Loan Document and to act on behalf of the Lender Group, in its own capacity and through other agents appointed by it, under the Security Documents; provided, that Administrative Agent shall not agree to the release of any Collateral except in accordance with the terms of this Agreement. The Lender Group acknowledges that the Loans, any Overadvances, all Obligations with respect to Bank Products and all interest, fees and expenses hereunder constitute one Debt for Money Borrowed, secured by all of the Collateral. Administrative Agent hereby appoints each Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting Administrative Agent's Liens in assets which, in accordance with the UCC, can be perfected by possession. Should any Lender obtain possession of any such Collateral, such Lender shall, promptly upon Administrative Agent's request therefore, deliver such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions.

11.15 Release of Collateral.

(a) Each Lender hereby directs, in accordance with the terms of this Agreement, Administrative Agent to release any Lien held by Administrative Agent for the benefit of the Lender Group:

(i) against all of the Collateral, upon final and indefeasible payment in full of the Obligations and termination of the Commitments; or

(ii) against any part of the Collateral sold, transferred or disposed of by Borrower if such sale, transfer or other disposition is permitted by **Section 9.2** or is otherwise consented to by the requisite Lenders for such release as set forth in **Section 12.8**, as certified to Administrative Agent by Borrower in a certificate of a Senior Officer of Borrower.

(b) Each Lender hereby directs Administrative Agent to execute and deliver or file or authorize the filing of such termination and partial release statements and do such other things as are necessary to release Liens to be released pursuant to this **Section 11.15** promptly upon the effectiveness of any such release. Upon request by Administrative Agent at any time, Lenders will confirm in writing Administrative Agent's authority to release particular types or items of Collateral pursuant to this **Section 11.15**.

SECTION 12. **GENERAL PROVISIONS**

12.1 Notices and Communications.

(a) Except as otherwise provided in **Section 2.1**, all notices, requests and other communications to or upon a party hereto shall be in writing (including facsimile transmission or similar writing) and shall be given, (i) if to Administrative Agent or Borrower, to such party at the address or facsimile number in Item 18 of the Terms Schedule; or (ii) if to Lenders, to the addresses set forth on the signature pages of this Agreement; or (iii) at such other address or facsimile number as such party may hereafter specify for the purpose by notice to Administrative Agent, Lenders or Borrower in accordance with the provisions of this Section.

(b) Except as otherwise provided in this Section, each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified herein for the noticed party and confirmation of receipt is received, (ii) if given by mail, 3 Business Days after such communication is deposited in the U.S. Mail, with first-class postage pre-paid, addressed to the noticed party at the address specified herein, or (iii) if given by personal delivery, when duly delivered with receipt acknowledged in writing by the noticed party. In no event shall a voicemail message be effective as a notice, communication or confirmation under any of the Loan Documents. Notwithstanding the foregoing, no notice to or upon Administrative Agent or Lender Group, as applicable, pursuant to **Sections 2.1**, **3.2** or **8.1** shall be effective until after actually received by the individual or individuals to whose attention at Administrative Agent or Lender Group such notice is required to be sent. Any written notice, request or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice, request or demand is actually received by the individual to whose attention at the noticed party such notice, request or demand is required to be sent.

(c) Electronic mail and internet websites may be used only to distribute routine communications, such as financial statements, Borrowing Base Certificates and other information required by **Section 8.6**, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose as effective notice under this Agreement or any of the other Loan Documents.

12.2 Performance of Borrower's Obligations; Sharing of Information; Publicity.

(a) If Borrower shall fail to discharge any covenant, duty or obligation hereunder or under any of the other Loan Documents, Administrative Agent may, in its Permitted Discretion at any time or from time to time, for Borrower's account and at Borrower's expense, pay any amount or do any act required of Borrower hereunder or under any of the other Loan Documents or otherwise lawfully requested by Administrative Agent to (i) enforce any of the Loan Documents or collect any of the Obligations, (ii) preserve, protect, insure or maintain or realize upon any of the Collateral, or (iii) preserve, defend, protect or maintain the validity or priority of Administrative Agent's Liens in any of the Collateral, including the payment of any judgment against Borrower, any insurance premium, any Bank Product Obligations, any warehouse charge, any finishing or processing charge, any landlord claim, any other Lien upon or with respect to any of the Collateral (whether or not a Permitted Lien). Subject to the terms and conditions of **Section 2.1(f)**, all payments that Administrative Agent may make under this Section and all out-of-pocket costs and expenses (including Lender Group Expenses) that Administrative Agent pays or incurs in connection with any action taken by it hereunder shall be an Agent Advance. Any payment made or other action taken by Administrative Agent under this Section shall be without prejudice to any right to assert, and without waiver of, an Event of Default hereunder and without prejudice to Administrative Agent's right to proceed thereafter as provided herein or in any of the other Loan Documents.

(b) Borrower hereby authorizes Lenders to use the names "Aventine Renewable Energy, Inc.", 'Aventine Renewable Energy Holdings, Inc.", "Aventine Renewable Energy – Aurora West, LLC" and "Nebraska Energy, L.L.C.", in each case together with variants of such name and related logotypes and the amount of the transaction, in advertising that promotes Lenders and the business transaction between Borrower and Lenders described herein through the use of so-called "tombstones" and similar publicity, and neither Lenders nor any of their respective subsidiaries, Affiliates, officers, employees and advertising agents shall have any liability to Borrower arising out of or related to the reasonable exercise of the rights hereby granted to Lenders.

12.3 Effectiveness, Successors, Assigns, Participations.

(a) This Agreement shall be binding and deemed effective when executed by Borrower and accepted by the Lender Group in the State of New York, and when so accepted, shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided that Borrower may not assign this Agreement or any rights hereunder without each Lender's prior written consent and any prohibited assignment shall be absolutely void. No consent to an assignment by Lenders shall release Borrower from its Obligations to Lenders.

(b) Each Lender reserves the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, such Lender's rights and benefits hereunder. Any Lender may assign this Agreement and its rights and duties hereunder; provided that (i) any such assignment shall be to an Eligible Assignee; (ii) except in the case of an assignment of the entire remaining amount of the assigning Lender's portion of the Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the portion of the Commitment of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Administrative Agent) shall not be less than $2,000,000, unless Agents otherwise consent (such consent not to be unreasonably withheld); and (iii) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (unless such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund), and the Eligible Assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire. Subject to acceptance and recording thereof by Administrative Agent pursuant to **Section 12.3(c)**, from and after the effective date specified in each Assignment and Acceptance, the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of any obligations that survive the termination of this Agreement including, without limitation, **Sections 2.11, 2.12** and **12.4**). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this **Section 12.3**.

(c) Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of Lenders, and the portion of the Commitments of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Borrower, Administrative Agent and Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may, without the consent of, or notice to, Borrower, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its portion of the Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower and the Lender Group shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in **Section 12.8(a)(i)** that affects such Participant. Subject to paragraph (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of **Sections 2.12 and 12.4** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 12.3(b)**.

(e) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation (i) any pledge or assignment to secure obligations to a Federal Reserve Bank and (ii) in the case of any Lender that is a Fund, any pledge or assignment of all or any portion of such Lender's rights under this Agreement to any holders of obligations owed, or securities issued, by such Lender as security for such obligations or securities, or to any trustee for, or any other representative of, such holders, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

12.4 General Indemnity. Borrower hereby agrees to indemnify and defend the Indemnitees against and to hold the Indemnitees harmless from and against any Indemnified Claim that may be instituted or asserted against or incurred by any of the Indemnitees and that either (i) arises out of or relates to this Agreement or any of the other Loan Documents (including any transactions entered into pursuant to any of the Loan Documents, Administrative Agent's Liens upon the Collateral, or the performance by any member of the Lender Group of its respective duties or the exercise of any of Lender Group's rights or remedies under this Agreement or any of the other Loan Documents), or (ii) results from Borrower's failure to observe, perform or discharge any of Borrower's covenants or duties hereunder. Without limiting the generality of the foregoing, this indemnity shall extend to any Indemnified Claims instituted or asserted against or incurred by any of the Indemnitees by any Person under any Environmental Laws or similar laws by reason of Borrower's or any other Person's failure to comply with laws applicable to the management, manufacture, processing, distribution, use, treatment, storage, disposal, Release, transport, or handling of any Hazardous Materials. Additionally, if any Taxes (excluding Taxes imposed upon or measured solely by the net income of any member of the Lender Group, but including any intangibles tax, stamp tax, recording tax or franchise tax) shall be payable by any member of the Lender Group or any Obligor on account of the execution or delivery of this Agreement, or the execution, delivery, issuance or recording of any of the other Loan Documents or any financing statement or other perfection document relating thereto, or the creation or repayment of any of the Obligations hereunder, by reason of any applicable law now or hereafter in effect, Borrower shall pay (or shall promptly reimburse such member of the Lender Group for the payment of) all such Taxes, including any interest and penalties thereon, and will indemnify and hold Indemnitees harmless from and against all liability in connection therewith. The foregoing indemnities shall not apply to Indemnified Claims incurred by any Indemnitee as a direct and proximate result of its own gross negligence or willful misconduct.

12.5 Section Headings; Interpretation. Section headings and section numbers have been set forth herein for convenience only. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any member of the Lender Group or Borrower, whether under any rule of construction or otherwise. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto.

12.6 Indulgences Not Waivers. No failure or delay at any time or times by the Lender Group, or any of them, or the Majority Lenders to require strict performance by Borrower of any provision of this Agreement or any of the other Loan Documents shall not waive, affect or otherwise diminish any right of the Lender Group, or any of them, or the Majority Lenders thereafter to demand strict compliance and to performance with such provision.

12.7 Severability; Survival. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision. Notwithstanding anything to the contrary contained in this Agreement or any of the other Loan Documents, the obligations of Obligors with respect to each indemnity given by it in any of the Loan Documents in favor of each Indemnitee shall survive the termination of the Commitments and the Full Payment of the Obligations.

12.8 Amendments and Waivers.

(a) This Agreement cannot be changed or terminated orally but only by an instrument in writing signed by the Majority Lenders, or in the case of Loan Documents executed by Administrative Agent (and not the other members of the Lender Group), signed by Administrative Agent and approved by the Majority Lenders and, in the case of an amendment, also by Borrower, except that: (i) the consent of each of Lenders (or in the case of clause (C) and clause (E), each of the affected Lenders) and, in the case of an amendment, Borrower, shall be required for (A) any sale or release of, or the subordination of Administrative Agent's security interest in, any material Collateral except in conjunction with sales or transfers of Collateral permitted hereunder, (B) except in conjunction with transactions permitted hereunder, any release of any guarantor of the Obligations, (C) any extensions, postponements or delays of the maturity or the scheduled date of payment of interest or principal or fees, or any reduction of principal (without a corresponding payment with respect thereto), or reduction in the rate of interest or fees due to Lenders hereunder or under any other Loan Documents (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in the rate of interest for purposes on this **Section 12.8**), (D) any amendment of this **Section 12.8** or of the definition of "Majority Lenders" or any other provision of the Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder; (E) any amendment increasing the Commitments (it being understood and agreed that a waiver of any Default or Event of Default or modification of any of the defined terms contained herein (other than those defined terms specifically addressed in this **Section 12.8**) shall not constitute a change in the terms of any portion of the Commitments held by any Lender); (F) any amendment to the definition of "Availability" and the defined terms used therein; and (G) any amendment to **Section 2.9**; (ii) the consent of Administrative Agent, the Majority Lenders and Borrower shall be required for any amendment to **Section 2.1(f)** (with respect to which the consent of the Collateral Agent shall also be required) or **Section 11**; (iii) the consent of the LC Issuer, the Majority Lenders and Borrower shall be required for any amendment to the Letter of Credit Rider; (iv) the consent of the Swing Bank, the Majority Lenders and the Borrower shall be required for any amendment to **Section 2.1(g)**; and (v) the consent of Administrative Agent only shall be required to amend Item 20 of the Terms Schedule to reflect assignments of any portion of the Commitments and Loans in accordance with this Agreement. Any amendment, modification, waiver, consent, termination or release of any agreements relating to Bank Products may be effected by the parties thereto without the consent of the Lender Group.

(b) Each Lender grants to Administrative Agent the right to purchase all (but not less than all) of such Lender's portion of the Commitments, the Loans and Letter of Credit Support Obligations owing to it and any Revolver Notes held by it and all of its rights and obligations hereunder and under the other Loan Documents at a price equal to the outstanding principal amount of the Loans payable to such Lender plus any accrued but unpaid interest on such Loans and accrued but unpaid commitment fees and letter of credit fees owing to such Lender plus the amount necessary to cash collateralize any Letters of Credit issued by such Lender, which right may be exercised by Administrative Agent if such Lender refuses to execute any amendment, waiver or consent which requires the written consent of all of Lenders and to which the Majority Lenders, Administrative Agent and Borrower have agreed. Each Lender agrees that if Administrative Agent exercises its option hereunder, it shall promptly execute and deliver an Assignment and Acceptance and other agreements and documentation necessary to effectuate such assignment. Administrative Agent may assign its purchase rights hereunder to any assignee if such assignment complies with the requirements of **Section 12.3(b)**.

(c) If any fees are paid to Lenders as consideration for amendments, waivers or consents with respect to this Agreement, at Administrative Agent's election, such fees may be paid only to those Lenders that agree to such amendments, waivers or consents within the time specified for submission thereof.

12.9 Replacement of Lender. In the event that a Replacement Event occurs and is continuing with respect to any Lender, Borrower may designate another financial institution (such financial institution being herein called a "Replacement Lender") acceptable to Agents, and which is not Borrower or an Affiliate of Borrower, to assume such Lender's portion of the Commitments hereunder and to purchase the Loans and participations of such Lender and such Lender's rights hereunder, without recourse to or representation or warranty by, or expense to, such Lender for a purchase price equal to the outstanding principal amount of the Loans payable to such Lender plus any accrued but unpaid interest on such Loans and accrued but unpaid commitment fees and letter of credit fees owing to such Lender, and upon such assumption, purchase and substitution, and subject to the execution and delivery to Administrative Agent by the Replacement Lender of documentation satisfactory to Agents (pursuant to which such Replacement Lender shall assume the obligations of such original Lender under this Agreement), the Replacement Lender shall succeed to the rights and obligations of such Lender hereunder and such Lender shall no longer be a party hereto or have any rights hereunder provided that the obligations of the Borrowers to indemnify such Lender with respect to any event occurring or obligations arising before such replacement shall survive such replacement. "Replacement Event" shall mean, with respect to any Lender, (a) the commencement of or the taking of possession by, a receiver, custodian, conservator, trustee or liquidator of such Lender, or the declaration by the appropriate regulatory authority that such Lender is insolvent or such Lender shall become a Defaulting Lender or (b) the making of any claim by any Lender under Sections 2.11 or 2.12, unless the changing of the lending office by such Lender would obviate the need of such Lender to make future claims under such Sections.

12.10 Entire Agreement. This Agreement and the other Loan Documents represent the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, negotiations and inducements regarding the same subject matter.

12.11 Counterparts; Facsimile Signatures. This Agreement and any amendments hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Counterparts of each of the Loan Documents may be delivered by facsimile or electronic mail and the effectiveness of each such Loan Document and signatures thereon shall, subject to applicable law, have the same force and effect as manually signed originals and shall be binding on all parties thereto.

12.12 Governing Law. This Agreement shall be deemed to have been made in the State of New York, and shall be governed by and construed in accordance with the internal laws (without regard to conflict of law provisions) of the State of New York.

12.13 Consent to Forum. Each party hereto hereby consents to the non-exclusive jurisdiction of any United States federal court sitting in or with direct or indirect jurisdiction over the Northern District of Georgia, the Northern District of Alabama, or the Southern District of New York or any state or superior court sitting in Cobb County, Georgia, Jefferson County, Alabama, or the City of New York, Borough of Manhattan in any action, suit or other proceeding arising out of or relating to this Agreement or any of the other Loan Documents and Borrower irrevocably agrees that all claims and demands in respect of any such action, suit or proceeding may be heard and determined in any such court and irrevocably waives any objection it may now or hereafter have as to the venue of any such action, suit or proceeding brought in any such court or that such court is an inconvenient forum. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing herein shall limit the right of any member of the Lender Group to bring proceedings against Borrower in the courts of any other jurisdiction. Any judicial proceeding commenced by Borrower against any member of the Lender Group or any holder of any of the Obligations, or any Affiliate of any member of the Lender Group or any holder of any Obligations, involving, directly or indirectly, any matter in any way arising out of, related to or connected with any Loan Document shall be brought only in a United States federal court sitting in or with direct jurisdiction over the Northern District of Georgia, the Northern District of Alabama or the Southern District of New York or any state or superior court sitting in Cobb County, Georgia, Jefferson County, Alabama or the City of New York, Borough of Manhattan. Nothing in this Agreement shall be deemed or operate to affect the right of any member of the Lender Group to serve legal process in any other manner permitted by law or to preclude the enforcement by any member of the Lender Group of any judgment or order obtained in such forum or the taking of any action under this Agreement to enforce same in any other appropriate forum or jurisdiction.

12.14 Waiver of Certain Rights. To the fullest extent permitted by applicable law, Borrower hereby knowingly, intentionally and intelligently waives (with the benefit of advice of legal counsel of its own choosing): (i) the right to trial by jury (which each member of the Lender Group hereby also waives) in any action, suit, proceeding or counterclaim of any kind arising out of, related to or based in any way upon any of the Loan Documents, the Obligations or the Collateral; (ii) presentment, protest, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Administrative Agent on which Borrower may in any way be liable and hereby ratifies and confirms whatever Administrative Agent may do in this regard; (iii) notice prior to taking possession or control of any of the Collateral and the requirement to deposit or post any bond or other security which might otherwise be required by any court or applicable law prior to allowing Administrative Agent to exercise any of Administrative Agent's self-help or judicial remedies to obtain possession of any of the Collateral; (iv) the benefit of all valuation, appraisement and exemption law; (v) any claim against any member of the Lender Group on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of any of the Loan Documents, any transaction thereunder, the enforcement of any remedies by any member of the Lender Group or the use of any proceeds of any Loans; (vi) notice of acceptance of this Agreement by any member of the Lender Group; and (vii) the right to assert any confidential relationship that it may have under applicable law with any accounting firm and/or service bureau in connection with any information requested by any member of the Lender Group pursuant to or in accordance with this Agreement (and Borrower agrees that the Lender Group may contact directly any such accounting firm and/or service bureau in order to obtain any such information).

12.15 USA Patriot Act Notice. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. For purposes of this section, account shall be understood to include loan accounts.

12.16 Credit Inquiries. Borrower hereby authorizes and permits each member of the Lender Group at its discretion and without any obligation to do so, to respond to credit inquiries from third parties concerning Borrower or any of its Subsidiaries.

12.17 Additional Provisions. Time is of the essence of this Agreement and the other Loan Documents. No provision of this Agreement or any of the other Loan Documents shall be construed against or interpreted to the disadvantage of any party hereto by any governmental authority by reason of such party having or being deemed to have structured, drafted or dictated such provision.

12.18 Intercreditor Agreement. (a) The Administrative Agent, for itself and on behalf of each ABL Secured Party (as defined in the Intercreditor Agreement), (i) acknowledges that it has received a copy of the Intercreditor Agreement, (ii) consents to the subordination of Liens on the Term Loan Primary Collateral as defined, and provided for, in the Intercreditor Agreement, (iii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (iv) solely with respect to each ABL Secured Party, authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement as agent for and representative of such ABL Secured Party. The foregoing provisions are intended as an inducement to the Term Loan Secured Parties (as defined in the Intercreditor Agreement) under the Term Loan Documents to extend credit to the Loan Parties and such Term Loan Secured Parties are intended third party beneficiaries of such provisions.

(b) Notwithstanding anything herein to the contrary, the lien and security interest granted to the Administrative Agent, for the ratable benefit of the ABL Secured Parties, pursuant to this Agreement and the exercise of any right or remedy by the Administrative Agent and the other ABL Secured Parties hereunder with respect to the Term Loan Primary Collateral, are subject to the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement with respect to the Term Loan Primary Collateral, the provisions of the Intercreditor Agreement shall control.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, to be effective on the date first set forth above.

BORROWER:

AVENTINE RENEWABLE ENERGY, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

ADMINISTRATIVE AGENT:

ALOSTAR BANK OF COMMERCE, as Administrative Agent and a Lender

By: /s/ Eddie Carpenter
Name: Eddie Carpenter
Title: Director

LENDER:

MIDCAP FINANCIAL, LLC

By: /s/ Stephen Redlich
Name: Stephen Redlich
Title: Managing Director

DISCLOSURE SCHEDULE

TO BE PROVIDED

DISCLOSURE SCHEDULE

THIS DISCLOSURE SCHEDULE ("Disclosure Schedule") dated September 17, 2014, is made a part of and incorporated into that certain Loan and Security Agreement AVENTINE RENEWABLE ENERGY, INC., a Delaware corporation ("Borrower Agent"), AVENTINE RENEWABLE ENERGY HOLDINGS, INC., a Delaware corporation ("Parent"), AVENTINE RENEWABLE ENERGY — AURORA WEST, LLC, a Delaware limited liability company ("Aurora") and NEBRASKA ENERGY, L.L.C., a Kansas limited liability company ("Nebraska" and, together with a Borrower Agent, Parent and Aurora, collectively, the "Borrowers"), the financial institutions party thereto from time to time, as lenders (the "Lenders"), Midcap Financial, LLC, as collateral agent (the "Collateral Agent"), and ALOSTAR BANK OF COMMERCE, as administrative agent (the "Administrative Agent"), dated as of the date hereof (together with all schedules, riders and exhibits annexed thereto and all amendments, restatements, supplements or other modifications with respect thereto, the "Loan Agreement"). Capitalized terms used herein, unless otherwise defined, shall have the meanings ascribed to them in the Loan Agreement.

1. **Fiscal Year of Borrower:** The Fiscal Year of Borrowers for accounting and tax purposes is as follows: January 1— December 31

2. **Permitted Liens:** Except as described below, there are no security interests in or other Liens upon any assets of any Borrower or Guarantor that are not Permitted Liens (if none, so state). None

3. **Borrower Locations:** All Collateral, other than Inventory in transit, is kept by each Borrower at one or more of the business locations of such Borrower set forth below:

Aventine Renewable Energy, Inc. — 1300 South 2nd Street, Pekin, IL 61554
Nebraska Energy, L.L.C. — 1205 0 Road, Aurora, NE 68818
Aventine Renewable Energy — Aurora West, LLC — 2103 Harvest Drive, Aurora, NE 68818
Kinder Morgan Liquid Terminals, L.L.C. — 8500 West 68th Street, Argo, IL 60501
Parke Warehouse, 1800 East Garfield Avenue, Decatur, IL 62525

4. **Description of Property Insurance of Borrower:** Borrowers have the following policies of insurance covering the Collateral.

Insurance Company	Policy Number	Expiry Date	Property Covered
Liberty International Underwriters	3C 366943 008	04/30/2015	Real and personal property (50%)
Lloyds of London — GCUBE	PRPNA1300896	04/30/2015	Real and personal property (50%)

5. Borrower and Guarantor Information:

(i) **Legal Names:** The exact name of Borrowers and Guarantors, as it appears in their respective certificate of incorporation or formation, the type of entity, the state of such Borrower's incorporation or organization and the states where such Borrower is qualified or licensed to transact businesses are described below:

Legal Name	Type of Entity	State of Incorporation/ Formation	Qualified to do Business
Aventine Renewable Energy, Inc.	Corporation	Delaware	Alabama, Arkansas, California, Colorado, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Virginia, Washington, Wisconsin
Aventine Renewable Energy Holdings, Inc.	Corporation	Delaware	N/A
Aventine Renewable Energy -- Aurora West, LLC	Limited liability company	Delaware	Nebraska
Nebraska Energy, L.L.C.	Limited liability company	Kansas	Nebraska

(ii) **Other Names:** Set forth below is each other name that any Borrower or Guarantor has had since its organization (including trade names) used by such Borrower, Guarantor or any of its divisions or other business units at any time during the past five years (if none, so state): None

(iii) **Corporate Changes:** Except as described below, no Borrower nor Guarantor has been a party to any merger, combination or consolidation or acquired all or substantially all of the Equity Interests or assets of any Person (if none, so state):

Aventine Renewable Energy Holdings, Inc. acquired all interests of Aventine Renewable Energy, LLC held in Nebraska Energy, L.L.C. pursuant to a merger agreement dated March 15, 2010 between Aventine Renewable Energy Holdings, Inc. and Aventine Renewable Energy, LLC.

Aventine Renewable Energy Holdings, Inc. purchased substantially all of the assets of New CIE Energy Opco, LLC d/b/a Riverland Biofuels on August 6, 2010. Aventine Renewable Energy Holdings, Inc. transferred the assets by quitclaim deed to Aventine Renewable Energy — Canton, LLC on December 22, 2010.

(iv) **FEIN:** The Federal Tax Identification Numbers of each Borrower, Guarantor and each Subsidiary are set forth below:

Name:	FEIN #
Aventine Renewable Energy, Inc.	75-3108352
Aventine Renewable Energy Holdings, Inc.	05-0569368
Aventine Renewable Energy — Aurora West, LLC	20-5359285
Nebraska Energy, L.L.C.	47-0771872

6. Litigation: Described below are any actions or proceedings that could reasonably be expected to have a Material Adverse Effect pending, or to the knowledge of any Borrower threatened, against any Obligor, and any pending, threatened or imminent, governmental investigations or claims, complaints, actions or prosecutions that could reasonably be expected to have a Material Adverse Effect involving any Borrower or any Obligor:

Aurora Cooperative Elevator Company's ("Coop") claim brought to the National Grain and Feed Association (NGFA Case No. 2651) and in the United States District Court, Nebraska (Case No. 4:12-cv-03200). Coop sued Aventine Renewable Energy, Inc. ("Aventine") claiming that Coop had acquired grain on Aventine's behalf, for which Aventine had not paid and of which Aventine had not accepted delivery. Aventine denied that the grain belonged to Aventine and counterclaimed for the amounts Coop owed to Aventine and had setoff against the disputed debt. The dispute was referred to the National Grain and Feed Association for arbitration, in which Aventine prevailed. Coop appealed the ruling. The federal lawsuit is currently inactive, but Aventine has sought to recast its counterclaims to include breach of contract damages.

Aurora Cooperative Elevator Company's claim in the United States District Court, Nebraska (Case No. 4:14-cv-03032). Coop sued for a declaratory judgment on Coop's rights as to certain disputed rail access matters. Coop then rendered its complaint moot. The matter is inactive pending a ruling on Aventine's motion to dismiss or alternatively consolidate this case with Case No. 4:12-cv-03200 described above.

Aurora Cooperative Elevator Company's claim in the United States District Court, Nebraska (Case No. 4:12-cv-0230). Coop claims that Aventine failed to complete construction and operate the Aventine Renewable Energy — Aurora West, LLC facility by a contractual deadline, as Coop has purported to exercise an option to repurchase the land on which the facility is located. Aventine countered that the contract only required Aventine to diligently pursue construction and that construction is complete, and that there was no contractual production requirement. The parties are engaged in protracted discovery and motion practice in this matter at this time.

Matthew Burton's ("Burton") claim in the Circuit Court for Tenth Judicial Circuit, State of Illinois (Case No. 2008-L-360). Burton was an employee of Wells Pet Food, which experiences a grain silo fire. Burton sued the suppliers and shippers of the grain product involved in the fire for his personal injuries. On the date of the fire, Aventine had supplied corn gluten meal to the location of the fire through an independent shipper (also named as a defendant). Burton's injuries occurred in early 2009 but Burton has not consistently moved along the case. Aventine has tendered this matter to our insurance provider for defense.

7. **Intellectual Property:** Set forth below is a list of all trademarks, trade names, copyrights, patents, patent rights and licenses owned by each Borrower and Guarantor as of the date hereof which are necessary to conduct its business as now operated:

(i) Patents:

Patent Description	Owner	Registration Number
"Heat Recovery from a Biomass Heat Source"	Aventine Renewable Energy, Inc.	7,566,383

(i) Trademarks:

Trademark Description	Owner	Registration Number
"Aventine Renewable Energy and design"	Aventine Renewable Energy Holdings, Inc.	3,857,196
"Aventine Renewable Energy, Inc. and design"	Aventine Renewable Energy, Inc.	2,954,378
"Aventine"	Aventine Renewable Energy, Inc.	2,928,195
"Aventine and design"	Aventine Renewable Energy, Inc.	2,937,415
"Providing clean, renewable energy for the world"	Aventine Renewable Energy, Inc.	3,428,803
Riverland Biofuels	Aventine Renewable Energy Holdings, Inc.	Unregistered
Riverland Biofuels logo	Aventine Renewable Energy Holdings, Inc.	Unregistered

(iii) Copyrights: None

8. Compliance with Laws:

Except as set forth below and except for any non-compliance that could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, each Borrower and their respective Subsidiaries has duly complied with, and its properties, business operations and leaseholds are in compliance in all material respects with, the provisions of all applicable laws, including all applicable Environmental Laws, OSHA, the Fair Labor Standards Act, Federal Power Act and Motor Vehicle Laws: N/A

9. Chief Executive Office and other Collateral Locations:

(i) The chief executive office of each Borrower and each Guarantor is at the following addresses:

Street Address	County	State	Zip Code
1300 South 2nd Street	Tazewell	Illinois	61554

(ii) The following are all of the current places of business of each Borrower and each Guarantor that are not identified above:

Street Address	County	State	Zip Code
1205 0 Road	Hamilton	Nebraska	68818
2103 Harvest Drive	Aurora	Nebraska	68818

(iii) The following are all of the locations not identified above where any Borrower or Guarantor maintains any books or records relating to any accounts receivable (if none, so state): None

(iv) The following are all of the locations not identified above where any Borrower or Guarantor maintains any property (including inventory, equipment, fixtures, documents of title, instruments, warehouse receipts or chattel paper) (if none, so state): None

(v) The following are the locations identified above where any Borrower or Guarantor is a tenant, together with the name and address of the landlord (if none, so state):

Address of Property	Name and address of Landlord
5400 LBJ Freeway, Suite 450, Dallas, Texas 75240	TIAA CREF, 730 Third Avenue, New York, New York 10017

(vi) The following are the locations identified above which are owned by any Borrower or Guarantor (if none, so state):

Street Address	County	State	Zip Code
1300 South 2"d Street	Tazewell	Illinois	61554
1205 0 Road	Hamilton	Nebraska	68818
2103 Harvest Drive	Hamilton	Nebraska	68818

(vii) The following are the names and addresses of each Person (other than Borrower or a Subsidiary) that has possession of any property of any Borrower or a Subsidiary:

Name	Street Address	County	State	Description
Kinder Morgan Liquid Terminals, L.L.C.	8500 West 68th Street	Cook	Illinois	Ethanol
Parke Warehouse	1800 East Garfield Avenue	Macon	Illinois	Yeast
United Sugars Corporation	524 Center Avenue	Clay	Minnesota	Sugar
	Box 600 Highway 75 South	Polk	Minnesota	
	1002 Business Highway 2	Polk	Minnesota	
American Crystal Sugar Co.	Route 2, Box 42	Traill	North Dakota	
Reile's Warehouse	3101 12th Avenue NW	Cass	North Dakota	
	4007 33rd Street North	Cass	North Dakota	
	4310 33rd Street North	Cass	North Dakota	
Murphy Warehouse	4700 Main Street	Anoka	Minnesota	
The Western Sugar Company	2100 East Overland Drive	Scotts Bluff	Nebraska	
	18317 Highway 144	Morgan	Colorado	
	11801 Sugar Mill Road	Weld	Colorado	
	P.O. Box 411, 3rd & Chestnut	Otero	Colorado	
	1973 Factory Street	Logan	Colorado	
	North 7th Street	Scotts Bluff	Nebraska	
	40284 22nd Avenue	Scotts Bluff	Nebraska	
	Route 1 Box 134	Morrill	Nebraska	

(viii) The following are all of the locations not identified above where any Borrower or any Subsidiary has conducted business or maintained property at any time during the past five (5) years (if none, so state): None

10. **Deposit Accounts and Commodity Accounts:** Set forth below is a description of each Deposit Account and Commodity Account of each Borrower and its Subsidiaries, together with relevant information regarding each Deposit Account and Commodity Account:

Account Number	Type of Account	Bank Name
BTB-950791	Commodities Account	Jefferies Bache, LLC
BTB-952751	Commodities Account	Jefferies Bache, LLC
4123507220	Deposit Account	Wells Fargo, N.A.
4123507238	Deposit Account	Wells Fargo, N.A.
4123507246	Deposit Account	Wells Fargo, N.A.
4123507253	Deposit Account	Wells Fargo, N.A.
4123507261	Deposit Account	Wells Fargo, N.A.
4124321696	Deposit Account	Wells Fargo, N.A.
4124321787	Deposit Account	Wells Fargo, N.A.
4124321829	Deposit Account	Wells Fargo, N.A.
4945660959	Deposit Account	Wells Fargo, N.A.

11. **Benefit Plans:** Set forth below is a description of all Plans sponsored or maintained by each Borrower or Guarantor (if none, so state):

Aventine Renewable Energy, Inc. maintains Aventine Renewable Energy, Inc. Hourly Pension Plan, a defined benefit pension plan, for the benefit of certain eligible unionized employees employed at the Pekin, Illinois facility.

12. **Collective Bargaining Agreements:** Except as described below and as of the date hereof, no Borrower nor Guarantor is a party to any collective bargaining or other agreement with any organization or representative of any of its employees (if none, so state):

Agreement between Aventine Renewable Energy, Inc. and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International Union Loan 7-662, expiring 10/31/2015, and covering its Pekin, Illinois production employees.

13. Capital Structure of Borrower:

(I) Set forth below is a list of each Person that owns any of the Equity Interests in each Borrower and such Person's percentage of ownership as of the date hereof:

Issuer	Type of Security	% Ownership	Number of authorized and issued Equity Interests
Aventine Renewable Energy, Inc.	Shares	100% - Aventine Renewable Energy Holdings, Inc.	1,000
Aventine Renewable Energy — Aurora West, LLC	Membership interest	100% - Aventine Renewable Energy Holdings, Inc.	N/A
Nebraska Energy, L.L.C.	Membership interest	78.4% - Aventine Renewable Energy Holdings, Inc. 21.6% - Aventine Renewable Energy, Inc.	N/A

(ii) Set forth below is a list of investments by each Borrower in any other Person and such Borrower's percentage of ownership: N/A

(iii) Set forth below is a description of and obligation of each Borrower or Guarantor to make any Distribution since the date of the last audited financial statements (if none, so state): None

14. Investments: Except as described below, no Borrower nor Guarantor holds any investments (if none, so state):

Holder	Issuer	Type of Security	Ownership Interest
Aventine Renewable Energy Holdings, Inc.	Imperial Petroleum, Inc.	Common Stock	425,000
Aventine Renewable Energy, Inc.	Advanced Bio-Energy LLC	Membership interest	131,579
	Northeast Iowa Ethanol*	Membership interest	7.9%
	TriStates Ethanol Company LLC*	Membership interest	15.1%
	Fluid Technologies n/k/a Micap Plc*	Membership interest	1.9%

*These investments are unlikely to be recoverable and have been written down to $0 on Aventine Renewable Energy, Inc.'s general ledger and financial records.

15. Affiliate Transactions: Except as described below, no Borrower nor Guarantor is a party to any agreement or transaction with, or obligated to make any payment to, an Affiliate, other than agreements to pay officers and employees and advisors and directors' fees and indemnities, in each case, in accordance with Section 9.11 of the Loan Agreement (if none, so state): None

The undersigned has executed this Disclosure Schedule on and as of the date of the Loan Agreement.

BORROWERS:

AVENTINE RENEWABLE ENERGY, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY-AURORA WEST, LLC

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

NEBRASKA ENERGY, L.L.C.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

TERMS SCHEDULE

This **TERMS SCHEDULE** ("Terms Schedule") is made a part of and incorporated into that certain Loan and Security Agreement by and among **AVENTINE RENEWABLE ENERGY, INC.**, a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as Lenders, **MIDCAP FINANCIAL, LLC**, as Collateral Agent, and **ALOSTAR BANK OF COMMERCE**, a state banking institution incorporated or otherwise organized under the laws of the State of Alabama, as Administrative Agent dated September 17, 2014 (together with all schedules, Riders and exhibits annexed thereto and all amendments, restatements, supplements or other modifications with respect thereto, the "Loan Agreement").

1. **Accounts Percentage**: 85%

2. **Authorized Officers**:

In addition to the Senior Officers, each of the following persons (if none, so state):

None.

3. **Additional Specified Availability Reserves:**

(a) Minimum Availability Block.

(b) Dilution Reserve.

(c) FSA Reserve.

4. **Early Termination Fee; Applicable Termination Percentage**:

Upon the effective date of termination of the Commitments (whether such termination is effected by Borrower or Administrative Agent or automatically as the result of the commencement of an Insolvency Proceeding by or against Borrower), Borrower shall be obligated to pay, in addition to all of the other Obligations then outstanding, an amount equal to the product obtained by multiplying the amount of Commitments being so terminated by the applicable percentage set forth below:

(a) 1.90% if the effective date of termination occurs during the first 365-day period after the Closing Date; or

(b) 0.95% if the effective date of termination occurs during the second 365-day period after the Closing Date;

and thereafter there shall be no applicable Early Termination Fee; provided, that in connection with the initial termination of the Commitments (other than a termination of the full amount of the Commitments) by the Borrower, the amount of the Commitments used to calculate the applicable Early Termination Fee shall be reduced by an amount up to $5,000,000.

5. **Guarantors**:

None.

6. **Inventory Formula Amount**: 70%

Maximum Revolver Facility Amount: $40,000,000.

(b) **Minimum Availability Block**: $2,000,000.

8. **Interest Rates (Sec.2.3)**:

(a) The Applicable Variable Rate shall be the LIBOR Rate in effect from time to time, or in Lender's discretion at any time that Lender determines that (i) it is not reasonably possible to determine the LIBOR Rate, (ii) the LIBOR Rate is no longer available, (iii) it is no longer lawful for Lender to make Loans at any rate based on the LIBOR Rate, or (iv) a Default or Event of Default exists, the Base Rate in effect from time to time.

"Base Rate" means, on any day, the U.S. prime rate as shown in The Wall Street Journal on such day, or, if such day is not a Business Day, on the immediately preceding Business Day. If The Wall Street Journal for any reason ceases to publish a U.S. prime rate, then the Prime Rate shall be as published from time to time in any other publication or reference source designated by Lender in its discretion. The prime rate is a reference rate and does not necessarily represent the best or lowest rate charged by Lender.

" LIBOR Rate" means, on any day, the LIBOR Rate as shown in the Wall Street Journal on such day for United States dollar deposits for the one month delivery of funds in amounts approximately equal to the principal amount of the Loan for which such rate is being determined or, if such day is not a Business Day on the immediately preceding Business Day. If The Wall Street Journal for any reason ceases to publish a LIBOR Rate, then the LIBOR Rate shall be as published from time to time and any other publication or reference source designated by Lender in its discretion. The LIBOR Rate is a reference rate and does not necessarily represent the best or lowest rate charged by Lender.

(b) Interest margin for Revolver Loans based on the LIBOR Rate: 6.00%. Interest margin for Revolver Loans based on the Base Rate: 3.00%.

(c) Minimum interest rate floor for Revolver Loans based on the LIBOR Rate (after giving effect to the applicable margin set forth above, but prior to giving effect to the Default Margin set forth below, when applicable): 6.50%. Minimum interest rate floor for Revolver Loans based on the Base Rate (after giving effect to the applicable margin set forth above, but prior to giving effect to the Default Margin set forth below, when applicable): 5.00%

(d) Default margin: 2.00%.

(e) Applicable Variable Rate Disclosure: 0.50%.

(f) Interest Rate Disclosure (Governing Rate): 6.50%.

9. **Fees and Expenses (Sec.2.4)**:

(a) Fees: Borrower shall pay to Administrative Agent, the following fees: (i) a closing fee, for the account of the Lenders in accordance with their respective Aggregate Commitment Ratios as of the Closing Date, in the amount of 1.25% of the Maximum Facility Amount, to be due and payable on the Closing Date; (ii) an unused line fee, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, in the amount of 0.50% per annum of the amount by which the average loan balance (other than with respect to Agent Advances and Swing Loans) for any month (or portion thereof that the Agreement is in effect) is less than the Maximum Revolver Facility Amount, such fee to be paid on the first day of the following month, but if the Commitments are terminated on a day other than the first day of the month, then any such fee payable for the month in which termination shall occur shall be paid on the effective date of such termination; (iii) a monthly, non-refundable maintenance fee, for the account of Administrative Agent, in the amount of $3,000 per month, which shall be paid on the first day of each month, in arrears, beginning November 1, 2014, but if Full Payment of the Obligations occurs on a day other than the first day of the month, then any such fee payable for the month in which Full Payment of the Obligations shall occur shall be paid on the date of Full Payment of the Obligations; and (iv) the Early Termination Fee, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, to the extent required to be paid pursuant to Item 4 of this Terms Schedule**.**

(b) Expenses: Borrower shall reimburse Administrative Agent for all reasonable, out-of-pocket costs and expenses incurred by Administrative Agent (including standard fees charged by Administrative Agent's internal or external field examiners) in connection with (i) examinations and reviews of Borrower's Books and such other matters pertaining to Borrower or any Collateral as Administrative Agent shall deem appropriate and shall pay to Administrative Agent the then standard amount charged by Administrative Agent per person per day ($900 per person per day as of the Closing Date) for each day that an employee or agent of Administrative Agent shall be engaged in an examination or review of any of Borrower’s Books establishment of electronic collateral reporting systems, plus reasonable out-of-pocket expenses; provided, however, that Borrower shall not be required to reimburse Administrative Agent for the costs and expenses of more than three field exams in any 12 month period, unless an Event of Default exists; (ii) appraisals of any Inventory or Equipment forming a part of the Collateral; (iii) reasonable, out-of-pocket legal fees and expenses incurred by Administrative Agent in connection with the preparation and negotiation of the Loan Documents; and (iv) the actual charges paid or incurred by Administrative Agent if it elects to employ the services of one or more third parties, to establish electronic collateral reporting of Borrower, appraise the Collateral or to assess Borrower's business valuation.

10. **[Reserved]**

11. **Collection Days (Sec.2.7):**

One (1) Business Day

12. **Term (Sec.3.1)**:

July 26, 2017.

13. **[Reserved]**

14. **Opening Availability (including unrestricted cash and cash equivalents) (Sec.6.1(g)):**

$7,000,000

15. **Other Conditions Precedent (Sec.6.1(h))**:

(a) [Reserved].

(b) Agents shall have received final credit approval for the transactions described in this Agreement.

(c) Agents shall have completed their business, financial, legal and collateral due diligence of Borrower, including a collateral audit and review of Borrower's Books, with results satisfactory to Agents.

(d) Agents shall have received, reviewed and be satisfied with all of Borrower's Material Agreements.

(e) Agents shall have completed background checks with respect to certain key officers of Borrower and such background checks shall be satisfactory to Agents.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) Agents shall have received a copy of the existing real estate survey with respect to the Real Property Collateral.

(j) Agents shall have received the Commodity Risk Management Plan in form and substance satisfactory to Agents.

(k) [Reserved].

(l) Agents shall have received an operations consulting report from Conway McKenzie, the results of which are satisfactory to the Agents.

(m) Agents shall have received a business plan from the Borrower, the results of which are reasonably satisfactory to the Agents.

(n) Agents shall have received a fully executed Third Amended and Restated Intercreditor Agreement, duly executed by Administrative Agent, Term Loan Agent and the Borrower.

(o) Agents shall have received a Lockbox Agreement in respect of a lockbox related to the Collections Account.

16. **Financial Covenants (Sec.8.9)**:

Borrower covenants that, from the Closing Date until the Commitment Termination Date and Full Payment of the Obligations, Borrower and each Subsidiary shall comply with the following additional covenants:

(a) Fixed Charge Coverage Ratio. At the end of each month, commencing with the month ending October 31, 2014, Borrower shall maintain a Fixed Charge Coverage Ratio of not less than 1.10 to 1.00 for the trailing twelve month period then ending.

(b) [Reserved].

(c) Unrestricted Cash. At all times after the Closing Date, Borrower shall maintain unrestricted Cash in an amount equal to or greater than $5,000,000.

As used in this Item 16 of the Terms Schedule, the following terms shall have the following means ascribed to them.

"Capital Expenditures" means all liabilities incurred or expenditures made by Borrower or any of its Subsidiaries for the acquisition of fixed assets, or any improvements, substitutions or additions thereto with a useful life of more than one year.

"EBITDA" means, for any period, determined on a consolidated basis for Borrower and its Subsidiaries, net income, calculated before interest expense, provision for income taxes, depreciation and amortization expense, gains or losses arising from the sale of capital assets or discontinued operations, gains arising from the write-up of assets, any extraordinary gains (in each case, to the extent included in determining net income), any non-cash expenses and any non-cash extraordinary losses.

"Fixed Charge Coverage Ratio" means, for the trailing twelve month period then ending, the quotient obtained by dividing (a) the difference between (i) Borrower's EBITDA for such period, minus (ii) the sum of (A) all of Borrower's Unfinanced Capital Expenditures made in such period, and (B) any Distributions paid by Borrower in such period, and (C) cash Taxes paid by Borrower in such period (without benefit of any refund), divided by (b) the sum of (i) the current portion of scheduled principal amortization on Debt for Money Borrowed plus (ii) cash interest payments paid by Borrower in such period.

"Unfinanced Capital Expenditures" means, for any fiscal period, Capital Expenditures made by Borrower and its consolidated Subsidiaries that are not funded by Debt for Money Borrowed (other than Revolver Loans) or capital lease obligations, in each case incurred by Borrower and its Subsidiaries during such period.

17. **Other Events of Default (Sec.10.1):**

The Parent and its Subsidiaries, on a consolidated basis, shall cease to be Solvent.

18. **Notices (Sec.11.1):**

If to Borrower:

Aventine Renewable Energy Holdings, Inc.
1300 South Second Street
PO Box 10
Pekin, IL 61554
Attention: Chief Financial Officer
Facsimile: (309) 347-1174

with a courtesy copy to (which shall not be deemed notice):
Aventine Renewable Energy Holdings, Inc.

1300 South Second Street
PO Box 10
Pekin, IL 61554
Attention: General Counsel
Facsimile: (309) 347-1174

If to Administrative Agent:

AloStar Bank of Commerce
3630 Peachtree Road, N.E., Suite 1050
Atlanta, GA 30326
Attn: Aventine Portfolio Manager
Facsimile: (404) 365-7112

with courtesy copies to (which shall not be deemed notice):

King & Spalding LLP
1180 Peachtree Street, N.E.
Atlanta, Georgia 30309
Attn: Chris D. Molen, Esq.
Facsimile: (404) 572-2880

19. Administrative Agent Account:

Bank: AloStar Bank of Commerce
Address: Birmingham, AL
ABA #: 062-006-330
Account No.: 7000005772
Account Name: ABL Settlement
Reference: Aventine

20. Commitments:

Lender	Commitment
AloStar Bank of Commerce	$20,000,000
MidCap Financial, LLC	$20,000,000
Total:	$40,000,000

[Remainder of page intentionally left blank]

The undersigned have executed this Terms Schedule on and as of the date of the Loan Agreement.

BORROWER:

AVENTINE RENEWABLE ENERGY, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY-AURORA WEST, LLC

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

NEBRASKA ENERGY, L.L.C.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

Accepted in Atlanta, Georgia:

ADMINISTRATIVE AGENT:

ALOSTAR BANK OF COMMERCE, as
Administrative Agent and a Lender

By: /s/ Eddie Carpenter
Name: Eddie Carpenter
Title: Director

LENDERS:

MIDCAP FINANCIAL, LLC

By: /s/ Stephen Redlich
Name: Stephen Redlich
Title: Managing Director

EXHIBIT A

FORM OF REVOLVER NOTE

U.S. $[_____] [_____ ____, 20___]
Atlanta, Georgia

FOR VALUE RECEIVED, the undersigned, **AVENTINE RENEWABLE ENERGY, INC.**, a Delaware corporation ("Borrower Agent"), **AVENTINE RENEWABLE ENERGY HOLDINGS, INC.**, a Delaware corporation ("Parent"), **AVENTINE RENEWABLE ENERGY – AURORA WEST, LLC,** a Delaware limited liability company ("Aurora") and **NEBRASKA ENERGY, L.L.C.**, a Kansas limited liability company ("Nebraska" and, together with Borrower Agent, Parent and Aurora, collectively, the "Borrower"), hereby, jointly and severally, promise to pay to the order of [_____] (herein, together with any subsequent holder hereof, called "Lender"), the principal sum of [_____] AND NO/100 DOLLARS ($[_____]) or such lesser sum as may constitute the outstanding principal amount of all Revolver Loans made pursuant to the terms of the Loan Agreement (as defined below) on the date on which such outstanding principal amounts become due and payable pursuant to **Section 2.2(a)(i)** of the Loan Agreement (as defined below), in strict accordance with the terms thereof. Borrower likewise unconditionally promises to pay to Lender interest from and after the date hereof on the outstanding principal amount of Revolver Loans at such interest rates, payable at such times and computed in such manner as are specified in **Sections 2.2(a)(ii)** and **2.3** of the Loan Agreement and in strict accordance with the terms thereof.

This Revolver Note ("Note") is issued pursuant to, and is the "Revolver Note" referred to in, the Loan and Security Agreement dated September 17, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), by and among Borrower, the financial institutions party hereto from time to time as Lenders, Midcap Financial, LLC, as Collateral Agent, and AloStar Bank of Commerce, a state banking institution incorporated or otherwise organized under the laws of the State of Alabama, as Administrative Agent, and Lender is and shall be entitled to all benefits thereof and of all other Loan Documents executed and delivered in connection therewith. All capitalized terms used herein, unless otherwise defined herein, shall have the meanings ascribed to such terms under the Loan Agreement.

The entire unpaid principal balance and all accrued interest on this Note shall be due and payable immediately upon the Commitment Termination Date. All payments of principal and interest shall be made in Dollars and in immediately available funds as specified in the Loan Agreement.

Upon or after the occurrence of an Event of Default and for so long as such Event of Default exists, the principal balance and all accrued interest of this Note may be declared (or shall become) due and payable in the manner and with the effect provided in the Loan Agreement, and the unpaid principal balance hereof shall bear interest at the Default Rate as and when provided in **Section 2.3** of the Loan Agreement. If this Note is collected by or through an attorney at law, then Borrower shall be obligated to pay, in addition to the principal balance of and accrued interest on this Note, all costs of collection, including, without limitation, reasonable attorneys' fees and court costs.

All principal amounts of Revolver Loans made by Lender to Borrower pursuant to the Loan Agreement, and all accrued and unpaid interest thereon, shall be deemed evidenced by this Note and shall continue to be owing by Borrower until paid in accordance with the terms of this Note and the Loan Agreement.

In no contingency or event whatsoever, whether by reason of advancement of the proceeds of Revolver Loans or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of Revolver Loans exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto; and, in the event of any such payment inadvertently paid by Borrower or inadvertently received by Lender, such excess sum shall be, at Borrower's option, returned to Borrower forthwith or credited as a payment of principal, but shall not be applied to the payment of interest. It is the intent hereof that Borrower not pay or contract to pay, and that Lender not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Borrower under applicable law.

Time is of the essence of this Note. To the fullest extent permitted by applicable law, Borrower, for itself and its legal representatives, successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, notice of non-payment, notice of maturity, notice of protest, presentment for the purpose of accelerating maturity, diligence in collection, and the benefit of any exemption or insolvency laws.

Wherever possible each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Note. No delay or failure on the part of Lender in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise by Lender of any right or remedy preclude any other right or remedy. Lender, at its option, may enforce its rights against any Collateral securing this Note without enforcing its rights against Borrower, or any other property or indebtedness due or to become due to Borrower. Borrower agrees that, without releasing or impairing Borrower's liability hereunder, Lender may at any time release, surrender, substitute or exchange any Collateral securing this Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Note.

The rights of Lender and obligations of Borrower hereunder shall be construed in accordance with and governed by the laws (without giving effect to the conflict of law principles thereof) of the State of New York. This Note is intended to take effect as an instrument under seal under New York law.

To the fullest extent permitted by applicable law, Borrower and, by its acceptance hereof, Lender, each hereby waives the right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of, related to or based in any way upon this Note or any of the matters contemplated hereby.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered by its duly authorized officers on the date first above written.

BORROWERS:

AVENTINE RENEWABLE ENERGY, INC.

By: _____
Name:
Title:

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: _____
Name:
Title:

AVENTINE RENEWABLE ENERGY-AURORA WEST, LLC

By: _____
Name:
Title:

NEBRASKA ENERGY, L.L.C.

By: _____
Name:
Title

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

[Letterhead of Borrower]

_____, 20__

AloStar Bank of Commerce
3630 Peachtree Road, N.E., Suite 1050
Atlanta, Georgia 30326
Attn: Susan Hall

The undersigned, the Chief Financial Officer of **AVENTINE RENEWABLE ENERGY, INC**., a Delaware corporation ("Borrower Agent"), gives this certificate to AloStar Bank of Commerce, a state banking institution incorporated or otherwise organized under the laws of the State of Alabama, as Administrative Agent, in accordance with the requirements of Section 8.6(a) of that certain Loan and Security Agreement, dated September 17, 2014, by and among Borrower, the financial institutions party hereto from time to time as Lenders, Midcap Financial, LLC, as Collateral Agent, and Administrative Agent (as at any time amended, the "Loan Agreement"). Capitalized terms used in this Certificate, unless otherwise defined herein, shall have the meanings ascribed to them in the Loan Agreement.

1. Attached hereto are copies of the balance sheets and statements of income, shareholders' equity and cash flow of Borrower and its consolidated Subsidiaries for the [Fiscal Year] [fiscal quarter] [month] ending [_____, 20__], which have been prepared in accordance with GAAP and fairly present the financial position and results of operations of Borrower for such [Fiscal Year] [fiscal quarter] [month] subject only to changes due to audit and year-end adjustments and except that such statements do not contain notes.

2. I hereby certify based upon my review of the balance sheets and statements of income of Borrower and its consolidated Subsidiaries for the month ending [_____, 20__], that the Fixed Charge Coverage Ratio for the relevant measurement period is ____ to 1.0, which [is] [is not] in compliance with the requirements of Item 16(a) of the Terms Schedule to the Loan Agreement.

3. I hereby certify based upon my review of the balance sheets and statements of income of Borrower and its consolidated Subsidiaries for the month ending [_____, 20__], that the unrestricted Cash of Borrower and its consolidated Subsidiaries at all times during such month [did] [did not] exceed $5,000,000 which [is][is not] in compliance with the requirements of 16(c) of the Terms Schedule to the Loan Agreement.

4. No Default or Event of Default exists on the date hereof, other than:
_____ _____ [if none, so state]; and

5. Attached hereto as Exhibit A is a schedule showing the calculations that support Borrower's [**compliance**] [**non-compliance**] with the financial covenants, as shown above.

6. Attached hereto as Exhibit B is a list of all trademarks, trade names, copyrights, patents, patent rights and licenses acquired since delivery of the immediately preceding Compliance Certificate.

Very truly yours,

_____

Chief Financial Officer

Exhibit A

To

Compliance Certificate

EXHIBIT C

FORM OF BORROWING BASE CERTIFICATE

[see attached]

EXHIBIT D

FORM OF BORROWING REQUEST

_____ __, 201_

I, _____, the _____ and an Authorized Officer of **AVENTINE RENEWABLE ENERGY, INC.**, a Delaware corporation (the "Borrower Agent"), do hereby certify, on behalf of the Borrower, pursuant to the provisions of that certain Loan and Security Agreement, dated as of September 17, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used herein without definition shall have the meanings ascribed thereto in the Loan Agreement); that:

1. The Borrower hereby requests a Revolver Loan in the amount of $_____ to be made on _____, 201_, under the Commitments. The proceeds of the Loan should be wired on behalf of the Borrower as set forth on Schedule 1 attached hereto. The foregoing instructions shall be irrevocable.

2. All representations and warranties made by any Obligor in any of the Loan Documents, or otherwise in writing to any member of the Lender Group, are true and correct in all material respects with the same effect as though the representations and warranties have been made on and as of the date hereof.

3. No event has occurred and no conditions exist which could reasonably be expected to have a Material Adverse Effect.

4. No Overadvance exists or would result from funding the requested Loan.
5. No Default or Event of Default exists or will exist after giving effect to this Borrowing Request.

[remainder of page intentionally left blank]

AVENTINE RENEWABLE ENERGY, INC.

By:_____
Name:
Title:

SCHEDULE 1 - WIRING INSTRUCTIONS

EXHIBIT E

FORM OF ASSIGNMENT AND ACCEPTANCE

This Assignment and Acceptance (the "Assignment and Acceptance") is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the "Assignor") and the Assignee identified in item 2 below (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement (as defined below), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the date of acceptance and recording inserted by Administrative Agent below (the "Effective Date") (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by the Assignor.

1.	Assignor:	_____
2.	Assignee:	_____ [and is an Affiliate/Approved Fund of [*Identify Lender*]][1]
3.	Borrower:	Aventine Renewable Energy, Inc., a Delaware corporation
4.	Administrative Agent:	AloStar Bank of Commerce, as Administrative Agent under the Loan Agreement

[1] Select as applicable.

5. Loan Agreement: The Loan and Security Agreement, dated as of September 17, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"; capitalized terms used herein without definitions shall have the meanings ascribed thereto in the Loan Agreement), by and among **AVENTINE RENEWABLE ENERGY, INC.**, a Delaware corporation ("Borrower"), the financial institutions party thereto from time to time as Lenders, Midcap Financial, LLC, as Collateral Agent, and AloStar Bank of Commerce, as Administrative Agent.

6. Assigned Interest:

Aggregate Amount of Commitments/ Loans for all Lenders[2]	Amount of Commitment/Loans Assigned[3]	Percentage Assigned of Commitment/ Loans[4]
$	$	%

[remainder of page intentionally left blank]

_____

[2] Global amount of the Commitment/Loans.

[3] Amount to be assigned to Assignee as of the Effective Date.

[4] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

Effective Date: _____ ___, 20___

The terms set forth in this Assignment and Acceptance are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By:_____
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By:_____
Name:
Title:

ACCEPTED AND APPROVED THIS ____ DAY
OF _____, 20___;

ALOSTAR BANK OF COMMERCE,
as Administrative Agent

By:_____
Name:
Title:

AVENTINE RENEWABLE ENERGY, INC.,[12]
as Borrower

By:_____
Name:
Title:

[12] If consent is required

ANNEX 1 to Assignment and Acceptance

AVENTINE RENEWABLE ENERGY, INC. LOAN AND SECURITY AGREEMENT

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ACCEPTANCE

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrowers, any of their Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all the requirements of an Eligible Assignee under the Loan Agreement (subject to receipt of such consents as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 8.6 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase the Assigned Interest, and (vi) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase the Assigned Interest; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be governed by, and construed in accordance with, the law of the State of New York (without regard to conflict of law provisions).

LETTER OF CREDIT RIDER

THIS LETTER OF CREDIT RIDER ("Rider") dated September 17, 2014, is made a part of and incorporated into that certain Loan and Security Agreement, by and among **AVENTINE RENEWABLE ENERGY, INC.**, a Delaware corporation ("Borrower"), the financial institutions party hereto from time to time as Lenders, **MIDCAP FINANCIAL, LLC**, as Collateral Agent, and **ALOSTAR BANK OF COMMERCE**, a state banking institution incorporated or otherwise organized under the laws of the State of Alabama, as Administrative Agent, dated September 17, 2014 (together with all schedules, Riders and exhibits annexed thereto and all amendments, restatements, supplements or other modifications with respect thereto, the "Loan Agreement").

1. Definitions. Capitalized terms contained in this Rider, unless otherwise defined herein, shall have the meanings attributable to such terms under the Loan Agreement. In addition, when used in this Rider, the following terms shall have the following meanings (terms defined in the singular to have the same meaning when used in the plural and *vice versa*):

"Cash Collateral" means cash that is delivered to Administrative Agent to Cash Collateralize any Obligations and all interest and other income earned (if any) on such cash.

"Cash Collateral Account" means a demand deposit, money market or other account maintained with Administrative Agent and subject to Administrative Agent's Liens.

"Cash Collateralize" means the delivery of cash to Administrative Agent, for the benefit of the Lender Group, as security for the payment of any LC Credit Support Obligations, in an amount equal to 103% of the aggregate LC Credit Support Obligations at the time of delivery. Cash Collateralization has a correlative meaning.

"LC Application" means an application (whether consisting of a single or several documents) by Borrower to LC Issuer, in form and substance satisfactory to LC Issuer, for the issuance of a Letter of Credit, which application shall, among other things, provided for Borrower's reimbursement to LC Issuer for any amount paid by LC Issuer under a Letter of Credit.

"LC Conditions" means the following conditions necessary for Administrative Agent to use its reasonable efforts to cause the issuance of a Letter of Credit by LC Issuer: (a) each of the conditions set forth in **Section 6** of the Loan Agreement is satisfied at such time, unless satisfaction thereof is waived by the Majority Lenders in writing; (b) Borrower shall have delivered to Administrative Agent, at such times and in such manner as Administrative Agent may prescribe, an LC Request and an LC Application in form and substance satisfactory to LC Issuer and Administrative Agent for the issuance of Letter of Credit and such other documents as may be required pursuant to the terms thereof; (c) no Default or Event of Default exists at the time of the request for the issuance of the proposed Letter of Credit or on the issuance date or after giving effect thereto; (d) Administrative Agent shall have determined that, after giving effect to such issuance (i) the total LC Credit Support Obligations do not exceed the Letter of Credit Subline and (ii) the total LC Credit Support Obligations plus the aggregate balance of Revolver Loans and Agent Advances outstanding at such time does not exceed the Borrowing Base at such time, or, if no Revolver Loans are outstanding at such time, the LC Credit Support Obligations plus the aggregate balance of Agent Advances and Swing Loans outstanding at such time does not exceed the Borrowing Base (without giving effect to the LC Reserve for purposes of this calculation); (e) the expiration date of such Letter of Credit is no more than 365 days from issuance, in the case of standby Letters of Credit; (f) the Letter of Credit and payments thereunder are denominated in Dollars; (g) the purpose and form of the proposed Letter of Credit are satisfactory to Administrative Agent in its discretion; and (h) the issuance of the requested Letter of Credit would not cause all LC Credit Support Obligations then outstanding to exceed any limit imposed by law or regulation upon LC Issuer.

"LC Credit Support Obligations" means, on any date, the sum (without duplication) of the following on such date: (a) all amounts owing by Borrower for reimbursement to Lenders of amounts paid by Lenders under any Credit Support of a Letter of Credit; (b) the aggregate amount of all liabilities (whether or not contingent at the time in question) of Lenders under any Credit Support of outstanding Letters of Credit; and (c) all Fees and other amounts owing by Borrower to Lenders with respect to any Credit Support provided by Lenders to any LC Issuer.

"LC Documents" means any and all agreements, instruments and documents required by LC Issuer or Administrative Agent to be executed at any time by Borrower or any other Person and delivered to LC Issuer or Administrative Agent, as applicable, in connection with, or as a condition to the issuance of, a Letter of Credit, including each LC Application and LC Request. All of the LC Documents, to the extent executed with or in favor of Administrative Agent, for the benefit of the Lender Group, shall constitute "Loan Documents" (as defined in the Loan Agreement).

"LC Issuer" means any bank or other financial institution which is selected by Administrative Agent to be the issuer of a Letter of Credit and to which Lenders provides a Credit Support as an inducement for such bank or other financial institution to issue such Letter of Credit.

"LC Request" means a request for issuance of a Letter of Credit, to be provided by Borrower, in form satisfactory to LC Issuer and Administrative Agent.

"LC Reserve" means a reserve in the aggregate amount of all LC Credit Support Obligations outstanding any time, other than any LC Credit Support Obligations that have been fully Cash Collateralized.

"Letter of Credit Subline" means an amount equal to $8,000,000.

"Reimbursement Date" means, in case of Borrower's obligation to reimburse LC Issuer for any amounts paid by LC Issuer under a Letter of Credit, the date on which LC Issuer makes payment under such Letter of Credit; and in the case of Borrower's obligation to reimburse Lenders for any amounts paid by Lenders under any Credit Support to an LC Issuer, the date on which Lenders makes payment under such Credit Support.

2. Letters of Credit. Administrative Agent agrees to use its reasonable best efforts to cause LC Issuer to issue Letters of Credit from time to time from the date hereof until the date that is 90 days before the last day of the Term; provided, however, that Administrative Agent shall have no obligation to request the issuance of a Letter of Credit on or after the Commitment Termination Date or if at the time of Borrower's request for a Letter of Credit, all of the LC Conditions are not satisfied as determined by Administrative Agent. Administrative Agent's agreement to request LC Issuer to issue Letters of Credit is further subject to the following terms and conditions:

(a) Administrative Agent's willingness to use its reasonable efforts to cause LC Issuer to issue any Letter of Credit is conditioned upon (i) LC Issuer's receipt of an LC Request and an LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as LC Issuer may customarily require for issuance of a Letter of Credit of similar type and amount, and (ii) satisfaction of the LC Conditions; provided, however, that Lenders shall have no obligation to issue any Letter of Credit and shall have no liability for any failure by LC Issuer to issue or LC Issuer's delay in issuing any Letter of Credit.

(b) Letters of Credit may be requested by Borrower only (i) to support obligations of Borrower incurred in the Ordinary Course of Business or (ii) for other purposes as the Agents may approve from time to time in writing. The renewal or extension of any Letter of Credit shall be treated as the issuance of a new Letter of Credit, except that delivery of a new LC Application shall be required at the discretion of Administrative Agent or LC Issuer.

(c) Borrower assumes all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with the issuance of any Letter of Credit, Lender Group shall not be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or any Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; any payment by LC Issuer under a Letter of Credit that was improperly made or any consequences arising from causes beyond the control of the Lender Group, including any act or omission of a governmental authority. The Lender Group shall be fully subrogated to the rights and remedies of each beneficiary whose claims against Borrower are discharged with proceeds of any Letter of Credit.

(d) Borrower shall promptly comply with each LC Document. An Event of Default shall occur if Borrower fails to comply with any covenant contained herein as in any LC Document at any time or if any representation or warranty by Borrower in any LC Document is not true and correct in all material respects when made or furnished (or deemed to be made or furnished) under any LC Document.

3. Reimbursement. If LC Issuer honors any request for payment under a Letter of Credit, Borrower shall pay to LC Issuer on the Reimbursement Date, the amount paid under such Letter of Credit. If Lenders make any payment to LC Issuer under any Credit Support, Borrower shall pay to Administrative Agent, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, on the Reimbursement Date, the amount paid by Lenders under such Credit Support together with interest at the interest rate applicable to Revolver Loans from the Reimbursement Date until payment is actually made by Borrower. The obligation of Borrower to reimburse LC Issuer or Lenders for any payment made under a Letter of Credit or Credit Support shall be absolute, unconditional, irrevocable and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or any LC Document; or the existence of any claim, setoff, defense, counterclaim or other right that Borrower may have at any time against the beneficiary or the LC Issuer. Borrower shall be deemed to have requested a Revolver Loan in an amount necessary to pay all amounts due the Lender Group on any Reimbursement Date.

4. Cash Collateral. If any LC Credit Support Obligations, whether or not then due or payable, shall for any reason be outstanding at any time (a) that a Default or Event of Default exists, (b) that Availability is less than zero, (c) on or after the effective date of termination of the Commitments, or (d) within 30 days prior to the last day of the Term, then Borrower shall, at Administrative Agent's request, Cash Collateralize all LC Credit Support Obligations (whether absolute or contingent at the time in question). If Borrower fails to provide Cash Collateral as required herein, Lenders may advance, as one or more Revolver Loans, the amount of Cash Collateral required. Without limiting the foregoing, on the effective date of the termination of the Commitments, all Obligations shall be due and payable in full and on such date Borrower shall comply with the terms of Section 3 of the Loan Agreement and shall either (a) Cash Collateralize all LC Credit Support Obligations (whether absolute or contingent at the time in question) or (b) cause to be issued a replacement letter of credit, which letter of credit shall be in form and substance satisfactory to Administrative Agent and LC Issuer, for each Letter of Credit outstanding on such date, and cause each Letter of Credit to be returned to LC Issuer marked cancelled concurrently with the issuance of each replacement letter of credit and such repayment in full of all Obligations.

5. Availability Reserve; Maximum Revolver Facility Amount. The Availability Reserve on any date shall be increased by an amount equal to the LC Reserve on such date. The Maximum Revolver Facility Amount shall not be increased by the amount of the Letter of Credit Subline, and the aggregate amount of all Revolver Loans, Agent Advances, Swing Loans and LC Credit Support Obligations outstanding on any date shall not exceed the Maximum Revolver Facility Amount.

6. Indemnification. In addition to any other indemnity which Borrower may have to any Indemnitee under the Loan Agreement or any of the other Loan Documents and without limiting such other indemnification provisions, Borrower hereby agrees to indemnify each of the Indemnitees from, and to defend and hold each of the Indemnitees harmless against, any and all claims, demands, liabilities, costs, actions, suits or proceedings that any one or more of them may incur or be subject to as a consequence, directly or indirectly, of (a) the issuance of, payment or failure to pay or any performance or failure to perform under any Letter of Credit or any LC Document, (b) any suit, investigation or proceeding as to which any Indemnitee may become a party to as a consequence, directly or indirectly, of the issuance of any Letter of Credit or Credit Support therefor or payment or failure to pay under such Letter of Credit or Credit Support, and (c) any action, suit or other proceeding to recover, set aside or reclaim any amount paid by or on behalf of Borrower, or from any proceeds of the Collateral, to or for the benefit of any Indemnitee on account of any of the LC Credit Support Obligations. This indemnity shall survive Full Payment of the Obligations and termination of the commitments under the Loan Agreement.

7. Letter of Credit Fees. Borrower shall pay (a) to Administrative Agent, for the account of Lenders in accordance with their respective Aggregate Commitment Ratios, a fee equal to 4.0% per annum *multiplied by* the average daily undrawn amount of all Letters of Credit issued and outstanding pursuant to the Loan Documents, which fee shall be payable monthly, in arrears, on the first day of each month; and (b) to LC Issuer, for its own account, all fees, charges, costs and expenses associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, which fees, charges, costs and expenses shall be paid as and when incurred. During an Event of Default, the fee payable under clause (a) of this **Section 7** shall be increased by 2.0% per annum.

[Remainder of page intentionally left blank]

The undersigned have executed this Letter of Credit Rider on the date first written above.

BORROWERS:

AVENTINE RENEWABLE ENERGY, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY-AURORA WEST, LLC

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

NEBRASKA ENERGY, L.L.C.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

ADMINISTRATIVE AGENT AND LENDERS:

ALOSTAR BANK OF COMMERCE, as
Administrative Agent and a Lender

By: /s/ Eddie Carpenter
Name: Eddie Carpenter
Title: Director

MIDCAP FINANCIAL, LLC

By: /s/ Stephen Redlich
Name: Stephen Redlich
Title: Managing Director

MULTIPLE BORROWER RIDER

THIS MULTIPLE BORROWER RIDER ("Rider") dated September 17, 2014, is made a part of and incorporated into that certain Loan and Security Agreement, between **AVENTINE RENEWABLE ENERGY, INC.**, a Delaware corporation ("Borrower"), the financial institutions party thereto from time to time, as lenders (the "Lenders"), **MIDCAP FINANCIAL, LLC**, as Collateral Agent, and **ALOSTAR BANK OF COMMERCE**, as administrative agent (the "Administrative Agent"), dated as of the date hereof (together with all schedules, Riders and exhibits annexed thereto and all amendments, restatements, supplements or other modifications with respect thereto, the "Loan Agreement").

1. Definitions. Capitalized terms contained in this Rider, unless otherwise defined herein, shall have the meanings attributable to such terms under the Loan Agreement.

2. Multiple Borrowers. In addition to Aventine Renewable Energy, Inc. identified in the Loan Agreement as "Borrower," each Person identified below shall also be deemed to be a Borrower under the Loan Agreement, shall be entitled to all of the benefits of a Borrower under the Loan Agreement and the other Loan Documents, shall be deemed to have granted (and does hereby grant) to the Administrative Agent, for the benefit of the Lenders, as security for the payment of the Obligations, a continuing security interest and Lien upon all property of such Person of the types or items as are set forth in **Section 4** of the Loan Agreement, and shall be subject to all of the obligations of a Borrower under the Loan Agreement and each of the other Loan Documents:

Aventine Renewable Energy Holdings, Inc., a Delaware corporation
Aventine Renewable Energy – Aurora West, LLC, a Delaware limited liability company
Nebraska Energy, L.L.C., a Kansas limited liability company

Aventine Renewable Energy, Inc. shall be deemed to constitute the "Borrower Agent" and, in that capacity, shall be authorized to act for and on behalf of each other Borrower, including for the purpose of requesting any Loans or other extensions of credit under the Loan Agreement and receiving proceeds of Loans and other extensions of credit for and on behalf of each other Borrower; and any Loan or other extension of credit funded to or at the direction of Borrower Agent shall be deemed made to and on behalf of all Borrowers.

3. Joint and Several Liability. Each Borrower shall be jointly and severally liable with each other Borrower for the payment and performance of all of the Obligations; shall be deemed to have separately made the representations and warranties set forth herein; shall be responsible jointly and severally with each other Borrower for all of the indemnities set forth in any of the Loan Documents; shall be responsible for discharging the covenants contained in each of the Loan Documents applicable to it; and shall be deemed separately to have granted (and does hereby grant), as security for the payment of the Obligations, a security interest in the types and items of its property constituting Collateral. The Administrative Agent and Lenders shall have the right to deal with any individual of Borrower Agent with regard to all matters concerning the rights and obligations of Lender and the duties and liabilities of Borrowers under the Loan Documents. All actions or inactions of the officers, managers, members and agents of any Borrower with regard to the transactions contemplated under any of the Loan Documents shall be deemed to be binding upon all Borrowers hereunder. Any Loans or other extensions of credit made to one Borrower shall be deemed to have been made to and for the benefit of all Borrowers, it being understood that Borrowers' businesses are a mutual and collective enterprise and Borrowers believe that the consolidation of all Loans under this Agreement will enhance the aggregate borrowing powers of each Borrower and ease the administration of their loan relationship with Lenders, all to the mutual advantage of each Borrower. Notwithstanding the appointment of Aventine Renewable Energy, Inc. to serve as Borrower Agent, each Borrower hereby appoints each other Borrower as its true and lawful attorney-in-fact, with full right and power, for purposes of exercising all rights of such appointing Borrower hereunder and under applicable law with regard to the transactions contemplated under the Loan Documents.

4 . Unconditional Nature of Liabilities. Borrowers' joint and several liability with respect to the Loans and other Obligations shall, to the fullest extent permitted by applicable law, be unconditional irrespective of (i) the validity, enforceability, avoidance or subordination of any of the Obligations or of any document evidencing or securing any part of the Obligations, (ii) the absence of any attempt to collect any of the Obligations from any other Obligor or any Collateral or other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent or any Lender with respect to any Loan Documents, (iv) the failure by the Administrative Agent or any Lender to take any steps to perfect or maintain the perfected status of its security interest in or Lien upon, or to preserve its right to, any of the Collateral or the Administrative Agent's release of any Collateral or its termination or release of any Liens upon any Collateral, (v) the release or compromise, in whole or in part, of the liability of any Obligor for the payment of any of the Obligations, (vi) any amendment or modification of any of the Loan Documents or any waiver of a Default or Event of Default, (vii) any increase in the amount of the Obligations beyond any limits imposed herein or any increase or decrease in the amount of any interest, fees or other charges payable in connection therewith, or (viii) any other circumstances that might constitute a legal or equitable discharge or defense of any Obligor. Each Borrower shall be deemed to have waived any provision under applicable law that might otherwise require the Administrative Agent or any Lender to pursue or exhaust its remedies against any Collateral or Obligor before pursuing Borrower or any other Obligor. Each Borrower consents that neither the Administrative Agent nor any Lender shall be under no obligation to marshal any assets in favor of any Obligor or against or in payment of any or all of the Obligations.

5. Subordination. Each Borrower subordinates any claims, including any right of payment, subrogation, contribution and indemnity, that it may have from or against any other Obligor, and any successor or assign of the Obligor, including any trustee, receiver or debtor-in-possession, howsoever arising, due or owing or whether heretofore, now or hereafter existing, to the full and final payment of all of the Obligations.

6. Incorporation by Reference. The terms, covenants and conditions of the Loan Agreement are incorporated into and made a part of this Rider. This Rider shall form a part of the Loan Agreement and shall constitute a part of the Loan Documents.

7. Miscellaneous. This Rider may be executed in multiple counterparts, each of which shall be deemed an original document and all of which taken together shall constitute one and the same instrument; shall be deemed to have been executed and made in the State of New York and shall be governed in all respects by and construed in accordance with the internal laws of the State of New York; and shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Borrower hereby waives notice of the Administrative Agent's or any Lender's acceptance hereof.

The undersigned have executed this Multiple Borrower Rider on the date first written above.

BORROWERS:

AVENTINE RENEWABLE ENERGY, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

AVENTINE RENEWABLE ENERGY-AURORA WEST, LLC

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

NEBRASKA ENERGY, L.L.C.

By: /s/ Mark Beemer
Name: Mark Beemer
Title: President and Chief Executive Officer

ADMINISTRATIVE AGENT AND LENDERS:

ALOSTAR BANK OF COMMERCE, as
Administrative Agent and a Lender

By: /s/ Eddie Carpenter
Name: Eddie Carpenter
Title: Director

MIDCAP FINANCIAL, LLC

By: /s/ Stephen Redlich
Name: Stephen Redlich
Title: Managing Director

Exhibit 10.4

STOCKHOLDERS AGREEMENT

DATED AS OF SEPTEMBER 24, 2012

BY AND AMONG

AVENTINE RENEWABLE ENERGY HOLDINGS, INC.,

THE INVESTORS LISTED ON SCHEDULE A HERETO

AND

THE EXISTING STOCKHOLDERS LISTED ON SCHEDULE A HERETO

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STOCKHOLDERS AGREEMENT

THIS STOCKHOLDERS AGREEMENT (as amended, modified or supplemented from time to time, this "**Agreement**") is made as of September 24, 2012, by and among Aventine Renewable Energy Holdings, Inc., a Delaware corporation (the "**Company**"), each of the investors identified on **Schedule A** hereto as "Investors" (each, an "**Investor**" and collectively, the "**Investors**") and each of the other parties identified on **Schedule A** hereto as "Existing Stockholders" (each, an "**Existing Stockholder**" and collectively, the "**Existing Stockholders**").

W I T N E S S E T H

WHEREAS, the Company and the Investors are parties to that certain Subscription Agreement, dated as of September 24, 2012 (as amended, modified or supplemented from time to time, the "**Subscription Agreement**"), pursuant to which, on the Closing Date, in exchange for the retirement, cancellation or forgiveness of a portion of the outstanding balance of the Original Term Loan owed by the Company to each such Investor in the amount set forth opposite such Investor's name in column (3) of Schedule 1 thereto and certain Investors wish to lend the Company a portion of the outstanding balance of the New Term Loan (as defined in the Subscription Agreement) in the amount set forth opposite such Investors' name in column (4) of Schedule 1 thereto, the Company is issuing and selling to the Investors, and the Investors are purchasing from the Company, shares of Common Stock, all on the terms and subject to the conditions set forth in the Subscription Agreement;

WHEREAS, pursuant to the Restructuring Agreement, the Existing Stockholders have agreed to restructure their existing Equity Interests in the Company as set forth therein;

WHEREAS, the execution and delivery of this Agreement by the parties hereto is a condition precedent to the obligation of each Investor to consummate the transactions contemplated by the Subscription Agreement;

WHEREAS, in consideration of the substantial direct and indirect benefits which the Company and the Existing Stockholders will realize from the consummation of the transactions contemplated by the Subscription Agreement and the Financing Documents, the Company and the Existing Stockholders have agreed to grant to the Investors certain rights as set forth in this Agreement; and

WHEREAS, it is understood and agreed among the parties hereto that the Investors would not be consummating the transactions contemplated by the Subscription Agreement but for the agreements set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual premises, representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby subject to the conditions set forth herein, the parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. For purposes of the provisions of this Agreement, the following definitions shall have the following meanings:

"**Acceptance Notice**" has the meaning set forth in Section 7.2.

"**Administrative Agent**" means Citibank, N.A.

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Notwithstanding the foregoing, solely for the purpose of the definition of "Affiliate", no Stockholder shall be deemed to Control the Company solely because such Stockholder (or an Affiliate of an Approved Fund of such Stockholder), in its capacity as a Stockholder: (a) has the right to, or otherwise participates in, the selection of the initial Board on the Closing Date; (b) has the right to, or otherwise participates in, the selection of any Observer from time to time; (c) is the owner of Company Stock so long as such Stockholder, together with its Affiliates and Approved Funds, owns less than 40% of the Company Stock on a Fully-Diluted Basis; or (d) may be deemed to be acting together with other Stockholders as a "group" (within the meaning of Section 13(d) of the Exchange Act, or any successor provision thereto).

"**Agreement**" has the meaning set forth in the preamble.

"**Agreement Among Lenders**" means that certain Agreement Among Lenders, by and among the Term Loan A Lenders (as defined in the Amended and Restated Senior Term Loan Facility) and the Term Loan B Lenders (as defined in the Amended and Restated Senior Term Loan Facility), dated as of the Closing Date, as may be amended, restated, supplemented or otherwise modified from time to time.

"**Amended and Restated Bylaws**" means the Second Amended and Restated Bylaws of the Company, to be effective as of the Closing Date, as further amended or restated from time to time.

"**Amended and Restated Certificate of Incorporation**" means the Fourth Amended and Restated Certificate of Incorporation of the Company, effective as of or prior to the Closing Date, as further amended or restated from time to time.

"**Amended and Restated Senior Term Loan Facility**" means that certain Amended and Restated Senior Secured Term Loan Credit Agreement, dated as of the Closing Date among the Company, as borrower, the lenders from time to time party thereto and the Administrative Agent, as collateral agent and administrative agent, as may be amended, restated, supplemented, or otherwise modified from time to time.

"**Applicable Law**" means all laws, statutes, common law ordinances, codes, rules, regulations, Orders, decrees, judgments, court decisions, writs, injunctions, consent decrees, rulings, binding policies, executive Orders, and other pronouncements by or requirements of a Governmental Authority having the force or effect of law, including the common law.

"**Approved Fund**" means any Fund that is administered or managed by (a) a Stockholder, (b) an Affiliate of a Stockholder or (c) an entity or an Affiliate of an entity that administers or manages a Stockholder.

"**Aventine Companies**" means, collectively, the Company, Aventine Power, LLC, Aventine Renewable Energy, Inc., Aventine Renewable Energy—Aurora West, LLC, Aventine Renewable Energy—Mt Vernon, LLC, Nebraska Energy, L.L.C., Aventine Renewable Energy- Canton LLC and any direct or indirect wholly-owned Subsidiary of the Company formed after the date hereof.

"**Board**" means the Board of Directors of the Company.

"**Capital Stock**" means (a) in the case of a corporation, corporate stock (including all classes of common stock and preferred stock); (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership (whether general or limited) or membership interests; and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"**CEO Director**" has the meaning set forth in Section 2.1(a)(1).

"**Closing Date**" means the date on which the transactions contemplated by the Financing Documents close.

"**Commission**" means the United States Securities and Exchange Commission and any Governmental Authority succeeding to the functions thereof.

"**Common Stock**" means shares of common stock of the Company, par value $0.001 per share.

"**Company**" has the meaning set forth in the preamble.

"**Company Materials**" means materials and/or information provided by or on behalf of the Company.

"**Company Stock**" means all authorized, issued and outstanding shares of Common Stock and all other Equity Interests in the Company.

"**Contractual Obligation**" means, as to any Person, any Organizational Document of such Person and any provision of any security issued by such Person or of any written agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Co-Sale Stockholder Shares**" has the meaning set forth in Section 5.2.

"**Co-Sale Notice**" has the meaning set forth in Section 5.1.

"**Co-Sale Stockholders**" has the meaning set forth in Section 5.1.

"**Debt Securities**" means any securities, instruments and agreements evidencing or documenting a debt obligation, including notes, debentures, bonds, credit agreements and loan agreements.

"**DGCL**" means the General Corporation Law of the State of Delaware.

"**Drag-Along Stockholder**" has the meaning set forth in Section 6.1.

"**Equity Documents**" means, collectively, this Agreement, the Subscription Agreement, the Registration Rights Agreement, the Warrant Agreement, the Warrants and each of the other documents and agreements entered into by the parties thereto (other than the Financing Documents) in connection with the transactions contemplated by the Subscription Agreement and, in each case, as in effect on the Closing Date and as amended, supplemented or otherwise modified from time to time.

"**Equity Interests**" means, with respect to any Person, all Capital Stock and all Stock Equivalents of such Person.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Existing ABL Facility**" means that certain Second Amended and Restated Credit Agreement, dated as of the Closing Date, among the Company, Aventine Renewable Energy – Aurora West, LLC, Aventine Renewable Energy – Mt Vernon, LLC, Aventine Renewable Energy—Canton, LLC, Aventine Power, LLC and Nebraska Energy, L.L.C., as borrowers, and Wells Fargo Capital Finance, LLC, as lender and agent, as may be amended, restated, supplemented, or otherwise modified from time to time.

"**Existing Stockholders**" has the meaning set forth in the preamble.

"**Existing Warrants**" is defined in the Subscription Agreement.

"**Facilities**" means the Company's and each of its Subsidiaries' ethanol production facilities and, in each case, all improvements thereto.

"**Financial Officer**" means with respect to any Person, the chief financial officer, chief accounting officer, vice president of finance, treasurer, assistant treasurer or controller of such Person.

"**Financing Documents**" means each of the Existing ABL Facility, the Amended and Restated Senior Term Loan Facility, the Intercreditor Agreement, the Agreement Among Lenders, the Omnibus Amendment and each of the other documents and agreements entered into by the parties thereto (other than the Equity Documents) in connection with the transactions contemplated by each such agreement.

"**Fully-Diluted Basis**" means the number of shares of Common Stock that would be outstanding, as of the date of computation, based on the number of outstanding shares of Common Stock and assuming that all issued and outstanding Stock Equivalents had been converted, exercised or exchanged.

"**Fund**" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"**GAAP**" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances as of the date of determination.

"**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission or instrumentality of the United States of America, any governmental authority, agency, department, board, commission or instrumentality of Switzerland or any other jurisdiction, any State of the United States of America or canton of Switzerland or any political subdivision thereof, and any court, tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization.

"**Independent Director**" means a member of the Board who is not (a) Affiliated with any of the Stockholders, (b) the CEO Director or (c) any other officer, employee or member of the Company's management team.

"**Information**" has the meaning set forth in Section 10.1(b).

"**Initial Public Offering**" means the first initial underwritten Public Offering of the Common Stock after the date hereof on Form S-1 (or any successor form under the Securities Act) on a firm commitment basis.

"**Intercreditor Agreement**" means that certain Second Amended and Restated Intercreditor Agreement, dated as of the Closing Date**,** among the Administrative Agent, the Collateral Agent (as defined in the Amended and Restated Senior Term Loan Facility) and the agent under the Existing ABL Facility, as may be amended, restated, supplemented or otherwise modified from time to time, which agreement amends and restates the Original Intercreditor Agreement.

"**Investor**" has the meaning set forth in the preamble.

"**Issuance Notice**" has the meaning set forth in Section 7.2.

"**Lien**" means any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any kind (including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof or any agreement to give any security interest).

"**NDA Signatories**" means such Stockholders or other Persons that have executed a customary non-disclosure agreement for the benefit of the Aventine Companies.

"**New Securities**" means any Capital Stock of the Company whether now authorized or not, and any other Equity Interests in the Company; provided, however, that the term "New Securities" shall not include the Warrants, the shares of Common Stock issued under the Subscription Agreement or Company Stock (a) issued or granted to any directors, officers or other employees of the Company pursuant to any stock option or other employee incentive or benefit plan or arrangement that has been approved by the Board, (b) issued as a result of (i) any stock split, stock dividend or subdivision that is approved by the Board or (ii) any combination, recapitalization or any similar event that is approved by the Board, (c) issued upon the exercise or conversion of the Warrants, the Existing Warrants (as defined in the Subscription Agreement) or convertible or exchangeable New Securities previously issued in accordance with, and subject to, Article VII, (d) issued as payment-in-kind interest on, or otherwise in connection with, Debt Securities issued by the Company upon the approval of the Board; (e) issued in connection with a bona fide arms' length transaction not intended for financing purposes consummated upon the approved by the Board, (f) registered under the Securities Act that are issued in an underwritten Public Offering or (g) distributed pursuant to the Plan (as defined in the Subscription Agreement).

"**Observers**" has the meaning set forth in Section 2.6.

"**Omnibus Amendment**" means the Omnibus Amendment, dated as of the Closing Date, by and among the Company, the Subsidiary Guarantors (as defined in the Amended and Restated Senior Term Loan Facility), the Collateral Agent (as defined in the Amended and Restated Senior Term Loan Facility) and the Administrative Agent, amending and ratifying (as so amended) the Security Agreement (as defined in the Amended and Restated Senior Term Loan Facility) and the Subsidiary Guaranty (as defined in the Amended and Restated Senior Term Loan Facility).

"**Order**" means any writ, judgment, decree, injunction, stipulation, determination or award or similar order of any Governmental Authority.

"**Organizational Documents**" means, with respect to any Person that is a corporation, its articles or certificate of incorporation or memorandum and articles of association, as the case may be, and bylaws; with respect to any Person that is a partnership, its certificate of partnership and partnership agreement; with respect to any Person that is a limited liability company, its certificate of formation and limited liability company or operating agreement; with respect to any Person that is a trust or other entity, its declaration or agreement of trust or other constituent document; and with respect to any other Person, its comparable organizational documents, in each case, as has been amended or restated.

"**Original Credit Agreement**" means that certain Senior Secured Term Loan Credit Agreement, dated as of December 22, 2010, among the Company, as borrower, the Administrative Agent, as administrative agent and collateral agent, the lenders party thereto, Citigroup Global Market Inc. and Jefferies Finance LLC, as joint lead arrangers and joint book-runners, and Citibank, N.A. and Jefferies Finance, LLC, as co-syndication agents, as amended, restated, supplemented, or otherwise modified from time to time.

"**Original Intercreditor Agreement**" means the Amended and Restated Intercreditor Agreement, dated as of July 20, 2011, among the Agents (as defined in the Amended and Restated Senior Term Loan Facility) and the agent under the Existing ABL Facility, as may have been amended, supplemented or otherwise modified as of the Closing Date.

"**Original Term Loan**" means the term loans made under the Original Credit Agreement, including all principal, interest, capitalized interest, fees and expenses.

"**Permitted Transfer**" means, with respect to any Stockholder, (a) any Transfer of all or a portion of such Stockholder's Company Stock to an Affiliate or Approved Fund, (b) any Transfer of all or a portion of such Stockholder's Company Stock to any Person who is an "accredited investor" (as such term is defined in Rule 501(a) of Regulation D of the Securities Act), (c) any Transfer of all or a portion of such Stockholder's Company Stock to any Person who is a "qualified institutional buyer" (as such term is defined in Rule 144A of the Securities Act), or (d) at any time after the one-year anniversary of the Closing Date, any Transfer of all or a portion of such Stockholder's Company Stock to a Rule 144 Transferee, in each case in a transaction exempt from registration under federal and state securities laws. Notwithstanding anything to the contrary contained herein, any Permitted Transfer shall be subject to Article 4, Article 5 and Article 6 of this Agreement. Each Stockholder shall be solely responsible for any and all tax consequences to him or it resulting from any Permitted Transfers under this Agreement. Notwithstanding the foregoing, however, a Transfer shall not be deemed to be a Permitted Transfer unless the permitted transferee of the Company Stock expressly assumes, in writing, all of the rights, obligations and limitations imposed on the Company Stock under this Agreement, pursuant to the form of Stockholder's Assent attached hereto as **Exhibit A**.

"**Person**" means any individual, corporation, partnership, company, limited liability company, association, joint stock company, trust, estate, employee benefit plan, joint venture or unincorporated organization.

"**Plan**" is defined in the Subscription Agreement.

"**Plant-Level Financial Statements**" means, for each Facility and for any specified period, statements of income and operations (including appropriate operating metrics) of such Facility for such period and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding period of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail.

"**Pro Rata Share**" means, with respect to a Stockholder, a percentage based upon a fraction, (a) the numerator of which is the sum of the total number of shares of Company Stock, calculated on a Fully-Diluted Basis, owned by such Stockholder immediately prior to such issuance and (b) the denominator of which is the total number of shares of Company Stock, calculated on a Fully-Diluted Basis, outstanding immediately prior to such issuance; provided, that for purposes of Article 7, (a) a Stockholder's "Pro Rata Share" shall be calculated immediately prior to the issuance of any New Securities and (b) the definition of "Pro Rata Share" shall not include any Company Stock underlying Warrants that have not been exercised prior to the issuance of any New Securities.

"**Public Filer**" means, with respect to the Company, (a) that after the date hereof, the Company has filed a Registration Statement with the Commission for its Equity Interests and such Registration Statement has been declared to be, and remains, effective, or (b) that the Company is otherwise making its quarterly unaudited consolidated financial statements and annual audited financial statements publicly available (through its corporate web-site or otherwise).

"**Public Offering**" means a public offering and sale of Common Stock for cash pursuant to an effective Registration Statement.

"**Public Stockholder**" means, in the event that the Company is a Public Filer, a Stockholder that chooses to be a "public-side" Stockholder (i.e., a Stockholder that does not wish to receive material non-public information with respect to any other Stockholder or their securities).

"**Qualified Stockholder**" means, as of any measurement date, any Stockholder holding Common Stock representing at least ten percent (10.0%) of the aggregate Common Stock issued and outstanding on such date.

"**Registration Rights Agreement**" means that certain Registration Rights Agreement, dated as of the Closing Date, by and among the Company and the Holders (as defined therein).

"**Registration Statement**" means a registration statement filed by the Company with the Commission under the Securities Act that covers any of the Company Stock pursuant to the provisions of the Registration Rights Agreement.

"**Required Holders**" means, as of any measurement date, the holders of Common Stock representing at least a majority of the aggregate Common Stock issued and outstanding on such date.

"**Responsible Officer**" means, with respect to any Person, the chief executive officer, president, any executive officer, any Financial Officer, or any vice president of such Person or, with respect to financial matters, the Financial Officer of such Person. Unless otherwise specified, all references herein to "Responsible Officer" shall refer to a Responsible Officer of the Company.

"**Restricting Information**" has the meaning set forth in Section 10.2.

"**Restructuring Agreement**" means the Restructuring Agreement, including the Restructuring Term Sheet attached thereto, dated as of August 17, 2012, by and among the Company, Aventine Renewable Energy, Inc., Aventine Renewable Energy—Aurora West, LLC, Aventine Renewable Energy - Mt Vernon, LLC, Aventine Renewable Energy—Canton, LLC, Aventine Power, LLC, Nebraska Energy, L.L.C., the lenders listed on the signature pages thereof and certain shareholders of the Company beneficially holding the Company's issued and outstanding common stock in the amounts set forth in Exhibit B thereto.

"**Rules**" has the meaning set forth in Section 11.15(b).

"**Rule 144**" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such rule.

"**Rule 144 Transferee**" means any Person to whom a Transfer of Company Stock is made in accordance with Rule 144, which Transfer shall be permitted at any time after the performance by the Company of its obligations as set forth in Section 6 of the Registration Rights Agreement.

"**Sale Notice**" has the meaning set forth in Section 6.3.

"**Sale of the Company**" means such time as:

(a) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to any "person" (within the meaning of Section 13(d) of the Exchange Act) other than the Company or any of its Subsidiaries;

(b) the Company's stockholders approve a plan for the liquidation or dissolution of the Company;

(c) any Person or Persons acting together that would constitute a group (for purposes of Section 13(d) of the Exchange Act) (a "group"), together with any Affiliates or related Persons thereof, is or becomes the "Beneficial Owner," directly or indirectly, of more than 50% of the voting power of the Voting Stock of the Company; provided, that none of the Investors shall be deemed to be acting together as a group for this purpose; provided, further, that in no event shall the sale of the Company's Common Stock to an underwriter or group of underwriters in privity of contract with the Company (or any other Person in privity of contract with such underwriters) be deemed to be a Sale of the Company unless such Common Stock is held in an investment account, in which case the investment account would be treated without giving effect to the foregoing part of this proviso; or

(d) individuals who on the Closing Date constituted the Board (together with any new directors appointed pursuant to the terms of this Agreement or whose election by the Board or whose nomination by the Board for election by the Company's stockholders was approved by a vote of at least a majority of the Board then in office who either were members of the Board on the Closing Date or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the members of the Board then in office.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Selling Stockholder**" has the meaning set forth in Section 5.1.

"**Selling Stockholder Shares**" has the meaning set forth in Section 5.1.

"**Stockholder**" means any Person who holds Company Stock that is or becomes a party hereto.

"**Stock Equivalents**" means any (a) warrants, options or other right to subscribe for, purchase or otherwise acquire any shares of Common Stock or any other class or series of Capital Stock of the Company or (b) any securities convertible into or exchangeable for shares of Common Stock or any other class or series of Capital Stock of the Company.

"**Sub Board**" means the board of directors of any Subsidiary of the Company.

"**Subscription Agreement**" has the meaning set forth in the recitals.

"**Subsidiary**" means, with respect to any specified Person, (a) any corporation, association or other business entity of which more than fifty percent (50%) of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and (b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"**Transfer**" means (a) when used as a noun, any transfer, donation, sale, assignment, pledge, encumbrance, hypothecation, gift, bequest, creation of a security interest in or lien on, or other disposition, irrespective of whether any of the foregoing are effected with or without consideration, voluntarily or involuntarily, directly or indirectly, conditionally or unconditionally, by operation of law or otherwise, inter vivos or upon death (including an indirect transfer of Equity Interests occurring as a result of the transfer of Equity Interests in any Person which has a direct or indirect interest in such Equity Interests); or (b) when used as a verb, means to make a transfer.

"**Voting Stock**" means with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

"**Warrantholder**" means any Person who holds any Warrants pursuant to the Warrant Agreement.

"**Warrants**" means the five-year warrants to be issued by the Company pursuant to the Warrant Agreement to purchase 787,855 shares of Common Stock at an initial exercise price of $61.75 per share, subject to adjustment as provided in the Warrant Agreement.

"**Warrant Agreement**" means that certain Warrant Agreement, dated as of the Closing Date, between the Company and American Stock Transfer & Trust Company, LLC, as warrant agent.

ARTICLE 2

VOTING; BOARD OF DIRECTORS

Section 2.1 Board of Directors. From and after the date hereof, and until the provisions of this Article 2 cease to be effective, each Stockholder shall vote all of his or its Company Stock over which such Stockholder has voting control, whether at any annual or special meeting, by written consent or otherwise, and shall take all other reasonably necessary or desirable actions within such Stockholder's control (whether in such Stockholder's capacity as a stockholder, director, member of a Board committee or officer of the Company or otherwise, and including attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings), and the Company shall take all necessary or desirable actions within its control (including calling special Board and stockholder meetings as permitted by the Amended and Restated Bylaws), so that:

(a) the authorized number of directors on the Board shall initially be five (5):

(1) one (1) of whom shall be the Chief Executive Officer of the Company (the "**CEO Director**"); and

(2) three (3) of whom shall be Independent Directors designated by the affirmative vote of a majority in interest of the Investors (one of whom shall serve as the Chairman of the Board); and

(3) one (1) of whom shall be an Independent Director designated by the affirmative vote of a majority in interest of the Existing Stockholders,

and the initial directors under clause (1), (2) and (3) shall be John Castle, Eugene Davis (who shall serve as the Chairman of the Board), Timothy Bernlohr, Kip Horton and James Continenza.

(b) Subsidiary Boards. The composition of each Sub Board shall be determined by the Board.

Section 2.2 Vacancy. In the event that any director designated hereunder, other than the CEO Director, ceases for any reason to serve as a member of the Board during his term of office pursuant to Section 2.1, the resulting vacancy on the Board shall be filled as promptly as practicable by the affirmative vote of the remaining Independent Directors. In the event that the CEO Director ceases for any reason to serve as a member of the Board during his term of office pursuant to Section 2.1, the resulting vacancy on the Board shall be filled as promptly as practicable by the affirmative vote of the Independent Directors.

Section 2.3 Meetings; Advance Notice; Meeting Materials. Meetings of the Board shall be held in person or by means of conference telephone or similar communications equipment by means of which all directors and Observers (as defined below) participating in the meeting can hear each other, it being acknowledged and agreed, that no matter the form of meeting, any director or Observer may participate by means of telephone or similar communications equipment. The Company shall give each director and each Observer notice, in the same manner and at the same time, of each meeting of the Board at least forty-eight (48) hours prior to such meeting. Notwithstanding the foregoing or anything to the contrary in the Amended and Restated Bylaws, (a) a meeting may be held at any time without notice if a majority of the directors and Observers have waived notice of the meeting and (b) if the Company reasonably determines that, as a result of exigent circumstances affecting the Company, it must hold a meeting of the Board without such advance notice as required pursuant to this Section 2.3, the Company shall be permitted to conduct such meeting and shall provide advance notice of such meeting to each director and each Observer, in the same manner and at the same time, as soon as reasonably practicable prior to such meeting. The Company shall provide, in the same manner and at the same time, each director and Observer with (a) copies of all information and materials (including a meeting agenda, if one is prepared) at least forty-eight (48) hours prior to each meeting of the Board, as the case may be, and (b) copies of the minutes of all meetings of such directors and/or stockholders, but in no event later than thirty (30) days after each such meeting. Notwithstanding the foregoing, if the Company reasonably determines that, as a result of exigent circumstances affecting the Company, it must hold a meeting of the Board without such advance information and materials as required pursuant to this Section 2.3, the Company shall provide, in the same manner and at the same time, each director and Observer with electronic copies of all information and materials (including a meeting agenda, if one is prepared) as soon as reasonably practicable prior to such meeting.

Section 2.4 Expenses; Director Fees. Without limitation of any right to reimbursement or advance of expenses provided in the Amended and Restated Certificate of Incorporation or the Amended and Restated Bylaws or otherwise, the Company (a) shall pay the reasonable out-of-pocket expenses incurred by each Independent Director in connection with meetings of the Board any committees thereof, and (b) shall pay to the Independent Directors and any non-employee director on each Sub Board a reasonable annual director fee to be determined by the Board.

Section 2.5 Significant Transactions. In the event that the Drag-Along Stockholders elect to exercise their rights under Article 6, each Stockholder agrees to cast all votes to which such Stockholder is entitled in respect of its Company Stock, whether at any annual or special meeting, by written consent or otherwise, in the same proportion as the Company Stock is voted by the Drag-Along Stockholders to approve any Sale of the Company or other transaction or series of transactions involving any of the Aventine Companies (or all or any portion of their respective assets) in connection with, or in furtherance of, the exercise by the Drag-Along Stockholders of their rights under Article 6.

Section 2.6 Observation Rights. Without limiting any of the rights of any Investor set forth in this Article 2, the Company shall invite (by written notice given to each Qualified Stockholder) one (1) representative of each Qualified Stockholder (provided such representative shall become an NDA Signatory and such non-disclosure agreement would apply to information received by such Observer and such Qualified Stockholder would be responsible for such Observer's breaches of the terms of such non-disclosure agreement) (such individuals, each an "**Observer**" and collectively, the "**Observers**") to attend in a non-voting observer capacity all meetings of the Board and all meetings of the stockholders of the Company. The Company shall ensure that the Board does not meet in any informal capacity without giving prior notice to each Observer; provided, that the Board may exclude any Observer from any meeting of the Board or withhold copies of any information or materials to be presented, discussed or used at such meeting if the Board reasonably determines that such exclusion is necessary to (a) preserve the attorney-client, work product or similar privilege or immunity belonging to any of the Aventine Companies or (b) to protect highly confidential proprietary information. Each Qualified Stockholder shall bear any and all expenses incurred by each Observer designated by such Qualified Stockholder and the Company shall not pay any fees to, or expenses of, any such Observer.

Section 2.7 Voting Agreement. The agreements set forth in Article 2 are, to the extent applicable, intended to constitute enforceable voting agreements within the scope of Section 218 of the DGCL.

ARTICLE 3

INSURANCE

Section 3.1 Directors and Officers Insurance. The Company shall, and shall cause each other Aventine Company to, have in place and maintain in full force and effect one or more insurance policies covering directors and officers liability and employment practice liability. The directors and officers liability insurance policies shall provide for coverage amounts and terms and conditions at least as favorable as maintained by the Company immediately prior to the date hereof.

ARTICLE 4

RESTRICTIONS ON TRANSFER

Section 4.1 General Prohibitions on Transfers.

(a) Notwithstanding anything to the contrary in this Agreement, other than (i) Permitted Transfers, (ii) Transfers as provided in Article 5 of this Agreement, or (iii) Transfers in connection with any Sale of the Company pursuant to Article 6 of this Agreement, no Stockholder may Transfer any shares of Company Stock. Transfers of Company Stock may only be made in compliance with applicable foreign, U.S. federal and state securities laws, including the Securities Act of 1933, as amended, and the rules and regulations thereunder, and the DGCL. Any purported Transfer of any such Company Stock other than in strict accordance with this Agreement shall be null and void and of no force and effect, and the Company may refuse to recognize, unless otherwise agreed in writing by the Board, any such prohibited Transfer and not reflect in its records any change in record ownership of such Company Stock pursuant to any such prohibited Transfer.

(b) Any Stockholder that proposes to Transfer any shares of Company Stock to a Permitted Transferee shall deliver a written notice to the Company at least twenty (20) days prior to such proposed Transfer, with such notice stating the number and class of Company Stock that is proposed to be Transferred by such Stockholder and the name and address of such Permitted Transferee.

ARTICLE 5

CO-SALE AGREEMENT

Section 5.1 Co-Sale Notice. In the event that one or more Stockholders holding a majority of the aggregate number of issued and outstanding shares of Common Stock (any such Stockholder, a "**Selling Stockholder**" and collectively, the "**Selling Stockholders**") proposes to Transfer (in a single transaction or a series of related transactions) shares of Common Stock representing more than a majority of the aggregate number of shares of Common Stock issued and outstanding immediately prior to such Transfer ("**Selling Stockholder Shares**") to any Person other than an Affiliate or Approved Fund of such Selling Stockholder, such Selling Stockholder(s) shall promptly notify the Company and each other Stockholder (collectively, the "**Co-Sale Stockholders**") of such proposed Transfer in writing (the "**Co-Sale Notice**") at least twenty (20) days prior to the closing of such proposed Transfer. The Co-Sale Notice shall describe in reasonable detail the proposed Transfer, including the number of Selling Stockholder Shares proposed to be Transferred, the nature of such Transfer, the consideration to be paid and the name and address of each prospective transferee.

Section 5.2 Co-Sale Right. Each Co-Sale Stockholder shall have the right, but not the obligation, exercisable upon written notice to the Selling Stockholder(s) within fifteen (15) days after receipt of the Co-Sale Notice, to participate in such proposed Transfer on the same terms and conditions as specified in the Co-Sale Notice, as such terms and conditions may be modified as contemplated by Section 5.3, up to the amount described in Section 5.4. To the extent that a Co-Sale Stockholder exercises its right to participate in accordance with the terms and conditions set forth in this Article 5, the Selling Stockholder(s) will, upon the consent of the prospective transferee, increase the amount of shares of Common Stock to be Transferred to the prospective transferee by the amount of shares of Common Stock owned by such Co-Sale Stockholder as at the date of such Co-Sale Notice (the "**Co-Sale Stockholder Shares**"), as determined pursuant to Section 5.4, the Co-Sale Stockholders elect to include in such Transfer, unless the prospective transferee does not wish to purchase such additional Co-Sale Stockholder Shares, in which case, the number of Selling Stockholder Shares that the Selling Stockholder(s) may Transfer in the proposed Transfer shall be correspondingly reduced, subject to Section 5.4.

Section 5.3 Price Modifications. If there shall be a decrease in the price to be paid by the prospective transferee for the Selling Stockholder Shares to be purchased from the price set forth in the Co-Sale Notice, which decrease is acceptable to the Selling Stockholder(s), or any other change in the terms or conditions set forth in the Co-Sale Notice which are less favorable to the Selling Stockholder(s) but which are acceptable to the Selling Stockholder(s), the Selling Stockholder(s) shall immediately notify the Company and each Co-Sale Stockholder in writing of such decrease or other change, and each such Co-Sale Stockholder shall have ten (10) days from the date of receipt of such written notice to modify the Co-Sale Stockholder Shares that it elected to sell to the prospective transferee as previously indicated in the written notice delivered by such Co-Sale Stockholder, as the case may be, pursuant to Section 5.2.

Section 5.4 Co-Sale Stockholder Shares; Representations and Warranties. In connection with any proposed Transfer of Selling Stockholder Shares under Section 5:

(a) Each Co-Sale Stockholder shall have the right, but not the obligation, to Transfer up to and including a number of Co-Sale Stockholder Shares equal to the product of (i) the number of Selling Stockholder Shares covered by the Co-Sale Notice, multiplied by (ii) a fraction, the numerator of which is the number of Co-Sale Stockholder Shares owned by such Co-Sale Stockholder at the time of such Transfer, and the denominator of which is the number of Co-Sale Stockholder Shares owned by such Co-Sale Stockholder at the time of such Transfer plus the number of Selling Stockholder Shares owned by the Selling Stockholder(s) at the time of such Transfer plus the number of Co-Sale Stockholder Shares owned by each other Co-Sale Stockholder electing to participate in such Transfer at the time of such Transfer.

(b) In no event shall any Co-Sale Stockholder be required to make any representations or warranties as to the Co-Sale Stockholder Shares held by such Co-Sale Stockholder or the business of the Company and/or its Subsidiaries in connection with the proposed Transfer, other than with respect to such Co-Sale Stockholder, the organization and authority of such Co-Sale Stockholder, title to such Co-Sale Stockholder's Co-Sale Stockholder Shares, no consents and no conflicts with (i) such Co-Sale Stockholder's Organizational Documents and (ii) such Co-Sale Stockholder's material agreements. No such Co-Sale Stockholder shall have any liability for any breach of a representation or warranty of any other Co-Sale Stockholder relating to the representations required to be given pursuant to the immediately preceding sentence. In the event that any indemnification and/or purchase price adjustment liabilities are incurred, a Co-Sale Stockholder's obligations pursuant thereto shall be on a several (and not a joint and several) basis and shall not exceed the lesser of (x) such Co-Sale Stockholder's Pro Rata Share of such indemnification and/or purchase price adjustment liabilities and (y) the net proceeds received by such Co-Sale Stockholder pursuant to such proposed Transfer.

Section 5.5 Exercise Procedure.

(a) If a Co-Sale Stockholder elects to participate in the proposed Transfer, it shall effect its participation by delivering to the prospective transferee for Transfer to the prospective transferee documentation representing the Co-Sale Stockholder Shares that it has elected to sell. Such documentation shall be delivered to the prospective transferee in connection with the consummation of the Transfer pursuant to the terms and conditions specified in the Co-Sale Notice (as such terms and conditions may be modified and accepted pursuant to Section 5.3), and the Selling Stockholder(s) shall concurrently therewith pay or arrange for the payment to such Co-Sale Stockholder, as applicable, by wire transfer in immediately available funds of that portion of the sale proceeds to which such Co-Sale Stockholder is entitled by reason of its participation in such Transfer. To the extent any prospective transferee prohibits such assignment or otherwise refuses to purchase any of a Co-Sale Stockholder's Co-Sale Stockholder Shares, the Selling Stockholder(s) shall not sell to such prospective transferee any Selling Stockholder Shares unless and until, simultaneously with such sale, the Selling Stockholder(s) shall purchase such Co-Sale Stockholder's Co-Sale Stockholder Shares from such Co-Sale Stockholder, as applicable, on terms and conditions equivalent to those under which the Selling Stockholder(s) sold its shares of Company Stock (as such terms and conditions may be modified and accepted pursuant to Section 5.3). Subject to the foregoing sentence, if the Selling Stockholder(s) does not complete the proposed Transfer for any reason, it shall immediately, but in no event in more than two (2) days, return to such Co-Sale Stockholder all documents (including any shares of Common Stock) which such Co-Sale Stockholder delivered to the Selling Stockholder(s) pursuant to this Article 5 or otherwise in connection with such Transfer.

Section 5.6 Transfer Period. In the event that no Co-Sale Stockholder has elected to participate in the proposed Transfer, the Selling Stockholder(s) shall have sixty (60) days thereafter to Transfer or enter into a binding agreement (pursuant to which the Transfer of such Selling Stockholder Shares covered thereby will be, and is, consummated within sixty (60) days from the date of such agreement) to Transfer the Selling Stockholder Shares as to which such Co-Sale Stockholder(s) co-sale right was not exercised, at a price and upon such other terms no more favorable to the Selling Stockholder(s) than those specified in the Co-Sale Notice. In the event the Selling Stockholder(s) have not Transferred such Selling Stockholder Shares within such sixty (60) day period (or Transferred such Selling Stockholder Shares in accordance with the foregoing within sixty (60) days from the date of such agreement), the Selling Stockholder(s) will not thereafter Transfer any Selling Stockholder Shares without first offering such Selling Stockholder Shares to such Co-Sale Stockholders in the manner provided above.

Section 5.7 Subsequent Transfer. The exercise or non-exercise of the rights by a Co-Sale Stockholder hereunder to participate in one or more sales of Selling Stockholder Shares shall not adversely affect its right to participate in one or more subsequent sales of Selling Stockholder Shares. Any transfer by any Selling Stockholder(s) of any of its Common Stock without first giving each Co-Sale Stockholder the rights described in this Article 5 shall be void and of no force or effect.

ARTICLE 6

DRAG-ALONG RIGHTS

Section 6.1 Drag-Along Right. In the event that one or more Stockholders holding a majority of the aggregate number of issued and outstanding shares of Common Stock (such Stockholders, the "**Drag-Along Stockholders**") propose to consummate any Sale of the Company, such Drag-Along Stockholders shall have the right, but not the obligation, to require each of the other Stockholders to participate in the Sale of the Company and dispose of all (but not less than all) of the shares of Company Stock owned by each such other Stockholder on the date of the consummation of such Sale of the Company at the same price and on the same terms and conditions as the Drag-Along Stockholders have agreed in the Sale of the Company; provided, that the terms of the Sale of the Company are normal and customary for transactions of that nature.

Section 6.2 Conditions to Exercise. The obligation of any such Stockholder to participate in a Sale of the Company is subject to the satisfaction of the following conditions: (a) the Sale of the Company is a bona fide arm's length transaction that has been, or prior to the consummation thereof will be, approved by a majority-in-interest of the Stockholders; (b) upon the consummation of the Sale of the Company, each Stockholder shall receive in exchange for its shares of Company Stock the same portion of the aggregate consideration from such Sale of the Company that such Stockholder would have received if such consideration had been distributed by the Company in a complete liquidation of the Company; (c) if any holder of Company Stock is given an option as to the form of consideration to be received, all holders of such Company Stock will be given the same option; (d) in no event shall any Stockholder be required to make any representations or warranties as to the Company Stock held by such Stockholder or the business of the Company and/or its Subsidiaries in connection with the proposed Sale of the Company, other than with respect to such Stockholder, the organization and authority of such Stockholder, title to such Stockholder's shares of Company Stock, no consents and no conflicts with (i) such Stockholder's Organizational Documents and (ii) such Stockholder's material agreements; and (e) no such Stockholder shall have any liability for any breach of a representation or warranty of any other Stockholder relating to the representations required to be given pursuant to the immediately preceding clause (d). In the event that any indemnification and/or purchase price adjustment liabilities are incurred, a Stockholder's obligations pursuant thereto shall be on a several (and not a joint and several) basis and shall not exceed the lesser of (A) such Stockholder's Pro Rata Share of such indemnification and/or purchase price adjustment liabilities and (B) the net proceeds received by such Stockholder pursuant to such Sale of the Company.

Section 6.3 Exercise Procedure. If the Drag-Along Stockholders wish to exercise their drag-along rights under this Article 6, they shall furnish written notice to all other Stockholders (a "**Sale Notice**") not more than sixty (60) days nor less than twenty (20) days prior to the proposed date of consummation of the Sale of the Company, and the Drag-Along Stockholders shall cause a definitive agreement with respect to such Sale of the Company to be executed not more than sixty (60) days following the date the Sale Notice is delivered. The Sale Notice shall set forth: (a) the name and address of the Person to whom the Sale of the Company is being made; (b) the proposed amount and form of consideration to be paid per share of Company Stock and the terms and conditions of payment offered by such Person; (c) the aggregate number of shares of Company Stock being sold in the Sale of the Company; (d) the planned date on which such Sale of the Company is to be consummated; and (e) the Drag-Along Stockholders' intention to exercise the "Drag-Along" rights set forth in this Article 6.

Section 6.4 Costs. Each Stockholder shall bear its Pro Rata Share (based upon the number of shares of Company Stock sold by him, her or it) of the costs of any sale of such Stockholder's shares of Company Stock pursuant to a Sale of the Company to the extent such costs are incurred for the benefit of Stockholders and are not otherwise paid by the Company or the acquiring third party. Costs incurred by any Stockholder for his or its own behalf shall not be considered costs of the Sale of the Company hereunder.

Section 6.5 No Appraisal Rights. Each Stockholder hereby agrees to waive any and all appraisal rights to which such Stockholder may be entitled under Section 262 of the DGCL with respect to a transaction subject to Article 6 as to which such appraisal rights are available.

ARTICLE 7

ISSUANCES OF NEW SECURITIES; PREEMPTIVE RIGHTS

Section 7.1 Preemptive Rights. The Company hereby grants to each Stockholder the right to purchase up to such Stockholder's Pro Rata Share of any New Securities which the Company may from time to time propose to issue and sell, and the Company shall not issue or sell any New Securities without first complying with the provisions of this Article 7. For the avoidance of doubt, no Warrantholder shall have any rights under this Article 7 in such capacity unless and until such Warrantholder has exercised all or any portion of the Warrants, and then only to the extent such Warrants have been exercised for shares of Company Stock in accordance with the terms of the Warrant Agreement.

Section 7.2 Issuance Notice. If the Company proposes to undertake an issuance of New Securities, it shall give each Stockholder written notice (an "**Issuance Notice**") of its intention, describing the number and type of New Securities, and the proposed offer price for such New Securities and the general terms upon which the Company proposes to issue such New Securities. Each Stockholder shall have twenty (20) days after its receipt of the Issuance Notice to agree to purchase up to such Stockholder's Pro Rata Share of such New Securities for the price and upon the terms specified in the Acceptance Notice by giving written notice to the Company (the "**Acceptance Notice**") and indicating therein the number of New Securities to be purchased. The Company shall, at the closing of the issuance of the New Securities, sell to each Stockholder such number of New Securities as such Stockholder shall have agreed to purchase in the Acceptance Notice. In the event any Stockholder fails to exercise such preemptive right within such twenty (20) day period, the Company will have sixty (60) days thereafter to sell or enter into a binding agreement (pursuant to which the sale of New Securities covered thereby will be, and is, consummated within sixty (60) days from the date of such agreement) to sell the New Securities as to which such Stockholder's preemptive right was not exercised, at a price and upon such other terms no more favorable to the purchasers thereof than those specified in the Issuance Notice. In the event the Company has not sold such New Securities within such sixty (60) day period (or sold and issued New Securities in accordance with the foregoing within sixty (60) days from the date of such agreement), the Company will not thereafter issue or sell any New Securities without first offering such New Securities to such Stockholders in the manner provided above. Notwithstanding anything in this Agreement to the contrary, for so long as the Company is a Public Filer, in no event will the Company be required to deliver an Issuance Notice to any Public Stockholder, and no such Public Stockholder shall have a right to exercise its rights under this Article 7 if such Issuance Notice is a condition precedent to such exercise (or election to exercise), and any such Issuance Notice, as determined by a Responsible Officer, would constitute Restricting Information.

Section 7.3 Post-Issuance Notice. Notwithstanding the notice requirements of Section 7.2, the Company may proceed with any issuance of New Securities prior to having complied with the provisions of Section 7.2; provided, that the Company shall:

(a) provide each Stockholder with (i) prompt notice of such issuance of New Securities and (ii) the Issuance Notice described in Section 7.2, in which the actual price per unit of the New Securities shall be set forth;

(b) offer to issue to each Stockholder such number of New Securities of the type issued in the issuance of New Securities as may be requested by such Stockholder (not to exceed the Pro Rata Share such Stockholder would have been entitled to purchase pursuant to Section 7.1 multiplied by the number of New Securities that would have been issued had every Stockholder participated up to its Pro Rata Share) on the same economic terms and conditions with respect to such New Securities as the subscribers in the issuance of New Securities received; and

(c) keep such offer open for a period of thirty (30) days, during which period each such Stockholder may accept such offer by sending a written acceptance to the Company committing to purchase an amount of such New Securities (not in any event to exceed the Pro Rata Share that each such Stockholder would have been entitled to pursuant to Section 7.1 multiplied by the number of New Securities that would have been issued had every Stockholder participated up to its Pro Rata Share).

Section 7.4 Consideration. Notwithstanding anything to the contrary contained in this Article 7, if the consideration to be received by the Company with respect to the issuance of New Securities specified in the Issuance Notice is other than cash to be paid upon the issuance of the New Securities (that is, if the consideration would constitute so-called "in-kind" property such as Capital Stock), or if security is to be provided to secure the payment of any deferred portion of the purchase price, then any Stockholder exercising its rights under this Article 7 may purchase such New Securities by making a cash payment at the time of the closing specified in the Acceptance Notice in the amount of the reasonably equivalent value of the "in-kind" property specified in the Issuance Notice and/or may provide reasonably equivalent security to that provided in the Issuance Notice. Such "reasonably equivalent value" or "reasonably equivalent security" shall be determined by the Board, or, following the objection of the Required Holders of such determination by the Board, shall be determined pursuant to arbitration in accordance with Section 11.15 hereof.

Section 7.5 Subsequent Issuances. The exercise or non-exercise of the rights by any Stockholder hereunder to participate in one or more issuances of New Securities shall not adversely affect its right to participate in one or more subsequent issuances of New Securities.

ARTICLE 8

AFFILIATE TRANSACTIONS

Section 8.1 Affiliate Transactions. From and after the date hereof, without the prior written consent of the Board, the Company shall not, and shall cause the other Aventine Companies not to, directly or indirectly enter into, renew or extend any transaction (including, without limitation, the purchase, sale, lease or exchange of property or assets, or the rendering of any service) with any Stockholder (or any Affiliate of such Stockholder) that owns 10% or more of any class of Capital Stock of the Company or with any Affiliate of the Company, except upon fair and reasonable terms no less favorable to the Company or such Subsidiary than could be obtained, at the time of such transaction or, if such transaction is pursuant to a written agreement, at the time of the execution of the agreement providing therefor, in a comparable arm's length transaction with a Person that is not such a holder or an Affiliate. The foregoing restrictions shall not apply to the following:

(a) transactions (i) approved by a majority of the disinterested members of the Board or (ii) for which the Company or a Subsidiary delivers to the Board a written opinion of a nationally recognized investment banking, accounting, valuation or appraisal firm stating that the transaction is fair to the Company or such Subsidiary from a financial point of view;

(b) any transaction solely between the Company and any of its Subsidiaries or solely among Subsidiaries;

(c) the payment of compensation (including awards or grants in cash, securities or other payments) for the personal services of, and expense reimbursement and indemnity provided on behalf of, officers, directors (including the payment of, or an agreement providing for the payment of, reasonable directors' fees), consultants and employees of the Company or any of its Subsidiaries, in each case in the ordinary course of business;

(d) any payments or other transactions pursuant to any tax-sharing agreement between the Company and any other Person with which the Company files a consolidated tax return or with which the Company is part of a consolidated group for tax purposes;

(e) any sale of shares of Capital Stock (other than Disqualified Stock (as defined in the Amended and Restated Senior Term Loan Facility)) of the Company;

(f) any Investments (as defined in the Amended and Restated Senior Term Loan Facility) or any Restricted Payments (as defined in the Amended and Restated Senior Term Loan Facility) not prohibited by Section 7.05 of the Amended and Restated Senior Term Loan Facility;

(g) the transactions in accordance with the Financing Documents and the Equity Documents and other agreements set forth on Schedule 7.07(g) of the Amended and Restated Senior Term Loan Facility as in effect as of the Closing Date (or as of the time contemplated by Section 4.8 of the Subscription Agreement in the case of the Warrants) or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) in any replacement agreement thereto so long as any such amendment or replacement agreement is not more disadvantageous to the Lenders (as defined in the Amended and Restated Senior Term Loan Facility) in any material respect than the original agreement as in effect on the Closing Date;

(h) the issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock options and stock ownership plans or similar employee benefit plans approved by the Board in good faith and loans to employees of the Company and its Subsidiaries which are approved by the Board in good faith;

(i) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case on ordinary business terms and otherwise in compliance with the terms of this Agreement, which are fair to the Company or its Subsidiaries, in the reasonable determination of the Board or the senior management thereof, or are on terms at least as favorable as could reasonably have been obtained at such time from an unaffiliated party;

(j) any transaction with a joint venture or similar entity which would be subject to this covenant solely because the Company or a Subsidiary of the Company owns an equity interest in or otherwise controls such joint venture or similar entity; or

(k) payments and transactions in connection with any Credit Facilities (as defined in the Amended and Restated Senior Term Loan Facility) (including commitment, syndication and arrangement fees payable thereunder) and the Amended and Restated Senior Term Loan Facility (including upfront, syndicate and arrangement fees payable in connection therewith), and the application of the proceeds of each, and the payment of fees and expenses with respect thereto.

(l) Notwithstanding the foregoing, any transaction or series of related transactions covered by the first paragraph of this Section 8.1 and not covered by clauses (b) through (l), (A) the aggregate amount of which exceeds $5,000,000 in value, must be approved or determined to be fair in the manner provided for in clause (a)(i) or (a)(ii) above and (B) the aggregate amount of which exceeds $15,000,000 in value must be determined to be fair in the manner provided for in clause (a)(ii) above.

ARTICLE 9

INFORMATION AND ACCESS RIGHTS

Section 9.1 Financial Statements.

(a) From the date of this Agreement, the Company shall deliver to (i) each Stockholder and (ii) any prospective Stockholder that becomes an NDA Signatory; provided, that, if the Company is and for such time as it continues to be a Public Filer, then the financial statements described in subsections (1) and (2) below, other than Plant-Level Financial Statements, will be delivered to all Stockholders and (y) the Company shall not be required to deliver the financial statements and projections in subsections (3) and (4) below):

(1) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Company (commencing with the fiscal year ending December 31, 2012), (i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards; and (ii) Plant-Level Financial Statements for such fiscal year (such Plant-Level Financial Statements to be certified by a Responsible Officer of the Company as fairly presenting in all material respects the financial condition and results of operations of the applicable Facility in accordance with GAAP);

(2) as soon as available, but in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company (commencing with the fiscal quarter ending September 30, 2012), (i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, and (ii) Plant-Level Financial Statements for such fiscal quarter certified by a Responsible Officer of the Company as fairly presenting in all material respects the financial condition and results of operations of the Company and its Subsidiaries or applicable Facility in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(3) as soon as available, but in any event within thirty (30) days after the end of each fiscal month of each fiscal year of the Company (commencing with the fiscal month ending October 31, 2012), (i) a consolidated balance sheet of the Company and its Subsidiaries as at the end of such fiscal month, and the related consolidated statements of income or operations for such fiscal month and for the portion of the Company's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, and (ii) Plant-Level Financial Statements for such fiscal month, such consolidated statements and Plant-Level Financial Statements to be certified by a Responsible Officer of the Company as fairly presenting in all material respects the financial condition and results of operations of the Company and its Subsidiaries or applicable Facility in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; and

(4) as soon as available and in any event within sixty (60) days after the end of each fiscal year, forecasts prepared by management of the Company, in form reasonably satisfactory to a majority-in-interest of the Qualified Stockholders, of balance sheets, income statements and cash flow statements on a quarterly basis for the fiscal year following such fiscal year and on an annual basis for each fiscal year thereafter, together with a budget for the each fiscal quarter and fiscal year, in form reasonably satisfactory to a majority-in-interest of the Qualified Stockholders (provided, in the event of a conflict between the information that is required to be delivered hereunder and the information required to be delivered under the Amended and Restated Term Loan Facility, the latter shall control and be delivered pursuant hereto).

(b) Documents required to be delivered pursuant to this Section 9.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 10.02 to the Amended and Restated Senior Term Loan Facility; (ii) such information is filed on EDGAR or the equivalent thereof with the Commission; or (iii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Stockholder has access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that if any Stockholder so requests, the Company shall provide such Stockholder, by electronic mail, electronic versions (i.e., soft copies) of the documents required to be delivered pursuant to this Section 9.1. Each Stockholder shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

(c) Notwithstanding anything to the contrary contained herein, all Plant-Level Financial Statements referred to above shall only be delivered to Persons that are (i) subject to the confidentiality provisions set forth in Article 10 or (ii) NDA Signatories.

Section 9.2 Other Information. At any time after the one-year anniversary of the Closing Date, upon the request of one or more Stockholders, with the prior written approval of the Required Holders, the Company shall provide to such requesting Stockholders the information set forth in Section 6 of the Registration Rights Agreement.

Section 9.3 Quarterly Operating Call. Within fifty (50) days of the end of each fiscal quarter, commencing with the first fiscal quarter ending after the date hereof, the Company shall cause the Chief Executive Officer and Chief Financial Officer of the Company to hold a conference telephone call with representatives of (a) each Stockholder and (b) any prospective Stockholder that becomes an NDA Signatory to review the financial condition of the Aventine Companies as reflected in the information furnished pursuant to Section 9.1. The Company shall determine in each fiscal quarter the date and time for the quarterly operating call to be held in the immediately succeeding fiscal quarter and shall notify such Stockholders and prospective Stockholders at least ten (10) days prior to the date thereof. The financial officers of the Company shall prepare a financial package to be electronically delivered to each such Stockholder and prospective Stockholder (provided, that such package shall not actually be delivered until such prospective Stockholder becomes an NDA Signatory) at least twenty-four (24) hours prior to each scheduled quarterly operating call. The financial package shall include, among other things, (i) information furnished pursuant to Section 9.1 and (ii) such other information regarding the Aventine Companies as a majority-in-interest of the Stockholders may, from time to time, reasonably request.

ARTICLE 10

TREATMENT OF CERTAIN INFORMATION; CONFIDENTIALITY

Section 10.1 Non-Disclosure Obligations.

(a) Each Stockholder agrees to maintain the confidentiality of Information, except that Information may be disclosed (i) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives with a need to know such Information (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners); provided, such Stockholder shall provide the Company with prompt notice prior to such disclosure to the extent permitted by law to do so, (iii) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Equity Document or Financing Document, any action or proceeding relating to this Agreement or any other Equity Document or Financing Document, the enforcement of rights hereunder or thereunder or any litigation or proceeding to which such Stockholder or any of its Affiliates may be a party, (vi) with the written consent of the Company or (vii) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Article 10 or (2) becomes available to such Stockholder or any of its Affiliates on a nonconfidential basis from a source (other than another Stockholder) not known by such Stockholder to be bound by a confidentiality duty or obligation.

(b) For purposes of this Section, "**Information**" means all information received from the Company or any Subsidiary relating to the Company or any Subsidiary or any of their respective businesses, other than any such information that is available to a Stockholder on a nonconfidential basis prior to disclosure by the Company or any Subsidiary; provided, that in the case of information received from the Company or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Article 10 shall be considered to have complied with its obligation to do so if such Person has exercised reasonable care to protect such Information, and in no event less than the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 10.2 Restricting Information. EACH STOCKHOLDER ACKNOWLEDGES THAT UNITED STATES FEDERAL AND STATE SECURITIES LAWS PROHIBIT ANY PERSON WITH MATERIAL, NON-PUBLIC INFORMATION ABOUT AN ISSUER FROM PURCHASING OR SELLING SECURITIES OF SUCH ISSUER OR, SUBJECT TO CERTAIN LIMITED EXCEPTIONS, FROM COMMUNICATING SUCH INFORMATION TO ANY OTHER PERSON. EACH STOCKHOLDER AGREES TO COMPLY WITH APPLICABLE LAW AND ITS RESPECTIVE CONTRACTUAL OBLIGATIONS WITH RESPECT TO CONFIDENTIAL AND MATERIAL NON-PUBLIC INFORMATION. Each Stockholder that is not a Public Stockholder confirms to the Company that such Stockholder has adopted and will maintain internal policies and procedures reasonably designed to permit such Stockholder to take delivery of Restricting Information (as defined below) and maintain its compliance with Applicable Law and its respective contractual obligations with respect to confidential and material non-public information. A Public Stockholder may elect not to receive Company Materials and Information that contains material non-public information with respect to the Stockholder or their securities (such Company Materials and Information, collectively, "**Restricting Information**"), in which case it will identify itself to the Company as a Public Stockholder. Such Public Stockholder shall not take delivery of Restricting Information and shall not participate in conversations or other interactions with any other Stockholder concerning the Company Stock in which Restricting Information is likely to be discussed. The Company, however, shall not, by making any Company Materials and Information (including Restricting Information) available to a Stockholder (including any Public Stockholder), by participating in any conversations or other interactions with a Stockholder (including any Public Stockholder) or otherwise, be responsible or liable in any way for any decision a Stockholder (including any Public Stockholder) may make to limit or to not limit its access to Company Materials and Information. In particular, the Company shall not have, and hereby disclaims, any duty to ascertain or inquire as to whether or not a Stockholder (including any Public Stockholder) has elected to receive Restricting Information, such Stockholder's policies or procedures regarding the safeguarding of material non-public information or such Stockholder's compliance with Applicable Law related thereto. Each Public Stockholder acknowledges that circumstances may arise that require it to refer to Company Materials and Information that might contain Restricting Information. Accordingly, each Public Stockholder agrees that it will nominate at least one designee to receive Company Materials and Information (including Restricting Information) on its behalf and identify such designee (including such designee's contact information) on such Public Stockholder's Administrative Questionnaire (as defined in the Amended and Restated Senior Term Loan Facility). Each Public Stockholder agrees to notify the Company in writing (including by electronic communication) from time to time of such Public Stockholder's designee's e-mail address to which notice of the availability of Restricting Information may be sent by electronic transmission. Each Public Stockholder confirms to the Company that such Public Stockholder understands and agrees that the Company and each other Stockholder may have access to Restricting Information that is not available to such Public Stockholder and that such Public Stockholder has elected to make its decision to enter into this Agreement and to take or not take action under or based upon this Agreement, any other Equity Document or any other Financing Document or related agreement knowing that, so long as such Person remains a Public Stockholder, it does not and will not be provided access to such Restricting Information. Nothing in this Section 10.2 shall modify or limit a Stockholder's (including any Public Stockholder) obligations under Section 10.1 with regard to Company Materials and Information and the maintenance of the confidentiality of or other treatment of Company Materials or Information.

ARTICLE 11

MISCELLANEOUS

Section 11.1 Legends. Any certificates or book-entry records representing Common Stock shall have substantially the following legend endorsed conspicuously thereupon:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE STOCKHOLDERS AGREEMENT, DATED AS OF SEPTEMBER 24, 2012, AMONG THE COMPANY AND THE OTHER PARTIES THERETO, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH AGREEMENT. THE HOLDER OF THIS CERTIFICATE, BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE PROVISIONS OF SUCH AGREEMENT, INCLUDING THE TRANSFER RESTRICTIONS AND THE FORCED SALE PROVISIONS CONTAINED THEREIN.

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND NO INTEREST HEREIN MAY BE SOLD, OFFERED, ASSIGNED, DISTRIBUTED, PLEDGED OR OTHERWISE TRANSFERRED UNLESS (A) THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT COVERING ANY SUCH TRANSACTION OR (B) THE COMPANY AND ITS COUNSEL ARE OTHERWISE SATISFIED THAT SUCH TRANSACTION IS EXEMPT FROM SUCH REGISTRATION AND IN COMPLIANCE WITH ALL STATE SECURITIES LAWS."

The requirement imposed by this Section 11.1 to include the second paragraph of the legend set forth above shall cease and terminate as to any particular Company Stock (a) when, in the opinion of legal counsel reasonably satisfactory to the Company, such legend is no longer required in order to assure compliance by the Company with the Securities Act or (b) when such Company Stock has been effectively registered under the Securities Act or Transferred pursuant to Rule 144. Wherever (x) such requirement shall cease and terminate as to any Company Stock or (y) such Company Stock shall be transferable under paragraph (b)(1) of Rule 144, the holder thereof shall be entitled to receive from the Company, without expense, new certificates not bearing the second paragraph of the legend set forth in this Section 11.1 hereof (so long as such Stockholder remains a non-affiliate of the Company within the meaning of Rule 144).

Section 11.2 Stock Transfer Records. The Company or its duly appointed transfer agent(s) shall maintain a register for the Company Stock, in which it shall register the issuance and sale of all shares of Company Stock. The Company may issue stop transfer instructions to such agent(s) and make appropriate notations in its stock transfer records of the restrictions on Transfer provided for in this Agreement. The Company shall not record any Transfers of shares of Company Stock not made in strict compliance with the terms of this Agreement. Following the execution and delivery of the Stockholder's Assent by any Person, the Company shall amend **Schedule A** hereto to reflect the admission of such Person as a Stockholder and the ownership of Company Stock by such Person.

Section 11.3 Successors and Assigns. Except as otherwise expressly provided herein, all covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not. The rights and obligations of each Stockholder under this Agreement shall be freely assignable in connection with any Transfer of the Company Stock owned by such Stockholder that is effected. In addition, and whether or not any express assignment has been made, the provisions of this Agreement which are for each Stockholder's benefit as a purchaser or holder of Company Stock are also for the benefit of, and enforceable by, any subsequent holder of such Company Stock in accordance with the provisions of this Agreement.

Section 11.4 Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof and supersedes all prior oral and written, and all contemporaneous oral, agreements and understandings relating to the subject matter hereof.

Section 11.5 Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if transmitted by telecopier with receipt acknowledged by the recipient, or upon delivery, if delivered personally or by recognized commercial courier with receipt acknowledged, or upon receipt if mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to any of the Aventine Companies, at:

Aventine Renewable Energy Holdings, Inc.
One Lincoln Centre
5400 LBJ Freeway, Suite 450
Dallas, Texas 75240
Attention: John Castle
Telephone: (214) 451-6750
Telecopier: (214) 451-6799

with a copy to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, New York 10036
Attention: Ackneil M. Muldrow, III
Telephone: (212) 872-1064
Telecopier: (212) 872-1992

If to any Investor, to the address set forth on **Schedule A** hereto

with a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attention: Michael Littenberg, Esq.
Attention: Daniel Oshinsky, Esq.
Telephone: (212) 756-2000
Telecopier: (212) 593-5955

or at such other address or addresses as such party may specify by written notice given in accordance with this Section 11.5.

Section 11.6 Construction and Interpretation. The headings in this Agreement are for convenience of reference only, do not constitute a part of this Agreement and are not to be considered in construing or interpreting this Agreement. All section, preamble, recital, exhibit, schedule, disclosure schedule, annex, clause and party references contained in this Agreement are to this Agreement unless otherwise stated. Unless the context of this Agreement clearly requires otherwise, the use of the words "include," "includes" or "including" is not limiting and shall be deemed to be followed by "without limitation" and the use of the word "or" has the inclusive meaning represented by the phrase "and/or." References in this Agreement to any agreement, other document or law "as amended" or "as amended from time to time," or amendments of any document or law, shall include any amendments, supplements, restatements, replacements, renewals, refinancings or other modifications. Wherever required by the context of this Agreement, the masculine, feminine and neuter gender shall each include the other. This Agreement has been negotiated by, and entered into between or among, Persons that are sophisticated and knowledgeable in business matters. Accordingly, any rule of law or legal decision that would require interpretation of this Agreement against the party that drafted it shall not be applicable and is irrevocably and unconditionally waived. All provisions of this Agreement shall be construed in accordance with their fair meaning, and not strictly for or against any party.

Section 11.7 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Applicable Laws during the term thereof, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part thereof, and the remaining provisions thereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement, a legal, valid, and enforceable provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible.

Section 11.8 Counterparts. This Agreement may be executed in multiple counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument. This Agreement, to the extent signed and delivered by means of a facsimile machine or electronic delivery (i.e., by email of a PDF signature page), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or electronic delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or by electronic delivery as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

Section 11.9 Waivers and Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally or by course of dealing, but only by a statement in writing signed by each of the parties hereto, which change, waiver, discharge or termination shall bind each such party.

Section 11.10 Remedies.

(a) The Company and each Stockholder shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder by the Company or any Stockholder. The parties acknowledge and agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and, in addition to any other remedies which may be available, each of the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof and, in addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances.

(b) None of the rights, powers or remedies conferred under this Agreement shall be mutually exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy whether conferred by this Agreement or now or hereafter available at law, in equity, by statute or otherwise.

Section 11.11 Stockholder Representations.

(a) Representations. Each Stockholder hereby represents and warrants to the Company and the other Stockholders that:

(1) he, she or it has full legal capacity, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and this Agreement has been duly authorized and delivered by such Stockholder and is the legal, valid and binding obligation of such Stockholder enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent transfer or other similar law affecting creditors' rights generally, and subject to principles of equity;

(2) this Agreement has been duly executed and delivered by such Stockholder and constitutes the legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms;

(3) the execution and delivery of this Agreement by such Stockholder, and the performance by such Stockholder of his or her obligations hereunder, does not and will not breach or violate (x) such Stockholder's Organizational Documents, (y) any agreement, instrument or other document to which such Stockholder is a party or to which such Stockholder's assets are bound, or (z) any Applicable Laws;

(4) such Stockholder (A) is the sole record owner of the shares of Company Stock set forth opposite such Stockholder's name on **Schedule A** hereto, (B) has good, valid and marketable title to all such shares, and (C) there exist no Liens, claims, options, proxies, voting agreements, charges or encumbrances of whatever nature which would restrict the voting of such shares as contemplated hereby; and

(5) such Stockholder has carefully read this Agreement and has had sufficient time and opportunity to consider its terms and to obtain legal advice, if desired, and he fully understands the final and binding effect of this Agreement.

(b) Spousal Consents. Each Stockholder who is a natural person covenants and agrees that he or she will deliver, upon the execution of this Agreement, a Spousal Consent to this Agreement, in substantially the form of **Exhibit B** hereto, duly executed by his or her spouse.

Section 11.12 Governing Law. IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE (WITHOUT REGARD TO THE CHOICE OF LAW OR CONFLICTS OF LAW PROVISIONS THEREOF OTHER THAN N.Y. GEN. OBLIG. LAW §5-1401), EXCEPT TO THE EXTENT THAT THE CORPORATION LAW OF THE STATE OF INCORPORATION OF THE COMPANY MANDATORILY APPLIES.

Section 11.13 Consent to Jurisdiction and Venue. THE PARTIES HEREBY CONSENT AND AGREE THAT ALL ADVERSE PROCEEDINGS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER EQUITY DOCUMENT SHALL BE TRIED AND LITIGATED IN ANY FEDERAL COURT OF THE SOUTHERN DISTRICT OF NEW YORK OR ANY STATE COURT LOCATED IN NEW YORK COUNTY, STATE OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY AND ALL CLAIMS, CONTROVERSIES AND DISPUTES ARISING OUT OF THIS AGREEMENT OR ANY OTHER MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.

THE PARTIES HEREBY (A) IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY FEDERAL COURT OF THE SOUTHERN DISTRICT OF NEW YORK OR ANY STATE COURT LOCATED IN NEW YORK COUNTY, STATE OF NEW YORK, AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ADVERSE PROCEEDING COMMENCED IN ANY SUCH COURT, (B) WAIVE ANY RIGHT THEY MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR ANY OBJECTION THAT SUCH PERSON MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION OR IMPROPER VENUE AND (C) CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. THE PARTIES HEREBY WAIVE PERSONAL SERVICE OF THE SUMMONS, COMPLAINT OR OTHER PROCESS ISSUED IN ANY SUCH ADVERSE PROCEEDING AND AGREE THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN Section 11.5 (NOTICES) AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH PERSON'S ACTUAL RECEIPT THEREOF OR FIVE (5) DAYS AFTER DEPOSIT IN THE UNITED STATES MAILS, PROPER POSTAGE PREPAID.

TO THE EXTENT PERMITTED UNDER THE APPLICABLE LAWS OF ANY SUCH JURISDICTION, THE PARTIES HEREBY EXPRESSLY WAIVE, IN RESPECT OF ANY SUCH ADVERSE PROCEEDING, THE JURISDICTION OF ANY OTHER COURT OR COURTS THAT NOW OR HEREAFTER, BY REASON OF SUCH PERSON'S PRESENT OR FUTURE DOMICILE, OR OTHERWISE, MAY BE AVAILABLE TO IT.

Section 11.14 Termination. (a) The rights granted to any Stockholder under this Agreement shall terminate as to such Stockholder at such time as such Stockholder is no longer the beneficial owner of any Company Stock. If this Agreement so terminates, it shall become null and void and have no further force or effect with respect to such Stockholder. (b) This Agreement shall automatically terminate upon the consummation by the Company of an Initial Public Offering. If this Agreement so terminates, it shall become null and void and have no further force or effect.

Section 11.15 Arbitration.

(a) If the Board and the Stockholders are unable to come to a mutually agreeable determination of "reasonably equivalent value" or "reasonably equivalent security," then the value of such shares shall be determined by an appraisal by a nationally recognized investment banking firm appointed by the Board and approved by the Required Holders. In determining such "reasonably equivalent value" or "reasonably equivalent security," the value of shares of the Company shall not be diminished or enhanced because of the fact that they are not registered for public trading or that they may represent a majority or minority interest, and the Company shall be valued as an ongoing business. The Company shall instruct the investment banking firm to render its decision as promptly as practicable (but in no event later than thirty (30) days of the engagement), and such decision shall be final and binding on the Company and all Stockholders for all purposes under this Agreement. The fees and expenses of the investment banking firm shall be paid one-half by the Company and one-half by such Stockholders.

(b) Except as set forth in Section 11.15(a), if any dispute, claim or controversy shall arise among the parties hereto as to any issue arising under this Agreement or any instrument issued in pursuance hereof that has not otherwise been resolved in accordance with the other terms of this Agreement, the same shall be referred to and settled by the following "arbitration" procedure which may be requested upon the application of any interested party: it is agreed the arbitration hearings, if any, shall be held in New York, New York, and any such dispute, claim or controversy shall be referred to and settled by such arbitration before three neutral arbitrators in accordance with the Commercial Arbitration Rules (the "**Rules**") of the American Arbitration Association then in effect (which Rules are incorporated herein by reference as though set forth at length herein) and any decision, order or finding rendered by the arbitrators appointed in accordance with such Rules shall be final and conclusive upon the parties hereto and judgment upon the award, finding or decision rendered may be entered in the court of the forum, state or federal, having jurisdiction. It is expressly agreed between the parties hereto that whether or not the Rules shall provide for a discovery procedure, such discovery procedure is hereby granted and permitted in said arbitration proceedings and the parties may apply to the arbitrators for the enforcement of any form of discovery which would be permitted by the laws of the State of Delaware and their award or decision in respect of such discovery shall be final and binding.

Section 11.16 Waiver of Jury Trial. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE COMPANY AND THE INVESTORS WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES HERETO DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, AND UNDERSTANDING THEY ARE WAIVING A CONSTITUTIONAL RIGHT, EACH PARTY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

COMPANY

AVENTINE RENEWABLE ENERGY
HOLDINGS, INC., a Delaware corporation

By: /s/ John Castle
John Castle
Chief Executive Officer

[Signature Page to Stockholders Agreement]

EXISTING STOCKHOLDERS

BRIGADE LEVERAGED CAPITAL STRUCTURES FUND LTD.

By: Brigade Capital Management, LLC,
its investment manager

By: /s/ Raymond Luis
Name: Raymond Luis
Title: CFO

SEI GLOBAL MASTER FUND PLC – THE SEI HIGH YIELD FIXED INCOME FUND

By: Brigade Capital Management, LLC,
its portfolio manager

By: /s/ Raymond Luis
Name: Raymond Luis
Title: CFO

SEI INSTITUTIONAL INVESTMENTS TRUST – HIGH YIELD BOND FUND

By: Brigade Capital Management, LLC,
its sub-adviser

By: /s/ Raymond Luis
Name: Raymond Luis
Title: CFO

SEI INSTITUTIONAL MANAGED TRUST – HIGH YIELD BOND FUND

By: Brigade Capital Management, LLC,
its sub-adviser

By: /s/ Raymond Luis
Name: Raymond Luis
Title: CFO

DAVID KEMPNER PARTNERS

By: MHD Management Co., its general partner
By: MHD Management Co. GP, L.L.C., its general partner
By: /s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Managing Member

DAVIDSON KEMPNER INSTITUTIONAL PARTNERS, L.P.

By: Davidson Kempner Advisers, Inc.,
its general partner

By: /s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Principal

M.H. DAVIDSON & CO.

By: M.H. Davidson & Co., L.L.C.,
its general partner

By: /s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Managing Member

DAVIDSON KEMPNER INTERNATIONAL, LTD.

By: Davidson Kempner International Advisors, L.L.C., its Investment Manager

By: /s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Managing Member

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DAVIDSON KEMPNER DISTRESSED OPPORTUNITIES FUND LP

By: DK Group LLC,
its general partner

By: /s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Managing Member

DAVIDSON KEMPNER DISTRESSED OPPORTUNITIES INTERNATIONAL LTD.

By: DK Management Partners LP,
its Investment Manager

By: /s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Limited Partner

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DW INVESTMENT MANAGEMENT, LP

By: DW Investment Partners, LLC,
its general partner

By: /s/ David Warren
Name: David Warren
Title: Manager

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SENATOR GLOBAL OPPORTUNITY MASTER FUND L.P.

By: Senator Master GP LLC,
its general partner

By: /s/ Evan Gartenlaub
Name: Evan Gartenlaub
Title: General Counsel

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LJR CAPITAL L.P.

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALJ CAPITAL I, L.P.

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

ALJ CAPITAL II, L.P.

By:
/s/ Lawrence B. Gill
Name: Lawrence B. Gill
Title: Authorized Signatory

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ALLIANCEBERNSTEIN STRATEGIC OPPORTUNITIES FUND, L.P.

By: AllianceBernstein, L.P.,
as Investment Adviser

/s/ Jack Kelley
Name: Jack Kelley
Title: SVP

ALLIANCEBERNSTEIN EVENT DRIVEN OPPORTUNITIES FUND (DELAWARE), L.P.

By: AllianceBernstein, L.P.,
as Investment Adviser

/s/ Jack Kelley
Name: Jack Kelley
Title: SVP

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ALTAI CAPITAL MASTER FUND, LTD.

By: Altai Capital Management, L.P.,
as Investment Adviser

/s/ Toby E. Symonds
Name: Toby E. Symonds
Title: Managing Principal of the Investment Adviser to Altai Capital Master Fund, Ltd.

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APOLLO INVESTMENT CORPORATION

By: Apollo Investment Management, L.P., as Advisor
By: ACC Management, LLC, as its General Partner

/s/ Ted J. Goldthorpe
Name: Ted J. Goldthorpe
Title: Chief Investment Officer

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CREDIT SUISSE SECURITIES (USA) LLC

By:
/s/ Michael Wotanowski
Name: Michael Wotanowski
Title: Authorized Signatory

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MIDTOWN ACQUISITIONS L.P.

By: Midtown Acquisitions GP LLC, its general partner

/s/ Avram Z. Friedman
Name: Avram Z. Friedman
Title: Manager

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MACQUARIE CAPITAL (USA) INC.

By:
/s/ Robert M. Perdock
Name: Robert M. Perdock
Title: Managing Director

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REDWOOD MASTER FUND, LTD.

By: REDWOOD CAPITAL MANAGEMENT, LLC,
its Investment Advisor

/s/ Jed Nussbaum
Name: Jed Nussbaum
Title: Authorized Signatory

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ROCHDALE FIXED INCOME PORTFOLIOS

By: Seix Investment Advisors LLC,
in its capacity as Sub-Adviser

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

RIDGEWORTH SEIX FLOATING RATE HIGH INCOME FUND

By: Seix Investment Advisors LLC,
in its capacity as Sub-Adviser

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

RIDGEWORTH HIGH INCOME FUND

By: Seix Investment Advisors LLC
in its capacity as Sub-Adviser

/s/ Brian Nold
Name: Brian Nold
Title: Managing Director

SEIX MULTI-SECTOR ABSOLUTE RETURN FUND LP

By: Seix Investment Advisors LLC,
in its capacity as Investment Manager

/s/ Michael Kirkpatrick
Name: Michael Kirkpatrick
Title: Managing Director

UNIVERSITY OF ROCHESTER

By: Seix Investment Advisors LLC,
in its capacity as Investment Manager

/s/ George Goudelias
Name: George Goudelias
Title: Managing Director

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TPG CREDIT OPPORTUNITIES INVESTORS, L.P.

By: TPG Credit Opportunities Fund GP, L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TPG CREDIT STRATEGIES FUND, L.P.

By: TPG Credit Strategies GP, L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TPG CREDIT STRATEGIES FUND II, L.P.

By: TPG Credit Strategies II GP., L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TCS II OPPORTUNITIES, L.P.

By: TPG Credit Strategies II GP, L.P.
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

TPG CREDIT OPPORTUNITIES FUND L.P.

By: TPG Credit Opportunities Fund GP, LP
Its General Partner

/s/ Julie K. Braun
Name: Julie K. Braun
Title: Vice President

SCHEDULE A

EQUITY OWNERSHIP

Existing Stockholders

Name	Address and Facsimile	Type of Company Stock	Number and Shares of Company Stock	Percentage of Company Stock (On a Fully-Diluted Basis)
DK Partners	65 East 55th Street, 19th Floor, New York, NY 10022			
Davidson Kempner Partners		Common Stock	796	0.0336779399%
Davidson Kempner Institutional Partners, L.P.		Common Stock	1,777	0.0751830392%
M.H. Davidson & Co.		Common Stock	117	0.0049501495%
Davidson Kempner International, Ltd.		Common Stock	2,026	0.0857179726%
Davidson Kempner Distressed Opportunities Fund LP		Common Stock	3,967	0.1678396829%
Davidson Kempner Distressed Opportunities International Ltd.		Common Stock	6,889	0.2914664924%
Brigade Capital Management	399 Park Avenue, 16th Floor, New York, New York 10022			
Brigade Leveraged Capital Structures Fund Ltd.		Common Stock	37,467	1.5851901682%
SEI Global Master Fund PLC - The SEI High Yield Fixed Income Fund		Common Stock	371	0.0156966278%
SEI Institutional Investments Trust - High Yield Bond Fund		Common Stock	1,334	0.0564401656%
SEI Institutional Managed Trust - High Yield Bond Fund		Common Stock	1,411	0.0596979563%

DW Investment Partners	55 Baker Street, London W1U 8EW			
Brevan Howard Master Fund Limited		Common Stock	15,142	0.6406424194%
Brevan Howard Credit Catalysts Master Fund Limited		Common Stock	12,285	0.5197656929%
Senator Investment Group	510 Madison Avenue, 28th Floor, New York, New York 10022			
Senator Global Opportunity Master Fund, L.P.		Common Stock	23,049	0.9751794429%

Investors

Name	Address and Facsimile	Type of Company Stock	Number and Shares of Company Stock	Percentage of Company Stock (On a Fully-Diluted Basis)
ALJ Capital	6300 Wilshire Blvd., Suite 700**,** Los Angeles, CA 90048			
ALJ Capital I, L.P.		Common Stock	9,018	0.3815422889%
ALJ Capital II, L.P.		Common Stock	49,133	2.0787666089%
LJR Capital L.P.		Common Stock	47,195	1.9967718256%
Alliance Capital	1345 Avenue of the Americas**,** New York, NY 10105			
AllianceBernstein Event Driven Opportunities Fund (Delaware), L.P.		Common Stock	10,468	0.4428902950%
AllianceBernstein Strategic Opportunities Fund, L.P.		Common Stock	26,007	1.1003293753%

Altai Capital Management	152 West 57th Street, 10th Floor, New York, NY 10019			
Altai Capital Master Fund, Ltd.		Common Stock	72,636	3.0731543241%
Apollo / Stone Tower	9 West 57TH Street, 37th Floor, New York, NY 10019			
Apollo Investment Corporation		Common Stock	262,036	11.0864731877%
Credit Suisse	11 Madison Ave., New York, NY 10010			
Credit Suisse Securities (USA) LLC		Common Stock	10,377	0.4390401787%
DK Partners	65 East 55th Street, 19th Floor, New York, NY 10022			
Midtown Acquisitions L.P.		Common Stock	627,982	26.5692714184%
Macquarie Group	125 West 55th Street, New York, NY 10019			
Macquarie Capital (USA) Inc.		Common Stock	150,786	6.3796003072%
Redwood Capital Management	910 Sylvan Ave., Englewood Cliffs, NJ 07632			
Redwood Master Fund, Ltd.		Common Stock	249,709	10.5649305181%

Seix Advisors	10 Mountainview Road, Suite C-200, Upper Saddle River, NJ 07458			
Ridgeworth Seix Floating Rate High Income Fund		Common Stock	69,044	2.9211805049%
Ridgeworth High Income Fund		Common Stock	52,979	2.2414869064%
Rochdale Fixed Income Portfolios		Common Stock	3,837	0.1623395168%
Seix Multi-Sector Absolute Return Fund LP		Common Stock	4,857	0.2054946659%
University of Rochester		Common Stock	486	0.0205621593%
Senator Investment Group				
Senator Global Opportunity Master Fund L.P.		Common Stock	83,013	3.5121945028%
TPG	4600 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402			
TCS II Opportunities, L.P.		Common Stock	19,635	0.8307366203%
TPG Credit Opportunities Fund L.P.		Common Stock	46,467	1.9659708957%
TPG Credit Opportunities Investors, L.P.		Common Stock	51,883	2.1951162756%
TPG Credit Strategies Fund II, L.P.		Common Stock	307,620	13.0150852632%
TPG Credit Strategies Fund, L.P.		Common Stock	31,130	1.3170782272%

EXHIBIT A

STOCKHOLDER'S ASSENT

The undersigned hereby assents to the Stockholders Agreement, dated as of September 24, 2012 (the "Agreement"), by and among Aventine Renewable Energy Holdings, Inc. a Delaware corporation, and certain other parties named therein, as such Agreement may be amended from time to time, and hereby agrees to become a party to such Agreement and be bound by all of the applicable terms and provisions thereof as fully as if the undersigned had been named as an original party in such Agreement.

Executed as of

[Transferee's Signature]

Print Name and Address:

EXHIBIT B

SPOUSAL CONSENT

The undersigned is the spouse of _____, one of the individuals who has executed, delivered and agreed to be bound by the Stockholders Agreement, dated as of September 24, 2012 (the "Agreement"), by and among Aventine Renewable Energy Holdings, Inc., a Delaware corporation, and certain other parties named therein. The undersigned hereby acknowledges that he or she has read and understands the terms and other provisions of the Agreement. Further, the undersigned hereby consents to, approves of and agrees to be bound by the terms and other provisions of the Agreement for all purposes as if he or she were a party thereto, including in order to bind any community property interest she has or may have in any Selling Stockholder Shares owned by him or her and his or her spouse that is the subject of the Agreement.

_____

[Name]

Exhibit 10.5

AGREEMENT

between

AVENTINE RENEWABLE ENERGY, INC.

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRY AND SERVICE WORKERS INTERNATIONAL UNION ON BEHALF OF LOCAL 7-662

November 5, 2012
Through
October 31, 2015

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AGREEMENT
between
AVENTINE RENEWABLE ENERGY, INC.
and
UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRY AND
SERVICE WORKERS INTERNATIONAL UNION
ON BEHALF OF LOCAL 7-662

It is understood that this Agreement covers all hourly employees employed by the Employer at its Pekin, Illinois Plant, but excludes all office clerical, professional employees, guards and supervisors, as defined in the Act.

It is agreed by Aventine Renewable Energy, Inc. (hereinafter called the "Company" or the "Employer") and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International Union on behalf of Local 7-662 or its successors (hereinafter called the "Union"), on behalf of employees described above, that the Articles set forth herein shall constitute the Agreement between the parties which shall be in effect from November 5, 2012 through October 31, 2015, and which, if not terminated at the end of that period by sixty (60) days' prior written notice of a desire to terminate by one party to the other, shall continue in effect from year to year thereafter, unless terminated on any annual anniversary date by either party giving sixty (60) days' written notice prior to such anniversary date.

It is also agreed that either party, sixty (60) days prior to any subsequent anniversary date, may serve notice on the other of its desire to amend, rather than terminate the Agreement, in which event the terms and conditions of the Agreement shall continue in full force and effect until amended by mutual consent, or terminated by either party upon sixty (60) days' written notice.

The Company and Union acknowledge that the use of the masculine pronoun herein, is somewhat inconsistent with non-discriminatory policy. Its use is for editorial convenience only, and should not be taken as a sex identification.

NON-DISCRIMINATION

The parties agree that there shall be no discrimination with regard to race, color, creed, sex, age, veterans, disabled, veterans of the Vietnam era, or national origin in the application of the terms of this Labor Agreement.

ARTICLE 1
MANAGEMENT'S RIGHTS

It is agreed that the Company unilaterally retains any and all rights not expressly limited by the specific terms of this Agreement. Among these rights, but not intended as a wholly inclusive list, shall be the right to manage the business and to direct the workforce, including the right to plan, direct and control plant operations; to determine schedules and hours of work including reasonable overtime, and to assign work to employees, to change, combine, eliminate, increase, decrease, transfer or reassign jobs or duties, to set the wage rates for the newly created jobs; to determine the means, methods, processes and schedules of production; to determine the products to be manufactured or processed, and the plant and facility at which they are to be manufactured or processed; to determine the location of its plants and the continuance of its operating departments; to determine whether work or services should be performed by the company or by other sources; to establish and require employees to observe Company rules and regulations; to hire, layoff, rehire, promote, transfer or relieve employees from duties for lack of work or other legitimate reasons; to maintain order; to suspend, demote, discipline or discharge employees for just and sufficient cause and to unilaterally make any decisions which, in the opinion of management, the efficient operation of the plant requires, provides that no such decisions shall be exercised in violation of any specific terms of this Agreement.

ARTICLE II
BARGAINING

The Company recognizes the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International Union on behalf of Local 7-662, which organization has been certified by the National Labor Relations Board as the exclusive representative of said employees of the Company, for the purpose of collective bargaining with respect to wages, hours of employment and other conditions of employment.

ARTICLE III
EMPLOYEE'S DUTIES

For the purpose of using the workforce in the most efficient and economical manner, employees will perform any duties to which they may be assigned. This may include the assignment of duties which overlap job classifications within Aventine Renewable Energy, Inc.

ARTICLE IV
SENIORITY

A. Employees shall have Plant and Group seniority. Groups will be Production, Utilities, Mechanical, Yeast Plant and Dry Mill.

B. Plant seniority is the employee's total term of continuous service since November 1, 1981, plus all credited service with CPC, Pekin, prior to November 1, 1981. An employee hired subsequent to November 1, 1981, will have Plant seniority effective only after the employee has actually and actively been in the employ of the Company for a period of one hundred twenty (120) calendar days during which period he shall be considered a probationary employee. After the initial one hundred twenty (120) calendar days, Plant seniority shall be computed from the date of the employee's original employment with Aventine Renewable Energy, Inc. A newly hired employee must serve a one hundred twenty (120) calendar day trial period, before the employee can contest a discharge and/or become eligible for any benefits; provided however, that medical benefits under the Aventine Renewable Energy, Inc.'s medical plan shall be available to an employee on the first day of the month following 1st day of employment. An employee, during their 120 day probation period, may not bid out of the department during this time unless bid/accepted into an Apprentice Program.

C. Group seniority shall be effective November 1, 1981, if he entered the Group on that day or the last date the employee permanently entered the Group. If two or more employees have the same Group seniority, their seniority rank will be determined on the basis of their Plant Seniority.

D. It is agreed that the operation of the seniority provisions in this Agreement must be governed by considerations of whether the employee is qualified to perform the job required without impairing either efficient or safe Plant operations and that the seniority provisions shall not apply if either efficient or safe plant operations are impaired thereby. The Company shall determine the qualifications of employees.

E. Transfers from non-bargaining unit employment to bargaining unit positions. For employees so transferring, seniority will be computed as of the first day of work in the bargaining unit position after completion of one hundred twenty (120) calendar day probation period. Employees transferring into the bargaining unit will not suffer a break in service and will be eligible for all benefits as outlined in the labor agreement; however, a vacation entitlement will be determined by total company length of service.

ARTICLE V
HOURS OF WORK

A. The established workweek shall consist of forty (40) hours worked within a period of seven (7) consecutive days, beginning at seven (7:00) a.m., Sunday for the Mechanical Group and six-thirty (6:30) a.m. for the Production and Utilities Groups. Regular scheduled hours of work will not exceed eight (8) consecutive hours in any one (1) day or forty (40) hours within any one (1) week at regular rates of pay.

B. The normal hours of work for the Mechanical Group shall be from 7:00 a.m. to 3:30 p.m. including a thirty (30) minute lunch period without pay, which normally will be between 12:00 noon and 12:30 p.m.. If the Company requires a mechanic to work between 12:00 noon and 12:30 p.m. he will be paid time and one-half his regular rate, but such time paid will not be used again in computing daily or weekly overtime in excess of forty (40) hours. The normal hours of work for the night Mechanics will be from 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m.. Normal weekend and/or holiday hours of work for day shift will be 7:00 a.m. to 3:00 p.m. when there are only two (2) general mechanics and one (1) I & E person scheduled. Any other staffing will result in a reversion to scheduled times of 7:00 a.m. to 3:30 p.m. according to department guidelines.

C. The normal hours of work for the Production and Utilities Groups shall be:

1st	Shift	6:30 a.m.	to	2:30 p.m.
2nd	Shift	2:30 p.m.	to	10:30 p.m.
3rd	Shift	10:30 p.m.	to	6:30 a.m.

It is agreed that shifts cannot be filled by strict seniority, but that qualifications and the Company's needs for training, and union participation in Safety, Operations, and Quality audit joint committee's must be considered.

ARTICLE VI
OVERTIME

A. It is recognized that a reasonable amount of overtime, as well as emergency call-in overtime is necessary and it is agreed that employees will cooperate in performing such work.

The following guidelines are established for this purpose, but are not necessarily all inclusive and should conditions of an unusual nature exist which make it impractical or impossible to follow the guidelines, or in situations where no guidelines exist, Management will handle the overtime assignment in accordance with its best judgment. An employee will be paid time and one-half of the job rate, including appropriate shift differential, for all work performed in excess of the daily scheduled hours or in excess of forty (40) hours in any one week. However the hours paid for on a daily overtime basis will not be used again in computing weekly overtime in excess of forty (40) hours.

B. If there is overtime at the end of a shift, the employee working that shift must remain on the job until relieved up to a maximum of eight (8) hours. No employee will be forced to work overtime more than two (2) times in one scheduled work week or three (3) consecutive times combining two work weeks provided the Company reserves the right to fill all operating jobs. The Company will offer the overtime to other senior qualified employees on the off-going shift. However, under normal circumstances, with the exception of call in hours, no employee will be allowed or required to work in excess of sixteen (16) hours if on an eight (8) hour schedule or eighteen (18) hours if on a twelve (12) hour schedule, in a twenty-four (24) hour period.

C. When it becomes necessary to call in an employee for overtime, it shall be offered on a group seniority and qualification basis. The Company is not required to call in an employee on his day off if the employee already has a six (6) day work schedule.

D. When employees are called in to work outside of their regularly scheduled shift, a minimum of four (4) hours will be paid at one and one-half times the regular straight time rate regardless of the hours worked

E. An employee scheduled to work on Sunday will be paid time and one-half the regular rate.

F. Hours worked on Sunday and Holidays up to a maximum of eight (8) hours shall not be used to offset wage and hour requirements.

G. There shall be no pyramiding of the various premiums or overtime rates for the same hours worked. If two or more premium or overtime rates are applicable during the same hours of work, only the higher premium rate will be paid.

H. All work performed on a 7^{th} day shall be paid at two (2) times the regular rate.

I. Early Start – An employee already in the Plant who is asked to commence work early shall be paid the overtime rate for the amount of time prior to his regular shift he begins work, but not less than 2 hours. The Company will not force under this provision. Seniority and qualifications among those available will be considered.

ARTICLE VII
FILLING TEMPORARY VACANCIES

To provide for flexible and efficient operations, temporary vacancies which the Company determines are necessary to fill will be filled with the most qualified employee. In general, the step-up system will be followed in each group. (Guidelines will be posted in the Departments.)

FILLING PERMANENT VACANCIES

If the Company determines it is necessary to fill a permanent vacancy, it shall be filled in the following manner:

The vacancy shall be posted in the group where the vacancy exists for a period of five (5) calendar days. The Company shall then select the most qualified senior employee who has bid on the vacant position. However, when a bid job becomes available that an employee would have otherwise been awarded based on his seniority had he been qualified, the Company will award him the bid and provide the training necessary so long as the employee has not turned down the training opportunity when last offered on their bid shift. Should this employee fail to qualify on the awarded bid job, he shall be able to exercise his seniority on any available bid job for which he is qualified. The Company will determine the training needs.

If no eligible (as defined above) employee within the group has signed the bid, the vacancy may be posted on a Plant Wide basis following the steps outlined above.

Department bids will become effective two (2) weeks after they are posted except, due consideration will be given to eligible (as defined above) employees who are absent from the Plant while the bid is posted because of vacation, sickness or other excused absence. After the above guidelines are met, then the Company may fill the vacant position from the outside.

ARTICLE VIII
SCHEDULING

A. The work schedule will be made on a Group seniority and qualification basis. The work schedule will be posted prior to the start of the next work week.

B. An employee who is scheduled and reports to work will be provided with four (4) hours work or will be paid four (4) hours reporting pay, unless the Company made a reasonable attempt to notify the employee not to report to work.

C. When an employee is called in on his scheduled day off and has to take another day off because of the State Six Day Work Law, he will be given eight (8) hours of work or eight (8) hours of pay on the day called in.

D. When employees are scheduled to work six (6) days, the six (6) days will be scheduled based on Group seniority and the employee's qualifications on a shift basis.

E. In the Production and Utilities Groups, designated days off shall be consecutive and stepped forward one (1) day each succeeding week when possible. This scheduling procedure will not be mandatory if it involves overtime or prevents a senior employee from being scheduled forty (40) hours. An employee scheduled for training after completing the probation period will be paid at the rate the employee would have been scheduled on if not training.

F. Guidelines will be posted in the respective Groups.

ARTICLE IX
LAYOFF

A. Reductions in forces in a Group will be made in the inverse order of Plant seniority, except that the Company may deviate from such Plant seniority when such deviation is necessary to retain employees with ability to perform the work available. In the event an employee is permanently laid off from his department, he may bump as far as his qualifications and seniority allow. If not qualified, an employee may bump the least senior employee holding a relief bid in Production and Utilities or Laborer B level or below in the Mechanical Group. An employee who bumps into another department will have seniority in that department effective the date of the bump.

B. If an employee is laid off and so remains for a period of more than one (1) year, he permanently loses all rights and benefits as an employee as of the date of his layoff.

C. When laid off, the employee will be entitled to continue to participate in the Hospital-Medical Plan and Life Insurance Plan until the end of the month following the month laid off provided the employee continues to pay the employee share of these benefits.

D. Employees who have established seniority rights by reason of 120 calendar days, if laid off for a period of more than one (1) year, will lose all seniority rights. Such former employees laid off but reinstated with one (1) year or less will continue to accrue all seniority rights during the period of layoff.

E. Any former employee who has earned seniority rights and is laid off for less than three (3) years and has kept his current address on file with the Company will be given notice of a vacancy for which he is eligible on the basis of plant seniority and qualifications.

F. If an employee is not scheduled for forty (40) hours in his Group, the Company may schedule him in another Group in accordance with Plant Seniority.

ARTICLE X
GRIEVANCES AND DISPUTES

It is agreed that any employee or group of employees may, individually or through their representatives present grievances to Management.

If an employee believes himself to have been injured or treated unfairly by the Company by reason of improper application of any of the articles of this Agreement, he may seek redress as follows:

FIRST, he may make complaint to his immediate supervisor, either individually or through his job steward. All complaints must be submitted within five (5) days of the occurrence of the initial cause. The Company will not be obligated to review or process any complaint/grievances which are submitted more than five (5) days after the initial cause of the complaint/grievance.

SECOND, if satisfaction is not obtained, he may within seven (7) calendar days of the occurrence take the matter up in writing with the superintendent or his representative in the following manner:

(1) He may present the matter individually or through the job steward or other representatives of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International on behalf of Union Local 7-662.

The Superintendent shall, within ten (10) working days after the complaint has been received by him, render a decision in writing; provided, however, that this requirement shall only apply in the event the complaining party or his representative has also submitted in writing with the timely complaint, full and complete information and facts respecting the basis for the complaint, including the particular part of the Agreement that allegedly has been violated. In the event the Superintendent does not reply in writing within ten (10) working days as above provided, the employee or his representative may proceed with the third step as follows:

THIRD, if the Superintendent fails to reply or his decision is not satisfactory, the complainant may, individually or through his representative, at the earliest possible time request the complaint be considered by the Joint Committee.

FOURTH, if after being considered by the Joint Committee, the Company's response is not satisfactory, the complainant may individually or through his representative, within thirty (30) calendar days after notification of the decision, notify the Director, Human Resource in writing of the complaining party's desire to arbitrate the grievance. As soon as practicable thereafter and in any event within thirty (30) calendar days of receipt of such notice, the complainant or his representative and the Director, Human Resource shall jointly request the Federal Mediation and Conciliation Service to submit the names of seven (7) arbitrators. Within thirty (30) days after receipt of the panel of arbitrators submitted by the Director of the Federal Mediation and Conciliation Service, the complainant or his representative and the Director, Human Resource will attempt to meet for the purpose of striking arbitrators. Each party shall alternately strike a name from the panel until only one name remains. The Company and the Union or the grievant, if represented by himself, shall alternate striking the first name. The decision of the arbitrator so selected shall be final and binding upon both parties. The arbitrator is confined to rendering a decision within the terms and provisions of this Agreement. In all cases of grievance presented under this Article, the Company will furnish to the representative of the employee all information in its possession necessary to a full understanding of the subject matter of the grievance, and in like manner the employees and their representative will cooperate with the Company to facilitate the prompt handling of grievances under this Article.

The Company and the complainant, or his representative, shall each pay their own expenses incident to the presentation of their respective cases, however all other expenses, including the Arbitrator's fee and expenses shall be shared equally by the Union or the grievant, if represented by himself, and the Company.

It is understood that the employee's representative shall have the right to participate in the settlement of grievances only as specified in this Article. Accordingly, the employee's representative shall not have the right to be present or participate in any investigations which the Company may undertake involving an employee represented by the bargaining unit.

In each instance where a specified number of days is required for the timely processing of grievances, the number of days shall be calendar days, unless otherwise specified herein. If the employee fails to process a complaint/grievance in a timely and complete manner according to the above provisions of this Article, the complaint/grievance shall be considered void and non-arbitrable.

If the settlement of a grievance involves payment to an employee, the Company shall have the option to schedule an employee to make up the missed work in lieu of pay within 90 calendar days.

ARTICLE XI

DISCHARGE, SUSPENSION, AND RESIGNATION

A. The Company has the right to take disciplinary action against employees up to and including discharge for what it considers to be just cause.

B. In all cases of complaints arising over an alleged unjust discharge, suspension, or layoff, a written notice of such complaint must be filed with the Company within five (5) days after notice to the employee affected. When an employee is discharged or voluntarily resigns, he immediately loses all rights and benefits. When suspended, an employee loses all rights to wages during the period of suspension, but does not lose other employee rights and benefits.

ARTICLE XII
NO STRIKE

A. During the term of this Agreement, the Union, its officers, agents, and representatives shall not authorize, instigate, participate in, or condone any work stoppage, sympathy strike, partial strike, slowdown, picketing or any other interruption of work, or permit any of its members to cause or participate in any such activities. Nor will any employee who is a member of the Union take part in any such activities during such time. It is agreed that there shall be no lockouts by the Company during the term of this Agreement.

B. Any violation of Paragraph A hereof by an employee shall constitute cause for discharge or other discipline of the employee or employees who participate therein.

C. In the event of any violation of Paragraph A, the officers, agents, and representatives of the Union shall take whatever steps are necessary to terminate the work stoppage, sympathy strike, partial strike, slowdown, picketing, or other activities which interrupt the Company's operations, including picketing of such operations.

D. The Company shall be under no obligation to bargain with the Union concerning employees who engage in any of the activities in Paragraph A or concerning the subject of any such activities as long as those activities continue.

ARTICLE XIII
LEAVES OF ABSENCE

A. If an employee is called for jury duty, he will immediately notify the Company. In the event an employee receives jury (service or reporting) pay on a day the employee is scheduled to work, the Company shall make up the difference between what the employee will receive as jury pay and what the employee would otherwise receive as his/her regular straight time pay for the time he/she would have been scheduled to work on the shift to which he/she was assigned during all periods of jury service / reporting. Employees will be required to report for work on their scheduled work days when not required to serve as jurors during this jury duty period.

B. An employee absent on account of a death in his immediate family, will be paid his base rate for scheduled time lost, not to exceed: one (1) day for grandparents, that day to be either the day of the funeral or other celebration of life activity; three (3) consecutive days, one of which must be either the day of the funeral or other celebration of life activity, for: sister, brother, grandchildren or parents-in-law; four (4) consecutive days, one of which must be either the day of the funeral or other celebration of life activity, for: mother, father or current step-parents; or five (5) consecutive days, one of which must be either the day of the funeral or other celebration of life activity, for : spouse or children or current step children.

C. In individual cases, the Company may consider requests for leaves of absence without pay on account of Union business.

D. The company complies with the Uniformed Service Employment and Reemployment Act of 1994 in granting leaves of absence and return from such leaves for employees who have joined the military.

ARTICLE XIV
MISCELLANEOUS

A. An employee required to work three (3) or more consecutive hours beyond his scheduled quitting time will be paid a five ($5.00) dollar meal allowance. General Mechanics, Instrument/Electricians and the Garage Mechanic shall not be eligible for meal tickets.

B. The Union shall be provided bulletin boards for their exclusive use. All material for posting must first be approved by the Director, Human Resource or his representative.

C. When the Company chooses to utilize special training courses, consideration will be given to seniority. (Employees in the Mechanical, I/E Trainee Program are exempt from this clause.)

D. Pay for Union Committee members during Contract Negotiations. (President, Vice President, Treasurer, 1(one) Committeeman per group.) The Union will pick up day 1. The Company will pick up days 2 through 6, the Union will pick up days 7 through 11. The Company will then pay for the odd numbered days and the Union will pay for the even numbered days until complete. Pay means straight time wages for scheduled time lost only and will be based on the job the committee member would have worked and the shift on which he would have worked on the respective days. In the case of committee members who normally work 3rd shift, the respective day shall be the night preceding the day of the meeting.

E. The Union agrees that the Company shall not be obligated to bargain collectively with the Union during the term of this Agreement on any matter pertaining to rates of pay, wages, hours of employment or other conditions of employment and the Union hereby specifically waives any right which it might otherwise have to request or demand such bargaining. The Company and the Union acknowledge that this Agreement and any written amendments thereto, embodies the complete and final understanding reached by the parties as to the wages, hours and all other terms and conditions of employment of all employees covered by this Agreement. Any term and condition of employment which existed prior to the date of this Agreement as a past practice is hereby abolished unless such term and condition of employment is specifically provided for in the language of this Agreement.

F. Perfect Attendance Day:

(i) For the purpose of this Section "F", perfect attendance is defined as being at work and on time for all hours of work for every scheduled day of work. Any absence authorized by law and/or under Article XIII of this agreement shall not be deemed a scheduled day for the purpose of this section "F" only.

(ii) Commencing on and after January 1, 2007, an employee who establishes perfect attendance in any entire calendar year shall be granted one (1) day off with pay which must be taken in the following calendar year or it will be lost. The actual day off with pay shall be taken subject to Management approval based on the need for efficient operations.

ARTICLE XV
PHYSICAL EXAMINATIONS

The Company may, in cases of constantly recurring absence from duty or in other exceptional cases require an employee to submit to a physical examination by a physician appointed by the Company.

If the findings of such physicians are that an employee does not meet the minimum physical requirements for his job, the employee may obtain a physical examination by a second physician agreeable to the employee at the employee's expense. If the findings of the second physician are not consistent with the medical opinion expressed by the physician appointed by the Company, the employee may be examined by a third physician agreeable to the employee and the Company. The findings of the third physician as to the facts of such person's medical condition shall be final. The cost of this examination shall be shared equally by the Company and the employee. All examinations shall be at the expense of the Company, except as indicated above.

ARTICLE XVI
EMPLOYEE BENEFITS

Employees shall be eligible to participate in the Company's current Employee Benefit Plans: namely (A) Pension Plan; (B) Company sponsored Health and Welfare Plan, which includes Medical, LTD, ADD, Life Insurance, and Dental; (C) Sickness and Accident Plan; (D) Severance Pay Plan; (E) Savings/Retirement Plan subject to the terms and provisions of such Plans. The provisions of the Plans will determine all the questions arising thereunder and in connection with the Plans. It is agreed that no dispute, grievance or questions arising from the application of or in connection with any of the Plans will be subject to the arbitration procedure described in Article X.

ARTICLE XVII
HOLIDAYS

A. All work performed on the following holidays shall be paid at two and one-half (2½) times the regular straight time rate:

New Years Day	Labor Day
Easter Monday	Thanksgiving Day
Memorial Day	Christmas Eve Day
Independence Day	Christmas Day
Two (2) Personal Holidays*, **	

*The timing of an employee's Personal Holiday shall be subject to Management approval based on the need for efficient operations.

**An employee on S & A or Workers Compensation at the end of a contract year will not be removed to utilize unused Personal Holidays. These Personal Holidays must be used by February 1st of the following calendar year.

B. When employees are not scheduled to work on the above-mentioned holidays, eight (8) hours at the employee's regular straight time rate, plus appropriate shift differential based on the employee's bid shift, will be paid, provided they work the day before and the day after the holiday, if scheduled.

If called in on a scheduled holiday off, or double over onto a scheduled holiday off, the hours worked will not be used to offset holiday not worked pay.

Approved leaves of absence as defined or allowed for in the contract or other leaves, as allowed for by the Company, bonafide medical emergency leaves or other emergency leave, where acceptable proof will be required, will not nullify holiday pay. Absence on the holiday, if scheduled, or the day before or the day after the holiday, if scheduled, for unverifiable or minor illness that would not have prevented an employee from working or for reasons unacceptable to the Company, will nullify holiday pay.

C. Holidays falling on Sunday will be observed on the following Monday. Employees to receive Holiday pay must:

1.) Have completed their probationary period, or actually have worked the Holiday.

2.) Not be receiving Sickness and Accident Benefits or Workers' Compensation payments.

ARTICLE XVIII
VACATION

A. All employees who have worked one thousand (1,000) hours or more in the previous calendar year will be entitled to vacation as follows:

2 weeks	After completing one (1) year of service
3 weeks	Commencing in the calendar year in which you attain 5 years of service.
4 weeks	Commencing in the calendar year in which you attain 12 years of service.
5 weeks	Commencing in the calendar year in which you attain 17 years of service.

B. In computing time for the thousand (1,000) hours eligibility for vacation, the following shall be counted:

a) An employee on Sickness and Accident benefits.
b) An employee on Workers' Compensation.
c) An employee on vacation.

C. If a Holiday falls while an employee is on vacation, the employee shall receive Holiday pay in addition to vacation pay.

D. The rate of pay for vacation will be the average straight time rate, including shift differential, for that employee as of December 31st of the year prior to the vacation being taken.

E. In case of annual scheduled shutdown, employees not scheduled to work will be required to take vacation during this period of time if the employee is eligible for the same. Guidelines will be posted in the Departments.

F. Employees may take three weeks of their vacation entitlement one day at a time, with a full week of vacation given priority over single days.

This language shall not, in any case, allow for the exceeding of the stated vacation allotment defined by each department.

ARTICLE XIX
WAGES

A. See Appendix "A" (Rate Schedule Attached.)

B. Employees will be paid on a weekly basis.

ARTICLE XX
CHECK-OFF – UNION SECURITY

A. If an employee authorizes and requests the Company in writing to deduct from wages due him, union dues and to pay same to proper offices of the Union, the Company will make such deductions and payment to the Union so long as such authorization remains unrevoked and provided there is in effect, a collective bargaining agreement so providing. The Company will continue the union dues deductions until written instructions are received from the employee advising the discontinuance of such deductions.

B. Employees are free to join or not to join the Union.

C. All present employees who are not Union members and who do not in the future become and remain members shall, as of the effective date of this Agreement be required, as a condition of employment to continue to pay to the Union, pursuant to authorization for payroll deduction as hereinafter referred to, a service charge as a contribution toward the administration of this Agreement in an amount equal to regular union dues (not including initiation fees, fines, assessments or any other charges uniformly required as a condition of acquiring or maintaining membership) in the Union.

D. All new employees who do not become Union members after forty-five (45) calendar days of employment shall, as a condition of employment, pay to the Union commencing after said date, pursuant to authorization for payroll deduction therefore as hereinafter referred to, a service charge as a contribution toward the Administration of this Agreement in an amount equal to the regular union dues (not including initiation fees, fines, assessments or any other charges uniformly required as a condition of acquiring or retaining membership) of the Union. Upon failure of any non-member employee to pay or tender the above-mentioned service charge, the Employer will discharge such employee when so informed by the Union.

E. All employees covered by this Agreement, who are members of the Union on the effective date of the Agreement, or who voluntarily become members thereafter, will be required as a condition of employment to maintain membership in the Union throughout the term of this Agreement. It is understood that this requirement of maintenance of Union membership shall be met upon the payment or tender by the employee to the Union of the amount of dues uniformly required for maintaining membership therein.

F. The requirement of maintenance of Union membership shall not apply to any employee who gives written notice to the Company during the fifteen (15) days immediately preceding any anniversary date of this Agreement of his desire to withdraw from membership in the Union. Such a notice so given by an employee shall also cancel any check off authorization of his in effect at that time.

G. The foregoing provisions shall only be effective in accordance and consistent with applicable provisions of Federal and State Law.

H. Upon written authorization from an Employee in the bargaining unit, the Company will deduct from the earnings of such employee his Union Dues as set by the Union or service charge equivalent thereto. The written authorization shall be on a form or forms mutually agreed upon and shall be fully filled out and properly executed by the employee prior to delivery to the Company.

ARTICLE XXI
VALIDITY

If any provision of this Agreement is in violation of any Federal, State, or Local Law, the other provisions of this Agreement will remain in full force and effect.

United Steel, Paper and Forestry,
Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers
International Union on Behalf of
Local 7-662

/s/ Leo W. Gerard
Leo W. Gerard, President

/s/ Stanley W. Johnson
Stanley W. Johnson,
International Secretary-Treasurer

/s/ Thomas Conway
Thomas Conway,
Vice President-Administration

/s/ Fred Redmond
Fred Redmond, Vice President-Human Affairs

/s/ Jim Robinson
Jim Robinson, District 7 Director

/s/ David Dowling
David Dowling, Sub-District 2 Director

/s/ Bob White
Bob White, Staff Representative

/s/ Darren Huddleston
Darren Huddleston, Local 7-662 President

/s/ Keith Knipmeyer
Keith Knipmeyer, Local 7-662 Vice President

/s/ Theodore B. Goetze
Theodore B. Goetze, Local 7-662 Sec/Treasurer

Aventine Renewable Energy Inc.
1300 South 2nd Street
Pekin, IL 61555

/s/ John Shriver
John Shriver, Human Resources Manager

/s/ Todd Benton
Todd Benton, Plant Manager

/s/ Art Hemmerlein
Art Hemmerlein, V.P. of Operations

/s/ Daniel B. Sego
Daniel B. Sego, Utilities Committeeman

/s/ Brian Muth
Brian Muth, Production Committeeman

/s/ Chris Lewis
Chris Lewis, Yeast Plant Committeeman

/s/ John J. Zilch
John J. Zilch, Maintenance Committeeman

/s/ Bob Taylor
Bob Taylor, Dry Mill Committeeman

Dated 11/5/12

The following Benefit Plans are effective November 5, 2012.

1. Pension Plan (Applicable only for employees hired before November 1, 2010):

   Aventine Renewable Energy, Inc. will recognize CPC service for vesting purposes only.

   a) $ 43.00 per month for each year of service, with normal retirement at age 65.

   b) Early Retirement 55 years of age, or older, with 10 years of service, with 4% per year, 1/3% per month reduction preceding age 62.

2. Effective January 1, 2001, coverage for bargaining unit employees under Life Insurance Plan, Permanent and Total Disability, Accidental Death and Dismemberment, and Hospital-Medical (Dental Plan), as those plans and benefits existed and are referenced in the Collective Bargaining Agreement executed October 29, 1997, were replaced by Company and employee benefits and contributions and benefit plans administered by Williams Companies, and then, subsequently, by those administered by Aventine Renewable Energy, Inc. ("Aventine"), and given the company's right to effect changes to or in any or all such Company-sponsored Plans, then during the term of this Agreement, such plans, contributions and benefits shall be the same as are applicable to Aventine's non-bargaining unit employees; with the exception of Pension and/or STD benefits which are described herein.

   The foregoing notwithstanding, it is also agreed that for persons hired into the bargaining unit on and after January 1, 2001, those employees and only those employees will have no right to carry over health or other benefits past retirement.

3. Sickness and Accident

   $ 585.00 per week; 4-day waiting period, unless hospitalized; maximum of twenty-six (26) weeks. However, the waiting period may be waived on a case-by-case basis for out-patient surgery that would normally have been performed on an in-patient basis.

The following Benefit Plans are effective November 1, 2013.

1. Pension Plan (Applicable only for employees hired before November 1, 2010):

   Aventine Renewable Energy, Inc. will recognize CPC service for vesting purposes only.

   a) $ 43.00 per month for each year of service, with normal retirement at age 65.

   b) Early Retirement 55 years of age, or older, with 10 years of service, with 4% per year, 1/3% per month reduction preceding age 62.

2. Effective January 1, 2001, coverage for bargaining unit employees under Life Insurance Plan, Permanent and Total Disability, Accidental Death and Dismemberment, and Hospital-Medical (Dental Plan), as those plans and benefits existed and are referenced in the Collective Bargaining Agreement executed October 29, 1997, were replaced by Company and employee benefits and contributions and benefit plans administered by Williams Companies, and then, subsequently, by those administered by Aventine Renewable Energy, Inc. ("Aventine"), and given the company's right to effect changes to or in any or all such Company-sponsored Plans, then during the term of this Agreement, such plans, contributions and benefits shall be the same as are applicable to Aventine's non-bargaining unit employees; with the exception of Pension and/or STD benefits which are described herein.

   The foregoing notwithstanding, it is also agreed that for persons hired into the bargaining unit on and after January 1, 2001, those employees and only those employees will have no right to carry over health or other benefits past retirement.

3. Sickness and Accident

   $ 595.00 per week; 4-day waiting period, unless hospitalized; maximum of twenty-six (26) weeks. However, the waiting period may be waived on a case-by-case basis for out-patient surgery that would normally have been performed on an in-patient basis.

The following Benefit Plans are effective November 1, 2014.

1. Pension Plan (Applicable only for employees hired before November 1, 2010):

   Aventine Renewable Energy, Inc. will recognize CPC service for vesting purposes only.

   a) $ 43.00 per month for each year of service, with normal retirement at age 65.

   b) Early Retirement 55 years of age, or older, with 10 years of service, with 4% per year, 1/3% per month reduction preceding age 62.

2. Effective January 1, 2001, coverage for bargaining unit employees under Life Insurance Plan, Permanent and Total Disability, Accidental Death and Dismemberment, and Hospital-Medical (Dental Plan), as those plans and benefits existed and are referenced in the Collective Bargaining Agreement executed October 29, 1997, were replaced by Company and employee benefits and contributions and benefit plans administered by Williams Companies, and then, subsequently, by those administered by Aventine Renewable Energy, Inc. ("Aventine"), and given the company's right to effect changes to or in any or all such Company-sponsored Plans, then during the term of this Agreement, such plans, contributions and benefits shall be the same as are applicable to Aventine's non-bargaining unit employees; with the exception of Pension and/or STD benefits which are described herein.

   The foregoing notwithstanding, it is also agreed that for persons hired into the bargaining unit on and after January 1, 2001, those employees and only those employees will have no right to carry over health or other benefits past retirement.

3. Sickness and Accident

   $ 610.00 per week; 4-day waiting period, unless hospitalized; maximum of twenty-six (26) weeks. However, the waiting period may be waived on a case-by-case basis for out-patient surgery that would normally have been performed on an in-patient basis.

APPENDIX A
RATE SCHEDULE

Pay Grade	Position	Effective 11-05-12	Effective 11-01-13	Effective 11-01-14
8	Instrument/Electrician & Controls	$ 26.51	$ 26.97	$ 27.51
7	Control Room Operator Power House Operator Boiler House Operator Instrument/Electrician General Mechanic Laborer A (Garage Mechanic)	$ 25.24	$ 25.68	$ 26.19
6	----------	$ 24.62	$ 25.05	$ 25.55
5	Assistant Boiler House Operator Assistant Power House Operator Field Operator (Building 3, 5, 7, 17) Product Loader & Water Softener New Hire General Mechanic New Hire Instrument/Electrician	$ 23.98	$ 24.40	$ 24.89
4	Elevator Operator Laborer B (Hough Operator) Stores	$ 23.37	$ 23.78	$ 24.26
3	Truck Dump Operator Loader/Utility Ash Puller/Coal Car Unloader Laborer C	$ 22.74	$ 23.14	$ 23.60
2	Laborer D	$ 22.11	$ 22.50	$ 22.95
1	Entry Level Rate	$ 17.34	$ 17.64	$ 17.99

SHIFT DIFFERENTIAL

Second Shift - $ .25 Third Shift - $ .50

DRY MILL ADDENDUM

This Dry Mill Addendum to the July 2nd, 2006 Collective Bargaining Agreement ("2006 Agreement") entered into and agreed to on this 2nd day of July, 2006, by Aventine Renewable Energy, Inc. (the "Company") and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International Union on behalf of Local 7-662 (the "Union") or its successors.

W I T N E S S E T H

Section 1:

The Company recognizes the Union as exclusive bargaining agent for all hourly-paid employees, employed at its Pekin, Illinois, Dry Mill facility excluding office employee's clerical employees, managerial employees, professional employees and supervisors.

Section 2:

When used herein "Dry Mill Group" means those employees regularly assigned to and performing work in and at the Dry Mill facility. The term "Wet Mill" shall refer to the physical plant and job positions and operations in place prior to the construction of the "Dry Mill"; provided however, that the term "Yeast Plant" shall refer to the operating, jobs and physical facility associated with Aventine Bio Products.

Section 3 – Transition from Wet Mill to Dry Mill:

The parties recognize and agree that initial staffing of bargaining unit positions in and for the Dry Mill shall be accomplished in accordance with the provisions of this Section 3.

A. Bidding by employees covered by the November 1, 2003 – October 31, 2006 Collective Bargaining Agreement (the "October Agreement"):

1. On the Monday of the first calendar week following ratification of this Dry Mill Addendum, seven (7) vacancies for open hourly-paid job positions in and/for the Dry Mill shall be posted throughout the Wet Mill and Yeast Plant as open for bidding by employees covered by the October Agreement.

(a) Such seven (7) hourly-paid job vacancies shall be for:

(i) Any one of three (3) positions for first shift in the Dry Mill;
(ii) Any one of two (2) positions for second shift in the Dry Mill;
(iii) Any one of two (2) positions for third shift in the Dry Mill.

(b) Any member of the bargaining unit covered by the October Agreement may sign one bid for each or all of the vacancies listed in 1.(a) of this Section 3A.

(c) Bids will be awarded in accordance with Plant seniority as defined by Article IV, Section "B." of the October Agreement.

(d) Any employee who has been awarded more than one bid among the seven (7) posted job vacancies will be required to choose which one (1) of the seven (7) vacancies s/he will accept and the positions left open by reason of such selection will be available to the other bidders by seniority in accordance with the terms of this Section 3.

2. Limitations on bid selection.

(a) Only those individuals who bid on one of the seven (7) openings referenced in this Section 3 and who are physically capable of performing all aspects of the job will be eligible to be awarded any such bid.

(i) If during the one week period referenced in Section 3.A.1. of this Addendum, an individual is not at work in the Yeast Plant or the Wet Mill due to absence while the bid is posted because of vacation, sickness or other excused absence, the Company shall use its best efforts to personally contact that individual by telephone to advise him/her that the bids referenced herein have been posted.

(ii) The parties shall accept bids which are made by telephone or received from off-premises by employees who are absent from work because of vacation, sickness or other excused absence during the time the bids for Dry Mill positions are open.

(iii) Employees who are absent from work due to medical reasons (including but not limited to Workers Compensation or S&A) shall be permitted to bid on Dry Mill openings however, prior to an award of any such bid, the company shall require the absent employee to submit to a medical examination at the Company's expense, which, in order for the employee to be eligible his/her bid to be awarded, must result in the physician's certification that the employee will be physically able to fully perform the work required in the Dry Mill at the time of training for such Dry Milling jobs.

(b) Dry Mill employees will be required to maintain and demonstrate required qualifications on all operator positions.

(c) Any employee who is awarded a bid under this Section 3 will thereby signify his/her commitment to the successful operation of the Dry Mill and as a part of that commitment once the individual has been awarded his/her bid job, he/she will not be permitted to bid out of that job or to move or attempt to move to the Wet Mill, the Yeast Plant or any other job associated with such facilities until on and after January 1, 2008.

(d) Once all seven (7) vacancies for the Dry Mill have been posted and awarded, the Company will not accept any bids from employees otherwise covered by the October Agreement for openings in the Dry Mill until on and after July 1, 2007, but, instead, until July 1, 2007, the Company shall fill such openings by new hires.

(e) If at the time of actual job assignment and training at the Dry Mill (or at an off-site training facility) any employee whose bid has been accepted is physically unable to perform the job or training, then the Company shall not be required to hold that position open but shall treat that position as an opening and fill it by a new hire.

B. Transition to staffing Dry Mill.

1. When bids have been awarded for the seven (7) openings. If not enough successful bidders exist to fill such openings when there are no more eligible bidders to fill such openings, the Company and Union will meet to discuss the effects of such lack of interest in bidding.

2. Although employees covered by the October Agreement have been awarded jobs in the Dry Mill, such individuals will remain working in the jobs they occupied at the time of their bid until actually assigned and working in (or training for) their awarded Dry Mill position. At the time this Addendum was/is entered into that period of working for or training for the Dry Mill jobs is believed to be somewhere between September, 2006 and the end of November, 2006.

3. While continuing to work at the jobs held prior to successfully bidding on the Dry Mill vacancies, such employees will actively participate in training both new hires and those employees moving to new positions in the Wet Mill or the Yeast Plant in job openings which have been created by filling the job openings in the Dry Mill by the bid procedure set forth in this Section 3.

4. All employees who successfully bid on and are awarded jobs for openings in the Dry Mill shall be required to utilize their full allotment of vacation, personal holidays and/or United Way days prior to actually reporting for work at the Dry Mill. Such employees will not be permitted to utilize vacation, personal holidays and/or United Way days regardless of otherwise eligibility for the same once training for and/or work at the Dry Mill begins.

5. Once employees covered by the October Agreement are awarded job bids in the Dry Mill facility, they will be ineligible to have renewed personal holidays approved for the remainder of calendar year 2006.

6. Vacation scheduling will resume February 1, 2007.

C. Compensation for Dry Mill positions.

1. All individuals working at the Dry Mill will be compensated at the hourly rate of pay for Rate 5 as set forth in the Collective Bargaining Agreement which replaces and supplants the October Agreement.

2. During such times, and only during the transition period referenced in this Section 3, as employees are off-site training at another (non-Company owned) facility, employees who are either training or traveling during any one (1) of the estimated two (2) week periods of off-site training will be paid at Rate 5 for 56 hours time regardless of when such individuals are actually training or traveling or otherwise occupied during such off-site training and during the transition period. When employees are taken off-site for training purposes the Company shall provide food, lodging and transportation; provided, however, that the Company shall not be required to provide lodging, meals and/or transportation other than for travel to and from the training site for the entire group, and shall not pay for, or reimburse, employees for other or exceptional expenses.

D. Hours of work.

The normal hours of work for all employees assigned to the Dry Mill shall be:

1st	Shift	6:30 a.m.	to	2:30 p.m.
2nd	Shift	2:30 p.m.	to	10:30 p.m.
3rd	Shift	10:30 p.m.	to	6:30 a.m.

E. Effect of addendum on Wet Mill employees

1. In an effort to support the efficient operation of the Wet Mill facility, the plant wide bidding process referenced in Article VII of the October Agreement and its replacement will be bypassed. Once vacancies in each department are identified, they will be filled with a new hire employee.

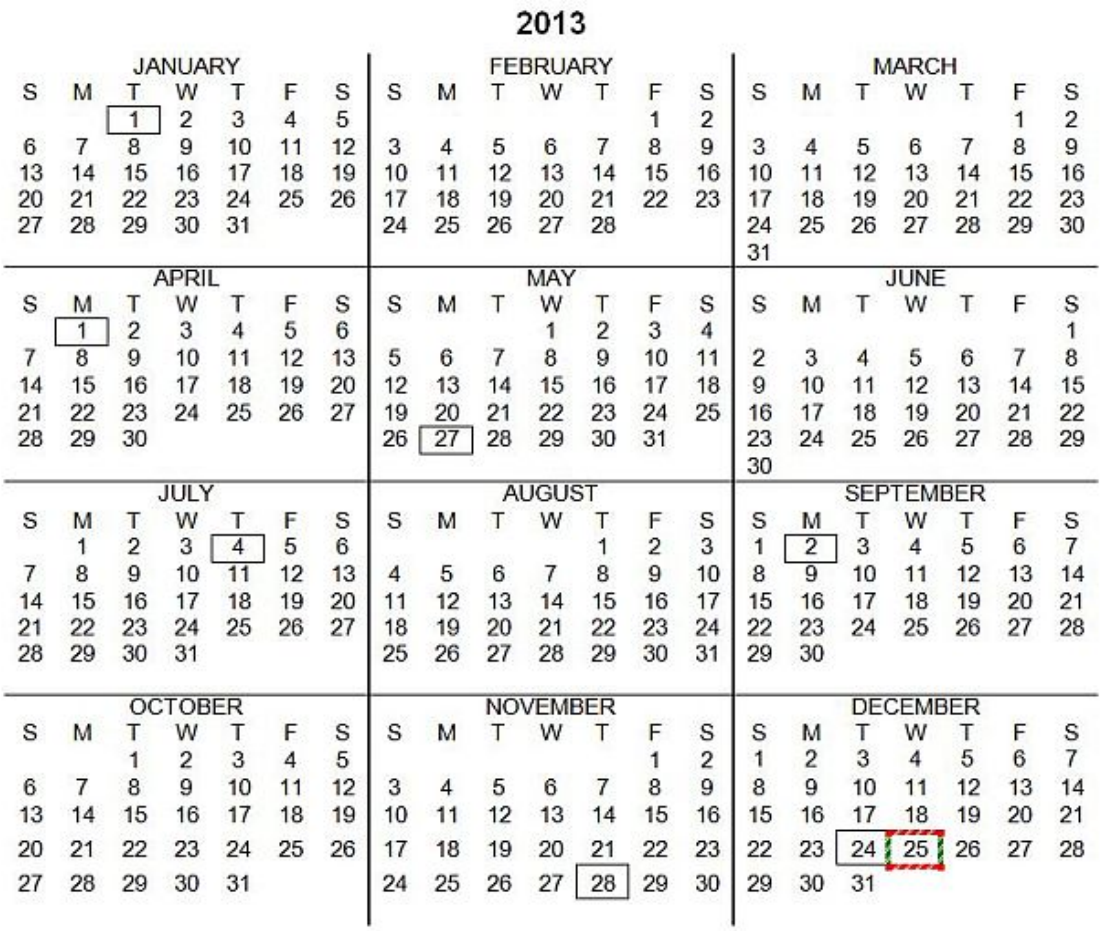
(a) New hires, who are filling the Wet Mill permanent vacancies created by movement to the Dry Mill, will be brought into the Wet Mill ahead of the transition to the Dry Mill.

(b) Such new hires will be trained accordingly and will help to provide continuity in plant operation as the transition takes place.

(c) Between the dates of July 1st 2006 to July 1st 2007 new hires will not be eligible to sign plant wide bids. Plant wide bidding procedure resumes after July 1st 2007.

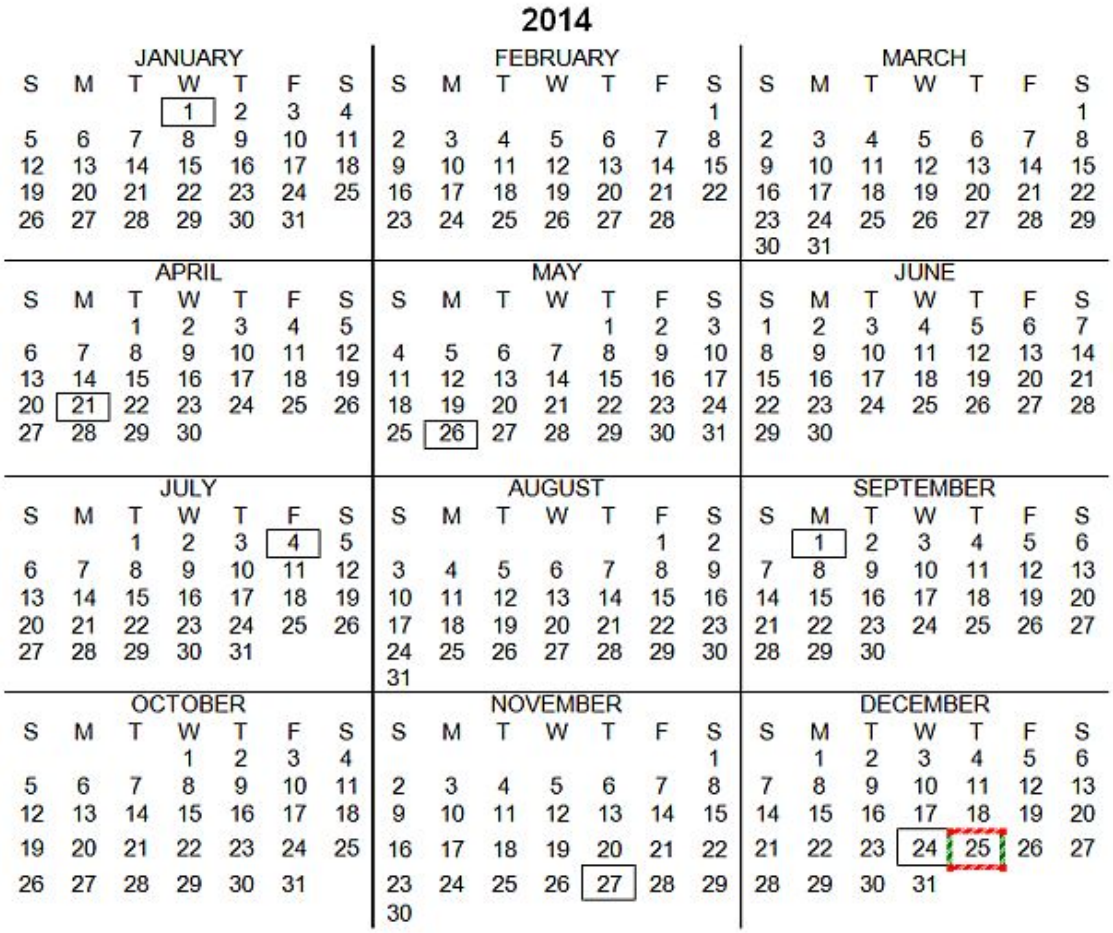
F. Applicability of Additional or Other Collective Bargaining Agreement.

1. Unless specifically modified, changed, or deleted by the provisions of this Addendum, any and all of the terms and conditions of employment applicable to employees covered by the Collective Bargaining Agreement which replaces the October Agreement shall apply to employees covered by this Dry Mill Addendum.



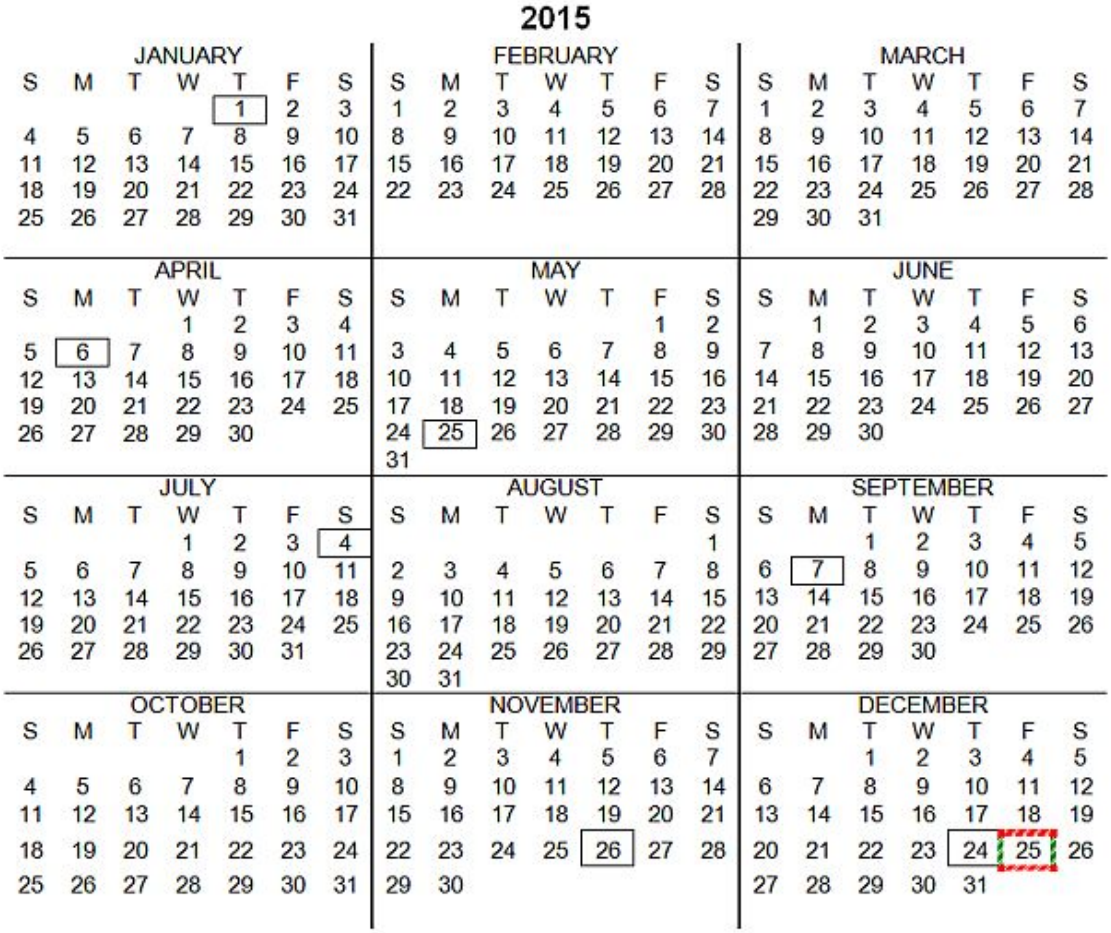
HOURLY HOLIDAYS
(Dates Observed)
2013

Tuesday, January 1st	New Year's Day
Monday, April 1st	Easter Monday
Monday, May 27th	Memorial Day
Thursday, July 4th	Independence Day
Monday, September 2nd	Labor Day
Thursday, November 28th	Thanksgiving Day
Tuesday, December 24th	Christmas Eve Day
Wednesday, December 25th	Christmas Day



HOURLY HOLIDAYS
(Dates Observed)
2014

Wednesday, January 1	New Year's Day
Monday, April 21	Easter Monday
Monday, May 26	Memorial Day
Friday, July 4	Independence Day
Monday, September 1	Labor Day
Thursday, November 27	Thanksgiving Day
Wednesday, December 24	Christmas Eve Day
Thursday, December 25	Christmas Day



HOURLY HOLIDAYS
(Dates Observed)
2015

Thursday, January 1	New Year's Day
Monday, April 6	Easter Monday
Monday, May 25	Memorial Day
Saturday, July 4	Independence Day
Monday, September 7	Labor Day
Thursday, November 26	Thanksgiving Day
Thursday, December 24	Christmas Eve Day
Friday, December 25	Christmas Day

Exhibit 21.1

SUBSIDIARIES OF THE REGISTRANT

Subsidiary Name*	Name(s) Under Which Subsidiary Does Business**	State or Jurisdiction of Incorporation or Organization
Kinergy Marketing, LLC	Kinergy Marketing	Oregon
Pacific Ag. Products, LLC	Pacific Ag Products / PAP	California
PEMS Corp.	–	Delaware
Pacific Ethanol Development, LLC	–	Delaware
New PE Holdco LLC(1)	–	Delaware
Pacific Ethanol Holding Co LLC(1)	–	Delaware
Pacific Ethanol Columbia, LLC(1)	–	Delaware
Pacific Ethanol Madera LLC(1)	–	Delaware
Pacific Ethanol Magic Valley, LLC(1)	–	Delaware
Pacific Ethanol Stockton LLC(1)	–	Delaware
AVR Merger Sub, Inc.	-	Delaware

* All subsidiaries are wholly-owned by the Registrant unless otherwise specified by footnote.
** If different from the name of the subsidiary.
(1) The Registrant holds a 91% ownership interest in New PE Holdco LLC. Pacific Ethanol Holding Co LLC is wholly-owned by New PE Holdco LLC. Pacific Ethanol Columbia, LLC, Pacific Ethanol Madera LLC, Pacific Ethanol Magic Valley, LLC and Pacific Ethanol Stockton LLC are wholly-owned by Pacific Ethanol Holding Co LLC.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-4 of Pacific Ethanol, Inc. of our report dated March 31, 2014, relating to our audits of the consolidated financial statements, which appear in the Annual Report on Form 10-K of Pacific Ethanol, Inc. for the year ended December 31, 2013.

We also consent to the reference to our firm under the caption "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ HEIN & ASSOCIATES LLP
Irvine, California
February 3, 2015

Exhibit 23.2

Consent of Independent Auditor

We consent to the use in this Registration Statement on Form S-4 of Pacific Ethanol, Inc. of our report dated March 31, 2014, relating to our audit of the consolidated financial statements of Aventine Renewable Energy Holdings, Inc., appearing in the Joint Proxy/Prospectus, which is part of this Registration Statement.

We also consent to the reference to our firm under the captions "Experts" in such Joint Proxy/Prospectus.

/s/ McGladrey LLP

Des Moines, Iowa
February 3, 2015

Exhibit 23.3

Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated June 27, 2013, except Note 2, as to which the date is February 2, 2015, included in the Proxy Statement of Pacific Ethanol, Inc. that is made a part of the Registration Statement (Form S-4 No. 333-00000) and Prospectus of Pacific Ethanol, Inc. for the registration of shares of its common stock and non-voting common stock.

/s/ Ernst & Young LLP
St. Louis, Missouri
February 4, 2015

Exhibit 99.5

CONSENT OF CRAIG-HALLUM CAPITAL GROUP LLC

We hereby consent to the inclusion of our opinion letter dated December 29, 2014 as Annex D to, and to the reference thereto under the captions "SUMMARY—Opinion of Craig-Hallum Capital Group LLC," "THE PROPOSED MERGER—Background of the Merger," "THE PROPOSED MERGER—Recommendation of the Pacific Ethanol Board and its Reasons for the Merger" and "THE PROPOSED MERGER—Opinion of Craig-Hallum Capital Group LLC" in, the Joint Proxy Statement/Prospectus relating to the proposed merger transaction involving Pacific Ethanol, Inc., Aventine Renewable Energy Holdings, Inc. and AVR Merger Sub, Inc., which Joint Proxy Statement/Prospectus is a part of the Registration Statement on Form S-4 of Pacific Ethanol, Inc. By giving such consent, we do not thereby admit that we are experts with respect to any part of such Registration Statement within the meaning of the term "expert" as used in, or that we come within the category of persons whose consent is required under, the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

CRAIG-HALLUM CAPITAL GROUP LLC

/s/ Craig-Hallum Capital Group LLC

Minneapolis, Minnesota
February 4, 2015

Exhibit 99.6

CONSENT OF DUFF & PHELPS, LLC

We hereby consent to the use in the Registration Statement (Form S-4) of Pacific Ethanol, Inc. ("Pacific") and in the Proxy Statement/Prospectus of Pacific and Aventine Renewable Energy Holdings, Inc. ("Aventine"), which is part of the Registration Statement, of our opinion letter, dated December 30, 2014, to the Board of Directors of Aventine, appearing as Annex E to such Proxy Statement/Prospectus, and to the description of such opinion and to the references to our name contained therein under the headings "Summary—Opinion of Aventine Financial Advisor", "Risk Factors—Risks Related to the Merger", "The Proposed Merger—Recommendation of the Aventine Board of Directors and its Reasons for the Merger" and "The Merger—Opinion of Financial Advisor to the Aventine Board of Directors". In giving such consent, we do not admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended (the "Act"), or the rules and regulations of the Securities and Exchange Commission thereunder (the "Regulations"), nor do we admit that we are experts with respect to any part of such Registration Statement within the meaning of the term "experts" as used in the Act or the Regulations.

DUFF & PHELPS, LLC

By: /s/ Andrew Capitman
Name: Andrew Capitman
Title: Managing Director

February 3, 2015