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**UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION**

WASHINGTON, D.C. 20549

**FORM 10-K**

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

FOR THE FISCAL YEAR ENDED JANUARY 31, 2007

COMMISSION FILE NO. 001-09097

\_\_\_\_\_  
REX STORES CORPORATION  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

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

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

45414  
(Zip Code)

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

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

<u>Title of each class</u>	<u>Name of each exchange On which registered</u>
Common Stock, \$.01 par value	New York Stock Exchange

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

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

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

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

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

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

At the close of business on July 31, 2006 the aggregate market value of the registrant's outstanding Common Stock held by non-affiliates of the registrant (for purposes of this calculation, 1,281,183 shares beneficially owned by directors and executive officers of the registrant were treated as being held by affiliates of the registrant), was \$125,361,959.

There were 10,492,355 shares of the registrant's Common Stock outstanding as of April 13, 2007 .

Documents Incorporated by Reference

Portions of REX Stores Corporation's definitive Proxy Statement for its Annual Meeting of Shareholders on May 31, 2007 are incorporated by reference into Part III of this Form 10-K.

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## AVAILABLE INFORMATION

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

### PART I

#### Item 1. Business

##### Overview

REX was incorporated in Delaware in 1984 as a holding company to succeed to the entire ownership of three affiliated corporations, Rex Radio and Television, Inc., Stereo Town, Inc. and Kelly & Cohen Appliances, Inc., which were formed in 1980, 1981 and 1983, respectively. Our principal offices are located at 2875 Needmore Road, Dayton, Ohio 45414. Our telephone number is (937) 276-3931. We are a specialty retailer in the consumer electronics and appliance industry, presently serving over 160 small to medium-sized towns and communities. Since 1980, when our first four stores were acquired, we have expanded into a national chain operating 164 stores in 35 states under the "REX" trade name. In 1998, we entered the synthetic fuel industry with investments in two synthetic fuel plants. We recently entered the ethanol industry with investments in several entities that operate or plan to operate ethanol producing plants.

Additional information regarding our business segments is presented below and in Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") in this Form 10-K. See Note 17 of the Notes to the Consolidated Financial Statements for information regarding the net sales and revenues for each of our business segments for the fiscal years ended January 31, 2007, 2006 and 2005.

##### Fiscal Year

All references in this report to a particular fiscal year are to REX's fiscal year ended January 31. For example, "fiscal 2006" means the period February 1, 2006 to January 31, 2007. We refer to our fiscal year by reference to the year immediately preceding the January 31 fiscal year end date.

##### Retail Overview

Our stores average approximately 11,300 square feet and offer a broad selection of brand name products within selected major product categories, including big screen and standard-sized televisions, major household appliances, video and audio equipment and ready to assemble furniture.

Our business strategy emphasizes depth of selection within key product categories. Brand name products are offered at everyday low prices combined with frequent special sales and promotions. We concentrate our stores in small and medium sized markets where we believe that by introducing a high volume, low price merchandising concept, we can become a dominant retailer. We support our merchandising strategy with extensive newspaper advertising in each of our local markets and maintain a knowledgeable sales force which focuses on customer service. We believe our low price policy, attention to customer satisfaction and deep product selection provide customers with superior value.

Our strategy is to operate stores in small to medium sized markets. We focus on markets with a newspaper circulation that can efficiently and cost-effectively utilize our print advertising materials and where we believe we can become a dominant retailer.

## **Retail Business Strategy**

Our objective is to be a leading consumer electronics/appliance retailer in each of our markets. The key elements of our retail business strategy include:

### ***Focusing on Small Markets***

We traditionally have concentrated our stores in markets with populations of 20,000 to 300,000. When opening stores, we focus on markets with populations under 85,000, which generally are underserved by our competitors. We believe our low-overhead store format and our ability to operate in free-standing as well as strip shopping centers and regional mall locations makes us well suited to serve these small markets.

### ***Maintaining Guaranteed Lowest Prices***

We actively monitor prices at competing stores and adjust our prices as necessary to meet or beat the competition. We guarantee the lowest price on our products through a policy of refunding 125% of the difference between our price and a competitor's price on the same item.

### ***Offering a Broad Selection of Brand Name Products***

We offer a broad selection of brand name products within key product categories. We carry most major brands of consumer electronics and several major brands of appliances. We offer merchandise in each of our product categories at a range of price points and generally maintain sufficient product stock for immediate delivery to customers.

### ***Capitalizing on Our Opportunistic Buying***

When available, we may purchase large quantities of products directly from manufacturers on an opportunistic basis at favorable prices. We believe this buying strategy makes us an attractive customer for manufacturers seeking to sell cancelled orders and excess inventory, enabling us to develop strong relationships and extended trade credit support with vendors. We also collaborate with key suppliers to insure a steady and seasonal supply of key product categories and items.

### ***Striving to be the Low Cost Operator in Our Markets***

Our current prototype store is approximately 12,000 square feet and provides us with cost and space efficiencies. Our market selection criteria and operating philosophy allow us to minimize both occupancy and labor costs. Generally, all of our store employees, including our store managers, sell products, unload trucks, stock merchandise and process sales, which helps minimize employee count and overhead within each store. Most stores are staffed with between three and six employees.

### ***Leveraging Our Strong Operational Controls***

Our information systems and point-of-sale computer systems, which are installed in every store, allow management to monitor our merchandising programs, sales, employee productivity and in-store inventory levels on a daily basis. Our operational controls provide us with cost efficiencies which reduce overhead while allowing us to maintain high levels of in-stock merchandise. Our three distribution centers, strategically located in Dayton, Ohio, Pensacola, Florida and Cheyenne, Wyoming, reduce inventory requirements at individual stores and facilitate centralized inventory and accounting controls.

## Store Operations

**Stores.** We locate our stores in the general vicinity of major retail shopping districts and design our stores to generate their own traffic . At January 31, 2007, 143 stores were located in free-standing buildings, with the balance situated in strip shopping centers and regional malls. Stores located in malls generally have exterior access and signage rights.

Our stores are designed with minimal interior fixtures to provide an open feeling and a view of all product categories upon entering the store. The stores are generally equipped with neon signage above each product category to further direct the customer to particular products. We believe the interior layout of our stores provides an inviting and pleasant shopping environment for the customer. This also enables us to adapt our merchandising displays and product assortments with minimal remodeling costs.

Our existing stores average approximately 11,300 square feet, including approximately 7,800 square feet of selling space and approximately 3,500 square feet of storage. Stores are open seven days and six nights per week, except for certain holidays. Hours of operation are 10:00 a.m. to 8:00 p.m. Monday through Saturday and 12:00 p.m. to 6:00 p.m., or 1:00 p.m. to 5:00 p.m. in some states, on Sunday.

Our retail business is seasonal. Our net retail sales and net income historically have been highest in our fourth fiscal quarter, which includes the Christmas selling season. The fourth quarter accounted for approximately 30% and 33% of our net sales and revenue, and 31% and 23% of our net income in fiscal 2006 and 2005, respectively.

Prior to April 1, 2007, our operations were divided into regional districts, containing up to 11 stores whose manager's reported to a district manager. Our 35 district managers reported to one of five regional vice presidents. The regional vice presidents reported to the President and Chief Operating Officer. We restructured our store operations on April 1, 2007. Our operations are now divided into seven regions, containing up to 28 stores and one district containing ten stores. The seven regional vice presidents and the one district manager report to the President and Chief Operating Officer. Each store is staffed with a full-time manager and one or two assistant managers, commissioned sales personnel and, in higher-traffic stores, seasonal support personnel. Store managers are paid on a commission basis and have the opportunity to earn bonuses based upon their store's sales and gross margins. Sales personnel work on a commission basis.

We evaluate the performance of our stores on a regular basis and, based on an assessment of overall profitability, future cash flows and other factors we deem relevant, may close any store which is not adequately contributing to our profitability. We closed 25, 16 and 14 stores during fiscal 2006, 2005 and 2004, respectively. Subsequent to January 31, 2007, we have closed an additional 29 stores.

**Store Locations.** The following table shows the states in which we operated stores and the number of stores in each state as of January 31, 2007:

<u>State</u>	<u>Number of Stores</u>	<u>State</u>	<u>Number of Stores</u>
Alabama	10	New Mexico	1
Arkansas	1	New York	15
Colorado	3	North Carolina	6
Florida	24	North Dakota	3
Georgia	5	Ohio	18
Idaho	5	Oklahoma	3
Illinois	8	Pennsylvania	13
Indiana	1	South Carolina	7
Iowa	8	South Dakota	1
Kansas	1	Tennessee	6
Kentucky	2	Texas	7
Louisiana	2	Vermont	1
Maryland	1	Virginia	2
Michigan	5	Washington	3
Mississippi	11	West Virginia	5
Missouri	3	Wisconsin	4
Montana	5	Wyoming	2
Nebraska	1		

**Personnel.** We train our employees to explain and demonstrate to customers the use and operation of our merchandise and to develop good sales practices. Our in-house training program for new employees combines on-the-job training with use of a detailed company-developed manual entitled "The REX Way." Sales personnel attend in-house training sessions conducted by experienced salespeople or manufacturers' representatives and receive sales, product and other information in meetings with managers.

We also have a manager-in-training program that consists of on-the-job training of the assistant manager at the store. Our policy is to staff store management positions with personnel promoted from within REX and to staff new store management positions with existing managers or assistant managers.

**Services.** Virtually all of the products we sell carry manufacturers' warranties. Except for our least expensive items, we offer extended service contracts to customers, usually for an additional charge, which typically provide, inclusive of manufacturers' warranties, one to five years of extended warranty coverage. We offer maintenance and repair services for most of the products we sell. These services are subcontracted to independent repair firms.

Our return policy provides that any merchandise may be returned for exchange or refund within seven days of purchase if accompanied by original packaging material and verification of sale.

We accept MasterCard, Visa, Discover and American Express. We estimate that, during fiscal 2006, approximately 48.3% of our total sales were made on these credit cards, and approximately 15.4% were made on revolving or installment credit contracts arranged through banks or independent finance companies which bear the credit risk of these contracts. We offer a REX private label credit card in all of our stores which makes up the bulk of customer financing.

## Merchandising

**Products.** We offer a broad selection of brand name consumer electronics and home appliance products at a range of price points. We emphasize depth of product selection within selected key product categories. During fiscal 2006, we sold approximately 1,400 products produced by approximately 50 manufacturers. Our product categories include:

<u>Televisions</u>	<u>Video</u>	<u>Audio</u>	<u>Appliances</u>	<u>Other</u>
TVs	VCRs	Stereo Systems	Air Conditioners	Extended Service
Big Screen TVs	Camcorders	Receivers	Microwave Ovens	Contracts
TV/VCR/	Digital Satellite	Compact Disc	Washers	Ready to Assemble
DVD	Systems	Players	Dryers	Furniture
Combos	DVD Players	Tape Decks	Ranges	Recordable Tapes
Plasma/LCD	DVD Recorders	Speakers	Dishwashers	Audio/Video
TVs	DVD/VCR	Car Stereos	Refrigerators	Accessories
	Combos	Portable Radios	Freezers	Radar Detectors
	Digital Cameras	Turntables	Dehumidifiers	
		Home Theater		
		Systems		
		Satellite Radio		

Among the leading brands sold by us during fiscal 2006, in alphabetical order, were Frigidaire, Hitachi, Panasonic, Samsung, Sharp, Sony, Toshiba, Westinghouse and Whirlpool.

All our stores carry a broad range of televisions, video and audio products, microwave ovens and air conditioners. In addition, all but one store carries major appliances.

The following table shows the approximate percent of net sales and revenue for each major product group for the last three fiscal years:

<u>Product Category</u>	<u>Fiscal Year</u>		
	<u>2006</u>	<u>2005</u>	<u>2004</u>
Televisions	55%	56%	55%
Appliances	26	22	19
Audio	7	9	11
Video	4	6	7
Other	8	7	8
	<u>100%</u>	<u>100%</u>	<u>100%</u>

**Pricing.** Our policy is to offer our products at guaranteed lowest prices combined with frequent special sales and promotions. Our retail prices are established by our merchandising department, but each store manager is responsible for monitoring the prices offered by competitors and has authority to adjust prices to meet local market conditions. Our commitment to offer the lowest prices is supported by our guarantee to refund 125% of the difference in price if, within 30 days of purchase, a customer can locate the same item offered by a local competitor at a lower price.

**Advertising.** We use a "price and item" approach in our advertising, stressing the offering of nationally recognized brands at significant savings. The emphasis of our advertising is our Guaranteed Lowest Price. Our guarantee states:

"Our prices are guaranteed in writing. If you find any other local store (excluding Internet) stocking and offering to sell for less the identical item in a factory sealed box within 30 days after your REX purchase, we'll refund the difference plus an additional 25% of the difference."

Advertisements are concentrated principally in newspapers and preprinted newspaper inserts, which are produced by our internal advertising department. Advertisements are complemented by in-store signage highlighting special values, including "Value Every Day," "Best Value," and "Top of the Line." Our advertising strategy includes preferred customer private mailers, special events such as "Moonlight Madness Sales" and coupon sales to provide shopping excitement and generate traffic.

**Purchasing.** Our merchandise purchasing and opportunistic buying are performed predominantly by four members of management. By purchasing merchandise in large volume, we are able to obtain quality products at competitive prices and advertising subsidies from vendors to promote the sale of their products. For fiscal 2006, nine vendors accounted for approximately 86% of our purchases, with three vendors representing approximately 45% of our inventory purchases. We typically do not maintain long-term purchase contracts with vendors and operate principally on an order-by-order basis.

We utilize a vendor financing arrangement for certain products. Under this arrangement, payment to the vendor is not due until the product is sold. Legal title to the products does not pass to us until we have paid the vendor. See Note 1 of the Notes to the Consolidated Financial Statements for a further discussion.

#### **e-Commerce**

We sell selected televisions, audio and video products and appliances on our retail store Web site at [www.rexstores.com](http://www.rexstores.com). We also use the site to support our retail sales by listing our advertisements and our store locations.

#### **Distribution**

Our stores are supplied by three regional distribution centers. The distribution centers consist of:

- a 470,000 square foot owned facility in Dayton, Ohio;
- a 180,000 square foot owned facility in Pensacola, Florida; and
- a 145,000 square foot owned facility in Cheyenne, Wyoming.

#### **Inventory Management**

The regional distribution centers reduce inventory requirements at individual stores, while preserving the benefits of volume purchasing and facilitating centralized inventory and accounting controls. Virtually all of our merchandise is distributed through our distribution centers, with the exception of major appliances which are often shipped directly by the vendor to the retail location. All deliveries to stores are made by independent contract carriers.

## **Management Information Systems**

We have developed a computerized management information system which operates an internally developed software package. Our computer system provides management with the information necessary to manage inventory by stock keeping unit (SKU), monitor sales and store activity on a daily basis, capture marketing and customer information, track productivity by salesperson and control our accounting operations.

Our mainframe computer is an IBM A/S 400 model 720. The host computer is integrated with our point-of-sale system which serves as the collection mechanism for all sales activity. The combined system provides for next-day review of inventory levels, sales by store and by SKU and commissions earned, assists in cash management and enables management to track merchandise from receipt at the distribution center until time of sale.

## **Competition**

Our business is characterized by substantial competition. Our competitors include national and regional large format merchandisers and superstores such as Best Buy Co., Inc., Lowe's Corporation, Home Depot, Inc. and Circuit City Stores, Inc., other specialty electronics retailers including RadioShack Corporation, department and discount stores such as Sears, Roebuck and Co. and Wal-Mart Stores, Inc., furniture stores, warehouse clubs, home improvement retailers and Internet and store-based retailers who sell competitive products online. We also compete with small chains and specialty single-store operators in some markets, as well as Sears' dealer-operated units. Some of our competitors have greater financial and other resources than us, which may increase their ability to purchase inventory at a lower cost, better withstand economic downturns or engage in aggressive price competition. Competition within the consumer electronics/appliance retailing industry is based upon price, breadth of product selection, product quality, customer service and credit availability. We expect competition within the industry to increase.

## **Real Estate Operations**

As part of our continuous evaluation of retail store performance, we explore alternative uses of owned properties. We consider factors such as the local real estate market, recent and pending commercial development and recent store profitability. We may close a retail store if we believe we can execute a real estate transaction that is more profitable to us than the continuing operation of the retail store. At January 31, 2007, we had lease agreements, as landlord, for all or parts of 23 owned properties. In seven of the locations, we operate a store and lease a portion of the property to another party. We do not operate a store in 16 of the owned properties.

A typical lease agreement has an initial term of three to five years with renewal options. Most of our lessees are responsible for a portion of maintenance, taxes and other executory costs. We require our lessees to maintain adequate levels of insurance. During fiscal 2006, we recognized approximately \$1,778,000 of lease revenue.

We have five owned properties that are vacant at January 31, 2007. Two of these assets and a property to be sold subsequent to January 31, 2007 are classified as assets held for sale. Subsequent to January 31, 2007, we closed 29 of our retail stores. Of these properties, 26 were owned and three were leased. One of the owned properties was sold; we intend to market the remaining 25 owned properties for lease or sale (21 are currently included in the Purchase and Sale Agreement with Coventry Real Estate Investments, LLC).



## Coventry Sale and Leaseback

On February 8, 2007, we entered into a Purchase and Sale Agreement with Coventry Real Estate Investments, LLC. Pursuant to the Agreement, we have agreed to sell 94 of our current and former store locations for approximately \$84.0 million, before selling expenses, and to leaseback a minimum of 40 of the properties for an initial lease term expiring January 31, 2010. The leases will contain renewal options for up to 15 additional years. Either party may terminate a lease after the initial six months of the initial lease term on 23 to 30 of the sites as selected by us.

We are in the process of analyzing the allocation of the purchase price to individual properties which have a carrying value of approximately \$66.5 million, thus, the resulting gain to be recognized cannot currently be determined. We intend to use the proceeds from the sale to pay off approximately \$17 to \$19 million in mortgage debt related to these properties, to fund our alternative energy projects and for other general corporate purposes.

Closing of the transaction is subject to customary conditions, including title commitments, surveys and, on certain properties, environmental and site inspections. Either party has the right to terminate the Agreement if a threshold number of stores, or mix of locations, is not met. The Agreement also contains customary non-solicitation provisions. The closing is scheduled to occur on or before April 30, 2007.

## Alternative Energy Overview

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

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

## Alternative Energy Strategy

The key elements of our alternative energy business strategy include:

**Investing in Plants that Meet our Investment Criteria.** We have stringent and structured criteria to evaluate our plant investments. We focus on identifying projects with efficient cost structure, superior infrastructure and logistics and quality partners. We evaluate the projects using the following criteria:

**Partners.** We judge our partners on the strength of their connection with the local community, ability to support the plant through construction and when in operation, as well as their willingness and desire for an outside partner.

**Plant Location.** We generally look for locations in areas that are near large quantities of feedstock which we believe will be important to procure commodities cost effectively as demand for key feedstock commodities increases. We also look for accessibility to rail, highways or waterways for ease of transportation of ethanol and distillers grains and feedstock.

**Technology and Construction.** We look for plants that are built or will be built using the latest but proven production technology in order to facilitate cost efficient conversion of raw material into ethanol. All of our plants are being designed and built by leading plant builder and design firms, such as Fagen, Inc. or ICM, Inc.

**Marketing Alliance.** Each project independently chooses its own marketing alliance. We prefer marketing partners that we believe have strong positions in the industry based on their experience and national reach, which we believe will become increasingly important as ethanol becomes a more available alternative to petroleum based fuels.

**Grow Capacity to Meet both Mandated and Non-mandated Demand.** We continuously look for opportunities to partner with farmer-controlled ethanol plants throughout the United States. We believe that new production facilities will need to be constructed to meet both the mandated and non-mandated demand for ethanol and that we are well positioned to rapidly grow our capacity.

**Adding Value to Our Partnerships.** We will look for ways to add to the operational characteristics of our projects by being a source of development support and information on practices in the ethanol industry. The diversification of our investments in terms of geography, ownership, management, plant size and financial and operational agreements will allow us to provide our partners with value added information with respect to risk management, feedstock procurement, plant management and ethanol and co-products marketing.

#### Ethanol Investments

We have invested in four entities as of January 31, 2007 utilizing both debt and equity investments. We expect three of the entities to begin generating operating revenue approximately 14 to 20 months after construction of the plants has begun. Big River Resource, LLC, has a 52 million gallon dry-mill ethanol manufacturing facility and is currently generating operating revenue. We continue to evaluate other potential ethanol investments. The following table is a summary of our ethanol investments (amounts in thousands, except ownership percentages):

Entity	Equity Investment	Ownership Percentage	Debt Investment	Contingent Commitment
Levelland/Hockley County Ethanol, LLC	\$ 11,500	47.1%	\$ 5,000	-
Millennium Ethanol, LLC	-	-	\$ 14,000	-
Big River Resources, LLC (a)	\$ 5,000	4.3%	-	\$ 10,000
Patriot Renewable Fuels, LLC	\$ 16,000	23.3%	-	-
One Earth Energy, LLC	-	-	-	\$ 24,900

(a) On January 25, 2007, we invested an additional \$5.0 million in Big River Resources, LLC (included in other assets). This investment was effective February 1, 2007, increasing our equity investment to \$10.0 million, and our ownership percentage increased from 4.3% to 6.9%.

#### Levelland/Hockley County Ethanol, LLC

On September 30, 2006, we acquired 47.1% of the outstanding membership units of Levelland/Hockley County Ethanol, LLC, or Levelland/Hockley, for \$11.5 million. On December 29, 2006, we purchased a \$5.0 million convertible secured promissory note from Levelland/Hockley. The conversion of the note into equity would increase our ownership percentage to approximately 56%. We consolidate Levelland/Hockley with

our financial results and are included in our alternative energy segment. We have funded the majority of the at risk equity, therefore, under FIN 46R, we are considered to be the primary beneficiary.

Levelland/Hockley has commenced construction of an ethanol producing facility in Levelland, Texas. ICM, Inc. is providing construction, process design and engineering services for the plant. The plant is expected to begin ethanol production by early 2008 and has a design capability of 40 million gallons of ethanol and 135,000 tons of dried distillers grains per year. Levelland/Hockley has reached an agreement with Lansing Trade Group, LLC to provide corn origination, ethanol and DDG marketing services for Levelland/Hockley.

***Millennium Ethanol, LLC***

On December 18, 2006, we purchased a \$14.0 million secured promissory note from Millennium Ethanol, LLC, or Millennium. We have the right to convert the note, with additional funds of \$4.0 million, into an approximately 33% ownership interest in Millennium.

Millennium has commenced construction of an ethanol producing facility in Marion, South Dakota. Fagen, Inc. and ICM, Inc. are providing construction, process design and engineering services for the plant. The plant is expected to begin ethanol production by early 2008 and has a design capacity of 100 million gallons of ethanol and 320,000 tons of dried distillers grains per year. Millennium has reached an agreement with Archer Daniels Midland Company to market ethanol produced by Millennium.

Millennium was organized and is owned by over 900 South Dakota investors including FREMAR Farmers Cooperative, Inc., a grain procurement and grain terminal operator in the region.

***Big River Resources, LLC***

On October 1, 2006, we agreed to invest \$20 million in Big River Resources, LLC, or Big River. We have funded \$5 million of this commitment in exchange for a 4.3% ownership interest. On January 25, 2007, we invested an additional \$5 million which increased our ownership percentage to 6.9% effective February 1, 2007. The remaining \$10 million investment is expected to occur in fiscal 2007, subject to certain conditions.

Big River is a holding company for several entities including Big River Resources West Burlington, LLC which operates a 52 million gallon dry-mill ethanol manufacturing facility in West Burlington, Iowa. The facility has been in operation since 2004. Big River Resources West Burlington, LLC is expanding the plant to produce approximately 80 million gallons per year. Fagen, Inc. and ICM, Inc. are providing construction, process design and engineering services for the expansion project which is expected to be completed in late 2007. Big River, through interests in other entities, intends to develop additional production plants.

***Patriot Renewable Fuels, LLC***

On December 4, 2006, we acquired a 23.3% ownership interest in Patriot Renewable Fuels, LLC, or Patriot, for \$16 million. Patriot has commenced construction of an ethanol producing facility in Annawan, Illinois. The facility has a design capacity of 100 million gallons of ethanol and 320,000 tons of dried distillers grains per year. Fagen, Inc. and ICM, Inc. are providing construction, process design and engineering services for the plant. The plant is expected to begin ethanol production in early 2008. Murex N.A. Ltd. will market the plant's ethanol.

***One Earth Energy, LLC***

On May 26, 2006, we entered into a contingent agreement to invest \$24.9 million in One Earth Energy, LLC, or One Earth, which intends to construct an ethanol producing facility in Gibson City, Illinois. The facility is expected to have a design capacity of 100 million gallons of ethanol and 320,000 tons of dried distillers grains

per year. Our equity investment is expected to occur before June 30, 2007, subject to One Earth obtaining additional financing and certain other conditions.

## **Ethanol Industry**

Ethanol is a renewable fuel source produced by processing corn and other biomass through a fermentation process that creates combustible alcohol that can be used as an additive or replacement to fossil fuel based gasoline. The majority of ethanol produced in the United States is made from corn because of its relatively low cost compared to other feedstocks, wide availability and ease of convertibility from large amounts of carbohydrates into glucose, the key ingredient in producing alcohol that is used in the fermentation process. Ethanol production can also use feedstocks such as grain sorghum, switchgrass, wheat, barley, potatoes and sugarcane as carbohydrate sources.

Most ethanol plants have been located near large corn production areas, such as Illinois, Iowa, Minnesota, Nebraska, Ohio and South Dakota. Proximity to sufficient low-cost corn as well as other inputs such as natural gas or coal and transportation provides a competitive advantage for ethanol producers. Railway access and interstate access are vital for ethanol facilities due to the large amount of demand in the east- and west-coast markets, primarily as a result of the stricter air quality requirements in large parts of those markets, and the limited ethanol production facilities.

According to the Renewable Fuels Association, or RFA, the United States fuel ethanol industry has experienced record growth and expansion, increasing from 1.3 billion gallons produced in 1997 to 4.9 billion gallons produced in 2006. As of January 2007, the total number of ethanol plants increased to 110, up from 54 in 2000 and are located in 21 states.

The domestic production of ethanol is relatively fragmented except for the top five producers who accounted for approximately 36% of the industry's total estimated production capacity as of January 2007. The remaining production is generated by more than 89 smaller producers and farmer-owned cooperatives, most with production of 50 million gallons per year (mgy) or less. Farmer owned plants have increased from 18 in 2000 to 46 in 2007 and the percentage of total capacity has increased from 19% in 2000 to 39% in 2007, according to the RFA.

Typical ethanol facilities take approximately 14 to 18 months from groundbreaking to operation, enabling estimates of capacity additions for up to 18 months going forward. As of January 2007, the RFA estimates ethanol facilities with capacity of an additional 5.6 billion gallons per year were under construction.

## **Ethanol Production**

The plants we have invested in will use the dry milling method of producing ethanol. In the dry milling process, the entire corn kernel is first ground into flour, which is referred to as "meal," and processed without separating out the various component parts of the grain. The meal is processed with enzymes, ammonia and water, and then placed in a high-temperature cooker. It is then transferred to fermenters where yeast is added and the conversion of sugar to ethanol begins. After fermentation, the resulting liquid is transferred to distillation columns where the ethanol is separated from the remaining "stillage" for fuel uses. The anhydrous ethanol is then blended with approximately 5.0% denaturant, such as natural gasoline, to render it undrinkable and thus not subject to beverage alcohol tax. With the starch elements of the corn consumed in the above described process, the principal co-product produced by the dry milling process is dry distillers grains with solubles, or DDGS. DDGS is sold as a protein used in animal feed and recovers a significant portion of the total corn cost.

## **The Primary Uses of Ethanol**

**Blend component.** The U.S. continues to have increased demand for automotive fuel and, in turn, a greater dependence on foreign sources for crude oil. Today, much of the ethanol blending in the U.S. is done for the purpose of extending the volume of fuel sold at the gas pump. Blending ethanol allows refiners to produce

more fuel from a given barrel of oil. Currently, refiners typically blend ethanol at 5.7% to 10.0% of volume in 46% of the U.S. gasoline fuel supply, according to the RFA. Going forward, the industry is attempting to expand the E-85 market, blend ethanol with diesel fuel and use ethanol as a fuel source for hydrogen for fuel cells.

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

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

#### **Legislation**

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

#### **Synthetic Fuel Partnerships**

In fiscal 1998, we invested in two limited partnerships, Colona SynFuel Limited Partnership, L.L.L.P. and Somerset Synfuel, L.P. which own facilities producing synthetic fuel. The partnerships earn federal income tax credits under Section 29/45K of the Internal Revenue Code based on the tonnage and content of solid synthetic fuel produced and sold to unrelated parties. We have sold our entire interest in the Colona partnership (through a series of transactions) and expect to receive payments from the sales, on a quarterly basis, through 2007, subject to production levels. On October 14, 2005, we sold our entire interest in the Somerset Synfuel partnership for \$1,200,000, net of commissions, along with a secured contingent payment note. We expect to receive payments from the sale, on a quarterly basis, through 2007, subject to production levels. On September 5, 2002, we purchased an additional synthetic fuel facility in Gillette, Wyoming. We sold our membership interest in the entity that owned the Gillette facility on March 30, 2004 for \$2,750,000 along with a secured contingent payment note. The plant was subsequently sold and during the third quarter of fiscal 2006, we modified our agreement with the owners and operators of the synthetic fuel facility. Based on the terms of the modified agreement, we currently are not able to determine the likelihood and timing of collecting payments related to production occurring after September 30, 2006. Thus, we cannot currently determine the timing of income recognition, if any, related to production occurring subsequent to September 30, 2006.

In 2003, the Internal Revenue Service (IRS) questioned the scientific validity of the testing procedures used to support synthetic fuel credits. The IRS has completed its review of these procedures and resumed issuing letter rulings based on its previous requirements. The IRS has completed an audit on the Colona partnership with no impact on related tax credits generated. The IRS has completed an audit of the Somerset partnership for calendar year 2001 as part of its normal audit program of the general partner. The audit resulted in no impact on related tax credits generated. REX has been allocated income tax credits of approximately \$48.0 million. In addition, REX has recognized investment income of approximately \$122.5 million from the sales of its partnership interests, including \$10.8 million for fiscal 2006.

Although we believe the retroactive disallowance of our synthetic fuel credits is unlikely, any such disallowance could result in a significant liability for income tax credits previously taken. REX's use of income tax credits and investment income in the future could be limited by any new IRS interpretations or regulations or by any new income tax legislation. Additionally, the price of oil could have a significant

impact on future synthetic fuel production. This could significantly impact future earnings from our synthetic fuel sales. The current Section 29/45K tax credit program expires on December 31, 2007. If not renewed by Congress, we will not receive income related to Section 29/45K tax credits for the production and sale of synthetic fuel after that date.

See Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations and Notes 4 and 16 of the Notes to the Consolidated Financial Statements for further discussions.

#### **Facilities**

We owned 131 of our stores operated at January 31, 2007. The remaining 62 stores operated on leased premises, with the unexpired terms of the leases ranging from less than one year to 20 years, inclusive of options to renew. For fiscal 2006, the total net rent expense for our leased facilities was approximately \$4.6 million.

At January 31, 2007, we owned 15 properties that were not operated as stores and were leased to outside, unrelated parties. These properties are former store sites for which we have closed the retail store. There were also five properties vacant that we were attempting to either lease or sell.

Levelland Hockley County Ethanol, LLC began construction of a 40 million gallon ethanol plant during fiscal 2006. We expect that plant construction will be completed during the latter part of fiscal 2007 or in the early part of fiscal 2008.

#### **Employees**

At January 31, 2007, we had approximately 130 hourly and salaried employees and approximately 688 commission-based sales employees. We also employ additional personnel during peak selling seasons. None of our employees are represented by a labor union. We consider our relationship with our employees to be good. We restructured our store operations on April 1, 2007. See Store Operations for a further discussion.

#### **Service Marks**

We have registered our rights in our service marks "REX" and "Farmers Energy" with the United States Patent and Trademark Office. We are not aware of any adverse claims concerning our service marks.

#### **Item 1A. Risk Factors**

We encourage you to carefully consider the risks described below and other information contained in this report when considering an investment decision in REX common stock. Additional risks and uncertainties not presently known to management, or that management currently deems immaterial, may also impair our business operations. Any of the events discussed in the risk factors below may occur. If one or more of these events do occur, our results of operations, financial condition or cash flows could be materially adversely affected. In this instance, the trading price of REX stock could decline, and investors might lose all or part of their investment.

#### **Risks Related to our Retail Business**

**We face significant competition from other retailers many of whom have greater financial resources. This could result in a decline of our sales and profitability.**

We face significant competition from a diverse group of retailers. Our competitors include national and regional large format merchandisers and superstores such as Best Buy Co., Inc., Lowe's Corporation, Home Depot, Inc. and Circuit City Stores, Inc., other specialty electronics retailers including RadioShack Corporation, department and discount stores such as Sears, Roebuck and Co. and Wal-Mart Stores, Inc., furniture stores, warehouse clubs, home improvement retailers and Internet and store-based retailers who sell consumer electronics and home appliance products online. We also compete with small chains and specialty single-store operators in some markets, as well as Sears' dealer-operated units. Some of our competitors have greater financial resources than us, which may increase their ability to purchase inventory at a lower cost, better withstand economic downturns or engage in aggressive price competition.

We expect competition within the consumer electronics/appliance retailing industry to increase. National merchandisers continue to expand their geographic markets and enter markets traditionally served by us. In the event that competitors enter markets we serve, we may experience pricing pressures, reduced gross margins and declines in comparable store sales.

**A decline in economic conditions could lead to reduced consumer demand for the products we sell.**

Demand for consumer electronics and home appliance products is dependent upon various economic factors outside of our control. These factors include:

- general economic conditions;
- consumer confidence;
- consumer spending patterns and preferences; and
- new housing starts.

A slowdown in the national or regional economies or an uncertain economic outlook could adversely affect discretionary consumer spending habits and negatively impact our sales and operating results.

**If new products are not introduced or consumers do not accept new products, our sales may decline.**

We rely upon the periodic introduction of new products to help stimulate consumer demand. The lack of new products could reduce consumer interest and lower our sales.

In addition, many products which incorporate the newest technologies, such as high definition television, are subject to technological and pricing limitations and may not achieve widespread or rapid consumer acceptance in the markets we serve. If these new products do not meet with widespread or rapid market acceptance, our results of operations may be impaired.

Furthermore, the introduction or expected introduction of new products may depress sales of existing products and technologies. Government mandates for such areas as high definition television tuners can increase production costs and lead to higher retail prices that could reduce product acceptance. Other mandates include the Department of Energy compliance mandates for major appliances that will be in effect in 2007. This could also lead to higher retail prices and a slowdown in overall product demand.

**If we do not adequately anticipate and respond to changing consumer demand and preferences, our results of operations may be impaired.**

Our success depends, in part, on our ability to anticipate and respond in a timely manner to changing consumer demand and preferences regarding consumer electronics and home appliances. Our failure to adequately anticipate and respond to these changes could have a material adverse effect on our business,

results of operation and financial condition either from lost sales or lower margins due to the need to mark down excess inventory.

**Our opportunistic product buying strategy could negatively impact our sales and gross margins.**

When available, we may purchase large quantities of merchandise on an opportunistic or when-available basis at favorable prices. Our inability to find suitable opportunistic product buying opportunities could negatively impact our sales and gross margins. As manufacturers move to more market-driven, supply chain management strategies, the opportunities for opportunistic purchases may decline.

Products purchased on an opportunistic basis generally are held in inventory longer than our other products. This can result in increased inventory levels and lower inventory turnover, which increase our working capital requirements and inventory carrying costs. Increased inventory levels and lower turnover rates also increase the risk of inventory mark-downs. The introduction of digitally-based display products such as plasma, LCD and other micro display products has shortened product life cycles and introduced a higher degree of risk for opportunistic buying. Given the rate of change of technology and price levels, opportunity costs for purchasing in large quantities can be offset by the obsolescence risk of holding merchandise that may have to be deeply discounted to consumers.

**Fluctuations in our comparable store sales may cause the price of our common stock to fluctuate substantially.**

"Comparable store sales" is a term we use to compare the year over year sales performance of our stores. We consider a store to be comparable after it has been open six full fiscal quarters.

A number of factors have historically affected and will continue to affect our comparable store sales, including the following:

- competition;
- national and regional economic conditions;
- consumer trends;
- new product introductions;
- weather conditions which can impact store traffic as well as sales of seasonal products such as air conditioners;
- changes in our product mix and availability of products from key vendors;
- duration of the holiday selling season;
- timing of promotional events; and
- attracting and retaining qualified sales personnel.

Comparable store sales are often followed closely by the investment community and significant fluctuations in these results could cause the price of our common stock to fluctuate substantially.

**Our quarterly operating results are subject to seasonality. Our profitability would be adversely affected by lower than expected fourth quarter results.**

Our retail business is seasonal. Our net retail sales and net income historically have been highest in our fourth fiscal quarter, which includes the Christmas selling season. The fourth quarter accounted for approximately 30% and 33% of our net sales and revenue, and 31% and 23% of our net income in fiscal 2006 and 2005, respectively. Our annual financial results would be adversely impacted if our sales were to fall substantially below what we normally expect during this period.



**We depend on our suppliers for products and our business could be adversely affected if we do not maintain relationships with our key vendors.**

Our success depends to a significant degree upon our suppliers of consumer electronics and home appliance products. We do not have any long-term supply agreements or exclusive arrangements with vendors. We typically order merchandise by issuing individual purchase orders to vendors. We rely significantly on a few suppliers. Our nine largest suppliers accounted for approximately 86% of our purchases during fiscal 2006, with three suppliers representing approximately 45% of our inventory purchases in fiscal 2006. The loss of any of these key vendors, our failure to establish and maintain relationships with our vendors, or any prolonged disruptions in product supply, could have a material adverse impact on our business.

**We may incur higher costs or decreased sales and gross margins because we purchase imported products.**

A significant portion of our inventory is manufactured outside the United States. Changes in trade regulations, currency fluctuations or other factors may increase the cost of items manufactured outside the United States or create shortages of those items. We purchase all of our products in U.S. dollars. Significant reductions in the cost of such items in U.S. dollars may cause a significant reduction in retail price levels of those products, which could adversely affect our sales and gross margins.

**The loss of the services of our Chief Executive Officer or our other key employees could jeopardize our ability to maintain our competitive position.**

We believe that our success depends on the continued service of our key executive management personnel. Loss of the services of Stuart Rose, our Chairman and Chief Executive Officer, or other key employees could jeopardize our ability to maintain our competitive position in the industry.

**Risks Related to our Synthetic Fuel Investments**

**Income and tax credits from our investments in facilities producing synthetic fuel have contributed significantly to our operating and net income in past years but will not continue after December 31, 2007.**

In fiscal 1998, we invested in two limited partnerships, Colona Synfuel Limited Partnership, L.L.L.P. (Colona) and Somerset Synfuel, L.P. (Somerset), which own facilities producing synthetic fuel. In fiscal 2002, we purchased a plant located in Gillette, Wyoming (Gillette) designed and constructed for the production of synthetic fuel. The entities earn federal income tax credits under Section 29/45K of the Internal Revenue Code based on the quantity and content of synthetic fuel production and sales.

We sold our interest in the Colona partnership in three separate sale transactions and expect to receive cash payments from the sales on a quarterly basis through 2007, subject to production levels. We reported income from the sales of approximately \$5.3 million and \$22.8 million in fiscal 2006 and 2005, respectively, which accounted for approximately 33% and 63% of our income from continuing operations before income taxes in those years. The loss of this income will significantly reduce our net income.

We also sold our interest in the limited liability company that owned the Gillette facility and received \$2.75 million at the time of the sale in March 2004 along with a secured contingent payment note that could provide additional investment income to us. This plant was dismantled and relocated. The facility resumed commercial operations in the second quarter of 2005 and we received an additional \$3.5 million. We are also eligible to receive \$1.50 per ton of "qualified production" fuel produced by the facility and sold through 2007. The plant was subsequently sold and during the third quarter of fiscal 2006, we modified our agreement with

the owners and operators of the synthetic fuel facility. Based on the terms of the modified agreement, we currently are not able to determine the likelihood and timing of collecting payments related to production occurring after September 30, 2006. Thus, we cannot currently determine the timing of income recognition, if any, related to production occurring subsequent to September 30, 2006. We reported income from the sale of approximately \$1.1 million and \$6.1 million in fiscal 2006 and 2005, respectively. The loss of this income will significantly reduce our net income.

Effective October 1, 2005, we sold our entire ownership interest in the Somerset partnership. We received \$1.2 million, net of commissions, at closing along with a secured contingent payment note that could provide additional investment income. We expect to receive quarterly payments through 2007 equal to 80% of the Section 29/45K tax credits attributable to the ownership interest sold, subject to production levels. We reported income from the sale of approximately \$4.4 million and \$1.6 million in fiscal 2006 and 2005, respectively. The loss of this income will significantly reduce our net income.

The current Section 29/45K tax credit program expires on December 31, 2007. If not renewed by Congress, we will not receive income related to Section 29/45K tax credits for the production and sale of synthetic fuel after that date.

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

We have been allocated in total approximately \$48 million in Section 29/45K credits. Should the tax credits be denied on any future audit and we fail to prevail through the Internal Revenue Service (IRS) or the legal process, there could be a significant tax liability owed for previously taken tax credits with a significant adverse impact on earnings and cash flows.

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

**We face synthetic fuel risks associated with crude oil prices as such our income could decrease significantly.**

Recent increases in the price of oil could limit the amount of Section 29/45K tax credits or eliminate them altogether following fiscal 2006. Section 29/45K provides that if the average wellhead price per barrel for unregulated domestic crude oil for the year (the "Annual Average Price") exceeds a certain threshold value (the "Threshold Price"), the Section 29/45K tax credits are subject to phase out. For calendar year 2006, the Threshold Price was \$56.71 per barrel and the Phase Out Price was \$71.19 per barrel. The Threshold Price and the Phase Out Price are adjusted annually as a result of inflation. We cannot determine, with absolute certainty, the Annual Average Price for 2007. Therefore, we cannot determine whether the price of oil will have a material effect on our synthetic fuel income after fiscal 2006. However, if during fiscal 2007 oil prices remain at historically high levels or increase, our synthetic fuel income may be adversely affected. Based upon the price of oil to date, we estimate the tax credits and related income, for calendar year 2007 would not be subject to phase out as of January 31, 2007. Because synthetic fuel is not economical to produce absent the associated tax credits, and we have no control or decision involvement with production levels, we cannot determine the impact of possible production reduction or elimination on our financial results.

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

We have approximately \$35.4 million of deferred tax assets recorded on our consolidated financial statements. Should future results of operations or other factors cause us to determine that it is unlikely that we will generate

sufficient taxable income to fully utilize our deferred tax assets, we would then be required to establish a valuation allowance against such deferred tax assets by increasing our income tax expense in the amount of tax benefit we do not expect to realize. This would reduce our net income and could have a material adverse effect on our results of operations.

**We may realize capital losses related to our sales of synthetic fuel ownership interests.**

We have, for income tax purposes, recognized capital gain in the year of sale for certain sales of our ownership interests in synthetic fuel entities. Should we, in subsequent years, realize a capital loss as a result of lower synthetic fuel production, for income tax purposes, we may be required to carry the loss back to prior years. This could result in the write down of previously used Section 29/45K tax credits. This would reduce our net income and could have a material adverse effect on our results of operations.

**Risks Related to our Alternative Energy Business**

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

We do not have an established record for investing in the ethanol industry. We entered into our first agreement to invest in an ethanol plant in November 2005. At January 31, 2007, we have invested in four entities. Three entities have begun construction of ethanol production facilities and one is expanding its current ethanol production facilities. Our ethanol investments have been managed by our Chief Executive Officer, our Vice President and our Chief Financial Officer. We do not otherwise have a dedicated ethanol development staff. As a consequence, our ethanol investments are subject to all of the risks associated with a development stage company, including an unproven business model, a lack of operating history and an undeveloped operating structure. These development stage risks could result in our making investments in ethanol plants that perform substantially below our expectations, which would adversely affect our results of operations and financial condition.

**We invest in new construction of ethanol plants and significant expansion of existing plants. As a result, we face significant project development risks that may adversely affect our investment returns.**

In each of our investments, we are investing in the new construction of a plant or a significant expansion of an existing plant. As a result, our investments face risks of construction delays and cost over-runs that could delay or reduce our investment returns. In addition, the new plants are development-stage operations that must obtain necessary permits and complete arrangements for transportation, natural gas and marketing of the ethanol before production can begin. The failure to obtain any of these necessary elements in a timely manner or on commercially acceptable terms could adversely affect the profitability of each plant. Once the new plants or expansions begin production, they face uncertainties of whether they will perform to specifications and whether they will achieve anticipated operating results.

**We depend on our partners to operate our ethanol investments .**

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

**We may not successfully acquire or develop additional ethanol investments.**

The growth of our ethanol business depends on our ability to identify and develop new ethanol investments. Our ethanol development strategy depends on referrals, and introductions, to new investment opportunities from industry participants, such as ethanol plant builders, marketing agents and others. We must continue to maintain favorable relationships with these industry participants, and a material disruption in these sources of referrals would adversely affect our ability to expand our ethanol investments. In addition, we face significant competition for new ethanol investment opportunities. There are many enterprises seeking to participate in the ethanol industry. Some enterprises, such as Andersons, Inc., provide financial support similar to our business model. Other enterprises seek to acquire or develop plants which they will directly own and operate. As a consequence, there is increasing competition for suitable sites for new or expanded plants. Many of our competitors for these sites are larger and have greater financial resources and name recognition than we do. We must compete for investment opportunities based on our strategy of supporting and enhancing local development of ethanol plant opportunities. We may not be successful in competing for investment opportunities based on our strategy.

**We face risks that our funding commitments will not become investments positions in ethanol plants.**

We have structured our investments in ethanol plants as agreements to purchase secured notes or equity in the limited liability companies that are developing each plant. Our obligation to fund the investment commitment is subject to a number of conditions, including completing an equity financing to a specified level, obtaining senior debt financing and executing a plant construction agreement with a specified builder. We will not begin to realize any returns on ethanol investments until these conditions to funding are satisfied. Any delay or failure in satisfying the funding conditions would adversely affect the development of our ethanol investments.

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

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

**Our returns on ethanol investments are highly sensitive to corn prices.** The principal raw material our ethanol plants use to produce ethanol and co-products is corn. As a result, changes in the price of corn can significantly affect their businesses. In general, rising corn prices produce lower profit margins. Because ethanol competes with non-corn-based fuels, our ethanol plants generally will be unable to pass along increase corn costs to their customers. At certain levels, corn prices may make ethanol uneconomical to use in fuel markets. Over the ten-year period from 1997 through 2006, corn prices (based on the Chicago Board of Trade, or CBOT, daily futures data) have ranged from a low of \$1.75 per bushel in 2000 to a high of \$3.90 per bushel in 2006 with prices averaging \$2.32 per bushel during this period. At January 31, 2007, the CBOT price per bushel of corn was \$4.04.

The price of corn is influenced by weather conditions and other factors affecting crop yields, farmer planting decisions and general economic, market and regulatory factors. These factors include government policies and subsidies with respect to agriculture and international trade, and global and local demand and supply. The significance and relative effect of these factors on the price of corn is difficult to predict. Any event that tends to negatively affect the supply of corn, such as adverse weather or crop disease, could increase corn prices and potentially harm the business of our ethanol plants. In addition, our ethanol plants may also have difficulty, from time to time, in physically sourcing corn on economical terms due to supply shortages. Such a shortage could require our ethanol plants to suspend operations until corn is available at economical terms

which would have a material adverse effect on the financial returns on our ethanol investments. The price the ethanol plants pay for corn at a facility could increase if an additional ethanol production facility is built in the same vicinity.

***The spread between ethanol and corn prices can vary significantly and we do not expect the spread to remain at recent high levels.*** The gross margin at our ethanol plants depends principally on the spread between ethanol and corn prices. During the five-year period from 2002 to 2006, ethanol prices (based on average U.S. ethanol rack prices from Bloomberg, L.P., or Bloomberg) have ranged from a low of \$0.94 per gallon to a high of \$3.98 per gallon, averaging \$1.70 per gallon during this period. In recent periods, the spread between ethanol and corn prices has been at historically high levels, driven in large part by high oil prices and historically low corn prices. However, this spread has fluctuated widely and fluctuations are likely to continue to occur. Any reduction in the spread between ethanol and corn prices, whether as a result of an increase in corn prices or a reduction in ethanol prices, would adversely affect the results of operations at our ethanol plants.

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

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

***If the expected increase in ethanol demand does not occur, or if the demand for ethanol otherwise decreases, there may be excess capacity in the ethanol industry.***

Domestic capacity has increased steadily from 1.7 billion gallons per year in January 1999 to 5.5 billion gallons per year at January 2007. In addition, there is a significant amount of capacity being added to the industry. According to the RFA, as of January 2007 approximately 5.6 billion gallons per year of production capacity was under construction. This capacity is being added to address anticipated increased demand. However, demand for ethanol may not increase as quickly as expected or to a level that exceeds supply, or at all. If the ethanol industry has excess capacity and such excess capacity results in a fall in prices, it will have an adverse impact on the results of operations, cash flows and financial condition of our ethanol plants. Excess capacity may result from the increases in capacity coupled with insufficient demand. Demand could be impaired due to a number of factors including regulatory developments and reduced United States gasoline consumption. Reduced gasoline consumption could occur as a result of increased gasoline or oil prices. For example, price increases could cause businesses and consumers to reduce driving or acquire vehicles with more favorable gasoline mileage. There is some evidence that this has occurred in the recent past as United States gasoline prices have increased.

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

***The elimination or significant reduction in the blenders' credit could have a material adverse effect on the results of our ethanol investments.*** The cost of production of ethanol is made significantly more competitive

with regular gasoline by federal tax incentives. Before January 1, 2005, the federal excise tax incentive program allowed gasoline distributors who blended ethanol with gasoline to receive a federal excise tax rate reduction for each blended gallon they sold. If the fuel was blended with 10% ethanol, the refiner/marketer paid \$0.054 per gallon less tax, which equated to an incentive of \$0.54 per gallon of ethanol. The \$0.54 per gallon incentive for ethanol was reduced to \$0.51 per gallon in 2005 and is scheduled to expire (unless extended) in 2010. The blenders' credits may not be renewed in 2010 or may be renewed on different terms. In addition, the blenders' credits, as well as other federal and state programs benefiting ethanol (such as tariffs), generally are subject to U.S. government obligations under international trade agreements, including those under the World Trade Organization Agreement on Subsidies and Countervailing Measures, and might be the subject of challenges thereunder, in whole or in part. The elimination or significant reduction in the blenders' credit or other programs benefiting ethanol may have a material adverse effect on the results of our ethanol investments.

**Ethanol can be imported into the U.S. duty-free from some countries which may undermine the ethanol industry in the U.S.** Imported ethanol is generally subject to a \$0.54 per gallon tariff that was designed to offset the \$0.51 per gallon ethanol incentive available under the federal excise tax incentive program for refineries that blend ethanol in their fuel. A special exemption from the tariff exists for the ethanol imported from 24 countries in Central America and the Caribbean Islands, which is limited to a total of 7% of U.S. production per year. Imports from the exempted countries may increase as a result of new plants under development. Since production costs for ethanol in these countries are estimated to be significantly less than what they are in the U.S., the duty-free import of ethanol through the countries exempted from the tariff may negatively affect the demand for domestic ethanol and the price at which our ethanol plants sell their ethanol. In May 2006, bills were introduced in both the U.S. House of Representatives and U.S. Senate to repeal the \$0.54 per gallon tariff. We do not know the extent to which the volume of imports would increase or the effect on U.S. prices for ethanol if this proposed legislation is enacted or if the tariff is not renewed beyond its current expiration in December 2008. Any changes in the tariff or exemption from the tariff could have a material adverse effect on the results of our ethanol investments. In addition, the North American Free Trade Agreement, or NAFTA, which entered into force on January 1, 1994, allows Canada and Mexico to export ethanol to the United States duty-free or at a reduced rate. Canada is exempt from duty under the current NAFTA guidelines, while Mexico's duty rate is \$0.10 per gallon.

**The effect of the RFS in the Energy Policy Act is uncertain.** The use of fuel oxygenates, including ethanol, was mandated through regulation, and much of the forecasted growth in demand for ethanol was expected to result from additional mandated use of oxygenates. Most of this growth was projected to occur in the next few years as the remaining markets switch from MTBE to ethanol. The Energy Policy Act, however, eliminated the mandated use of oxygenates and established minimum annual nationwide levels of renewable fuels to be included in gasoline. The annual requirement grows to 7.5 billion gallons by 2012. Because biodiesel and other renewable fuels in addition to ethanol are counted toward the minimum usage requirements of the renewable fuel standard or RFS, the elimination of the oxygenate requirement for reformulated gasoline may result in a decline in ethanol consumption, which in turn could have a material adverse effect on the results of our ethanol investments. The legislation also included provisions for trading of credits for use of renewable fuels and authorized potential reductions in the RFS minimum by action of a governmental administrator. As the rules for implementation of the RFS and the energy bill are under development, the impact of legislation is still uncertain.

**Waivers of the RFS minimum levels of renewable fuels included in gasoline could have a material adverse effect on the results of our ethanol investments.** Under the Energy Policy Act, the U.S. Department of Energy, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the renewable fuels mandate with respect to one or more states if the Administrator of the U.S. Environmental Protection Agency, or U.S. EPA, determines that implementing the requirements would severely harm the economy or the environment of a state, a region or the U.S., or that there is inadequate supply to meet the requirement. Any waiver of the RFS with respect to one or more states would adversely offset demand for ethanol and could have a material adverse effect on the results of our ethanol investments.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

The information required by this Item 2 is set forth in Item 1 of this report under "Store Operations--Stores," "Distribution" and "Facilities" and is incorporated herein by reference.

**Item 3. Legal Proceedings**

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

**Item 4. Submission of Matters to a Vote of Security Holders**

None.

**Executive Officers of the Company**

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

<u>Name</u>	<u>Age</u>	<u>Position</u>
Stuart Rose	52	Chairman of the Board and Chief Executive Officer*
David Bearden	56	President and Chief Operating Officer
Douglas Bruggeman	46	Vice President-Finance, Chief Financial Officer and Treasurer
Edward Kress	57	Secretary*
David Fuchs	53	Vice President-Management Information Systems
Philip Kellar	52	Vice President-Store Operations
Keith Magby	48	Vice President-Operations
Zafar Rizvi	57	Vice President

\*Also serves as a director.

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

*David Bearden* has been our President and Chief Operating Officer since October 2005. Mr. Bearden joined us from Panasonic Company where he held several senior management positions over 24 years, most recently as Group President of Panasonic's Consumer Electronics Sales Group.

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

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

*David Fuchs* has been our Vice President – Management Information Systems since 1989. From 1985 to 1989, Mr. Fuchs was our Manager of Management Information Systems.

*Philip Kellar* has been our Vice President – Store Operations since 2005. From 1990 to 2004, Mr. Kellar was our Vice President of the Northern and Midwestern regions.

*Keith Magby* has been our Vice President – Operations since 1991. From 1982 to 1991, Mr. Magby was employed in the consumer electronics/appliance retailing industry in a variety of management positions.

*Zafar Rizvi* has been our Vice President since 2006. From 1991 to 2006, Mr. Rizvi was our Vice President – Loss Prevention. Mr. Rizvi is also responsible for identifying, evaluating and managing our alternative energy investments. From 1986 to 1991, Mr. Rizvi was employed in the video retailing industry in a variety of management positions.

## PART II

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

#### SHAREHOLDER INFORMATION

##### Common Share Information and Quarterly Share Prices

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

<b>Fiscal Quarter ended</b>	<b>High</b>	<b>Low</b>
April 30, 2005	\$15.50	\$12.60
July 31, 2005	16.65	13.21
October 31, 2005	16.08	12.55
January 31, 2006	17.37	13.20
April 30, 2006	\$19.95	\$14.15
July 31, 2006	20.23	13.17
October 31, 2006	17.14	13.38
January 31, 2007	18.49	15.68

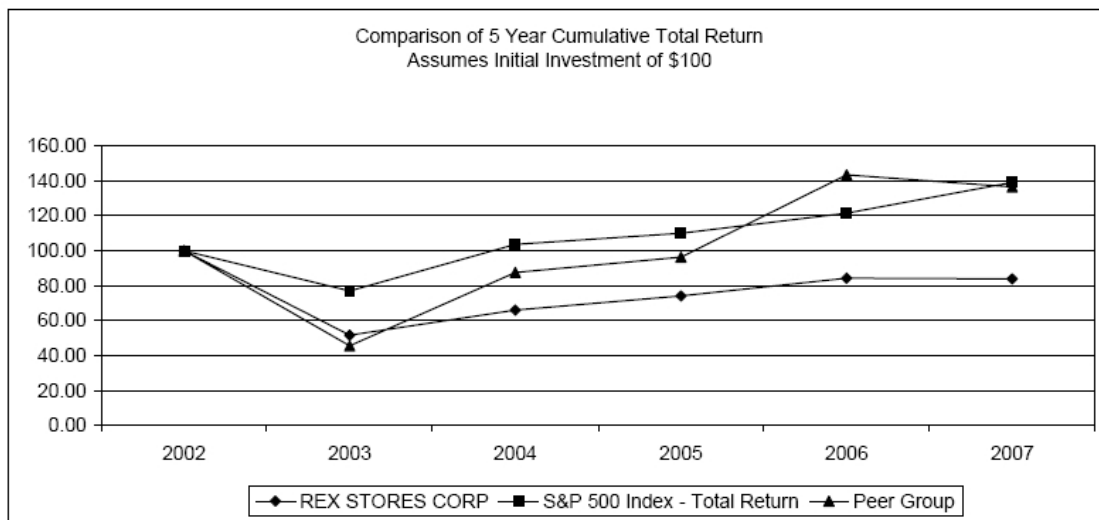
As of April 13, 2007, there were 153 holders of record of our common stock, including shares held in nominee or street name by brokers.

##### Dividend Policy

Under our revolving credit agreement, we are permitted to pay dividends only if the bank determines that we have and will maintain at least \$25 million of excess borrowing availability for the 12 months immediately preceding and following the dividend payment. We did not pay dividends in the current or prior years.



The following graph compares the yearly percentage change in the cumulative total shareholder return on our Common Stock against the cumulative total return of the S&P 500 Stock Index and a peer group comprised of selected publicly traded consumer electronics retailers (\*) for the period commencing January 31, 2002 and ended January 31, 2007. The graph assumes an investment of \$100 in our Common Stock and each index on January 31, 2002 and reinvestment of all dividends.



\* The peer group is comprised of Best Buy Co., Inc. Tweeter Home Entertainment Group, Inc., Circuit City Stores, Inc. and Conn's, Inc.

**Item 6. Selected Financial Data**

The following statements of operations and balance sheet data have been derived from our consolidated financial statements and should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and the Consolidated Financial Statements and related Notes. Prior period amounts applicable to the statement of operations have been adjusted to recognize the reclassification of the results of certain stores to discontinued operations as a result of store closings and certain other reclassifications. See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations for a discussion of income from synthetic fuel investments and long-term debt. These items have fluctuated significantly in recent years and may affect comparability of years.

**Five Year Financial Summary****(In Thousands, Except Per Share Amounts)**

	<b>Years Ended January 31,</b>				
	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
Net sales and revenue	\$ 347,334	\$ 374,451	\$ 358,098	\$ 370,150	\$ 376,973
Income from continuing operations	\$ 10,865	\$ 28,814	\$ 28,355	\$ 28,005	\$ 22,199
Net income	\$ 11,351	\$ 28,269	\$ 27,549	\$ 27,440	\$ 22,932
Basic income per share from continuing operations	\$ 1.06	\$ 2.69	\$ 2.56	\$ 2.58	\$ 1.83
Diluted income per share from continuing operations	\$ 0.94	\$ 2.36	\$ 2.23	\$ 2.21	\$ 1.56
Basic net income per share	\$ 1.10	\$ 2.64	\$ 2.49	\$ 2.53	\$ 1.89
Diluted net income per share	\$ 0.98	\$ 2.31	\$ 2.17	\$ 2.17	\$ 1.61
Total assets	\$ 335,208	\$ 295,245	\$ 310,951	\$ 313,411	\$ 310,922
Long-term debt, net of current maturities	\$ 31,236	\$ 21,462	\$ 30,501	\$ 53,548	\$ 64,426

	Quarters Ended (In Thousands, Except Per Share Amounts)			
	April 30, 2006	July 31, 2006	October 31, 2006	January 31, 2007
Net sales and revenue (a)	\$ 81,872	\$ 78,631	\$ 82,390	\$ 104,441
Cost of sales (a)	58,899	56,997	60,618	77,489
Net income	1,489	1,497	4,815	3,550
Basic net income per share (b)	\$ 0.15	\$ 0.15	\$ 0.47	\$ 0.34
Diluted net income per share	\$ 0.13	\$ 0.13	\$ 0.42	\$ 0.30

	Quarters Ended (In Thousands, Except Per Share Amounts)			
	April 30, 2005	July 31, 2005	October 31, 2005	January 31, 2006
Net sales and revenue (a)	\$ 83,745	\$ 78,691	\$ 88,507	\$ 123,508
Cost of sales (a)	60,700	55,220	63,994	91,042
Net income	6,100	8,721	6,882	6,566
Basic net income per share	\$ 0.55	\$ 0.80	\$ 0.65	\$ 0.64
Diluted net income per share (b)	\$ 0.48	\$ 0.70	\$ 0.58	\$ 0.57

- a) Amounts differ from those previously reported as a result of certain stores being reclassified into discontinued operations and certain other reclassifications. See Note 15 of the Notes to the Consolidated Financial Statements for further discussion and analysis of discontinued operations.
- b) The total of the quarterly net income per share amounts is greater than the annual net income per share amount primarily due to the impact of more shares and options outstanding earlier in the year resulting in greater dilution from stock options versus the full year.

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

### Overview

#### Retail

We are a specialty retailer in the consumer electronics/appliance industry. As of January 31, 2007, we operated 193 stores in 35 states under the "REX" trade name. By offering a broad selection of brand name products at guaranteed lowest prices, we believe we have become a leading consumer electronics/appliance retailer in our markets.

Our comparable store sales decreased 5.0% for fiscal 2006, increased 5.0% for fiscal 2005, and decreased 2.0% for fiscal 2004. We believe our comparable store sales have recently been negatively affected by increased competition and rapid change in television technology, resulting in the loss of CRT and projection television sales. We consider a store to be comparable after it has been open six full fiscal quarters. Comparable store sales comparisons do not include sales of extended service contracts or sales from stores classified in discontinued operations.

Our extended service contract revenues, net of sales commissions, are deferred and amortized on a straight-line basis over the life of the contracts after the expiration of applicable manufacturers' warranty periods. Terms of coverage, including the manufacturers' warranty periods, are usually for periods of 12 to 60 months. Extended service contract revenues represented 3.4% of net sales and revenue for fiscal 2006, 2.9% of net sales and revenue for fiscal 2005 and 3.4% of net sales and revenue for fiscal 2004. Service contract repair costs are charged to operations as incurred.

### Investments in Alternative Energy

In fiscal 2006, we entered the alternative energy industry by investing in several entities organized to construct and, subsequently operate, ethanol producing plants. As we continue to seek to diversify sources of revenue and earnings we have invested in four entities as of January 31, 2007 utilizing both debt and equity investments. We expect three of the entities to begin generating operating revenue approximately 14 to 20 months after construction of the plants has begun. Big River Resources, LLC has a 52 million gallon dry-mill ethanol manufacturing facility and is currently generating operating revenue. We continue to evaluate other potential ethanol investments. The following table is a summary of our ethanol investments (amounts in thousands, except ownership percentages):

Entity	Equity Investment	Ownership %	Debt Investment	Contingent Commitment
Levelland/Hockley County Ethanol, LLC	\$ 11,500	47.1%	\$ 5,000	-
Millennium Ethanol, LLC	-	-	\$ 14,000	-
Big River Resources, LLC (a)	\$ 5,000	4.3%	-	\$ 10,000
Patriot Renewable Fuels, LLC	\$ 16,000	23.3%	-	-
One Earth Energy, LLC	-	-	-	\$ 24,900

(a) On January 25, 2007, we invested an additional \$5.0 million in Big River Resources, LLC (included in other assets). This investment was effective February 1, 2007 and our ownership percentage increased from 4.3% to 6.9%.

### Investment in Synthetic Fuel Partnerships

In fiscal 1998, we invested in two limited partnerships which owned four facilities producing synthetic fuel. The partnerships earn federal income tax credits under Section 29/45K of the Internal Revenue Code based on the tonnage and content of solid synthetic fuel produced and sold to unrelated parties. Our share of the credits generated may be used to reduce our federal income tax liability down to the alternative minimum tax (AMT) rate. Under current law, credits under Section 29/45K are available for qualified fuels sold before January 1, 2008. The tax credits begin to phase out if the reference price of a barrel of oil exceeds certain levels adjusted annually for inflation. The 2006 phase-out started at \$56.71 per barrel and based upon the price of oil to date, we estimated the phase out for calendar 2006 to be approximately 40%. See Notes 4 and 16 of the Notes to the Consolidated Financial Statements for further discussion.

We initially held a 30% interest in Colona Synfuel Limited Partnership, L.L.L.P. (Colona) and an 18.75% interest in Somerset Synfuel, L.P. (Somerset). We sold our ownership in the Colona and Somerset partnerships as described below.

Effective February 1, 1999, we sold 13% of our interest in the Colona partnership, reducing our ownership percentage from 30% to 17%. Payments are contingent upon and equal to 75% of the federal income tax credits attributable to the 13% interest sold and are subject to certain annual limitations. The maximum amount of cash that can be received varies by year. The maximum that can be received for calendar 2007 is approximately \$9.9 million. Effective July 31, 2000, we sold an additional portion of our interest in the Colona partnership, reducing our ownership percentage from 17% to 8%. Effective May 31, 2001, we sold our remaining 8% ownership in the Colona partnership. For the 2000 and 2001 sales, payments are contingent upon and equal to the greater of 82.5% of the federal income tax credits attributable to the interest sold subject to annual limitations or 74.25% of the federal income tax credits amounts attributable to the interest sold with no annual limitations.

Because the purchase price for the Colona sales is based on the value of Section 29/45K tax credits generated, they are subject to production levels and to possible reduction or elimination to the extent the credit is limited.

Effective October 1, 2005, we sold our entire ownership interest in the Somerset partnership. We received \$1.2 million, net of commissions, at closing along with a secured contingent payment note that could provide additional investment income. We expect to receive quarterly payments through 2007 equal to 80% of the Section 29/45K tax credits attributable to the ownership interest sold. Because the purchase price is based on the value of Section 29/45K tax credits generated, it is subject to production levels and to possible reduction or elimination to the extent the credit is limited. With this sale, we have divested all of our ownership interests in facilities that produce synthetic fuel which qualifies for Section 29/45K tax credits.

On September 5, 2002, we purchased a plant located in Gillette, Wyoming designed and constructed for the production of synthetic fuel, which qualifies for tax credits under Section 29/45K of the Internal Revenue Code. We obtained a Private Letter Ruling from the Internal Revenue Service, which allowed for the disassembly, and reconstruction, of the facility. On March 30, 2004, we sold our membership interest in the limited liability company that owned the Gillette facility to an outside party. We received \$2,750,000 at the time of sale, resulting in pre-tax income of approximately \$468,000 along with a secured contingent payment note that could provide additional investment income. The facility resumed commercial operations during the second quarter of fiscal 2005; as such, we received \$3.5 million as a one-time payment per the terms of the purchase agreement. In addition, we are eligible to receive \$1.50 per ton of "qualified production" produced by the facility. The plant was subsequently sold and during the third quarter of fiscal 2006, we modified our agreement with the owners and operators of the synthetic fuel facility. Based on the terms of the modified agreement, we currently are not able to determine the likelihood and timing of collecting payments related to production occurring after September 30, 2006. Thus, we cannot currently determine the timing of income recognition, if any, related to production occurring subsequent to September 30, 2006. Our proceeds are subject to possible reduction to the extent future production decreases. At January 31, 2007, we estimate that there is approximately 1.8 million tons of production for which we did not recognize income.

Tax credits generated from the Somerset partnership were applied to reduce tax expense in the amounts of approximately \$0.2 million, \$6.4 million and \$8.0 million in fiscal 2006, 2005 and 2004, respectively.

Although the Section 29/45K tax credit program is expected to continue through calendar year 2007, recent market conditions and events have increased the volatility and level of oil prices that could limit the amount of those credits or eliminate them entirely for calendar year 2007. This possibility is due to a provision of Section 29/45K that provides that if the average wellhead price per barrel for unregulated domestic crude oil for the year (the "Annual Average Price") exceeds a certain threshold value (the "Threshold Price"), the Section 29/45K tax credits are subject to phase out. For calendar year 2006, the Threshold Price was \$56.71.

per barrel and the Phase Out Price was \$71.19 per barrel. This resulted in a partial tax credit phase out for calendar year 2006 which we estimate to be 40%. The Threshold Price and the Phase Out Price are adjusted annually as a result of inflation.

We cannot determine the Annual Average Price for 2007. Therefore, we cannot determine, with absolute certainty, whether the price of oil will have a material effect on our synthetic fuel business after 2006. However, if during 2007, oil prices remain at historically high levels or increase, our synthetic fuel income may be adversely affected. Based upon the price of oil to date, we estimate the tax credits and related income for calendar 2007 would not be subject to a phase out as of January 31, 2007. Because synthetic fuel is not economical to produce absent the associated tax credits and the fact that we have no control or decision involvement with production levels, we cannot determine the impact of possible production reduction or elimination on our financial results.

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

#### Results of Operations

The following table sets forth, for the periods indicated, the relative percentages that certain income and expense items bear to net sales and revenue:

	Years Ended January 31,		
	2007	2006	2005
Net sales and revenue	100.0%	100.0%	100.0%
Cost of sales	<u>73.1</u>	<u>72.4</u>	<u>71.8</u>
Gross profit	26.9	27.6	28.2
Selling, general and administrative expenses	26.2	25.6	26.3
Interest income	0.6	0.1	-
Interest expense	(0.5)	(0.6)	(0.9)
Loss on early termination of debt	-	-	(0.2)
Gain on sale of real estate	0.6	0.1	0.1
Equity in unconsolidated affiliates	0.1	-	-
Income from synthetic fuel investments	<u>3.1</u>	<u>8.1</u>	<u>5.2</u>
Income from continuing operations before income taxes and discontinued operations	4.6	9.7	6.1
Provision (benefit) for income taxes	<u>1.5</u>	<u>2.0</u>	<u>(1.8)</u>
Income from continuing operations	<u>3.1</u>	<u>7.7</u>	<u>7.9</u>
Loss from discontinued operations, net of tax	(0.1)	(0.2)	(0.3)
Gain on disposal of discontinued operations, net of tax	<u>0.3</u>	<u>-</u>	<u>0.1</u>
Net income	<u><u>3.3%</u></u>	<u><u>7.5%</u></u>	<u><u>7.7%</u></u>

## Business Segment Results

As discussed in Note 17 of the Notes to the Consolidated Financial Statements our chief operating decision maker (as defined by SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information") evaluates the operating performance of our business segments using a measure we call segment profit. Segment profit excludes income taxes, interest expense, discontinued operations, indirect interest income and certain other items that are included in net income determined in accordance with accounting principles generally accepted in the United States of America. Management believes these are useful financial measures; however, they should not be construed as being more important than other comparable GAAP measures.

Items excluded from segment profit generally result from decisions made by corporate executives. Financing, divestiture and tax structure decisions are generally made by corporate executives. Excluding these items from our business segment performance measure enables us to evaluate business segment operating performance based upon current economic conditions.

The following table sets forth, for the periods indicated, sales and profits by segments for the periods indicated (amounts in thousands):

	<b>Years Ended January 31,</b>		
	<b>2007</b>	<b>2006</b>	<b>2005</b>
Net sales and revenues:			
Retail	\$ 347,334	\$ 374,451	\$ 358,098
Alternative energy	-	-	-
Total net sales and revenues	<u>\$ 347,334</u>	<u>\$ 374,451</u>	<u>\$ 358,098</u>
Segment profit:			
Retail segment profit	\$ 7,818	\$ 11,965	\$ 9,892
Alternative energy segment profit	168	-	-
Corporate expenses	(2,138)	(3,896)	(3,229)
Interest expense	(1,893)	(2,650)	(3,740)
Interest income	1,521	308	178
Income from synthetic fuel investments	<u>10,764</u>	<u>30,515</u>	<u>18,615</u>
Income from continuing operations before income taxes	<u>\$ 16,240</u>	<u>\$ 36,242</u>	<u>\$ 21,716</u>

## Comparison of Fiscal Years Ended January 31, 2007 and 2006

**Net Sales and Revenue** – All of our net sales and revenue was generated by our retail segment, as the only ethanol entity we consolidate did not have an operating plant in fiscal 2006. Net sales and revenue in fiscal 2006 were \$347.3 million, a 7.2% decrease from \$374.5 million in fiscal 2005. This decrease was due to a decrease in comparable store sales of 5.0% for fiscal 2006. In addition, the decrease was caused by a reduction of 25 stores (14 of which were classified as discontinued operations) since the end of the fiscal 2005. The reduction in stores accounted for approximately \$5.7 million of the decrease. We consider a store to be comparable after it has been open six full fiscal quarters. Comparable store sales comparisons do not include sales of extended service contracts. We closed 25 stores (14 of which were classified as discontinued operations) during fiscal 2006 and 16 stores during fiscal 2005. We did not open any new stores in fiscal years 2006 and 2005. We had 193 stores open at January 31, 2007 compared to 218 stores at January 31, 2006.

The appliance category was our strongest product category for fiscal 2006, positively impacting comparable store sales by 3.5%. The appliance category performance was primarily due to improved sales across most of the appliance category products as we continue to emphasize a broader selection of appliance products. The television category negatively impacted comparable store sales by 4.0%. This resulted from gains in LCD and plasma television sales being offset by declines in high definition projection, light engine and traditional tube televisions. The audio and video categories negatively impacted comparable store sales by 2.2% and 1.8%, respectively. Both the audio and video categories have been impacted by lower price points of their respective products and these products becoming more of a commodity item with very high levels of competition.

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

<u>Product Category</u>	<u>Fiscal Year</u>		
	<u>2006</u>	<u>2005</u>	<u>2004</u>
Televisions	55%	56%	55%
Appliances	26	22	19
Audio	7	9	11
Video	4	6	7
Other	8	7	8
	<u>100%</u>	<u>100%</u>	<u>100%</u>

Lease income was approximately \$1.8 million, a 100% increase from \$0.9 million in fiscal 2005. The increase resulted primarily from more properties being leased during fiscal 2006.

**Gross Profit** – Gross profit was \$93.3 million in fiscal 2006, or 26.9% of net sales and revenue, versus \$103.5 million for fiscal 2005 or 27.6% of net sales and revenue. Gross profit for fiscal 2006 was negatively impacted by approximately \$4.0 million as a result of having 11 fewer stores classified in continuing operations compared to fiscal 2005. Gross profit margin for fiscal 2006 was negatively impacted by a change in product mix, a competitive market environment and a focused effort to sell slow moving or aged inventory at a discount.

**Selling, General and Administrative Expenses** – Selling, general and administrative expenses for 2006 were \$91.0 million, or 26.2% of net sales and revenue, a \$4.8 million decrease from \$95.8 million, or 25.6% of net sales and revenue, for fiscal 2005. The decrease in expenditures was primarily due to an impairment charge of \$1.2 million related to company owned real estate incurred in fiscal 2005, lower advertising expenses of \$1.7 million as we had fewer markets to serve after our store closings, an emphasis on cost control this year and lower accruals for executive incentive pay of \$1.2 million associated with lower profitability levels in the current year. This was partially offset as we recognized stock based compensation expense in fiscal 2006 of \$1.7 million.

**Interest Income** – Interest income increased to \$2,374,000, or 0.6% of net sales and revenue, for fiscal 2006 from \$308,000, or 0.1% of net sales and revenue for fiscal 2005 primarily as a result of more excess cash available for investment in fiscal 2006 and \$853,000 of interest income from our ethanol investments in Millennium and Levelland/Hockley.

**Interest Expense** – Interest expense decreased to \$1.9 million, or 0.5% of net sales and revenue, for fiscal 2006 from \$2.5 million, or 0.6% of net sales and revenue, for fiscal 2005. The decline in interest expense was



primarily caused by a reduction in the average amount of mortgage debt outstanding and the capitalization of \$373,000 of interest related to our equity investments in ethanol entities.

**Loss on Early Termination of Debt** – During fiscal 2005, we completed the early payoff of mortgages for 14 retail locations totaling approximately \$6.9 million. We incurred a charge of approximately \$22,000 related to this termination of debt.

**Gain on Sale of Real Estate** – During fiscal 2006, we completed a sale and leaseback for one property and sold one additional property for a total gain of \$2,197,000. In fiscal 2005, we sold one parcel of land attached to an owned property for a gain of \$253,000.

**Equity in Income of Unconsolidated Ethanol Affiliates** – During fiscal 2006, we recognized income of \$499,000 from our equity investment in an ethanol producing facility, Big River Resources, LLC.

**Income from Synthetic Fuel Investments** – Results for fiscal years 2006 and 2005 reflect the impact of our equity investment in two limited partnerships, Colona Synfuel Limited Partnership L.L.L.P. (Colona) and Somerset Synfuel, L.P. (Somerset), which produce synthetic fuels. We expect to receive payments from the three separate sales of our interests in Colona through 2007, which will range from 74.25% to 82.5% of the federal income tax credits attributable to the interest sold subject to certain annual limitations and production levels. We expect to receive payments of approximately \$5.9 million related to 2006 production which were deferred based upon an agreement with the owner and operator of the facility.

Effective October 1, 2005, we sold our entire ownership interest in the Somerset limited partnership that owned two synthetic fuel facilities. We received \$1.2 million, net of commissions, at closing along with a secured contingent payment note that could provide additional investment income. We expect to receive quarterly payments through 2007 equal to 80% of the Section 29/45K tax credits attributable to the ownership interest sold, subject to production levels. With this sale, we have divested all of our ownership interests in facilities that produce synthetic fuel which qualifies for Section 29/45K tax credits.

Income from synthetic fuel investments for fiscal years 2006 and 2005 also includes income related to our sale of our membership interest in the limited liability company that owned a synthetic fuel facility in Gillette, Wyoming. We received \$2.8 million at the time of sale on March 30, 2004 along with a secured contingent payment note that could provide additional investment income to us. The facility resumed commercial operations during the second quarter of fiscal 2005; as such, we received \$3.5 million as a one-time payment per the terms of the purchase agreement. In addition, we are eligible to receive \$1.50 per ton of "qualified production" produced by the facility and sold through 2007. The plant was subsequently sold and during the third quarter of fiscal 2006, we modified our agreement with the owners and operators of the synthetic fuel facility. Based on the terms of the modified agreement, we currently are not able to determine the likelihood and timing of collecting payments related to production occurring after September 30, 2006. Thus, we cannot currently determine the timing of income recognition, if any, related to production occurring subsequent to September 30, 2006. At January 31, 2007, we estimate that there is approximately 1.8 million tons of production for which we did not recognize income. Because the purchase price of all our synthetic fuel sales is based on the value of Section 29/45K tax credits generated, it is subject to production levels and to possible reduction or elimination to the extent the credit is limited.

Below is a table (amounts in thousands) summarizing the income from the sales, net of certain expenses, of our interests in synthetic fuel entities.

**Years Ended January 31,**

	<b><u>2007</u></b>	<b><u>2006</u></b>
February 1, 1999 Colona sale	\$ 1,928	\$ 8,516
July 31, 2000 Colona sale	1,805	7,552
May 31, 2001 Colona sale	1,604	6,713
March 30, 2004 Gillette sale	1,058	6,125
October 1, 2005 Somerset sale	4,369	1,609
Total	<u>\$ 10,764</u>	<u>\$ 30,515</u>

**Income Taxes** – Our effective tax rate was 33.1% and 20.5% for fiscal years 2006 and 2005, respectively, after reflecting our share of federal tax credits earned by the Somerset limited partnership. Our effective tax rate increased for fiscal 2006, as we no longer receive federal tax credits for synthetic fuel produced subsequent to September 30, 2005. We received \$6.4 million in tax credits generated by Somerset for fiscal 2005 and recognized \$0.2 million in fiscal 2006 based upon final published IRS rates for 2005.

**Income from Continuing Operations** – As a result of the foregoing, income from continuing operations was \$10.9 million for fiscal 2006 versus \$28.8 million for fiscal 2005.

**Discontinued Operations** – During fiscal 2006, we closed 14 stores that were classified as discontinued operations. In addition, we closed three stores subsequent to January 31, 2007 that are also classified as discontinued operations. As a result of these underperforming stores, we had a loss from discontinued operations, net of tax benefit, of \$620,000 in fiscal 2006 compared to \$754,000 in fiscal 2005. We sold six store locations classified as discontinued operations in fiscal 2006 compared to selling two properties in fiscal 2005. As a result, we had a gain from disposal of discontinued operations, net of a tax provision, of \$1,106,000 in fiscal 2006 compared to \$209,000 in fiscal 2005.

**Net Income** – As a result of the foregoing, net income was \$11.4 million for fiscal 2006 versus \$28.3 million for fiscal 2005.

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

**Retail**

The retail segments includes all of our store and distribution center operations, our real estate sales and leasing activities and certain administrative expenses. It excludes results from discontinued operations.

The net sales and revenue are discussed under **Net Sales and Revenue**—Comparison of Fiscal Years Ended January 31, 2007 and 2006.

Segment profit declined \$4.2 million (35.0%) to \$7.8 million in fiscal 2006 from \$12.0 million in fiscal 2005. The decline in segment profit was primarily related to lower gross profit of \$10.3 million. Selling, general and administrative expenses of \$87.7 million in fiscal 2006 were \$4.2 million (4.6%) lower than the \$91.9 million in fiscal 2005. Lower advertising expenditures were the primary reason for the decline in selling,

general and administrative expenses. During fiscal 2006, we completed a sale and leaseback for one property and sold one additional property for a total gain of \$2.2 million. Approximately \$0.7 million of the gain from the sale and leaseback transaction was deferred. In fiscal 2005, we sold one parcel of land attached to an owned property for a gain of \$0.2 million.

#### **Alternative Energy**

The alternative energy segment includes the consolidated financial statements of Levelland/Hockley County Ethanol, LLC, our other investments in ethanol facilities, the interest income related to those investments and certain administrative expenses. No sales or revenue is attributable to this segment as Levelland/Hockley is a development stage enterprise and income related to equity method investments is not reported as sales or revenue.

Interest income attributable to alternative energy increased to \$0.8 million in fiscal 2006; while equity in unconsolidated affiliates increased \$0.5 million in fiscal 2006. Expenses were \$1.2 in fiscal 2006, which represented \$1.0 million of allocated general and administrative expenses and \$0.2 million of expenses from Levelland/Hockley County Ethanol, LLC.

#### **Corporate and Other**

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

Income from synthetic fuel investments declined \$19.8 million as production was halted at the Gillette and Colona facilities for a majority of fiscal 2006. Selling, general and administrative expenses were \$2.1 million in fiscal 2006, compared to \$3.9 million in fiscal 2005, primarily a result of lower executive incentive payroll expense. Unallocated interest income was \$1.5 million in fiscal 2006, compared to \$0.3 million in fiscal 2005.

#### **Comparison of Fiscal Years Ended January 31, 2006 and 2005**

**Net Sales and Revenue**—Net sales and revenue in fiscal 2005 were \$374.5 million, a 4.6% increase from \$358.1 million in fiscal 2004. This increase was primarily due to an increase in comparable store sales of 5.0% for fiscal 2005, which was partially offset by a reduction in store count. We believe that our fiscal 2005 comparable store sales were positively affected by hurricanes, our increased efforts on expanding appliance product selection and consumer demand for flat screen and light engine televisions. We closed 16 stores during fiscal 2005 and 14 stores during fiscal 2004. We did not open any new stores in fiscal years 2005 and 2004. We had 218 stores open at January 31, 2006 compared to 234 stores at January 31, 2005.

The television and appliance categories were our strongest product categories for fiscal 2005. Both categories positively impacted comparable store sales by 4.0%. The television category performance was primarily due to increased sales of LCD, DLP, plasma and other high definition ready televisions. The appliance category performance was primarily due to air conditioner sales and generally improved sales across most of the appliance category products. The audio and video categories negatively impacted comparable store sales by 2.2% and 0.8%, respectively. Both the audio and video categories have been impacted by lower price points of their respective products and these products becoming more of a commodity item with very high levels of competition.

Lease income was approximately \$942,000, a 16.4% increase from \$809,000 in fiscal 2004. The increase results primarily from more properties being leased during fiscal 2005.

**Gross Profit**—Gross profit was \$103.5 million in fiscal 2005, or 27.6% of net sales and revenue, versus \$100.8 million for fiscal 2004 or 28.2% of net sales and revenue. The primary factors impacting the gross profit margin have been an increase in promotional activity and recognizing a reduced amount of extended service contracts sales, which generally have higher gross profit margin associated with them. Demand for extended service contracts has declined, which is partially due to lower prices on many products we sell.

**Selling, General and Administrative Expenses**—Selling, general and administrative expenses for fiscal 2005 were \$95.8 million, or 25.6% of net sales and revenue, a 1.5% increase from \$94.4 million, or 26.3% of net sales and revenue, for fiscal 2004. The increase in expenditures was primarily due to an impairment charge of \$1.2 million related to company owned real estate, higher payroll costs of \$1.8 million, reflecting higher commission cost to the sales staff due to higher sales and higher accruals for executive incentive pay associated with higher corporate profitability. These increases were partially offset by lower advertising costs of \$1.5 million as we had fewer markets to serve after our store closings and we emphasized cost control this year.

**Interest Income**—Interest income increased to \$308,000 in fiscal 2005 from \$178,000 in fiscal 2004 primarily as a result of more excess cash available for investment in the latter half of fiscal 2005.

**Interest Expense**—Interest expense decreased to \$2.5 million, or 0.6% of net sales and revenue, for fiscal 2005 from \$3.1 million, or 0.9% of net sales and revenue, for fiscal 2004. The decline in interest expense was primarily caused by a reduction in the amount of mortgage debt outstanding.

**Loss on Early Termination of Debt** – During fiscal 2005, we completed the early payoff of mortgages for 14 retail locations totaling approximately \$6.9 million. We incurred a charge of approximately \$22,000 related to this termination of debt. During fiscal 2004, we completed the early payoff of mortgages for 43 retail locations totaling approximately \$21.6 million. We incurred a charge of approximately \$679,000 related to this termination of debt.

**Gain on Sale of Real Estate** – During fiscal 2005, we sold one parcel of land attached to an owned property for a gain of \$253,000. In fiscal 2004, we sold three parcels of land attached to owned properties for a gain of \$246,000.

**Income from Synthetic Fuel Investments**—Results for fiscal years 2005 and 2004 reflect the impact of our equity investment in two limited partnerships, Colona Synfuel Limited Partnership L.L.L.P. and Somerset Synfuel, L.P., which produce synthetic fuels. We expect to receive payments from the three separate sales of our interests in Colona, on a quarterly basis through 2007, which will range from 74.25% to 82.5% of the federal income tax credits attributable to the interest sold, subject to production levels.

Effective October 1, 2005, we sold our entire ownership interest in the Somerset limited partnership that owned two synthetic fuel facilities. We received \$1.2 million, net of commissions, at closing along with a secured contingent payment note that could provide additional investment income. We expect to receive quarterly payments through 2007 equal to 80% of the Section 29/45K tax credits attributable to the ownership interest sold, subject to production levels. With this sale, we have divested all of our ownership interests in facilities that produce synthetic fuel which qualifies for Section 29/45K tax credits.

Income from synthetic fuel investments for fiscal 2005 also includes income related to our sale of our membership interest in the limited liability company that owned a synthetic fuel facility in Gillette, Wyoming. We received \$2.8 million at the time of sale on March 30, 2004 along with a secured contingent payment note that could provide additional investment income to us. The facility resumed commercial operations during the second quarter of fiscal 2005; as such, we received \$3.5 million as a one-time payment per the terms of the purchase agreement. In addition, we are eligible to receive \$1.50 per ton of "qualified production" produced by the facility and sold through 2007.

Below is a table (amounts in thousands) summarizing the income from the sales, net of certain expenses, of our interests in synthetic fuel entities.

**Years Ended January 31.**

	<b>2006</b>	<b>2005</b>
February 1, 1999 Colona sale	\$ 8,516	\$ 7,181
July 31, 2000 Colona sale	7,552	5,831
May 31, 2001 Colona sale	6,713	5,134
March 30, 2004 Gillette sale	6,125	469
October 1, 2005 Somerset sale	1,609	-
Total	<u>\$ 30,515</u>	<u>\$ 18,615</u>

**Income Taxes** – Our effective tax rate was approximately 20.5% and (30.6%) for fiscal years 2005 and 2004, respectively, after reflecting our share of federal tax credits earned by the Somerset limited partnership. Our effective tax rate increased for fiscal 2005, as we no longer receive federal tax credits for synthetic fuel produced subsequent to September 30, 2005. We received \$6.4 million in tax credits generated by Somerset for fiscal 2005. Our effective tax rate was reduced for fiscal 2004 as a result of \$8.0 million in tax credits generated by Somerset and a \$6.6 million net reduction in our valuation allowance on the alternative minimum tax carryforwards due to the favorable resolution of the IRS audits of the Somerset limited partnership and of REX.

**Income from Continuing Operations** – As a result of the foregoing, income from continuing operations was \$28.8 million for fiscal 2005 versus \$28.4 million for fiscal 2004.

**Discontinued Operations** – During fiscal 2005, we closed nine stores that were classified as discontinued operations. In addition, we closed one store subsequent to January 31, 2006 that was classified as discontinued operations. As a result of these underperforming stores, we had a loss from discontinued operations, net of tax benefit, of \$754,000 in fiscal 2005 compared to \$1,036,000 in fiscal 2004. We sold two of these store locations and as a result had a gain from disposal of discontinued operations, net of a tax provision, of \$209,000 in fiscal 2005 compared to \$230,000 in fiscal 2004.

**Net Income** – As a result of the foregoing, net income was \$28.3 million for fiscal 2005 versus \$27.5 million for fiscal 2004.

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

**Retail**

The net sales and revenue are discussed under **Net Sales and Revenue**—Comparison of Fiscal Years Ended January 31, 2006 and 2005.

Segment profit increased \$2.0 million (20.2%) to \$11.9 million in fiscal 2005 from \$9.9 million in fiscal 2004. The increase in segment profit was primarily related to higher gross profit of \$2.8 million. Selling, general and administrative expenses of \$91.9 million in fiscal 2005 were \$0.7 million (0.8%) higher than the \$91.0 million in fiscal 2004. Higher sales commissions were the primary reason for the increase in selling, general and administrative expenses.

## Corporate and Other

Income from synthetic fuel investments increased \$11.9 million as a result of higher production at all plants. Selling, general and administrative expenses were \$3.9 million in fiscal 2005, compared to \$3.2 million in fiscal 2004, primarily a result of higher executive incentive payroll expense.

## Liquidity and Capital Resources

Our primary sources of financing have been income from operations and our investment in synthetic fuel limited partnerships, supplemented by mortgages on owned properties. We also use borrowings under our revolving line of credit to fund our seasonal working capital needs.

**Outlook** – We consider our inventory balance of \$70.1 million at January 31, 2007 to be a lower than normal balance for that time of the year excluding the impact of possible store closings. Based upon industry conditions, we managed our inventory at lower than normal in late fiscal 2006. In addition, we are carrying a lower level of air conditioners. Our inventory levels are subject to seasonal fluctuations, with January 31 traditionally a time of lower inventory levels. Our cash levels will tend to fluctuate inversely with our inventory levels.

Our pending ethanol investments could require a significant amount, if not all, of our available cash. Consequently, we may be forced to borrow amounts under our revolving line of credit exceeding our historically normal levels. This would result in our incurring additional interest expense. We cannot estimate the potential impact of the phase-out of Section 29/45K tax credits, and the resulting reduction in our income, cannot be accurately determined. Should our income from synthetic fuel investments decline significantly, then we anticipate a resulting increase in amounts borrowed under our revolving line of credit and a corresponding increase in interest expense.

On February 8, 2007, we entered into a Purchase and Sale Agreement with Coventry Real Estate Investments, LLC. Pursuant to the Agreement, we have agreed to sell 94 of our current and former store locations for approximately \$84.0 million, before selling expenses, and to leaseback a minimum of 40 of the properties for an initial lease term expiring January 31, 2010. The leases will contain renewal options for up to 15 additional years. Either party may terminate a lease after the initial six months of the initial lease term on 23 to 30 of the sites as selected by us.

We are in the process of analyzing the allocation of the purchase price to individual properties which have a carrying value of approximately \$66.5 million, thus, the resulting gain to be recognized cannot currently be determined.

Cash of approximately \$17.1 million held by Levelland/Hockley will be used primarily to fund the construction of a 40 million gallon ethanol plant and to provide working capital until the plant commences operations. In addition, Levelland/Hockley intends to borrow up to \$43.7 million to fund construction costs.

**Operating Activities** – Net cash provided by operating activities was \$31.8 million for fiscal 2006 compared to \$19.0 million in fiscal 2005. For fiscal 2006, operating cash flow was provided by net income of \$11.4 million adjusted for the impact of a \$10.8 million gain on sales of partnership interest, \$1.7 million of stock based compensation expense and non-cash items of \$5.8 million, which consist of deferred income, the deferred income tax provision, impairment charges, gain on disposal of fixed assets, income from ethanol investments and depreciation and amortization. Cash was provided by a decrease in inventory of \$27.3 million, primarily due to managing our inventory at lower than normal in late fiscal 2006. In addition, we are carrying a lower level of air conditioners. Additionally, cash was provided by a decrease in accounts receivable of \$1.5 million and an increase in accounts payable of \$2.3 million. The largest uses of cash were an increase in other assets of \$4.1 million and a decrease in other liabilities of \$3.2 million.

For fiscal 2005, operating cash flow was provided by net income of \$28.3 million adjusted for the impact of a \$30.5 million gain on sales of partnership interest and non-cash items of \$6.5 million, which consist of deferred income, the deferred income tax provision, impairment charges and depreciation and amortization. Cash was provided by a decrease in inventory of \$26.8 million, primarily due to a shortage in the supply of certain televisions and lower levels of air conditioners. Additionally, cash was provided by a decrease in accounts receivable of \$2.0 million. The largest use of cash was a decrease in accounts payable of \$12.5 million. Cash was also used by an increase in other assets of \$0.7 million and a decrease in other liabilities of \$0.4 million.

**Investing Activities** – Net cash was used by investing activities of \$22.2 million for fiscal 2006. We paid \$16.0 million and \$5.0 million for equity investments in Patriot and Big River, respectively. We paid \$14.0 million for a debt investment in Millennium. The acquisition and resulting consolidation of Levelland/Hockley provided cash of \$1.7 million as Levelland/Hockley's cash balance of \$13.2 million exceeded the purchase price of \$11.5 million which resulted in us to acquiring a 47.1% ownership interest in Levelland/Hockley. Cash of \$3.7 million was provided by proceeds from the sale of our partnership interest in synthetic fuel and \$9.3 million from the sale of real estate and buildings. Capital expenditures in fiscal 2006 totaled \$1.7 million. Expenditures included approximately \$1.0 million for the construction of the Levelland/Hockley ethanol plant and \$0.5 million of improvements to existing stores.

Net cash was provided by investing activities of \$29.8 million for fiscal 2005. Cash of \$30.5 million was provided by proceeds from the sale of our partnership interest in synthetic fuel and \$1.5 million from the sale of real estate and buildings. Capital expenditures in fiscal 2005 totaled \$2.2 million. Expenditures included approximately \$0.7 million for the purchase of one store, approximately \$0.5 million towards a store being relocated and approximately \$1.2 million for improvements at existing locations.

**Financing Activities** – Cash provided by financing activities was \$12.1 million for fiscal 2006. During fiscal 2006, we borrowed \$13.8 million in long term mortgage debt. Scheduled repayments of debt totaled \$3.7 million during fiscal 2006. Stock option exercises in fiscal 2006 generated cash of \$2.6 million.

Cash used in financing activities was \$32.2 million for fiscal 2005. During fiscal 2005, we acquired 1,956,400 shares of our common stock in open market transactions for approximately \$28.3 million. During fiscal 2004, we acquired 717,435 shares of our common stock in open market transactions for approximately \$7.5 million.

At January 31, 2007, we had a remaining authorization from our Board of Directors to purchase 496,645 shares of our common stock. All acquired shares will be held in treasury for possible future use.

At January 31, 2007, we had approximately \$33.9 million of mortgage debt outstanding at a weighted average interest rate of 7.14%, with maturities from February 1, 2008 to December 28, 2021. During fiscal 2006, we paid off \$3.7 million of long-term mortgage debt from scheduled repayments. During fiscal 2005, we paid off \$9.5 million of long-term mortgage debt from scheduled repayments and the early extinguishment of debt for 14 retail locations.

We received proceeds of approximately \$2.6 million and \$5.7 million for fiscal years 2006 and 2005, respectively, from the exercise of stock options by employees and directors. The exercise of non-qualified stock options resulted in a tax benefit of approximately \$1.0 million and \$2.2 million for fiscal years 2006 and 2005, respectively, which was reflected as an increase in additional paid-in capital.

On September 14, 2004, we entered into an Amended and Restated Loan Agreement (the "Loan Agreement") with four banks. The Loan Agreement provides for a \$115,000,000 five-year revolving credit facility, with a \$50,000,000 sub-limit for letters of credit, through September 14, 2009. Amounts available for borrowing are based upon the sum of specific percentages of eligible accounts receivable, eligible inventories, and certain real estate assets as defined. Amounts available for borrowing are reduced by any letter of credit

commitments outstanding. Borrowings on the revolving credit agreement accrue interest at prime minus .50% or LIBOR plus 1.75%. Borrowings are secured by certain fixed assets, accounts receivable, inventories and the capital stock of our subsidiaries. Aggregate commitments under the loan agreement may be increased by up to an additional \$50,000,000. This loan agreement replaced our prior \$130,000,000 bank credit facility. The loan agreement requires the maintenance of excess borrowing availability of 10% of the borrowing base, contains covenants limiting indebtedness, liens, mergers and permitted acquisitions, asset divestitures, dividends, loans, investments and transactions with affiliates, and contains customary default provisions including, but not limited to, failure to pay interest or principal when due and failure to comply with covenants. We are in compliance with all covenants at January 31, 2007.

We had no borrowings outstanding on the line of credit at January 31, 2007 or January 31, 2006. A total of approximately \$52.2 million was available at January 31, 2007, net of letters of credit outstanding of \$0.9 million. Borrowing levels vary during the course of a year based upon our seasonal working capital needs. The maximum direct borrowings outstanding during fiscal 2006 were approximately \$3.2 million. The weighted average interest rate was 7.4% (261.3% including commitment fees) for fiscal 2006.

### Tabular Disclosure of Contractual Obligations

In the ordinary course of business, we enter into agreements under which we are obligated to make legally enforceable future cash payments. These agreements include those related to purchasing inventory, mortgaging and leasing retail space. The following table summarizes by category expected future cash outflows associated with contractual obligations in effect as of January 31, 2007 (amounts in thousands):

Contractual Obligations (a)	Payment due by period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Operating lease obligations	\$ 9,817	\$ 4,212	\$ 4,904	\$ 701	\$ -
Long-term debt obligations	33,914	2,678	7,462	7,929	15,845
Inventory purchase orders	16,948	16,948	-	-	-
Interest on variable rate debt	794	266	359	169	-
Interest on fixed rate debt	13,053	2,159	3,760	2,845	4,289
Other (b)	56,550	56,550	-	-	-
<b>Total</b>	<b>\$ 131,076</b>	<b>\$ 82,813</b>	<b>\$ 16,485</b>	<b>\$ 11,644</b>	<b>\$ 20,134</b>

(a) Contractual obligations exclude contingent commitments to invest in three ethanol entities. See Note 13 of the Notes to the Consolidated Financial Statements for further discussion of these commitments.

(b) Amounts represent construction and related commitments of Levelland/Hockley County Ethanol, LLC for construction of its ethanol producing plant.

### Seasonality and Quarterly Fluctuations

Our retail business is seasonal. As is the case with many other retailers, our net sales and revenue and net income are generally greatest in our fourth fiscal quarter, which includes the Christmas selling season. The fourth fiscal quarter accounted for 30.1% and 33.0% of net sales and revenue for fiscal 2006 and 2005,



respectively. The fourth fiscal quarter accounted for 31.3% and 23.2% of net income in fiscal 2006 and 2005, respectively. Year to year comparisons of quarterly results of operations and comparable store sales can be affected by a variety of factors, including the duration of the holiday selling season, weather conditions, the timing of new ethanol investments and fluctuations in synthetic fuel production.

### **Impact of Inflation**

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

### **Critical Accounting Policies**

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

**Revenue Recognition** – We recognize sales of products upon receipt by the customer. We will honor returns from customers within seven days from the date of sale. We establish liabilities for estimated returns at the point of sale.

We also sell extended service contracts covering periods beyond the normal manufacturers' warranty periods, usually with terms of coverage (including manufacturers' warranty periods) of between 12 to 60 months. Contract revenues, net of sales commissions, are deferred and amortized on a straight-line basis over the life of the contracts after the expiration of applicable manufacturers' warranty periods. We retain the obligation to perform warranty service and such costs are charged to operations as incurred.

We recognize income from synthetic fuel partnership sales as the synthetic fuel is produced and sold except for operations at the Gillette facility as we do not believe that collection of our proceeds is reasonably assured. We estimate the impact of oil prices and the likelihood of any phase out of Section 29/45K credits and the resulting reduction of synthetic fuel income quarterly. See Note 4 of the Notes to the Consolidated Financial Statements for a further discussion of synthetic fuel partnership sales.

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

**Goodwill** – Goodwill represents the cost in excess of the fair value of net assets acquired. Under Statement of Financial Accounting Standards (SFAS) No. 142, Goodwill and Other Intangible Assets ("SFAS 142") we are required to identify reporting units for purposes of assessing impairment of goodwill. We conduct impairment assessments annually or when events indicate a triggering event has occurred.

**Investments** - From time to time, in advance of making an investment in debt or equity securities of investees, such as the investments we have in ethanol entities, we may enter into a commitment for such investment which is contingent upon future events occurring, including but not limited to, the investee raising additional financing and/or equity. These commitments may be backed by letters of credit or other means as mutually agreed to by us and the investee. Generally, because commitments are contingently exercisable and represent the potential acquisition of a minority position in the investee, we believe that we are not the primary beneficiary of the investee under the guidance in FASB Interpretation Number 46R ("FIN 46R"). When, and if the commitment is exercised and we make our investment, we are required to re-evaluate whether we are the primary beneficiary under the guidance in FIN 46R.

The method of accounting applied to long-term investments, whether consolidated, equity or cost, involves an evaluation of the significant terms of each investment that explicitly grant or suggest evidence of control or influence over the operations of the investee and also includes the identification of any variable interests in which we are the primary beneficiary. The evaluation of consolidation under FIN 46R is complex and requires judgments to be made. We have concluded that we are the primary beneficiary of Levelland/Hockley. See Note 5 of the Notes to the Consolidated Financial Statements for a further discussion of the acquisition of Levelland/Hockley. Investments in businesses that we do not control, or maintain a majority voting interest or maintain a primary beneficial interest, but we have the ability to exercise significant influence over operating and financial matters, are accounted for using the equity method. Investments in which we do not have the ability to exercise significant influence over operating and financial matters are accounted for using the cost method.

Investments in debt securities are considered "held to maturity", "available for sale", or "trading securities" under Statement of Financial Accounting Standards (SFAS) No. 115, Accounting for Certain Investments in Debt and Equity Securities ("SFAS 115"). Under SFAS 115, held to maturity securities are required to be carried at their cost; while available-for-sale securities are required to be carried at their fair value, with unrealized gains and losses, net of income taxes, that are considered temporary in nature recorded in accumulated other comprehensive income (loss) in the accompanying consolidated balance sheets. The fair values of our investments in debt securities are determined based upon market quotations and various valuation techniques, including discounted cash flow analysis.

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

**Vendor allowances** – Vendors often fund, up front, certain advertising costs and exposure to general changes in pricing to customers due to technological change. Allowances are deferred as received from vendors and recognized into income as an offset to the cost of merchandise sold when the related product is sold.

**Inventory Reserves** – Inventory is recorded at the lower of cost or market, net of reserves established for estimated technological obsolescence. The market value of inventory is often dependent upon changes in technology resulting in significant changes in customer demand. If these estimates are inaccurate, we may be exposed to market conditions that require an additional reduction in the value of certain inventories affected.

**Income Taxes** – Income taxes are recorded based on the current year amounts payable or refundable, as well as the consequences of events that give rise to deferred tax assets and liabilities based on differences in how those events are treated for tax purposes, net of valuation allowances. We base our estimate of deferred tax assets and liabilities on current tax laws and rates and other expectations about future outcomes, including the outcome of tax credits under Section 29/45K of the Internal Revenue Code. Changes in existing regulatory

tax laws and rates may affect our ability to successfully manage regulatory matters, and future business results may affect the amount of deferred tax liabilities or the valuation of deferred tax assets over time. Our accounting for deferred tax consequences represents management's best estimate of future events that can be appropriately reflected in the accounting estimates.

**Recoverability of Long-Lived Assets** – Given the nature of our business, each income producing property must be evaluated separately when events and circumstances indicate that the value of that asset may not be recoverable. We recognize an impairment loss when the estimated future undiscounted cash flows expected to result from the use of the asset and its value upon disposal are less than its carrying amount. Changes in the real estate market for particular locations could result in changes to our estimates of the property's value upon disposal.

**Costs Associated with Exit Activities** – We occasionally vacate stores prior to the expiration of the related lease. For vacated locations that are under long-term leases, we record an expense for the difference between our future lease payments and related costs (real estate taxes, maintenance, etc.) from the date of closure through the end of the remaining lease term, net of expected future sublease rental income. If actual results related to sublease income, vacancy periods and the payment of settlements and repairs differ from our estimates, we may be exposed to gains and or losses that could be material.

## **New Accounting Pronouncements**

In May 2005, the Financial Accounting Standards Board ("FASB") issued SFAS No. 154, "Accounting Changes and Error Corrections – A Replacement of APB Opinion No. 20 and FASB Statement No. 3" ("SFAS 154"). SFAS 154 requires retrospective application to prior periods' financial statements for a change in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. Additionally, retrospective application is not required when explicit transition requirements specific to newly adopted accounting principles exist. Retrospective application requires the cumulative effect of the change on periods prior to those presented to be reflected in the carrying amounts of assets and liabilities as of the beginning of the first period presented, and the offsetting adjustments to be recorded to beginning retained earnings. SFAS 154 retains the guidance contained in APB Opinion No. 20 for reporting both the correction of an error in previously issued financial statements and a change in accounting estimate. We adopted the provisions of SFAS 154 as applicable, at the beginning of fiscal year 2006, and its adoption had no effect on our financial condition or results of operations.

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123 (revised 2004), Share-Based Payment ("SFAS 123(R)"), which requires the recognition of the cost of employee services received in exchange for an award of equity instruments in the financial statements and measurement based on the grant-date fair value of the award. It also requires the cost to be recognized over the period during which an employee is required to provide service in exchange for the award (presumptively the vesting period). SFAS 123(R) replaces SFAS No. 123, Accounting for Stock-Based Compensation, and supersedes Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees ("APB 25"), and its related interpretations. The Company adopted SFAS 123(R) on February 1, 2006. We chose the Modified Prospective Application ("MPA") method for implementing SFAS 123(R). Under the MPA method, new awards, if any, are valued and accounted for prospectively upon adoption. Outstanding prior awards that are unvested as of February 1, 2006 will be recognized as compensation cost over the remaining requisite service period. Prior periods have not been restated.

In July 2006, the Financial Accounting Standards Board ("FASB") issued FASB Interpretation No. 48 ("FIN 48") "Accounting for Uncertainty in Income Taxes" which prescribes a recognition threshold and measurement process for recording in the financial statements uncertain tax positions taken or expected to be taken in a tax return. Additionally, FIN 48 provides guidance on the derecognition, classification, accounting

in interim periods and disclosure requirements for uncertain tax positions. The provisions of FIN 48 will be effective for the Company beginning February 1, 2007. We estimate the effect of adopting FIN 48 will result in a decrease to beginning retained earnings of less than \$1 million.

In September 2006, the FASB issued SFAS No. 157, Fair Value Measurements, ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value measurements. This statement does not require any new fair value measurements; rather, it applies to other accounting pronouncements that require or permit fair value measurements. The provisions of this statement are to be applied prospectively as of the beginning of the fiscal year in which this statement initially applies, with any transition adjustment recognized as a cumulative-effect adjustment to the opening balance of retained earnings. The provisions of SFAS 157 are effective for the fiscal years beginning after November 15, 2007. We anticipate adopting this standard as of February 1, 2008. We have not determined the effect, if any, the adoption of this statement will have on our financial condition or results of operations.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108 ("SAB 108"), "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements." SAB 108 provides interpretative guidance on the process of quantifying financial statement misstatements and is effective for fiscal years ending after November 15, 2006. We applied the provisions of SAB 108 in the third quarter of fiscal 2006 and there was no impact to the financial statements.

There were no other new accounting standards issued during fiscal 2006 that had or are expected to have a material impact on our financial position, results of operations, or cash flows.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

As of January 31, 2007, we had financial instruments which were sensitive to changes in interest rates. These financial instruments consist of a revolving credit agreement and various mortgage notes payable secured by certain land, buildings and leasehold improvements.

The revolving credit agreement is with four banks through September 14, 2009, with interest at prime minus .50% or LIBOR plus 1.75% and commitment fees of 1/4% payable on the unused portion. Amounts available for borrowing are based upon the sum of specific percentages of eligible accounts receivable and eligible inventories, as defined, and certain real estate assets. Amounts available for borrowing are reduced by any letter of credit commitments outstanding. Borrowings are secured by certain fixed assets, accounts receivable, inventories and the capital stock of our subsidiaries. At January 31, 2007, a total of approximately \$52.2 million was available for borrowings under the revolving credit agreement, net of one letter of credit outstanding of \$0.9 million. We had no outstanding borrowings under the revolving credit agreement at January 31, 2007.

Approximately \$30.3 million of the mortgage debt consists of fixed rate debt. The interest rates range from 3.7% to 8.5%. The remaining \$3.6 million of mortgage debt is variable rate mortgage debt. In general, the rate on the variable rate debt ranges from the one month LIBOR plus 1.75% to prime less 0.25%. If the variable interest rate increased 1%, we estimate our annual interest cost would increase approximately \$36,000 for the variable rate mortgage debt. Principal and interest are payable monthly over terms which generally range from 5 to 15 years. The fair value of our long-term debt at January 31, 2007 was approximately \$34.1 million. The fair value was estimated based on rates available to us for debt with similar terms and maturities.

We anticipate managing our risk with respect to the volatility of commodity prices inherent in the ethanol industry by using forward purchase and sale contracts and other similar instruments. Levelland Hockley has agreements with Lansing Trade Group, LLC ("Lansing") for grain procurement and distillers grains

marketing and consulting services. Levelland will have the ability to determine grain purchase prices through cash grain forward sales contracts with Lansing. Distillers grains sales prices will be determined through cash forward distillers sales contracts entered into with Lansing. There are no outstanding forward purchase or sales contracts at January 31, 2007.

Item8. Financial Statements and Supplementary Data

**REX STORES CORPORATION  
AND SUBSIDIARIES**

CONSOLIDATED BALANCE SHEETS  
JANUARY 31, 2007 AND 2006  
(Amounts in thousands)

ASSETS	2007	2006
CURRENT ASSETS:		
Cash and cash equivalents	\$ 43,008	\$ 21,363
Accounts receivable—net of allowance for doubtful accounts of \$116 and \$159 in 2007 and 2006, respectively	1,975	3,457
Synthetic fuel receivable	8,838	1,680
Merchandise inventory—Net	70,078	97,371
Prepaid expenses and other	2,915	2,052
Future income tax benefits	<u>9,192</u>	<u>9,361</u>
Total current assets	136,006	135,284
PROPERTY AND EQUIPMENT—Net	122,769	125,245
ASSETS HELD FOR SALE—Net	2,009	1,497
OTHER ASSETS	8,752	760
GOODWILL	1,322	-
FUTURE INCOME TAX BENEFITS	26,245	30,031
INVESTMENTS	35,699	-
RESTRICTED INVESTMENTS	<u>2,406</u>	<u>2,318</u>
 TOTAL ASSETS	 <u>\$ 335,208</u>	 <u>\$ 295,135</u>
 LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Current portion of long-term debt	\$ 2,678	\$ 2,389
Accounts payable—trade	23,254	20,396
Accrued income taxes	593	541
Current portion of deferred income	11,473	10,883
Accrued payroll and related items	4,528	7,183
Other current liabilities	<u>5,389</u>	<u>5,863</u>
Total current liabilities	<u>47,915</u>	<u>47,255</u>
LONG-TERM LIABILITIES:		
Long-term mortgage debt	31,236	21,462
Deferred income	<u>13,825</u>	<u>12,213</u>
Total long-term liabilities	<u>45,061</u>	<u>33,675</u>
COMMITMENTS AND CONTINGENCIES		
MINORITY INTEREST IN CONSOLIDATED SUBSIDIARY	11,443	-
SHAREHOLDERS' EQUITY:		
Common stock, 45,000 shares authorized, 29,513 and 29,390 shares issued at par	295	294
Paid-in capital	139,337	135,775
Retained earnings	252,249	240,898
Treasury stock, 19,089 and 19,289 shares	<u>(161,092)</u>	<u>(162,762)</u>
Total shareholders' equity	<u>230,789</u>	<u>214,205</u>
 TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	 <u>\$ 335,208</u>	 <u>\$ 295,135</u>

See notes to consolidated financial statements.

**REX STORES CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF INCOME  
FOR THE YEARS ENDED JANUARY 31, 2007, 2006 AND 2005**

(Amounts in Thousands, Except Per Share Amounts)

	2007	2006	2005
NET SALES AND REVENUE	\$ 347,334	\$ 374,451	\$ 358,098
COST OF SALES (EXCLUDING DEPRECIATION)	<u>254,003</u>	<u>270,956</u>	<u>257,276</u>
GROSS PROFIT	93,331	103,495	100,822
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES	(91,032)	(95,783)	(94,405)
INTEREST INCOME	2,374	308	178
INTEREST EXPENSE	(1,893)	(2,524)	(3,061)
LOSS ON EARLY TERMINATION OF DEBT	-	(22)	(679)
GAIN ON SALE OF REAL ESTATE	2,197	253	246
EQUITY IN INCOME OF UNCONSOLIDATED ETHANOL AFFILIATES	499	-	-
INCOME FROM SYNTHETIC FUEL INVESTMENTS	<u>10,764</u>	<u>30,515</u>	<u>18,615</u>
INCOME FROM CONTINUING OPERATIONS BEFORE INCOME TAXES	16,240	36,242	21,716
PROVISION (BENEFIT) FOR INCOME TAXES	<u>5,375</u>	<u>7,428</u>	<u>(6,639)</u>
INCOME FROM CONTINUING OPERATIONS	10,865	28,814	28,355
LOSS FROM DISCONTINUED OPERATIONS, NET OF TAX	(620)	(754)	(1,036)
GAIN ON DISPOSAL OF DISCONTINUED OPERATIONS, NET OF TAX	<u>1,106</u>	<u>209</u>	<u>230</u>
NET INCOME	<u>\$ 11,351</u>	<u>\$ 28,269</u>	<u>\$ 27,549</u>
WEIGHTED AVERAGE SHARES OUTSTANDING—BASIC	<u>10,291</u>	<u>10,688</u>	<u>11,081</u>
BASIC INCOME PER SHARE FROM CONTINUING OPERATIONS	\$ 1.06	\$ 2.69	\$ 2.56
BASIC LOSS PER SHARE FROM DISCONTINUED OPERATIONS	(0.06)	(0.07)	(0.09)
BASIC GAIN ON DISPOSAL OF DISCONTINUED OPERATIONS	<u>0.10</u>	<u>0.02</u>	<u>0.02</u>
BASIC NET INCOME PER SHARE	<u>\$ 1.10</u>	<u>\$ 2.64</u>	<u>\$ 2.49</u>
WEIGHTED AVERAGE SHARES OUTSTANDING—DILUTED	<u>11,576</u>	<u>12,220</u>	<u>12,714</u>
DILUTED INCOME PER SHARE FROM CONTINUING OPERATIONS	\$ 0.94	\$ 2.36	\$ 2.23
DILUTED LOSS PER SHARE FROM DISCONTINUED OPERATIONS	(0.05)	(0.06)	(0.08)
DILUTED GAIN ON DISPOSAL OF DISCONTINUED OPERATIONS	<u>0.09</u>	<u>0.01</u>	<u>0.02</u>
DILUTED NET INCOME PER SHARE	<u>\$ 0.98</u>	<u>\$ 2.31</u>	<u>\$ 2.17</u>

See notes to consolidated financial statements.

**REX STORES CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**YEARS ENDED JANUARY 31, 2007, 2006 AND 2005**  
**(Amounts in thousands)**

	2007	2006	2005
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income	\$ 11,351	\$ 28,269	\$ 27,549
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Depreciation and amortization	4,190	4,645	4,158
Stock based compensation expense	1,660	-	-
Impairment charges	346	1,345	875
Income from equity method investments	(499)	-	-
Minority interest in consolidated subsidiaries	(6)	-	-
Income from synthetic fuel investments	(10,764)	(30,515)	(18,615)
Gain on disposal of real estate and property and equipment	(3,775)	(375)	(60)
Loss on early termination of debt	-	22	284
Deferred income	1,548	961	(871)
Excess tax benefits from stock option exercises	(27)	-	-
Deferred income tax	3,955	(485)	(15,559)
Changes in assets and liabilities, net of acquisitions:			
Accounts receivable	1,507	2,003	(654)
Merchandise inventory	27,293	26,817	(7,433)
Other current assets	151	(844)	(33)
Other long term assets	(4,199)	81	2,636
Accounts payable—trade	2,281	(12,446)	97
Other current liabilities	(3,187)	(435)	(600)
Net cash provided by (used in) operating activities	<u>31,825</u>	<u>19,043</u>	<u>(8,226)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Capital expenditures	(1,668)	(2,171)	(6,919)
Proceeds from sale of synthetic fuel investments	3,716	30,510	20,038
Purchase of investments	(40,795)	-	-
Repayment of note receivable and sale of investments	5,595	-	7,000
Acquisition, net of cash acquired	1,665	-	-
Proceeds from sale of real estate and property and equipment	9,339	1,523	1,346
Restricted investments	(88)	(48)	(13)
Net cash (used in) provided by investing activities	<u>(22,236)</u>	<u>29,814</u>	<u>21,452</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from long-term debt	13,812	-	-
Payments of long-term debt	(3,749)	(9,547)	(25,408)
Loan fees	(593)	-	-
Stock options exercised	2,559	5,696	4,557
Excess tax benefits from stock option exercises	27	-	-
Treasury stock acquired	-	(28,314)	(7,484)
Net cash provided by (used in) financing activities	<u>12,056</u>	<u>(32,165)</u>	<u>(28,335)</u>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>21,645</b>	<b>16,692</b>	<b>(15,109)</b>
CASH AND CASH EQUIVALENTS—Beginning of year	<u>21,363</u>	<u>4,671</u>	<u>19,780</u>
CASH AND CASH EQUIVALENTS—End of year	<u>\$ 43,008</u>	<u>\$ 21,363</u>	<u>\$ 4,671</u>

See notes to consolidated financial statements.



**REX STORES CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY  
FOR THE YEARS ENDED JANUARY 31, 2007, 2006 AND 2005  
(Amounts in thousands)**

	Common Shares				Paid-In Capital	Retained Earnings	Total Shareholders' Equity
	Issued		Treasury				
	Shares	Amount	Shares	Amount			
BALANCE—February 1, 2005	28,308	\$ 283	17,214	\$ (127,555)	126,124	\$ 185,080	\$ 183,932
Net income						27,549	27,549
Treasury stock acquired			902	(12,174)			(12,174)
Stock options exercised and related tax effects	<u>730</u>	<u>7</u>	<u>(251)</u>	<u>1,890</u>	<u>7,350</u>	<u>-</u>	<u>9,247</u>
BALANCE—January 31, 2005	29,038	290	17,865	(137,839)	133,474	212,629	208,554
Net income						28,269	28,269
Treasury stock acquired			2,088	(30,186)			(30,186)
Stock options exercised and related tax effects	<u>352</u>	<u>4</u>	<u>(664)</u>	<u>5,263</u>	<u>2,301</u>	<u>-</u>	<u>7,568</u>
BALANCE—January 31, 2006	29,390	294	19,289	(162,762)	135,775	240,898	214,205
Net income						11,351	11,351
Stock based compensation					1,660		1,660
Stock options exercised and related tax effects	<u>123</u>	<u>1</u>	<u>(200)</u>	<u>1,670</u>	<u>1,902</u>	<u>-</u>	<u>3,573</u>
BALANCE—January 31, 2007	<u>29,513</u>	<u>\$ 295</u>	<u>19,089</u>	<u>\$ (161,092)</u>	<u>139,337</u>	<u>\$ 252,249</u>	<u>\$ 230,789</u>

See notes to consolidated financial statements

# REX STORES CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

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### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Principles of Consolidation** – The accompanying financial statements consolidate the operating results and financial position of REX Stores Corporation, its wholly-owned subsidiaries and entities in which REX maintains a primary beneficial interest (the "Company"). All significant intercompany balances and transactions have been eliminated. As of January 31, 2007, the Company operated 193 retail consumer electronics and appliance stores under the REX name in 35 states and maintains ownership interests in three ethanol entities. The Company operates in two reportable segments, retail and alternative energy.

**Reclassifications** – The Company reclassified \$1.3 million of outstanding checks from accounts payable to cash at January 31, 2006 to conform to current year presentation.

**Fiscal Year** – All references in these consolidated financial statements to a particular fiscal year are to the Company's fiscal year ended January 31. For example, "fiscal 2006" means the period February 1, 2006 to January 31, 2007.

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

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

**Merchandise Inventory** – Inventories are carried at the lower of cost or market on a first-in, first-out ("FIFO") basis and includes certain costs associated with purchasing, warehousing and transporting merchandise. Reserves are established for estimated technological obsolescence. The market value of inventory is often dependent upon changes in technology resulting in significant changes in customer demand. In the fourth quarter of fiscal 2006, the Company changed its method of accounting for inventory of an acquired subsidiary, Kelly & Cohen (K&C) from the last-in, first-out ("LIFO") method to the FIFO method (see note 2). Nine suppliers accounted for approximately 86% of the Company's purchases in fiscal 2006. Eleven suppliers accounted for approximately 81% of the Company's purchases in fiscal 2005. Three suppliers represented approximately 45% and 40% of the Company's inventory purchases in fiscal 2006 and 2005, respectively. The Company has reserves for obsolete inventory of \$5,107,000 and \$5,211,000 at January 31, 2007 and 2006, respectively.

The Company has inventory that it does not have legal title but maintains constructive title to of \$2,825,000 at January 31, 2007. This inventory is subject to a product financing agreement with one vendor. This agreement transfers the risk and rewards of ownership to the Company. Such inventory cannot be encumbered or otherwise pledged as collateral by the Company.

**Property and Equipment** – Property and equipment is recorded at cost. Depreciation is computed using the straight-line method. Estimated useful lives are 15 to 40 years for buildings and improvements, and 3 to 12 years for fixtures and equipment. Leasehold improvements are depreciated over the initial lease

term and one renewal term when exercise of the renewal term is reasonably assured or the life of the improvement, whichever is shorter.

The components of property and equipment at January 31, 2007 and 2006 are as follows (amounts in thousands):

	2007	2006
Land	\$ 36,304	\$ 38,269
Buildings and improvements	99,001	103,525
Fixtures and equipment	16,397	17,431
Leasehold improvements	7,067	8,296
Construction in progress	<u>6,834</u>	<u>-</u>
	165,603	167,521
Less: accumulated depreciation	<u>(42,834)</u>	<u>(42,276)</u>
	<u>\$ 122,769</u>	<u>\$ 125,245</u>

In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets", the carrying value of long-lived assets is assessed for recoverability by management when changes in circumstances indicate that the carrying amount may not be recoverable, based on an analysis of undiscounted future expected cash flows from the use and ultimate disposition of the asset. The Company recorded an impairment charge included in selling, general and administrative expenses in the accompanying consolidated statements of income of \$168,000, \$1,200,000 and \$875,000 in the fiscal years ended January 31, 2007, 2006 and 2005, respectively. In addition, the Company recorded an impairment charge included in discontinued operations in the accompanying consolidated statements of income of \$85,000, \$100,000 and \$0 in the fiscal years ended January 31, 2007, 2006 and 2005 respectively.

**Goodwill** – Goodwill represents the cost in excess of the fair value of net assets acquired. Under Statement of Financial Accounting Standards (SFAS) No. 142, Goodwill and Other Intangible Assets ("SFAS 142") the Company is required to identify reporting units for purposes of assessing impairment of goodwill. The Company conducts impairment assessments annually or when events indicate a triggering event has occurred.

**Investments** – Restricted investments, which are principally marketable debt securities of a federal government agency, are stated at cost plus accrued interest, which approximates market. Restricted investments at January 31, 2007 and 2006 are required by two states to cover possible future claims under product service contracts. In accordance with SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities", the Company has classified the investments as held-to-maturity. The investments had maturity dates of less than one year at January 31, 2007 and 2006. The Company has the intent and ability to hold these securities to maturity.

From time to time, in advance of making an investment in debt or equity securities of investees, such as the contingent investments the Company has in ethanol entities, the Company may enter into a commitment for such investment which is contingent upon future events occurring, including but not limited to, the investee raising additional financing and/or equity. These commitments may be backed by letters of credit or other means as mutually agreed to by the Company and the investee. Generally, because commitments are contingently exercisable and represent the potential acquisition of a minority position in the investee, the Company believes that it is not the primary beneficiary of the investee under the guidance in FASB Interpretation Number 46R ("FIN 46R"). When, and if the commitment is

exercised and the Company makes its investment, it is required to re-evaluate whether it is the primary beneficiary under the guidance in FIN 46R.

The method of accounting applied to long-term investments, whether consolidated, equity or cost, involves an evaluation of the significant terms of each investment that explicitly grant or suggest evidence of control or influence over the operations of the investee and also includes the identification of any variable interests in which the Company is the primary beneficiary. The Company has concluded that it is the primary beneficiary of Levelland/Hockley. Results for Levelland/Hockley are accounted for on a one month lag. See Note 5 for a further discussion of the acquisition of Levelland/Hockley. Investments in businesses that the Company does not control, but has the ability to exercise significant influence over operating and financial matters, are accounted for using the equity method. Investments in which the Company does not have the ability to exercise significant influence over operating and financial matters are accounted for using the cost method.

Investments in debt securities are considered "held to maturity", "available for sale", or "trading securities" under Statement of Financial Accounting Standards (SFAS) No. 115, Accounting for Certain Investments in Debt and Equity Securities ("SFAS 115"). Under SFAS 115, held to maturity securities are required to be carried at their cost; while available-for-sale securities are required to be carried at their fair value, with unrealized gains and losses, net of income taxes, that are considered temporary in nature recorded in accumulated other comprehensive income (loss) in the accompanying consolidated balance sheets. The fair values of investments in debt securities are determined based upon market quotations and various valuation techniques, including discounted cash flow analysis.

The Company periodically evaluates its investments for impairment due to declines in market value considered to be other than temporary. Such impairment evaluations include, in addition to persistent, declining market prices, general economic and company-specific evaluations. If the Company determines that a decline in market value is other than temporary, then a charge to earnings is recorded in investment and other income (expense), net in the accompanying consolidated income statements for all or a portion of the unrealized loss, and a new cost basis in the investment is established.

**Revenue Recognition** – The Company recognizes sales of products upon receipt by the customer. The Company will honor returns from customers within seven days from the date of sale. The Company establishes liabilities for estimated returns at the point of sale.

The Company also sells product service contracts covering periods beyond the normal manufacturers' warranty periods, usually with terms of coverage (including manufacturers' warranty periods) of between 12 to 60 months. Contract revenues, net of sales commissions, are deferred and amortized on a straight-line basis over the life of the contracts after the expiration of applicable manufacturers' warranty periods. The Company retains the obligation to perform warranty service and such costs are charged to operations as incurred.

The Company recognizes amounts billed to a customer for shipping and handling as revenue and actual costs incurred for shipping as selling, general and administrative expense in the income statement. Amounts classified as selling, general and administrative expense were \$2,885,000, \$3,192,000 and \$3,281,000 in fiscal 2006, 2005 and 2004, respectively.

Merchandise sold under interest-free financing arrangements is recorded as a sale when the customer receives the merchandise. In general, the Company receives payment within three to ten business days from the third-party lender. The amount the Company receives from the third-party lender is generally discounted for the interest free financing option, which is recorded as a marketing expense in selling, general and administrative expense. The net expense for third party financing was approximately \$1,071,000, \$1,191,000, and \$1,490,000 in fiscal 2006, 2005 and 2004, respectively.

The Company recognizes income from synthetic fuel partnership sales as production is completed and collectibility of receipts is reasonably assured. The Company is paid for actual tax credits earned as the synthetic fuel is produced with the exception of production at the Pine Mountain (Gillette) facility. The Company estimates the impact of oil prices and the likelihood of any phase out of Section 29/45K credits and the resulting reduction of synthetic fuel income quarterly. See Note 4 for a further discussion of synthetic fuel partnership sales.

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

**Costs of Sales** – Cost of sales includes the cost of merchandise, inventory reserves and inventory shortage, receiving, warehousing and freight charges to get merchandise to retail stores, service repair bills as well as cash discounts and rebates. Due to this classification, the Company's gross margins may not be comparable to those of other retailers that include costs related to their distribution network in selling, general and administrative expense. The Company classifies purchasing costs as selling, general and administrative expenses.

**Selling, General and Administrative Expenses** – The Company includes store expenses (such as payroll and occupancy costs), advertising, buying, depreciation, insurance and overhead costs in selling, general and administrative expenses.

**Vendor Allowances and Advertising Costs** – Vendors often fund, up front, certain advertising costs, display allowances and exposure to general changes in pricing to customers due to technological change. Allowances are deferred as received from vendors and recognized into income as an offset to the cost of merchandise sold when the related product is sold. Advertising costs are expensed as incurred. Advertising expense was approximately \$21,560,000, \$23,238,000 and \$25,287,000 for the years ended January 31, 2007, 2006 and 2005, respectively and was not offset by vendor allowances.

**Interest Cost** – Interest expense of \$1,893,000, \$2,524,000 and \$3,061,000 for the years ended January 31, 2007, 2006 and 2005, respectively, is net of approximately \$373,000, \$15,000 and \$37,000 of interest capitalized related to equity investments, store, ethanol plant or warehouse construction. Cash paid for interest in fiscal years 2006, 2005 and 2004 was approximately \$2,118,000, \$2,525,000 and \$3,392,000, respectively; such amounts include \$0, \$0 and \$394,000 of prepayment penalties recorded as loss on early termination of debt for fiscal 2006, 2005 and 2004, respectively.

**Loss on Early Termination of Debt** – Unamortized deferred financing costs and associated prepayment penalties related to the early payoff of loans are charged to loss on early termination of debt.

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

**Store Opening and Closing Costs** – Store opening costs are expensed as incurred. Store opening costs incurred in the fiscal years ended January 31, 2007, 2006 and 2005 were not material. The costs associated with closing stores are accrued when the decision is made to close a location. Expenses related to store closing incurred in the fiscal years ended January 31, 2007, 2006 and 2005 were not material.

**Stock Compensation** – The Company has stock-based compensation plans under which stock options have been granted to directors, officers and key employees at the market price on the date of the grant.

In December 2004, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 123 (revised 2004), Share-Based Payment ("SFAS 123(R)"), which requires the recognition of the cost of employee services received in exchange for an award of equity instruments in the financial statements and measurement based on the grant-date fair value of the award. It also requires the cost to be recognized over the period during which an employee is required to provide service in exchange for the award (presumptively the vesting period). SFAS 123(R) replaces SFAS No. 123, Accounting for Stock-Based Compensation, and supersedes Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees ("APB 25"), and its related interpretations. The Company adopted SFAS 123(R) on February 1, 2006. The Company chose the Modified Prospective Application ("MPA") method for implementing SFAS 123(R). Under the MPA method, new awards, if any, are valued and accounted for prospectively upon adoption. Outstanding prior awards that are unvested as of February 1, 2006 will be recognized as compensation cost over the remaining requisite service period. Prior periods have not been restated.

Prior to its adoption of SFAS 123(R), the Company accounted for stock-based compensation in compliance with APB 25, under which no compensation cost was recognized. The Company provided disclosures based on the fair value as permitted by SFAS 123. In fiscal 2006, the adoption of SFAS 123(R) resulted in incremental stock-based compensation expense of approximately \$1,660,000 (\$1,112,000 net of tax, or \$0.11 per basic share and \$0.10 per diluted share). Prior to the adoption of SFAS 123(R), the Company reported all tax benefits resulting from the exercise of non-qualified stock options as operating cash flows in its consolidated statements of cash flows. In accordance with SFAS 123(R), the Company revised its current year statement of cash flows presentation to report the excess tax benefits from the exercise of non-qualified stock options as financing cash flows. There were approximately \$27,000 of excess tax benefits from the exercise of non-qualified stock options for the year ended January 31, 2007.

SFAS 123(R) also requires the Company to establish the beginning balance of the additional paid in capital pool ("APIC pool") related to actual tax deductions from the exercise of stock options. This APIC pool is available to absorb tax shortfalls (actual tax deductions less than recognized compensation expense) recognized subsequent to the adoption of SFAS 123(R). On November 10, 2005, the FASB issued FASB Staff Position No. FAS 123R-3, "Transition Election Related to Accounting for Tax Effects of Share-Based Payment Awards." This FASB Staff Position provided companies with the option to use either the transition method prescribed by SFAS 123(R) or a simplified alternative method described in the staff position. The Company chose to utilize the transition method prescribed by SFAS 123(R), which requires the calculation of the APIC pool as if the Company had adopted SFAS 123 for fiscal years beginning after December 15, 1994.

SFAS 123 requires the presentation of pro forma information for the comparative period prior to the adoption as if all of the Company's employee stock options had been accounted under the fair value method of the original SFAS 123. Had compensation cost for these plans been determined at fair value consistent with SFAS 123, *Accounting for Stock-Based Compensation*, the Company's net income and net income per share would have been reduced to the following pro forma amounts for the years ended January 31, 2006, and 2005 (amounts in thousands, except per-share amounts):

		2006	2005
Net income	As reported	\$ 28,269	\$ 27,549
	Compensation cost, net of tax	<u>3,590</u>	<u>3,370</u>
	Pro forma	24,679	24,179
Basic net income per share	As reported	\$ 2.64	\$ 2.49
	Compensation cost, net of tax	<u>0.33</u>	<u>0.31</u>
	Pro forma	2.31	2.18
Diluted net income per share	As reported	\$ 2.31	\$ 2.17
	Compensation cost, net of tax	<u>0.29</u>	<u>0.27</u>
	Pro forma	2.02	1.90

The fair values of options granted were estimated as of the date of grant using a Black-Scholes option pricing model with the following weighted average assumptions used for grants in the fiscal year ended January 31, 2005: risk-free interest rate of 4.7%, expected volatility of 65.4% and a weighted average stock option life of nine years. No options were granted in the fiscal years ended January 31, 2007 or January 31, 2006. In accordance with the provisions of SFAS 123, the fair value method of accounting was not applied to options granted prior to February 1, 1995 in estimating the pro forma amounts.

The following table summarizes options granted, exercised and canceled or expired during the fiscal year ended January 31, 2007:

		2007		
	Shares (000's)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (000's)
Outstanding—Beginning of year	4,674	\$ 8.15		
Granted	-	-		
Exercised	(323)	7.69		
Canceled or expired	<u>(14)</u>	<u>12.65</u>		
Outstanding—End of year	<u>4,337</u>	<u>\$ 8.18</u>	<u>3.8</u>	<u>\$ 36,018</u>
Exercisable—End of year	<u>4,007</u>	<u>\$ 7.81</u>	<u>3.5</u>	<u>\$ 34,753</u>

The total intrinsic value of options exercised during fiscal 2006, 2005 and 2004, was approximately \$3.0 million, \$9.1 million and \$8.6 million, respectively, resulting in tax deductions to realize benefits of approximately \$1.0 million, \$2.2 million and \$3.0 million, respectively.

At January 31, 2007, there was approximately \$2.8 million (pre-tax) of unrecognized compensation cost related to nonvested stock options, which is expected to be recognized over a weighted average period of 2.0 years.

**Extended Service Contracts** – Extended service contract revenues, net of sales commissions, are deferred and amortized on a straight-line basis over the life of the contracts after the expiration of applicable manufacturers' warranty periods. Terms of coverage, including the manufacturers' warranty periods, are usually for periods of 12 to 60 months. Extended service contract revenues represented 3.4%, 2.9% and 3.4% of net sales and revenue for fiscal 2006, 2005 and 2004, respectively. Service contract repair costs are charged to operations as incurred.

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

**Discontinued Operations** –The Company classifies closed or sold stores in discontinued operations when the operations and cash flows of the store have been (or will be) eliminated from ongoing operations and when the Company will not have any significant continuing involvement in the operation of the store after disposal. To determine if cash flows had been or would be eliminated from ongoing operations, the Company evaluates a number of qualitative and quantitative factors, including, but not limited to, proximity to remaining open stores and estimates of sales migration from the closed store to any stores remaining open. The estimated sales migration is based on the Company's historical estimates of sales migration upon opening a new store in a similar market and geographical considerations. For purposes of reporting the operations of stores meeting the criteria for discontinued operations, the Company reports net sales and revenue, gross profit and related selling, general and administrative expenses that are specifically identifiable to those stores operations as discontinued operations. Certain corporate level charges, such as general office expense, certain interest expense, and other "fixed" expenses are not allocated to discontinued operations because the Company believes that these expenses are not specific to the store's operations.

**New Accounting Pronouncements** – In May 2005, the Financial Accounting Standards Board ("FASB") issued SFAS No. 154, Accounting Changes and Error Corrections – A Replacement of APB Opinion No. 20 and SFAS No. 3 ("SFAS 154"). SFAS 154 requires retrospective application to prior periods' financial statements for a change in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of the change. Additionally, retrospective application is not required when explicit transition requirements specific to newly adopted accounting principles exist. Retrospective application requires the cumulative effect of the change on periods prior to those presented to be reflected in the carrying amounts of assets and liabilities as of the beginning of the first period presented and the offsetting adjustments to be recorded to opening retained earnings. SFAS 154 retains the guidance contained in APB Opinion No. 20 for reporting both the correction of an error in previously issued financial statements and a change in accounting estimate. The Company adopted the provisions of SFAS 154, as applicable, at the beginning of fiscal 2006, and its adoption had no effect on the Company's financial condition or results of operations.

In July 2006, the FASB issued FASB Interpretation No. 48 ("FIN 48") "Accounting for Uncertainty in Income Taxes" which prescribes a recognition threshold and measurement process for recording in the financial statements uncertain tax positions taken or expected to be taken in a tax return. Additionally, FIN 48 provides guidance on the derecognition, classification, accounting in interim periods and disclosure requirements for uncertain tax positions. The provisions of FIN 48 will be effective for the Company beginning February 1, 2007. The Company expects the adoption of FIN 48 to reduce beginning retained earnings by less than \$1 million.

In September 2006, the FASB issued SFAS No. 157, Fair Value Measurements, ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with generally



accepted accounting principles, and expands disclosures about fair value measurements. This statement does not require any new fair value measurements; rather, it applies to other accounting pronouncements that require or permit fair value measurements. The provisions of this statement are to be applied prospectively as of the beginning of the fiscal year in which this statement initially applies, with any transition adjustment recognized as a cumulative-effect adjustment to the opening balance of retained earnings. The provisions of SFAS 157 are effective for the fiscal years beginning after November 15, 2007. The Company anticipates adopting this standard as of February 1, 2008. The Company has not determined the effect, if any, the adoption of this statement will have on its financial condition or results of operations.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108 ("SAB 108"), "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements." SAB 108 provides interpretative guidance on the process of quantifying financial statement misstatements and is effective for fiscal years ending after November 15, 2006. The Company applied the provisions of SAB 108 in the third quarter of fiscal 2006 and there was no impact to the financial statements.

## **2. ACCOUNTING CHANGES**

During the fourth quarter of fiscal 2006, the Company changed its method of accounting for the inventory of an acquired subsidiary, Kelly & Cohen Appliances, Inc. ("K&C"). K&C inventory was historically valued at the lower of cost or market using the last-in, first-out ("LIFO") method. The Company changed its method of accounting for the inventory of K&C from the LIFO method to the first-in, first-out ("FIFO") method. The Company believes the FIFO method is preferable because it conforms all of the Company's inventory to a single costing method and it is comparable with its major competitors. In accordance with FAS 154, "Accounting Changes and Error Corrections" (FAS 154), the change from the LIFO method has been applied retrospectively. However, the change to the FIFO method for the K&C inventory does not result in either a current period or retrospective adjustment to any historical consolidated balance sheets, statements of income or statements of cash flow as the lower of cost or market inventory value using the LIFO method has been equivalent to the lower of cost or market inventory value using the FIFO method for all periods presented.

## **3. INVESTMENTS**

The Company has debt and equity investments. The debt investments are accounted for under FAS 115, "Accounting for Certain Investments in Debt and Equity Securities" (FAS 115) while the equity investments are accounted for under Accounting Principles Board Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock" (APB 18).

The following tables summarize investments at January 31, 2007 and 2006 (amounts in thousands):

**Debt Securities January 31, 2007**

Investment	Coupon Rate	Maturity	Classification	Fair Market Value	Carrying Amount
Federal National Mortgage Association Note	5.04%	2/16/2007	Held to Maturity	\$ 1,473	\$ 1,473
Millennium Ethanol, LLC Convertible Note	15.60%	4/1/2015	Available for Sale	<u>14,000</u>	<u>14,000</u>
Total Debt Securities				<u>\$ 15,473</u>	<u>\$ 15,473</u>

**Debt Securities January 31, 2006**

Investment	Coupon Rate	Maturity	Classification	Fair Market Value	Carrying Amount
Federal Home Loan Bank Note	3.95%	2/10/2006	Held to Maturity	\$ <u>1,406</u>	\$ <u>1,406</u>
Total Debt Securities				<u>\$ 1,406</u>	<u>\$ 1,406</u>

There were no realized or unrealized holding gains or losses in fiscal 2006 and 2005.

On March 17, 2006, the Company entered into an agreement to purchase a note in the principal amount of \$14 million to be issued by Millennium Ethanol, LLC ("Millennium") which has commenced construction of an ethanol producing facility in Marion, South Dakota. The facility is expected to have a design capacity of 100 million gallons annually. The Company funded the note on December 18, 2006. The note agreement provides the Company rights to purchase a minority equity interest in Millennium in exchange for the note. Monthly payments of principal and interest are scheduled to begin on the earlier of the date the ethanol plant is certified ready for production or April 1, 2008. Accrued interest receivable was \$256,000 at January 31, 2007.

The Company has \$933,000 and \$912,000 at January 31, 2007 and 2006, respectively, on deposit with the Florida Department of Financial Services to secure its obligation to fulfill future obligations related to extended warranty contracts sold in the state of Florida. The deposits earned 5.7% and 3.2% at January 31, 2007 and 2006, respectively.

**Equity Securities January 31, 2007:**

Entity	Ownership Percentage	Carrying Amount	Initial Investment
Big River Resources, LLC	4.3%	\$ 5,499	\$ 5,000
Patriot Renewable Fuels, LLC	23.3%	<u>16,200</u>	<u>16,000</u>
Total Equity Securities		<u>\$21,699</u>	<u>\$ 21,000</u>

On October 1, 2006, the Company entered into an agreement to invest \$20 million in Big River Resources, LLC ("Big River"). Big River is an Iowa limited liability company and holding company for several entities including Big River Resources West Burlington, LLC which presently operates a 52 million gallon ethanol manufacturing facility. The Company has funded \$5 million of this investment in exchange for a 4.3% ownership interest. On January 25, 2007, the Company advanced an additional \$5.0 million to Big River Resources, LLC (see Note 6). This investment was effective February 1, 2007 and increased the Company's ownership percentage from 4.3% to 6.9%. The remaining \$10 million investment is expected to occur in fiscal 2007. The Company's final ownership percentage will be determined once Big River has obtained all funding. During fiscal 2006, the Company recorded income of \$499,000 as its share of earnings from Big River.

On June 8, 2006, the Company entered into an agreement to invest \$16 million in Patriot Renewable Fuels, LLC ("Patriot") which has commenced construction of an ethanol producing facility in Annawon, Illinois. The facility is expected to have a design capacity of 100 million gallons annually. The Company funded this investment on December 4, 2006 in exchange for a 23.3% ownership interest. Patriot is a development stage enterprise; the Company has capitalized interest of \$200,000 at January 31, 2007 as Patriot is constructing its ethanol plant.

**4. SYNTHETIC FUEL LIMITED PARTNERSHIPS**

During fiscal 1998, the Company invested in two limited partnerships that produce synthetic fuels. The limited partnerships earned Federal income tax credits under Section 29/45K of the Internal Revenue Code based upon the quantity and content of synthetic fuel production and sales. Under current law, credits under Section 29/45K are available for qualified fuels sold before January 1, 2008 (see Note 16). The Company accounts for its share of the income tax credits as a reduction of the income tax provision in the period earned and such credits totaled approximately \$200,000, \$6,400,000, and \$8,000,000 in fiscal 2006, 2005 and 2004, respectively (see Note 14).

Effective February 1, 1999, the Company sold a 13% interest in Colona Synfuel Limited Partnership, L.L.L.P (Colona) reducing its initial 30% ownership interest to 17%. The Company expects to receive cash payments from the sale on a quarterly basis through December 31, 2007, subject to production levels. These payments are contingent upon and equal to 75% of the federal income tax credits attributable to the 13% interest sold and are subject to certain annual limitations, as specified in the sale agreement. The Company earned and reported as income approximately \$1.9 million, \$8.5 million and \$7.2 million for fiscal years 2006, 2005 and 2004, respectively. The maximum that can be received for calendar 2007 is approximately \$9.5 million.

Effective July 31, 2000, the Company sold an additional portion of its interest in the Colona partnership, reducing its ownership percentage from 17% to 8%. The Company expects to receive payments from the sale on a quarterly basis through December 31, 2007, subject to production levels. These payments are contingent upon and equal to the greater of 82.5% of the federal income tax credits attributable to the 9% interest sold subject to annual limitations or 74.25% of the federal income tax credits attributable to the 9% interest sold with no annual limitations. The amount earned and reported as income was approximately \$1.8 million, \$7.6 million and \$5.8 million for fiscal 2006, 2005 and 2004, respectively.

Effective May 31, 2001, the Company sold its remaining 8% ownership in the Colona partnership. The Company expects to receive payments from the sale on a quarterly basis through December 31, 2007, subject to production levels. These payments are contingent upon and equal to the greater of 82.5% of the federal income tax credits attributable to the 8% interest sold, subject to annual limitations or 74.25% of the federal income tax credits attributable to the 8% interest sold with no annual limitations. The amount earned and reported as income was approximately \$1.6 million, \$6.7 million and \$5.1 million for fiscal 2006, 2005 and 2004, respectively.

Effective October 1, 2005, the Company sold its entire ownership interest in Somerset Synfuel, L.P., a limited partnership that owned two synthetic fuel facilities. The Company received \$1.2 million, net of commissions, at closing along with a secured contingent payment note that could provide additional investment income. The Company expects to receive quarterly payments through 2007 equal to 80% of the Section 29/45K tax credits attributable to the ownership interest sold, subject to production levels. The amount earned and reported as income was approximately \$4.4 million and \$1.6 million for fiscal 2006 and 2005, respectively. With this sale, the Company has divested all of its ownership interests in facilities that produce synthetic fuel which qualifies for Section 29/45K tax credits.

The IRS has completed an audit on the Colona partnership. The audit was finalized in February 2004 and a closing agreement was signed with the IRS with no impact on tax credits generated. In June 2004, the IRS concluded its examination of the Somerset partnership's Section 29/45K federal income tax credits for calendar year 2001 reporting no changes in the credits. In January 2005, the IRS concluded its examination of the Company's federal tax return for the year ended January 31, 2002 with no changes in taxable income for that year.

Income from synthetic fuel investments also includes income related to the sale of the Company's membership interest in the limited liability company that owned a synthetic fuel facility in Gillette, Wyoming. The Company received \$2.8 million (resulting in \$0.5 million in pre tax investment income) at the time of sale on March 30, 2004 along with a secured contingent payment note that could provide additional investment income. The facility resumed commercial operations during the second quarter of fiscal 2005; as such, the Company received \$3.5 million as a one-time payment per the terms of the purchase agreement. In addition, the Company is eligible to receive \$1.50 per ton of "qualified production" produced by the facility and sold through 2007. The plant was subsequently sold and during the third quarter of fiscal 2006, the Company modified its agreement with the owners and operators of the synthetic fuel facility. Based on the terms of the modified agreement, the Company currently is not able to determine the likelihood and timing of collecting payments related to production occurring after September 30, 2006. Thus, the Company cannot currently determine the timing of income recognition, if any, related to production occurring subsequent to September 30, 2006. The Company recognized approximately \$1.1 million and \$6.1 million of pre-tax investment income from this sale during fiscal 2006 and 2005, respectively.

## **5. BUSINESS COMBINATIONS**

On September 30, 2006, the Company acquired 47 percent of the outstanding membership units of Levelland/Hockley County Ethanol, LLC ("Levelland/Hockley"). Levelland/Hockley is a development

stage entity that has commenced construction of an ethanol production facility in Levelland, Texas, which will have a design capacity of 40 million gallons of ethanol annually. The purchase, along with the Company's \$5 million convertible secured promissory note investment, enables the Company to secure a majority equity interest in Levelland/Hockley.

The results of Levelland/Hockley's operations have been included in the consolidated financial statements subsequent to the acquisition date and are included in the Company's alternative energy segment. The Company has funded the majority of the at risk equity, therefore, under FIN 46R, the Company is considered to be the primary beneficiary. The aggregate purchase price was \$11.5 million, all of which was cash.

The acquisition was recorded by allocating the total purchase price to the assets acquired, including intangible assets, and liabilities assumed, based on their estimated fair values at the acquisition date. The excess of the cost of the acquisition over the net amounts assigned to the fair values of the assets acquired and liabilities assumed was recorded as goodwill. The acquired goodwill of \$1.3 million was the only change in goodwill for the years ended January 31, 2007, 2006 and 2005.

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition:

(In thousands)

Cash	\$ 13,165
Accrued interest receivable	24
Property, plant and equipment	595
Prepaid loan fees	3,200
Deposits	5,220
Goodwill	<u>1,322</u>
Total assets acquired	23,526
Current liabilities	(577)
Minority interest	<u>(11,449)</u>
Net purchase price	<u>\$ 11,500</u>

Prepaid loan fees and have an estimated useful life of 6 years. None of the goodwill is expected to be deductible for income tax purposes.

The unaudited financial information in the table below summarizes the combined results of operations of the Company and Levelland/Hockley, on a pro forma basis, as though the companies had been combined as of the beginning of each of the periods presented (in thousands, except per share amounts):

	<b>Years Ended</b>	
	<b><u>January 31,</u></b>	
	<b><u>2007</u></b>	<b><u>2006</u></b>
Net sales and revenue	\$347,334	\$374,451
Net income	10,871	27,870
Basic net income per share	1.06	2.61
Diluted net income per share	0.94	2.28

The pro forma financial information is presented for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place at the

beginning of each of the periods presented. The pro forma financial information for all periods presented includes adjustments to interest income and expense and related income tax effects.

#### 6. OTHER ASSETS

The components of other assets at January 31, 2007 and 2006 are as follows (amounts in thousands):

	<u>January 31,</u>	
	<u>2007</u>	<u>2006</u>
Prepaid loan fees	\$ 4,377	646
Advance equity investment	5,000	-
Other	<u>155</u>	<u>237</u>
Total	9,532	883
Less current portion	<u>780</u>	<u>123</u>
Long term	<u>\$ 8,752</u>	<u>\$ 760</u>

Advance equity investment represents a payment made to Big River Resources, LLC in January 2007, and effective February 1, 2007; this increased the Company's ownership percentage in Big River from 4.3% to 6.9%. Prepaid loan fees represent amounts paid to obtain both mortgage debt and borrowings under the Company's and Levelland/Hockley's line of credit. Such amounts are amortized as interest expense. Future amortization expense is as follows (amounts in thousands):

<u>Year Ended January 31,</u>	<u>Amortization</u>
2008	\$ 780
2009	984
2010	830
2011	632
2012	579
Thereafter	<u>572</u>
Total	<u>\$ 4,377</u>

#### 7. NET INCOME PER SHARE FROM CONTINUING OPERATIONS

The Company reports net income per share in accordance with SFAS No. 128, "Earnings per Share". Basic net income per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during the year. Diluted net income per share is computed by dividing net income available to common shareholders by the weighted average number of shares outstanding and dilutive common share equivalents during the year. Common share equivalents for each year include the number of shares issuable upon the exercise of outstanding options, less the shares that could be purchased with the proceeds from the exercise of the options, based on the average trading price of the Company's common stock for fiscal 2006, 2005 and 2004.

The following table reconciles the basic and diluted net income per share from continuing operations computations for each year presented for the years ended January 31, 2007, 2006, and 2005 (amounts in thousands, except per-share amounts):

	<u>2007</u>		
	Income	Shares	Per Share
Basic net income per share from continuing operations	\$ 10,865	10,291	\$ 1.06
Effect of stock options		<u>1,285</u>	
Diluted net income per share from continuing operations	<u>\$ 10,865</u>	<u>11,576</u>	<u>\$ 0.94</u>
	<u>2006</u>		
	Income	Shares	Per Share
Basic net income per share from continuing operations	\$ 28,814	10,688	\$ 2.69
Effect of stock options		<u>1,532</u>	
Diluted net income per share from continuing operations	<u>\$ 28,814</u>	<u>12,220</u>	<u>\$ 2.36</u>
	<u>2005</u>		
	Income	Shares	Per Share
Basic net income per share from continuing operations	\$ 28,355	11,081	\$ 2.56
Effect of stock options		<u>1,633</u>	
Diluted net income per share from continuing operations	<u>\$ 28,355</u>	<u>12,714</u>	<u>\$ 2.23</u>

For the years ended January 31, 2007, 2006 and 2005, a total of 468,779, 296,702 and 325,136 shares, respectively, subject to outstanding options were not included in the common equivalent shares outstanding calculation as the exercise prices were above the average trading price of the Company's common stock for those periods. Equivalent shares information herein was also used for purposes of determining earnings per share related to discontinued operations.

#### 8. SALE AND LEASEBACK TRANSACTION

On July 28, 2006, the Company completed a transaction for the sale and leaseback of one of its stores under an initial three-year lease term. A pre-tax financial statement gain of \$1.7 million (net of expenses) resulted from this sale. The Company has also deferred \$0.6 million, which represents the present value of the minimum lease payments and will amortize this deferred gain as a reduction to lease expense over the lease term. The lease has been accounted for as an operating lease.

#### 9. COMMON STOCK

During the years ended January 31, 2007, 2006 and 2005, the Company purchased 0 shares, 2,088,671 shares and 901,529 shares, respectively, of its common stock for \$0, \$30,186,000 and \$12,174,000, respectively. Included in these amounts are shares the Company received totaling 0, 132,271 and 184,094 for the years ended January 31, 2007, 2006 and 2005, respectively, as tenders of the exercise price of stock options exercised by the Company's Chief Executive Officer, all pursuant to the Stock-for-Stock and Cashless Option Exercise Rules and Procedures adopted by the Company on June 4, 2001. The cost of these shares, determined as the fair market value on the date they were tendered, was approximately \$0, \$1,872,000 and \$2,800,000 for the years ended January 31, 2007, 2006 and 2005,

respectively. At January 31, 2007, the Company was authorized by its Board of Directors to purchase, in open market transactions, an additional 496,645 shares of its common stock.

#### 10. REVOLVING LINE OF CREDIT

The \$115,000,000 revolving credit agreement is with four banks and expires on September 14, 2009. Amounts available for borrowing under the loan agreement are subject to a borrowing base equal to the sum of 85% of net appraised liquidation value of eligible inventory, 85% of eligible receivables and 60% of the fair market value of certain real estate assets. Borrowings accrue interest at prime minus 0.5% or LIBOR plus 1.75%. Borrowings are guaranteed by the Company and are presently secured by all of the Company's inventory, receivables, certain real estate assets and the capital stock of the Company's subsidiaries. Aggregate commitments under the loan agreement may be increased by up to an additional \$50,000,000. The loan agreement does not contain any financial covenants. The loan agreement requires the maintenance of excess borrowing availability of 10% of the borrowing base, contains covenants limiting indebtedness, liens, mergers and permitted acquisitions, asset divestitures, dividends, loans, investments and transactions with affiliates, and contains customary default provisions including, but not limited to, failure to pay interest or principal when due and failure to comply with covenants. The Company was in compliance with all covenants as of January 31, 2007.

There were no borrowings outstanding on the line of credit at January 31, 2007 or January 31, 2006. A total of approximately \$52.2 million was available at January 31, 2007, net of one letter of credit outstanding of \$0.9 million at that time.

Borrowing levels vary during the course of a year based upon seasonal working capital needs. The maximum direct borrowings outstanding during fiscal 2006 were approximately \$3.2 million. The weighted average interest rate was 7.4% (261.3% including commitment fees) for fiscal 2006.

#### 11. LONG-TERM MORTGAGE DEBT

Long-term mortgage debt consists of notes payable secured by certain land, buildings and leasehold improvements. Interest rates ranged from 3.7% to 8.5% in fiscal years 2006 and 2005. Principal and interest are payable monthly over terms that generally range from 5 to 15 years. The following provides information on rates segregated as fixed or variable and by term for fiscal 2006 and fiscal 2005:

		Fiscal 2006	
Interest Rates	Maturity		Balance (in thousands)
	Variable		
7.07% - 8.00%	Within five years		\$ <u>3,642</u>
	Fixed		
6.75% - 8.50%	Within five years		\$ 5,790
3.70% - 8.40%	Five to ten years		22,264
7.75% - 7.95%	Ten to fifteen years		<u>2,218</u>
	Total fixed		<u>\$ 30,272</u>



Fiscal 2005		
Interest Rates	Maturity	Balance (in thousands)
	Variable	
6.26% - 7.25%	Within five years	\$ 4,932
7.75%	Five to ten years	<u>782</u>
	Total variable	<u>\$ 5,714</u>
	Fixed	
5.75% - 8.50%	Within five years	\$ 5,139
3.70% - 8.40%	Five to ten years	12,157
6.85%	Ten to fifteen years	<u>841</u>
	Total fixed	<u>\$ 18,137</u>

Maturities of long-term debt are as follows (amounts in thousands):

Years Ending January 31,	
2008	\$ 2,678
2009	3,420
2010	4,042
2011	4,768
2012	3,161
Thereafter	<u>15,845</u>
	<u>\$33,914</u>

In fiscal 2005, the Company paid off approximately \$6.9 million in mortgage debt prior to maturity. As a result, the Company expensed unamortized financing cost of approximately \$22,000 as loss on early termination of debt.

In fiscal 2004, the Company paid off approximately \$22.0 million in mortgage debt prior to maturity. As a result, the Company expensed unamortized financing cost and prepayment penalties of approximately \$679,000 as loss on early termination of debt.

The fair value of the Company's long-term debt at January 31, 2007 and 2006 was approximately \$34.1 million and \$24.1 million, respectively.

On September 27, 2006, Levelland/Hockley entered into a construction and term loan agreement with Merrill Lynch Capital ("MLC") for a principal sum up to \$43.7 million. Advances are available monthly at a minimum of \$2 million each, with usage restrictions limited to actual costs incurred for items agreed upon. The construction and term loan bears interest at a floating rate of 400 basis points above the LIBO rate, adjusted monthly through the maturity date. The construction loan will be converted into a term loan on March 31, 2008, or earlier if certain terms of the construction and term loan agreement are fulfilled.

Interest accrues upon the initial draw request through the conversion date, payments will be required monthly for accrued interest only. Beginning with the first monthly payment date following the conversion date, payments will be due in 59 equal monthly payments of principal and accrued interest

with the principal portion calculated based on a 120 month amortization schedule. One final installment will be required on the maturity date for the remaining unpaid principal balance with accrued interest. The maturity date for the term loan will be the fifth anniversary of the conversion date.

The construction and term loan is secured by all property of Levelland/Hockley. As of January 31, 2007, no amounts were drawn on the construction and term loan. Levelland/Hockley paid approximately \$3.2 million for various fees associated with the construction and term loan agreement. This is recorded as prepaid loan fees and will be amortized ratably over the loan term.

## 12. EMPLOYEE BENEFITS

**Stock Option Plans** – The Company maintains the REX Stores Corporation 1995 Omnibus Stock Incentive Plan and the REX Stores Corporation 1999 Omnibus Stock Incentive Plan (the Omnibus Plans). Under the Omnibus Plans, the Company may grant to officers and key employees awards in the form of non-qualified stock options, stock appreciation rights, restricted stock, other stock-based awards and cash incentive awards. The Omnibus Plans also provide for yearly grants of non-qualified stock options to directors who are not employees of the Company. The exercise price of each option must be at least 100% of the fair market value of the Company's common stock on the date of grant. A maximum of 4,500,000 shares of common stock are authorized for issuance under each of the Omnibus Plans. On January 31, 2007, 108,011 and 2,038,032 shares remain available for issuance under the 1995 and 1999 Plans, respectively.

On October 14, 1998, the Company's Board of Directors approved a grant of non-qualified stock options to two key executives for 1,462,500 shares at an exercise price of \$4.42, which represented the market price on the date of grant. These options are fully vested as of December 31, 2003. On January 31, 2007, 904,332 of these options remained outstanding.

On April 17, 2001, the Company's Board of Directors approved a grant of non-qualified stock options to two key executives for 1,462,500 shares at an exercise price of \$8.01, which represented the market price on the date of grant. These are fully vested as of December 31, 2005. All of these options remained outstanding at January 31, 2007.

On May 26, 2005, the Company's Board of Directors approved accelerating the vesting of out-of-the-money, unvested stock options held by current employees, including non-director executive officers. An option was considered out-of-the-money if the stated option exercise price was greater than \$13.82, which was the closing price of the Company's common stock on May 26, 2005. As a result, options to purchase approximately 118,000 shares, including options to purchase approximately 60,000 shares held by executive officers, became immediately exercisable. As a result of the acceleration, stock option expense was reduced by approximately \$723,000, (\$470,000, net of tax) during fiscal 2006 and will be reduced by approximately \$181,000, (\$118,000, net of tax) during fiscal 2007.

The following summarizes stock option activity for the years ended January 31, 2007, 2006 and 2005 (amounts in thousands, except per-share amounts):

	2007		2006		2005	
	Shares (000's)	Weighted Average Exercise Price	Shares (000's)	Weighted Average Exercise Price	Shares (000's)	Weighted Average Exercise Price
Outstanding—Beginning of year	4,674	\$ 8.15	5,751	\$ 7.70	6,391	\$ 7.24
Granted	-	-	-	-	369	12.42
Exercised	(323)	7.69	(1,016)	5.29	(981)	6.37
Canceled or expired	(14)	12.65	(61)	12.75	(28)	12.36
Outstanding—End of year	<u>4,337</u>	<u>\$ 8.18</u>	<u>4,674</u>	<u>\$ 8.15</u>	<u>5,751</u>	<u>\$ 7.70</u>
Exercisable—End of year	<u>4,007</u>	<u>\$ 7.81</u>	<u>4,082</u>	<u>\$ 7.62</u>	<u>4,183</u>	<u>\$ 6.52</u>
Weighted average fair value of options granted	-	-	-	-	\$ 9.51	-

Price ranges and other information for stock options outstanding as of January 31, 2007 were as follows (amounts in thousands, except per share amounts):

Range of Exercise Prices	Outstanding			Exercisable	
	Shares (000's)	Weighted Average Exercise Price	Weighted Average Remaining Life	Shares (000's)	Weighted Average Exercise Price
\$4.42 to \$6.63	1,390	\$ 4.64	1.60	1,390	\$ 4.64
\$8.01 to \$12.02	2,043	8.30	4.07	2,043	8.30
\$12.04 to \$16.04	904	13.32	6.46	574	13.70
	<u>4,337</u>	<u>\$ 8.18</u>	<u>3.78</u>	<u>4,007</u>	<u>\$ 7.81</u>

**Profit Sharing Plan** – The Company has a qualified, noncontributory profit sharing plan (the "Plan") covering full-time employees who meet certain eligibility requirements. The Plan also allows for additional 401(k) saving contributions by participants, along with certain company matching contributions. Aggregate contributions to the Plan are determined annually by the Board of Directors and are not to exceed 15% of total compensation paid to all participants during such year. The Company contributed approximately \$26,000, \$27,000 and \$30,000 for the years ended January 31, 2007, 2006 and 2005, respectively, under the Plan.

### 13. LEASES AND COMMITMENTS

The Company is committed under operating leases for certain retail store locations. The lease agreements are for varying terms through 2012 and contain renewal options for additional periods. Real estate taxes, insurance and maintenance costs are generally paid by the Company. Contingent rentals

based on sales volume are not significant. Certain leases contain scheduled rent increases and rent expense is recognized on a straight-line basis over the term of the leases.

On August 30, 1989, the Company completed a transaction for the sale and leaseback of the corporate office, distribution center and certain stores under an initial 15-year lease term. This transaction resulted in a pre-tax financial statement gain of \$15,600,000, which was deferred and amortized as a reduction to lease expense over the initial term of the leases, which ended August 31, 2004.

During the year ended January 31, 2002, the Company repurchased the building, which contains the corporate office, distribution center and retail store in Dayton, Ohio for approximately \$6.0 million. For financial statement purposes, the purchase of this facility resulted in approximately \$600,000 of the deferred gain associated with the sale/leaseback being recorded as a reduction in the carrying value of the property.

On July 28, 2006, the Company completed a transaction for the sale and leaseback of one of its stores under an initial three-year lease term. A pre-tax financial statement gain of \$1.7 million (net of expenses) resulted from this sale. The Company has also deferred \$0.6 million, which represents the present value of the minimum lease payments and will amortize this deferred gain as a reduction to lease expense over the lease term. The lease has been accounted for as an operating lease.

The following is a summary of rent expense under operating leases (amounts in thousands):

Years Ended January 31	Minimum Rentals	Gain Amortization	Sublease Income	Total
2007	\$ 4,843	\$ (50)	\$ (218)	\$ 4,575
2006	5,104	-	(133)	4,971
2005	6,169	(300)	(290)	5,579

The Company is secondarily liable under certain lease arrangements when there is a sublessee. These arrangements arise out of the normal course of business when the Company decides to close stores prior to lease expiration. As of January 31, 2007, future minimum annual rentals on all leased locations and sublease income are as follows (amounts in thousands):

Years Ended January 31	Minimum Rentals	Sublease Income
2008	\$ 4,212	\$ 221
2009	3,205	215
2010	1,699	135
2011	495	70
2012	<u>206</u>	<u>5</u>
	<u>\$ 9,817</u>	<u>\$ 646</u>

At January 31, 2007, the Company has lease agreements, as landlord, for all or portions of 23 owned properties. At 16 of these locations, the Company does not operate a retail store. The Company operates a store and leases a portion of the properties to tenants at seven properties. Subsequent to January 31, 2007, the Company closed one store, which remains partially leased to a tenant. All of the leases are accounted for as operating leases. The Company recognized lease income of approximately \$1,778,000, \$942,000 and \$809,000 in fiscal years 2006, 2005 and 2004, respectively.

As of January 31, 2007, future minimum annual rentals on such leases are as follows (amounts in thousands):

<b>Years Ended January 31</b>	<b>Minimum Rentals</b>
2008	\$ 1,670
2009	1,549
2010	1,452
2011	1,221
2012	514
Thereafter	<u>1,047</u>
	<u>\$ 7,453</u>

#### **OTHER COMMITMENTS**

On May 26, 2006, the Company entered into an agreement to invest \$24.9 million in One Earth Energy, LLC ("One Earth"), a limited liability company that intends to construct and, subsequently, operate an ethanol producing facility. The equity investment is expected to occur before June 30, 2007, subject to One Earth obtaining additional financing and certain other conditions.

On October 1, 2006, the Company entered into an agreement to invest \$20 million in Big River Resources, LLC ("Big River"). The Company has funded \$5 million of this investment in exchange for a 4.3% ownership interest and made an advance payment of \$5 million for an additional ownership interest of 2.6%, effective February 1, 2007.

In June 2006, Levelland/Hockley entered into an agreement with a designer/builder for the construction of Levelland's ethanol plant. The designer/builder is responsible for all engineering, labor, materials and equipment to design, construct, startup and achieve guaranteed performance criteria of the plant. The contract price is \$58 million, subject to adjustments as provided by the general conditions of the agreement.

On July 25, 2002 Levelland/Hockley entered into an agreement with RIO Technical Services, Inc. ("RIO") regarding the planning, financing, design, construction, and operation of Levelland's ethanol plant. RIO is a related party, as certain officers of RIO own equity interests in Levelland/Hockley. The Company estimates that fees for these services will be approximately \$4 million. Of this amount, \$1 million was paid and recorded as construction in process at January 31, 2007.

In addition, Levelland/Hockley paid RIO approximately \$3.6 million as compensation for RIO's evaluation and assistance for Levelland/Hockley to obtain financing. These costs are recorded as either prepaid loan fees or equity issuance costs.

#### 14. INCOME TAXES

The provision (benefit) for income taxes from continuing operations for the years ended January 31, 2007, 2006 and 2005 consists of the following (amounts in thousands):

	2007	2006	2005
Federal:			
Current	\$1,339	\$ 7,561	\$ 8,420
Deferred	<u>4,109</u>	<u>(1,520)</u>	<u>(15,239)</u>
	<u>5,448</u>	<u>6,041</u>	<u>(6,819)</u>
State and Local:			
Current	81	352	499
Deferred	<u>(154)</u>	<u>1,035</u>	<u>(319)</u>
	<u>(73)</u>	<u>1,387</u>	<u>180</u>
	<u>\$5,375</u>	<u>\$ 7,428</u>	<u>\$ (6,639)</u>

The tax effects of significant temporary differences representing deferred tax assets and liabilities are as follows as of January 31, 2007 and 2006 (amounts in thousands):

	2007	2006
Assets:		
Deferral of service contract income	\$ 8,938	\$ 8,311
Accrued liabilities	1,808	2,075
Inventory accounting	2,693	3,968
Income from synthetic fuel investments	1,297	3,033
Installment sales of limited partnerships	(2,614)	(1,781)
Depreciation	968	1,627
AMT credit carryforward	22,322	23,006
Valuation allowance	(959)	(1,021)
Other items	<u>984</u>	<u>174</u>
Total net future income tax benefits	<u>\$35,437</u>	<u>\$39,392</u>

The Company paid approximately \$5,231,000 and \$4,875,000 of alternative minimum tax ("AMT") for the years ended January 31, 2006 and 2005, respectively. The AMT liability in excess of the regular tax liability results in an AMT credit carryforward, which can be used to offset future regular income tax liabilities subject to certain limitations. Therefore, for financial statement purposes, the required AMT payment has been recorded as an AMT credit carryforward. The AMT credit carryforwards have no expiration date.

The Company has state net operating loss carryforwards of approximately \$17.6 million, which will begin to expire in fiscal 2007.

The Company reduced the valuation allowance by \$62,000 and \$3,595,000 in fiscal 2006 and 2004, respectively. The Company established an additional valuation allowance of \$669,000 in fiscal 2005. Adjustments in fiscal 2006 and 2005 are a result of the uncertainty of realizing certain future state tax benefits. The adjustment in fiscal 2004 is a result of IRS audits being completed on certain years that the Company was uncertain as to the realization of income tax credits. The Company believes it is more likely than not that the results of future operations will generate sufficient taxable income to allow for the utilization of the remaining deferred tax assets. The Company must generate approximately \$149 million in future taxable income to fully utilize the AMT credit carryforward. If the Company is not able to generate sufficient taxable income in subsequent years to allow for the utilization of the deferred tax assets, the Company would need to provide a valuation allowance for such deferred tax assets, thus increasing income tax expense.

Since fiscal 1998, the Company has been allocated in aggregate approximately \$47.9 million in Section 29/45K tax credits from its investment in two partnerships (see Notes 4 and 16). The Internal Revenue Service (IRS) has completed an audit of the Colona partnership and a closing agreement was signed with the IRS with no impact on tax credits generated. The IRS has also audited the Somerset partnership for a certain year reporting no changes on tax credits generated for that year.

The Company paid income taxes of \$1,210,000, \$7,041,000 and \$4,809,000 in the years ended January 31, 2007, 2006 and 2005, respectively.

The effective income tax rate on consolidated pre-tax income differs from the federal income tax statutory rate for the years ended January 31, 2007, 2006 and 2005 as follows:

	2007	2006	2005
Federal income tax at statutory rate	34.0%	35.0%	35.0%
Tax credits from investment in limited partnership	(1.4)	(17.6)	(37.0)
State and local taxes, net of federal tax benefit	(0.4)	1.9	(1.3)
Net provision (reduction) in valuation allowance	0.3	1.8	(29.0)
Other	<u>0.6</u>	<u>(0.6)</u>	<u>1.7</u>
	<u>33.1%</u>	<u>20.5%</u>	<u>(30.6)%</u>

#### 15. DISCONTINUED OPERATIONS AND ASSETS HELD FOR SALE

All amounts reported as discontinued operations and assets held for sale relate to the Company's retail segment. During fiscal years 2006 and 2005, the Company closed 14 and nine stores, respectively, in vacated markets. Accordingly, those stores were classified as discontinued operations for all periods presented. Three of the closed stores are classified as assets held for sale. The Company expects to sell the assets related to these stores within the next 12 months through normal real estate channels. Subsequent to January 31, 2007, the Company closed three stores classified as discontinued operations.

Below is a table reflecting certain items of the income statement that were reclassified as discontinued operations for the years ended January 31, 2007, 2006 and 2005 (amounts in thousands):

	2007	2006	2005
Net sales and revenue	\$ 16,618	\$ 29,615	\$ 41,874
Cost of merchandise sold	12,762	22,039	31,159
Loss before benefit for income taxes	939	1,142	1,570
Benefit for income taxes	319	388	534
Gain on disposal	1,676	317	348
Provision for income taxes	570	108	118
Net income (loss)	\$ 486	\$ (545)	\$ (806)

#### 16. CONTINGENCIES

The Company owned a minority interest in two entities (Somerset and Colona) that provided Section 29/45K credits to the Company in the current and prior years. The production and sale of the synthetic fuel from these facilities qualify for tax credits under Code Section 29/45K if certain requirements are satisfied, including a requirement that the synthetic fuel differs significantly in chemical composition from the coal used to produce such synthetic fuel and that the fuel was produced from a facility that was placed in service before July 1, 1998. The amount of Section 29/45K credits that the Company is allowed to claim in any year is limited by the amount of the Company's regular income tax liability. Excess credits cannot be carried back or carried forward to offset the Company's regular tax liability in any other tax year. In addition, synthetic fuel tax credits may not be utilized to offset the Company's alternative minimum tax liability. Consequently, the Company may pay significant alternative minimum tax when utilizing synthetic fuel tax credits. To the extent the Company pays alternative minimum tax, the Company generates alternative minimum tax credits which are carried forward indefinitely. The Company has been allocated in the aggregate approximately \$47.9 million, including \$6.4 million for fiscal 2005, in Section 29/45K credits. Should the tax credits be denied on any future audit and the Company fails to prevail through the IRS or the legal process, there could be a significant tax liability owed for previously taken tax credits with a significant impact on earnings and cash flows. In the Company's opinion, the Somerset and Colona partnerships are complying with all the necessary requirements to be allowed such credits and believes it is likely, although not certain, that the partnerships will prevail if challenged by the IRS on any credits taken.

The Company sold its entire interest, through a series of transactions, in three partnerships (Colona, Gillette and Somerset) that owned synthetic fuel facilities. As such, the Company will no longer be allocated Section 29/45K tax credits after fiscal 2005. In connection with the Colona and Somerset sales, the Company receives contingent payments based upon percentages of qualified Section 29/45K credits generated. In connection with the sale of the Gillette partnership, the Company is eligible to receive contingent payments based upon the amount of "qualified production." The Company recognized \$10.8 million in fiscal 2006 from these sales. In the event that the synthetic fuel tax credits or production from the Colona, Gillette or Somerset facility is reduced, including an increase in the price of oil that could limit or eliminate synthetic fuel tax credits, the amount of proceeds realized from the sales could be significantly impacted.

As provided by the current Internal Revenue Code, the Code Section 29/45K tax credit program is expected to continue through December 31, 2007. Recent increases in the price of oil could limit the



amount of those credits or eliminate them altogether. This possibility is due to a provision of Section 29/45K that provides that if the average wellhead price per barrel for unregulated domestic crude oil for the year (the "Annual Average Price") exceeds a certain threshold value (the "Threshold Price"), the Section 29/45K tax credits are subject to phase out. For calendar year 2006, the Threshold Price was \$56.71 per barrel and the Phase Out Price was \$71.19 per barrel. The Threshold Price and the Phase Out Price are adjusted annually as a result of inflation.

The Company cannot determine the Annual Average Price for 2006 or beyond. If during 2007, oil prices remain at historically high levels or increase, the Company's synthetic fuel income may be adversely affected. Based upon the price of oil to date, the Company estimates the tax credits and related income would be subject to approximately a 40% phase out for calendar year 2006. Because synthetic fuel is not economical to produce absent the associated tax credits and the fact that the Company has no control or decision involvement with production levels, the Company cannot determine the impact of possible production reduction or elimination on the Company's financial results.

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

#### **17. SEGMENT REPORTING**

The Company has two reportable segments, consumer electronics and appliance retailing ("retail") and alternative energy. The Company evaluates the performance of each reportable segment based on segment profit. Segment profit excludes income taxes, interest expense, discontinued operations, indirect interest income and certain other items that are included in net income determined in accordance with accounting principles generally accepted in the United States of America.

Amounts in the other category below include business activities that are not separately reportable and income from synthetic fuel investments (amounts in thousands):

	<u>Years Ended January 31.</u>		
	<u>2007</u>	<u>2006</u>	<u>2005</u>
Net sales and revenues:			
Retail	\$ 347,334	\$ 374,451	\$ 358,098
Alternative energy	-	-	-
Total net sales and revenues	<u>\$ 347,334</u>	<u>\$ 374,451</u>	<u>\$ 358,098</u>
Segment profit:			
Retail segment profit	\$ 7,818	\$ 11,861	\$ 9,892
Alternative energy segment profit	168	-	-
Corporate expenses	(2,138)	(3,896)	(3,229)
Interest expense	(1,893)	(2,546)	(3,740)
Interest income	1,521	308	178
Income from synthetic fuel investments	<u>10,764</u>	<u>30,515</u>	<u>18,615</u>
Income from continuing operations before income taxes	<u>\$ 16,240</u>	<u>\$ 36,242</u>	<u>\$ 21,716</u>
Interest income:			
Retail	\$ -	\$ -	\$ -
Alternative energy	853	-	-
Unallocated	<u>1,521</u>	<u>308</u>	<u>178</u>
Total interest income	<u>\$ 2,374</u>	<u>\$ 308</u>	<u>\$ 178</u>
Depreciation and amortization expense:			
Retail	\$ 4,190	\$ 4,645	\$ 4,158
Alternative energy	-	-	-
Total depreciation and amortization expense	<u>\$ 4,190</u>	<u>\$ 4,645</u>	<u>\$ 4,158</u>
Equity in unconsolidated affiliates:			
Retail	\$ -	\$ -	\$ -
Alternative energy	<u>498</u>	<u>-</u>	<u>-</u>
Total equity in unconsolidated affiliates:	<u>\$ 498</u>	<u>\$ -</u>	<u>\$ -</u>
Additions to property and equipment:			
Retail	\$ 848	\$ 2,171	\$ 6,919
Alternative energy	<u>820</u>	<u>-</u>	<u>-</u>
Total additions to property and equipment	<u>\$ 1,668</u>	<u>\$ 2,171</u>	<u>\$ 6,919</u>
Assets:			
Retail	\$ 223,432	\$ 254,063	\$ 270,369
Alternative energy	67,653	-	-
Corporate	<u>44,123</u>	<u>41,182</u>	<u>40,582</u>
Total assets	<u>\$ 335,208</u>	<u>\$ 295,245</u>	<u>\$ 310,951</u>

	<u>Years Ended January 31,</u>		
	<u>2007</u>	<u>2006</u>	<u>2005</u>
Sales of products:			
Retail	\$ 333,661	\$ 362,482	\$ 344,993
Alternative energy	<u>-</u>	<u>-</u>	<u>-</u>
Total sales of products	\$ 333,661	\$ 362,482	\$ 344,993
Sales of services:			
Retail	\$ 13,673	\$ 11,969	\$ 13,104
Alternative energy	<u>-</u>	<u>-</u>	<u>-</u>
Total sales of services	\$ 13,673	\$ 11,969	\$ 13,104
Additions to other long lived assets:			
Retail		-	-
Alternative energy	<u>42,021</u>	<u>-</u>	<u>-</u>
Total additions to other long lived assets	\$ 42,021	-	-

Additions to other long lived assets represent primarily equity method investments and goodwill.

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

Cash, except for cash held by Levelland/Hockley is considered to be fungible and available for both corporate and segment use dependent on liquidity requirements. Cash of approximately \$17.1 million held by Levelland/Hockley will be used primarily to fund the construction of a 40 million gallon ethanol plant and to provide working capital until the plant commences operations.

#### 18. SUBSEQUENT EVENTS

On February 8, 2007, the Company entered into a Purchase and Sale Agreement with Coventry Real Estate Investments, LLC. Pursuant to the Agreement, the Company has agreed to sell 94 of its current and former store locations for approximately \$84.0 million, before selling expenses, and to leaseback a minimum of 40 of the properties for an initial lease term expiring January 31, 2010. The leases will contain renewal options for up to 15 additional years. Either party may terminate a lease after the initial six months of the initial lease term on 23 to 30 of the sites as selected by the Company.

The Company is in the process of analyzing the allocation of the purchase price to individual properties which have a carrying value of approximately \$66.5 million, thus, the resulting gain to be recognized cannot currently be determined. The Company intends to use the proceeds from the sale to pay off approximately \$17 to \$19 million in mortgage debt related to these properties, to fund its alternative energy projects and for other general corporate purposes.

Closing of the transaction is subject to customary conditions, including title commitments, surveys and, on certain properties, environmental and site inspections. Either party has the right to terminate the Agreement if a threshold number of stores, or mix of locations, is not met. The Agreement also contains customary non-solicitation provisions. The closing is scheduled to occur on or before April 30, 2007.

Subsequent to January 31, 2007, the Company closed 29 of its retail stores. Of these properties, 26 were owned and three were leased. One of the owned properties was sold; the Company intends to market the remaining 25 owned properties for lease or sale (21 are currently included in the Purchase and Sale Agreement with Coventry Real Estate Investments, LLC). Costs associated with closing the 29 retail stores were insignificant.

Effective February 1, 2007, the Company's ownership percentage in Big River Resources, LLC increased from 4.3% to 6.9% as the Company funded an equity investment of \$5 million in January 2007 resulting in the contingent commitment being reduced to \$10 million.

\* \* \* \* \*

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and Board of Directors of  
REX Stores Corporation

We have audited the accompanying consolidated balance sheets of REX Stores Corporation and subsidiaries (the "Company") as of January 31, 2007 and 2006, and the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended January 31, 2007. Our audits also included the consolidated financial statement schedules listed in the Index at Item 15. These consolidated financial statements and consolidated financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on the consolidated financial statements and consolidated financial statement schedules based on our audits.

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

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of REX Stores Corporation and subsidiaries as of January 31, 2007 and 2006, and the results of their operations and their cash flows for each of the three years in the period ended January 31, 2007, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such consolidated financial statement schedules, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

As discussed in Note 1 to the consolidated financial statements, the Company adopted the provisions of Statement of Financial Accounting Standards No. 123(R) (Revised 2004), *Shared Based Payments*, effective February 1, 2006.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of January 31, 2007, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated April 16, 2007 expressed an unqualified opinion on management's assessment of the effectiveness of the Company's internal control over financial reporting and an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Deloitte & Touche LLP

Cincinnati, Ohio

April 16, 2007

**REX STORES CORPORATION AND SUBSIDIARIES****Schedule II - VALUATION AND QUALIFYING ACCOUNTS  
FOR THE YEARS ENDED JANUARY 31, 2007, 2006 AND 2005  
(Amounts in thousands)**

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	<b>Balance Beginning of Year</b>	<b>Additions Charged to Cost and Expenses</b>	<b>Deductions Charges for Which Reserves Were Created</b>	<b>Balance End of Year</b>
2007:				
Allowance for doubtful accounts	<u>\$ 159</u>	<u>\$ 296</u>	<u>\$ 339</u>	<u>\$ 116</u>
2006:				
Allowance for doubtful accounts	<u>\$ 157</u>	<u>\$ 428</u>	<u>\$ 426</u>	<u>\$ 159</u>
2005:				
Allowance for doubtful accounts	<u>\$ 235</u>	<u>\$ 346</u>	<u>\$ 424</u>	<u>\$ 157</u>
2007:				
Inventory reserve	<u>\$ 5,211</u>	<u>\$ 2,130</u>	<u>\$ 2,234</u>	<u>\$ 5,107</u>
2006:				
Inventory reserve	<u>\$ 5,476</u>	<u>\$ 1,750</u>	<u>\$ 2,015</u>	<u>\$ 5,211</u>
2005:				
Inventory reserve	<u>\$ 5,386</u>	<u>\$ 984</u>	<u>\$ 894</u>	<u>\$ 5,476</u>

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

None

**Item 9A. Controls and Procedures**

*Evaluation of Disclosure Controls and Procedures*

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

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

*Management's Annual Report on Internal Control Over Financial Reporting*

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

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

Under the supervision and with the participation of our senior management, including our Chief Executive Officer and Chief Financial Officer, we assessed the effectiveness of our internal control over financial reporting as of January 31, 2007 based on the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based upon this assessment, our management concluded that our internal control over financial reporting was effective as of January 31, 2007 based on those criteria.

Our management's assessment of the effectiveness of our internal control over financial reporting as of January 31, 2007 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report which is included herein.

**Item 9B. Other Information**

None

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and Board of Directors of  
REX Stores Corporation

We have audited management's assessment, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting, that REX Stores Corporation and subsidiaries (the "Company") maintained effective internal control over financial reporting as of January 31, 2007, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

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

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

In our opinion, management's assessment that the Company maintained effective internal control over financial reporting as of January 31, 2007, is fairly stated, in all material respects, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of January 31, 2007, based on the criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.



We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedules as of and for the year ended January 31, 2007 of the Company and our report dated April 16, 2007 expressed an unqualified opinion on those consolidated financial statements and consolidated financial statement schedules and included an explanatory paragraph regarding the Company's adoption of Statement of Financial Accounting Standards No. 123(R) (Revised 2004), *Shared Based Payments* in 2006.

Deloitte & Touche LLP

Cincinnati, Ohio

April 16, 2007

### PART III

**Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this Item 10 is incorporated herein by reference to the Proxy Statement for our Annual Meeting of Shareholders on May 31, 2007, except for certain information concerning our executive officers which is set forth in Part I of this report.

**Item 11. Executive Compensation**

The information required by this Item 11 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on May 31, 2007 and is incorporated herein by reference.

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

The information required by this Item 12 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on May 31, 2007 and is incorporated herein by reference.

**Item 13. Certain Relationships, Related Transactions and Director Independence**

The information required by this Item 13 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on May 31, 2007 and is incorporated herein by reference.

**Item 14. Principal Accountant Fees and Services**

The information required by this Item 14 is set forth in the Proxy Statement for our Annual Meeting of Shareholders on May 31, 2007 and is incorporated herein by reference.

### PART IV

**Item 15. Exhibits and Financial Statement Schedules**

(a)(1) Financial Statements

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

Consolidated Balance Sheets as of January 31, 2007 and 2006

Consolidated Statements of Income for the years ended January 31, 2007, 2006 and 2005

Consolidated Statements of Cash Flows for the years ended January 31, 2007, 2006 and 2005

Notes to Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

(a)(2) Financial Statement Schedules

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

Schedule II - Valuation and Qualifying Accounts

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

(a)(3) Exhibits

See Exhibit Index at page 85 of this report.

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

## SIGNATURES

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

REX STORES CORPORATION

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

Date: April 16, 2007

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

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
STUART A. ROSE Stuart A. Rose	Chairman of the Board, President and Chief Executive Officer (principal executive officer)	April 16, 2007
DOUGLAS L. BRUGGEMAN Douglas L. Bruggeman	Vice President-Finance, Chief Financial Officer and Treasurer (principal financial and accounting officer)	April 16, 2007
LAWRENCE TOMCHIN Lawrence Tomchin	Director	April 16, 2007
EDWARD M. KRESS Edward M. Kress	Director	April 16, 2007
ROBERT DAVIDOFF Robert Davidoff	Director	April 16, 2007
CHARLES A. ELCAN Charles A. Elcan	Director	April 16, 2007
DAVID S. HARRIS David S. Harris	Director	April 16, 2007
MERVYN L. ALPHONSO Mervyn L. Alphonso	Director	April 16, 2007

## EXHIBIT INDEX

- (3) *Articles of incorporation and by-laws:*
- 3(a) Certificate of Incorporation, as amended (incorporated by reference to Exhibit 3(a) to Form 10-K for fiscal year ended January 31, 1994, File No. 0-13283)
  - 3(b)(1) By-Laws, as amended (incorporated by reference to Registration Statement No. 2-95738, Exhibit 3(b), filed February 8, 1985)
  - 3(b)(2) Amendment to By-Laws adopted June 29, 1987 (incorporated by reference to Exhibit 4.5 to Form 10-Q for quarter ended July 31, 1987, File No. 0-13283)
- (4) *Instruments defining the rights of security holders, including indentures:*
- 4(a) Amended and Restated Loan Agreement dated as of September 14, 2004 among Rex Radio and Television, Inc., as lead borrower, Kelly & Cohen Appliances, Inc., Rex Alabama, Inc., Rex Kansas, Inc., rexstores.com, Inc. and Stereo Town, Inc. (the "Borrowers"), the Lenders named therein, Fleet Retail Group, Inc. as agent for the Lenders and KeyBank National Association as syndication agent (incorporated by reference to Exhibit 4(a) to Form 8-K filed September 17, 2004, File No. 001-09097)
  - 4(b) First Amendment to Amended and Restated Loan Agreement and Consent Under Amended and Restated Parent Guaranty dated as of August 5, 2005 among the Borrowers, REX Stores Corporation, the Lenders named therein, Fleet Retail Group, LLC as agent for the Lenders and KeyBank National Association as syndication agent (incorporated by reference to Exhibit 4(a) to Form 10-Q for quarter ended July 31, 2005, File No. 001-09097)
  - 4(c) Second Amendment to Amended and Restated Loan Agreement dated as of January 26, 2006 among the Borrowers, REX Stores Corporation, the Lenders named therein, Bank of America, N.A. (f/k/a Fleet Retail Group, Inc.) as agent for the Lenders and KeyBank National Association as syndication agent (incorporated by reference to Exhibit 4 (c) to Form 10-K for fiscal year ended January 31, 2006, File No. 001-09097)
  - 4(d) Third Amendment to Amended and Restated Loan Agreement dated as of May 4, 2006 among the Borrowers, REX Stores Corporation, the Lenders named therein, Bank of America, N.A. (f/k/a Fleet Retail Group, Inc.) as agent for the Lenders and KeyBank National Association as syndication agent (incorporated by reference to Exhibit 4(a) to Form 10-Q for quarter ended April 30, 2006, File No. 001-09097)

- 4(e) Fourth Amendment to Amended and Restated Loan Agreement dated as of August 18, 2006 among the Borrowers, REX Stores Corporation, the Lenders named therein, Bank of America, N.A. (f/k/a Fleet Retail Group, Inc.) as agent for the Lenders and KeyBank National Association as syndication agent (incorporated by reference to Exhibit 4(a) to Form 10-Q for quarter ended October 31, 2006, File No. 001-09097)
- 4(f) Construction and Term Loan Agreement dated as of September 27, 2006 among Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., as Administrative Agent, the Lenders party thereto and Levelland/Hockley County Ethanol, LLC

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

(10) *Material contracts:*

- 10(a)\* Employment Agreement dated November 29, 2005 between Rex Radio and Television, Inc. and Stuart Rose (incorporated by reference to Exhibit 10(a) to Form 8-K filed November 30, 2005, File No. 001-09097)
- 10(b)\* Amendment No. 1 to Employment Agreement dated December 20, 2006 between Rex Radio and Television, Inc. and Stuart A. Rose
- 10(c)\* Employment agreement dated October 11, 2005 between Rex Radio and Television, Inc. and David L. Bearden (incorporated by reference to Exhibit 10(a) to Form 8-K filed October 12, 2005, File No. 001-09097)
- 10(d)\* Executive Stock Option dated October 14, 1998 granting Stuart Rose an option to purchase 500,000 shares of registrant's Common Stock (incorporated by reference to Exhibit 10.3 to Form 10-Q for quarter ended October 31, 1998, File No. 001-09097)
- 10(e)\* Executive Stock Option dated October 14, 1998 granting Lawrence Tomchin an option to purchase 150,000 shares of registrant's Common Stock (incorporated by reference to Exhibit 10.4 to Form 10-Q for quarter ended October 31, 1998, File No. 001-09097)

- 10(f)\* Executive Stock Option dated April 17, 2001 granting Stuart Rose an option to purchase 500,000 shares of registrant's Common Stock (incorporated by reference to Exhibit 10(g) to Form 10-K for fiscal year ended January 31, 2002, File No. 001-09097)
- 10(g)\* Executive Stock Option dated April 17, 2001 granting Lawrence Tomchin an option to purchase 150,000 shares of registrant's Common Stock (incorporated by reference to Exhibit 10(h) to Form 10-K for fiscal year ended January 31, 2002, File No. 001-09097)
- 10(h)\* Subscription Agreement dated December 1, 1989 from Stuart Rose to purchase 300,000 shares of registrant's Common Stock (incorporated by reference to Exhibit 6.5 to Form 10-Q for quarter ended October 31, 1989, File No. 0-13283)
- 10(i)\* Subscription Agreement dated December 1, 1989 from Lawrence Tomchin to purchase 140,308 shares of registrant's Common Stock (incorporated by reference to Exhibit 6.6 to Form 10-Q for quarter ended October 31, 1989, File No. 0-13283)
- 10(j)\* 1995 Omnibus Stock Incentive Plan, as amended and restated effective June 2, 1995 (incorporated by reference to Exhibit 4(c) to Post-Effective Amendment No. 1 to Form S-8 Registration Statement No. 33-81706)
- 10(k)\* 1999 Omnibus Stock Incentive Plan (incorporated by reference to Exhibit 10(a) to Form 10-Q for quarter ended April 30, 2000, File No. 001-09097)
- 10(l)\* Form of Stock Option Agreement under 1999 Omnibus Stock Incentive Plan (Nonqualified Stock Option) (incorporated by reference to Exhibit 10(a) to Form 10-Q for quarter ended October 31, 2004, File No. 001-09097)
- 10(m)\* Form of Stock Option Agreement under 1999 Omnibus Stock Incentive Plan (Nonemployee Director Stock Option) (incorporated by reference to Exhibit 10(b) to Form 10-Q for quarter ended October 31, 2004, File No. 001-09097)
- 10(n) Lease dated December 12, 1994 between Stuart Rose/Beavercreek, Inc. and Rex Radio and Television, Inc. (incorporated by reference to Exhibit 10(q) to Form 10-K for fiscal year ended January 31, 1995, File No. 0-13283)
- 10(o) Purchase and Sale Agreement dated February 8, 2007 among Rex Radio and Television, Inc., Kelly & Cohen Appliances, Inc., Stereo Town, Inc., REX Stores Corporation and Coventry Real Estate Investments, LLC

(14) *Code of Ethics:*

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

(18) *Letter re change in accounting principles:*

18(a) Letter from Deloitte & Touche LLP dated April 16, 2007 regarding change in method of accounting for inventory of Kelly & Cohen Appliances, Inc. from the last-in, first-out (LIFO) method to the first-in, first-out (FIFO) method

(21) *Subsidiaries of the registrant:*

21(a) Subsidiaries of registrant

(23) *Consents of experts and counsel:*

23 Consent of Deloitte & Touche LLP to use its report dated April 16, 2007 included in this annual report on Form 10-K into registrant's Registration Statements on Form S-8 (Registration Nos. 33-3836, 33-81706, 33-62645, 333-69081, 333-69089, 333-35118 and 333-69690)

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

31 Certifications

(32) *Section 1350 Certifications:*

32 Certifications

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

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





**CONSTRUCTION AND TERM  
LOAN AGREEMENT**

dated as of September 27, 2006

among

**MERRILL LYNCH CAPITAL,**

a division of Merrill Lynch Business Financial Services Inc.,  
as Administrative Agent, Sole Bookrunner and Sole Lead Arranger,  
the Lenders,

and

**LEVELLAND/HOCKLEY COUNTY ETHANOL, LLC**

as Borrower

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## Table of Contents

	<u>Page</u>
ARTICLE I. DEFINITIONS	1
Section 1.1	1
Section 1.2	18
Section 1.3	18
Section 1.4	18
ARTICLE II. THE LOAN	18
Section 2.1	18
Section 2.2	18
Section 2.3	19
Section 2.4	19
Section 2.5	22
Section 2.6	23
Section 2.7	24
Section 2.8	26
Section 2.9	30
Section 2.10	30
Section 2.11	31
Section 2.12	31
Section 2.13	32
Section 2.14	32
Section 2.15	33
ARTICLE III. CONDITIONS PRECEDENT TO ADVANCES	34
Section 3.1	34
Section 3.2	38
Section 3.3	39
Section 3.4	39
Section 3.5	40
ARTICLE IV. REPRESENTATIONS AND WARRANTIES	41
Section 4.1	41
Section 4.2	42
Section 4.3	42
Section 4.4	42
Section 4.5	42
Section 4.6	43
Section 4.7	43
Section 4.8	43
Section 4.9	43
Section 4.10	43
Section 4.11	43
Section 4.12	43

Section 4.13	Environmental Matters	44
Section 4.14	Investment Company Act	44
Section 4.15	Public Utility Holding Company Act	44
Section 4.16	No Assignment	44
Section 4.17	Compliance With Laws	44
Section 4.18	Plans	44
Section 4.19	Utility Services	45
Section 4.20	Access	45
Section 4.21	No Commencement	45
Section 4.22	Budget Correct	45
Section 4.23	Projections	45
Section 4.24	Contracts	45
Section 4.25	Land	46
Section 4.26	ERISA	46
Section 4.27	Disclosure; Accuracy	46
Section 4.28	Subsidiaries	46
Section 4.29	Labor Controversies	47
ARTICLE V. AFFIRMATIVE COVENANTS		47
Section 5.1	Financial and Other Information	47
Section 5.2	General Agreements With Respect to Financial Information	48
Section 5.3	Financial Records; Inspection	48
Section 5.4	Taxes	48
Section 5.5	Compliance With Laws and Agreements	48
Section 5.6	Notification By Borrower	49
Section 5.7	Entity Organization	50
Section 5.8	Environmental Compliance	50
Section 5.9	Insurance	50
Section 5.10	Additional Subsidiaries	54
Section 5.11	Intellectual Property	54
Section 5.12	Use of Proceeds	55
Section 5.13	Title; Maintenance of Assets	55
Section 5.14	Operating Margin Protection	55
Section 5.15	Deposit Accounts	55
Section 5.16	Lockbox Agreement	55
Section 5.17	Reorganizations	56
Section 5.18	Further Assurances	56
ARTICLE VI. NEGATIVE COVENANTS		56
Section 6.1	Merger, Change in Business	56
Section 6.2	Use of Property; Transactions with Affiliates; Nature of Business; Financial Condition	57
Section 6.3	Indebtedness	57
Section 6.4	Liens	58
Section 6.5	Restricted Payments	58
Section 6.6	Investments, Loans and Advances	58
Section 6.7	Lease Approval	58

Section 6.8	Amendments to Entity Documents and Other Agreements	58
Section 6.9	ERISA	59
Section 6.10	Financial Covenants	59
Section 6.11	Project Management	60
Section 6.12	Alterations	60
Section 6.13	No Commingling of Funds	60
Section 6.14	No Use of Administrative Agent or any Lender's Name	60
Section 6.15	Swap Contract	60
Section 6.16	Burdensome Agreements	60
Section 6.17	Sale or Discount of Receivables	60
Section 6.18	Abandonment	60
Section 6.19	Sale and Leaseback Transactions	61
ARTICLE VII. ADDITIONAL CONSTRUCTION COVENANTS		61
Section 7.1	[Reserved]	61
Section 7.2	Surveys	61
Section 7.3	Appraisals	61
Section 7.4	Permits; Licenses; Approvals	62
Section 7.5	Plans and Construction Contracts, and Approvals and Amendments	62
Section 7.6	Construction	63
Section 7.7	Defects and Variances	63
Section 7.8	Independent Consultant	64
Section 7.9	Contracts	64
Section 7.10	Affidavit of Commencement	65
Section 7.11	Affidavit of Completion	65
Section 7.12	Advertising by Administrative Agent and Lenders	65
Section 7.13	Delivery of Property Contracts	65
Section 7.14	Operating Contracts	65
Section 7.15	Safe Storage	65
Section 7.16	Title Insurance Endorsement	66
Section 7.17	Site Visits, Observation and Testing	66
Section 7.18	Project Commencement and Operation	66
Section 7.19	Reserve Account	66
Section 7.20	Accounts	66
ARTICLE VIII. COLLATERAL		67
Section 8.1	Collateral	67
Section 8.2	Collateral Assignment of Construction Contracts and Property Contracts	67
Section 8.3	Collateral Assignment of Plans	68
Section 8.4	No Obligation or Agency of Administrative Agent or any Lender	69
Section 8.5	Casualty; Condemnation	70
ARTICLE IX. EVENTS OF DEFAULT AND REMEDIES		72
Section 9.1	Events of Default	72
Section 9.2	Remedies	74
Section 9.3	Set-Off	76

Section 9.4	Power of Attorney	76
Section 9.5	Remedies are Severable and Cumulative	76
Section 9.6	No Marshalling	76
Section 9.7	Notices	77
Section 9.8	Application of Funds	77
Section 9.9	Completion of the Improvements	77
Section 9.10	Receiver	78
Section 9.11	Right to Perform Obligations	78
ARTICLE X. ADMINISTRATIVE AGENT		79
Section 10.1	Appointment and Duties of Administrative Agent	79
Section 10.2	Discretion and Liability of Administrative Agent	79
Section 10.3	Event of Default	80
Section 10.4	Consultation	80
Section 10.5	Communications to and from Administrative Agent	80
Section 10.6	Limitations of Agency	81
Section 10.7	No Representations or Warranty	81
Section 10.8	Lender Credit Decision	81
Section 10.9	Indemnity	81
Section 10.10	Resignation	82
Section 10.11	Disbursements and Distributions	82
Section 10.12	Limitation of Suits	82
Section 10.13	Right of Setoff	82
ARTICLE XI. MISCELLANEOUS		83
Section 11.1	Non-Waiver	83
Section 11.2	Disclosure	83
Section 11.3	Communications	83
Section 11.4	Costs and Expenses	84
Section 11.5	Taxes and Fees	84
Section 11.6	Further Assurances	84
Section 11.7	Binding Effect	84
Section 11.8	Interpretation; Construction	84
Section 11.9	GOVERNING LAW	85
Section 11.10	Severability of Provisions	85
Section 11.11	Term	85
Section 11.12	Exhibits	85
Section 11.13	Counterparts; Facsimiles	85
Section 11.14	Jurisdiction; Waiver	85
Section 11.15	Jury Waiver	86
Section 11.16	Survival	86
Section 11.17	Borrower's Acknowledgments	86
Section 11.18	Customer Identification – USA Patriot Act Notice; OFAC and Bank Secrecy Act	86
Section 11.19	Amendment	87
Section 11.20	Assignments and Participations	88
Section 11.21	Integration	90

**EXHIBITS**

- A – Land
- B – Form of Certificate of Compliance
- C – Form of Draw Request
- D – Form of Affidavit of Commencement
- E – Form of Affidavit of Completion
- F – Budget

**SCHEDULES**

- 1.1 – Commitments
- 3.1 (e) – Governmental Approvals
- 3.1 (f) – Operating Contracts
- 4.28 – Subsidiaries

This **CONSTRUCTION AND TERM LOAN AGREEMENT** is dated as of September 27, 2006, among **LEVELLAND/HOCKLEY COUNTY ETHANOL, LLC**, a limited liability company organized and existing under the laws of the State of Texas having its principal office at 1012 Austin Street, Levelland, Texas 79336 (together with its successors and permitted assigns, "Borrower"), each of Lenders that is a signatory hereto or which becomes a signatory hereto pursuant to Section 11.20 hereof (individually, together with its successors and assigns, a "Lender" and collectively, "Lenders"), and **MERRILL LYNCH CAPITAL**, a division of Merrill Lynch Business Financial Services Inc., a corporation organized and existing under the laws of the State of Delaware having its principal office at 222 North LaSalle Street, Chicago, IL 60601, as administrative agent for Lenders (in such capacity, "Administrative Agent").

In consideration of \$10, other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the covenants and agreements herein contained, Borrower, Administrative Agent and each Lender hereby agree as follows, intending to be legally bound:

#### **ARTICLE I. DEFINITIONS**

Section 1.1 Specific Terms. In addition to terms defined elsewhere in this Construction and Term Loan Agreement, when used herein, the following terms shall have the following meanings:

"Administrative Agent" is defined in the introductory paragraph hereof.

"Advance" means a disbursement by Administrative Agent, whether by journal entry, deposit to Borrower's account, check or wire transfer to third party, or otherwise, of any of the proceeds of the Loan.

"Adverse Environmental Condition" means (a) the existence or the continuation of the existence of an Environmental Contamination (including a sudden or non-sudden accidental or non-accidental Environmental Contamination), or exposure to any substance, chemical, material, pollutant, Hazardous Substance, odor or audible noise or other release or emission in, into or onto the environment (including without limitation, the air, ground, water or any surface) at, in, by, from or related to any Collateral, (b) the environmental aspect of the transportation, storage, treatment or disposal of materials in connection with the operation of any Collateral, or (c) the violation, or alleged violation, of any Environmental Law, permits or licenses of, by or from any Governmental Agency relating to environmental matters connected with any of the Collateral.

"Affidavit of Commencement" means the affidavit substantially in form and substance as set forth on Exhibit D attached hereto or as otherwise acceptable to Administrative Agent.

"Affidavit of Completion" means the affidavit substantially in form and substance as set forth on Exhibit E attached hereto or as otherwise acceptable to Administrative Agent.

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"Affiliate" of any Person means any Person directly or indirectly controlled by, controlling or under common control with such first Person. For the purposes of this definition "control" of any Person includes (a) with respect to any corporation or other Person having voting shares or the equivalent and elected directors, managers, or Persons performing similar functions, the ownership or power to vote, directly or indirectly shares or the equivalent representing 25% or more of the power to vote in the election of directors, managers or Persons performing similar functions (other than as a limited partner of such other Person) and (b) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.

"Allocations" means the line items set forth in the Budget for which Advances of Loan proceeds may be made.

"Appraisal" means a current appraisal prepared by a qualified appraiser, who is designated as an MAI appraiser by the Appraisal Institute, and who is licensed in the state in which the Land is located and who is completely independent from each Credit Party and each Affiliate of any Credit Party, in scope and substance acceptable to Administrative Agent, in conformity with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time, and the requirements of Administrative Agent, and approved in accordance with any requirements of Administrative Agent.

"Approved Fund" means, with respect to Lender, any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, operates or manages such Lender.

"Assignment and Acceptance" means an agreement by which an assignment is made pursuant to Section 11.20 hereof, in form and substance reasonably satisfactory to Administrative Agent.

"Assignment Fee" is defined in Section 11.20(a).

"Bankruptcy Code" means the Bankruptcy Code of the United States.

"Bankruptcy Event" means any of the following: (a) a proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, liquidation, winding up or receivership law or statute shall be commenced, filed or consented to by any Credit Party; or (b) any such proceeding shall be filed against any Credit Party and shall not be dismissed or withdrawn within 60 days after filing; (c) any Credit Party shall make a general assignment for the benefit of creditors; (d) any Credit Party shall generally fail to pay or admit in writing its inability to pay its debts as they become due; (e) any Credit Party shall be adjudicated a bankrupt or insolvent; (f) any Credit Party shall take advantage of any other law or procedure for the relief of debtors or shall take any action for the purpose of or with a view towards effecting any of the foregoing; or (g) a receiver, trustee, custodian, fiscal agent or similar official for any Credit Party or for any substantial part of any of their respective property or assets shall be sought by such Credit Party or appointed.



"Borrower" is defined in the introductory paragraph hereof.

"Borrower's Deposit" means such cash amounts as Administrative Agent may deem necessary for Borrower to deposit with it in accordance with the provisions of Section 2.8(e).

"Borrower's Equity" means the amount or amounts shown in the Budget which are required to be contributed by Borrower and utilized for the purposes reflected in the Budget. The amount of Borrower's Equity as of the Closing Date shall not be less than \$29,140,000 plus, if applicable, the additional amount required pursuant to Section 3.1(g). For purposes of this Loan Agreement, the amount of the Rex Subordinated Debt shall be included as part of the Borrower's Equity.

"Budget" means a budget prepared by Borrower, in form and substance acceptable to Administrative Agent and approved by Administrative Agent in writing, that reflects an itemization of all costs associated with the acquisition, construction, and financing of the Project, including (a) all costs needed or anticipated to acquire the Land and all equipment and materials that comprise the Improvements and to design and construct the Improvements in accordance with the Plans (including all Construction Costs), (b) all marketing costs, and (c) all costs associated with financing any of the foregoing (including Loan fees, interest, and other financing charges) that are anticipated to be incurred during the Construction Phase, which budget is attached hereto as Exhibit F, as such budget may be amended from time to time in accordance with the provisions of this Loan Agreement.

"Business Day" means any day other than a Saturday, a Sunday, and any day on which banking institutions located in the State of Illinois are authorized by law or other governmental action to close and which Administrative Agent has designated as its holiday.

"Casualty" means the damage or destruction by any cause of any portion of the Collateral.

"Closing Date" means the date upon which all conditions precedent to a Lender's obligation to make the first Advance under the Construction Loan shall have been met or waived to the satisfaction of all Lenders.

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

"Collateral" means the Property (as such term is defined in the Mortgage) and the Collateral (as such term is defined in the Security Agreement), including the Real Property Collateral and the Personal Property Collateral, and any other property, rights, or interests which, at any time and for such time, secure all or any portion of the Obligations.

"Commitment" means the commitment of each Lender to make Advances under the Construction Loan pursuant to Section 2.1 in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 1.1 or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Loan Agreement. As of the Closing Date, the total Commitments equal the Note Amount.

"Commitment Expiration Date" means the earlier of (a) March 31, 2008, (b) the day before the Conversion Date, or (c) the date on which the Commitment is terminated pursuant to Section 9.2(a).

"Completion" means the full and complete performance of all work (including all punch list items) required to fully construct the Improvements in accordance with this Loan Agreement, the other Loan Documents, the Plans, and all Legal Requirements, and issuance of a Certificate of Occupancy (or its equivalent) by the appropriate Governmental Agencies authorizing the use and occupancy of the Improvements.

"Condemnation" means the taking, condemnation, confiscation or acquisition of any portion of the Collateral pursuant to the exercise of the power of eminent domain or other action of a Governmental Agency or the threat thereof.

"Construction Account" means an account established by Borrower with Administrative Agent into which all Advances made directly to Borrower will be deposited, and other amounts for payment of Construction Costs may be deposited as provided in this Loan Agreement.

"Construction Commencement Date" means a date on or before November 15, 2006, which is after the date the Mortgage was recorded in the appropriate records of the county where the Land is located.

"Construction Contracts" means any and all contracts, subcontracts and agreements, written or oral, between Borrower and any other party, and between parties other than Borrower, in any way relating to the design or construction of the Improvements on the Land or the supplying of material (specially fabricated or otherwise), labor, supplies, or other services therefor.

"Construction Costs" means all costs to acquire the Land and all equipment and materials that comprise the Improvements and to design and construct the Improvements, including labor and materials, architectural, engineering, interior and landscape design, legal, consulting and other related fees; costs for Construction Contracts; the Imposition costs; bond and insurance costs; and any financing costs payable to any creditor other than Administrative Agent or any Lender during the Construction Phase but excluding all financing costs payable to Administrative Agent and Lenders.

"Construction Loan" means the Loan, during the term beginning on the Closing Date through the earlier of (a) the Maturity Date or (b) the Commitment Expiration Date.

"Construction Phase" means the period from the Closing Date through the earliest to occur of (a) the Commitment Expiration Date or (b) the last to occur of (i) Completion or (ii) disbursement of the final Advance.

"Construction Schedule" means a schedule of the construction of the Improvements, which shall include the anticipated commencement and completion dates of each phase or aspect of construction of the Improvements, in detail and form reasonably acceptable to Administrative Agent, as such Construction Schedule is amended from time to time.

"Contractor" means ICM, Inc., and any other contractor with whom Borrower contracts for construction of the Improvements or any portion thereof, including for the development of the Land.

"Contractor Consents" means a consent and agreement, by a Contractor or Design Professional, as applicable, to the collateral assignment to Administrative Agent of a Construction Contract, and the granting of nondisturbance rights in favor of Administrative Agent, opportunity to cure rights in favor of Administrative Agent, and such other matters as Administrative Agent may require, all in form and substance acceptable to Administrative Agent.

"Conversion Date" means the effective date of the Loan Conversion, if any, as provided in Section 2.5.

"Conversion Notice" is defined in Section 2.5.

"Credit Party" and "Credit Parties" means, individually or collectively, Borrower and any and all other Persons guaranteeing the Obligations or providing Collateral to secure the Obligations.

"Default" means either an "Event of Default" as defined in Section 9.1 hereof, or an event which with the giving of notice, passage of time, or both, would constitute such an Event of Default.

"Default Rate" means a rate per annum equal to the Interest Rate otherwise applicable, plus 6.00% .

"Design Professional" means each engineer, interior designer, space planner, landscape designer or other Person with whom Borrower contracts for the providing of planning, design, engineering or other similar services relating to the Improvements.

"Disqualified Capital Stock" means any Stock that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event, matures or is mandatorily redeemable for any consideration other than other Stock (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Indebtedness or redeemable for any consideration other than other Stock (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the earlier of (a) the Maturity Date and (b) the date on which there are no outstanding Obligations and all of the Commitments for Advances are terminated.

"Dollars," "\$" or "USD" means lawful currency of the United States of America.

"Draw Period" means a calendar month.

"Draw Request" means a request duly completed, executed, and submitted by Borrower to Administrative Agent and the Independent Consultant as a condition precedent to an Advance, in the form of Exhibit C attached hereto or as otherwise acceptable to Administrative Agent,

together with such Lien waivers, releases, affidavits, invoices, certifications, and other documents as Administrative Agent may require.

“EBITDAR” means the Borrower’s income before interest (including payments in the nature of interest under capital leases), taxes, depreciation, amortization, other non-cash charges, and rent; all as determined (a) for the period beginning April 1, 2008 through and including March 31, 2009, on an annualized basis and (b) thereafter on a trailing 12-month basis in accordance with GAAP.

“EBITDAR Coverage Ratio” means the ratio of (a) EBITDAR of Borrower to (b) the sum of Borrower’s (i) interest (including payments in the nature of interest under capital leases), plus (ii) current maturities of long-term Funded Debt, plus (iii) rent under operating leases; all as determined on a trailing 12-month basis in accordance with GAAP.

“Eligible Assignee” means (a) a commercial bank organized under the laws of the United States, or any state thereof, and having total assets in excess of \$250,000,000, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of \$250,000,000, provided that such bank is acting through a branch or agency located in the United States, (c) a finance company, insurance company, or other financial institution or fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of \$250,000,000, (d) a Lender, any Affiliate (other than individuals) or Approved Fund of a Lender, and (e) during the continuation of a Default, any other Person so long as the assigning Lender provides at least five Business Days prior written notice to Administrative Agent of such assignment; provided, however, in order for any assignee to be a party to this Agreement, such assignee must be exempt from withholding taxes.

“Eligible Swap Counterparty” means a Lender or any Affiliate of a Lender that at the time it occupies such role or capacity enters into a Swap Contract with Borrower or any Subsidiary.

“Environmental Claim” means any accusation, allegation, notice of violation, claim, demand, abatement or other order or direction (conditional or otherwise) by any Governmental Agency or any Person for personal injury (including sickness, disease or death), tangible or intangible property damage, damage to the environment or other adverse affects on the environment, or for fines, penalties or restrictions, resulting from or based upon any Adverse Environmental Condition.

“Environmental Contamination” means any actual or threatened release, spill, emission, leaking, pumping, injection, presence, deposit, abandonment, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, or into or out of any of the Collateral, including, without limitation, the movement of any Hazardous Substance or other substance through or in the air, soil, surface water, groundwater or property which is not in compliance with applicable Environmental Laws.

“Environmental Law” means any federal, state or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to environmental regulation, contamination, remediation or human health or safety, industrial hygiene, or the environmental conditions on, under, or about the Real Property Collateral, and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes, ordinances and regulations, as such laws, statutes, ordinances, regulations, rules, guidelines, and standards are amended from time to time.

“ERISA” means the Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended from time to time, and any regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

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

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

“Event of Loss” means the occurrence whereby any Tangible Collateral is damaged beyond repair, lost, totally destroyed, or confiscated, whether or not covered by property insurance.

“Excess Cash Flow” means the sum of Borrower’s (a) EBITDAR, minus (b) current principal and interest payments due on any of Borrower’s debt, minus (c) current operating lease expense, minus (d) any maintenance capital expenditures, minus (e) taxes; all as determined for the fiscal year most recently ended in accordance with GAAP.

"Excluded Taxes" means, with respect to Administrative Agent or any Lender, (a) income or franchise taxes measured by its net income (however denominated) and imposed on it by a Governmental Agency, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Borrower is located, (c) franchise taxes imposed by the State of Texas or other Governmental Agency on either Administrative Agent or any Lender as a result of doing business in the State of Texas or other jurisdiction.

"Facility Fee" means the facility fee described in the fee letter dated September 27, 2006 between Borrower and Administrative Agent.

"FEL" means Farmers Energy Levelland, LLC, an Ohio limited liability company.

"FEL Subordinated Debt" means the Indebtedness in an aggregate original principal amount of \$5,595,000 evidenced by the FEL Subordinated Debt Documents. As of September 25, 2006, the outstanding principal amount of the FEL Subordinated Debt together with the accrued and unpaid interest payable thereon total \$2,875,613.45.

"FEL Subordinated Debt Documents" means, collectively (a) that certain Secured Promissory Note dated July 27, 2006 in the aggregate original principal amount of \$5,595,000 executed by Borrower and payable to the order of FEL and (b) that certain Security Agreement dated effective July 27, 2006 by and between Borrower and FEL.

"Force Majeure" means acts of God, strikes, lockouts, embargo, fire, tornadoes, unavoidable casualty, acts of terrorism, national emergency or any other unforeseeable event beyond the control of Borrower.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Funded Debt" means, as of any date of determination and for any Person, the Indebtedness described in clauses (a), (b), (c) and (d) of the definition of "Indebtedness" and guarantees and other surety obligations by such Person of the Funded Debt of others.

"Funding Source" is defined in Section 11.20(e).

"GAAP" means the generally accepted accounting principles in effect in the United States of America from time to time, consistently applied from period to period.

"Governmental Agencies" means any government or any state, department or other political subdivision thereof, or governmental body, agency, authority, department or commission having jurisdiction over Borrower or its properties (including any court or tribunal) exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation, partnership or other entity directly or indirectly owned by the foregoing.

"Guaranteed Indebtedness" means, as to any Person, any obligation of such Person guaranteeing any indebtedness, lease, dividend, or other obligation ("primary obligations") of any other Person (the "primary obligor") in any manner, including any obligation or arrangement of such guaranteeing Person (whether or not contingent): (a) to purchase or repurchase any such primary obligation; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (d) to indemnify the owner of such primary obligation against loss in respect thereof.

"Hazardous Substances" means any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, radon, lead-based paint, flammable explosives, radioactive materials, infectious substances or raw materials) which are included under or regulated by Environmental Laws.

"Impositions" means (a) all real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon the Collateral or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (b) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Collateral; (c) water, gas, sewer, electricity, and other utility charges and fees relating to the Collateral; and (d) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Collateral.

"Improvements" means the ethanol production facility and other facilities that are ancillary, incidental, necessary or related to the marketing, management, servicing, ownership or operation of such facility; any and all buildings, covered garages, storage sheds, silos and buildings, air conditioning towers, work rooms, open parking areas, structures and other improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

"Indebtedness" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services (including reimbursement and all other obligations with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured, but not including accounts payable and accrued expenses, liabilities, or other obligations to pay the deferred purchase price of property or services, from time to time incurred in the ordinary course of business which are not greater than 60 days past the date of invoice or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP); (b) all obligations evidenced by notes, bonds, debentures or similar instruments; (c) all indebtedness created or arising under any conditional sale or other title retention agreements with respect to

property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (d) all capital lease obligations; (e) all Guaranteed Indebtedness; and (f) all Indebtedness referred to in clauses (a), (b), (c), (d) or (e) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Independent Consultant” means any architectural or engineering firm or other Person (and all of them, if more than one) retained by Administrative Agent at Borrower’s expense for the purpose of: approving the Plans, Advances, and each Construction Contract; verifying the Budget; performing inspections as construction progresses to verify that the Improvements are constructed to Completion in a manner satisfactory to Administrative Agent and in accordance with the Plans, and such other purposes permitted by this Loan Agreement.

“Interest Period” means each calendar month occurring during the period commencing with the month of the Closing Date through and including the calendar month of the Maturity Date; provided, however, that no Interest Period shall commence or extend past the Maturity Date and the Loan shall bear interest at the Default Rate after the Maturity Date.

“Interest Rate” means, with respect to the Loan, a floating rate per annum equal to the sum of the LIBO Rate for such Interest Period plus 400 basis points (or if LIBO Rate is not available or permitted as described in Section 2.4, the sum of Prime Rate plus 400 basis points) which floating rate will be adjusted from time to time as contemplated in the definitions of LIBO Rate and Prime Rate.

“Knowledge” means actual knowledge and such knowledge as a person of ordinary experience and intelligence and exercising reasonable care should have under and in light of the particular facts and circumstances. For purposes of this definition the term “actual knowledge” is limited to facts and circumstances known to any officer, agent, plant manager or supervisor responsible for the financial affairs, business, assets, management or operations of Borrower or the Property (as defined in the Mortgage), or both, or any member of the Board of Managers of Borrower.

“Land” means the real property described in Exhibit A attached hereto.

“Late Charge” is defined in Section 2.6.

“Leases” means any and all leases, master leases, subleases, licenses, concessions, or other agreements (written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use, all or any part of the Real Property Collateral, together with all security and other deposits or payments made in connection therewith.

“Legal Requirements” means (a) any and all present and future judicial decisions, statutes (including all disabilities laws and Environmental Laws), rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Agency in any way applicable to any Credit



Party or the Collateral, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, construction, operation, maintenance, alteration, repair, or reconstruction thereof, (b) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Collateral or the ownership, use, or occupancy thereof, (c) each Credit Party's presently or subsequently effective certificate of formation, governing documents, bylaws and articles of incorporation, operating agreement and articles of organization, or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (d) any and all Leases, (e) any and all Contracts (as such term is defined in the Mortgage) and (f) any and all leases, other than those described in clause (d) above, and other contracts (written or oral) of any nature that relate in any way to the Property (as defined in the Mortgage) and to which Borrower or any Credit Party may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in and to the Land and/or the Improvements.

"Lender" and "Lenders" are defined in the introductory paragraph hereof.

"Leverage Ratio" means the ratio of (a) the sum of (i) all Borrower's Funded Debt, plus all Borrower's unused availability under any revolving credit facility, and including debt to Administrative Agent and Lenders, plus (ii) two-thirds of the future rents payable under Borrower's operating leases, to (b) EBITDAR of Borrower; all as determined on a trailing 12-month basis in accordance with GAAP.

"LIBO Rate" means, with respect to the Loan for any Interest Period, an interest rate per annum (rounded upward to the next higher whole multiple of one-sixteenth percent if such rate is not such a multiple), equal to the rate per annum (rounded upwards to the next higher whole multiple of one-sixteenth percent if such rate is not such a multiple) as determined on the basis of the average of the rates offered by a majority of the banks in the London interbank market for deposits in U.S. Dollars for one month, to the extent the rates as published in the "Bloomberg Professional Service, Screen BAAM" two Business Days prior to the first Business Day of such Interest Period (provided, however, that with respect to the first Interest Period of the Loan, on the second Business Day immediately preceding the first day of such Interest Period with such rate having an effective date as of the date of execution of the Loan).

"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 the common law, statute or contract, and whether such obligation or claim is fixed or contingent, and including the lien or security interest arising from a mortgage, encumbrance, pledge, security agreement, conditional sale or trust receipt, or a lease, consignment or bailment for security purposes.

"Loan" means the loan from Administrative Agent and Lenders to Borrower evidenced, governed, and secured by the Note, this Loan Agreement, the Mortgage, and the other Loan Documents.

"Loan Agreement" means this Construction and Term Loan Agreement, as this Construction and Term Loan Agreement may hereafter be modified, amended, or restated in accordance with the terms hereof.

“Loan Conversion” means the conversion of the Construction Loan into the Term Loan in accordance with the provisions hereof.

“Loan Conversion Request” is defined in Section 2.5.

“Loan Documents” mean this Loan Agreement, the Note, the Security Agreement, the Mortgage, the Subordination Agreement and all other security and other instruments, assignments, consents, certificates, certifications and agreements of any kind relating to any of the Obligations, whether obtained, authorized, authenticated, executed, sent or received concurrently with or subsequent to this Loan Agreement, or which evidence the Loan or the creation, guaranty or collateralization of any of the Obligations or the granting or perfection of Liens or security interests upon any Collateral or any other collateral securing a guaranty of the Obligations, including any modifications, amendments or restatements of the foregoing.

“Loan Purpose” means the purpose for which the proceeds of the Loan will be used; to wit: (i) to finance the construction of the Project, (ii) to finance related costs and expenses including without limitation, the acquisition of the Land, in accordance with the Budget and this Loan Agreement and (iii) to pay accrued and unpaid interest on the Loan prior to the Conversion Date so that it can be capitalized for Borrower’s accounting purposes.

“Lockbox Agreement” is defined in Section 5.16.

“Material Adverse Effect” means any event, fact, circumstance, change in, or effect on (a) the business, property, prospects, operations, condition (financial or otherwise), of Borrower and its Subsidiaries, that individually, in the aggregate or on a cumulative basis with any other events, facts, circumstances, changes in, or effects on, Borrower has had or could reasonably be expected to have a materially adverse effect on or material change in (i) the ability of Borrower to (A) operate or conduct business in all material respects in the manner in which such business is proposed to be operated or conducted as outlined in the Prospectus or (B) perform under the Loan Documents or pay the Obligations, (ii) the assets, properties, business, operations, condition (financial or otherwise) or prospects of Borrower, (iii) the validity or enforceability of the Loan Documents or any of the material rights or remedies of the Administrative Agent or any Lender thereunder, or (iv) the value, enforceability, or collectibility of all or any material portion of the Collateral. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect or change, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then existing events would result in a Material Adverse Effect; provided however, that it is understood and agreed that short-term swings in commodity prices or business interruptions that are covered by Borrower’s insurance policies which name Administrative Agent as additional insured and loss payee do not, in and of themselves, create a Material Adverse Effect.

“Maturity Date” means (a) as to the Construction Loan, the earliest of (i) March 31, 2008, (ii) the date Completion shall have occurred, plus 30 days or (iii) the date the Commitments are sooner terminated and the Obligations are due and payable in accordance with Section 9.2, and (b) if the Construction Loan is converted to a Term Loan, then as to the Term Loan, the earlier of

(i) the date that is the fifth anniversary of the Conversion Date, or (ii) the date the Note and the other Obligations are due and payable in accordance with Section 9.2.

“Minimum Advance” means \$2,000,000.

“MLPF&S” is defined in Section 4.11.

“Mortgage” means the Mortgage, Deed of Trust, Security Agreement, Assignment and Fixture Financing Statement, dated as of September 6, 2006 executed by Borrower, in favor of the Trustee (as defined therein), the trustee to the extent that the Mortgage operates as a deed of trust, and to Administrative Agent for the benefit of Secured Parties, covering, among other property, the Land and Improvements, to secure the Loan, as it may be modified, amended, or restated from time to time.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Note” is defined in Section 2.2.

“Note Amount” means \$43,710,000, minus, if applicable, the additional amount of Borrower’s Equity required under Section 3.1(g).

“Obligations” mean all present and future liabilities, indebtedness and obligations of Borrower to Administrative Agent or any Lender, howsoever created, arising or evidenced, whether now existing or hereafter arising, whether direct or indirect, absolute or contingent, due or to become due, primary or secondary or joint or several, and, without limiting the generality of the foregoing, shall include principal, accrued interest (including interest accruing after the filing of any petition in bankruptcy), all Advances made by or on behalf of Administrative Agent and Lenders, or any of them, under this Loan Agreement and the other Loan Documents, collection and other costs and expenses incurred by or on behalf of Administrative Agent and Lenders, or any of them, whether incurred before or after judgment, and all present and future liabilities, indebtedness and obligations of Borrower under the Note, this Loan Agreement, or the other Loan Documents. In addition to, but without duplication of, the foregoing, the Obligations shall also include without limitation, all obligations, liabilities and indebtedness arising from or in connection with all Swap Contracts entered into with any Eligible Swap Counterparty.

“OFAC” is defined in Section 11.18.

“Operating Contracts” means any material contracts or agreements related to the purchase or delivery of materials used as energy resources, inventory, or otherwise for production of the products or by-products from the operations of the Project or related to the sale, distribution, or delivery of products or by-products produced in whole or in part at the Project, including (a) all contracts listed on Schedule 3.1(f) and (b) all other contracts identified in the Prospectus.

“Other Taxes” is defined in Section 2.7(a).

“Participant Register” is defined in Section 11.20(e).

"Payment Date" means (a) the first day of each calendar month beginning on the first day of the calendar month after the Closing Date and (b) the Maturity Date.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Exceptions" means (a) Liens in favor of Administrative Agent for the benefit of itself and Lenders, (b) as to Real Property Collateral, the liens, easements, restrictions, security interests and other title matters, if any, as reflected on the mortgagee policy of title insurance accepted by Administrative Agent with respect to the Mortgage, (c) Liens of Governmental Agencies for taxes not yet due and payable, (d) Liens not delinquent arising in the ordinary course of business and created by statute in connection with worker's compensation, unemployment insurance, social security and similar statutory obligations, (e) as to Personal Property Collateral, other non-consensual liens arising in the ordinary course of business for sums not due, (f) if Secured Parties' rights to and interest in the Collateral would not be materially and adversely affected thereby, any Liens for taxes or other non-consensual Liens against the Collateral arising in the ordinary course of business and being contested in good faith by appropriate proceedings, so long as adequate reserves are maintained with respect to such contested amounts in amount (including the amount contested, and potential costs, interest, and penalties) and manner acceptable to Administrative Agent, (g) as to grain in storage or in transit but excluding grain in-process, finished products and proceeds of grain in-process and finished products, Liens in favor of a third party reasonably acceptable to Administrative Agent to secure Indebtedness permitted under Section 6.3(f), (h) Liens arising pursuant to the Rex Subordinated Debt Documents, and (i) any other Liens expressly permitted in writing by Administrative Agent.

"Person" means any natural person and any corporation, partnership (general, limited or otherwise), limited liability company, trust, association, joint venture, governmental body or agency or other entity having legal status of any kind.

"Personal Property Collateral" means all Collateral that constitutes personal property.

"Plans" means (a) the plans and specifications for the development of the Land and construction of the Improvements, prepared by the Design Professional and approved as required herein, and all amendments thereof and supplements thereto, and (b) all other plans, designs, engineering or architectural work, test reports, surveys, shop drawings, and similar items related to the foregoing, approved as required herein.

"Prepayment Premium" is defined in Section 2.11.

"Prime Rate" means, with respect to any Interest Period, the rate publicly announced in New York, New York from time to time as the prime rate of JPMorgan Chase Bank N.A. (or any successor thereof) ("JPMorgan"). The Prime Rate shall be determined by Administrative Agent at the close of business two Business Days before a Payment Date, and shall be effective to but not including the next applicable Payment Date. The Prime Rate is not intended to be the lowest rate of interest charged by JPMorgan or the Lenders in connection with extensions of credit to debtors.

"Project" means the constructed, under construction, or to be constructed, as the case may be, fuel ethanol plant on the Land which will be capable of producing, upon Completion, not less than 40 million gallons of ethanol per year, approximately 128,000 tons of distillers grains with solubles on a dry matter basis, and other value-added products in connection with such process, and includes the Improvements and any and all other improvements on the Land from time to time.

"Projections" means Borrower's forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a combined basis and otherwise consistent with the historical financial statements of Borrower, together with appropriate supporting details and a statement of underlying assumptions, all of which are believed by Borrower to be reasonable and fair in light of the current condition and past performance of Borrower and to reflect a reasonable estimate of the projected balance sheets, results of operations, cash flows and other information presented therein for five years following the Closing Date.

"Property Contracts" means any Contract (as such term is defined in the Mortgage) related to or which affects all or any portion of the operation or use of any portion of the Collateral, including all management agreements, service contracts, and utility, maintenance, and security contracts and other contracts and agreements identified in the Prospectus, but excluding Operating Contracts.

"Prospectus" means the Borrower's Prospectus dated July 26, 2005.

"Real Property Collateral" means all Collateral that constitutes real property.

"Register" is defined in Section 11.20(c).

"Registered Loans" is defined in Section 11.20(c).

"Related Lender Assignment" means an assignment of all or any portion of a Loan made by a Lender to an Affiliate of such Lender or an Approved Fund of such Lender.

"Related Party Register" is defined in Section 11.20(c).

"Required Lenders" means those Lenders holding at least 51% of the aggregate outstanding principal amount of the Loan or, if no Advances are then outstanding, Lenders having at least 51% of the total Commitments.

"Restricted Payment" means (a) any dividend or distribution (whether in cash, securities or other property) with respect to any Stock in Borrower, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Stock in Borrower or any option, warrant or other right to acquire Stock in Borrower; or (b) any payment or distribution made in respect of any subordinated Indebtedness of Borrower or its Subsidiaries by Borrower or its Subsidiaries in violation of any subordination or other agreement made in favor of Administrative Agent and Lenders.

"Rex" means Rex Radio and Television, Inc., an Ohio corporation.

"Rex Subordinated Debt" means the Indebtedness in an aggregate original principal amount of up to \$5,050,000 evidenced by the Rex Subordinated Debt Documents.

"Rex Subordinated Debt Documents" means, collectively (a) that certain Convertible Secured Promissory Note Purchase Agreement dated effective as of November 22, 2005 by and between Borrower and Rex, as amended by that certain Amendment to Convertible Secured Promissory Note Purchase Agreement dated effective as of May 31, 2006 by and between Borrower and Rex, (b) that certain Convertible Secured Promissory Note in an original principal amount of up to \$5,050,000 to be issued by Borrower and payable to the order of Rex pursuant to the Convertible Secured Promissory Note Purchase Agreement described in clause (a) above, (c) that certain Guaranty dated as of May 31, 2006 executed by Rex Stores Corporation, a Delaware corporation, in favor of Borrower, (d) that certain Right of First Offer and Co-Sale Agreement dated effective as of November 22, 2005 by and among Rex, RIO, Lindy Walker and James P. Halbert, all as assigned by Rex to FEL under that certain Assignment and Acknowledgement dated as of July 19, 2006 pursuant to which Rex assigned all its rights to FEL under the documents described in clauses (a), (b) and (d) above, and (e) any subordinate security agreements and mortgages or deeds of trust securing payment thereof to the extent the terms and provisions thereof are reasonably satisfactory to Administrative Agent.

"RIO" means RIO Technical Services, Inc., a Nevada corporation.

"Secured Parties" means, collectively, Administrative Agent, Lenders and all Eligible Swap Counterparties.

"Security Agreement" means the one or more Security Agreements now or hereafter in effect executed by Borrower or a Credit Party in favor of Administrative Agent for the benefit of Secured Parties to secure all or any portion of the Obligations.

"Special Accounts" means collectively or individually, one or more deposit accounts (other than the Construction Account) that Borrower establishes with Administrative Agent pursuant to the terms of the Loan Documents, each of which shall be used solely for the purpose or purposes stated in the Loan Documents for the respective account.

"Stock" means all certificated and uncertificated shares, options, warrants, membership interests, general or limited partnership interests, participation or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934).

"Subordination Agreement" means that certain Subordination Agreement dated as of the Closing Date, by and among Administrative Agent, Borrower and FEL, in form and substance satisfactory to Administrative Agent.

“Subsidiary” means as to any particular parent entity, any corporation, partnership, limited liability company or other entity (whether now existing or hereafter organized or acquired) in which more than 50% of the outstanding equity ownership interests having voting rights as of any applicable date of determination, shall be owned directly, or indirectly through one or more Subsidiaries, by such parent entity. Unless otherwise expressly stated herein, each reference to the term “Subsidiary” shall mean a Subsidiary of the Borrower.

“Swap Contract” means any “swap agreement,” as defined in Section 101 of the Bankruptcy Code, that is intended to provide protection against fluctuations in interest or currency exchange rates.

“Tangible Collateral” means all Real Property Collateral, except the Land, and all Personal Property Collateral that is Equipment, Fixtures, Inventory, and any other Goods (as those terms are defined in Article 9 of the UCC), vehicles and other titled personal property, and any other similar, tangible personal property.

“Taxes” means any present or future taxes, levies, duties, imposts, fees, deductions, withholdings, assessments or other charges imposed by any Governmental Agency, including any interest, additions to tax or penalties with respect thereto.

“Term Loan” means the Loan on and after the Conversion Date.

“Title Company” means the Title Company (and its issuing agent, if applicable) issuing the Title Policy, which shall be acceptable to Administrative Agent in its sole and absolute discretion.

“Title Policy” means an American Land Title Association Loan Policy of Title Insurance (or if such title insurance policy cannot be obtained in the state in which the Property (as defined in the Mortgage) is located, then such other title insurance policy which is as similar thereto as can be obtained) with extended coverage and such other endorsements thereto as are typically required with respect to properties similar to the Property (as defined in the Mortgage), in the amount of the Note Amount, insuring Administrative Agent, its successors and assigns, of the first Lien status of the Mortgage, subject only to such Liens, easements, restrictions, security interests and other title matters as are approved by Administrative Agent in writing, and with deletions or modifications thereto as are standard and customary with respect to properties similar to the Property (as defined in the Mortgage), and issued by the Title Company.

“UCC” means the Uniform Commercial Code of Illinois as in effect in Illinois from time to time.

“USA Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56, signed into law October 26, 2001).

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

Section 1.2 Other Terms. Except as otherwise defined herein, all terms used in this Loan Agreement which are defined in the UCC shall have the meanings set forth in the UCC and accounting terms not defined herein shall have the meaning ascribed to them in GAAP.

Section 1.3 UCC Filing. Borrower hereby authorizes Administrative Agent to file a record or records (as defined or otherwise specified under the UCC), including financing statements, in all jurisdictions and with all filing offices as Administrative Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interests granted to Administrative Agent for the benefit of Secured Parties or contemplated to be granted to Administrative Agent for the benefit of Secured Parties herein or in any other Loan Document. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as Administrative Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in such Collateral.

Section 1.4 Computations of Time; Other Definitional Provisions. In this Loan Agreement and the other Loan Documents in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to but excluding." In this Loan Agreement, the words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation", unless the content clearly indicates otherwise. All terms used herein, including those defined in Section 1.1, may be used in the plural or singular and shall be deemed to refer to the object of such term whether such object is singular or plural in nature, as the context may suggest or require. References in this Loan Agreement to any contract or agreement shall be a reference to such contract or agreement as the same may be amended, restated, supplemented, renewed, extended, or otherwise modified from time to time in accordance with its terms.

## ARTICLE II. THE LOAN

Section 2.1 Agreement to Lend. Each Lender hereby agrees, severally and not jointly, to lend to Borrower its percentage share of the Advances in an aggregate amount not to exceed its Commitment, and Borrower hereby agrees to borrow such sum from Lenders, all upon and subject to the terms and provisions of this Loan Agreement, the Note, and the other Loan Documents. After giving effect to any requested Advance, the total Advances made under the Loan shall not exceed the Note Amount. The Loan is not a revolving credit; therefore, no principal amount repaid by Borrower may be reborrowed by Borrower. Each Lender's Commitment shall terminate automatically upon the Commitment Expiration Date or if the Loan is prepaid in full. Advances shall only be for Loan Purposes set forth in the Budget, and each Lender's Commitment shall only be effective during the Construction Phase. To the extent that Loan proceeds are insufficient to pay all costs required for the acquisition, development, construction, and completion of the Improvements and Collateral, and all other costs associated with the Collateral, the Project, or the Loan Documents, Borrower shall pay such excess costs with funds derived from sources other than the Loan.

Section 2.2 Note. The Loan will be evidenced by that certain Master Promissory Note executed of even date herewith by Borrower, payable to the order of Administrative Agent for the benefit of Lenders, in the stated principal amount of the Note Amount, and issued pursuant to



this Loan Agreement (as the same has been or may be amended, restated, extended, increased or modified from time to time, the Note). The Note is hereby incorporated as a part hereof as if fully set forth herein. Interest on the principal of the Loan shall be limited to and calculated with respect to Loan proceeds actually disbursed pursuant to the terms of this Loan Agreement and which are outstanding from time to time. Outstanding principal and accrued but unpaid interest under the Note shall be due and payable as provided in this Loan Agreement.

Section 2.3 Repayment Schedule.

(a) Construction Loan. At all times prior to the Conversion Date, if any, and on the Conversion Date, if any, all accrued but unpaid interest at the Interest Rate on the outstanding principal balance of the Note shall be due and payable in arrears in monthly installments of interest only on each Payment Date through the earlier of (i) the Maturity Date or (ii) the Conversion Date, if any.

(b) Term Loan. If the Loan Conversion occurs, then during the term of the Term Loan, beginning on the first Payment Date following the Conversion Date, and continuing on each Payment Date thereafter through the Maturity Date, Borrower shall pay to Administrative Agent, for the account of Lenders, the outstanding principal amount of the Note, in 59 equal monthly principal installments (such principal installments shall be calculated based upon a 120 months amortization schedule), and one final installment equal to the then unpaid principal balance thereof (due on the Maturity Date), in each case together with all accrued but unpaid interest at the Interest Rate on the outstanding principal balance of the Note on each such Payment Date. Borrower shall pay to Administrative Agent, for the account of each Lender, all outstanding Obligations on the Maturity Date.

(c) Excess Cash Flow. If the Loan Conversion occurs, then during the term of the Term Loan, beginning on the date that is 120 days after the end of Borrower's fiscal year following the Conversion Date and continuing on each April 30 thereafter, Borrower shall make annual payments to Administrative Agent (unless otherwise waived by Administrative Agent in its sole discretion) equal to 70% of Excess Cash Flow as of December 31 of the immediately preceding fiscal year. All payments of Excess Cash Flow shall be applied to reduce the outstanding principal balance of the Loan.

Section 2.4 Interest.

(a) Interest Payments. Beginning on the Closing Date and continuing until the principal amount of the Loan is paid in full, Borrower shall pay interest, in arrears, on the unpaid principal amount of the Loan at a floating rate of interest (computed on the basis of a 360-day year and for the actual number of days elapsed) equal to (i) the Interest Rate at all times when the provisions of Section 2.6(b) hereof do not apply and (ii) the Default Rate when and as provided in Section 2.6(b) hereof. Payments of accrued but unpaid interest shall be due and payable on each Payment Date, on demand in the case of the Default Rate, and on the Maturity Date.

(b) Illegality. If any Lender determines that any Legal Requirement has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain or fund Advances bearing interest based on the LIBO Rate, or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Borrower through Administrative Agent, any obligation of such Lender to make or continue Advances bearing interest based on the LIBO Rate shall be suspended until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), convert all Advances bearing interest based on the LIBO Rate of such Lender to Advances bearing interest based on the Prime Rate (for avoidance of doubt, such Advances shall bear interest at a rate per annum equal to the Prime Rate plus 400 basis points), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Advances bearing interest based on the LIBO Rate to such day, or immediately, if such Lender may not lawfully continue to maintain such Advances bearing interest based on the LIBO Rate. Upon any such conversion, Borrower shall also pay all amounts due under clause (e) below in accordance with the terms thereof due to such conversion.

(c) Inability to Determine Rates. If Administrative Agent determines in connection with any request for an Advance bearing interest based on the LIBO Rate or a continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Advance bearing interest based on the LIBO Rate, (b) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed Advance bearing interest based on the LIBO Rate, or (c) the LIBO Rate for any requested Interest Period with respect to a proposed Advance bearing interest based on the LIBO Rate does not adequately and fairly reflect the cost to such Lenders of funding or maintaining such Advance. Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, the obligation of Lenders to make or maintain Advances bearing interest based on the LIBO Rate shall be suspended until Administrative Agent revokes such notice. Upon receipt of such notice, Borrower may revoke any pending request for an Advance or continuation of Advances bearing interest based on the LIBO Rate or, failing that, will be deemed to have converted such request into a request for an Advance bearing interest based on the Prime Rate in the amount specified therein.

(d) Increased Costs.

(i) Increased Costs Generally. If any change in Legal Requirements 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 (except any reserve requirement reflected in the LIBO Rate);

(B) subject any Lender to any tax of any kind whatsoever with respect to this Loan Agreement or any Advance bearing interest based on the LIBO Rate made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2.7 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(C) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Loan Agreement or Advances bearing interest based on the LIBO Rate made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Advance bearing interest based on the LIBO Rate (or of maintaining its obligation to make any such Advance), 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 of 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.

(ii) Capital Requirements. If any Lender determines that any change in Legal Requirements affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have 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 Loan Agreement, the Commitment of such Lender or the Advances 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 Legal Requirements (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 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.

(iii) 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 clauses (i) or (ii) above and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(iv) 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 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 nine months prior to the date that such Lender notifies Borrower of the change in Legal Requirements giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the change in Legal Requirements giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Compensation for Losses. Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(i) any continuation, conversion, payment or prepayment of any Advance other than an Advance bearing interest based on the Prime Rate on a day other than the last day of the Interest Period for such Advance (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(ii) any failure by Borrower (for a reason other than the failure of such Lender to make an Advance) to prepay, borrow, continue or convert any Loan other than an Advance bearing interest based on the Prime Rate on the date or in the amount notified by Borrower;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Advance or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. For purposes of calculating amounts payable by Borrower to Lenders under this Section 2.4, each Lender shall be deemed to have funded each Advance bearing interest based on the LIBO Rate made by it at the LIBO Rate used in determining the LIBO Rate for such Advance by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Advance bearing interest based on the LIBO Rate was in fact so funded.

(f) Computations. All computations of interest, fees and any other amounts shall be made on the basis of a 360-day year and actual days elapsed. Each determination by Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.5 Loan Conversion. The Loan Conversion of the Construction Loan into the Term Loan shall be effectuated upon (a) either (i) the written request ("Loan Conversion Request") by Borrower to Administrative Agent and the Independent Consultant not less than 30 days prior to the requested Conversion Date, or (ii) upon election by the Administrative Agent with five Business Days notice to Borrower, and (b) achievement by Borrower to the reasonable satisfaction of Administrative Agent of each of the following: (i) fulfillment of the conditions in Section 3.5; (ii) the Title Policy shall have been endorsed to remove any exception for

mechanics' or materialmen's Liens or pending disbursements, with no additional title change or exception objectionable to Administrative Agent, and Borrower shall have obtained such other endorsements as may be reasonably required by Administrative Agent; (iii) no Default or Event of Default shall occur or exist at any time on or between the Conversion Notice and the Conversion Date; (iv) no Material Adverse Effect shall have occurred; (v) Borrower shall have paid all reasonable expenses incurred by Administrative Agent in connection with Administrative Agent's review and approval of the Loan Conversion; (vi) Administrative Agent shall have received certification by the Independent Consultant that Completion has occurred; (vii) the earlier of (A) verification by Administrative Agent that the Project will operate at least at its nameplate rating of 40 million gallons of ethanol per year and (B) 90 days after Completion has occurred; and (viii) Borrower shall have delivered to Administrative Agent and the Independent Consultant evidence of payment of, and executed releases and lien waivers from, all Contractors and any other Persons with respect to the Collateral. If Administrative Agent determines that the conditions to the Loan Conversion have been satisfied, Administrative Agent shall give Borrower written notice ("Conversion Notice") that the Construction Loan will convert to the Term Loan, in which case the Loan Conversion shall be effective on the first day of the month following the date Administrative Agent gives a Conversion Notice; provided that a Conversion Notice shall not constitute or be deemed a waiver of any obligations, covenants, representations, or warranties of Borrower or any other party under any of the Loan Documents, nor an acknowledgment, confirmation or agreement (i) that all conditions for the Loan Conversion were fully satisfied or (ii) as to the lack of existence of a Default, Event of Default, or Material Adverse Effect. Until Administrative Agent gives a Conversion Notice upon satisfaction of all conditions thereto, the conditions for a Loan Conversion shall be deemed not to have been satisfied. Notwithstanding anything in the Loan Documents to the contrary, if the Loan Conversion has not occurred on or before the Maturity Date for the Construction Loan, Borrower shall not thereafter be eligible for such Loan Conversion and all such rights shall automatically terminate, without any notice or other action by any party.

Section 2.6 Late Charge; Default Interest; Usury Savings Provision.

(a) If any payment required under this Loan Agreement or the Note is not paid within five days after such payment is due, then Borrower shall pay, at Administrative Agent's request, a late charge (the "Late Charge") equal to 5.00% of the amount of such payment to compensate Administrative Agent for administrative expenses and other costs of delinquent payments. Each such Late Charge shall be immediately due and payable and shall be in addition to all other rights and remedies available to Administrative Agent and Lenders.

(b) If any amount which is due and payable by Borrower to Administrative Agent pursuant to any of the Loan Documents is not paid when due, including at stated maturity, upon acceleration or otherwise, or if a Default has occurred and is continuing then, at the election of Administrative Agent (without giving notice thereof to Borrower), the Loan shall bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate, unless otherwise expressly provided in any of the Loan Documents; provided however, if Administrative Agent has been paid a Late Charge for a particular month as provided in clause (a) above in connection with such late payment, the Default Rate shall not apply with respect to the amount of such late payment during such month

for which a Late Charge has been paid. Interest at the Default Rate shall be immediately due and payable ON DEMAND as it accrues. Borrower acknowledges that failure to timely make payments due under this Loan Agreement may affect any amortization schedule contained in the Loan Documents.

(c) In no event shall any interest rate provided for in this Loan Agreement, the Note or any other Loan Document exceed the maximum rate permitted by the then Legal Requirements. It is the intention of the parties hereto to strictly comply with applicable usury laws; accordingly, it is agreed that, notwithstanding any provision to the contrary in this Loan Agreement, in the Note, or in the other Loan Documents, in no event shall this Loan Agreement, the Note, or the other Loan Documents be construed to charge, contract for or require the payment or permit the collection of interest in excess of the maximum amount permitted by Legal Requirements. If any interest is contracted for, charged or received pursuant to this Loan Agreement, the Note, the other Loan Documents, or any actions taken in connection therewith, or in the event that any portion of the principal balance shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received on the principal balance shall exceed the maximum amount of interest permitted by Legal Requirements, then in such event (i) the provisions of this Section 2.6(c) shall govern and control, (ii) neither Borrower nor any other Person now or hereafter liable for the payment thereof shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by Legal Requirements, (iii) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal balance or refunded to Borrower, at the option of Administrative Agent, and (iv) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under Legal Requirements as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Loan Agreement, the Note and the other Loan Documents, which are made for the purpose of determining whether such rate exceeds the maximum lawful contract rate, shall be made, to the extent permitted by Legal Requirements, by amortizing, prorating, allocating and spreading in parts during the period of the full stated term of the indebtedness, all interest at any time contracted for, charged or received from Borrower or otherwise by Administrative Agent and Lenders in connection with such indebtedness; provided, however, that if any applicable state law is amended or any law of the United States of America preempts any applicable state law, so that it becomes lawful for Administrative Agent or any Lender to receive a greater interest rate than is presently allowed, Borrower agrees that, on the effective date of such amendment or preemption as the case may be, the maximum lawful interest rate hereunder shall be increased to the maximum interest rate allowed by the higher of the amended state law or the law of the United States of America.

#### Section 2.7 Payments.

(a) Payments of principal and interest on the Note, and payments of all other amounts payable by Borrower to Administrative Agent or a Lender pursuant to any of the Loan Documents, shall be made by Automated Clearing House debit of immediately available funds from the account designated by Borrower in the Automated Clearing

House debit authorization executed by Borrower in connection with this Loan Agreement, or by wire transfer of immediately available funds to LaSalle Bank, 135 South LaSalle Street, Chicago, Illinois 60603, ABA 071000505, Account name: Merrill Lynch Equipment Finance Group, Account # 5800393166, Attention: Portfolio Management, reference: Levelland/Hockley County Ethanol, LLC, or such other address as Administrative Agent shall have designated to Borrower in writing, and shall be effective upon receipt. All payments by Borrower to Administrative Agent or a Lender under the Loan Documents shall be paid to Administrative Agent at such address, not later than 2:00 p.m. Central Time on the due date thereof, in lawful money of the United States. All payments under the Loan Documents shall be made (i) without setoff, counterclaim or condition and (ii) free and clear of, and without deduction for or on account of, any Indemnified Taxes; provided that if Borrower is required by Legal Requirements to make any deduction or withholding on account of any Indemnified Taxes from any payment due under the Loan Documents, then: (A) Borrower shall notify Administrative Agent promptly as soon as it becomes aware of such requirement and shall remit promptly the amount of such Taxes to the appropriate taxation authority, and in any event prior to the date on which penalties attach thereto; and (B) such payment shall be increased by such amount as may be necessary to ensure that Administrative Agent and Lenders receive a net amount, after deduction of such Indemnified Taxes, equal to the full amount which Administrative Agent and Lenders would have received had such payment not been subject to such deduction or withholding of Indemnified Taxes. In addition, Borrower agrees to pay to the relevant Governmental Agency in accordance with Legal Requirements any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Loan Agreement, the Note, or the recording or filing of any Loan Document but excluding the Excluded Taxes ("Other Taxes"). Borrower shall deliver to Administrative Agent an official receipt (or, if an official receipt is not available, such other evidence of payment as shall be reasonably satisfactory to Administrative Agent or Lenders) in respect of any Other Taxes payable hereunder promptly after payment of such Other Taxes. Borrower shall indemnify Administrative Agent and Lenders in respect of Indemnified Taxes or Other Taxes paid by Administrative Agent and Lenders whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted and shall supply copies of applicable tax receipts or other evidence of payment reasonably satisfactory to Administrative Agent. Such indemnification shall be paid within ten Business Days from the date on which Administrative Agent or a Lender makes written demand therefor specifying in reasonable detail the nature and amount of such Indemnified Taxes or Other Taxes.

(b) If any payment to be made by Borrower shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day.

(c) Each payment to be made on a Payment Date, all prepayments, and all other payments shall be applied to the Obligations in such order and manner as Administrative Agent may, in its reasonable discretion, elect; provided however, if no election is made by Administrative Agent, then such payment shall be applied by Administrative Agent in the following order: first, to payment of that portion of the

Obligations constituting accrued and unpaid interest on the Loan; second, to payment of that portion of the Obligations constituting outstanding principal of the Loan; third, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to Administrative Agent or a Lender; and fourth, to payment of any remaining Obligations. Prepayments of principal will be applied to the Obligations in inverse order of maturity.

(d) Borrower shall indemnify Administrative Agent and Lenders on demand against all costs, expenses, liabilities and losses (including funding losses) incurred as a result of or in connection with (i) any postponement of the Closing Date occurring because of one or more of the conditions precedent set forth in Article III shall not have been satisfied or waived as a result of Borrower's failure to satisfy such condition and/or (ii) any payment of principal of the Loan made on a Business Day which is not a Payment Date. The above indemnities are separate and independent obligations of Borrower and apply irrespective of any indulgence granted by Administrative Agent or any Lender.

(e) If Administrative Agent or a Lender receives a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.7, it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 2.7 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Agency with respect to such refund); provided, that Borrower, upon the request of Administrative Agent or such Lender, agrees to repay without interest the amount paid over to Borrower to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Agency. This Section shall not be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to Borrower or any other Person.

Section 2.8 Advance Procedures. All Advances are subject to the following conditions and requirements:

(a) Procedures. Advances shall be made only once each Draw Period during the Construction Phase. Each Advance shall be in an amount of not less than the Minimum Advance, and Borrower shall not request an Advance for less than the Minimum Advance. Advances will be made only for actual costs incurred in accordance with the Budget and other provisions hereof. For each Advance, Borrower must submit to Administrative Agent and the Independent Consultant a written Draw Request. Each Draw Request must include the information and documentation required in this Agreement, along with the lien waivers and releases, information, certifications, approvals, instruments, and documents required as a condition to the requested Advance (except the down date endorsement to the Title Insurance must be received by Administrative Agent and the Independent Consultant prior to the date that the requested



Advance is actually made). In each Draw Request, Borrower must (i) specify the amount of such Draw Request that applies to each Allocation; (ii) identify all funds being used to pay any portion of the costs reflected in the Draw Request other than the funds being requested to be advanced, and identify the sources and respective amounts from each source of such other funds; and (iii) state the date the Advance is requested, which shall be at least 15 Business Days after Administrative Agent and the Independent Consultant receive the Draw Request. All Draw Requests shall account for the retainage and other withholdings required pursuant to Section 2.8(f). Except as otherwise provided in this Loan Agreement, all Advances will be deposited in the Construction Account; provided that if not all of the conditions to an Advance have been met or satisfied (including if a Default or an Event of Default exists), but Administrative Agent and each Lender elects to make such Advance, then Administrative Agent and such Lender shall have the unconditional right, exercisable in Administrative Agent's and such Lender's sole discretion, to make such Advance, in whole or in part, upon such terms and conditions as Administrative Agent may require, to one or more of (A) directly to Borrower by depositing same in the Construction Account, (B) directly to the Contractor, Design Professional, subcontractors, laborers, or materials suppliers owed, and/or (C) jointly to Borrower and any one or more of the Contractor, Design Professional, subcontractors, laborers, or materials suppliers owed. Borrower will hold the Advances deposited in the Construction Account (until payment to the proper payee) as a trust fund for the purpose of paying the respective costs contained in the Draw Request, pursuant to which such Advance was made. Borrower will apply the same promptly to the payment of the respective costs specified in the subject Draw Request and for which the Advance is made, and will not use any part thereof for any other purpose. Borrower irrevocably authorizes Administrative Agent to make an Advance in an amount equal to the accrued and unpaid interest on the Loan notwithstanding that (i) such Advance may be less than the Minimum Advance, (ii) Borrower has previously requested an Advance during such Draw Period, (iii) Borrower has not satisfied the conditions contained in Sections 3.2, 3.4 and 3.5, (iv) Borrower has not provided a completed Draw Request and/or (v) a Default has occurred and is continuing.

(b) Allocations. The purposes for which the Loan proceeds are allocated and the respective amounts of such Allocations are set forth in the Budget. All Advances requested by Borrower shall conform to the Allocations. Neither Administrative Agent nor any Lender shall be obligated to make an Advance from an Allocation set forth in the Budget to the extent limited by the provisions of this Loan Agreement or the other Loan Documents, including Section 2.8(d) below. Neither Administrative Agent nor any Lender shall be obligated to make an Advance from an allocation for a "contingency" as set forth in the Budget; all Loan proceeds provided in a "contingency" Allocation in the Budget must be reallocated pursuant to Section 2.8(c) hereof as a condition to the Advance of such proceeds.

(c) Reallocations. Borrower shall not be entitled to require that Administrative Agent and Lenders reallocate Loan proceeds from one Allocation to any other Allocations. Borrower may request Administrative Agent and Lenders to make a reallocation of Loan proceeds among one or more Allocations (including any "contingency" Allocation) in the Budget; provided, however, any such reallocation shall

be in Administrative Agent's sole and absolute discretion. To the extent the amount of the Loan proceeds actually needed and disbursed for any Allocation is less than the amount of the Allocation, and the use of those Loan proceeds are not otherwise reallocated as herein provided, then such unused Loan proceeds shall not be available for Advances. If any Loan proceeds are reallocated at the request of Borrower and in accordance with this Section 2.8(c), then the Budget shall be deemed amended in accordance with such reallocation. If a Default or an Event of Default exists, Administrative Agent shall have the right, at its option, to disburse Loan proceeds allocated to any of the Allocations for such other purposes or in such different proportions as Administrative Agent may, in its sole discretion, deem necessary or advisable.

(d) Limitation on Advances. The aggregate amount of all Advances shall not exceed the Note Amount. Without limiting any of the other provisions in this Loan Agreement, neither Administrative Agent nor any Lender shall be required to approve any Draw Request or make an Advance if (i) any cost requested in the Draw Request is not set forth in the Budget, (ii) the requested amount from any Allocation, when added to all prior Advances and any applicable Borrower's Equity and retention requirements for such Allocation, would exceed the lesser of (A) the actual costs incurred by Borrower for such Allocation, or (B) the amount allocated in the Budget for such Allocation, or (iii) an amount is requested directly from a contingency Allocation. Administrative Agent may withhold from an Advance or, on account of subsequently discovered evidence, withhold from a later Advance or require Borrower to repay to Administrative Agent and Lenders the whole or any part of any earlier Advance, to the extent necessary to protect Administrative Agent and Lenders from loss on account of (1) defective work not remedied or requirements of this Loan Agreement not performed, (2) Liens filed or reasonable evidence indicating probable filing of Liens, (3) the failure of Borrower to make payments to the Contractor or subcontractors for materials or labor, or (4) a reasonable doubt by Administrative Agent that the construction of the Improvements can be completed for the sum of (x) the balance of the Loan then undisbursed, (y) the balance of any undisbursed Borrower's Deposits, and (z) the balance of any other deposits made by Borrower into a Special Account with Administrative Agent for any of the foregoing purposes. When all such grounds are cured, Borrower may request the Advance of any amount so withheld because of the foregoing.

(e) Borrower's Deposit. If at any time and from time to time Administrative Agent shall in its reasonable discretion deem that the undisbursed proceeds of the Loan allocated in the Budget for Construction Costs, plus the then balance of the Construction Account and any Special Account to be applied to Construction Costs, are insufficient to meet Construction Costs, plus any other unpaid costs contained in the Budget related to construction of the Improvements, excluding financing costs, Administrative Agent and Lenders may refuse to make any additional Advances to Borrower hereunder until Borrower shall have deposited with Administrative Agent in the Construction Account or a Special Account, as Administrative Agent may require, sufficient additional funds as a Borrower's Deposit to cover the deficiency which Administrative Agent deems to exist. Such Borrower's Deposit will be disbursed by Administrative Agent to Borrower pursuant to the terms and conditions hereof as if they constituted a portion of the Loan

proceeds, prior to any Advance. Borrower agrees to establish such Special Account (if applicable) and make the Borrower's Deposit into the Construction Account or Special Account, as applicable, within 30 days after written demand by Administrative Agent. Unless required by any Governmental Agency requirements, neither Administrative Agent nor any Lender shall be required to pay interest on Borrower's Deposit.

(f) Retainage. An amount equal to 10% of all costs incurred pursuant to a Construction Contract for acquisition or construction of any Improvements, excluding Construction Contracts for design, and for which an Advance has been requested or made, plus the amount of any claims asserted by any laborers or materialmen against any portion of the Collateral pursuant to stop notices, lien claims or similar demands or notices received by Administrative Agent and the Independent Consultant (which have not been bonded against or otherwise secured in accordance with the applicable provisions of the Mortgage), shall be retained by Administrative Agent. Such retainage shall be paid over by Administrative Agent to Borrower, excluding the amount of any such unbonded or unsecured lien claims, plus potential costs and interest related thereto (which funds will be disbursed only as such claims are resolved or bonded around reasonably satisfactorily to Administrative Agent in addition to the satisfaction of the following conditions), when all of the following have occurred to the satisfaction of Administrative Agent:

(i) Administrative Agent has received a certificate of completion, in form and substance acceptable to Administrative Agent, executed by Borrower, the Contractor and the appropriate Design Professional, and approved by the Independent Consultant, certifying, among other things, that all requirements for Completion have been satisfied, the date of Completion, that direct connection has been made to all proposed utility facilities and such utilities are available for use at the Project, and that the construction of the Project has been completed in a good and workmanlike manner, free of defects and damages.

(ii) Administrative Agent and the Independent Consultant shall have received such other evidence as Administrative Agent may require that no mechanics' or materialmen's liens or other encumbrances have been filed and remain in effect against the Collateral, and the time periods for the filing of any stop notice or lien claim with respect to the construction of the Improvements shall have elapsed without the filing or providing of any such stop notice or lien claim. The Design Professional, Contractor, and all subcontractors and material suppliers who performed or provided work or materials related to the Improvements have been paid in full, subject to the release of the retainage as provided in this Section 2.8(f).

(iii) Each applicable Governmental Agency shall have duly inspected and approved the Improvements and the right of occupancy of same and issued the appropriate permits, licenses and certificates evidencing proper completion of the Improvements and the right of occupancy, and Administrative Agent and the Independent Consultant shall have received satisfactory evidence of the foregoing.

- (iv) All conditions to an Advance contained in Section 3.5 are met or satisfied.

Notwithstanding the previous provisions of this Section 2.8(f) to the contrary, Administrative Agent hereby agrees to release separately the amount of retainage withheld with respect to each subcontractor providing services or materials for the construction of the Improvements, but only after (A) all other conditions to an Advance are satisfied, (B) the Independent Consultant approves the separate release of such amount, and (C) such subcontractor and the Contractor execute an affidavit, lien waiver, and release in form and substance acceptable to Administrative Agent in Administrative Agent's sole discretion, for the benefit of Administrative Agent and Lenders (1) stating that the subcontractor has completed all of its services relating to the construction of the Improvements and has been paid in full for such services, and (2) providing a waiver and release by the subcontractor of any and all mechanic's and materialmen's or other Liens it may have against the Land, Improvements, and other Collateral.

(g) Final Advance. Notwithstanding anything else contained in this Loan Agreement to the contrary, if Borrower is able to make final payment to all Contractors, Design Professionals, and other Persons who supplied labor or materials with respect to the construction of the Project and are to be paid in whole or part from Loan proceeds, and all of their subcontractors, except with respect to any disputed claims related to same, then Borrower shall request a final Advance pursuant to Section 3.5, including any Loan proceeds allocable to the disputed claims, and any Loan proceeds allocable to such disputed claims pursuant to the Budget shall be disbursed in a Special Account, with such terms and conditions as Administrative Agent may require, until final resolution of the respective disputed claim.

Section 2.9 Use of Loan Proceeds. The proceeds of the Loan shall be used by Borrower solely for a Loan Purpose, or, with the prior written consent of Administrative Agent and Lenders, which may be withheld by Administrative Agent and Lenders in their sole discretion, for other lawful business purposes of Borrower not prohibited hereby. Borrower agrees that under no circumstances will the proceeds of the Loan be used: (a) for personal, family or household purposes of any Person whatsoever, or (b) to purchase, carry or trade in securities, or repay debt incurred to purchase, carry or trade in securities, or (c) to pay any amount to Merrill Lynch and Co., Inc. or any of its Subsidiaries, other than Merrill Lynch Bank USA, Merrill Lynch Bank & Trust Co. or any Subsidiary of either of them (including Administrative Agent and Merrill Lynch Credit Corporation). The Collateral forms no part of any property claimed by any Person as homestead or otherwise exempt from creditors' rights or forced sale.

Section 2.10 Fees.

(a) Facility Fee. In consideration of the agreement by Administrative Agent and Lenders to extend the Loan to Borrower in accordance with and subject to the terms hereof, Borrower has paid or shall, on or before the Closing Date, pay the Facility Fee to Administrative Agent. Borrower acknowledges and agrees that the Facility Fee has been fully earned by Administrative Agent, and that it will not under any circumstances be refundable.

(b) Additional Fees. Borrower shall pay to Administrative Agent for Administrative Agent's own account, the administrative fee and other fees in the amounts and at the times specified in the fee letter dated September 27, 2006, between Borrower and Administrative Agent. Such fees shall be fully earned when paid or as otherwise provided in such fee letter and shall be nonrefundable for any reason whatsoever.

(c) Non-conversion Fee. If the Loan Conversion has not occurred on or before the Commitment Expiration Date, Borrower shall pay to Administrative Agent for the pro rata account of Lenders a fee in an amount equal to 3.0% of the Note Amount; provided however, Borrower shall not be required to pay such fee if the Loan Conversion fails to occur solely as a result of Administrative Agent's willful failure to give a Conversion Notice without reasonable justification after the terms, conditions and requirements of Loan Conversion have been met.

Section 2.11 Prepayment.

(a) Borrower may not prepay the Loan prior to the second anniversary of the Conversion Date. On or after the date that is two years after the Conversion Date, Borrower may prepay in full (but not in part) the outstanding principal amount of the Loan on any Payment Date after giving at least 30 days prior written notice of such prepayment and payment to Administrative Agent of accrued and unpaid interest thereon and the Prepayment Premium referred to below, if any. Any notice of prepayment hereunder shall be irrevocable. All such prepayments shall also include payment of that portion of the Obligations constituting obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts permitted by the terms of this Loan Agreement.

(b) Lenders shall apply payments received pursuant to this Section 2.11 in accordance with Section 2.7(c) above.

(c) Prepayments made under this Section 2.11 (other than prepayments made in accordance with Section 2.3(c)) shall include a "Prepayment Premium" as follows:

(i) If made on or after the second anniversary but prior to the third anniversary of the Conversion Date, 3.0% of the aggregate principal amount prepaid;

(ii) If made on or after the third anniversary but prior to the fourth anniversary of the Conversion Date, 2.0% of the aggregate principal amount prepaid; and

(iii) If made on or after the fourth anniversary of the Conversion Date, 1.0% of the aggregate principal amount prepaid.

Section 2.12 Advance Not a Waiver or Approval. Administrative Agent or any Lender may make an Advance of all or any portion of a request for an Advance (including a Draw Request) notwithstanding the fact that one or more conditions to such Advance have not been met or satisfied. No Advance of the proceeds of the Loan shall constitute a waiver of any of the

conditions to Administrative Agent's or any Lender's obligation to make such Advance that have not been met or satisfied. In the event Borrower makes an Advance when all conditions have not been met or satisfied, such Advance shall not preclude Administrative Agent or any Lender from requiring that all such conditions be met and satisfied before another Advance is made. The making of any Advance or part thereof shall not be deemed an approval or acceptance by Administrative Agent or any Lender of the work theretofore done. Neither Administrative Agent nor any Lender shall have any obligation to make any Advance or part thereof during the existence of any Default or Event of Default, but shall have the right and option so to do; provided that if Administrative Agent or any Lender elects to make any such Advance, no such Advance shall be deemed to be either a waiver of any Default or Event of Default nor of the right to demand payment of the Obligations, or any part thereof, or exercise any other right or remedy that Administrative Agent or such Lender has with respect to such Default or Event of Default.

Section 2.13 Borrower's Equity. All of Borrower's Equity shall be expended, and evidence thereof shall be provided to Administrative Agent prior to disbursement of any Advance.

Section 2.14 Sharing of Payments, Etc. Borrower agrees that, in addition to (and without limitation of) any right of set-off, bankers' lien or counterclaim a Lender may otherwise have, each Lender shall be entitled, at its option after an Event of Default has occurred and is continuing to offset balances held by it for the account of Borrower at any of its offices against any principal of or interest on any portion of the Loan attributable to such Lender hereunder or any other obligation of Borrower hereunder which is not paid (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and Administrative Agent thereof, provided that such Lender's failure to give such notice shall not affect the validity thereof. If a Lender shall obtain payment of any principal of or interest on any portion of the Loan attributable to it under this Loan Agreement or other Obligation then due hereunder to such Lender, through the exercise of any right of set-off or lien granted under Section 9.3, bankers' lien, counterclaim or similar right, or otherwise, it shall promptly purchase from the other Lenders participations in the Loan attributable to it, or the other obligations of Borrower hereunder of, the other Lenders in such amounts, and make such other adjustments from time to time as shall be equitable to the end that all Lenders shall share the benefit of such payment (net of any expenses which may be incurred by such Lender in obtaining or preserving such benefit) pro rata in accordance with their respective portions of the Loan. To such end, all Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. Borrower agrees, to the fullest extent it may effectively do so under applicable Legal Requirements, that any Lender so purchasing a participation in the Loan may exercise all rights of set-off, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of the Loan or other obligations in the amount of such participation. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligations of Borrower to such Lender.

Section 2.15 Status of Lenders.

(a) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to Borrower (with a copy to Administrative Agent), at the time or times prescribed by Legal Requirements or reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation prescribed by Legal Requirements as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by Legal Requirements or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(b) Without limiting the generality of the foregoing clause (a), in the event that Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Borrower or Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed 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 copies of Internal Revenue Service Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under 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 Borrower within the meaning of section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in section 871(h) or 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN; or

(iv) any other form prescribed by Legal Requirements as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Legal Requirements to permit Borrower to determine the withholding or deduction required to be made.

### ARTICLE III. CONDITIONS PRECEDENT TO ADVANCES

Section 3.1 Conditions of Closing and Initial Advance. The Closing Date and Lenders' obligation to make the initial Advance under the Loan are subject to the prior fulfillment, or waiver by Administrative Agent in writing, of each of the following conditions:

(a) Administrative Agent and Lenders shall have received this Loan Agreement and all of the other Loan Documents, duly executed and filed or recorded (or in a form suitable for filing and recording for the first Advance) where applicable, all of which shall be in form and substance satisfactory to Administrative Agent, including (i) the Note, (ii) the Mortgage, (iii) the Security Agreement, (iv) Financing Statements, (v) a Contractor Consent for each Construction Contract between Borrower and a Contractor or Design Professional, (vi) a closing certificate of Borrower, (vii) the Subordination Agreement, and (viii) a certification by an authorized representative of each Credit Party certifying as to (A) resolutions of the governing authority, board of directors, members or managers, or general partner, as applicable, of each Credit Party authorizing the Loan, the execution, delivery and performance of the Loan Documents, and any other action that is then being proposed to be taken, (B) an incumbency certificate of each Credit Party who will sign any Loan Document, (C) governmental certificates of good standing and existence of each Credit Party, where applicable, (D) certified articles of incorporation or other certificate of formation document and bylaws, operating agreement or regulations, partnership agreement, or other governing documents of each Credit Party, and (E) such other matters as may be required by Administrative Agent;

(b) Borrower shall have performed, satisfied, and delivered, as applicable, all in Administrative Agent's sole discretion, (i) all items set forth in Borrower's Loan Application, which was approved by Administrative Agent, in connection with the Loan, and (ii) all items on the closing checklist, as amended, issued by Administrative Agent in connection with such Loan Application;

(c) Administrative Agent shall be satisfied with the financial condition of Borrower and any other Credit Party;

(d) The Facility Fee shall have been paid to Administrative Agent;

(e) Administrative Agent shall have received, in form and substance acceptable to Administrative Agent, at no cost to Administrative Agent or any Lender, each of the following:

(i) an opinion of Credit Parties' legal counsel, dated as of the Closing Date, and covering such matters as are required by Administrative Agent;

(ii) to the extent applicable as of the date of the initial Advance, copies of each authorization, license, permit, consent, order or approval of, or registration, declaration or filing with, any Governmental Agencies or other Person obtained or made by Borrower, any other Credit Party or any other Person in connection with the transactions contemplated by the Loan Documents and



which is material to the financial condition of Borrower or such other Person or the conduct of its business or the transactions contemplated hereby or the Collateral or the Project, including building permits and those listed in Schedule 3.1(e)(ii), which is attached hereto and incorporated herein for all purposes and those identified in the Prospectus;

(iii) UCC, tax lien and judgment lien record searches, disclosing no notice of any Liens filed against any of the Collateral, other than the Permitted Exceptions;

(iv) the Title Policy (or the Title Company's unconditional commitment to issue the Title Policy upon recordation of the Mortgage), and legible copies of all instruments representing exceptions to the state of title to the Land;

(v) a Phase I environmental report (jointly addressed to Borrower and Administrative Agent or with an appropriate reliance letter addressed to Administrative Agent) covering the Land, in form and content and conducted and prepared by an environmental consultant acceptable to Administrative Agent, and any other environmental reports or tests that Administrative Agent may request with respect to the Land, and any improvements thereon, all in form and substance acceptable to Administrative Agent (and Borrower agrees Administrative Agent may disclose the contents of such environmental report to Governmental Agencies, and if requested by Administrative Agent, Borrower shall deliver to Administrative Agent the written consent to such disclosure from the respective environmental consultant);

(vi) an Appraisal of the Land and Improvements showing the "completed and stabilized" value, and/or such other valuations as may be required by Administrative Agent;

(vii) a current pre-construction survey of the Land and any then existing improvements thereon as required pursuant to and in conformity with Section 7.2(a) hereof;

(viii) a full-size, single sheet copy of all recorded subdivision or plat maps of the Land approved (to the extent required by Legal Requirements) by all Governmental Agencies;

(ix) a copy of each Construction Contract, except that Borrower shall not be obligated to provide an original or copy of any Construction Contract related to construction (versus design) which is not executed by the Contractor directly with Borrower unless such subcontract (when aggregated with all contracts with such subcontractor) exceeds \$50,000 or is requested by Administrative Agent;

(x) a copy of the Plans;

(xi) evidence that all applicable zoning ordinances and restrictive covenants affecting the Land permit the use for which the Improvements are intended and have been or will be complied with in all respects;

(xii) current Financial Statements of Borrower as required by Administrative Agent;

(xiii) a soils and geological report covering the Land issued by a Design Professional approved by Administrative Agent, which report shall be addressed to Borrower, Administrative Agent, Lenders, and their respective successors and assigns, shall be satisfactory in form and substance to Administrative Agent, and shall include an affirmative confirmation that construction of all Improvements as proposed is feasible under existing soils conditions so long as the recommendations of the soils report are followed and confirmation that the Plans adequately incorporate such recommendations;

(xiv) if there are existing improvements on the Land, a property condition report prepared by a Design Professional acceptable to Administrative Agent and reflecting no facts or conditions that are objectionable to Administrative Agent;

(xv) the Construction Schedule;

(xvi) the Budget, which must have been approved by Administrative Agent;

(xvii) evidence that all permits, approvals, contracts, rights-of-way, and other matters have been obtained in order to provide rail access, spur upgrade construction, rail spur and container loading services, and similar upgrades and services for operation of the Plant, all satisfactory to Administrative Agent;

(xviii) evidence that all applicable impact fees, use fees, utility fees and deposits, connection fees, and other fees and assessments related to the streets, rail access, and utility services for, and development and operation of, the Project have been paid or are included in the Budget;

(xix) an Automated Clearing House debit authorization duly executed by Borrower;

(xx) the Projections;

(xxi) all of Borrower's marketing agreements and agreements with members satisfactory in form and substance to Administrative Agent;

(xxii) evidence that Borrower has received the Borrower's Equity in an amount not less than \$29,140,000 in cash;

(xxiii) fully executed copies of the Borrower's contracts with the West Texas and Lubbock Railway Company for spur upgrade construction and with a Person approved by Administrative Agent for rail access, a rail spur and container loading services and other similar contracts for Borrower's operation of the Project, including those contracts identified in the Prospectus;

(xxiv) evidence that all tax credits, incentives, mandates and the like described in the Prospectus are available to Borrower;

(xxv) evidence that Borrower shall have purchased and received clear title in fee simple to the Land free and clear of all Liens;

(xxvi) mortgagee title policy re-insurance or co-insurance as required by Administrative Agent;

(xxvii) evidence that no Collateral is located in an area identified as having special flood hazards or, if any Collateral is located in an area identified as having any flood hazards, evidence of flood insurance for such area as required by applicable Legal Requirements;

(xxviii) evidence that each Credit Party has paid all of its taxes, assessments and other governmental charges which are due and payable;

(xxix) evidence that the Real Property Collateral abuts and has fully adequate direct and free access to one or more dedicated streets and thoroughfares and to rail lines and has adequate rights of ingress and egress;

(xxx) evidence of the availability of utilities and other necessary services;

(xxxi) copies of all Rex Subordinated Debt Documents and all FEL Subordinated Debt Documents; and

(xxxii) evidence that Borrower has paid in full the FEL Subordinated Debt.

(f) Borrower shall have (i) executed all Operating Contracts necessary for the operation of the Project, including Operating Contracts of the nature identified on Schedule 3.1(f) attached hereto and incorporated herein for all purposes, each of which shall be in form and substance and with party(s) reasonably acceptable to Administrative Agent and (ii) caused to be executed and delivered to Administrative Agent a consent and agreement for each such Operating Contract executed by the parties thereto to the collateral assignment to Administrative Agent of such Operating Contract, and the granting of nondisturbance rights in favor of Administrative Agent, opportunity to cure rights in favor of Administrative Agent, and such other matters as Administrative Agent may require, all in form and substance acceptable to Administrative Agent.

(g) With respect to the initial Advance only, either (i) Borrower shall have received and used for approved Construction Costs an additional amount equal to \$7,285,000 in Borrower's Equity and shall have consented to a reduction of the Note Amount by such amount or (ii) Administrative Agent shall have received an update feasibility study and pro forma financial statements for the Project prepared by an independent third party acceptable to Administrative Agent that confirm or reflect improved findings and outcomes than those in the feasibility study previously provided by Borrower to Administrative Agent, all as approved by Administrative Agent's chief credit and risk officer.

Section 3.2 Conditions of All Advances. The Closing Date and Lenders' obligation to make any Advance (including the initial Advance) under the Loan are subject to the prior fulfillment, or waiver by Administrative Agent in writing, of each of the following conditions:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the making of any such Advance hereunder;

(b) there shall not have occurred and be continuing any Material Adverse Effect;

(c) the Commitment Expiration Date shall not then have occurred;

(d) all representations and warranties of all of the Credit Parties herein or in any of the other Loan Documents shall then be true and correct in all material respects (provided those that relate to a specific date shall be true and correct as of such date), and Borrower shall have provided Administrative Agent such evidence of compliance with the representations and warranties as Administrative Agent may reasonably request;

(e) each Credit Party shall have performed and complied with all agreements and conditions contained in the Loan Documents applicable to it and which are to be performed or complied with on or before the date of the Advance, all in accordance with the provisions of the Loan Documents;

(f) Borrower shall have paid any and all fees due Administrative Agent and Lenders under the Loan Documents and any and all costs and expenses (including legal fees and expenses) incurred by Administrative Agent that are to be reimbursed by Borrower under the Loan Documents up to the date of such Advance;

(g) Administrative Agent shall have received evidence satisfactory to it that the Credit Parties own the Collateral and Administrative Agent's Liens against the Collateral are duly perfected in a first priority Lien position;

(h) Administrative Agent shall have received evidence satisfactory to it of the insurance required hereby or by any of the other Loan Documents;

(i) all of the Loan Documents shall be in full force and effect and binding and enforceable obligations of each Person who may be a party thereto or otherwise bound thereby;

(j) in Administrative Agent's determination, which cannot be made in bad faith, Completion will occur on or before March 31, 2008;

(k) Borrower shall have disbursed, or Borrower shall be disbursing with the requested Advance, (i) all funds previously advanced, and (ii) all Borrower's Deposits made or required to be made as of the date of the Advance; and all Borrower's Equity, which was to have been paid prior to such Advance being disbursed, shall have been paid;

(l) the aggregate of all Advances (including the requested Advance) shall not exceed the value of the Land, the work done, and the materials physically incorporated into the Improvements or paid for and delivered to the Land or stored off-site as provided in this Agreement;

(m) Administrative Agent shall have received such other documents and information as Administrative Agent may reasonably request; and

(n) Borrower shall have satisfied all of the conditions set forth in Section 3.1.

#### Section 3.3 [Reserved]

Section 3.4 Additional Conditions Precedent to All Advances. Lenders' obligation to make any Advance is subject to the prior fulfillment, or waiver by Administrative Agent in writing, of each of the following conditions:

(a) Administrative Agent and the Independent Consultant shall have received a Draw Request for the subject Advance at least 15 Business Days prior to the requested date of disbursement of the Construction Advance, and Administrative Agent and the Independent Consultant shall have approved such Draw Request, such approval not to be unreasonably withheld or delayed;

(b) each of the conditions contained in Sections 3.1 and 3.2 shall have been met or satisfied;

(c) the Mortgage and any other Loan Documents which are to be recorded or filed were duly recorded and filed prior to commencement of any construction on the Land, including pre-construction activity, placing any materials or supplies on the Land, or any other act or occurrence which could give rise to a lien claim equal or superior to the Liens created by the Loan Documents;

(d) Completion shall not then have occurred;

(e) (i) the Improvements shall not have been damaged by fire or other casualty (x) that has not been fully repaired or (y) that is not in the process of being repaired with sufficient funds set aside therefor and such repair shall not result in a material delay in construction and completion of the Project;

(f) Administrative Agent and the Independent Consultant shall have received, at Borrower's expense, a down date endorsement to the Title Policy (or if an endorsement is not available, a letter from the Title Company) dated within five days of the requested Advance and showing no state of facts objectionable to Administrative Agent, including showing no intervening Lien has been filed affecting the Land or the Project;

(g) if requested by Administrative Agent, Administrative Agent and the Independent Consultant shall have received, after the location of the foundation for any building site on the Land has been established and staked on the ground and before the foundation is poured, a survey in conformity with Section 7.2(b) hereof;

(h) Administrative Agent and the Independent Consultant shall have received waivers and releases signed and acknowledged (notarized) by each Contractor that has done work included within any prior Draw Request that the respective Contractor has been paid in full (except for required retainage) for, and waiving and releasing any mechanic's and materialmen's Lien rights with respect to, all work done through the date of the preceding Draw Request;

(i) Administrative Agent and the Independent Consultant shall have received an inspection report prepared by the Independent Consultant approving the Draw Request and confirming that the amount of the Advance included in the Draw Request does not exceed the cost of the work completed less prior Advances and required retainage, that the undisbursed Loan proceeds, together with funds in the Construction Account and any Special Account designated for Construction Costs plus any outstanding Borrower's Equity for Construction Costs, are sufficient to complete all of the Improvements, that the Improvements have been constructed in accordance with the Plans and applicable Legal Requirements, that the construction is proceeding in conformity with the Budget and Construction Schedule, and such other matters as may be reasonably requested by Administrative Agent; and

(j) Administrative Agent shall have received evidence that the full amount of the Interest Reserve has been deposited into the Interest Reserve Account.

Section 3.5 Conditions Precedent to Final Advance. Lenders' obligation to make the final Advance is subject to the prior fulfillment, or waiver by Administrative Agent in writing, of each of the following conditions:

(a) each of the conditions contained in Sections 3.1, 3.2 and 3.4 shall have been met or satisfied;

(b) Completion shall have occurred, and Administrative Agent and the Independent Consultant shall have received satisfactory evidence that Completion has occurred;

(c) Administrative Agent and the Independent Consultant shall have received an "as-built" survey as required pursuant to and in conformity with Section 7.2(c) hereof and approved in writing by Administrative Agent;

(d) Administrative Agent and the Independent Consultant shall have received a complete set of "as-built" plans and specifications for the Improvements, certified as accurate by each applicable Design Professional;

(e) Administrative Agent and the Independent Consultant shall have received an affidavit of bills paid and lien waivers and releases, in form and substance acceptable to Administrative Agent, executed by each Contractor and any other Person Administrative Agent reasonably requires;

(f) Administrative Agent and the Independent Consultant shall have received evidence that there are no Liens against any of the Collateral, other than Permitted Exceptions;

(g) Administrative Agent and the Independent Consultant shall have received evidence that 40 days shall have elapsed from the later of (i) the date of completion of the Improvements, as specified in Texas Property Code § 53.106, if the Affidavit of Completion provided for in this Loan Agreement is filed within 10 days after such date of Completion, or (ii) the date of filing of such Affidavit of Completion if such Affidavit of Completion is filed 10 days or more after the date of the completion of the Improvements, as specified in Texas Property Code § 53.106;

(h) Administrative Agent and the Independent Consultant shall have received evidence that the Improvements and their use comply fully with any and all applicable zoning, subdivision, building and environmental requirements and other Legal Requirements (and such evidence must include documentation establishing that both the zoning and subdivision approval is based on no requirement or condition involving any real property, or rights appurtenant thereto, other than the property encumbered by the Mortgage, that the number of parking spaces available on the Land is sufficient to comply with all applicable Legal Requirements for the Project, and that all fire and other health and safety systems in the Improvements are installed, operational and sufficient to comply with all applicable Legal Requirements);

(i) satisfaction of the requirements set forth in Section 2.8(f); and

(j) Administrative Agent and the Independent Consultant shall have received any other evidence or information concerning Completion that Administrative Agent reasonably requires.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Administrative Agent and each Lender (each of the following representations and warranties: (a) has been and will be relied upon as an inducement to Administrative Agent and each Lender to make the Loan, and (b) is continuing and shall be deemed remade by Borrower on the Closing Date and at all times thereafter until all Obligations have been fully satisfied) that:

Section 4.1 Organization and Existence. Borrower is a limited liability company, duly organized, validly existing and in good standing, if applicable, under the laws of its jurisdiction

of organization; the organizational number assigned to Borrower by such jurisdiction is 800306780; Borrower is qualified to do business and is in good standing in each other jurisdiction where the nature of its business or the property owned by it make such qualification necessary; and each Credit Party, if any, is duly organized, validly existing and in good standing, if applicable, under the laws of the state of its formation and is qualified to do business and in good standing in each other jurisdiction where the nature of its business or the property owned by it make such qualification necessary.

Section 4.2 Execution, Delivery and Performance. Each Credit Party has the requisite organizational power and authority to enter into and perform its obligations under the Loan Documents to which it is a party. Borrower holds all necessary permits, licenses, certificates of occupancy and other governmental authorizations and approvals required for the then current stage of construction or Completion of the Improvements and for the then current operations of Borrower's business. The execution, delivery and performance by Borrower and by each of the other Credit Parties of each of the Loan Documents to which it is a party: (a) have been duly authorized by all requisite organizational action, (b) do not and will not violate or conflict with any law, order or other Legal Requirement, (c) do not and will not violate or conflict with any of the agreements, instruments or documents which formed or govern the respective Credit Party, and (d) do not and will not breach or violate any of the provisions of, and will not result in a default by any of the Credit Parties under, any other material agreement, instrument or document to which it is a party or is subject.

Section 4.3 Notices and Approvals. Except as may have been given or obtained, no notice to or consent or approval of any Governmental Agency or other third party whatsoever (including any other creditor) is required in connection with the execution, delivery or performance by any Credit Party of this Loan Agreement, the Note and the other Loan Documents to which it is a party.

Section 4.4 Enforceability. The Loan Documents to which any Credit Party is a party are the respective legal, valid and binding obligations of such Credit Party, enforceable against it or them, as the case may be, in accordance with their respective terms, except as enforceability may be limited by bankruptcy and other similar laws affecting the rights of creditors generally or by general principles of equity.

Section 4.5 Collateral. Borrower has good and marketable title to the Real Property Collateral, free and clear of any Liens, charges, claims, easements, restrictions, rights of first refusal, options, leases, covenants, or other rights, titles, or interests except the Permitted Exceptions. Except for Permitted Exceptions and priorities afforded to any Permitted Exception: (a) Borrower has good and marketable title to the Personal Property Collateral, (b) none of the Personal Property Collateral is subject to any Lien, and (c) upon the filing of all UCC financing statements with respect to the Personal Property Collateral in the appropriate jurisdiction(s) and the completion of any other action required by Legal Requirements to perfect its Liens, Administrative Agent (for the benefit of Secured Parties) will have valid and perfected first Liens upon all of the Personal Property Collateral. Any Tangible Collateral which is not located on the Land is and will remain Personal Property Collateral and is not and shall not constitute real property at such location. Within the past six years, Borrower has not changed its name, done



business under any other name, or merged or been the surviving entity of any merger, except as disclosed in writing to Administrative Agent prior to the Closing Date.

Section 4.6 Financial Statements. Except as expressly set forth in Borrower's financial statements, all financial statements of Borrower furnished to Administrative Agent and any Lender have been prepared in conformity with GAAP are true and correct and present fairly in all material respects, the financial condition of Borrower as of such dates and the results of its operations for the periods then ended (subject, in the case of interim unaudited financial statements, to normal year-end adjustments); and since the most recent date covered by such financial statements, there has been no material adverse change in any such financial condition or operation.

Section 4.7 Litigation. No litigation, arbitration, administrative or governmental proceedings are pending or, to the Knowledge of Borrower, threatened against any Credit Party, which would, if adversely determined, materially and adversely affect (a) such Credit Party's interest in the Collateral or the Liens and security interests of Administrative Agent for the benefit of Secured Parties hereunder or under any of the Loan Documents, or (b) the financial condition of such Credit Party or its continued operations.

Section 4.8 Tax Returns. All federal, state and local tax returns, reports and statements required to be filed by any Credit Party have been filed with the appropriate Governmental Agencies, and all taxes due and payable by any Credit Party have been timely paid (except to the extent that any such failure to file or pay will not materially and adversely affect (a) either the Liens and security interests of Administrative Agent for the benefit of Secured Parties hereunder or under any of the Loan Documents, (b) the financial condition of any Credit Party, or (c) its continued operations).

Section 4.9 Relationship with Merrill Lynch. Neither Borrower nor any shareholder or other Person that controls Borrower is (a) an executive officer or director of Merrill Lynch & Co., Inc. or any of its subsidiaries or Affiliates, or (b) a holder of more than 10% of any class of voting securities of Merrill Lynch & Co., Inc. or any of its subsidiaries or Affiliates. For purposes of this representation, "control" means the power to vote 25% or more of any class of voting securities; the ability to control the election of a majority of directors; or the power to exercise a controlling influence over management policies.

Section 4.10 No Default. No Default or Event of Default has occurred and is continuing.

Section 4.11 No Outside Broker. Except for employees of Administrative Agent, Merrill Lynch, Pierce, Fenner & Smith Financial Consultant ("MLPF&S") or one of their Affiliates or as described in writing by Borrower to Administrative Agent, Borrower has not in connection with the transactions contemplated hereby directly or indirectly engaged or dealt with, and was not introduced or referred to Administrative Agent by, any broker or other loan arranger.

Section 4.12 Material Adverse Effect. Since June 30, 2006, there has been no change which would reasonably be expected to have a Material Adverse Effect.

Section 4.13 Environmental Matters. In the ordinary course of its business, the officers of Borrower consider the effect of Environmental Laws on the business of Borrower, in the course of which they identify and evaluate potential risks and liabilities accruing to Borrower due to Environmental Laws. On the basis of this consideration, Borrower has concluded that Environmental Laws and Environmental Claims would not reasonably be expected to have a Material Adverse Effect on Borrower. Neither Borrower nor any Subsidiary has received any written notice of a material Environmental Claim or to the effect that its operations are not in material compliance with any of the requirements of applicable Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action would reasonably be expected to have a Material Adverse Effect on Borrower.

Section 4.14 Investment Company Act. Neither Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

Section 4.15 Public Utility Holding Company Act. Neither Borrower nor any Subsidiary is a "holding company" or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of the Public Utility Holding Company Act of 2005, as amended.

Section 4.16 No Assignment. Borrower has made no previous assignment of its interest in the Plans, any Construction Contract, any Property Contract, or any Operating Contract.

Section 4.17 Compliance With Laws. Each Credit Party is in compliance in all material respects with all Legal Requirements applicable to such Credit Party. Upon completion of construction of the Improvements in accordance with the Plans, the Improvements will comply with all applicable Legal Requirements, including zoning laws, building codes, handicap or disability laws, Environmental Laws, and all rules, regulations and orders relating thereto, and the use to which Borrower is using and intends to use the Land and Improvements complies with and will comply with such Legal Requirements. Borrower has obtained all permits, licenses, consents and approvals which are needed as of such date for the construction of the Improvements and use of the Land and Improvements in order to comply with all Legal Requirements.

Section 4.18 Plans. The Plans are satisfactory to Borrower, are in compliance with all Legal Requirements and, to the extent required by any Legal Requirements, have been approved by each Governmental Agency and/or by the governing authority and beneficiaries, as appropriate, of any restrictive covenant or other nongovernmental legal requirements affecting the Land or Improvements. The Plans are complete in all material respects, contain all necessary detail for construction of the Improvements, are sufficient for construction of all infrastructure and improvements necessary to complete construction of the Project so that the Project is capable of operating in its intended capacity, and have been sealed by the Design Professional(s) who prepared such Plans.

Section 4.19 Utility Services. All utility services of sufficient size and capacity necessary for the construction of the Improvements and the use thereof for their intended purposes are available at the property line(s) of the Land for connection, and upon Completion are connected, to the Improvements, including potable water, storm and sanitary sewer, gas, electric and telephone facilities.

Section 4.20 Access. Access by vehicles to the Land for the full utilization of the Improvements for their intended purposes exists over paved roadways that have been completed, dedicated to the public use and accepted by the appropriate Governmental Agencies, or the necessary rights-of-way for such road ways have been acquired by the appropriate Governmental Agencies and all necessary steps have been taken by Borrower and such Governmental Agencies to assure the complete construction and installation of such roadways.

Section 4.21 No Commencement. As of the date of recordation of the Mortgage, (a) no steps to commence construction on the Land, including steps to clear or otherwise prepare the Land for construction thereon or the delivery of materials for use in construction of the Improvements, have been taken, and (b) no contract or other agreement has been executed for construction (including development) on the Land for engineering, architecture or other design related to any such construction, has been entered into, for furnishing materials for such construction or for any other related purpose, the performance of which by the other party thereto could give rise to a Lien.

Section 4.22 Budget Correct. The Budget is true, correct, and complete, and accurately reflects Borrower's best good faith estimate of all of the direct and indirect costs of all matters reflected therein, including completing the Improvements in accordance with the Plans, the Loan Documents, and all Legal Requirements.

Section 4.23 Projections. The Projections fairly present Borrower's reasonable forecast of the most probable results of operations and changes in cash flows for the periods covered thereby, based on the assumptions set forth therein, which assumptions are reasonable based on historical experience and presently known facts. As of the date of this Loan Agreement, to the best of Borrower's Knowledge (with such due diligence as a reasonable Person would have performed), there have been no changes with respect to any facts, assumptions, or any other matters or conditions which could reasonably be expected to result in, singly or in the aggregate, a material discrepancy or change with respect to the Projections.

Section 4.24 Contracts. There are no Construction Contracts, Property Contracts, or Operating Contracts (including all amendments thereto), a copy of which has not been delivered to Administrative Agent and the Independent Consultant (if in existence on the date of this Loan Agreement) or that will not have been delivered to Administrative Agent and the Independent Consultant within five days after execution (if not currently in existence), and all such copies are and shall be true, correct and complete. All Construction Contracts, Operating Contracts, and material Property Contracts have been duly executed by all parties thereto, and Borrower is not in default, and there exists no event or fact that with the giving of notice, the passage of time, or both, would constitute a default, thereunder. Borrower has all Operating Contracts (duly executed and binding upon all parties thereto) needed to operate the Project consistent with the Projections.

Section 4.25 Land. If required by applicable Legal Requirements, the Land has been duly platted in accordance with all Legal Requirements, which plat has been approved and executed by all appropriate Governmental Agencies and has been duly recorded. The Project is taxed separately without regard to any other property, and for all purposes, the Project may be mortgaged, conveyed, and otherwise dealt with as an independent parcel.

Section 4.26 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each ERISA Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than a de minimis amount the fair market value of the assets of such ERISA Plan, and the present value of all accumulated benefit obligations of all underfunded ERISA Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than de minimis amount the fair market value of the assets of all such underfunded ERISA Plans.

Section 4.27 Disclosure: Accuracy. Borrower has disclosed to Administrative Agent, Lenders and the Independent Consultant all agreements, instruments, reports, inspections and corporate or other restrictions related to the Project or to which it or any of its Subsidiaries is subject, and all other matters known to any of them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished or hereafter furnished by or on behalf of Borrower or any other Credit Party to Administrative Agent, the Independent Consultant or any Lender in connection with the negotiation of this Loan Agreement or any of the Loan Documents or delivered hereunder (as modified or supplemented by other information so furnished) contains or will contain 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 misleading; provided that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 4.28 Subsidiaries. As of the Closing Date, Borrower has no Subsidiaries other than those specifically disclosed in Schedule 4.28, and all of the outstanding equity interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned by a Credit Party in the amounts specified in Schedule 4.28 free and clear of all Liens. Neither Borrower nor any Subsidiary has any equity investments in any other Person other than those specifically disclosed on Schedule 4.28. All of the equity interests in Borrower have been validly issued and are fully paid and nonassessable. The Subsidiaries of Borrower as of the Closing Date are specified on Schedule 4.28, and Schedule 4.28 correctly sets forth the complete and correct name of each Subsidiary, the jurisdiction of organization of each Subsidiary, the percentage of Borrower's ownership of the outstanding equity interests of each Subsidiary directly owned by Borrower, the percentage of each Subsidiary's ownership of the outstanding equity interests of each other Subsidiary and the authorized, issued and outstanding equity interests of Borrower and each Subsidiary. Other than those set forth on Schedule 4.28, there are no outstanding subscriptions, options, warrants, calls or rights (including preemptive rights) to

acquire, and no outstanding securities, instruments or rights convertible into, any equity interests of Borrower or any Subsidiary.

Section 4.29 Labor Controversies. There are no labor controversies pending or threatened against any Credit Party which could reasonably be expected to result in a Material Adverse Effect.

#### ARTICLE V. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Lender has any outstanding Commitment hereunder, Borrower will, and will cause each Credit Party to, perform and observe the following covenants:

Section 5.1 Financial and Other Information. Borrower shall furnish or cause to be furnished to Administrative Agent and Lenders during the term of this Loan Agreement all of the following:

(a) Annual Financial Statements. Within 120 days after the close of each fiscal year of Borrower, a copy of the annual audited financial statements of Borrower, including, in reasonable detail, a balance sheet and statement of retained earnings as at the close of such fiscal year and statements of profit and loss and cash flow for such fiscal year;

(b) Quarterly Certificate of Compliance. Within 60 days after the close of each calendar quarter, a Certificate of Compliance, duly executed by the president, chief financial officer or chief executive officer of Borrower, in the form of Exhibit B attached hereto, or such other form as may be reasonably required by Administrative Agent from time to time;

(c) Interim Financial Statements. Within 60 days after the close of each fiscal quarter of Borrower, a copy of the interim financial statements of Borrower for such fiscal quarter (including in reasonable detail both a balance sheet as of the close of such fiscal period, and statement of profit and loss for the applicable fiscal period);

(d) Projections. Within 60 days prior to the close of each fiscal year of Borrower, a copy of the internally prepared projections for Borrower of balance sheets and statements of income or operations and cash flows of Borrower and its Subsidiaries on a monthly basis for the immediately following fiscal year (including the fiscal year in which the Maturity Date occurs);

(e) Operating Statement. On or before 60 days after the end of each calendar month and on or before 120 days after the end of each fiscal year of Borrower, an operating statement for the Collateral, such reports to be in such form and in reasonable detail as Administrative Agent may request, setting forth the financial condition and the income and expenses for the Collateral for the immediately preceding calendar month or fiscal year, as applicable, and a certificate executed by Borrower certifying that such report has been prepared in accordance with GAAP that fairly presents the results of the operations of the Collateral for the period covered thereby;

(f) Operating Budget. On or before 60 days prior to the start of each fiscal year, an annual operating budget for the Collateral for the next fiscal year, in form and substance acceptable to Administrative Agent; and

(g) Other Information. Such other financial statements, reports and information as Administrative Agent may from time to time reasonably request relating to Borrower, any Credit Party or the Collateral.

Section 5.2 General Agreements With Respect to Financial Information. Borrower agrees that except as otherwise specified herein or otherwise agreed to in writing by Administrative Agent:

(a) all annual financial statements required to be furnished by Borrower to Administrative Agent hereunder will be prepared by either the current independent accountants for Borrower or other independent accountants of recognized standing reasonably acceptable to Administrative Agent;

(b) all other financial information required to be furnished by Borrower to Administrative Agent or any Lender hereunder will be certified as correct in all material respects by the party who has prepared such information, and, in the case of internally prepared information with respect to Borrower, certified as correct by its chief financial officer;

(c) all financial statements shall be prepared in accordance with GAAP; and

(d) the fiscal year of Borrower will end on December 31.

Section 5.3 Financial Records; Inspection. Each Credit Party will:

(a) maintain at its principal place of business complete and accurate books and records, and maintain all of its financial records in a manner consistent with the financial statements heretofore furnished to Administrative Agent, or prepared on such other basis as may be approved in writing by Administrative Agent; and

(b) permit Administrative Agent, any Lender or their duly authorized representatives, upon reasonable notice and at reasonable times, to inspect Borrower's, its Subsidiaries' and each Credit Party's properties (both real and personal), operations, books and records and to audit, examine, and make copies or extracts of Borrower's books of account and records relating to the Collateral.

Section 5.4 Taxes. Each Credit Party will pay when due all of its respective taxes, assessments and other governmental charges, howsoever designated, and all other liabilities and obligations, except to the extent that any such failure to file or pay will not materially and adversely affect either the Liens of Administrative Agent under any of the Loan Documents or the financial condition or continued operations of any Credit Party.

Section 5.5 Compliance With Laws and Agreements. Borrower will, and will cause its Subsidiaries to, timely comply (to prevent any breach) with and satisfy all Legal

Requirements that affect or are otherwise related to the Collateral, or the construction, use, or occupancy thereof, excluding non-compliance that, either individually or in the aggregate, could not reasonably be expected to result in (i) a Material Adverse Effect or (ii) seizure of, forfeiture of or a Lien upon any material portion of the Collateral. No Credit Party will violate (a) any law, regulation or other governmental requirement, any judgment or order of any court or Governmental Agency, or any other Legal Requirement; (b) any agreement, instrument or document which is material to its operations or to the operation or use of any Collateral, in each case as contemplated by the Loan Documents; or (c) any agreement, instrument or document to which it is a party or by which it is bound, in each case, if any such violation will materially and adversely affect either the Liens and security interests of Administrative Agent hereunder or under any of the Loan Documents or the financial condition or continued operations of any Credit Party.

Section 5.6 Notification By Borrower. Borrower shall provide Administrative Agent and the Independent Consultant with prompt written notification of:

- (a) any Default or Event of Default;
- (b) any Material Adverse Effect;
- (c) any information which indicates that any financial statements of any Credit Party fail in any material respect to present fairly the financial condition and results of operations purported to be presented in such statements;
- (d) any threatened or pending litigation involving any Credit Party;
- (e) any Event of Loss, Casualty or Condemnation or any attachment, Lien, judicial process, encumbrance or claim affecting or involving any Collateral other than a Permitted Exception;
- (f) any change in Borrower's outside accountants;
- (g) any violation of any Legal Requirement applicable to the Collateral or any Credit Party, except for violations that, either individually or in the aggregate, could not reasonably be expected to have a material effect on the Borrower or create or result in a Lien on any material portion of the Collateral;
- (h) any actual or threatened condemnation of any portion of the Collateral, any negotiations with respect to any such taking, or any loss of or substantial damage to the Collateral;
- (i) any notice received by Borrower with respect to the cancellation, alteration, or nonrenewal of any insurance coverage maintained as required by the Loan Documents;
- (j) any failure by Borrower or any Contractor, subcontractor, or supplier to perform any material obligation under any Construction Contract or subcontract, or any other breach under any Construction Contract, or any event or condition which would

permit termination of a Construction Contract or subcontract or suspension of work thereunder, or any notice given by Borrower or any Contractor or Design Professional with respect to any of the foregoing;

(k) any required permit, license, certificate, or approval with respect to the Collateral that is not timely issued, or lapses or ceases to be in full force and effect; and

(l) the occurrence of a default of any agreement involving any Credit Party and involving or evidencing trade payables in an aggregate amount equal to or greater than \$250,000.

Each notification by Borrower pursuant hereto shall specify the event or information causing such notification, and, to the extent applicable, shall specify the steps being taken to rectify or remedy such event or information.

Section 5.7 Entity Organization. Each Credit Party which is an entity will (a) remain (i) validly existing and in good standing in the state of its organization and (ii) qualified to do business and in good standing in each other state where the nature of its business or the property owned by it make such qualification necessary, and (b) maintain all governmental permits, licenses and authorizations necessary for the operation of its business. Borrower and each Credit Party shall give Administrative Agent not less than 30 days prior written notice before changing the state where it is organized, changing its "place of business" (as defined in the UCC) if not the state of organization or otherwise changing the place where its books and records are maintained, changing its name (including any fictitious name), or changing its organizational number or taxpayer identification number.

Section 5.8 Environmental Compliance. Except, in each case, where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, Borrower will conduct its business operations, handle, store, transmit, discharge, emit, release and dispose of Hazardous Substances, and use the Collateral so as to comply with all Environmental Laws in all material respects and will avoid Environmental Contamination; and Borrower, so long as any Obligations remains outstanding, will, and will cause each Subsidiary to, continue to have in full force and effect all Federal, state and local licenses, permits, orders and approvals required to operate the Collateral in compliance with all Environmental Laws in all material respects.

Section 5.9 Insurance.

(a) Coverage. Without limiting any of the other obligations or liabilities of Borrower under the Loan Documents, Borrower shall, and shall cause each Subsidiary to, during the term of this Loan Agreement, carry and maintain (or cause to be carried and maintained), at its own expense, at least the minimum insurance coverage and deductibles in at least such amounts (A) as are, at a minimum, usually obtained by similarly-situated companies engaged in the same or similar business and with the same or similar assets and operations as Borrower and (B) as Administrative Agent may reasonably require, with insurers having a minimum A.M. Best rating of A- VII and licensed to provide such insurance in the jurisdictions where coverage is to be provided, and be in such form, with terms, conditions, limits and deductibles as shall be reasonably acceptable to



Administrative Agent. In addition, Borrower shall, and shall cause each Subsidiary to, carry and maintain any other insurance that Administrative Agent may reasonably require from time to time.

(i) All risk property insurance, including boom and overload and boiler and machinery coverage (including electrical malfunction and mechanical breakdown), and such other coverage as Administrative Agent may require, and insuring the Collateral against physical loss or damage from perils including fire and extended coverage, windstorm, collapse, earth movement, and such other perils as Administrative Agent may require. Notwithstanding anything herein to the contrary, coverage shall be written for an amount which is no less than the replacement cost value of the Collateral, without reduction for depreciation. Such insurance policy shall contain an endorsement waiving any coinsurance requirement and contain deductibles not greater than \$5,000.

(ii) Commercial general liability insurance, including pollution liability (which may be provided under a separate policy), products/completed operations, blanket contractual liability, environmental liability, premises/ operations, independent contractors, personal injury, fire legal liability, loss of use, and employee benefits liability with each written on an occurrence basis. Such insurance shall not contain an exclusion for punitive or exemplary damages where insurable by law. If boom and overload is not available as required in clause (i) above, this policy shall be endorsed to include coverage for rigger's liability.

(iii) Business interruption, extra expense, and contingent business interruption insurance (whether a separate policy or additional coverage included under another policy) in an amount equal to 12 months projected net profits and continuing expenses (including the loan payments due on the Collateral).

(iv) Workers' compensation insurance in accordance with statutory provisions and employer's liability. Such coverage shall not contain any occupational disease exclusions. All such insurance will be compulsory and not elective. Any deductible contained under the policy will be disclosed to Administrative Agent.

(v) Automobile liability and automobile physical damage insurance (as appropriate) covering all owned, rented, non-owned and hired vehicles written on an occurrence basis.

(vi) Excess or umbrella liability insurance written on an occurrence basis providing coverage on a follow-form basis in excess of the insurance limits and terms required under subsections (ii), (iv), and (v) above. Any differences in coverage terms under this policy will be fully disclosed to Administrative Agent.

(vii) Prior to commencing any construction on the Land, builder's risk insurance, including theft, to insure, without limitation, all buildings, machinery,

equipment, materials, supplies, temporary structures, foundations, other underground property, personal property, and all other property of any nature on-site, off-site, and while in transit which is to be used in fabrication, construction, and completion of the improvements (other than tenant finish-out improvements not financed hereby) being constructed, and to remain in effect until all such improvements being constructed have been completed and accepted by Borrower and Administrative Agent (or Administrative Agent's designee) and a Certificate of Occupancy has been issued. Such insurance shall be provided on a replacement cost value basis and shall (A) be on a non-reporting, completed value, form; (B) cover damage to landscaping and debris removal expense (including removal of pollutants); (C) provide that Borrower can complete and occupy the premises without further written consent from the insurer; (D) cover loss of income resulting from delay in occupancy, loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, and loss while the property is in the care, custody and control of others to whom the property may be entrusted; (E) not exclude losses due to explosions, collapses, or underground hazards; (F) cover soft costs and continuing expenses not directly involved in the direct cost of construction or renovation, including interest on money borrowed to finance construction or renovation, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, architectural and engineering costs, legal and accounting costs, and other expenses incurred as the result of property loss or destruction by the insured peril; (G) cover settling, subsidence, riots, civil commotion, vandalism, and malicious mischief; (H) not contain any safeguard warranties; and (I) not contain any monthly limitation.

(viii) If requested by Administrative Agent with respect to any time any improvements are being constructed on the Land, Borrower shall cause each Contractor performing any of such construction work to maintain worker's compensation insurance or other applicable insurance providing coverage for injuries to such Contractor's personnel, auto liability insurance, and general liability insurance, all in the amounts and providing such coverage as is reasonably acceptable to Administrative Agent.

(ix) Borrower shall cause each Design Professional to maintain errors and omissions insurance in amounts and providing such coverage as is reasonably acceptable to Administrative Agent.

(x) Other insurance in such amounts as may from time to time be reasonably required by Administrative Agent, including liquor liability, environmental liability and professional liability.

(b) Endorsements. Borrower shall, and shall cause each Subsidiary to, cause all insurance policies carried and maintained in accordance with this Loan Agreement to be endorsed to Administrative Agent for the benefit of Secured Parties, its successors and assigns as indicated below.

(i) As the sole loss payee as its interest may appear with respect to the Collateral under the property, builder's risk, auto, boiler and machinery, business interruption/extra expense, and contingent business interruption insurance, and any other insurance obtained pursuant to the provisions hereof for which Administrative Agent for the benefit of Secured Parties can be named as a loss payee as its interest may appear. Any obligation imposed upon Borrower, including the obligation to pay premiums and/or coverage deductibles, shall be the sole obligation of Borrower and not an obligation of Administrative Agent or any Lender.

(ii) With respect to property and builder's risk policies described in the subsection (i) "Coverage" above, the interests of Administrative Agent or a Lender shall not be invalidated by any action or inaction of Borrower or any other Person, and shall insure Administrative Agent and Lenders regardless of any breach or violation by Borrower or any other Person, of any warranties, declarations or conditions of such policies.

(iii) Inasmuch as such policies are written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(iv) The insurers providing the coverage required hereunder shall waive all rights of subrogation against Administrative Agent or any Lender, any right of setoff or counterclaim and any other right to deduction, whether by attachment or otherwise.

(v) Such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of Administrative Agent and Lenders with respect to its interests as such in the Collateral.

(vi) If such insurance is canceled for any reason whatsoever, including nonpayment of premium, or any material changes are made in the coverage which adversely affect the interests of Administrative Agent or a Lender, such cancellation or change shall not be effective as to Administrative Agent until 30 days, except for non-payment of premium which shall not be effective as to Administrative Agent or any Lender until 10 days, in each case, after receipt by Administrative Agent of written notice sent by registered mail from such insurer.

(vii) Upon the occurrence of a Default hereunder, Borrower irrevocably, appoints Administrative Agent as Borrower's true and lawful attorney (and agent-in fact) for the purpose of making, settling and adjusting claims under such policies, endorsing the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies and for making all determinations and decisions with respect to such policies.

(viii) All insurance policies should include a waiver of terrorism exclusion or confirmation of said coverage.

(ix) Administrative Agent for the benefit of Secured Parties shall be named as an additional insured with respect to the commercial general liability, excess or umbrella liability, and any other insurance obtained pursuant to the provisions hereof for which Administrative Agent for the benefit of Secured Parties can be named as an additional insured. Any obligation imposed upon Borrower, including but not limited to the obligation to pay premiums and/or coverage deductibles, shall be the sole obligation of Borrower and not an obligation of Administrative Agent or any Lender.

(c) Certifications. On the Closing Date, and at each policy renewal, but not less than annually with respect to all Collateral, Borrower shall provide to Administrative Agent an Acord 27 – Evidence of Property Insurance and loss payable endorsements for each such property policy and an Acord 25 Certificate of Liability Insurance for general liability, workers' compensation, automobile liability, umbrella or excess liability policies. All certificates shall identify the insurance carriers, the type of insurance, the limits, deductibles, and terms thereof and shall specifically list the special provisions delineated for such insurance required by this Section. Borrower shall furnish to Administrative Agent a certificate signed by a duly authorized representative of the insurer, showing the insurance then maintained by or on behalf of Borrower pursuant to this Section and stating that such insurance complies in all material aspects with the terms hereof, together with evidence of payment of premiums.

(d) Forced Placement. In the event that at any time the insurance required by this Section shall be reduced or cease to be maintained, then (without limiting the rights of Administrative Agent or any Lender hereunder in respect of the Default which arises as a result of such failure) Administrative Agent may, at its option, maintain the insurance required hereby. Borrower shall reimburse Administrative Agent upon demand for the cost thereof with interest thereon at a rate per annum equal to the Default Rate, but in no event shall the rate of interest exceed the maximum rate permitted by law.

Section 5.10 Additional Subsidiaries. If any Subsidiary is acquired or formed by Borrower after the Closing Date, Borrower will, within 10 Business Days after such Subsidiary is acquired or formed, notify Administrative Agent and will cause such Subsidiary to execute a guaranty, a Security Agreement and such other Loan Documents as Administrative Agent shall reasonably require, in form and substance satisfactory to Administrative Agent, and will cause such Subsidiary to deliver simultaneously therewith similar documents applicable to such Subsidiary required under Section 3.1 as requested by Administrative Agent.

Section 5.11 Intellectual Property. Borrower will, and will cause each Subsidiary to, obtain and maintain in full force and in effect all patents, trademarks, service marks, licenses, franchises, trade names, trade styles, copyrights, technology, formulas, know-how and processes to be used in or necessary for the construction, ownership and operation of the Project and for the current and proposed conduct of its business, and in its use thereof it will obtain all required

licenses and consents and not injure or infringe upon the property or rights of any Person in any material respect.

Section 5.12 Use of Proceeds. Borrower shall use the proceeds of the Loan solely for a Loan Purpose or as otherwise permitted under Section 2.9. No part of the proceeds of the Loan will be used, whether directly or indirectly, for any purpose that would violate Regulation T, U or X of the Board of Governors of the Federal Reserve System of the United States of America.

Section 5.13 Title; Maintenance of Assets. Borrower shall, and shall cause each Subsidiary to, maintain good and marketable title to its interest in the Collateral in which it has an interest and shall warrant and defend its interest and title to the Collateral against all claims that do not constitute Permitted Exceptions. Borrower shall, and shall cause each Subsidiary to, maintain and preserve the Collateral and all of its other assets and properties in good working order and condition, ordinary wear and tear excepted, such that the Collateral remains in good and safe working order and in compliance with (a) all manufacturer's or similar provider's suggested and/or approved maintenance programs, (b) insurance and warranty requirements and (c) applicable Legal Requirements. Borrower shall, and shall cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its respective rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business and will continue to engage in and operate its business as presently conducted.

Section 5.14 Operating Margin Protection. Borrower shall employ, to the extent available for customary and usual costs, long-term hedging and price-management strategies customary and usual in the ethanol production industry, when it is reasonable to do so, for (a) the procurement of feedstocks, energy and fuel for the Project and (b) the sale of products produced by the Project. Such hedging and price management strategies will be employed to minimize any reductions in (i) the Project's operating margin and (ii) the Project's ability to repay the Loan in accordance with this Loan Agreement.

Section 5.15 Deposit Accounts. Borrower shall maintain all Deposit Accounts (as defined in the Security Agreement) with financial institutions acceptable to Administrative Agent and shall have executed and delivered all documents, agreements, instruments, including without limitation, control agreements, and taken all action requested by Administrative Agent to grant to Administrative Agent for the benefit of Secured Parties a first priority perfected Lien in such Deposit Accounts, all in accordance with the Security Agreement and the other Loan Documents.

Section 5.16 Lockbox Agreement. Upon the request of Administrative Agent and after the occurrence and continuation of an Event of Default, Borrower shall instruct all customers and other Persons obligated with respect to all of Borrower's accounts receivable to make all payments to Administrative Agent (by instructing that such payments be remitted to a post office box which shall be in the name and control of Administrative Agent) under a lockbox agreement (the "Lockbox Agreement") in the form and substance satisfactory to Administrative Agent in its sole discretion, duly executed by Borrower and Administrative Agent or under other arrangements pursuant to which Borrower shall have irrevocably instructed Administrative Agent, to remit all proceeds of such payments to Administrative Agent to be applied to the

Obligations in such order and manner as Administrative Agent may elect. Any proceeds received by Borrower in violation of this Section shall be promptly delivered to Administrative Agent and until so delivered, all such proceeds shall be held in trust by Borrower for the benefit of Administrative Agent and shall be segregated from any other funds or property of Borrower.

Section 5.17 Reorganizations. To the extent Borrower requests consent to the corporate or other entity reorganization of Borrower, any Subsidiary or any other Credit Party as permitted by this Loan Agreement, due to the often time intensive nature of reviewing such reorganizations, Borrower agrees that the Administrative Agent may retain counsel to assist in reviewing any reorganization documentation at the Borrower's expense, and may also require an additional review fee of at least \$5,000 in the Administrative Agent's reasonable discretion.

Section 5.18 Further Assurances. Borrower shall, and shall cause each Subsidiary to, at the request of Administrative Agent duly execute and deliver to Administrative Agent such further instruments and do and cause to be done such further acts as may be necessary or proper in the opinion of Administrative Agent to carry out more effectively the provisions and purposes of this Loan Agreement. Furthermore, Borrower shall, and shall cause each Subsidiary to, at the request of Administrative Agent or the Independent Consultant duly execute and deliver to Administrative Agent and the Independent Consultant such further instruments and do and cause to be done such further acts as may be necessary or proper, in the opinion of Administrative Agent or the Independent Consultant, for the Independent Consultant to carry out more effectively its duties, obligations and responsibilities with respect to the construction of the Project and to comply with its duties, obligations and responsibilities outlined in this Loan Agreement and the other Loan Documents.

## ARTICLE VI. NEGATIVE COVENANTS

Borrower covenants and agrees that, as long as the Obligations or any part thereof are outstanding or any Lender has any outstanding Commitment hereunder, Borrower will, and will cause each Subsidiary to, perform and observe the following covenants:

Section 6.1 Merger, Change in Business. Borrower shall not cause or permit any of its Subsidiaries to:

- (a) form any Subsidiary unless promptly after the formation thereof, such Subsidiary executes and delivers to Administrative Agent a guaranty in form and substance satisfactory to Administrative Agent;
- (b) consummate any merger or consolidation with, or purchase or otherwise acquire all or substantially all of the assets of, or any material stock, partnership, joint venture or other equity interest in, any Person, or sell, transfer or lease all or any substantial part of its assets;
- (c) sell, dispose of, or transfer any assets, except for (i) sales of inventory in the ordinary course of business or (ii) sales of obsolete, worn-out and redundant assets in an aggregate amount not to exceed \$250,000 during any fiscal year of Borrower;

(d) engage in any material business substantially different from its business in effect as of the date of application by Borrower for credit from Administrative Agent or as contemplated for the Project, or cease operating any such material business;

(e) cause or permit any other Person to assume or succeed to any material business or operations of such Credit Party; or

(f) liquidate or dissolve.

Section 6.2 Use of Property; Transactions with Affiliates; Nature of Business; Financial Condition. At no time shall Borrower, any Subsidiary or any other Credit Party, use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, any portion of the Collateral for any purpose which (a) in any manner may be dangerous unless safeguarded as required by law; (b) may constitute a public or private nuisance; or (c) may make void, voidable, or cancelable or increase the premium of any insurance then in force with respect thereto. At no time shall Borrower, any Subsidiary or any other Credit Party (i) enter into or conduct any transaction with any Affiliate of Borrower, except a transaction upon terms that are not less favorable to it than would be obtained in a comparable transaction at the same time as such transaction negotiated at arm's-length with a Person who is not such an Affiliate; (ii) conduct any business other than, or make any material change in the nature of, its business as carried on as of the date hereof or as contemplated for the Project; (iii) change its fiscal year or make any significant change in accounting treatment or reporting practices except as required by GAAP; (iv) pay or become obligated to pay any management, lease, brokerage fee or other similar expense to any Person unless approved by Administrative Agent, provided that Administrative Agent shall not unreasonably withhold or delay such approval; or (v) conduct business or allow the conduct of business or other activities on the Collateral that are not consistent with the intended uses by Borrower as contemplated and more fully described in the Prospectus.

Section 6.3 Indebtedness. Borrower shall not, and shall not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(a) the Note or other Obligations arising under the Loan Documents or any guaranty of or suretyship arrangement for the Note or other Obligations arising under the Loan Documents;

(b) Indebtedness under capital leases not to exceed \$1,000,000 in the aggregate from time to time;

(c) endorsements of negotiable instruments for collection in the ordinary course of business;

(d) the Rex Subordinated Debt;

(e) the FEL Subordinated Debt (to be paid prior to the first Advance hereunder); and

(f) other Indebtedness not to exceed \$5,000,000 in the aggregate at any one time outstanding to finance grain in storage and in transit.

Section 6.4 Liens. Except for Permitted Exceptions, Liens in favor of Administrative Agent for the benefit of Secured Parties securing the Obligations, and Liens on non-Collateral assets and the proceeds thereof securing the Indebtedness referred to in Sections 6.3(b), (d), and (e) above, Borrower shall not, and shall not permit any Subsidiary to, create or permit to exist any Liens on any property or assets of Borrower or its Subsidiaries, including any of the Collateral.

Section 6.5 Restricted Payments. Borrower shall not make or permit any Restricted Payment, except Borrower may prepay in full the FEL Subordinated Debt and may pay the Rex Subordinated Debt to the extent permitted in the Subordination Agreement.

Section 6.6 Investments, Loans and Advances. Borrower will not, and will not permit any Subsidiary to, make or permit to remain outstanding any investment in, or loan or advance to, any Person (an "Investment"), except that the foregoing restriction shall not apply to:

- (a) accounts receivable arising in the ordinary course of business;
- (b) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one year from the date of creation thereof;
- (c) commercial paper maturing within one year from the date of creation thereof rated in the highest grade by S&P or Moody's;
- (d) deposits maturing within one year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, has capital, surplus and undivided profits aggregating at least \$100,000,000 (as of the date of such bank or trust company's most recent financial reports) and has a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time by S&P or Moody's, respectively; and
- (e) deposits in money market funds investing exclusively in Investments described in clauses (b), (c), and (d) above.

Section 6.7 Lease Approval. Borrower shall not, and shall not permit any Subsidiary to, enter into any Lease for any portion of the Land, Improvements, or Project without the prior written consent of Administrative Agent.

Section 6.8 Amendments to Entity Documents and Other Agreements. Borrower will not, and will not permit any Subsidiary to, amend its formation or governing documents without the prior written consent of Administrative Agent. Borrower will not amend, modify, waive or consent to any change or modification in any material agreement, document, contract or instrument to which it is a party, including without limitation, any Rex Subordinated Debt Documents, any FEL Subordinated Debt Documents, any Operating Contract, any Construction



Contract, any Property Contract or the Plan, except as otherwise permitted pursuant to Section 7.5.

Section 6.9 ERISA. Borrower will not, and will not permit any Subsidiary to, incur liabilities under Title IV of ERISA except to the extent that such liabilities would not reasonably be expected to have a Material Adverse Effect.

Section 6.10 Financial Covenants.

(a) EBITDAR Coverage Ratio. Borrower's EBITDAR Coverage Ratio shall at all times equal or exceed 1.40 to 1.00 except, in the event that the Texas Fuel Ethanol and Biodiesel Production Incentive Program is terminated, then (i) for the fiscal quarter during which such termination occurred and the next succeeding two fiscal quarters thereafter, 1.30 to 1.00 and (ii) thereafter 1.40 to 1.00.

(b) Leverage Ratio. Borrower's Leverage Ratio shall at all times during the applicable periods below equal or exceed the ratio corresponding to the applicable period set forth below:

<b>Period:</b>	<b>Ratio:</b>
April 1, 2008 through and including March 31, 2009	3.34 to 1.00
April 1, 2009 through and including March 31, 2010	2.93 to 1.00
April 1, 2010 through and including March 31, 2011	2.54 to 1.00
April 1, 2011 through and including March 31, 2012	2.17 to 1.00
April 1, 2012 and thereafter	1.82 to 1.00

Notwithstanding anything to the contrary contained herein, (i) in the event Borrower is not in compliance with clause (a) above, if Borrower obtains an equity investment by one or more Persons within 45 days after the occurrence of such non-compliance and in an amount sufficient to cure such non-compliance, such non-compliance shall not be deemed a Default or Event of Default hereunder, and (ii) in the event Borrower is not in compliance with clause (b) above, if Borrower obtains funds in an amount equal to the principal and interest payments due under the Loan for the next succeeding six-month period from one or more Persons and deposits same with Administrative Agent within 45 days after the occurrence of such non-compliance, such non-compliance shall not be deemed a Default or Event of Default hereunder so long as, in case of clauses (i) and (ii) above, (A) no other Default or Event of Default has occurred and is continuing, (B) Borrower has not elected to utilize clauses (i) and/or (ii) more than two times during the term of this Loan Agreement and (C) Borrower has not elected to utilize clauses (i) and (ii) during any two consecutive reporting periods.

Section 6.11 Project Management. Borrower shall not, and shall not permit any Subsidiary to, engage any other Person to manage the Project without Administrative Agent's prior written consent as to such Person and the management agreement, including all amendments thereto, which consent shall not be unreasonably withheld or delayed by Administrative Agent.

Section 6.12 Alterations. Borrower shall not, and shall not permit any Subsidiary to, make any material alterations to the Project, including any improvements on the Land, without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld.

Section 6.13 No Commingling of Funds. Borrower shall not, and shall not permit any Subsidiary to, commingle, or allow the commingling of, funds related to the Project, including Loan proceeds, revenues, or other receivables, with funds from any other property or business.

Section 6.14 No Use of Administrative Agent or any Lender's Name. No Credit Party will directly or indirectly publish, disclose or otherwise use in any advertising or promotional material, or press release or interview, the name, logo or any trademark of Administrative Agent, any Lender, MLPF&S, Merrill Lynch and Co., Inc. or any of their Affiliates, except as required in any applicable securities filing. Any press release mentioning this Loan facility must be (a) factual only as to the making of the Loan and not have the appearance of an endorsement, and (b) expressly pre-approved by Administrative Agent's Equipment Finance Senior Transaction Attorney.

Section 6.15 Swap Contract. Borrower shall not enter into any Swap Contract without the written consent of Administrative Agent.

Section 6.16 Burdensome Agreements. Borrower will not, and will not permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement that prohibits, restricts or imposes any condition upon (a) the ability of Borrower or such Subsidiary to create, incur or permit any Lien upon any of its assets or properties, whether now owned or hereafter acquired, or (b) the ability of any Subsidiary to make any Restricted Payment to Borrower or any other Subsidiary, to make or repay loans or advances to Borrower or any other Subsidiary, to create or incur Guaranteed Indebtedness where the Borrower or any other Subsidiary is the primary obligor or to transfer any of its assets or properties to Borrower or any other Subsidiary; provided however, the foregoing shall not apply to restrictions or conditions imposed by applicable Legal Requirements, this Loan Agreement or any other Loan Document.

Section 6.17 Sale or Discount of Receivables. Neither Borrower nor any of its Subsidiaries shall discount or sell (with or without recourse) any of its notes receivables or accounts receivable.

Section 6.18 Abandonment. Borrower shall not abandon the Project or cease to operate the Project for any period other than (a) down-time for usual and customary maintenance or repair and (b) by reason of the occurrence of an event of Force Majeure so long as (i) such cessation of operations of the Project as a result of such Force Majeure does not continue for

more than three consecutive months and (ii) such cessation is covered by business interruption insurance for such three-month period.

Section 6.19 Sale and Leaseback Transactions. Borrower shall not, and shall not permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred.

#### ARTICLE VII. ADDITIONAL CONSTRUCTION COVENANTS

Borrower covenants and agrees that, so long as the Obligations or any part thereof are outstanding or any Lender has any outstanding Commitment hereunder, Borrower will, and will cause each Subsidiary to, perform and observe the following covenants:

Section 7.1 [Reserved]

Section 7.2 Surveys. Borrower will furnish to Administrative Agent and the Independent Consultant, at Borrower's expense, the following surveys prepared by a registered engineer or surveyor acceptable to Administrative Agent: (a) a pre-construction survey of the Land and any existing improvements thereon, prepared by a registered surveyor or engineer and certified to Administrative Agent, Borrower, and the Title Company, with a certification in form and substance acceptable to Administrative Agent, reflecting such matters as required by Administrative Agent, showing no state of facts objectionable to Administrative Agent, and certifying that none of the Land is located within any designated flood plain or special flood hazard area (or, in lieu thereof, Borrower shall provide evidence that Borrower has applied for and received flood insurance covering the Improvements in an amount acceptable to Administrative Agent); (b) if requested by Administrative Agent, a foundation survey, upon completion of staking the foundation for the Improvements, showing the location of the foundation and all Improvements, reflecting that the location of the Improvements will be entirely within the boundary lines of the Land, will not encroach upon any set-back line, easement, or right-of-way, and will not violate any covenant, condition, or restriction affecting the Land, and other matters customarily included in a foundation survey for the type of property and improvements being surveyed; and (c) an "as built" survey, within 60 days after substantial completion of the Improvements, showing the locations of the Improvements, and certifying that same are entirely within the property lines of the Land, do not encroach upon any easement, setback or building line or restrictions, and are placed in accordance with the Plans and all Legal Requirements affecting the Land and/or Improvements, showing and certifying to such other matters customarily shown and contained in certifications for an "as built" survey for the type of property and improvements being surveyed, and showing no state of facts objectionable to Administrative Agent. All surveys shall be in form and substance reasonably acceptable to Administrative Agent.

Section 7.3 Appraisals. In addition to the Appraisal contemplated in Section 3.1, Administrative Agent may, from time to time, obtain an Appraisal of all or any part of the Collateral prepared in accordance with written instructions from Administrative Agent. Administrative Agent, in Administrative Agent's sole discretion, may (but shall have no

obligation to) have any such Appraisal reviewed by another appraiser. The cost of any such Appraisal and review (if any) shall be borne by Borrower if the Appraisal (a) is obtained to confirm compliance with any financial covenants of Borrower pursuant to this Loan Agreement, (b) is obtained at least 24 months after the last appraisal of the Collateral, or (c) is obtained after the occurrence of an Event of Default. If the Appraisal cost is payable by Borrower, such cost shall be due and payable upon demand from Administrative Agent and shall be secured by the Loan Documents.

**Section 7.4 Permits; Licenses; Approvals.** Borrower shall (a) timely obtain, in accordance with the Construction Schedule and in conformity with the Plans, building permits and all other permits and licenses, and all approvals or consents of Governmental Agencies and appropriate bodies or Persons pursuant to any restrictive covenants, required with respect to the construction of the Improvements; (b) obtain prior to the date Completion has occurred, certificates of occupancy and all other permits and licenses required with respect to the occupancy and use of the Collateral for its intended purposes; and (c) obtain prior to the date Borrower has commenced operating any portion of the Project, all permits, licenses, approvals and consents of Governmental Agencies, and any other approvals or consents necessary to operate the Project for its intended purposes.

**Section 7.5 Plans and Construction Contracts, and Approvals and Amendments.** Borrower shall deliver to Administrative Agent and the Independent Consultant a true and complete copy of the Plans and each Construction Contract for Administrative Agent's review and approval, including each amendment or supplement thereto. Administrative Agent's approval is subject to Administrative Agent being satisfied, in Administrative Agent's reasonable discretion, with each Contractor, each Design Professional, the terms and conditions of the Construction Contracts, all aspects of the Plans, and any other issues or matters related thereto. Each Construction Contract shall be for a fixed price or a guaranteed maximum price, and all Construction Contracts, individually and jointly, shall be in conformity with the Budget. The Plans shall incorporate all recommendations contained in any soils or geological report that is obtained with respect to the Improvements. The Plans and Construction Contracts will not be amended, altered, or changed (pursuant to change order, amendment, or otherwise) unless the same shall have been approved in advance (a) in writing by Administrative Agent (except to the extent Administrative Agent's approval is expressly not required for such action as provided below), (b) by all requisite Governmental Agencies, (c) by each surety under payment or performance bonds (if any) covering the Construction Contracts or otherwise covering the construction of all or any portion of the Improvements; and (d) by any another third party who has a contractual or other right to approve the amendment. Borrower shall have provided evidence reasonably satisfactory to Administrative Agent of all such third party approvals, or, if requested by Administrative Agent, evidence that an approval not obtained by Borrower is not required. Administrative Agent may have the Independent Consultant review and advise Administrative Agent as to any or all of the foregoing or approve any of the foregoing on behalf of Administrative Agent. Notwithstanding the foregoing, Borrower shall not be required to obtain Administrative Agent's approval of an amendment to the Plans made pursuant to a change order which satisfies all of the following conditions: (i) such amendment does not have a material effect on the contemplated Improvements, and complies with all Legal Requirements and other requirements applicable thereto and all other requirements of the Loan Documents; (ii) such amendment does not increase the cost of the construction of the Improvements;

(iii) such amendment does not substitute a lesser quality material; (iv) the anticipated date of Completion is not changed; (v) the Budget is not modified, including any Allocation or contingency; (vi) any such change, or all changes in the aggregate, shall not affect any structural component or the structural integrity, or the utility or appearance, of the Improvements; and (vii) Borrower, Contractor, and the Design Professional who prepared the Plans approve such amendment and the corresponding change order in writing, and a copy of such approval and change order is promptly provided to Administrative Agent or the Independent Consultant.

Section 7.6 Construction. No construction will be commenced or otherwise performed on the Land until after (a) the Mortgage is duly recorded in the appropriate records of the county in which the Land is located; (b) Administrative Agent and Independent Consultant have approved, in writing, the Plans, such review by Administrative Agent and Independent Consultant not to be unreasonably delayed; and (c) Administrative Agent and Independent Consultant have approved, in writing, each Construction Contract which in any way relates to, or will relate to, the construction being performed, such review by Administrative Agent and Independent Consultant not to be unreasonably delayed. Borrower will cause the construction of the Improvements (i) to be constructed pursuant to the Construction Contracts; (ii) to commence by the Construction Commencement Date and to be prosecuted with diligence and continuity until completion; (iii) to be constructed in a good and workman like manner; (iv) to comply with the Plans and all applicable Legal Requirements; and (v) to be completed on or before March 31, 2008, free and clear of Liens or claims for Liens, except for Liens created by the Loan Documents and any Liens inferior to the Lien of the Loan Documents which inferior Liens have been approved in writing by Administrative Agent. Borrower shall promptly report to Administrative Agent and the Independent Consultant any variances in which the Construction Costs with respect to any Allocation are exceeding the Budget for such Allocation. Borrower shall exercise diligent efforts to cause the Contractors to meet all time lines in the Construction Schedule, and shall amend the Construction Schedule, and provide a copy thereof to Administrative Agent and the Independent Consultant, as soon as Borrower determines that a time contained therein will not be met. Borrower must resolve all disputes arising in connection with the construction of the Improvements in a manner allowing the construction to proceed expeditiously and to be completed by March 31, 2008. Further, from time to time, Administrative Agent may direct Borrower to provide such additional reports related to the construction as Administrative Agent may reasonably request, and Borrower agrees to provide such reports promptly.

Section 7.7 Defects and Variances. Upon demand of Administrative Agent and at Borrower's sole expense, Borrower shall correct (a) any structural defect in the Improvements; (b) any material variance from the Plans which is not approved in writing by Administrative Agent; (c) any non-compliance with any Legal Requirement; (d) any encroachment by any part of the Improvements or any other structures or improvements over or on any set-back line, easement, adjoining property or other restricted area; and (e) any encroachment of any adjoining structure upon the Land which any survey or inspection reflects. If Administrative Agent makes demand for Borrower to correct any such nonconformities, Borrower must promptly correct the nonconformity to Administrative Agent's reasonable satisfaction, and Administrative Agent may (i) withhold its consent to further Advances, and (ii) with respect to a nonconformity under clauses (a), (b), (c), or (d) above, require the nonconforming work and all other work which may be affected by the nonconforming work to be stopped, until the nonconformity is completely

corrected to Administrative Agent's reasonable satisfaction. No such action by Administrative Agent will affect Borrower's obligation to complete the Improvements on or before the Completion Date. Administrative Agent's reliance on the recommendations of the Independent Consultant in making any demands or requiring any work to be stopped pursuant to this Section shall be deemed reasonable. Administrative Agent shall have no obligation to make demand for Borrower to correct any such nonconformity, and Administrative Agent not making a demand for Borrower to correct any such nonconformity shall not relieve Borrower from any of its obligations under the Loan Documents or otherwise with respect to construction of the Improvements, nor imply or be deemed to constitute a consent or waiver by Administrative Agent with respect to any such nonconformity. No disbursement of any Loan proceeds or other actions taken by Administrative Agent shall constitute a waiver of Administrative Agent's rights under this Section.

Section 7.8 Independent Consultant. Administrative Agent shall be entitled to engage one or more Independent Consultants from time to time to assist Administrative Agent with any and all matters related to the acquisition, development, construction, or operation of the Project or requests for Advances. Borrower shall pay the reasonable fees and expenses of, and cooperate with, the Independent Consultant and cause each Design Professional and each Contractor to cooperate with the Independent Consultant in connection with the performance of the Independent Consultant's duties. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished to the Independent Consultant such items as working details, the Plans and details thereof, samples of materials, licenses, permits, certificates of Governmental Agencies, zoning ordinances, building codes and copies of the Construction Contracts and related subcontracts (if applicable). Borrower will permit Administrative Agent, the Independent Consultant and their representatives to enter upon the Land and wherever else any of the Collateral is located for the purposes of inspecting same. Borrower acknowledges that the duties of the Independent Consultant run solely to Administrative Agent and that the Independent Consultant shall have no obligations or responsibilities whatsoever to Borrower, any Contractor, any Design Professional, or to any of Borrower's, Contractor's, or Design Professional's agents, employees, contractors or subcontractors.

Section 7.9 Contracts. Borrower will (a) deliver to Administrative Agent (or its representatives) and the Independent Consultant immediately upon demand, counterparts and, if requested by Administrative Agent, collateral assignments of any and all contracts, bills of sale, chattel paper, statements, conveyances, receipted vouchers, or agreements of any nature under which Borrower claims title to any materials, fixtures, or personal property used or to be used in the construction of the Improvements; (b) either cause each Construction Contract to contain a provision specifically subordinating any Lien right against the Collateral to the Liens created by the Loan Documents or cause the other party thereto to execute any and all instruments, acceptable in form and substance to Administrative Agent, to accomplish the same; (c) cause each Construction Contract to be based on a fixed price or a guaranteed maximum contract amount consistent with the Budget; (d) if Administrative Agent shall request, furnish Administrative Agent and the Independent Consultant with a list of subcontractors, materialmen, vendors, and laborers who are to provide materials for or perform work with respect to the Improvements, and promptly notify Administrative Agent and the Independent Consultant of any changes to any list provided to Administrative Agent; and (e) comply with and satisfy all the

terms and conditions of Borrower under each Construction Contract, any Property Contracts, and any Operating Contracts.

Section 7.10 Affidavit of Commencement. Within 10 days after the Construction Commencement Date, but not before construction of the Improvements has actually begun, Borrower shall file or cause to be filed in the appropriate records of the county or counties in which the Land is situated, an Affidavit of Commencement duly executed by Borrower and Contractor. The date of commencement of work set forth in such Affidavit of Commencement shall not be the date of or prior to the date on which the Mortgage was recorded.

Section 7.11 Affidavit of Completion. Within 10 days after construction of the Improvements has been completed, Borrower shall file or cause to be filed in the appropriate records in the county or counties in which the Land is situated an Affidavit of Completion.

Section 7.12 Advertising by Administrative Agent and Lenders. Upon the direction of Administrative Agent, but not otherwise, Borrower shall erect and thereafter during the Construction Phase maintain on the Land one or more advertising signs furnished by Administrative Agent and Lenders indicating that the financing for construction of the Improvements has been furnished by Administrative Agent and Lenders.

Section 7.13 Delivery of Property Contracts. Borrower shall deliver to Administrative Agent and the Independent Consultant a copy of each Property Contract promptly after the execution of same by all parties thereto. Within 20 days after a request by Administrative Agent, Borrower shall prepare and deliver to Administrative Agent and the Independent Consultant a complete listing of all Property Contracts, showing date, term, parties, subject matter, concessions, contractual fees and costs payable by Borrower, whether any defaults exist, and other information specified by Administrative Agent, with respect to each of such Property Contracts.

Section 7.14 Operating Contracts. Borrower shall deliver to Administrative Agent and the Independent Consultant a copy of each Operating Contract promptly after the execution of same by all parties thereto, such Operating Contract to be in form and substance satisfactory to Administrative Agent. Within 20 days after a request by Administrative Agent, Borrower shall prepare and deliver to Administrative Agent and the Independent Consultant a complete listing of all Operating Contracts, showing date, term, parties, subject matter, concessions, contractual fees and costs payable by Borrower, anticipated revenues to Borrower (if applicable), whether any defaults exist, and other information specified by Administrative Agent, with respect to each of such Operating Contracts. Borrower agrees to promptly execute and deliver such collateral assignments and other documents, obtain such consents, and take such other actions as Administrative Agent may reasonably request to perfect Administrative Agent's security interest and (in the case of an Event of Default) enable Administrative Agent, at Administrative Agent's option, to succeed to Borrower's rights under any or all Operating Contracts. Borrower shall not amend or terminate any Operating Contract without the prior consent of Administrative Agent.

Section 7.15 Safe Storage. Borrower shall store all equipment, supplies and materials not affixed to or incorporated into the Improvements (a) on the Land or (b) with Administrative Agent's prior approval, in a bonded warehouse, or other facility, acceptable to Administrative

Agent and with such agreements and certifications as Administrative Agent may require to assure the perfected security interest therein, and in each case under adequate safeguard to minimize the possibility of loss, theft, damage or commingling with other property. Upon Administrative Agent's request, Borrower will furnish an inventory of all such equipment, supplies and materials stored off the Land, specifying their location, and will furnish such other information, including any requisition, invoice, bill of sale, evidence of insurance, evidence of bond, and other documentation, as Administrative Agent may request. Administrative Agent, or its representatives, must have the right to inspect from time to time all such equipment, supplies, and materials not stored on the Land.

Section 7.16 Title Insurance Endorsement. Within 15 days after Completion and the final Advance, Borrower shall cause the Title Policy to be endorsed to remove any exceptions related to completion of improvements, mechanics' or materialmen's liens, or pending disbursements, with no additional title change or exception objectionable to Administrative Agent.

Section 7.17 Site Visits, Observation and Testing. Administrative Agent and its agents and representatives shall have the right at any reasonable time to enter and visit the Project for the purpose of performing appraisals, observing the Project, inspecting the progress of construction of the Project, taking and removing soil or groundwater samples, and conducting tests on any part of the Project. Administrative Agent has no duty, however, to visit or observe the Project or to conduct tests, and no site visit, observation or testing by Administrative Agent, its agents or representatives, shall impose any liability on any of Administrative Agent, its agents or representatives. Neither Borrower nor any other party is entitled to rely on any site visit, observation or testing by any of Administrative Agent, its agents or representatives. Neither Administrative Agent, its agents nor representatives owe any duty of care to protect Borrower or any other party against, or to inform Borrower or any other party of any other adverse condition affecting the Project. Administrative Agent shall give Borrower reasonable notice before entering the Project.

Section 7.18 Project Commencement and Operation. Borrower shall commence operating the Project for its intended purposes on or before 30 days after the date Completion shall have occurred.

Section 7.19 Reserve Account. Upon written request by Administrative Agent, Borrower shall establish a Special Account and maintain cash reserves in such Special Account in the amount of the reserves set forth in the budgets provided to Administrative Agent pursuant to Section 7.1 or in an amount reasonably determined by Administrative Agent as being appropriate for deferred maintenance of the Collateral.

Section 7.20 Accounts. Borrower agrees promptly to execute and provide such documentation and information as Administrative Agent may reasonably request in connection with opening, securing, servicing, and closing any accounts opened with financial institutions acceptable to Administrative Agent or with any Lender pursuant to this Loan Agreement. All accounts opened pursuant to this Loan Agreement shall be in such form and content and have such persons with signature authority as Administrative Agent deems acceptable, including to



make an officer or officers of Administrative Agent as a required, joint signator or to make an officer or officers of Administrative Agent as the sole signator.

#### ARTICLE VIII. COLLATERAL

Section 8.1 Collateral. To secure payment and performance of the Obligations, Borrower and each other Credit Party shall grant to Administrative Agent, for the benefit of Secured Parties, Liens in and upon all of the Collateral, subject only to the Permitted Exceptions. Furthermore, Borrower shall grant, assign, and transfer to Administrative Agent, for the Secured Parties, a security interest in all accounts, and all funds in such accounts, which are established by Borrower with Administrative Agent pursuant to this Loan Agreement, including the Construction Account and any Special Account, to secure the full and timely payment of all Obligations, which accounts shall be deemed Personal Property Collateral and subject to all of the applicable provisions of the Mortgage and Security Agreement.

Section 8.2 Collateral Assignment of Construction Contracts and Property Contracts. As additional security for the payment and performance of the Obligations, Borrower hereby grants, transfers and assigns to Administrative Agent for the benefit of Secured Parties all of Borrower's rights and interest, but not its obligations, in, under and to each Construction Contract and Property Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Construction Contract and Property Contract Borrower has furnished or will furnish to Administrative Agent and the Independent Consultant is or will be (as applicable) a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any Lien, claim, setoff or other encumbrance.

(b) Neither this assignment nor any action by Administrative Agent or any Lender shall constitute an assumption by Administrative Agent or such Lender of any obligations under any Construction Contract or Property Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby is agreeing to perform all of its obligations under each Construction Contract and Property Contract. Borrower agrees to indemnify and hold Administrative Agent and Lenders harmless against and from any loss, cost, liability or expense (including attorneys' fees) resulting from any failure of Borrower to so perform.

(c) After the occurrence of an Event of Default, Administrative Agent shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower any action which Borrower could take under or with respect to each Construction Contract and Property Contract, including such action as Administrative Agent may at any time determine to be necessary or advisable to cure any default under any Construction Contract or Property Contract or to protect the rights of Borrower or Administrative Agent and Lenders thereunder. Neither Administrative Agent nor any Lender shall incur any liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid other than liability resulting solely from the gross negligence or willful misconduct of Administrative Agent or such Lender, and Borrower agrees to indemnify and hold Administrative Agent and Lenders harmless against and from any

loss, cost, liability or expense (including but not limited to reasonable attorneys' fees) incurred in connection with any such action, excluding any such loss, liabilities or expenses arising solely from the gross negligence or willful misconduct of Administrative Agent or any Lender.

(d) Prior to the occurrence of an Event of Default, Borrower shall have the right to exercise its rights as owner under each Construction Contract and Property Contract, provided that Borrower shall not cancel or amend any Construction Contract or Property Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Administrative Agent. Administrative Agent shall have the right, but no obligation, to exercise its rights as attorney-in-fact granted pursuant to Section 9.4 in connection with this assignment, along with any other rights or remedies, all of which are cumulative.

(e) This assignment shall inure to the benefit of Administrative Agent and its successors and assigns, any purchaser upon foreclosure of the Mortgage, any receiver in possession of any portion of the Collateral and any Person affiliated with Administrative Agent which assumes Administrative Agent's rights and obligations under this Loan Agreement.

Section 8.3 Collateral Assignment of Plans. As additional security for the payment and performance of the Obligations, Borrower hereby grants, transfers and assigns to Administrative Agent for the benefit of Secured Parties all of Borrower's rights and interest in and to the Plans and hereby represents and warrants to and agrees with Administrative Agent and Lenders as follows:

(a) The copy of the Plans (or schedules thereof if so specified by Administrative Agent) delivered or to be delivered to Administrative Agent and the Independent Consultant is and shall be complete and accurate.

(b) The Plans are and shall be complete and adequate for the construction of the Improvements, and there have been no modifications thereof except as reflected in such Plans (and described in the schedules, if provided).

(c) Administrative Agent may use the Plans for any purpose relating to the Improvements, including inspections of construction and the Completion of the Improvements.

(d) Administrative Agent's acceptance of this assignment shall not constitute approval of the Plans by Administrative Agent. Neither Administrative Agent nor any Lender has any liability or obligation in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans. Neither Administrative Agent nor any Lender has any duty to inspect the Improvements, and if Administrative Agent or any Lender should inspect the Improvements, neither Administrative Agent nor any Lender shall have any liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Administrative Agent or any Lender to make objections

after any such inspection shall constitute a representation by Administrative Agent or such Lender that the Improvements are in accordance with the Plans or any other requirement or constitute a waiver of Administrative Agent's or such Lender's right thereafter to insist that the Improvements be constructed in accordance with the Plans or any other requirement.

(e) This assignment shall inure to the benefit of Administrative Agent, Lenders and their respective successors and assigns, any purchaser upon foreclosure under the Mortgage, any receiver in possession of the Collateral and any entity which assumes Administrative Agent's rights and obligations under this Agreement.

Section 8.4 No Obligation or Agency of Administrative Agent or any Lender.

(a) No Obligation by Administrative Agent or any Lenders to Construct. Neither Administrative Agent nor any Lender has any liability or obligation in connection with the Land or Improvements or the development, construction or completion thereof or work performed thereon, and has no obligation except to disburse the Loan proceeds as herein agreed. Neither Administrative Agent nor any Lender is obligated to inspect the Improvements nor is Administrative Agent or any Lender liable, and under no circumstances shall Administrative Agent or any Lender be or become liable, for the performance or default of any contractor or subcontractor, or for any failure to construct, complete, protect or insure the Collateral, or any part thereof, or for the payment of any cost or expense incurred in connection therewith, or for the performance or nonperformance of any obligation of any Credit Party to Administrative Agent or any Lender nor to any other person, firm or entity, without limitation. Nothing, including any disbursement of Loan proceeds or Borrower's Deposit, any inspection, any other action taken pursuant to any Loan Document, or acceptance of any document or instrument, shall be construed as an assumption, representation or warranty, express or implied, on Administrative Agent's or any Lender's part.

(b) No Obligation by Administrative Agent or any Lender to Operate. Any term or condition of any of the Loan Documents to the contrary notwithstanding, neither Administrative Agent nor any Lender shall have, and by its execution and acceptance of this Loan Agreement hereby expressly disclaims, any obligation or responsibility for the management, conduct or operation of the business and affairs of any Credit Party or the Project. Any term or condition of the Loan Documents which permits Administrative Agent or any Lender to disburse funds, whether from the proceeds of the Loan, Borrower's Deposit or otherwise, or to take or refrain from taking any action with respect to any Credit Party, the Collateral or any other collateral for repayment of the Loan, shall be deemed to be solely to permit Administrative Agent or a Lender to audit and review the management, operation and conduct of the business and affairs of any Credit Party, and to maintain and preserve the security given by Borrower to Administrative Agent or a Lender for the Loan, for the sole benefit of the Secured Parties, and may not be relied upon by any other Person. Further, neither Administrative Agent nor any Lender shall have assumed, nor be deemed or construed to have assumed, and by its execution and acceptance of this Loan Agreement hereby expressly disclaims any liability or responsibility for any aspect of Borrower's business or affairs, including the management

or operation of the Project, the payment or performance of any Indebtedness, or other obligation of any Credit Party, and no term or condition of the Loan Documents shall be construed otherwise.

(c) No Agency. Nothing herein shall be construed as making or constituting Administrative Agent or any Lender as the agent of any Credit Party in making payments pursuant to any construction contracts or subcontracts entered into by any Credit Party for construction of the Improvements or otherwise, except to the extent, if any, the attorney-in-fact powers are construed to create an agency. The purpose of all requirements of Administrative Agent and Lenders hereunder is solely to allow Administrative Agent or any Lender to check and require documentation (including lien waivers) sufficient to protect Administrative Agent, Lenders and the Loan contemplated hereby. Borrower shall have no right to rely on any procedures required by Administrative Agent or any Lender, nor any approvals given by Administrative Agent or any Lender. Borrower hereby acknowledges that Borrower has sole responsibility for constructing the Improvements, managing and operating the Project, and conducting all other aspects of its business and affairs. Borrower has solely, on Borrower's own behalf, selected or approved each contractor, each subcontractor and each materialman, neither Administrative Agent nor any Lender having any responsibility for any such persons or entities or for the quality of their materials or workmanship.

Section 8.5 Casualty; Condemnation.

(a) If the Casualty is covered by insurance, Borrower shall immediately make proof of loss and collect all insurance proceeds, all such proceeds to be payable to Administrative Agent or as Administrative Agent shall direct. If an Event of Default exists, or if Borrower shall not be proceeding, in Administrative Agent's good faith opinion, to collect such insurance proceeds, then Administrative Agent may, but shall not be obligated to, make proof of loss, and is authorized but not obligated to settle any claim with respect thereto, and to collect the proceeds thereof. Borrower shall not accept any settlement of an insurance claim for \$50,000 or more without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld or delayed.

(b) Administrative Agent shall make the net insurance proceeds received by it (after reimbursement of Administrative Agent's out-of-pocket costs of collecting and disbursing the same) available to Borrower to pay the cost of restoration, repair, replacement and rebuilding of Tangible Collateral, subject to the following conditions:

(i) There shall be no Event of Default in existence at the time of any disbursement of the insurance proceeds;

(ii) Administrative Agent shall have determined, in its reasonable discretion, that the cost of restoration, repair, replacement and rebuilding is and will be equal to or less than the amount of insurance proceeds and other funds deposited by Borrower with Administrative Agent

(iii) Administrative Agent shall have determined, in its sole discretion, that the restoration, repair, replacement and rebuilding can be completed in accordance with plans and specifications approved by Administrative Agent (such approval not to be unreasonably withheld), in accordance with codes and ordinances and in accordance with the terms, and within the time requirements in order to prevent termination, of the Construction Contracts and Operating Contracts, and in any event not less than six months prior to the Maturity Date;

(iv) All funds shall be disbursed, at Administrative Agent's option, in accordance with Administrative Agent's customary disbursement procedures for construction loans; and

(v) The Casualty shall have occurred more than 12 months prior to the Maturity Date.

If any of these conditions shall not be satisfied, then Administrative Agent shall have the right to use the insurance proceeds to prepay the Loan in accordance with the Loan Documents. If any insurance proceeds shall remain after completion of the restoration, repair and rebuilding of Tangible Collateral, they shall be disbursed to Borrower, or at Administrative Agent's discretion, used to prepay the Loan in accordance with the Loan Documents.

(c) If any portion of the Collateral shall be subject to Condemnation, Borrower shall diligently pursue any negotiation and prosecute any proceeding in connection with the Condemnation at Borrower's expense. If an Event of Default shall be in existence, or if Borrower, in Administrative Agent's reasonable opinion, shall not be diligently negotiating or prosecuting the claim, Administrative Agent is authorized, but not required, to negotiate and prosecute the claim and appear at any hearing for itself and on behalf of Borrower and to compromise or settle all compensation for the Condemnation, Administrative Agent shall not be liable to Borrower for any failure by Administrative Agent to collect or to exercise diligence in collecting any such compensation except for any liability arising solely from the gross negligence or willful misconduct of Administrative Agent. Borrower shall not compromise or settle any claim resulting from the Condemnation if such settlement shall result in payment of \$50,000 or more without Administrative Agent's written consent, which consent shall not be unreasonably withheld or delayed. All awards shall be paid to Administrative Agent.

(d) Administrative Agent shall make the net proceeds of any Condemnation received by it (after reimbursement of Administrative Agent's out-of-pocket costs of collecting and disbursing the same) available to Borrower for restoration, repair and rebuilding of Collateral, subject to the following conditions:

(i) There shall be no Event of Default in existence at the time of any disbursement of the condemnation proceeds;

(ii) Administrative Agent shall have determined, in its reasonable discretion, that the cost of restoration, repair, replacement and rebuilding is and

will be equal to or less than the amount of condemnation proceeds and other funds deposited by Borrower with Administrative Agent.

(iii) Administrative Agent shall have determined, in its sole discretion, that the restoration, repair, replacement and rebuilding can be completed in accordance with plans and specifications approved by Administrative Agent (such approval not to be unreasonably withheld), in accordance with codes and ordinances and in accordance with the terms, and within the time requirements in order to prevent termination, of the Construction Contracts and Operating Contracts, and in any event not less than six months prior to the Maturity Date;

(iv) All funds shall be disbursed, at Administrative Agent's option, in accordance with Administrative Agent's customary disbursement procedures for construction loans; and

(v) The Condemnation shall have occurred more than 12 months prior to the Maturity Date.

If any of these conditions shall not be satisfied, then Administrative Agent shall have the right to use the condemnation proceeds to prepay the Loan in accordance with the Loan Documents. If any condemnation proceeds shall remain after completion of the restoration, repair, replacement and rebuilding of the Collateral, they shall be disbursed to Borrower, or at Administrative Agent's discretion, used to prepay the Loan in accordance with the Loan Documents.

#### ARTICLE IX. EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" under this Loan Agreement:

(a) Failure to Pay. Borrower or any other Credit Party shall fail to pay when due (i) any principal or interest under any Loan Document when and as the same shall become due and payable and (ii) any fee or other amount (other than principal or interest) under any Loan Document when and as the same shall become due and payable, and in each such case such failure shall continue unremedied for a period of five days.

(b) Failure to Perform. Any Credit Party shall default in the performance or observance of (i) any covenant or agreement on its part to be performed or observed under Section 5.1, 5.2, 5.3, 5.6, 5.9, 5.10, and Article VI (and such default does not constitute an Event of Default described under any other clause of this Section), and (ii) any other provision of this Loan Agreement, the Note or any of the other Loan Documents (and such default does not constitute an Event of Default described under any other clause of this Section), and such default shall continue unremedied for 10 Business Days (A) after written notice thereof shall have been given by Administrative Agent to Borrower, or (B) from Borrower's receipt of any notice or knowledge of such default from any other source.

(c) Breach of Warranty. Any representation or warranty made by any Credit Party contained in this Loan Agreement, the Note or any of the other Loan Documents shall at any time prove to have been incorrect in any material respect when made or shall become so at any time prior to repayment in full of all Obligations.

(d) Default Under Other Merrill Lynch Agreement. A default or event of default by any Credit Party shall occur under the terms of any other agreement, instrument or document with or intended for the benefit of Administrative Agent, MLPF&S or any of their Affiliates, and any required notice shall have been given and required passage of time shall have elapsed.

(e) Bankruptcy Event. Any Bankruptcy Event shall occur.

(f) [Reserved.]

(g) Default Under Other Agreements. Any event shall occur which results in any default of any material agreement involving any Credit Party or any agreement evidencing any indebtedness of any Credit Party of \$50,000 or more other than a default of any agreement involving or evidencing trade payables to the extent the same is being diligently contested in good faith by appropriate proceedings.

(h) Collateral Impairment or Lapse in Insurance Coverage. The loss, theft or destruction of any Collateral that is not fully covered by insurance, the occurrence of any material deterioration or impairment of any Collateral outside ordinary wear and tear or any material decline or depreciation in the value or market price thereof, which causes any Collateral, in the reasonable opinion of Administrative Agent, to become unsatisfactory as to value or character; or any levy, attachment, seizure or confiscation of more than a de minimis portion of the Collateral which is not released within 10 Business Days; or the failure to maintain insurance in accordance with Section 5.9.

(i) Contested Obligation. (i) Any of the Loan Documents shall for any reason cease to be, or is asserted by any Credit Party not to be, a legal, valid and binding obligation of any Credit Party thereto, enforceable in accordance with its terms; or (ii) the validity, perfection or priority of Administrative Agent's first Lien and security interest (subject to the Permitted Exceptions) on any of the Collateral is contested by any Person; or (iii) any Credit Party shall or shall attempt to repudiate, revoke, contest or dispute, in whole or in part, such Credit Party's obligations under any Loan Document.

(j) Judgments. A judgment shall be entered against any Credit Party in excess of \$50,000, and the judgment is not paid in full and discharged, or stayed and bonded to the satisfaction of Administrative Agent, prior to the deadline for filing an appeal to such judgment or such earlier date that the judgment creditor is entitled to assert a lien against such Credit Party's assets as a result of such judgment.

(k) Change in Control/Change in Management. (i) Any direct or indirect sale, conveyance, assignment or other transfer of or grant of a security interest in any ownership interest of any Credit Party which results, or if any rights related thereto were exercised would result, in any change in the identity of the individuals or entities

previously in control of any Credit Party; or (ii) the owner(s) of the controlling equity interest of any Credit Party on the date hereof shall cease to own and control such Credit Party; or (iii) a competent management and operations company shall for any reason cease to manage and operate the Project and such company is not replaced by another company reasonably acceptable to Administrative Agent within 45 days.

(l) Withdrawal, Death, etc. The incapacity, death, withdrawal, dissolution, or the filing for dissolution of: (i) any Credit Party; or (ii) any controlling shareholder, partner, or member of any Credit Party.

(m) Construction. The construction of the Improvements is (i) at any time discontinued for an unscheduled period of 10 or more consecutive days other than by reason of an event of Force Majeure, (ii) not resumed within 90 days after the date of any event of Force Majeure, or (iii) not completed by March 31, 2008, or Borrower is unable to satisfy any condition precedent to Borrower's right to receive Advances hereunder for a period in excess of 30 days after Administrative Agent's refusal to make any further Advances.

Section 9.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, Administrative Agent and Lenders may at their sole option do any one or more or all of the following, at such time and in such order as Administrative Agent may in its sole discretion choose:

(a) Termination. Administrative Agent or Lenders may without notice terminate their obligation to extend any credit to or for the benefit of Borrower (it being understood, however, that upon the occurrence of any Bankruptcy Event all such obligations shall automatically terminate without any action on the part of Administrative Agent or Lenders).

(b) Acceleration. Administrative Agent or Lenders may declare the principal of and interest and any premium on the Note, and all other Obligations, to be forthwith due and payable, whereupon all such amounts shall be immediately due and payable, without presentment, demand for payment, protest and notice of protest, notice of dishonor, notice of acceleration, notice of intent to accelerate or other notice or formality of any kind, all of which are hereby expressly waived; provided, however, that upon the occurrence of any Bankruptcy Event all such principal, interest, premium and other Obligations shall automatically become due and payable without any action on the part of Administrative Agent or any Lender. The acceleration of any obligations shall not limit, negate, or cancel the Prepayment Premium, which shall for all purposes be included within the Obligations.

(c) Exercise Other Rights. Administrative Agent or any Lender may exercise any or all of the remedies of a secured party under Legal Requirements and in equity, including under the UCC, and any or all of its other rights and remedies under the Loan Documents.



(d) Possession. Administrative Agent may require Borrower or any other Credit Party to make the Collateral and the records pertaining to the Collateral available to Administrative Agent at a place designated by Administrative Agent which is reasonably convenient to Borrower, or may take possession of the Collateral and the records pertaining to the Collateral without the use of any judicial process and without any prior notice to Borrower to the extent permitted by Legal Requirements. Administrative Agent's sole duty with respect to the custody, safe-keeping, and physical preservation of any Collateral in its possession, under Section 9.207 of the UCC or otherwise, shall be to deal with such Collateral in the same manner as Administrative Agent deals with similar property for its own account.

(e) Sale. Administrative Agent may sell any or all of the Collateral at public or private sale (in addition to and separate from a sale pursuant to the Mortgage) upon such terms and conditions as Administrative Agent may reasonably deem proper, whether for cash, on credit, or for future delivery, in bulk or in lots. Administrative Agent may purchase any Collateral at any such sale free of Borrower's right of redemption, if any, which Borrower expressly waives to the extent not prohibited by Legal Requirements. The net proceeds of any such public or private sale and all other amounts actually collected or received by Administrative Agent pursuant hereto, after deducting all costs and expenses incurred at any time in the collection of the Obligations and in the protection, collection and sale of the Collateral, will be applied to the payment of the Obligations and to Obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts permitted, but not required, by the terms of this Loan Agreement, with any remaining proceeds paid to Borrower or whoever else may be entitled thereto, and with Borrower and each other Credit Party remaining jointly and severally liable for any amount remaining unpaid after such application. Neither Administrative Agent nor any Lender has any obligation to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition as authorized herein. If Administrative Agent sells any Collateral upon credit, Borrower will receive credit against the Obligations only for cash payments made by the purchaser to Administrative Agent. If the purchaser fails to pay the purchase price, then Administrative Agent may resell the Collateral, to the extent permitted by Legal Requirements.

(f) Delivery of Cash, Checks, Etc. Administrative Agent may require Borrower or any other Credit Party to forthwith, upon receipt, transmit and deliver to Administrative Agent, in the form received, all cash, checks, drafts and other instruments for the payment of money (properly endorsed, where required, so that such items may be collected by Administrative Agent) which may be received by Borrower at any time in full or partial payment of any Collateral, and require that Borrower not commingle any such items which may be so received by Borrower with any other of its funds or property but instead hold them separate and apart and in trust for Administrative Agent until delivery is made to Administrative Agent.

(g) Notification of Account Debtors. Administrative Agent may notify any account debtor of Borrower or any other Credit Party that its Account or Chattel Paper has been assigned to Administrative Agent for the benefit of Secured Parties and direct such account debtor to make payment directly to Administrative Agent of all amounts

due or becoming due with respect to such Account or Chattel Paper; and Administrative Agent may enforce payment and collect, by legal proceedings or otherwise, such Account or Chattel Paper.

(h) Control of Collateral. Administrative Agent may otherwise take control in any lawful manner of any cash or non-cash items of payment or proceeds of Collateral and of any rejected, returned, stopped in transit or repossessed goods included in the Collateral and endorse Borrower's name on any item of payment on or proceeds of the Collateral.

Section 9.3 Set-Off. Administrative Agent and each Lender shall have the further right upon the occurrence and during the continuance of an Event of Default to set-off, appropriate and apply toward payment of any of the Obligations, in such order of application as Administrative Agent and such Lender may from time to time and at any time elect, any cash, credit, deposits, accounts, financial assets, investment property, securities and any other property of Borrower which is in transit to or in the possession, custody or control of Administrative Agent or such Lender, MLPF&S or any agent, bailee, or Affiliate of such Lender or MLPF&S. Borrower hereby collaterally assigns and grants to Administrative Agent, for itself and the benefit of each Lender, a continuing security interest in all such property as Collateral and as additional security for the Obligations. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have all rights in such property available to collateral assignees and secured parties under all Legal Requirements, including the UCC.

Section 9.4 Power of Attorney. Effective upon the occurrence and during the continuance of an Event of Default, Borrower hereby irrevocably appoints Administrative Agent as its attorney-in-fact, with full power of substitution, in its place and stead and in its name or in the name of Administrative Agent, to from time to time in Administrative Agent's sole discretion take any action and to execute any instrument which Administrative Agent may deem necessary or advisable to accomplish the purposes of this Loan Agreement and the other Loan Documents, including to receive, endorse and collect all checks, drafts and other instruments for the payment of money made payable to Borrower included in the Collateral. The powers of attorney granted to Administrative Agent in this Loan Agreement are coupled with an interest and are irrevocable until the Obligations have been indefeasibly paid in full and fully satisfied and all obligations of Administrative Agent and Lenders under this Loan Agreement have been terminated.

Section 9.5 Remedies are Severable and Cumulative. All rights and remedies of Administrative Agent and Lenders herein are severable and cumulative and in addition to all other rights and remedies available in the Note, the other Loan Documents, at law or in equity, and any one or more of such rights and remedies may be exercised simultaneously or successively.

Section 9.6 No Marshalling. Neither Administrative Agent nor any Lender shall be under any duty or obligation to (a) preserve, protect or marshal the Collateral; (b) preserve or protect the rights of any Credit Party or any other Person claiming an interest in the Collateral; (c) realize upon the Collateral in any particular order or manner, (d) seek repayment of any Obligations from any particular source; (e) proceed or not proceed against any Credit Party pursuant to any guaranty or security agreement or against any Credit Party under the Loan

Documents, with or without also realizing on the Collateral; (f) permit any substitution or exchange of all or any part of the Collateral; or (g) release any part of the Collateral from the Loan Agreement or any of the other Loan Documents, whether or not such substitution or release would leave Administrative Agent and Lenders adequately secured.

Section 9.7 Notices. To the fullest extent permitted by Legal Requirements, Borrower hereby irrevocably waives and releases Administrative Agent and Lenders of and from any and all liabilities and penalties for failure of Administrative Agent or any Lender to comply with any statutory or other requirement imposed upon Administrative Agent or any Lender relating to notices of sale, holding of sale or reporting of any sale, and Borrower waives all rights of redemption or reinstatement from any such sale. Except as otherwise required by Legal Requirements, any notices required under Legal Requirements shall be reasonably and properly given to Borrower if given by any of the methods provided herein at least five Business Days prior to taking action. Administrative Agent or any Lender shall have the right to postpone or adjourn any sale or other disposition of Collateral at any time without giving notice of any such postponed or adjourned date. In the event Administrative Agent or any Lender seeks to take possession of any or all of the Collateral by court process, Borrower further irrevocably waives to the fullest extent permitted by law any bonds and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession, and any demand for possession prior to the commencement of any suit or action.

Section 9.8 Application of Funds. During the existence of an Event of Default (including after the maturity of the Note), any amounts received on account of the Obligations shall be applied by Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to Administrative Agent, in its capacity as such (including fees, charges and disbursements of counsel to Administrative Agent);

Second, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loan and other Obligations;

Third, to payment of that portion of the Obligations constituting unpaid principal of the Loan;

Fourth, to payment of that portion of the Obligations constituting obligations owing to any Eligible Swap Counterparty in respect of any Swap Contracts permitted, but not required, by the terms of this Loan Agreement; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by Legal Requirements.

Section 9.9 Completion of the Improvements. Administrative Agent and Lenders shall have the right, upon the occurrence of a Default or an Event of Default, in addition to any rights or remedies available to any of them under this Loan Agreement and all other Loan Documents, to enter into possession of the Collateral and perform any and all work and labor necessary to complete the Improvements in accordance with the Plans. All amounts so expended

by Administrative Agent or any Lender shall be deemed to have been disbursed to Borrower as Loan proceeds and secured by the Mortgage. For this purpose, Borrower hereby constitutes and appoints (which appointment is coupled with an interest and is therefore irrevocable) Administrative Agent as Borrower's true and lawful attorney-in-fact, with full power of substitution to complete the Improvements in the name of Borrower, and hereby empowers Administrative Agent, acting as Borrower's attorney-in-fact, as follows: to use any funds of Borrower, including any balance which may be held in escrow, any Borrower's Deposit and any funds which may remain unadvanced under the Note, for the purpose of completing the Improvements; to make such additions and changes and corrections in the Plans which shall be necessary or desirable to complete the Improvements; to continue, amend, or terminate all or any existing Construction Contracts or subcontracts; to employ such contractors, subcontractors, agents, design professionals and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims which are or may be payable with respect to any Construction Contract, Property Contract, or Operating Contract, may be or become Liens, or may be necessary or desirable for the Completion of the Improvements or the clearing of title; to execute all applications, certificates, and other documents in the name of Borrower which may be required by any Construction Contract, Property Contract, or Operating Contract; and to do any and every act with respect to the construction of the Improvements which Borrower could do in Borrower's own behalf. Administrative Agent, acting as Borrower's attorney-in-fact, shall also have power to prosecute and defend all actions or proceedings in connection with the Collateral and to take such action and require such performance as is deemed necessary. In no event shall Administrative Agent have any obligation to take any action pursuant to its rights as attorney-in-fact. The power of attorney under this Section shall terminate upon payment of the Obligations in full or upon foreclosure (or conveyance in lieu of foreclosure) of all of the Collateral. Administrative Agent shall incur no liability if any action taken by it as attorney-in-fact as permitted above shall prove to be inadequate, invalid, or in poor judgment, so long as Administrative Agent did not act with gross negligence or willful misconduct. **Borrower agrees to indemnify and hold harmless Administrative Agent from and against any loss, cost, liability, or expense (including reasonable attorneys' fees) incurred in connection with any such action (excluding Administrative Agent's gross negligence or willful wrongful act). The foregoing indemnity shall apply with respect to matters which in whole or in part are caused by or arise out of the negligence (but not gross negligence) (whether sole, comparative, or contributory) of Administrative Agent, but shall not apply to matters to the extent such matters are caused by or arise out of the gross negligence or willful wrongful act of Administrative Agent.**

Section 9.10 Receiver. Administrative Agent and Lenders shall be entitled, without notice or consent, and completely without regard to the adequacy of any security for the Obligations, to the appointment of a receiver of the Collateral, all operations related thereto, and the rents and profits derived therefrom. This appointment shall be in addition to any other rights, relief or remedies afforded Administrative Agent and Lenders. Such receiver, in addition to any other rights to which he shall be entitled, shall be authorized to sell, foreclose or complete foreclosure on the Collateral for the benefit of Administrative Agent and Lenders, pursuant to provisions of Legal Requirements.

Section 9.11 Right to Perform Obligations. If Borrower shall fail to do any act or thing which it has covenanted to do under this Loan Agreement or any of the Loan Documents, or any

representation or warranty on the part of Borrower contained in this Loan Agreement or any of the Loan Documents shall be breached, Administrative Agent may, in its sole discretion, after five Business Days written notice is sent to Borrower (or such lesser notice, including no notice, as is reasonable under the circumstances), do the same or cause it to be done or remedy any such breach, and may expend its funds for such purpose. Any and all reasonable amounts so expended by Administrative Agent or any Lender shall be repayable to Administrative Agent or such Lender by Borrower upon demand, with interest at the Default Rate during the period from and including the date funds are so expended by Administrative Agent or such Lender to the date of repayment, and all such amounts shall be additional Obligations. The payment or performance by Administrative Agent or any Lender of any of Borrower's obligations hereunder shall not relieve Borrower of said obligations or of the consequences of having failed to pay or perform the same, and shall not waive or be deemed a cure of any Default or Event of Default.

## ARTICLE X. ADMINISTRATIVE AGENT

### Section 10.1 Appointment and Duties of Administrative Agent.

(a) The parties hereto agree that Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services Inc., shall act, subject to the terms and conditions of this Section 10.1, as Administrative Agent and to the extent set forth herein each Lender hereby irrevocably appoints, authorizes, empowers and directs Administrative Agent to take such action on its behalf and to exercise such powers as are specifically delegated to Administrative Agent herein or are reasonably incidental thereto in connection with the administration of and the enforcement of any rights or remedies with respect to this Loan Agreement, the Note and the other Loan Documents. It is expressly understood and agreed that the obligations of Administrative Agent under the Loan Documents are only those expressly set forth in this Loan Agreement. Administrative Agent shall use reasonable diligence to examine the face of each document received by it hereunder to determine whether such documents, on their face, appear to be what they purport to be. However, Administrative Agent shall not be under any duty to examine into and pass upon the validity or genuineness of any documents received by it hereunder and Administrative Agent shall be entitled to assume that any of the same which appears regular on its face is genuine and valid and what it purports to be.

(b) Except as otherwise set forth in Section 11.19, Administrative Agent shall act pursuant to the instructions of Required Lenders in all matters relating to the Loan Documents.

Section 10.2 Discretion and Liability of Administrative Agent. Subject to Sections 10.1(b), 10.3, and 10.5, Administrative Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it under any of the Loan Documents or otherwise, or with respect to taking or refraining from taking any action or actions which it may be able to take under any of the Loan Documents. Neither Administrative Agent nor any of its directors, officers, employees, agents or representatives shall be liable for any action taken or omitted by it hereunder or in connection herewith, except for its own gross negligence or willful misconduct. Administrative Agent shall incur no liability under, or in respect of this Loan Agreement or the other Loan Documents by acting upon a notice,

certificate, warranty or other paper or instrument reasonably believed by it to be genuine or authentic or to be signed by the proper party or parties, or 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 premises.

Section 10.3 Event of Default.

(a) Administrative Agent shall be entitled to assume that no Default or event which would constitute a Default after notice or lapse of time, or both, has occurred and is continuing, unless Administrative Agent has actual knowledge of such facts or has received notice from Borrower or a Credit Party or from a Lender in writing that such Person considers that a Default or event which would constitute a Default after notice or lapse of time, or both, has occurred and is continuing and which specifies the nature thereof.

(b) In the event that Administrative Agent shall acquire actual knowledge of any Default or event which would constitute a Default after notice or lapse of time, or both, or shall have received notice from Borrower, a Credit Party or a Lender as provided in Section 10.3(a), Administrative Agent shall promptly notify (either orally, confirmed in writing, or in writing) Lenders of such Default or event and shall take such action and assert such rights as are contemplated under this Loan Agreement and in an emergency, or if requested in writing by Required Lenders shall, take such action and assert such rights as are contemplated under this Loan Agreement. To the extent not otherwise paid by Borrower, Administrative Agent shall be indemnified pro rata by Lenders against any liability or expenses (except for any liability or expenses caused by Administrative Agent's gross negligence or willful misconduct), including, but not limited to, travel expenses and external counsel fees and expenses, incurred in connection with taking such action as Administrative Agent, and not as a Lender. Administrative Agent may refrain from acting in accordance with any instructions from Required Lenders until it shall have been indemnified to its satisfaction against any and all costs and expenses which it will or may expend or incur in complying with such instructions.

Section 10.4 Consultation. When acting in connection with this Loan Agreement, or the other Loan Documents, Administrative Agent may, with the consent of Required Lenders, engage and pay for the advice and services of any lawyers, accountants, surveyors, appraisers or other experts whose advice or services may to it appear necessary, expedient or desirable and Administrative Agent shall be entitled to fully rely upon any opinion or such advice so obtained.

Section 10.5 Communications to and from Administrative Agent. When any notice, approval, consent, waiver or other communication or action is required or may be delivered by Lenders hereunder or the other Loan Documents, action by Administrative Agent (upon the direction, approval or consent of each Lender, all Lenders or Required Lenders, as applicable pursuant to the requirements set forth in this Loan Agreement) shall be effective for all purposes hereunder. Borrower and other Credit Parties may rely on any communication from Administrative Agent hereunder or the other Loan Documents, and need not inquire into the propriety of or authorization for such communication. Upon receipt by Administrative Agent from Borrower, any other Credit Party or any Lender of any communication it will, in turn,

promptly forward such communication to Lenders; provided, however, that Administrative Agent shall not be liable for any costs, expenses or losses arising from any failure to so forward any such communication unless caused by the gross negligence or willful misconduct of Administrative Agent.

Section 10.6 Limitations of Agency. Notwithstanding anything in the Loan Documents, expressed or implied, it is agreed by the parties hereto, that Administrative Agent will act under the Loan Documents as Administrative Agent solely for Lenders and only to the extent specifically set forth herein, and will, under no circumstances, be considered to be an agent or fiduciary of any nature whatsoever in respect to any other Person. Administrative Agent, in its individual capacity, may generally engage in any business with Borrower and other Credit Parties or any of their Affiliates as if it was not Administrative Agent.

Section 10.7 No Representations or Warranty.

(a) No Lender (including Administrative Agent) makes to any other Lender any representation or any warranty, expressed or implied, or assumes any responsibility with respect to the Loan or the execution, construction or enforceability of the Loan Documents or any instrument or agreement executed by Borrower, other Credit Parties or any other Person in connection therewith.

(b) Administrative Agent takes no responsibility for the accuracy or completeness of any information concerning Borrower and other Credit Parties distributed by Administrative Agent in connection with the Loan nor for the truth of any representation or warranty given or made herein, nor for the validity, effectiveness, adequacy or enforceability of this Loan Agreement or any of the other Loan Documents.

Section 10.8 Lender Credit Decision. Each Lender acknowledges that it has independent of and without reliance upon any other Lender (including Administrative Agent) or any information provided by any other Lender (including Administrative Agent) and based on the financial statements of Borrower and other Credit Parties and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Loan Agreement. Each Lender also acknowledges that it will, independent of and without reliance upon any other Lender (including Administrative Agent) and based on such documents and information as it shall deem appropriate at that time, continue to make its own credit decisions in taking or not taking action under this Loan Agreement and any other documents relating thereto.

Section 10.9 Indemnity. Notwithstanding any of the provisions hereof, to the extent Administrative Agent has not been so indemnified by Borrower, Lenders shall severally, pro rata in respect of their respective Commitments, indemnify Administrative Agent against any and all losses, costs, liabilities, damages or expenses, including but not limited to, reasonable travel expenses and external counsel's reasonable fees and expenses, arising from, or in connection with, its performance as Administrative Agent hereunder and not caused by its gross negligence or willful misconduct.

Section 10.10 Resignation. Administrative Agent may resign as such at any time upon at least 30 days' prior notice to Borrower and Lenders, provided that such resignation shall not take effect until a successor agent has been appointed. In the event of a resignation by Administrative Agent, Lenders (in consultation with Borrower, provided no Default or Event of Default has occurred and is continuing) shall promptly appoint a successor agent from among Lenders.

Section 10.11 Disbursements and Distributions. On the date of each Loan advance, Administrative Agent shall disburse each Lender's pro rata portion of the Loan to or at the direction of Borrower pursuant to this Loan Agreement, to the extent received by Administrative Agent from such Lender. Administrative Agent shall be responsible for promptly distributing, on the Business Day immediately following the date received by Administrative Agent, each Lender's share of all net amounts received by Administrative Agent under any of the Loan Documents pursuant to this Loan Agreement. Each Lender shall be responsible for designating by written notice to Administrative Agent the account to which such distribution shall be deposited.

Section 10.12 Limitation of Suits. All rights of action and claims under this Loan Agreement and the other Loan Documents of Lenders shall be prosecuted and enforced only by Administrative Agent. Lenders agree that they shall not independently institute any proceedings, judicial or otherwise, to enforce their rights against Borrower under this Loan Agreement or the other Loan Documents. However, notwithstanding anything contained in this Section 10.12, Lenders shall always retain their ability to retain independent counsel and to protect their rights under this Loan Agreement and the other Loan Documents.

Section 10.13 Right of Setoff. Subject to the provisions of Section 2.14 hereof, upon the occurrence and during the continuation of any Event of Default, Lenders each are hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower), to setoff and apply any and all deposits (general or special, time or demand, provisional or final, whether or not such setoff results in any loss of interest or other penalty, and including without limitation all certificates of deposit) at any time held by Lenders and all of the indebtedness arising in connection with this Loan Agreement irrespective of whether or not such Lender will have made any demand under this Loan Agreement, the Note or any other Loan Document. Borrower also hereby grants to each of Lenders a Lien in and hereby transfers, assigns, sets over and conveys to each of Lenders, as security for payment of the Loan, all such deposits, funds or property of Borrower or indebtedness of any Lender to Borrower. Should the right of any Lender to realize funds in any manner set forth hereinabove be challenged and any application of such funds be reversed, whether by court order or otherwise, Lenders shall make restitution or refund to Borrower pro rata in accordance with their respective portions of the Loan. Each Lender agrees to promptly notify Borrower and Administrative Agent after any such setoff and application, provided that the failure to give such notice will not affect the validity of such setoff and application. The rights of Administrative Agent and Lenders under this Section 10.13 are in addition to other rights and remedies (including without limitation other rights of setoff) which Administrative Agent or Lenders may have. Nothing contained herein shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower to such Lender.



## ARTICLE XI. MISCELLANEOUS

Section 11.1 Non-Waiver. No failure or delay on the part of Administrative Agent or any Lender in exercising any right, power or remedy pursuant to this Loan Agreement, the Note or any of the other Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. Neither any waiver of any provision of this Loan Agreement, the Note or any of the other Loan Documents, nor any consent to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by Administrative Agent or Required Lenders, and any waiver in writing by Administrative Agent or Required Lenders shall be effective only in the specific instance and for the specific purpose for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall in any case entitle Borrower to any other or further notice or demand in similar or other circumstances.

Section 11.2 Disclosure. Borrower hereby irrevocably authorizes Administrative Agent, each Lender and each of their respective Affiliates, to at any time (whether or not an Event of Default shall have occurred) obtain from and disclose to each other any and all financial and other information about Borrower. Borrower further irrevocably authorizes Administrative Agent and each Lender to contact, investigate, inquire and obtain references and other information on Borrower from credit reporting services and agencies, former or current creditors, and other Persons and sources (including any Affiliate of Administrative Agent or such Lender) and to provide to any references, credit reporting services and agencies, creditors and other Persons and sources (including Affiliates of Administrative Agent or such Lender) all financial, credit and other information obtained by Administrative Agent or such Lender relating to Borrower.

Section 11.3 Communications. Delivery of an agreement, instrument or other document may, at the discretion of Administrative Agent or any Lender, be by electronic transmission. Except as required by law or otherwise provided herein or in a writing executed by the party to be bound, all notices, demands, requests, accountings, listings, statements, advices or other communications to be given under the Loan Documents shall be in writing, and shall be served either personally, by deposit with a reputable overnight courier with charges prepaid, or by deposit in the United States mail by certified mail return receipt required. Notices may be addressed to Borrower as set forth at its address shown in the preamble hereto, or to such other address designated in writing by Borrower, or to any office to which billing or account statements are sent; to Administrative Agent at its address shown in the preamble hereto, or at such other address designated in writing by Administrative Agent; and to each Lender at its address designated in writing by such Lender or Administrative Agent. Any such communication shall be deemed to have been given upon and received by, in the case of personal delivery the date of delivery, one Business Day after deposit with an overnight courier, two Business Days after deposit in the United States by certified mail (return receipt required), or receipt of electronic transmission (which shall be presumed to be three hours after the time of transmission unless an error message is received by the sender), except that any notice of change of address shall not be effective until actually received. **Any documents, agreements, reports, notices, instruments, or other items required to be delivered under the Loan Documents to the Administrative Agent and the Independent Consultant shall not be effective until both**

**Administrative Agent and the Independent Consultant shall have received such documents, agreements, reports, notices, instruments or such other items.**

Section 11.4 Costs and Expenses. Borrower agrees to pay on demand all reasonable fees, costs and expenses of Administrative Agent and Lenders in connection (a) with the preparation, execution, delivery, administration, amendment and enforcement of this Loan Agreement, the Note, the other Loan Documents and any other documents to be delivered hereunder and thereunder (including the appraisal and inspection reports required to be paid by it hereunder) and any amendment, modification or supplement hereto or thereto, including the reasonable fees and out-of-pocket expenses of counsel for Administrative Agent and Lenders, and any special counsel associated with them, and with respect thereto and the filing of any document or instrument in connection with any of the foregoing, (b) with respect to reasonable fees and out-of-pocket expenses of counsel for advising Administrative Agent and Lenders as to their respective rights and responsibilities under the Loan Documents and the transactions contemplated thereby after a Default or Event of Default, or both, shall have occurred, (c) with any filing or recording of any document or instrument, and (d) with respect to any assignment of any portion of the Obligations or the granting of any participation in the Obligations, the reasonable fees and out-of-pocket expenses (not to exceed \$10,000) of counsel for the Administrative Agent, and any special counsel associated with them.

Section 11.5 Taxes and Fees. Unless otherwise prohibited by Legal Requirements, should any tax (other than a tax based upon the net income of any Lender) or recording or filing fee become payable in respect of any Loan Document, any of the Collateral, any of the Obligations or any amendment, modification or supplement hereof or thereof, Borrower agrees to pay such taxes (or reimburse Administrative Agent therefor upon demand for reimbursement), together with any interest or penalties thereon, and agrees to hold Administrative Agent harmless with respect thereto.

Section 11.6 Further Assurances. Borrower agrees to do such further acts and things and to execute and deliver to Administrative Agent and Lenders such additional agreements, instruments and documents as Administrative Agent may reasonably require or deem advisable to effectuate the purposes of this Loan Agreement, the Note or any of the other Loan Documents, or to establish, perfect and maintain Administrative Agent's security interests and Liens upon the Collateral, including to cause third parties to execute and deliver waivers, releases, consents, or subordinations as deemed appropriate by Administrative Agent.

Section 11.7 Binding Effect. This Loan Agreement, the Note and the other Loan Documents shall be binding upon, and shall inure to the benefit of, Administrative Agent and each Lender, Borrower and their respective successors and assigns. Borrower shall not assign any of its rights or delegate any of its obligations under this Loan Agreement, the Note or any of the other Loan Documents without the prior written consent of Administrative Agent and each of Lenders. Unless otherwise expressly agreed to in a writing signed by Administrative Agent and each of Lenders, no such consent shall in any event relieve Borrower of any of its obligations under this Loan Agreement, the Note or any of the other Loan Documents.

Section 11.8 Interpretation; Construction. (a) Captions and section and paragraph headings in this Loan Agreement are inserted only as a matter of convenience, and shall not

affect the interpretation hereof; (b) no provision of this Loan Agreement shall be construed against a particular Person or in favor of another Person merely because of which Person (or its representative) drafted or supplied the wording for such provision; and (c) where the context requires: (i) use of the singular or plural incorporates the other, and (ii) pronouns and modifiers in the masculine, feminine or neuter gender shall be deemed to refer to or include the other genders.

Section 11.9 **GOVERNING LAW. THIS LOAN AGREEMENT, THE NOTE AND, UNLESS OTHERWISE EXPRESSLY PROVIDED THEREIN, EACH OF THE OTHER LOAN DOCUMENTS, SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF ILLINOIS, NOT INCLUDING ITS CONFLICT OF LAW PROVISIONS; PROVIDED THAT THE LAWS OF THE STATE WHERE REAL PROPERTY COLLATERAL IS LOCATED SHALL GOVERN WITH RESPECT TO THE CREATION, PERFECTION AND ENFORCEMENT OF RIGHTS, SECURITY INTERESTS, REMEDIES AND LIENS AGAINST THE REAL PROPERTY COLLATERAL.**

Section 11.10 Severability of Provisions. Whenever possible, each provision of this Loan Agreement, the Note and the other Loan Documents shall be interpreted in such manner as to be effective and valid under Legal Requirements. Any provision of this Loan Agreement, the Note or any of the other Loan Documents which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Loan Agreement, the Note and the other Loan Documents or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 11.11 Term. This Loan Agreement shall become effective when accepted by Administrative Agent at its office in Chicago, Illinois, and subject to the terms hereof, shall continue in effect so long thereafter as there shall be any moneys owing hereunder or under the Note, or there shall be any other Obligations outstanding. Borrower hereby waives notice of acceptance of this Loan Agreement by Administrative Agent.

Section 11.12 Exhibits. The exhibits to this Loan Agreement are hereby incorporated and made a part hereof and are an integral part of this Loan Agreement.

Section 11.13 Counterparts; Facsimiles. This Loan Agreement may be executed in one or more counterparts which, when taken together, constitute one and the same agreement. Signatures transmitted by facsimile or other electronic means shall be effective as originals.

Section 11.14 **JURISDICTION; WAIVER. BORROWER ACKNOWLEDGES THAT THIS LOAN AGREEMENT IS BEING ACCEPTED BY ADMINISTRATIVE AGENT AND LENDERS IN PARTIAL CONSIDERATION OF ADMINISTRATIVE AGENT'S AND EACH LENDER'S RIGHT AND OPTION, IN ITS SOLE DISCRETION, TO ENFORCE THE LOAN DOCUMENTS IN EITHER THE STATE OF ILLINOIS OR IN ANY OTHER JURISDICTION WHERE BORROWER OR ANY COLLATERAL MAY BE LOCATED. BORROWER IRREVOCABLY SUBMITS ITSELF TO JURISDICTION IN THE STATE OF ILLINOIS AND VENUE IN ANY STATE OR**

FEDERAL COURT IN THE COUNTY OF COOK FOR SUCH PURPOSES, AND BORROWER WAIVES ANY AND ALL RIGHTS TO CONTEST SAID JURISDICTION AND VENUE AND THE CONVENIENCE OF ANY SUCH FORUM, AND ANY AND ALL RIGHTS TO REMOVE SUCH ACTION FROM STATE TO FEDERAL COURT. BORROWER FURTHER WAIVES ANY RIGHTS TO COMMENCE ANY ACTION AGAINST ADMINISTRATIVE AGENT OR ANY LENDER IN ANY JURISDICTION EXCEPT IN THE COUNTY OF COOK AND STATE OF ILLINOIS. BORROWER AGREES THAT ALL SUCH SERVICE OF PROCESS SHALL BE MADE BY MAIL OR MESSENGER DIRECTED TO IT IN THE SAME MANNER AS PROVIDED FOR NOTICES TO BORROWER IN THIS LOAN AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT OR THREE DAYS AFTER THE SAME SHALL HAVE BEEN POSTED TO BORROWER OR BORROWER'S AGENT. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF ADMINISTRATIVE AGENT OR ANY LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION. BORROWER WAIVES, TO THE EXTENT PERMITTED BY LAW, ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF ADMINISTRATIVE AGENT OR ANY LENDER.

Section 11.15 JURY WAIVER. ADMINISTRATIVE AGENT, LENDERS AND BORROWER HEREBY EACH EXPRESSLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER PARTY WITH RESPECT TO ANY MATTER RELATING TO, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN, THE OBLIGATIONS, THIS LOAN AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS AND/OR ANY OF THE TRANSACTIONS WHICH ARE THE SUBJECT MATTER OF THIS LOAN AGREEMENT.

Section 11.16 Survival. All representations, warranties, agreements and covenants contained in the Loan Documents shall survive the signing and delivery of the Loan Documents, and all of the waivers made and indemnification obligations undertaken by Borrower shall survive the termination, discharge or cancellation of the Loan Documents.

Section 11.17 Borrower's Acknowledgments. Borrower acknowledges that Borrower: (a) has had ample opportunity to consult with counsel and such other parties as deemed advisable prior to signing and delivering this Loan Agreement and the other Loan Documents; (b) understands the provisions of this Loan Agreement and the other Loan Documents, including all waivers contained therein; and (c) signs and delivers this Loan Agreement and the other Loan Documents freely and voluntarily, without duress or coercion.

Section 11.18 Customer Identification – USA Patriot Act Notice: OFAC and Bank Secrecy Act. Administrative Agent and Lenders hereby notify Borrower and each other Credit Party that pursuant to the requirements of the USA Patriot Act, and Administrative Agent's and each Lender's policies and practices, Administrative Agent and each Lender is required to obtain,

verify and record certain information and documentation that identifies Borrower and each other Credit Party, which information includes the name and address of Borrower and each other Credit Party and such other information that will allow Administrative Agent and each Lender to identify Borrower and each other Credit Party in accordance with the USA Patriot Act. In addition, Borrower shall (a) ensure that no Person who owns a controlling interest in or otherwise controls Borrower or any Subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan, or any funds invested in the Project, to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, the Bank Secrecy Act, the Money Laundering Act of 1986, or any other Legal Requirement related to money laundering, all as amended from time to time, and (c) comply, and cause its Subsidiaries to comply, in all material respects with all Legal Requirements.

Section 11.19 Amendment.

(a) Neither this Loan Agreement nor any other Loan Document, nor any provision hereof or thereof, including without limitation this Section 11.19, may be amended, modified, waived, discharged or terminated, or any consent related thereto granted, orally, but only by an instrument in writing signed by Borrower and Required Lenders except as may be expressly provided in such provision hereunder or under any Loan Document; provided, however, that no such amendment, modification, waiver, discharge, termination or consent shall, without the consent of each Lender directly affected thereby (i) extend any Maturity Date, extend the time of payment for or reduce the amount of any scheduled principal repayment, or reduce the rate or extend the time of payment of interest on the Loan or Note (except that Administrative Agent may, in its sole discretion, without the consent of any of the Lenders, waive (A) the applicability of up to two Late Charges during the term of the Loan and (B) the applicability of the Default Rate increase for up to 30 days, provided that Administrative Agent shall not grant such waiver more than two times during the term of this Loan Agreement) or reduce the principal amount thereof, (ii) release any material amount of Collateral for the Loan (except as expressly provided in the Loan Documents), (iii) amend, modify or waive any provision of this Section 11.19, (iv) change the percentage specified in the definition of Required Lenders, (v) consent to the assignment or transfer by Borrower of any of its rights or obligations under this Loan Agreement or the other Loan Documents, (vi) amend, modify or waive any provision in this Loan Agreement or in any other Loan Document to the extent providing for payments or prepayments on the Note to be applied pro rata among Lenders, or (vii) release any Credit Party from its guaranty (except as set forth in its guaranty); provided, further, that no such amendment, modification, waiver, discharge, termination or consent shall (A) increase the Commitment of any Lender over the amount thereof then in effect without the consent of such Lender or (B) without the consent of Administrative Agent, amend, modify or waive any provision relating to the rights or obligations of Administrative Agent.

(b) This Loan Agreement shall be binding upon and inure to the benefit of Borrower, other Credit Parties, Administrative Agent and Lenders, and their respective

successors and assigns, except that Borrower and other Credit Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of Administrative Agent and all Lenders.

Section 11.20 Assignments and Participations.

(a) Each Lender shall have the right to assign all or any portion of its portion of the Loan outstanding under this Loan Agreement or the Note to any Eligible Assignee, so long as, at least five Business Days prior to the effectiveness of such assignment (except in the case of a Related Lender Assignment, which shall be governed by the provisions of Section 11.20(b) below) (i) an Assignment and Acceptance with respect to such assignment is delivered to Administrative Agent, (ii) the assigning Lender or the assignee pays to Administrative Agent a transfer fee in an amount equal to \$3,500.00 (the "Assignment Fee"), and (iii) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or its portion of the Loan, the amount of the Commitment or the portion of the Loan subject to each such assignment (determined as of the date the applicable Assignment and Acceptance is delivered to Administrative Agent) shall not be less than \$2,500,000 unless the Administrative Agent otherwise consents, at which time such Eligible Assignee shall become entitled to the benefits, and subject to the requirements and obligations, of this Loan Agreement and the other Loan Documents.

(b) A Lender may effect a Related Lender Assignment without paying the Assignment Fee and without delivering an Assignment and Acceptance to Administrative Agent or to any other Person; provided, however, that (i) Borrower and Administrative Agent may continue to deal solely and directly with such assigning Lender until the date that is five Business Days after an Assignment and Acceptance has been delivered to Administrative Agent for recordation in the Register, (ii) the failure of such assigning Lender to deliver an Assignment and Acceptance to Administrative Agent shall not affect the legality, validity, or binding effect of such assignment as between such assigning Lender and such assignee, and (iii) an Assignment and Acceptance between the assigning Lender and an Affiliate of such Lender or Approved Fund of such Lender shall be effective as of the date specified in such Assignment and Acceptance, once recorded on the Related Party Register (as defined below). Subject to the provisions of this Section 11.20, Borrower agrees that each assignee party to a Related Lender Assignment shall be entitled to the benefits, and subject to the requirements and obligations, of this Loan Agreement and the other Loan Documents to the same extent as if it had consummated such assignment and acceptance by delivery of an Assignment and Acceptance to Administrative Agent.

(c) Administrative Agent shall, on behalf of and acting solely for this purpose as the non-fiduciary agent of Borrower, maintain, or cause to be maintained at Administrative Agent's office where Borrower makes payments due hereunder, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of Lenders and the Commitments of, and portion of the principal amount of the Loan (and stated interest thereon) (the "Registered Loans"). In the case of any Related Lender Assignment,

Lender making such Related Lender Assignment shall, on behalf of and acting solely for this purpose as the non-fiduciary agent of Borrower, maintain a comparable register (the "Related Party Register"). The entries in the Register (or, in the case of a Related Lender Assignment, the Related Party Register) shall be conclusive and binding for all purposes, absent manifest error. Borrower, Administrative Agent and Lenders shall treat each Person whose name is recorded in the Register (and any Lender that makes a Related Lender Assignment shall treat each Person whose name is recorded in the Related Party Register) as a Lender hereunder for all purposes of this Loan Agreement, including, without limitation, the right to receive payments of principal and interest hereunder. The Register and the Related Party Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice. A Registered Loan may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register or the Related Party Register. Any assignment or sale of all or part of such Registered Loan may be effected only by registration of such assignment or sale on the Register or the Related Party Register. Within 30 days (five Business Days in the event of a Related Lender Assignment) after its receipt of a completed Assignment and Acceptance executed by an assigning Lender and an assignee, and the Assignment Fee if required by the provisions of this Section 11.20, Administrative Agent or a Lender, as the case may be, shall record the information contained therein in the Register or the Related Party Register.

(d) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Loan Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitment or Advances made by it under the Loan); provided, that (i) such Lender's obligations under this Loan Agreement (including without limitation, its Commitment) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and Borrower, Administrative Agent and other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Loan Agreement and the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except that a participant that is an Affiliate or Approved Fund of the participating Lender may require such Lender to obtain such participant's approval before such participating Lender approves any (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loan, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loan or the fees payable under this Loan Agreement, or (C) actions directly effecting a release of all or a substantial portion of the collateral or any Credit Party (except as set forth in this Loan Agreement or any other Loan Document).

(e) In the event that any Lender sells participations in a Registered Loan, such Lender shall, on behalf of and acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan which is the subject of the participation (the "Participant Register"). A Registered Loan may be participated in whole or in part only by

registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by Borrower at any reasonable time and from time to time upon reasonable prior notice. Further, any Lender shall have the right, without notice or the payment of an Assignment Fee, to encumber or hypothecate its interest to any funding source or participant (collectively, for purposes of this paragraph, a "Funding Source") as long as such Funding Source maintains a "blind" status and such Lender continues to act in its capacity as a Lender hereunder notwithstanding the Funding Source.

(f) Except to the extent set forth in Section 11.20(d) above, neither any participant of a Registered Loan nor any Funding Source shall be entitled to the benefits, or subject to the requirements and obligations, of this Loan Agreement, and Borrower and Administrative Agent may continue to deal solely and directly with the participating, encumbering or hypothecating Lender.

**Section 11.21 INTEGRATION. THIS LOAN AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, CONSTITUTES THE ENTIRE UNDERSTANDING AND REPRESENTS THE FULL AND FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR WRITTEN AGREEMENTS OR PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS OF THE PARTIES. WITHOUT LIMITING THE FOREGOING, BORROWER ACKNOWLEDGES THAT: (I) NO PROMISE OR COMMITMENT HAS BEEN MADE TO IT BY ADMINISTRATIVE AGENT, ANY LENDER, MLPF&S OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS OR REPRESENTATIVES TO MAKE ANY LOAN ON ANY TERMS OTHER THAN AS EXPRESSLY SET FORTH HEREIN, OR TO MAKE ANY OTHER LOAN OR OTHERWISE EXTEND ANY OTHER CREDIT TO BORROWER OR ANY OTHER PARTY; AND (II) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LOAN AGREEMENT SUPERSEDES AND REPLACES ANY AND ALL PROPOSALS, LETTERS OF INTENT AND APPROVAL AND COMMITMENT LETTERS FROM ADMINISTRATIVE AGENT OR ANY LENDER TO BORROWER, NONE OF WHICH SHALL BE CONSIDERED A LOAN DOCUMENT. NO AMENDMENT OR MODIFICATION OF ANY OF THE LOAN DOCUMENTS TO WHICH BORROWER IS A PARTY SHALL BE EFFECTIVE UNLESS IN A WRITING SIGNED BY ADMINISTRATIVE AGENT, REQUIRED LENDERS OR ALL LENDERS AND BORROWER.**

[Remainder of Page Intentionally Left Blank.]



**This Loan Agreement and the other Loan Documents are executed under seal and are intended to take effect as sealed instruments.**

**BORROWER:**

**LEVELLAND/HOCKLEY COUNTY  
ETHANOL, LLC**

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

James P. Halbert  
Vice President

Accepted at Chicago, Illinois:

**ADMINISTRATIVE AGENT AND LENDERS:**

**MERRILL LYNCH CAPITAL,**  
a division of Merrill Lynch Business Financial Services Inc.,  
as Administrative Agent and a Lender

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

Steve Coley  
Vice President, Group Credit Manager

**EXHIBIT A  
TO  
LOAN AGREEMENT**

**Description of Land**

METES AND BOUNDS DESCRIPTION of a portion of Tracts 22 and 23, William Tubbs Subdivision, Public School Land, Block A, Hockley County, Texas, according to the map, plat and/or dedication deed thereof recorded in Volume 1, Page 5 of the Plat Records of Hockley County, Texas, being further described as follows:

BEGINNING at a ½" iron rod with cap set in the North right-of-way line of Cactus Drive as recorded in Volume 36, Page 419, Deed Records of Hockley County, Texas, for the Southeast corner of this tract which bears N. 00°53'52" E., a distance of 50.00 feet from a ¾" iron pipe found at the Southeast corner of said Tract 23, William Tubbs Subdivision;

THENCE N. 89°14' W., along said North right-of-way line, a distance of 3280.49 feet to a ½" iron rod with cap set in the East right-of-way line of F.M. Road 2646 as recorded in Volume 216, Page 112, Deed Records of Hockley County, Texas, for the Southwest corner of this tract;

THENCE Northwesterly, along said East right-of-way line around a curve to the left, said curve having a radius of 3869.83 feet, a central angle of 11°03'29", a chord bearing of N. 00°59'46" W. and a chord distance of 745.71 feet to a ½" iron rod with cap set for a point of intersection;

THENCE N. 06°31'30" W., continuing along said East right-of-way line, a distance of 614.10 feet to a ½" iron rod with cap set at a point of intersection;

THENCE Northwesterly, continuing along said East right-of-way line around a curve to the right, said curve having a radius of 3769.83 feet, a central angle of 07°18'32", a chord bearing of N. 02°52'15" W. and a chord distance of 480.57 feet to a ½" iron rod with cap set for a point of intersection;

THENCE N. 00°45'04" E., continuing along said East right-of-way line, a distance of 1052.61 feet to a ½" iron rod with cap set in the North line of Tract 22, William Tubbs Subdivision and the South line of the South Plains & Santa Fe Railroad right-of-way, for the Northwest corner of this tract;

THENCE S. 89°14'56" E., along the South line of the South Plains & Santa Fe Railroad right-of-way as recorded in Volume 15, Page 77 of the Deed Records of Hockley County, Texas and the North line of said Tract 22, at 940.97 feet pass a ¾" iron pipe found at the Northeast corner of said Tract 22 and the Northwest corner of Tract 23, William Tubbs Subdivision, continuing along the South line of the South Plains & Santa Fe Railroad right-of-way and the North line of said Tract 23 for a total distance of 3418.75 feet to a ½" iron rod with cap set for the Northwest corner of Tract 24, William Tubbs Subdivision and the Northeast corner of said Tract 23 being the northeast corner of this tract;

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THENCE S. 00°53'52" W., along the West line of said Tract 24, and the East line of said Tract 23, a distance of 2887.65 feet to the Point of Beginning.

Construction and Term Loan Agreement – Signature Page

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**EXHIBIT B  
TO  
LOAN AGREEMENT**

**Form of Compliance Certificate**

[See Attached]

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**EXHIBIT C  
TO  
LOAN AGREEMENT**

**Form of Draw Request**

**[Letterhead of Borrower]**

Date: \_\_\_\_\_, 20\_\_\_\_

Merrill Lynch Capital ("Administrative Agent")  
222 North LaSalle Street  
Chicago, IL 60601

Reference is made to that certain Construction and Term Loan Agreement ("Loan Agreement") among Levelland/Hockley County Ethanol, LLC ("Borrower"), certain lenders party thereto from time to time and Administrative Agent, dated as of September 27, 2006. The terms used and not otherwise defined in this Draw Request shall have the same meanings as provided therefor in the Loan Agreement.

A. GENERAL.

1.	Construction Costs to be paid pursuant to this Draw Request (after deducting retainage)	\$ _____
2.	Advance amount requested	\$ _____
3.	Construction draw cut-off date	_____, 20____
4.	Requested funding date (must be at least 15 Business Days from date of submission to Administrative Agent)	_____, 20____

B. FUNDS AVAILABLE TO FUND REQUESTED ADVANCE

1.	Total Commitments	\$ _____
2.	Plus Borrower's Deposit (not disbursed)	+\$ _____
3.	Plus Special Account deposits:	+\$ _____
4.	Less all prior Loan Advances	-\$ _____
5.	Equals amount available for additional Advances	\$ _____

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6.	Less Borrower's Deposit balance	-\$ _____
7.	Less Borrower's Equity to be paid pursuant to this Draw Request	-\$ _____
8.	Less Special Account deposits to be paid pursuant to this Draw Request	-\$ _____
9.	Equals Advance amount available for this Draw Request	\$ _____

The amount on line B9 must be greater than the amount on line A2. The Construction Account and Borrower's Deposit must be exhausted before Loan proceeds may be advanced. Borrower's Equity and Special Account deposits must be paid before Loan proceeds are advanced to the extent contemplated in the Loan Agreement, Budget, and terms for a Special Account.

c. RUNNING TOTAL OF AMOUNT SPENT ON CONSTRUCTION OF IMPROVEMENTS TO DATE.

1.	Amount of total Construction Costs (in the Budget).	\$ _____
2.	Less amount of initial Advance and Borrower's Equity used for Construction Costs	-\$ _____
3.	Less total amount included in prior Draw Requests from all sources (including amounts provided by Borrower and prior Advances).	-\$ _____
4.	Equals unpaid Construction Costs	\$ _____
5.	Less amount of this Draw Request (A1)	-\$ _____
6.	Equals balance of Construction Costs after this Draw Request	\$ _____

d. REPRESENTATIONS AND WARRANTIES. Borrower hereby represents, warrants, and certifies to Lender as follows:

1. Loan Agreement. The authorized representative of Borrower executing this Draw Request on behalf of Borrower (herein referred to as "Authorized Representative") has read the Loan Agreement and other pertinent Loan Documents and understands the Advance procedures and requirements, including (without limitation) the Draw Request procedures and the conditions precedent to an Advance. Authorized Representative has made such examination and investigation as is necessary to enable Borrower to represent, warrant, and certify as to the matters set forth in this Draw Request.



2. Prior Advances. All prior Advances to Borrower have been applied to the payment of obligations of Borrower for materials, labor and other costs incurred in connection with the construction of the Improvements, and for no other purpose.
  3. Draw Request and Attachments Constituting Complete Draw Package. Attached to this Draw Request is a fully completed set of all the documents required by the Loan Agreement for the requested Advance specified in item A1 above, including a disbursement report that shows the amount of Construction Costs under this Draw Request allocable to each Allocation and the amount from each Allocation payable by Loan proceeds and other sources (identifying such other sources), and reflects the retainage for such Construction Costs. This Draw Request is accompanied by a transmittal letter to Administrative Agent which lists all of the attachments to this Draw Request which collectively comprise the draw package.
  4. Approval of Certificates for Payment Borrower expressly approves the attached Contractor certificates for payment.
  5. Down Date Endorsement. Borrower expressly represents that Administrative Agent will receive a title down date endorsement dated within two days prior to the Advance showing no liens or notices of liens against the Property (as defined in the Mortgage) recorded after the Mortgage was recorded.
  6. Requested Advance to Pay Costs Incurred on or Before Construction Draw Cut-off Date. The requested Advance represents items owed by Borrower for labor, materials, and other costs incurred on or before the construction draw cut-off date specified in item A2 above.
  7. Disbursement of Proceeds of Requested Advance. Borrower will use the proceeds of the requested Advance solely for the purpose of paying obligations owed by Borrower for labor, materials, and other costs incurred in connection with such construction as shown on the Budget and this Draw Request, and for no other purpose.
  8. Representation of Full Payment Upon disbursement by Borrower of the proceeds of the requested Advance, all obligations for labor, materials, and other costs incurred by Borrower in connection with such construction and which are due and payable on or before the construction draw cut-off date referred to in item A2 above will be fully and promptly paid and satisfied.
  9. Compliance with Conditions Precedent All covenants, agreements, and conditions required by the terms of the Loan Agreement to be performed or complied with by Borrower as conditions precedent to the funding of the requested Advance have been performed and complied with.
  10. Confirmation of Representations, Etc. As of the date hereof, the representations and warranties contained in the Loan Agreement are true and correct in all material
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respects and no Event of Default and/or event which, with the lapse of time or giving of notice, or both, would constitute an Event of Default, exists.

This Draw Request is given for the purpose of inducing Administrative Agent and Lenders to disburse the requested Advance. Borrower recognizes that Administrative Agent and Lenders are relying upon this Draw Request and the accuracy of the attachments in making such Advance.

DATED: \_\_\_\_\_, 20\_\_.

**BORROWER:**

LEVELLAND/HOCKLEY COUNTY ETHANOL,  
LLC, a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT D TO  
LOAN AGREEMENT**

**Affidavit of Commencement**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of LEVELLAND/HOCKLEY COUNTY ETHANOL, LLC, a Texas limited liability company ("Owner"), and \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ ("Contractor"), known to me to be the persons (collectively, "Affiants") whose names are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows:

1. Owner. The name and address of Owner are:

Levelland/Hockley County Ethanol, LLC  
1012 Austin Street  
Levelland, Texas 79336

2. Contractor. The name and address of Contractor are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Property. Owner is the owner of the real property (the "Land") situated in Hockley County, Texas, more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference for all purposes.

4. Improvements. The improvements (which shall include all improvements by contractor, "Improvements"), which are being, or will be, constructed on the Land are generally described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Original Contractors. The name and address of each original contractor (other than Contractor) with Owner, presently known, after diligent inquiry, to the Affiants, Owner or Contractor, that is furnishing, or will furnish, labor, service, or materials (including specifically fabricated materials), for the construction of the Improvements, and the nature of such labor, service or materials (including specifically fabricated materials), are as stated on Exhibit B attached hereto and incorporated herein by reference for all purposes.

\_\_\_\_\_

6. Commencement Date. Work, as contemplated by Texas Property Code §53.124(c)(4), on the Improvements actually commenced on (and not before) \_\_\_\_\_, 20\_\_ at approximately \_\_\_\_\_ o'clock \_\_.m.

7. Affidavit. This Affidavit of Commencement has been jointly made by Owner and Contractor by and through an authorized representative of each, the same being the Affiants, and may be recorded by any person with the County Clerk of the county in which the Land is located, whereupon it shall be deemed to have been jointly filed by Owner and Contractor.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

AFFIANTS:

\_\_\_\_\_  
Print Name: \_\_\_\_\_,  
who is an authorized representative  
of Owner

\_\_\_\_\_  
Print Name: \_\_\_\_\_,  
who is an authorized representative  
of Contractor

SUBSCRIBED AND SWORN BEFORE ME, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SEAL]

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed or Typed Name of Notary

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**EXHIBIT E  
TO  
LOAN AGREEMENT**

**Affidavit of Completion**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ (“Affiant”), the \_\_\_\_\_ of LEVELLAND/HOCKLEY COUNTY ETHANOL, LLC, a Texas limited liability company (“Owner”), known to me to be the person whose name is subscribed below, and who, being by me first duly sworn, did his oath state as follows:

1. Owner. The name and address of Owner are:

Levelland/Hockley County Ethanol, LLC  
1012 Austin Street  
Levelland, Texas 79336

2. Contractor. The name and address of the original contractor (“Contractor”) are:

3. Improvements. Certain improvements (“Improvements”) were furnished under an original contract (“Contract”) between Owner and Contractor, which Improvements are located on the Real Property generally described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Real Property. Owner is the owner of the real property (“Real Property”) situated in \_\_\_\_\_ County, Texas, on which the Improvements were constructed and are located, which Real Property is more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference for all purposes.

5. Completion. The Improvements under the Contract between Owner and Contractor have been completed within the meaning of Texas Property Code §53.106(e), and the date of such completion was \_\_\_\_\_, 20\_\_\_\_ (“Date of Completion”).

6. Affiant. The Affiant is an authorized representative of Owner and has been duly authorized to execute this Affidavit of Completion and cause it to be recorded with the County Clerk of the county in which the Real Property is situated.

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**NOTICE: A CLAIMANT MAY NOT HAVE A LIEN ON RETAINED FUNDS UNLESS THE CLAIMANT FILES THE AFFIDAVIT CLAIMING A LIEN NOT LATER THAN THE 30TH DAY AFTER THE DATE OF COMPLETION.**

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**AFFIANTS:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_,  
who is an authorized representative  
of Owner

SUBSCRIBED AND SWORN BEFORE ME, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SEAL]

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Printed or Typed Name of Notary

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**EXHIBIT F  
TO  
LOAN AGREEMENT**

**Budget**

[See Attached]

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**AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT**

**THIS AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT** (the "Amendment") is entered into as of the 20<sup>th</sup> day of December, 2006 between Rex Radio and Television, Inc., an Ohio corporation (the "Corporation"), and Stuart A. Rose (the "Employee").

**Recitals**

A. The Corporation and the Employee entered an Employment Agreement dated November 29, 2005 (the "Agreement").

B. The Corporation and the Employee desire to amend the terms and conditions of the Agreement to comply with Section 409A of the Internal Revenue Code of 1986, as enacted.

NOW, THEREFORE, the Corporation and the Employee hereby amend the Agreement as follows:

1. Definitions. All capitalized terms used herein and not otherwise defined shall have the same meaning herein as in the Agreement.
2. Amendment to Section 2.1. Section 2.1 of the Agreement is hereby amended and supplemented by adding the following sentences at the end thereof:

"Each twelve month period ending on January 31 during the Employment Period or any period of renewal provided for in Section 2.2 below shall be referred to as a "Performance Period." For purposes of the Agreement, the Employment Period shall consist of two (2) Performance Periods: (i) the Performance Period ending January 31, 2007; and (ii) the Performance Period ending January 31, 2008."

3. Amendment to Section 4.2. Section 4.2(c) of the Agreement is hereby amended and supplemented by adding the following sentence at the end thereof:

"Subject to Section 6.3 below, the Corporation shall pay the Retail Bonus and Energy Investment Bonus (collectively, the "Bonus Payments") to Employee during the calendar year in which the Performance Period ends."

4. Amendment to Section 6.3. Section 6.3 of the Agreement is hereby deleted in its entirety, and the following is inserted in its place:

"6.3 Effect of Termination of Employment Without Cause On or Prior to January 31, 2007. In the event the Corporation terminates Employee's employment on or prior to January 31, 2007 other than: (a) "For Cause" (as defined in Section 6.1); or (b) due to death or total disability as provided in Section 2.1, the Corporation shall pay Employee, in full satisfaction and complete discharge of all obligations and liabilities of the Corporation to Employee under this Agreement or otherwise: (i) the balance of his compensation under

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Section 3.1 for the remainder of the Employment Period; plus (ii) all Bonus Payments for the remainder of the Employment Period, computed pursuant to Section 4.2 hereof. Employee shall be paid the balance of his compensation under Section 3.1 no less frequently than monthly, provided that the compensation that is to be paid to Employee for the six months immediately following termination shall be paid in a lump sum on the first business day of the seventh month following the date of termination. Employee shall be paid his Bonus Payments in two installments, the first installment being paid during the calendar year in which the Performance Period that includes the date of termination ends and the second installment being paid in the next following calendar year."

5 . Amendment to Section 6.4. Section 6.4 of the Agreement is hereby amended and supplemented by adding the following sentence at the end thereof:

"Employee shall be paid his pro rata Bonus Payments during the calendar year in which the Performance Period that includes the date of termination ends."

6 . Amendment to Section 6.5. Section 6.5 of the Agreement is hereby amended and supplemented by adding the following sentence at the end thereof:

"Employee shall be paid his pro rata Bonus Payments during the calendar year in which the Performance Period that includes the date of termination ends."

7 . Amendment to Section 6.6. Section 6.6 of the Agreement is hereby amended and supplemented by adding the following sentence at the end thereof:

"Employee shall be paid his pro rata Bonus Payments during the calendar year in which the Performance Period that includes the date of termination ends."

8. Addition of Section 6.7. The Agreement is hereby amended and supplemented by adding a new Section 6.7 as follows:

"6.7 Effect of Termination of Employment Without Cause After January 31, 2007. In the event the Corporation terminates Employee's employment after January 31, 2007 other than: (a) "For Cause" (as defined in Section 6.1); or (b) due to death or total disability as provided in Section 2.1, the Corporation shall pay Employee, in full satisfaction and complete discharge of all obligations and liabilities of the Corporation to Employee under this Agreement or otherwise: (i) the balance of his compensation under Section 3.1 for the remainder of the Employment Period or period of renewal; plus (ii) all Bonus Payments, for the remainder of the Employment Period or period of renewal, computed pursuant to Section 4.2 hereof. Employee shall be paid the balance of his compensation under Section 3.1 no less frequently than monthly, provided that the compensation that is to be paid to Employee for the six months immediately following termination shall be paid in a lump sum on the first business day of the

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seventh month following the date of termination. Employee shall be paid his Bonus Payments during the calendar year in which the Performance Period that includes the date of termination ends."

9 . Effectiveness. This Amendment shall be effective as of the date first written above. Except as specifically amended by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect and are hereby ratified and confirmed.

10 . Miscellaneous. This Amendment shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts made and to be performed entirely within such State. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

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

REX RADIO AND TELEVISION, INC.

By: \_\_\_\_\_  
Edward M. Kress, Secretary

EMPLOYEE

\_\_\_\_\_  
Stuart A. Rose

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**PURCHASE AND SALE AGREEMENT**

**by and among**

**REX RADIO AND TELEVISION, INC., KELLY & COHEN APPLIANCES, INC. and  
STEREO TOWN, INC., as Seller,  
REX STORES CORPORATION,**

**and**

**COVENTRY REAL ESTATE INVESTMENTS, LLC, as Purchaser**

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## TABLE OF CONTENTS

	<u>PAGE</u>	
SECTION 1	DEFINITIONS	1
SECTION 2	AGREEMENT TO SELL AND PURCHASE; PURCHASE PRICE; LEASEBACK	6
2.1	Agreement to Sell and Purchase	6
2.2	Payment of Purchase Price; Earnest Money	7
2.3	Leaseback; License	8
SECTION 3	Seller's DELIVERIES; CONDITIONS PRECEDENT	9
3.1	Seller's Deliveries	9
3.2	Inspections and Access	11
3.3	Title and Survey; Material Due Diligence Issues	12
3.4	Estoppels and Consents	15
3.5	Right of First Refusal and Purchase Option Properties	16
3.6	Memorandum regarding No Shareholder Approval; SNDAs	19
3.7	Additional Conditions to Purchaser's Obligation to Close	19
3.8	Additional Conditions to Seller's Obligations to Close	20
3.9	Fairness Opinion	21
3.10	Covenants Regarding Change in Property Condition	22
3.11	Delivery of New Surveys in Event of Termination	22
SECTION 4	CLOSING	22
4.1	Time and Place	22
4.2	Deliveries	23
SECTION 5	PRORATIONS	25
5.1	Prorations and Adjustments	25
SECTION 6	REPRESENTATIONS AND WARRANTIES	27
6.1	Seller's Representations and Warranties	27
6.2	Purchaser's Representations and Warranties	30
6.3	Survival	31
6.4	Indemnification	31
SECTION 7	PURCHASE AS-IS	31
SECTION 8	CLOSING COSTS	32
8.1	Seller's Closing Costs	32
8.2	Purchaser's Closing Costs	32
SECTION 9	BROKERAGE COMMISSIONS	32
SECTION 10	NOTICE	32
SECTION 11	CASUALTY AND CONDEMNATION	33
11.1	Casualty	33
11.2	Right of First Refusal in the Event of Termination Post-Casualty	34
11.3	Condemnation	34
SECTION 12	OPERATIONS PRIOR TO CLOSING OR TERMINATION	35
SECTION 13	DEFAULTS AND REMEDIES	36
13.1	Seller Defaults	36
13.2	Purchaser Defaults	36

SECTION 14	OTHER OFFERS	37
SECTION 15	MISCELLANEOUS	38
15.1	Entire Agreement; Amendments	38
15.2	Time	38
15.3	Counterpart Execution	38
15.4	Governing Law	38
15.5	Assignment; Third Party Beneficiaries	38
15.6	Section Headings	38
15.7	Severability	39
15.8	WAIVER OF TRIAL BY JURY	39
15.9	No Waiver	39
15.10	Time of Performance	39
15.11	Commercially Reasonable Efforts	39
15.11	Termination; Reduction of Purchase Price	39
15.13	Further Assurances	39
15.14	Non-Solicitation	40
15.15	1031 Exchange	40
15.16	Joint and Several Liability	40
15.17	Allocations	40
SECTION 16	ESCROW	40
16.1	Earnest Money	40
16.2	Duties	41
16.3	Closing	42
Exhibit 1.1	List of Sites	
Exhibit 2.1(a)(i)	Legal Descriptions	
Exhibit 2.3(a)	Form of Lease	
Exhibit 2.3(b)	Form of Guaranty	
Exhibit 2.3(c)	Form of License Agreement	
Exhibit 3.4(a)	Form of Space Lease Estoppel	
Exhibit 3.4(b)	Form of REA Estoppel	
Exhibit 4.2(a)(i)	Form of Deed	
Exhibit 4.2(a)(ii)	Form of Space Lease Assignment	
Exhibit 4.2(a)(iii)	Form of Non-Foreign Transferor Certification	
Exhibit 4.2(a)(vii)	Form of Date-Down Letter	
Exhibit 4.2(a)(x)	Form of REA Assignment	
Exhibit 4.2(a)(xii)	Form of Bill of Sale and Assignment	
Exhibit 12(f)	Insurance Certificate	
Schedule 2.1(a)(iv)	Schedule of Space Lease Documents	
Schedule 2.3(a)(i)	Schedule of Twenty Leased Properties	
Schedule 2.3(a)(ii)	Schedule of Twenty Non-Leased Properties	
Schedule 2.3(e)	Schedule of Twenty-Two Properties	
Schedule 3.1(a)(xix)	Schedule of Service Contracts	
Schedule 3.3(f)	Schedule of Additional Properties	
Schedule 3.3(i)	Schedule of Environmental Assessment Properties	
Schedule 3.6(a)(vii)	Schedule of 25 Properties	

Schedule 6.1(c)(i)  
Schedule 6.1(c)(ii)  
Schedule 6.1(e)  
Schedule 6.1(h)  
Schedule 6.1(j)  
Schedule 15.17

Schedule of Purchase Options  
Schedule of Rights of First Refusal  
Schedule of Litigation  
Schedule of Leasing Commissions  
Schedule of Required Consents  
Purchase Price Allocations

## LIST OF DEFINED TERMS

90-Day License Agreement	9
Additional Properties	14
Additional Properties Material Maintenance Issue	15
Adjusted Aggregate Square Footage	42
Adjusted Purchase Price	41
Agreement	1, 2
Beltline	19
Beltline Release	19
Bill of Sale and Assignment	25
Business Day	40
CBL	18
CBL Release	18
CERCLA	29
Closing	2
Closing Date	2
Closing Statement	26
Creditors' Rights Statutes	30
Default Notice	42
Delivery Items	10
Earnest Money	8
Effective Date	1
Environmental Evaluation Property	15
Environmental Laws	29
Escrow Agent	2
Existing Survey	12
Existing Surveys	12
Fairness Opinion	21
Governmental Notices	10
Guaranty	9
Hazardous Materials	29
Improvements	6
Indemnitee	32
Indemnitor	32
Inspections	11
Intangible Property	7
Land	6
Lease	8
Leased Property	3
Leasing Commissions	29
Material Due Diligence Issue	3
Material Due Diligence Issue Objection	14
Met Life	17
Met Life Release	17
Newtowne	18
Newtowne Release	18

---

Notice	33
Offer	22
Offer Notice	22
Owner's Title Policies	20
Permitted Exceptions	12
Personal Property	7
Pre-Closing Impositions	28
Prohibited Transaction	41
Properties	7
Property	7
Proposed Transaction	4
PSI Reports	33
Purchase Option Agreements	28
Purchase Price	7
Purchaser	1
Purchaser Right of First Refusal	22
Randolph	19
Randolph Release	19
REA	10
REA Assignments	24
REA Estoppel	16
Real Property	4
Rent Roll	11
Required Consents	30
Restricted Parties	4
REX Stores	1
Right of First Refusal Agreements	28
ROFR Holder	16
ROFR Notice	16
ROFR Release	17
Seller	1
Seller One	1
Seller Three	1
Seller Two	1
Seller's Material Due Diligence Issue Response Notice	14
Seller's REA Estoppel	16
Seller's Space Lease Estoppel	16
Seller's Title Response Notice	13
Seller's Update Title Response Notice	13
Service Contracts	11
SNDA	20
Space Lease	7
Space Lease Tenant	11
Space Lease Assignment	24
Space Lease Estoppel	16
Space Lease Tenants	11

Square Footage Allocation	41
Superior Transaction	5
Surviving Obligations	6
Termination Fee	39
Title Commitments	12
Title Company	6
Title Objection	12
Title/Survey Review Period	6
Uncured Material Due Diligence Issue Objection	14
Uncured Title Objection	13
Uncured Update Objection	13
Update Objection	13
Woelfel	18
Woelfel Release	18

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the 8th day of February, 2007 (the "Effective Date"), by and between REX RADIO AND TELEVISION, INC., an Ohio corporation ("Seller One"), KELLY & COHEN APPLIANCES, INC., an Ohio corporation ("Seller Two"), and STEREO TOWN, INC., a Georgia corporation ("Seller Three"), all having an address at 2875 Needmore Road, Dayton, OH 45414 (collectively, Seller One, Seller Two and Seller Three, "Seller"), REX STORES CORPORATION, a Delaware corporation ("REX Stores"), and COVENTRY REAL ESTATE INVESTMENTS, LLC, a Delaware limited liability company having an address c/o Coventry Real Estate Advisors, L.L.C., 1 East 52<sup>nd</sup> Street, 4<sup>th</sup> Floor, New York, NY 10022 ("Purchaser").

### RECITALS

A. Seller is the owner of the Properties (as defined below) and desires to sell the Properties, subject to the terms and conditions of this Agreement.

B. Purchaser desires to purchase the Properties, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### SECTION 1 DEFINITIONS

The following capitalized terms shall have the meanings set forth in this Section 1 for all purposes under this Agreement:

"90-Day License Agreement" shall have the meaning set forth in Section 2.3(c) .

"Acquisition Agreement" shall have the meaning set forth in Section 14.2.

"Acquisition Proposal" means any good faith offer or proposal for the direct or indirect purchase of all or a material portion of the Properties.

"Additional Properties" shall have the meaning set forth in Section 3.3(f) .

"Additional Properties Material Maintenance Issue" shall have the meaning set forth in Section 3.3(f) .

"Adjusted Aggregate Square Footage" shall have the meaning set forth in Section 15.17.

"Adjusted Purchase Price" shall have the meaning set forth in Section 15.17.

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Beltline" shall have the meaning set forth in Section 3.5(h) .



"Bellline Release" shall have the meaning set forth in Section 3.5(h) .

"Bill of Sale and Assignment" shall have the meaning set forth in Section 4.2(a)(xii) .

"Business Day" shall have the meaning set forth in Section 15.10.

"CBL" shall have the meaning set forth in Section 3.5(e) .

"CBL Release" shall have the meaning set forth in Section 3.5(e) .

"CERCLA" shall have the meaning set forth in Section 6.1(f) .

"Closing" shall mean the consummation of the transactions described herein as more fully described in Section 4 below.

"Closing Date" shall mean April 30, 2007.

"Closing Statement" shall have the meaning set forth in Section 5.1(a) .

"Creditors' Rights Statutes" shall have the meaning set forth in Section 6.1(r) .

"Default Notice" shall have the meaning set forth in Section 16.1(b)(ii)(B) .

"Delivery Items" shall have the meaning set forth in Section 3.1(a) .

"Earnest Money" shall have the meaning set forth in Section 2.2(b) .

"Effective Date" shall have the meaning set forth in the first paragraph hereof.

"Environmental Evaluation Properties" shall have the meaning set forth in Section 3.3(i) .

"Environmental Laws" shall have the meaning set forth in Section 6.1(f) .

"Escrow Agent" shall mean the Title Company.

"Existing Survey" shall have the meaning set forth in Section 3.3(a) .

"Fairness Opinion" shall have the meaning set forth in Section 3.9.

"Governmental Notices" shall have the meaning set forth in Section 3.1(a)(viii) .

"Guaranty" shall have the meaning set forth in Section 2.3(b) .

"Hazardous Materials" shall have the meaning set forth in Section 6.1(f) .

"Improvements" shall have the meaning set forth in Section 2.1(a)(ii) .

"Indemnitee" shall have the meaning set forth in Section 6.4.

"Indemntor" shall have the meaning set forth in Section 6.4.

"Inspections" shall have the meaning set forth in Section 3.2(a) .

"Intangible Property" shall have the meaning set forth in Section 2.1(a)(v) .

"Land" shall have the meaning set forth in Section 2.1(a)(i) .

"Lease" shall have the meaning set forth in Section 2.3(a) .

"Leased Property" shall mean any Property that is to be subject to a Lease at Closing.

"Leasing Commissions" shall have the meaning set forth in Section 6.1(h) .

"Material Due Diligence Issue" means any zoning, litigation, leasing or other due diligence issue that may materially and adversely affect the condition, operations or valuation of any Property, as determined by Purchaser, excluding any matter expressly identified in the PSI Reports for a Property other than an Additional Property or any Permitted Exception and subject to Sections 3.3(f) and (i) hereof. Purchaser agrees that zoning restrictions on any Property that prohibit a restaurant use shall not be deemed a Material Due Diligence Issue, if such restrictions do not prohibit other non-restaurant retail uses.

"Material Due Diligence Issue Objection" shall have the meaning set forth in Section 3.3(e) .

"Met Life" shall have the meaning set forth in Section 3.5(c) .

"Met Life Release" shall have the meaning set forth in Section 3.5(c) .

"Newtowne" shall have the meaning set forth in Section 3.5(f) .

"Newtowne Release" shall have the meaning set forth in Section 3.5(f) .

"Notice" shall have the meaning set forth in Section 10.

"Offer" shall have the meaning set forth in Section 3.9(c) .

"Offer Notice" shall have the meaning set forth in Section 3.9(c) .

"Owner's Title Policies" shall have the meaning set forth in Section 3.7(a)(vi) .

"Permitted Exceptions" shall have the meaning set forth in Section 3.3(b) .

"Person" shall mean an individual, corporation, partnership, limited liability company, association, trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"Personal Property" shall have the meaning set forth in Section 2.1(a)(iii) .

"Pre-Closing Impositions" shall have the meaning set forth in Section 5.1(b) .

"Prohibited Transaction" shall have the meaning set forth in Section 15.14.

"Property" or "Properties" shall have the meaning set forth in Section 2.1(a) .

"Proposed Transaction" shall mean the transactions contemplated by this Agreement.

"PSI Reports" shall have the meaning set forth in Section 8.2.

"Purchase Option Agreements" shall have the meaning set forth in Section 6.1(c).

"Purchase Price" shall have the meaning set forth in Section 2.2(a).

"Purchaser" shall have the meaning set forth in the first paragraph hereof.

"Purchaser's Right of First Refusal" shall have the meaning set forth in Section 3.9(c).

"Randolph" shall have the meaning set forth in Section 3.5(g).

"Randolph Release" shall have the meaning set forth in Section 3.5(g).

"REA" and "REAs" shall have the meanings set forth in Section 3.1(a)(vii). "REA Assignments" shall have the meaning set forth in Section 4.2(a)(x). "REA Estoppel" shall have the meaning set forth in Section 3.4(b) .

"Real Property" shall mean the Land and the Improvements.

"Rent Roll" shall have the meaning set forth in Section 3.1(a)(xvii).

"Required Consents" shall have the meaning set forth in Section 6.1(j).

"Restricted Parties" shall mean and include REX Stores and each of the Sellers.

"REX Stores" shall have the meaning set forth in the first paragraph hereof.

"Right of First Refusal Agreements" shall have the meaning set forth in Section 6.1(c).

"ROFR Holder" shall have the meaning set forth in Section 3.5(a).

"ROFR Notice" shall have the meaning set forth in Section 3.5(a).

"ROFR Release" shall have the meaning set forth in Section 3.5(a) . "Seller" shall have the meaning set forth in the first paragraph hereof.

"Seller One" shall have the meaning set forth in the first paragraph hereof.

"Seller Three" shall have the meaning set forth in the first paragraph hereof.

"Seller Two" shall have the meaning set forth in the first paragraph hereof.

"Seller's Material Due Diligence Issue Response Notice" shall have the meaning set forth in Section 3.3(e).

"Seller's REA Estoppel" shall have the meaning set forth in Section 3.4(b).

"Seller's Space Lease Estoppel" shall have the meaning set forth in Section 3.4(a).

"Seller's Title Response Notice" shall have the meaning set forth in Section 3.3(b).

"Seller's Update Title Response Notice" shall have the meaning set forth in Section 3.3(c).

"Service Contracts" shall have the meaning set forth in Section 3.1(a)(xix).

"Sites" shall mean the sites of each Property identified on Exhibit 1.1 attached hereto.

"SNDA" shall have the meaning set forth in Section 3.6(b).

"Space Lease" and "Space Leases" shall have the meanings set forth in Section 2.1(a)(iv).

"Space Lease Assignment" shall have the meaning set forth in Section 4.2(a)(ii) .

"Space Lease Estoppel" shall have the meaning set forth in Section 3.4(a).

"Space Lease Tenant" shall have the meaning set forth in Section 3.1(a)(xvii).

"Square Footage Allocation" shall have the meaning set forth in Section 15.17.

"Superior Transaction" means a transaction embodying an Acquisition Proposal having terms (including conditions to consummation of the contemplated transaction) that the Board of Directors of REX Stores determines, in its good faith judgment, to be more favorable to REX Stores and its stockholders than the Proposed Transaction and for which financing, to the extent required, is then committed or is reasonably likely to be obtained in a timely manner.

"Surviving Obligations" shall mean all obligations of Purchaser or Seller hereunder that expressly survive the Closing or termination of this Agreement.

"Termination Fee" shall have the meaning set forth in Section 14.2.

"Title Commitments" shall have the meaning set forth in Section 3.3(a).

"Title Company" shall mean Chicago Title Insurance Company, 1360 East 9th Street, Suite 500, Cleveland, Ohio 44114.

"Title Objection" shall have the meaning set forth in Section 3.3(b).

"Title/Survey Review Period" shall mean the period commencing on the Effective Date and continuing until 5:00 p.m. eastern time on April 18, 2007.

"Uncured Material Due Diligence Issue Objection" shall have the meaning set forth in Section 3.3(e).

"Uncured Update Objection" shall have the meaning set forth in Section 3.3(c).

"Update Objection" shall have the meaning set forth in Section 3.3(c).

"Woelfel" shall have the meaning set forth in Section 3.5(d).

"Woelfel Release" shall have the meaning set forth in Section 3.5(d).

All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural and vice versa.

## **SECTION 2 AGREEMENT TO SELL AND PURCHASE; PURCHASE PRICE; LEASEBACK**

### **2.1 Agreement to Sell and Purchase.**

(a) Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following:

- (i) fee simple title to the land described on Exhibit 2.1(a)(i) attached hereto and all rights, easements and appurtenances thereto, including any right, title or interest of Seller in and to adjacent streets, alleys or rights-of-way (the "Land").
- (ii) all buildings, improvements, structures and fixtures situated on the Land, excluding trade fixtures owned by Space Lease Tenants (as defined below) (the "Improvements");
- (iii) all equipment and other personal property owned by Seller and located in, or affixed to, the Improvements, excluding inventory owned by Seller and held for sale in the ordinary course of business and sale and inventory scanning systems, cash registers, computer equipment and hardware systems utilized by Seller in the ordinary course of business as a consumer electronics retailer and audio and car display boards (collectively, the "Personal Property");
- (iv) all of Seller's right, title and interest as landlord in and to each of the leases and other occupancy agreements (including any amendments or modifications thereto) encumbering the Land and Improvements, each as described on Schedule 2.1(a)(iv) attached hereto, together with any new leases and other occupancy

agreements entered into prior to the Closing Date and permitted under the terms of this Agreement (each, a Space Lease"); Land").

- (v) Seller's right, title and interest in and to any intangible property owned by Seller and currently used in the ownership or operation for the Property, including, without limitation, plans and specifications, architectural and engineering reports, surveys, permits, licenses, guarantees and warranties, excluding Seller's right, title and interest (if any) in and to the trade names "Rex", "Rex Radio and Television", "Rex Television and Appliance Centers", "Rex TV & Appliance Centers", "rexstores.com", "Kelly & Cohen Appliances", "Stereo Town", and "T.V. & Stereo Town" or any variation thereof (collectively, the "Intangible Property"); and
- (vi) all of Seller's right, title and interest in the REAs (as defined below).

Items (i)-(vi) above collectively are referred to in this Agreement as to each Site as a Property" and as to all Sites as the Properties." The delineation of which Property is owned by Seller One, Seller Two and Seller Three is set forth in Exhibit 1.1 attached hereto.

## 2.2 Payment of Purchase Price; Earnest Money.

(a) The total purchase price to be paid by Purchaser to Seller for the Properties shall be Eighty Four Million Thirteen Thousand Two Hundred Thirty One and 86/100 Dollars (\$84,013,231.86), subject to reduction and adjustment as set forth in this Agreement (the "Purchase Price"). If the aggregate square footage for the Properties measured based on dimensions of outside wall, as actually determined by surveys of the Properties, varies by more than three percent (3%) from 1,099,218 aggregate square feet, up or down, the Purchase Price shall be adjusted by \$76.43 per square foot based on the actual aggregate square footage; provided, however, that in the event that Purchaser does not obtain surveys of any Property or Properties (which Purchaser shall not be obligated to so obtain), the square footage of such Property or Properties shall be deemed to be the square footage reflected on Exhibit 1.1 hereof.

(b) Within two (2) Business Days after the Effective Date, Purchaser shall deposit the sum of Three Hundred Seventy Five Thousand and 00/100 Dollars (\$375,000.00) (together with any interest earned thereon, the "Earnest Money" ) with the Escrow Agent which Earnest Money shall be applied as a credit against the Purchase Price or otherwise applied in accordance herewith. The Escrow Agent will promptly invest the Earnest Money and disburse same in accordance with the terms, conditions and provisions of this Agreement. Whenever the Earnest Money is by the terms hereof to be disbursed by the Escrow Agent, Seller and Purchaser agree promptly to execute and deliver such notice or notices as shall be necessary or, in the opinion of the Escrow Agent, appropriate to authorize the Escrow Agent to make such disbursement.

(c) At Closing, Purchaser shall deposit with the Escrow Agent the Purchase Price, less the Earnest Money and any costs and expenses chargeable to Seller pursuant to this Agreement, by wire transfer of immediately available funds, for payment to Seller at Closing.

### 2.3 Leaseback; License.

(a) At Closing, Purchaser shall execute and deliver counterparts of a lease in the form of Exhibit 2.3(a) attached hereto with Seller, as lessee, and Purchaser (or its nominee or nominees), as lessor, for forty (40) Properties (each, a "Lease"). Twenty (20) of the forty (40) Properties that will be subject to a Lease at Closing are the Properties identified on Schedule 2.3(a)(i) attached hereto. On or prior to March 30, 2007, Seller shall deliver written notice to Purchaser identifying the other twenty (20) Properties that will be subject to a Lease at Closing, which twenty (20) Properties shall not include the Properties identified on Schedule 2.3(a)(ii). In the event that this Agreement is terminated with respect to any of the Properties that was contemplated to be subject to a Lease at Closing pursuant to this Section 2.3(a), then Seller shall deliver written notice to Purchaser identifying a Property to serve as a replacement for such terminated Property within five (5) Business Days of such termination (but in any event at least two (2) Business Days prior to Closing), which replacement Property shall be subject to a Lease at Closing. Notwithstanding the foregoing, in the event that this Agreement is terminated pursuant to Section 3.3(e) with respect to twenty (20) or more Properties, then Seller shall have a right to proportionately decrease the number of Properties that will be subject to a Lease at Closing, which right shall be exercisable by delivery of written notice to Purchaser on or before five (5) Business Days after receipt of Purchaser's notice of termination pursuant to Section 3.3(e) with respect to twenty (20) or more Properties. [For example, if this Agreement is terminated pursuant to Section 3.3(e) with respect to twenty (20) Properties, Seller shall have a right to decrease the number of Properties subject to a Lease at Closing to thirty-one (31) Properties (31/40 = 77.5%).] In the event that Seller decreases the number of Properties that will be subject to a Lease at Closing pursuant to the foregoing, Schedule 2.3(a) shall be deemed modified to remove the affected Properties.

(b) At Closing, Seller shall deliver a guaranty of Seller's obligations under the Leases in the form of Exhibit 2.3(b) attached hereto (the "Guaranty"), executed by REX Stores.

(c) At Closing, Purchaser shall execute and deliver counterparts of a license agreement in the form of Exhibit 2.3(c) attached hereto with Seller, as licensee, and Purchaser (or its nominee or nominees), as licensor, for each of the Properties that will not be subject to a Lease or Space Lease at Closing (each, a "90-Day License Agreement"). Notwithstanding the foregoing, in the event that Seller ceases operating in and vacates any Property prior to the Closing Date, which Property will not be subject to a Lease or Space Lease at Closing, Seller shall provide Purchaser with written notice of such cessation and vacation and such Property shall not be subject to a 90-Day License Agreement at Closing.

(d) Notwithstanding any other provision of this Agreement, each Property subject to a Space Lease shall not be subject to a Lease or 90-Day License Agreement.

(e) On or prior to March 30, 2007, Seller shall deliver written notice Purchaser identifying no less than ten (10) and no more than fifteen (15) of the twenty-two (22)

Properties identified on Schedule 2.3(e), each of which shall be subject to a Lease at Closing, which Lease shall not include Article III.B and Article XXIII.M.4.(b) in the form of Lease attached hereto as Exhibit 2.3(a). Within ten (10) Business Days of receipt of the aforementioned notice from Seller, Purchaser may elect by delivery of written notice to Seller to identify up to two (2) Properties identified on Schedule 2.3(e) (and not previously identified by Seller pursuant to the preceding sentence), each of which shall be subject to a Lease at Closing, which Lease shall not include Article III.B and Article XXIII.M.4.(b) in the form of Lease attached hereto as Exhibit 2.3(a).

(f) In the event that the Property located at 2313 N. Monroe, Monroe, MI and known as Store No. 264 is subject to a Lease at Closing pursuant to Section 2.3(a) hereof, Purchaser agrees that only the premises at the Property currently occupied by Seller shall be subject to a Lease; provided, however, that (i) Seller shall be responsible for (A) all Taxes (as defined in the form of Lease attached hereto as Schedule 2.3(a)(i)), (B) insurance required by and utility charges payable under the form of Lease attached hereto as Schedule 2.3(a)(i) (excluding separately metered utility charges with respect only to the portion of the building at the Premises not currently occupied by Seller), and (C) operating expenses, common area or similar charges due under any Restrictions (as defined in the form of Lease attached hereto as Schedule 2.3(a)(i)), with respect to the entirety of the Property, until such time as the remainder of the Property not leased by Seller are occupied by another tenant, and (ii) the Lease for such Property shall provide that the landlord thereunder shall be responsible for either separately metering or submetering the utilities that may be so separately metered or submetered with respect to the portion of the building at the Premises not currently occupied by Seller by such time as such portion becomes occupied by another tenant.

### **SECTION 3 Seller's DELIVERIES; CONDITIONS PRECEDENT**

#### **3.1 Seller's Deliveries.**

(a) Seller has provided or, with respect to the Additional Properties, will provide within three (3) Business Days of the Effective Date, to Purchaser, to the extent within Seller's possession or control, true, correct and complete copies of the following items relating to the ownership and operation of the Properties (collectively, the "Delivery Items"):

- (i) existing engineering or property condition reports;
- (ii) historical CAM budgets (if any) and reconciliations for the Properties;
- (iii) existing owner's title policies, the Title Commitments (as hereinafter defined) and the Existing Surveys (as hereinafter defined);
- (iv) existing appraisals of the Properties;
- (v) permits and licenses for the Property, including, without limitation, certificates of occupancy, site plan approvals, zoning approvals and zoning variances, if any;



- (vi) plans and specifications and site plans relating to the Properties;
- (vii) all reciprocal easement agreements, operating agreements, development agreements and other similar agreements, declarations, deeds and instruments relating to the integrated use, operation and maintenance of the Properties and properties in the vicinity of, adjacent to, contiguous with, or peripheral to the Properties (each, an "REA");
- (viii) real and personal property tax bills (including bills for special assessments) for the Properties for the period from January 1, 2003 through December 31, 2006, and copies of all notices, correspondence and files from governmental authorities relating to the Properties, including notices of building safety, health code or environmental violations, and all files related thereto in Seller's possession or control (the "Governmental Notices");
- (ix) the latest real and personal property tax bills for the Properties and of any pending property tax complaints or proceedings;
- (x) [intentionally omitted]
- (xi) a schedule of utility costs for the Properties for the twelve (12) months prior to the Effective Date;
- (xii) any soils or environmental reports or studies relating to the Properties;
- (xiii) any and all notices, correspondence, files, pleadings or other documents relevant to Purchaser's evaluation of pending or threatened claims or litigation by any Person relating to or affecting the Properties, including, without limitation, claims or litigation relating to the REAs and including, without limitation, information regarding pending lawsuits affecting the Properties, even if covered by insurance;
- (xiv) all warranties or guarantees regarding major systems or structural items comprising part of the Properties;
- (xv) the following insurance information and documentation for each of the Properties: (A) a certificate of liability insurance (Acord Form 25), (B) a certificate of property insurance (Acord Form 28), (C) if property insurance provides for "blanket limits", information on the insured building and rent values for the affected Properties, (D) copies of property loss control recommendations for the three (3) years prior to the Effective Date, (E) information regarding currently valued general liability losses for the five (5) years prior to the Effective Date, and (F) information

- regarding how long the Seller and Tenant have been insured with their current insurers;
- (xvi) all Space Leases and any guarantees thereof and the Right of First Refusal Agreements and the Purchase Option Agreements;
  - (xvii) a rent roll for the Space Lease Properties, including the name of each tenant (each, a Space Lease Tenant", and, collectively, the "Space Lease Tenants"), the expiration dates of the Space Lease, the rent and any security deposit (the "Rent Roll");
  - (xviii) all notices and correspondence to and from the Space Lease Tenants and Seller's files relating to the Space Leases; and
  - (xix) all service, vendor, equipment leasing, management, development and other contracts relating to the operation or maintenance of the Real Property (the "Service Contracts"), each as identified on Schedule 3.1(a)(xix) attached hereto.

### 3.2 Inspections and Access.

(a) At any reasonable time and from time to time prior to the Closing or earlier termination of this Agreement, Purchaser and its representatives shall be permitted (i) to enter upon the Real Property to examine, inspect and investigate the Real Property, and (ii) to access all books, records, drawings and other documentation relating to the Properties in the possession or control of Seller (collectively, the "Inspections"). Purchaser agrees to use commercially reasonable efforts to (1) keep the purpose of the Inspections confidential and (2) not disclose the existence of or terms of this Agreement to any of Seller's personnel located at the retail operations at the Real Property; provided, however, that the foregoing shall not prohibit any disclosure required pursuant to any federal or state law or regulation or by governmental authorities. Seller shall cooperate with Purchaser in conducting the Inspections, which cooperation shall include, without limitation facilitating interviews with Space Lease Tenants. Seller agrees to respond promptly to any inquiry which Purchaser may make from time to time, and shall instruct its property manager and other agents and employees to give specific answers to Purchaser's inquiries from time to time relating to the condition and operation of the Properties.

(b) Notwithstanding any other provision of this Agreement, no Inspections shall constitute a waiver or relinquishment on the part of Purchaser of its rights under any covenant, condition, representation, or warranty of Seller under this Agreement.

(c) Purchaser agrees to indemnify, defend and hold Seller harmless from and against any and all claims, losses or damages suffered or incurred by Seller to the extent directly resulting from Purchaser's or its agents' negligence or willful misconduct in connection with the Inspections, and Purchaser agrees to restore any Property damaged by the Inspections to its condition prior to Purchaser's Inspections to the extent practicable; provided, however, that Purchaser's foregoing obligations shall specifically exclude any damages arising as a result of Purchaser's discovery of any condition existing on the Property prior to Purchaser's entry on the

Property. The provisions of the immediately preceding sentence of this Section 3.2(c) shall survive termination of this Agreement for three hundred sixty five (365) days, if this Agreement shall be terminated.

### 3.3 Title and Survey: Material Due Diligence Issues

(a) Seller shall obtain and deliver to Purchaser in accordance with Section 3.1 hereof: (i) current commitments for ALTA owner's policies of title insurance (Form B 10-17-92, with the creditors' rights and arbitration clauses deleted (except in Texas, where the policy shall be TLTA with the creditors' rights and arbitration clauses deleted), together with legible copies of recorded documents listed in such commitments (collectively, the "Title Commitments") issued by the Title Company and (ii) all existing surveys of the Real Property in the possession or control of Seller (each, an "Existing Survey", and, collectively, the "Existing Surveys"). Purchaser shall order any updates to the Existing Surveys that Purchaser may require within five (5) Business Days of the Effective Date.

(b) In the event that any of the Title Commitments or Existing Surveys disclose title defects other than (i) real estate taxes and assessments which are a lien but not yet due and payable, (ii) building and zoning laws, ordinances and regulations, and (iii) public streets and rights of way (collectively, the "Permitted Exceptions"), then, prior to expiration of the Title/Survey Review Period, Purchaser shall notify Seller of any such defects to which it objects (each, a "Title Objection"). Any defects not objected to by Purchaser prior to expiration of the Title/Survey Review Period shall be deemed Permitted Exceptions. Within eight (8) Business Days after receipt of notice of any Title Objection delivered by Purchaser to Seller on or prior to April 1, 2007 and within three (3) Business Days after receipt of notice of any Title Objection delivered by Purchaser after April 1, 2007, Seller shall provide written notice to Purchaser specifying with respect to each Title Objection whether Seller will cause such matter to be removed or cured by Closing ("Seller's Title Response Notice"). If Seller elects not to remove or cure any Title Objection (each, an "Uncured Title Objection") in Seller's Title Response Notice or fails to so deliver Seller's Title Response Notice, Purchaser shall elect, by written notice given to Seller within five (5) Business Days after the aforementioned deadline for Seller's delivery of Seller's Title Response Notice if such deadline is on or prior to April 11, 2007 and within two (2) Business Days after the aforementioned deadline if such deadline is after April 11, 2007 to either (i) accept the Properties subject to the Uncured Title Objection, with no reduction in the Purchase Price and such Uncured Title Objections shall be deemed included in the Permitted Exceptions, or (ii) terminate this Agreement with respect to the Properties affected by the Uncured Title Objections only. If Purchaser fails to so make the foregoing election, Purchaser shall be deemed to have elected (ii) above. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Properties, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

(c) In the event that (i) any update to any of the Title Commitments or Existing Surveys discloses title defects that were not disclosed on the initial Title Commitments or the Existing Surveys and that are not otherwise Permitted Exceptions, or (ii) with respect to any such Properties for which there was no Existing Survey, any new survey obtained by Purchaser, at Purchaser's cost, discloses title defects that are not otherwise Permitted Exceptions,

then, in each case, Purchaser shall notify the related Seller of any such defects relating to any individual Property to which it objects (an "Update Objection"). Any defects disclosed in any update to any of the Title Commitments or Existing Surveys or new surveys and not objected to by Purchaser shall be deemed Permitted Exceptions. Within eight (8) Business Days after receipt of notice of any Update Objection delivered by Purchaser to Seller on or prior to April 1, 2007 and within three (3) Business Days after receipt of notice of any Update Objection delivered by Purchaser after April 1, 2007, Seller shall provide written notice to Purchaser specifying with respect to each Update Objection whether Seller will cause such matter to be removed or cured by Closing ("Seller's Update Title Response Notice"). If Seller elects not to remove or cure any Update Objection (an "Uncured Update Objection") or fails to so deliver Seller's Update Title Response Notice, Purchaser shall elect, by written notice given to Seller within five (5) Business Days after the aforementioned deadline for delivery of Seller's Update Response Notice if such deadline is on or prior to April 11, 2007 and within two (2) Business Days after the aforementioned deadline if such deadline is after April 11, 2007 to either (i) accept the Properties subject to an Uncured Update Objection, with no reduction in the Purchase Price and such Uncured Update Objection shall be deemed included in the Permitted Exceptions, or (ii) terminate this Agreement with respect to the Properties affected by an Uncured Update Objection only. If Purchaser fails to so make the foregoing election, Purchaser shall be deemed to have elected (ii) above. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Properties, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof. The Closing Date shall be extended as necessary to permit each of such Seller and Purchaser to exercise its rights and perform its obligations within the time periods set forth in this Section; provided, however, that, at Purchaser's option, exercisable by the delivery of written notice to Seller, the extension of the Closing Date shall apply only to Properties affected by an Uncured Update Objections and the Closing Date shall not be extended with respect to the remainder of the Properties.

(d) Notwithstanding anything herein to the contrary, Seller shall have the unconditional obligation to remove or cure, at no cost to Purchaser, any mortgage, mechanics or other lien and any other encumbrance that can be removed by the payment of a definite sum of money, which matters shall be deemed Title Objections without requiring Purchaser to provide written notice thereof.

(e) In the event that any of the Inspections disclose a Material Due Diligence Issue to Purchaser, then, prior to expiration of the Title/Survey Review Period, Purchaser shall notify Seller of any such Material Due Diligence Issue to which it objects (each, a "Material Due Diligence Issue Objection"). Any Material Due Diligence Objection not objected to by Purchaser prior to expiration of the Title/Survey Review Period shall be deemed acceptable by Purchaser. Within eight (8) Business Days after receipt of notice of any Material Due Diligence Objection delivered by Purchaser to Seller on or prior to April 1, 2007 and within three (3) Business Days after receipt of notice of any Material Due Diligence Objection delivered by Purchaser to Seller after April 1, 2007, Seller shall provide written notice to Purchaser specifying with respect to each Material Due Diligence Objection whether Seller will cause such matter to be removed or cured by Closing ("Seller's Material Due Diligence Issue Response Notice"), which cure shall be acceptable to Purchaser. If Seller elects not to remove or so cure any Material Due Diligence Objection (each, a "Uncured Material Due Diligence Issue Objection")

or fails to so deliver Seller's Material Due Diligence Issue Response Notice, Purchaser shall elect, by written notice given to Seller within five (5) Business Days after the aforementioned deadline for delivery of Seller's Update Response Notice if such deadline is on or prior to April 11, 2007 and within two (2) Business Days after the aforementioned deadline if such deadline is after April 11, 2007 to either (i) accept the Properties subject to any such Uncured Material Due Diligence Issue Objection, with no reduction in the Purchase Price and Purchaser shall be deemed to have accepted such Uncured Material Due Diligence Issue Objections, or (ii) terminate this Agreement with respect to the Properties affected by the Uncured Material Due Diligence Issue Objections only. If Purchaser fails to so make the foregoing election, Purchaser shall be deemed to have elected (ii) above. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Properties, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

(f) Notwithstanding anything herein to the contrary, with respect to the Properties identified on Schedule 3.3(f) attached hereto (the "Additional Properties"), any of the following shall constitute a Material Due Diligence Issue:

- (i) any recognized environmental condition or other potential environmental issue disclosed in any PSI Reports, which may materially and adversely affect the condition, operations or valuation of such Property, as determined by Purchaser; or
- (ii) any repair, replacement or maintenance needs identified as recommended for attention in 2007-2009 as identified in any PSI Reports and/or needs spreadsheet prepared by Professional Service Industries, which in the aggregate, as indicated in such report and/or needs spreadsheet, will cost in excess of Fifty Thousand Dollars (\$50,000.00) per Additional Property (an "Additional Properties Material Maintenance Issue") to remedy.

(g) With respect to any Additional Properties Material Maintenance Issue, Seller and Purchaser shall have the rights set forth in Section 3.3(e) . Seller and Purchaser agree that, an acceptable cure of same for the purpose of Section 3.3(e) hereof shall include (i) a reduction in the Purchase Price equal to the amount by which the cost to remedy such Additional Properties Material Maintenance Issue exceeds Fifty Thousand Dollars (\$50,000) according to the relevant PSI Report and/or needs spreadsheet, or (ii) Seller completing the work to remove or remedy the Additional Properties Material Maintenance Issue, at Seller's sole cost, to the reasonable satisfaction of Purchaser prior to the Closing.

(h) For each Property (excluding any Additional Properties and Environmental Evaluation Properties) with respect to which this Agreement is terminated pursuant to Section 3.3(e), Seller may elect, by delivery of written notice to Purchaser delivered on or before five (5) Business Days after receipt of any Purchaser's notice of termination pursuant to Section 3.3(e) delivered to Seller on or prior to April 18, 2007 and within two (2) Business Days after receipt of such notice if such receipt is after April 18, 2007, to remove one (1) Property from the transaction contemplated by this Agreement. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to

remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

(i) Seller acknowledges that Purchaser may cause additional environmental assessments (e.g., Phase II testing) to be conducted with respect to the Properties, including the Properties identified on Schedule 3.3(i) attached hereto (each "Environmental Evaluation Property"). Notwithstanding anything herein to the contrary, if such assessments with respect to any Environmental Evaluation Property identify any recognized environmental condition or other potential environmental issue for which the estimated remediation costs exceed \$50,000 or may materially and adversely affect the condition, operations or valuation of such Property, as determined by Purchaser, such matters shall constitute a Material Due Diligence Issue.

### 3.4 Estoppels and Consents.

(a) At least five (5) days prior to the Closing Date, Seller shall have delivered to Purchaser an estoppel certificate, substantially in the form set forth in Exhibit 3.4(a) or such other form as is attached to the applicable Space Lease and, in each case, dated not more than thirty (30) days prior to the Closing Date (each, a "Space Lease Estoppel") from Space Lease Tenants leasing at least eighty percent (80%) of the aggregate square footage subject to Space Leases. In the event that Seller fails to obtain any Space Lease Estoppel, Seller shall deliver to Purchaser an estoppel certificate from Seller substantially in the form set forth in Exhibit 3.4(a) with respect to such Space Lease (each, a "Seller's Space Lease Estoppel"). Each statement in any Seller's Space Lease Estoppel shall survive the Closing until the earlier of three hundred sixty five (365) days after the Closing Date and the date on which Purchaser receives an executed Space Lease Estoppel in the form required by this Section 3.4(a) executed by the Space Lease Tenant in question.

(b) At least five (5) days prior to the Closing Date, Seller shall have delivered to Purchaser an estoppel certificate from each party under any REAs, excluding any REAs that consist solely of a standard utility easement, substantially in the form set forth in Exhibit 3.4(b) or such other form as is attached to the applicable REA and, in each case, dated not more than thirty (30) days prior to the Closing Date (each, a "REA Estoppel"). In the event that Seller fails to obtain any REA Estoppel, Seller shall deliver to Purchaser an estoppel certificate from Seller substantially in the form set forth in Exhibit 3.4(b) with respect to such REA (each, a "Seller's REA Estoppel"). Each statement in any Seller's REA Estoppel shall survive the Closing until the earlier of three hundred sixty five (365) days after the Closing Date and the date on which Purchaser receives an executed REA Estoppel in the form required by this Section 3.4(b) executed by the party to the REA in question.

(c) At least five (5) days prior to the Closing Date, Seller shall have delivered to Purchaser copies of the executed written consents to this Agreement and the transactions contemplated hereby, in form and substance satisfactory to Purchaser, for each of the Required Consents.

(d) If Seller fails to deliver any of the items set forth in Section 3.4(a)-(c), then, in addition to any rights or remedies hereunder, Purchaser shall have a right to terminate this Agreement with respect to the Properties affected by such failure, which right shall be

exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Properties, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

### 3.5 Right of First Refusal and Purchase Option Properties

(a) Within five (5) Business Days after the Effective Date, in accordance with the terms and conditions of each of the Right of First Refusal Agreements, Seller shall deliver notice (the "ROFR Notice") of (i) this Agreement, and (ii) if any rights under such Right of First Refusal Agreement would be applicable to a lease of any Property and such Property is to be leased-back to Seller under a Lease pursuant to Section 2.3 hereof, the applicable Lease, to the holder of the right of first refusal under each Right of First Refusal Agreement (each, a "ROFR Holder"), excluding (A) the Right of First Refusal Agreement affecting the Property located at 2550 E. Morris Blvd., Morristown, TN and known as Store No. 207, which is addressed in Section 3.5(e) below, (B) the Right of First Refusal Agreement affecting the Property located at 1603 E. Dixie Drive, Asheboro, NC and known as Store No. 316, which is addressed in Section 3.5(g) below, and (C) the Right of First Refusal Agreement affecting the Property located at 1821 Beltline Road SW, Decatur, AL and known as Store No. 103, which is addressed in Section 3.5(h) below. If the ROFR Holder exercises its right to purchase the affected Property, then Seller shall deliver written notice of such exercise to Purchaser. In such event this Agreement shall be deemed terminated with respect to the affected Property and all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced by the amount of the Purchase Price allocated to such affected Property as shown on Schedule 15.17 attached hereto. If the ROFR Holder does not exercise its right to purchase the affected Property, then Seller shall obtain a recordable release of the right of first refusal under the Right of First Refusal Agreement in a form reasonably acceptable to Purchaser or other evidence of the termination of the rights of first refusal reasonably acceptable to Purchaser and the Title Company (the "ROFR Release"). If Seller fails to deliver the ROFR Release with respect to any Property subject to a Right of First Refusal Agreement to Purchaser at least five (5) Business Days prior to Closing, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereto. If the time period for a ROFR Holder to respond to a ROFR Notice extends beyond the Closing Date, the Closing Date with respect to the affected Property only shall be extended for ten (10) Business Days after such time period, which extension shall not affect the Closing Date with respect to the Properties other than the affected Property.

(b) [Intentionally omitted.]

(c) Within five (5) Business Days after the Effective Date, Seller shall request from Metropolitan Life Insurance Company (or its successor or assign) ("Met Life") a written release in recordable form reasonably acceptable to Purchaser of the expired right of first refusal under that certain Covenants, Conditions, Restrictions Agreement, between Met Life and Seller Two, dated August 17, 1994, with respect to the Property located at 6967 U.S. Route 322,

Cranberry, PA and known as Store No. 237 (the "Met Life Release"). If Seller fails to deliver the Met Life Release to Purchaser at least five (5) Business Days prior to the Closing Date, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller; provided, however, that such right to terminate shall be null and void if the Title Company will insure Purchaser that the affected Property is no longer subject to the right of first refusal described in this Section 3.5(c) in the Owner's Title Policy for the affected Property. In the event of a termination of this Agreement with respect to the affected Property pursuant to this Section 3.5(c), all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

(d) Within five (5) Business Days after the Effective Date, Seller shall request from George W. Woelfel and Marguerite D. Woelfel and George W. Woelfel and Peoples First National Bank and Trust Company, Trustees under Deed of George W. Woelfel dated March 29, 1968 (or their successors or assigns) (collectively, "Woelfel") a written release in recordable form reasonably acceptable to Purchaser of Woelfel's purchase option under that certain Supplemental Agreement, dated November 26, 1971, with respect to the Property located at 96 Airport Beltway, Hazelton, PA 18201 and known as Store No. 252 (the "Woelfel Release"). If Seller fails to deliver the Woelfel Release to Purchaser at least five (5) Business Days prior to the Closing Date, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

(e) Within five (5) Business Days after the Effective Date, Seller shall request from CBL Morristown, Ltd. (or its successor or assign) ("CBL") a written release in recordable form reasonably acceptable to Purchaser of CBL's purchase option and right of first refusal under that certain Special Warranty Deed, by CBL, as grantor, to Kelly & Cohen Appliances, Inc., as grantee, dated October 15, 1993, with respect to the Property located at 2550 E. Morris Blvd., Morristown, TN and known as Store No. 207 (the "CBL Release"). If CBL exercises its right to purchase the affected Property, then Seller shall deliver written notice of such exercise to Purchaser. In such event this Agreement shall be deemed terminated with respect to the affected Property and all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced by the amount of the Purchase Price allocated to such affected Property as shown on Schedule 15.17 attached hereto. If CBL does not exercise its right to purchase the affected Property, then Seller shall obtain the CBL Release. If Seller fails to deliver the CBL Release to Purchaser at least five (5) Business Days prior to the Closing Date, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereto.

(f) Within five (5) Business Days after the Effective Date, Seller shall request from Newtowne Mall Associates Limited Partnership (or its successor or assign) ("Newtowne")



a written release in recordable form reasonably acceptable to Purchaser of Newtowne's purchase option under that certain General Warranty Deed, by Newtowne, as grantor, to Rex Radio and Television, Inc., as grantee, dated August 25, 1993, with respect to the Property located at 331 Graft Road, New Philadelphia, OH and known as Store No. 201 (the "Newtowne Release"). If Seller fails to deliver the Newtowne Release to Purchaser at least five (5) Business Days prior to the Closing Date, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

(g) Within five (5) Business Days after the Effective Date, Seller shall request from Randolph Fringe Land, Ltd. (or its successor or assign) ("Randolph") a written release in recordable form reasonably acceptable to Purchaser of Randolph's right of first refusal and purchase option under that certain Easement and Restriction Agreement dated September 5, 2000, by and among Randolph, Seller Two, and JG Randolph LLC and that certain Special Warranty Deed, by Randolph, as grantor, to Seller Two, as grantee, dated September 5, 2000, with respect to the Property located at 1603 E. Dixie Drive, Asheboro, NC and known as Store No. 316 (the "Randolph Release"). If Randolph exercises its right to purchase the affected Property, then Seller shall deliver written notice of such exercise to Purchaser. In such event this Agreement shall be deemed terminated with respect to the affected Property and all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced by the amount of the Purchase Price allocated to such affected Property as shown on Schedule 15.17 attached hereto. If Randolph does not exercise its right to purchase the affected Property, then Seller shall obtain the Randolph Release. If Seller fails to deliver the Randolph Release to Purchaser at least five (5) Business Days prior to the Closing Date, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 attached hereto.

(h) Within five (5) Business Days after the Effective Date, Seller shall request from Beltline-Decatur (or its successor or assign) ("Beltline") a written release in recordable form reasonably acceptable to Purchaser of Beltline's right of first refusal and purchase options under that certain deed to Seller, dated October 22, 1986, with respect to the Property located at 1821 Beltline Road SW, Decatur, AL and known as Store No. 103 (the "Beltline Release"). If Beltline exercises its right to purchase the affected Property, then Seller shall deliver written notice of such exercise to Purchaser. In such event this Agreement shall be deemed terminated with respect to the affected Property and all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced by the amount of the Purchase Price allocated to such affected Property as shown on Schedule 15.17 attached hereto. If Beltline does not exercise its right to purchase the affected Property, then Seller shall obtain the Beltline Release. If Seller fails to deliver the Beltline Release to Purchaser at least five (5) Business Days prior to the Closing Date, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination,

all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereto.

### 3.6 Memorandum regarding No Shareholder Approval: SNDAs

(a) Within thirty (30) days of the Effective Date, Seller shall deliver to Purchaser a copy of the memorandum from Seller's counsel confirming that neither this Agreement nor the transactions contemplated hereby require any approval of the shareholders of REX Stores and any analysis supporting such memorandum.

(b) If requested to do so by Purchaser, Seller shall send out a Subordination, Non-Disturbance and Attornment Agreement in the form requested by Purchaser's lender (a "SNDA") to each of the Space Lease Tenants and exercise good faith efforts to obtain each SNDA prior to Closing. Notwithstanding the foregoing, receipt of a SNDA from each Space Lease Tenants shall not be a condition to Purchaser's obligation to close the transaction contemplated by this Agreement. If requested to do so by Purchaser, Seller shall execute and deliver at Closing a SNDA and memorandum of lease with respect to each Lease.

### 3.7 Additional Conditions to Purchaser's Obligation to Close

(a) In addition to all other conditions set forth herein, the obligation of Purchaser to consummate the transactions contemplated hereunder shall be contingent on the following:

- (i) Seller's representations and warranties contained herein shall be true, correct and complete in all material respects as of the Closing Date;
- (ii) As of the Closing Date, the Seller shall have performed its obligations hereunder and all deliveries to be made by Seller at Closing have been tendered;
- (iii) At no time on or before the Closing Date shall any of the following have occurred with respect to Seller and/or REX Stores: (1) the commencement of a case under Title 11 of the U.S. Code, or under any other applicable federal or state bankruptcy or similar law; (2) the appointment of a trustee or receiver of any property interest; (3) an assignment for the benefit of creditors; (4) an attachment, execution or other judicial seizure of a substantial property interest; or (5) a dissolution or liquidation;
- (iv) [Intentionally omitted];
- (v) [Intentionally omitted];
- (vi) The Title Company shall be ready and willing to deliver to Purchaser owner's title policies in the form required by the

- Title Commitments in Section 3.3 above in the amount of the Purchase Price, subject only to the Permitted Exceptions, with the endorsements reasonably requested by Purchaser (the "Owner's Title Policies"); and
- (vii) This Agreement shall not have been terminated with respect to fifteen (15) or more of the twenty-five (25) Properties identified on Schedule 3.6(a)(vii) hereto by (A) Purchaser pursuant to terms and conditions of this Agreement, or (B) Seller pursuant to Section 3.3(h) .

(b) If any of the conditions set forth in Section 3.7(a)(i), (ii), (iii), (vi) or (vii) are not satisfied on the Closing Date, Purchaser may elect either to (i) terminate this Agreement, or (ii) to the extent such failure constitutes a default by Seller, exercise its rights under Section 13. In the event of the termination of this Agreement pursuant to this Section 3.7, the Earnest Money and any other sums deposited by Purchaser with the Escrow Agent shall be returned to Purchaser, all documents delivered into escrow shall be returned by the Escrow Agent to the depositing party, Purchaser shall promptly return to Seller the Delivery Items, and each party shall pay any costs theretofore incurred by it, whereupon neither party shall have any additional liability hereunder and this Agreement shall be terminated, except for the Surviving Obligations.

### 3.8 Additional Conditions to Seller's Obligations to Close

(a) In addition to all other conditions set forth herein, the obligation of Seller to consummate the transactions contemplated hereunder shall be contingent on the following:

- (i) The Purchaser's representations and warranties contained herein shall be true, correct and complete in all material respects as of the Closing Date;
- (ii) As of the Closing Date, the Purchaser shall have performed its obligations hereunder and all deliveries to be made by Purchaser at Closing have been tendered; and
- (iii) This Agreement shall not have been terminated with respect to twenty-five (25) or more Properties by (A) Purchaser pursuant to terms and conditions of this Agreement, or (B) Seller pursuant to Section 3.3(h) .

(b) If any of the conditions set forth in Section 3.8(a)(i), (ii) or (iii) are not satisfied on the Closing Date, Seller may elect either to (i) terminate this Agreement, or (ii) to the extent such failure constitutes a default by Purchaser, exercise its rights under Section 13. In the event of the termination of this Agreement pursuant to this Section 3.8, the Earnest Money and any other sums deposited by Purchaser with the Escrow Agent shall be returned to Purchaser, all documents delivered into escrow shall be returned by the Escrow Agent to the depositing party, Purchaser shall promptly return to Seller the Delivery Items, and each party shall pay any costs theretofore incurred by it, whereupon neither party shall have any additional liability hereunder and this Agreement shall be terminated, except for the Surviving Obligations.

### 3.9 Fairness Opinion.

(a) Seller may elect, in its discretion, to obtain an opinion from an investment banking firm of national standing as to whether or not the consideration to be received by Seller for the Properties pursuant to the transactions contemplated by this Agreement is fair to Seller and the stockholders of REX Stores from a financial point of view (the "Fairness Opinion"). If Seller obtains a Fairness Opinion on or prior to the date that is thirty (30) days after the Effective Date that the consideration to be received by Seller for the Properties is not fair to Seller and the stockholders of REX from a financial point of view, then Seller shall have a right to terminate this Agreement, which right shall be exercisable by (i) delivery to Purchaser of written notice of termination and a copy of the Fairness Opinion on or prior to the date that is thirty (30) days after the Effective Date, and (ii) within two (2) Business Days of such termination, payment to Purchaser of a fee of Seven Hundred Fifty Thousand Dollars (\$750,000.00) to cover Seller's costs, expenses and other losses. In such event of termination, the Earnest Money and any other sums deposited by Purchaser with the Escrow Agent shall be returned to Purchaser, all documents delivered into escrow shall be returned by the Escrow Agent to the depositing party, Purchaser shall promptly return to Seller the Delivery Items, and each party shall pay any costs theretofore incurred by it, whereupon neither party shall have any additional liability hereunder, except for the Surviving Obligations.

(b) Seller acknowledges and agrees that Seller shall have no right to terminate this Agreement if, after the date that is thirty (30) days after the Effective Date, Seller obtains a Fairness Opinion that the consideration to be received by Seller for the Properties is not fair to Seller and the stockholders of REX from a financial point of view.

(c) If Seller terminates this Agreement pursuant to Section 3.9(a) hereof, then Purchaser shall have a right of first refusal which expires on December 31, 2007 ("Purchaser Right of First Refusal") with respect to any sale, joint venture or other direct or indirect disposition by Seller and/or REX Stores of fifty (50) or more of the Properties. If at any time prior to December 31, 2007, Seller and/or REX Stores receive a bona fide offer with respect to a sale, joint venture or other direct or indirect disposition of fifty (50) or more of the Properties ("Offer") that Seller and/or REX Stores desire to accept, then prior to accepting the Offer, Seller and/or REX shall deliver written notice of the Offer to Purchaser ("Offer Notice"). The Offer Notice shall include a copy of the Offer. Purchaser shall have ten (10) Business Days after receipt of the Offer Notice to exercise the Right of First Refusal and accept the Offer, which right shall be exercisable by delivery of written notice to Seller and/or REX Stores. If Purchaser so accepts the Offer, then Purchaser shall have the right and the obligation to enter into the transaction contemplated by the Offer upon the same terms and conditions as are set forth in the Offer, except that periods of time for purchaser performance shall be extended so that Purchaser shall have at least ten (10) Business Days from the date of Purchaser's acceptance of the Offer for such performance and at least thirty (30) days from the date of Purchaser's acceptance of the Offer to close on the transaction contemplated by the Offer. If Purchaser does not so accept the Offer, then Seller and/or REX Stores may accept the Offer and enter into the transaction contemplated by the Offer pursuant to the terms and conditions set forth in the Offer and the Purchaser Right of First Refusal remain in effect with respect to any future Offer during the 365-day period. This Section 3.9(c) shall survive the termination of this Agreement and constitutes a Surviving Obligation.

### 3.10 Covenants Regarding Change in Property Condition

(a) Notwithstanding anything herein to the contrary in Section 11.1 hereof, in the event there is a material adverse change in the condition of any one or more of the Properties from the condition reported in the PSI Reports prior to Closing that requires repairs with respect to any one Property that cost in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) but less than Seventy-Five Thousand and 00/100 Dollars (\$75,000.00), Seller shall complete such repairs, at Seller's sole cost, to the reasonable satisfaction of Purchaser with good speed and diligence and the Closing Date with respect to the affected Property only shall be extended to permit the completion of the aforementioned repairs, which extension shall not affect the Closing Date with respect to the Properties other than the affected Property. Notwithstanding the foregoing, in the event the aforementioned repairs are not completed within sixty (60) days after the originally scheduled Closing Date, then Purchaser shall have a right to terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

(b) Notwithstanding anything herein to the contrary in Section 11.1 hereof, in the event there is a material adverse change in the condition of any one or more of the Properties from the condition reported in the PSI Reports prior to Closing that requires repairs with respect to any one Property that cost in excess of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00), then Purchaser shall have a right to either (i) require that Seller complete repairs costing not more than \$75,000.00, at Seller's sole cost, to the reasonable satisfaction of Purchaser with good speed and diligence and the Closing Date with respect to the affected Property only shall be extended to permit the completion of the aforementioned repairs, which extension shall not affect the Closing Date with respect to the Properties other than the affected Property, or (ii) terminate this Agreement with respect to the affected Property, which right shall be exercisable by the delivery of written notice to Seller. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof.

3.11 Delivery of New Surveys in Event of Termination. In the event that this Agreement is terminated in its entirety or with respect to any Properties in particular pursuant to the express rights of Seller or Purchaser hereunder, Purchaser agrees to deliver copies of all new surveys or updates to Existing Surveys obtained by Purchaser and assign to Seller all rights thereto.

## **SECTION 4 CLOSING**

4.1 Time and Place. The Closing shall be held on the Closing Date in the offices of counsel to Purchaser or counsel to Purchaser's lender, or at any other location mutually acceptable to the parties.

#### 4.2 Deliveries.

(a) In addition to the items and documents required under other provisions of this Agreement to be delivered by Seller to Purchaser at or prior to Closing, Seller (or whichever of Seller One, Seller Two or Seller Three is identified on Exhibit 1.1 as the owner of the Site to which such items and documents relate) shall execute and/or deliver (or cause to be executed and/or delivered) to Purchaser through escrow each of the following at Closing:

- (i) a limited warranty deed (or the equivalent under the law of the applicable State where the Real Property is located) for each Real Property, conveying to Purchaser all of Seller's right, title and interest in and to such Real Property, subject only to the Permitted Exceptions, substantially in the form attached hereto as Exhibit 4.2(a)(i);
- (ii) an assignment to Purchaser of all Space Leases in the form attached hereto as Exhibit 4.2(a)(ii) (the "Space Lease Assignment");
- (iii) a non-foreign transferor certification pursuant to Section 1445 of the Internal Revenue Code from Seller in the form attached hereto as Exhibit 4.2(a)(iii);
- (iv) evidence of Seller's authority to consummate the transactions described herein, as required by the Title Company;
- (v) an owner's affidavit in a form sufficient to induce the Title Company to remove the mechanics lien and other standard exceptions from the Owner's Title Policies for the Properties and such other documents from Seller as may be reasonably required by the Title Company to consummate the transactions contemplated hereby;
- (vi) notices in a form reasonably acceptable to Purchaser to each party under the REAs and each Space Lease Tenant under a Space Lease informing such party of the consummation of the transactions contemplated hereby;
- (vii) a date-down letter for representations and warranties in the form attached hereto as Exhibit 4.2(a)(vii);
- (viii) evidence of insurance required under the Leases and 90-Day License Agreements;
- (ix) originals of all Delivery Items to the extent in the possession or control of Seller;

- (x) assignments and assumptions, in recordable form, of Seller's interest in the REAs, whereby Seller assigns to Purchaser and Purchaser assumes all of Seller's or Tenant's rights, title, interests, duties, obligations and liabilities under such REAs, in the form attached hereto as Exhibit 4.2(a)(x) (the "REA Assignments");
- (xi) the Leases, 90-Day License Agreements and Guaranty;
- (xii) one or more bills of sale and assignment conveying to Purchaser all of Seller's right, title and interest in and to the Personal Property and Intangible Property, in the form attached hereto as Exhibit 4.2(a)(xii) (the "Bill of Sale and Assignment");
- (xiii) the Closing Statement;
- (xiv) all transfer declarations, affidavits of value or similar documentation required by law;
- (xv) originals of the Space Lease Estoppels and REA Estoppels;
- (xvi) originals of the Required Consents; and
- (xvii) evidence of Seller's payment of the Leasing Commissions.

(b) In addition to the items and documents required under other provisions of this Agreement to be delivered by Purchaser to Seller at or prior to Closing, Purchaser also shall execute and/or deliver (or cause to be executed and/or delivered) to Seller through escrow each of the following at Closing:

- (i) the Purchase Price, by wire transfer, as provided in subsection 2.2(b) hereof;
- (ii) evidence of Purchaser's authority to consummate the transactions described herein, as required by the Title Company;
- (iii) the Space Lease Assignments; (iv)
- (iv) the REA Assignments;
- (v) the Leases;
- (vi) the Bill of Sale and Assignment;
- (vii) the Closing Statement; and
- (viii) all transfer declarations, affidavits of value or similar documentation required by law to be delivered by Purchaser.

(c) Closing Instructions to Escrow Agent. The Closing shall be facilitated through an escrow established with the Escrow Agent, using closing escrow instructions consistent with this Agreement and the Escrow Agent's standard practice, or as otherwise mutually agreed between Purchaser and Seller.

(d) Possession. Seller shall deliver actual possession of the Properties to Purchaser at Closing, subject to the Leases, Space Leases and 90-Day License Agreements.

(e) Leasing Commissions. At or prior to Closing, Seller shall pay any Leasing Commissions.

(f) Legal Descriptions. To the extent that the Title Company is willing to insure an appurtenant easement not set forth in the legal descriptions of the Properties in Exhibit 2.1(a)(i) attached hereto, Seller agrees to add the insured description of such easement to the legal descriptions to be attached to the deeds delivered under Section 4(a)(i) hereto.

## **SECTION 5 PRORATIONS**

### **5.1 Prorations and Adjustments.**

(a) A statement of prorations and other adjustments shall be prepared by Seller for each Property being conveyed at Closing in conformity with the provisions of this Agreement and submitted to Purchaser for review and approval not less than ten (10) Business Days prior to the Closing Date (the "Closing Statement"). For purposes of prorations and other adjustments under this Section 5, Purchaser shall be deemed the owner of the Properties as of 12:00 a.m. on the Closing Date. Subject to the foregoing, and in addition to other adjustments that may be provided for in this Agreement, the following items with respect to each Property are to be prorated or adjusted, as the case may require, as of the Closing Date:

(i) With respect to each Property, except any Leased Property:

A. real estate taxes and assessments (except to the extent the same shall be the obligation of a Space Lease Tenant under a Space Lease; provided, however, in the event that the Space Lease Tenant fails to make applicable payments, Seller shall be responsible for the unpaid real estate taxes and assessments which relate to the period prior to the Closing and Purchaser shall be responsible for the unpaid real estate taxes and assessments which relate to the period after the Closing);

B. rents, additional rents, and all other charges and payments to be made by or received by Seller pursuant to any Space Lease encumbering or benefiting the Property;

C. charges and payments to be made by or received by Seller pursuant to any REA encumbering or benefiting the Property;



D. cash security deposits paid by Space Lease Tenants under the Space Leases, and not theretofore applied, shall be credited by Seller to Purchaser on the Closing Date;

E. water, electric, telephone and all other utility and fuel charges (except to the extent the same shall be the obligation of a Space Lease Tenant under a Space Lease; provided, however, in the event that the Space Lease Tenant fails to make applicable payments, Seller shall be responsible for the unpaid charges which relate to the period prior to the Closing and Purchaser shall be responsible for the unpaid charges which relate to the period after the Closing);

F. assignable license and permit fees;

G. deposits made by Seller with utility companies, governmental authorities or any other Person, which deposits shall be assigned to Purchaser at Closing and shall be credited to Seller; and

H. other operating expenses and any other customarily apportioned items.

(ii) Generally:

A. Real estate taxes shall be initially prorated on the basis of 100% of the most recent ascertainable bill, but subject to re-proration upon issuance of the actual bills therefor to effectuate the actual proration. Real estate taxes shall be apportioned on the basis of the fiscal period for which assessed. If as of the Closing Date any of the Properties or any portion thereof shall be affected by any special or general assessments which are or may become payable in installments of which the first installment is then a lien and has become payable, responsibility for the payment of any unpaid installments of such assessments which are due prior to the Closing Date shall be allocated to Seller, and Purchaser shall be responsible to pay only the installments which are due on or after the Closing Date, and Purchaser or Seller shall make a payment to the other to the extent necessary so that the total amount of such special or general assessment is apportioned as provided above. Except with respect to general real estate taxes (which shall be re-prorated upon the issuance of the actual bills, if necessary), any proration which must be estimated at a Closing shall be re-prorated and finally adjusted as soon as practicable after the Closing, with any refunds payable to Seller or Purchaser to be made as soon as practicable. Seller shall have the right to prosecute and continue to prosecute subsequent to the Closing any tax certiorari proceedings for the tax year in which the Closing occurs and all prior tax years. Any refunds obtained, net of the reasonable expenses incurred in obtaining such refund, shall be paid to Purchaser to the extent of the amount thereof which is payable to the Space Lease Tenants under the Space Leases, and the

balance thereof, if any, shall be apportioned to the date preceding the date of the Closing, with any portion thereof allocable to periods subsequent to the date preceding the date of the Closing to be paid to Purchaser and the remainder to be paid to Seller.

B. Water, electric, telephone and all other utility and fuel charges shall be prorated ratably on the basis of the last ascertainable bills (and re-prorated upon receipt of the actual bills or invoices) unless final meter readings and final invoices can be obtained. To the extent practicable, Seller shall cause meters for utilities to be read not more than ten (10) Business Days prior to the Closing Date.

C. In the event that a Space Lease Tenant is owed any additional funds as a result of any deficiency shown in a reconciliation of percentage rents, taxes or other operating expenses for the period of time prior to the Closing, Seller shall deliver to Purchaser the overpaid funds within twenty (20) days of receipt of notice from Purchaser; provided that Seller shall have a right to review any reconciliation and the related records prior to making any payments so long as such review is requested and completed within twenty (20) days of receipt of the aforementioned notice from Purchaser.

(b) With respect to any Leased Property, there shall be no proration of any income or expenses at Closing, as Seller shall be responsible for all Additional Rent (as defined in the Leases) under the Leases. Additionally, Seller agrees to be responsible for all Additional Rent with respect to the Leased Properties incurred prior to the Closing Date ("Pre-Closing Impositions") and indemnify, defend and hold Purchaser harmless from and against any and all claims, losses, damages, costs and expense (including, without limitation, reasonable attorneys fees' and court costs) suffered or incurred as a result of or in connection with any failure by Seller to pay Pre-Closing Impositions. Seller shall cause any past due Pre-Closing Impositions to be paid at or prior to Closing.

(c) The provisions of this Section 5 shall survive the Closing.

## **SECTION 6 REPRESENTATIONS AND WARRANTIES**

6.1 Seller's Representations and Warranties. Seller represents and warrants to Purchaser as follows:

(a) Seller has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Neither this Agreement nor the transactions contemplated hereby will require any approval of the shareholders of REX Stores. This Agreement and the transactions contemplated hereby have been approved by the Board of Directors of REX Stores.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated conflict with or result in the material

breach of any terms, conditions or provisions of or constitute a default under, any bond, note or other evidence of indebtedness or any agreement to which Seller is a party.

(c) To Seller's knowledge, no Person other than Purchaser has an option or right of first refusal to purchase any Property or any portion thereof, except as set forth on Schedule 6.1(c)(i) (the "Purchase Option Agreements") and Schedule 6.1(c)(ii) (the "Right of First Refusal Agreements"). The copies of the Purchase Option Agreements and Right of First Refusal Agreements delivered by Seller to Purchaser are true, correct and complete. The Real Property includes all Land and Improvements utilized in connection with the prior and/or current operation of "Rex", "Kelly & Cohen Appliances" and "Stereo Town" stores at the Sites.

(d) To Seller's knowledge, there is no pending or threatened condemnation action affecting any Property

(e) To Seller's knowledge, except as set forth on Schedule 6.1(e) attached hereto, there is no action, suit or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser in any court or by or before any other governmental agency or instrumentality which would affect any of the Properties or would materially and adversely affect the ability of Purchaser to carry out the transactions contemplated by this Agreement.

(f) To Seller's knowledge, there are no violations of Environmental Laws related to any Property with respect to the presence or release of Hazardous Materials on or from any Property, except as disclosed in the environmental reports delivered by Seller to Purchaser. The term "Environmental Laws" includes, without limitation, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and other federal laws governing Hazardous Materials as in effect on the date of this Agreement, together with their implementing regulations and guidelines as of the date of this Agreement, and all state and local laws, regulations and ordinances that regulate Hazardous Materials in effect as of the date of this Agreement. "Hazardous Materials" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any applicable law, as currently in effect as of the date of this Agreement, (ii) petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) friable asbestos, (vi) flammable explosives, (vii) infectious materials, (viii) radioactive materials, or (ix) mold.

(g) The copies of the Space Leases, REAs and Service Contracts delivered by Seller to Purchaser are true, correct and complete. The Space Leases, REAs and Service Contracts are in full force and effect and have not been assigned by Seller.

(h) To Seller's knowledge, neither Seller nor any Space Lease Tenant is in default under any Space Lease in any material respect. None of Seller, any Space Lease Tenant or any party to any REA has given or made or received any notice of default, which remains uncured or unsatisfied, with respect to any Space Lease or REA. All payments payable by, or due Seller under any Space Lease or REA have been made and received, without any defenses or counterclaims, offsets, concessions, rebates, credits or allowances. No Space Lease Tenant has paid more than one (1) month's rent in advance. All tenant improvements or work to be done, furnished or paid for by Seller or loans to be provided by Seller for, or in connection with, any

Space Lease Tenant under the Space Leases have been completed and paid for in full. Except as set forth on Schedule 6.1(h) (the "Leasing Commissions"), no leasing, brokerage or like commissions are due from Seller, or may become due, in respect to the Space Leases or the Properties.

(i) To Seller's knowledge, neither Seller nor any other party under any REAs is in default under any REAs in any material respect.

(j) To Seller's knowledge after due inquiry, neither this Agreement nor the transactions contemplated hereby will constitute a breach or violation of, or default under, or will be modified, restricted or precluded by, the REAs or any other agreement binding Seller or the Properties, provided that Seller obtains the consents from the parties identified on Schedule 6.1(j) attached hereto (the "Required Consents") in form and substance satisfactory to Purchaser. Neither this Agreement nor the transactions contemplated hereby will constitute a breach or violation of, or default under, or will be modified, restricted or precluded by, or any other agreement to which Seller is a party or by which Seller or any Property is bound.

(k) Seller has obtained or will obtain prior to Closing the Required Consents.

(l) Seller is not required to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental or regulatory authority (including, without limitation, any securities exchange) as a condition to the execution and delivery or performance of this Agreement and the consummation of transactions contemplated hereby.

(m) All Personal Property and Intangible Property will be conveyed to Purchaser at Closing free and clear of any and all liens, encumbrances, charges or adverse interests.

(n) Seller has received no written notice that any government agency or any employee or official thereof considers the construction of any Property or the operation or use of the same to have failed to comply with any law, ordinance, regulation or order that has not previously been corrected or that any investigation has been commenced or is contemplated regarding any such possible failure of compliance. To the knowledge of Seller, there are no unsatisfied requests for repairs relating to any Property from any party to a REA, Space Lease, lender, insurance carrier or government agency.

(o) To Seller's knowledge, there are no occupancies, concessions, or licenses in or to any Property or any portion thereof, other than the Space Leases, REAs and other agreements disclosed by the Title Commitments, and, to Seller's knowledge, no agreement other than the Space Leases, REAs and other agreements disclosed by the Title Commitments, provides for any restrictions on the leasing, use or occupancy of any of the Properties or any portion thereof.

(p) Seller has not received written notice of any pending or threatened zoning proceedings which would adversely affect the zoning currently applicable to any Property.

(q) Any existing indebtedness encumbering any Property will be paid off by Seller at or prior to Closing.

(r) Neither Seller nor any of the entities constituting Seller: (i) is “insolvent” or will be, after completion of the transactions contemplated hereby, rendered “insolvent”, as the term “insolvent” is used in the Bankruptcy Code or in the Uniform Fraudulent Conveyance Act as enacted in either any state in which any Property is located or the state in which Seller’s principal office is located (the “Creditors’ Rights Statutes”); (ii) has, or after completion of the transactions contemplated hereby will be left with, an unreasonably small capital within the meaning of the Creditors Rights Statutes; (iii) in entering into and carrying out its obligations hereunder, intends to incur, or believes that it will incur, debts beyond its ability to satisfy such debts as they mature within the meaning of the Creditors Rights Statutes; (iv) has commenced a case under Title 11 of the U.S. Code, or under any other applicable federal or state bankruptcy or similar law; (v) appointed a trustee or receiver of any property interest; (vi) made an assignment for the benefit of creditors; (vii) suffered an attachment, execution or other judicial seizure of a substantial property interest; (viii) suffered a dissolution or liquidation; or (ix) suffered the discontinuation of trading of shares on the New York Stock Exchange;

(s) Seller is not a “foreign person” within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended.

(t) Seller is not obligated to contribute to any merchants’ associations relating to the properties other than as set forth in the by-laws of such associations, true and correct copies of which have been delivered to Purchaser, or to any other promotional or similar fund for the advertising and promotion of the Properties.

(u) The representations and warranties of Seller set forth in this Agreement are true, accurate and complete; and do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statement therein not misleading.

Whenever in this Agreement there is a reference to the “knowledge” of Seller, such term refers to the actual (as opposed to the constructive or imputed) knowledge, with no duty to undertake inquiries or investigations, of (i) Stuart Rose, Chief Executive Officer of REX Stores, (ii) Douglas Bruggeman, Chief Financial Office of REX Stores, and (iii) Rick Santia, Vice President – Corporate Development of Seller.

#### 6.2 Purchaser’s Representations and Warranties

Purchaser hereby represents and warrants to Seller as follows:

(a) Purchaser has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transactions herein contemplated conflict with or result in the material breach of any terms, conditions or provisions of or constitute a default under, any bond, note, or other evidence of indebtedness or any agreement to which Purchaser is a party.

6.3 Survival. The representations and warranties of Seller and Purchaser set forth in this Agreement shall be deemed remade as of Closing, and said representations and warranties as so remade shall survive Closing for a period of three hundred sixty five (365) days after the Closing Date (other than the representations made in Sections 6.1(a) and 6.2(a), which shall have no expiration date), after which all of the representations and warranties of Seller and Purchaser set forth in this Agreement shall become void and of no further force or effect.

6.4 Indemnification. Seller hereby indemnifies and agrees to defend, hold harmless and protect Purchaser, each partner or shareholder, as the case may be, in Purchaser, and their respective officers, directors, members, shareholders, partners, employees, agents and consultants, from and against any and all loss, costs, expenses (including reasonable attorneys' fees), obligations, liabilities, claims (including any claim for damage to property or injury to death of any persons), liens, or encumbrances, but not consequential damages, punitive damages or lost profits, arising from: (i) the Properties and arising or accruing on or before the Closing Date, including, without limitation, matters arising under Environmental Laws or relating to Hazardous Materials; (ii) any act, conduct, omission, contract or commitment of Seller occurring on or before the Closing Date; or (iii) any material inaccuracy in or material breach of any representation or warranty of Seller resulting from any breach or default by Seller under this Agreement, provided the claim for indemnity was timely made during the survival period set forth in Section 6.3 above. The party claiming indemnification under this Section 6.4 or under Section 3.2(c), Section 9 or Section 15.14 hereof (the "Indemnitee") shall notify the other party (the "Indemnitor") of any such claim for indemnification within forty-five (45) days after the Indemnitee receives notice of the basis for such claim, but failure to notify the Indemnitor shall in no case limit the obligations of the Indemnitor under this Section 6.4 except to the extent Indemnitor shall be prejudiced by such failure. Should Indemnitor fail to discharge or undertake to defend against such claim upon learning of the same, then the Indemnitee may litigate or settle such liability or submit such liability to arbitration or other alternative dispute resolution in its reasonable discretion and Indemnitor's liability shall include, but not be limited to, the amount of such settlement. The provisions of this Section 6.4 shall survive the Closing for a period of two (2) years, if the Closing shall occur, and shall survive termination of this Agreement, if this Agreement shall be terminated.

#### **SECTION 7 PURCHASE AS-IS**

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER WARRANTS AND ACKNOWLEDGES TO AND AGREES WITH SELLER THAT PURCHASER IS PURCHASING THE PROPERTIES IN THEIR "AS-IS, WHERE IS" CONDITION "WITH ALL FAULTS" AS OF THE CLOSING DATE AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, AS TO THEIR CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER. SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT Seller's OBLIGATION TO REMOVE FIXTURES, SHELVEING, CABINETS, COUNTERS, DESKS, SIGNS AND SIGN FASCIAS AND SATELLITE DISHES FROM THE PROPERTIES SHALL BE GOVERNED

**SECTION 8 CLOSING COSTS**

8.1 Seller's Closing Costs. Seller shall pay the following expenses incurred in connection with the transactions described herein: (a) all costs associated with efforts to obtain the Fairness Opinion, and (b) Seller's legal fees. Seller also agrees to credit Purchaser at Closing the sum of One Million Four Hundred Thousand Dollars (\$1,400,000.00) to reimburse Purchaser for due diligence costs, closing costs and deferred maintenance expenses associated with the Properties.

8.2 Purchaser's Closing Costs. Subject to receipt of the credit contemplated by Section 8.1 hereof and provided the Closing occurs, Purchaser shall pay the following expenses incurred in connection with the transactions described herein: (a) the commitment fee and premiums on any Owner's Title Policies obtained by Purchaser, including any title endorsements thereto, (b) any cancellation fees payable to the Title Company for title commitment for any Property with respect to which this Agreement is terminated, (c) any title coordination or escrow fees, (d) the cost to obtain any zoning reports, updates to Existing Surveys or new surveys ordered by Purchaser, (e) the cost to obtain any additional environmental assessment reports with respect to the Environmental Assessment Properties, (f) the fee for the recording of the deeds, REA Assignments, Space Lease Assignments and memorandum of leases, (g) Purchaser's legal fees and expenses, (h) the cost to obtain the Title Commitments for the Properties, (i) the cost to obtain Phase I environmental reports and property condition assessments for the Properties (including the Additional Properties) prepared by Professional Service Industries (collectively, the "PSI Reports"), and (j) any deed and transfer taxes.

**SECTION 9 BROKERAGE COMMISSIONS**

Seller and Purchaser each warrant and represent to the other that neither has had any dealings with any broker, agent or finder relating to the sale of any Property or the other transactions contemplated hereby, and each agrees to indemnify, defend and hold the other harmless from and against any claim for brokerage commissions, compensation or fees by any broker, agent or finder in connection the sale of any Property or the other transactions contemplated hereby resulting from the acts of the indemnifying party. This Section 9 shall survive the Closing, if the Closing shall occur, and shall survive termination of this Agreement, if this Agreement shall be terminated.

**SECTION 10 NOTICE**

All notices, demands and communications (a "Notice") under this Agreement shall be delivered or sent by: (a) first class, registered or certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight courier, or (c) facsimile with confirmation of receipt of such facsimile, addressed to the address of the intended recipient set forth below or to such other address as either party may designate by notice pursuant to this Section. Notices shall be deemed given upon receipt or refusal. Any notice may be given by counsel to the party giving such notice.

Notices to Seller: Rex Radio and Television, Inc.  
Kelly & Cohen Appliances, Inc.  
Stereo Town, Inc.  
2875 Needmore Road  
Dayton, OH 45414  
Attn: Douglas Bruggeman  
Ph. (937)279-3931  
Fax. (937)279-8643

With a copy to: Chernesky, Heyman & Kress P.L.L.  
10 Courthouse Plaza SW, Suite 1100  
Dayton, Ohio 45402  
Attn: Edward M. Kress and Karen R. Adams  
Ph. (937)449-2830 and (937)449-2825  
Fax. (937)463-4947

Notices to Purchaser: Coventry Real Estate Investments, LLC  
c/o Coventry Real Estate Advisors, L.L.C.  
1 East 52<sup>nd</sup> Street, 4<sup>th</sup> Floor  
New York, NY 10022  
Attn: Mr. David Hirschberg  
Ph. 212.699.4100  
Fax. 212.699. 4124

With a copy to: Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
Attention: Robyn Minter Smyers, Esq.  
Ph. 216.566.5500  
Fax 216.566.5800

#### **SECTION 11 CASUALTY AND CONDEMNATION**

11.1 Casualty. If any Property is damaged by fire or other casualty prior to the Closing Date and the cost to repair would exceed twenty-five percent (25%) of the valuation for such Property based upon \$76.43 multiplied by the square footage of such Property as reflected on Exhibit 1.1 hereof (as determined by an insurance adjuster mutually selected by Purchaser and Seller), then either Seller or Purchaser may terminate this Agreement, but only with respect to the Property that is affected by such casualty, by written notice to Seller given on or before the earlier of (i) twenty (20) days following such casualty or (ii) the Closing Date. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof. If neither Seller or Purchaser are entitled to terminate this Agreement with respect to the affected Property pursuant to the foregoing (or otherwise under this Agreement) or, either Seller or Purchaser are so entitled to terminate this Agreement, but do not elect to do so, then the Closing shall take place as herein provided, including, without



limitation, without abatement of the Purchase Price and with Seller's delivery of the Lease, executed by Seller, for the affected Property, and Seller shall assign and transfer to Purchaser on the Closing Date, without warranty or recourse, (A) all of Seller's right, title and interest in and to all insurance proceeds paid or payable to Seller on account of such fire or casualty (less Seller's reasonable costs of collection thereof and, provided that Seller obtained Purchaser's prior written approval therefor, the reasonable amounts spent by Seller toward the restoration or repair of the Property, as supported by reasonable evidence of such expenditures provided to Purchaser), and (B) all of Seller's rights under any contract with respect to any restoration or repair. Seller shall credit Purchaser the amount of the deductible except to the extent that Seller has already expended the deductible on the aforementioned restoration or repair costs, as supported by reasonable evidence of such expenditures provided to Purchaser.

**11.2 Right of First Refusal in the Event of Termination Post-Casualty** If Seller terminates this Agreement with respect to any Property pursuant to Section 11.1 hereof, then Purchaser shall have a right of first refusal which expires on the date that is 365 days after the date of such termination with respect to any sale, joint venture or other direct or indirect disposition by Seller and/or REX Stores of such Property. If at any time prior to the date that is 365 days after such date of termination, Seller and/or REX Stores receive a bona fide offer with respect to a sale, joint venture or other direct or indirect disposition of such Property that Seller and/or REX Stores desire to accept, then prior to accepting the offer, Seller and/or REX shall deliver written notice of the offer to Purchaser. Such notice shall include a copy of the offer. Purchaser shall have ten (10) Business Days after receipt of the notice regarding the offer to exercise its right of first refusal and accept the offer, which right shall be exercisable by delivery of written notice to Seller and/or REX Stores. If Purchaser so accepts the offer, then Purchaser shall have the right and the obligation to enter into the transaction contemplated by the offer upon the same terms and conditions as are set forth in the offer, except that periods of time for purchaser performance shall be extended so that Purchaser shall have at least ten (10) Business Days from the date of Purchaser's acceptance of the offer for such performance and at least thirty (30) days from the date of Purchaser's acceptance of the offer to close on the transaction contemplated by the offer. If Purchaser does not so accept the offer, then Seller and/or REX Stores may accept the offer and enter into the transaction contemplated by the offer pursuant to the terms and conditions set forth in the offer and the Purchaser's right of first refusal under this Section 11.2 shall remain in effect with respect to any future offer during the 365-day period. This Section 11.2 shall survive the termination of this Agreement with respect to any Property pursuant to Section 11.1 and constitutes a Surviving Obligation.

**11.3 Condemnation.** If a Property or any portion thereof is taken in eminent domain proceedings prior to Closing, and if such taking materially adversely interferes with the value or operation of such Property, Purchaser may, as its sole and exclusive right and remedy, terminate this Agreement, but only with respect to the Property that is affected by such taking, by notice to Seller given on or before the earlier of (a) twenty (20) days after such taking or (b) the Closing Date. In the event of such termination, all exhibits and schedules hereto and definitions herein shall be deemed modified to remove such affected Property, and the Purchase Price shall be reduced in accordance with Section 15.12 hereof. If Purchaser is not entitled to or does not elect to so terminate, the Closing shall take place as herein provided, including, without limitation, without abatement of the Purchase Price and with Seller's delivery of the Lease, executed by Tenant, for the affected Property, and Seller shall assign and transfer to Purchaser on the Closing

Date, without warranty or recourse, all of Seller's right, title and interest in and to all condemnation awards paid or payable to Seller on account of such eminent domain proceedings (if any) less Seller's reasonable costs of collection thereof and, provided that Seller obtained Purchaser's prior written approval therefor, the reasonable amounts spent by Seller toward the restoration or repair of the Property, as supported by reasonable evidence of such expenditures.

#### **SECTION 12 OPERATIONS PRIOR TO CLOSING OR TERMINATION**

Seller covenants and agrees with Purchaser that after the date hereof until the Closing or termination of this Agreement, Seller shall conduct its business involving the Properties as follows:

(a) Seller shall not transfer title to any Property or create any easements or mortgages encumbering any Property that will survive Closing.

(b) Subject to 12(c)-(d) below, Seller shall not enter into or amend the Service Contracts or any other contracts affecting the Properties, other than contracts entered into in the ordinary course of business and which are cancelable by the owner of such Property without penalty or fee at or prior to Closing. Seller shall terminate all Service Contracts and other contracts affecting the Properties, except the Permitted Exceptions, REAs and Space Leases, and pay any penalty or fee associated with such terminations, at or prior to Closing.

(c) Seller shall not amend or agree to amend any Space Lease without Purchaser's prior written consent, which Purchaser shall not unreasonably withhold or delay. Seller shall pay and perform Seller's obligations as landlord under the Space Leases and otherwise comply with the requirements of the Space Leases.

(d) Seller shall not amend or agree to amend any REA without Purchaser's prior written consent, which Purchaser shall not unreasonably withhold or delay, and Seller shall pay and perform or cause to be paid and performed Seller's obligations under the REAs and otherwise comply with the requirements of the REAs.

(e) Seller shall maintain or cause to be maintained the Properties in the same condition and repair as existed as of the date of the applicable PSI Reports, normal wear and tear and damage by fire or other casualty excepted, in which case Section 12 of this Agreement shall control.

(f) Seller shall maintain or cause to be maintained the existing casualty, liability and other insurance policies relating to the Properties that are currently maintained by Seller as evidenced by the certificate attached hereto as Exhibit 12(f).

(g) Seller shall promptly deliver to Purchaser copies of any (i) notices received by Seller from any governmental authority alleging any violation of any applicable law or ordinance with respect to any Property; (ii) notices from the Space Lease Tenants under the Space Leases or parties under the REAs alleging any default or default with the giving of notice or passage of time, or both, on the part of Seller received by Seller; or (iii) notices from Seller alleging any default or any event which with the giving of notice or passage of time, or both, constitutes a default on the part of any party to the Space Leases or REAs; provided, however,

that no such notice alleging a default on the part of any party to the Spaces Leases or REAs shall be given by Seller without Purchaser's prior consent, which Purchaser may withhold in its sole discretion.

(h) Seller shall not institute any zoning proceeding affecting any Property without Purchaser's prior written consent, which Purchaser may withhold in its sole discretion. Seller shall regularly communicate with Purchaser regarding the status of and developments in any pending property tax complaints or proceedings. Seller shall deliver written notice to Purchaser prior to instituting any additional property tax complaints or proceedings.

### **SECTION 13 DEFAULTS AND REMEDIES**

13.1 Seller Defaults. In the event that Seller, on or prior to the Closing Date, shall default in the performance of its obligations hereunder (other than de minimis obligations that do not affect the use or value of the transactions contemplated hereunder in any material respect), Purchaser, as its sole and exclusive remedy and in lieu of all other rights or remedies otherwise provided at law or in equity, may either (a) seek specific performance of Seller's obligations hereunder, or (b) terminate this Agreement and receive (i) prompt refund of the Earnest Money and any other sums deposited by Purchaser with the Escrow Agent, and (ii) prompt payment by Seller to Purchaser of a break up fee of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), which sums shall be full and complete liquidated damages for such default of Seller. The parties hereto acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Purchaser upon Seller's default. Purchaser's receipt of the aforementioned sums is intended not as a penalty, but as full liquidated damages. Upon receipt of such sums, Purchaser hereby waives and releases any right to (and hereby covenants that it shall not) sue Seller to recover actual, punitive, consequential, special or exemplary damages in excess of such sums in connection with any such default.

13.2 Purchaser Defaults. In the event that Purchaser, on or prior to the Closing Date, shall default in the performance of its obligations under this Agreement (other than de minimis obligations that do not affect the value of the transactions contemplated hereunder in any material respect), then Seller, as its sole and exclusive remedy and in lieu of all other rights or remedies otherwise provided at law or in equity, may terminate this Agreement and receive and retain the Earnest Money as full and complete liquidated damages for such default of Purchaser. The parties hereto acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Purchaser's default. Seller's receipt of the Earnest Money is intended not as a penalty, but as full liquidated damages. The right to retain such sums as full liquidated damages is Seller's sole and exclusive remedy in the event the purchase and sale of the Property is not consummated because of a default hereunder by Purchaser, and, upon receipt of such sums, Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Purchaser: (i) for specific performance of this Agreement, or (ii) to recover actual, punitive, consequential, special or exemplary damages in excess of such sums in connection with any such default.

## **SECTION 14 OTHER OFFERS**

14.1 Other Offers. From the date hereof until the Closing Date or the earlier termination of this Agreement in accordance with the terms hereof, the Restricted Parties will not, and each of them will direct and cause their respective directors, officers, employees and agents not to, directly or indirectly, (i) solicit, initiate, knowingly encourage, take any action to facilitate the consummation of, or enter into agreements with any other Person with respect to, any Acquisition Proposal, (ii) engage or participate in discussions or negotiations with any Person with respect to an Acquisition Proposal, or (iii) in connection with an Acquisition Proposal, disclose any nonpublic information relating to the Properties, except that the Restricted Parties may take any action described in clause (ii) or (iii) if (A) such action is taken in connection with an unsolicited Acquisition Proposal, (B) in the good faith judgment of the Board of Directors of REX Stores, after having received the advice of a financial advisor of internationally recognized reputation and of independent legal counsel (who may be the regularly engaged independent legal counsel of REX Stores) (1) the Acquisition Proposal constitutes, or is reasonably likely to result in, a Superior Transaction, and (2) the failure to take such action would be a breach of the fiduciary duties of the Board of Directors of REX Stores under applicable law, and (C) in the case of the disclosure of nonpublic information relating to the Properties, such information is covered by a confidentiality agreement that is no less favorable to REX Stores than is afforded by the confidentiality agreement entered into between REX Stores and Purchaser in connection with the Proposed Transaction. REX Stores will promptly notify Purchaser orally, and confirm such notification in writing within 24 hours of such notification, of any Acquisition Proposal or any inquiries with respect thereto. Any such written notification will include the identity of the Person making such inquiry or Acquisition Proposal and a description of the material terms of the Acquisition Proposal (or the nature of the inquiry) and will indicate whether any of the Restricted Parties is providing or intends to provide the Person making the Acquisition Proposal with access to nonpublic information relating to the Properties.

14.2 Termination. None of the Restricted Parties will enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement (in each case, an "Acquisition Agreement") relating to any Acquisition Proposal with any Person other than the Purchaser; except that, prior to the Closing Date, the Restricted Parties may, in response to an unsolicited Acquisition Proposal, enter into an Acquisition Agreement if (i) the Board of Directors of REX Stores determines in good faith after having received the advice of a financial advisor of internationally recognized reputation and the written opinion of outside legal counsel (who may be the regularly engaged outside legal counsel of REX Stores) that such Acquisition Proposal constitutes a Superior Transaction and that the failure to take any such action would be a breach of the fiduciary duties of such Board of Directors under applicable law; (ii) within three days after Purchaser's receipt of written notice from REX Stores advising Purchaser that REX Stores has received an Acquisition Proposal that has been determined to be a Superior Transaction, which notice shall specify the material terms of the Superior Transaction and identify the Person offering the Superior Transaction, Purchaser does not make an offer that the Board of Directors determines in good faith to be at least as favorable to REX Stores and its stockholders as the Superior Transaction; and (iii) promptly after satisfaction of the conditions set forth in clauses (i) and (ii) above, the Restricted Parties pay to Purchaser a termination fee of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the "Termination Fee"), terminate this Agreement and concurrently therewith enter into a definitive Acquisition

Agreement with respect to such Superior Transaction. No such termination by the Restricted Parties will be effective unless and until Purchaser has received the Termination Fee. In such event of termination of this Agreement pursuant to this Section 14.2, the Earnest Money and any other sums deposited by Purchaser with the Escrow Agent shall be returned to Purchaser, all documents delivered into escrow shall be returned by the Escrow Agent to the depositing party, Purchaser shall promptly return to Seller the Delivery Items, and each party shall pay any costs theretofore incurred by it, whereupon neither party shall have any additional liability hereunder, except for the Surviving Obligations.

#### **SECTION 15 MISCELLANEOUS**

15.1 Entire Agreement; Amendments. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement of the parties hereto regarding the purchase and sale of the Properties, and all prior agreements, understandings, representations and statements, oral or written, including any so-called offer letters or letters of intent, are hereby merged herein and superseded hereby. This Agreement may be amended or modified only by an instrument in writing, signed by the party or parties intended to be bound thereby.

15.2 Time. All parties hereto agree that time is of the essence in the performance of the provisions of this Agreement.

15.3 Counterpart Execution. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original. The execution of this Agreement by facsimile signature or other electronic means shall be binding and enforceable as an original.

15.4 Governing Law. This Agreement shall be deemed to be a contract made under the internal laws of the State of Ohio and for all purposes shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15.5 Assignment; Third Party Beneficiaries. Neither Purchaser or Seller shall assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding this foregoing, without the prior written consent of Seller, Purchaser shall have the right to (a) assign this Agreement and Purchaser's rights hereunder, and/or (b) designate a nominee or nominees to whom Seller shall convey Seller's interest in one (1) or more Properties at Closing; provided, in each case, Coventry Real Estate Advisors or its affiliates have a direct or indirect ownership interest in such assignee, nominee or nominees. Subject to the foregoing, this Agreement shall inure to the benefit of, and shall be enforceable by and binding upon, the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer any rights or remedies upon any Person, other than the parties hereto and, subject to the restrictions on assignment herein contained, their respective successors and assigns.

15.6 Section Headings. The Section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several Sections hereof.

15.7 Severability. If any portion of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

15.8 WAIVER OF TRIAL BY JURY. SELLER AND PURCHASER, TO THE EXTENT THEY MAY LEGALLY DO SO, HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE EXTENT THEY MAY LEGALLY DO SO, SELLER AND PURCHASER HEREBY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, CAUSE OF ACTION OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY OR PARTIES HERETO TO WAIVER OF ITS OR THEIR RIGHT TO TRIAL BY JURY.

15.9 No Waiver. No covenant, term or condition of this Agreement, other than as expressly set forth herein, shall be deemed to have been waived by Seller or Purchaser unless such waiver is in writing and executed by Seller or Purchaser, as the case may be.

15.10 Time of Performance. Whenever the time for performance of an obligation under this Agreement occurs or expires on a day other than a Business Day, the time for performance thereof shall be extended to the next Business Day. For the purpose of this Agreement, "Business Day" shall mean any day other than a Saturday, Sunday, U.S. national holiday or holiday in the State of Ohio.

15.11 Commercially Reasonable Efforts. Between the date of this Agreement and the Closing Date, REX Stores, Seller and Purchaser shall cooperate with each other and use commercially reasonable efforts to perform their respective obligations hereunder and cause to be made the respective deliveries required to be made by them.

15.12 Termination; Reduction of Purchase Price. In the event of the termination of this Agreement with respect to any Property that, by the express terms of this Agreement, is governed by this Section 15.12, the Purchase Price shall be reduced by the amount equal to \$76.43 multiplied by the square footage of such Property as reflected on Exhibit 1.1 hereof.

15.13 Further Assurances. If at any time any of the parties hereto reasonably determine that any further assignments, conveyances or assurances are reasonably necessary or desirable to carry out the provisions hereof and the transactions contemplated herein, the appropriate parties hereto shall execute and deliver, or cause to be executed and delivered, any and all proper deeds, assignments and assurances and to do, or cause to be done, all things reasonably necessary or proper to carry out fully the provisions hereof.

15.14 Non-Solicitation. Seller agrees not to market for a sale, debt financing, joint venture or other direct or indirect disposition of any Property or the Properties (each, a "Prohibited Transaction"), negotiate for any Prohibited Transaction, or accept any offers for a Prohibited Transaction until the earliest to occur of (a) this Agreement is terminated with respect to the affected Property pursuant to the terms hereof, or (b) the termination of this Agreement in its entirety.

15.15 1031 Exchange. Any party hereto may structure the sale or purchase of any Property or the Properties, as the case may be, as a like-kind exchange under Internal Revenue Code Section 1031 at the exchanging party's sole cost and expense, except as set forth below. Each party shall reasonably cooperate therein, provided that such party(ies) shall incur no material costs, expenses or liabilities in connection with the other party's exchange. Each party shall indemnify, defend and hold the other harmless from all liability in connection with the indemnifying party's exchange. If any party uses a qualified intermediary to effectuate the exchange, any assignment of the rights or obligations of such party hereunder shall not relieve, release or absolve such party of its obligations to the others. The provisions of this Section 15.14. shall survive the Closing.

15.16 Joint and Several Liability. The obligations and undertakings of Seller One, Seller Two and Seller Three and REX Stores under this Agreement are joint and several.

15.17 Allocations. The allocation of the Purchase Price with respect to each Property on Schedule 15.17 shall be as set forth on such schedule. The allocation of the Purchase Price with respect to each Property other than each Property on Schedule 15.17 shall be mutually agreed upon between Seller and Purchaser not later than March 30, 2007. If Seller and Purchaser are unable to so agree by such date, the Purchase Price allocated to each Property other than the Properties on Schedule 15.17 hereof shall be calculated by multiplying the square footage of each Property by the Square Foot Allocation. For the purpose of this Agreement, (i) "Square Footage Allocation" shall mean the amount equal to the Adjusted Purchase Price divided by the Adjusted Aggregate Square Footage, (ii) "Adjusted Purchase Price" shall mean the amount equal to the Purchase Price for the Properties less the Purchase Price allocated to each Property on Schedule 15.17 hereof, and (iii) "Adjusted Aggregate Square Footage" shall mean the amount equal to the aggregate square footage of the Properties less the aggregate square footage of the Properties on Schedule 15.17.

## **SECTION 16 ESCROW**

### **16.1 Earnest Money**

(a) The parties hereto have mutually requested that the Escrow Agent act as escrow agent for the purpose of holding the Earnest Money in accordance with the terms of this Agreement. The Earnest Money shall be deposited by the Escrow Agent in an interest bearing account approved by Purchaser.

(b) The Earnest Money shall be released or delivered to the party entitled thereto pursuant to this Agreement with reasonable promptness after the Escrow Agent shall have received notice:

- (i) from Seller and Purchaser authorizing release of the Earnest Money, or
- (ii) of the occurrence of either of the following events:
  - (A) Closing, at which time the Earnest Money shall be paid to Seller and applied to the Purchase Price; or
  - (B) the receipt by the Escrow Agent of a written notice from either Seller or Purchaser stating that an event has occurred under this Agreement entitling the party delivering such notice to the Earnest Money, whereupon the Escrow Agent shall deliver written notice (the "Default Notice") thereof to the other party and, unless such other party shall have delivered a written notice of objection to the Title Company within ten (10) Business Days following receipt by such other party of the Default Notice, the Escrow Agent shall deliver the Earnest Money to the party initially requesting the Earnest Money.

#### 16.2 Duties.

(a) The Escrow Agent is to be considered as a depository only, shall not be deemed to be a party to any document other than this Agreement. The Escrow Agent shall not at any time be held liable for actions taken or omitted to be taken in good faith and in the exercise of reasonable judgment and without negligence or willful misconduct.

(b) It is further understood by Seller and Purchaser that if, as a result of any disagreement between them or adverse demands and claims being made by any of them upon the Escrow Agent, or if the Escrow Agent otherwise shall become involved in litigation with respect to this Agreement, the Escrow Agent may deposit the Earnest Money with a court of competent jurisdiction and/or in accordance with the order of a court of competent jurisdiction and in any such event, Seller and Purchaser agree that they, jointly and severally, are and shall be liable to the Escrow Agent and shall reimburse the Escrow Agent on demand for all costs, expenses and reasonable counsel fees it shall incur or be compelled to pay by reason of any such litigation. Seller and Purchaser agree between themselves that each shall be responsible to advance one-half of all amounts due the Escrow Agent pursuant to this Section 16.2, provided that any such advance by Seller or Purchaser as a result of any dispute or litigation between them shall be without prejudice to its right to recover such amount as damages from the breaching party except as otherwise provided herein.

(c) In taking or omitting to take any action whatsoever hereunder, the Escrow Agent shall be protected in relying upon any notice, paper, or other document reasonably believed by it to be genuine, or upon evidence deemed by it to be sufficient.



16.3 Closing.

(a) Upon the satisfaction of the mutual obligations of the parties hereunder, the Title Company shall promptly submit for recording or filing, as applicable, all appropriate instruments delivered to it at the Closing.

(b) The Title Company shall have no right to approve any amendment to this Agreement unless such amendment purports to affect the rights or obligations of the Title Company or Escrow Agent hereunder.

(c) The Title Company hereby agrees to serve as the "real estate reporting person" (as such term is defined in Section 6045(e) of the Code).

[signatures on following page]

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

**REX STORES:**

REX STORES CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER:**

REX RADIO AND TELEVISION, INC.,  
an Ohio corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

KELLY & COHEN APPLIANCES, INC.,  
an Ohio corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STEREO TOWN, INC.,  
a Georgia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PURCHASER:**

COVENTRY REAL ESTATE  
INVESTMENTS, LLC,  
a Delaware limited liability company

By: Coventry Real Estate Investment Holdings,  
LLC

By: \_\_\_\_\_  
David S. Hirschberg, Member



**Exhibit 1.1****List of Sites**

<b>Store No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>	<b>Seller</b>
3	2119 E. Dorothy Lane	Kettering	OH	45420	Montgomery	10,507	Seller One
10	5225 Highway 18 South	Jackson	MS	39209	Hinds	11,996	Seller One
32	2440 Broad Street	Sumter	SC	29151	Sumter	13,527	Seller Two
45	8522 US Hwy 441	Leesburg	FL	34788	Lake	12,000	Seller Three
50	1808 22nd Ave. SW	Minot	ND	58701	Ward	9,000	Seller One
51	7050 Ulmerton Road	Largo	FL	34641	Pinellas	11,988	Seller One
52	2651 29th St.	Greeley	CO	80631	Weld	12,980	Seller One
53	3755 Harrison Ave.	Butte	MT	59701	Silver Bow	12,000	Seller One
56	4300 10th Ave. South	Great Falls	MT	59405	Cascade	12,000	Seller One
59	8290 N. Pensacola Blvd.	Pensacola	FL	32505	Escambia	11,500	Seller Three
60	3501 6th Ave. S.E.	Aberdeen	SD	57401	Brown	11,956	Seller One
61	1725 32nd Ave. S.	Grand Forks	ND	58201	Grand Forks	11,844	Seller One
67	241 W. 15th Street	Panama City	FL	32401	Bay	8,746	Seller Three
73	3301 Singing Hills Blvd.	Sioux City	IA	51106	Woodbury	11,988	Seller Two
78	3548 Rt. 281	Cortland	NY	13045	Cortland	11,988	Seller Two
88	1801 Norman Drive	Valdosta	GA	31601	Lowndes	12,000	Seller Two
97	2717 W. 26th Street	Erie	PA	16506	Erie	12,000	Seller Two
103	1821 Beltline Road SW	Decatur	AL	35601	Morgan	11,000	Seller One
104	120 N. Range Line	Joplin	MO	65801	Jasper	12,000	Seller One
108	2619 Dawson Road	Albany	GA	31707	Dougherty	10,000	Seller Two
112	4099 McDonald Drive	Dubuque	IA	52002	Dubuque	11,830	Seller Two
118	1305 81 E. Ash Street	Piqua	OH	45356	Miami	12,000	Seller One
120	803 S. Wheatley Street	Ridgeland	MS	39158	Madison	9,920	Seller One
129	2920 Cheney Highway	Titusville	FL	32780	Brevard	12,000	Seller Three
132	5101 Okeechobee Rd.	Ft. Pierce	FL	34947	Saint Lucie	10,000	Seller Three
133	4436 Tamiami Trail	Naples	FL	33962	Collier	11,958	Seller Three
140	4801 Commercial Way	Springhill	FL	34606	Hernando	11,570	Seller Three
142	6748 NW Cache Road	Lawton	OK	73505	Comanche	12,000	Seller Three
143	28270 S. Tamiami Trail	Bonita Springs	FL	34134	Lee	11,988	Seller One
144	946 Orleans Road	Charleston	SC	29407	Charleston	11,058	Seller One
145	1817 S. Ave. West	Missoula	MT	59801	Missoula	11,840	Seller One
147	1414 Poleline Road East	Twin Falls	ID	83301	Twin Falls	11,988	Seller One
148	262 W. Hanley Avenue	Coeur D'Alen	ID	83814	Kootenai	11,988	Seller One
152	1804 N. Belt Highway	St. Joseph	MO	64506	Buchanan	7,000	Seller One
155	2827 Watson Blvd.	Warner Robins	GA	31093	Houston	11,900	Seller Two
160	1145 East Main Street	Carbondale	IL	62901	Jackson	11,211	Seller Two

Store							
No.	Address	City	State	ZIP	County	SF	Seller
162	12052 Highway 17 Bypass	Murrell's Inlet	SC	29576	Georgetown	9,999	Seller Two
163	2376 David Lyle Blvd.	Rock Hill	SC	29730	York	10,044	Seller Two
167	1200 Berkeley Blvd.	Goldsboro	NC	27532	Wayne	11,918	Seller Two
169	2045 Statesville Blvd.	Salisbury	NC	28144	Rowan	10,064	Seller Two
171	1806 21st Street	Lewiston	ID	83501	Nez Perce	11,904	Seller One
174	12905 U.S. Hwy 19	Hudson	FL	34667	Pasco	11,000	Seller Three
175	30512 U.S. Hwy 19 S.	Palm Harbor	FL	34684	Pinellas	11,000	Seller Three
183	7130 Rivers Ave.	Charleston	SC	29418	Charleston	9,600	Seller Two
193	106 East Loop 281	Longview	TX	75601	Gregg	11,918	Seller One
194	4322 John Ben Sheppard	Odessa	TX	79762	Ector	11,009	Seller One
196	4717 N. Midkiff Road	Midland	TX	79702	Midland	11,009	Seller One
201	331 Graft Road S.E.	Philadelphia	OH	44663	Tuscarawas	8,004	Seller One
202	4903 Milan Road	Sandusky	OH	44870	Erie	11,918	Seller One
204	2900 Milton Ave.	Janesville	WI	53545	Rock	11,988	Seller One
207	2550 E. Morris Blvd.	Morristown	TN	37813	Hamblen	7,650	Seller Two
212	8202 N. Naverro	Victoria	TX	77904	Victoria	10,044	Seller One
214	2200 Orchard Crossing	Benton Harbor	MI	49022	Berrien	11,985	Seller One
216	4130 E. Wilder Road	Bay City	MI	48706	Bay	13,940	Seller One
217	1612 Highway 50 West	Pueblo	CO	81008	Pueblo	11,988	Seller One
218	2152 Dell Range Blvd.	Cheyenne	WY	82009	Laramie	11,700	Seller One
219	3650 E. 2nd Street	Casper	WY	82601	Natrona	13,932	Seller One
220	2469 Hwy 6 & 50	Grand Junction	CO	81505	Mesa	11,985	Seller One
221	2223 Colorado Boulevard	Denton	TX	76205	Denton	11,985	Seller One
223	3035 Northridge East	Ashtabula	OH	44004	Ashtabula	11,960	Seller One
231	3501 4th St. SW	Mason City	IA	50401	Cerro Gordo	11,988	Seller Two
233	107 Sandy Court	Danville	VA	24541	Danville City	11,900	Seller One
237	6967 US Routes 322	Cranberry	PA	16319	Butler	11,920	Seller Two
238	4361 Venture Drive	Peru	IL	61354	La Salle	15,000	Seller Two
239	3208 Veterans Drive	Pekin	IL	61554	Tazewell	13,000	Seller Two
242	1804 N. Diers Avenue	Grand Island	NE	68803	Hall	14,652	Seller Two
248	20839 State Route 3	Watertown	NY	13601	Jefferson	11,880	Seller Two
252	96 Airport Beltway	Hazleton	PA	18201	Luzerne	11,988	Seller Two
254	1573 N. State Rte 50	Bradley	IL	60915	Kankakee	11,748	Seller Two
264	2313 N. Monroe	Monroe	MI	48162	Monroe	16,488	Seller One
265	2350 Airline Drive	Bossier City	LA	71111	Bossier Parish	14,985	Seller One
271	979 St. Rte 5 & US 20	Geneva	NY	14556	Ontario	11,970	Seller Two
272	2749 Military Road	Niagara Falls	NY	14305	Niagara	11,988	Seller Two
273	851 Highway 17 South	N. Myrtle Beach	SC	29582	Horry	11,988	Seller One

<b>Store</b>							
<b>No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>	<b>Seller</b>
276	2250 Tiffin Ave.	Findlay	OH	45840	Hancock	11,984	Seller One
280	5071 State Hwy 23	Seller Oneonta	NY	13820	Otsego	11,400	Seller Two
281	90A W. Campbell Road	Rotterdam	NY	12306	Schenectady	12,000	Seller Two
283	13115 Lee Highway	Bristol	VA	24202	Bristol	11,988	Seller One
284	4531 North Main Street	Roswell	NM	88202	Chaves	12,000	Seller One
287	420 Walton Drive	Texarkana	TX	75501	Bowie	11,700	Seller One
288	W8165 Hwy 2 & 141 South	Iron Mountain	MI	49801	Dickinson	11,988	Seller One
289	3336 North Montana Avenue	Helena	MT	59602	Lewis and Clark	11,988	Seller One
290	2615 Lincoln Way	Clinton	IA	52732	Clinton	11,988	Seller Two
291	1823 S. West Avenue	Freeport	IL	61032	Stephenson	11,970	Seller Two
292	2100 Memorial Drive	Waycross	GA	31501	Ware	11,988	Seller Two
295	3190 E. Andrew Johnson Hwy	Greenville	TN	37745	Greene	11,988	Seller Two
297	927 S. State Road 19	Palatka	FL	32177	Putnam	11,988	Seller Three
306	1611 West Rose Street	Walla Walla	WA	99362	Walla Walla	11,400	Seller One
307	2654 S.E. Washington Blvd.	Bartlesville	OK	74006	Washington	12,000	Seller Three
308	1431 Montana Hwy 35	Kalispell	MT	59901	Flathead	11,830	Seller One
309	1600 Memorial Drive	Houghton	MI	49931	Houghton	12,000	Seller One
314	2200 E. Main Street	Owosso	MI	48867	Shiawassee	11,988	Seller One
316	1603 E. Dixie Drive	Asheboro	NC	27203	Randolph	12,000	Seller Two
324	3869 N. Gloster	Tupelo	MS	38801	Lee	11,720	Seller One

**Seller Key:**

Seller One: Rex Radio and Television, Inc.

Seller Two: Kelly & Cohen Appliances, Inc.

Seller Three: Stereo Town, Inc.

**Exhibit 2.1(a)(i)**

**Legal Descriptions**

[see attachment]

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**Exhibit 2.3(a)**

**Form of Lease**

[see attachment]

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**Exhibit 2.3(b)**  
**Form of Guaranty**  
[see attachment]

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LEASE GUARANTEE

REX STORES CORPORATION, a Delaware corporation ("Guarantor"), whose address is 2875 Needmore Road, Dayton, Ohio 45414, as a material inducement to and in consideration of \_\_\_\_\_, a \_\_\_\_\_ ("Landlord"), entering into a written lease ("Lease") with \_\_\_\_\_ ("Tenant"), dated \_\_\_\_\_, 20\_\_\_\_, including any amendments thereto, pursuant to which Landlord leased to Tenant, and Tenant leased from Landlord, premises located in the City of \_\_\_\_\_, State of \_\_\_\_\_, described on Exhibit A, attached hereto and made a part hereof, together with all buildings and improvements located thereon, unconditionally and absolutely guarantees and promises, to and for the benefit of Landlord, its successors and assigns, that Tenant shall perform the provisions of the Lease that Tenant is to perform, including, but not limited to, payment of Minimum Rent and any and all other sums, charges, costs and expenses payable by Tenant, its successors and assigns, under the Lease and the full performance and observance of all of the covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant, its successors and assigns. The defined terms used herein shall have the same meaning as set forth in the Lease.

A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against Guarantor, Tenant, or whether Guarantor or Tenant, are joined in the action.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guarantee.

The provisions of the Lease may be changed by agreement between Landlord and Tenant, or their respective successors or assigns, at any time, or by course of conduct, without the consent of or without notice to Guarantor, including, without limitation, the rental obligations of Tenant, the Term of the Lease or the time for performance of any obligation thereunder, or the release, compromise or settlement of any Lease obligations. This Guarantee shall guarantee the performance of the Lease as changed.

This Guarantee shall not be affected by Landlord's failure or delay to enforce any of its rights or Landlord's promptness in commencing or diligence in prosecuting suit.

If Tenant defaults under the Lease, Landlord can proceed immediately against Guarantor or Tenant, or both parties collectively, without prior notice to Guarantor or Landlord can enforce against Guarantor or Tenant, or both parties collectively, any rights that it has under the Lease or pursuant to applicable laws. If the Lease terminates and Landlord has any rights it can enforce against Tenant after termination, Landlord can enforce those rights against Guarantor without giving previous notice to Tenant or Guarantor, or without making any demand on either of them. This Guarantee is a guarantee of payment and not of collection.

Guarantor waives the right to require Landlord to (1) proceed against Tenant; (2) proceed against or exhaust any security that Landlord holds from Tenant; or (3) pursue any other remedy in Landlord's power. Guarantor waives any defense by reason of any disability of Tenant, including but not limited to any limitation on the liability or obligation of Tenant under the Lease

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or its estate in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute, or from the decision of any court, and waives any other defense based on the termination of Tenant's liability from any cause whatsoever. Until all of Tenant's obligations to Landlord have been discharged in full, Guarantor has no right of subrogation against Tenant. Guarantor waives its rights to enforce any remedies that Landlord now has, or later may have against Tenant. Guarantor waives any right to participate in any security now or later held by Landlord. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Guarantee, and waives all notices of the existence, creation or incurring of new or additional obligations.

This Guarantee shall continue to be effective, or be reinstated, as the case may be, if at any time any whole or partial payment or performance of any obligation under the Lease is or is sought to be rescinded or must otherwise be restored or returned by Landlord upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Tenant, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for Tenant or any substantial part of Tenant's property, or otherwise, all as though such payments and performance had not been made.

If Landlord disposes of its interest in the Lease, the term "Landlord," as used in this Guarantee, shall mean Landlord's successors.

If Landlord is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Landlord all costs incurred, including, without limitation, reasonable attorneys' fees. Guarantor hereby waives trial by jury in any such legal proceedings.

If any term or provision of this Guarantee, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Guarantee, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Guarantee shall be valid and be enforced to the fullest extent permitted by law.

No waiver by Landlord of any provision or right hereunder shall be implied from any omission by Landlord to take any action on account of Landlord's right under such provision. Any express waiver by Landlord of any provision or right hereunder shall not act as a waiver of any provision or right elsewhere contained herein, and shall only act as a waiver as specifically expressed in said waiver, and only for the time and to the extent therein stated. One or more waivers by Landlord shall not be construed as a waiver of a subsequent breach of the same provision or right.

The rights and remedies given to Landlord by this Guarantee shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive at law or in equity of the rights and remedies which Landlord might otherwise have by virtue of a default under this Guarantee, and the exercise of one such right or remedy by Landlord shall not impair Landlord's standing to exercise any other rights or remedies.

All the terms, provisions and agreements of this Guarantee shall be construed liberally in favor of Landlord, shall inure to the benefit of and be enforceable by Landlord, its successors and assigns, and shall be binding upon Guarantor and its successors and assigns.

This Guarantee shall be governed by, and construed in accordance with, the laws of the State of Ohio.

WITNESSES AS TO GUARANTOR:

GUARANTOR:  
REX STORES CORPORATION,  
a Delaware corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF OHIO

SS:

COUNTY OF

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, \_\_\_\_\_, known to me to be the \_\_\_\_\_ of REX STORES CORPORATION, the corporation which executed the foregoing instrument, who acknowledged that he/she did sign and seal the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors, that the same is his/her free act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

**[Add to Guarantee: Exhibit A: Description of Leased Premises]**

**Exhibit 2.3(c)**

**Form of License Agreement**

[see attachment]

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**Exhibit 3.4(a)**

**Form of Space Lease Estoppel**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Proposed purchase of property located at \_\_\_\_\_ (the "Property"), subject to a Lease dated \_\_\_\_\_ ("Lease") between the undersigned ("Tenant") and \_\_\_\_\_ ("Landlord"), by virtue of that certain Purchase and Sale Agreement between Landlord and \_\_\_\_\_ ("Purchaser") dated \_\_\_\_\_, 2007

Ladies and Gentlemen:

I. The following statements are made with the knowledge that Purchaser is relying on them in connection with the purchase and assignment of the Landlord's interest in the Lease and, in connection therewith, Purchaser and Landlord and their respective lenders, successors and assigns (collectively, the "Beneficiaries") may rely on them for that purpose.

The undersigned hereby certifies to Purchaser and the other Beneficiaries that the following statements are true, correct and complete as of the date hereof:

1. The Lease is presently in full force and effect and neither Landlord nor Tenant is in default thereunder beyond any applicable notice or cure period. To the knowledge of the undersigned, no event has occurred that with the giving of notice or the passage of time, or both, would constitute a default by either Landlord or Tenant under the Lease.

2. The documents constituting the Lease, as described on Exhibit A attached hereto, constitute the entire agreement between Landlord and Tenant and there has been no amendment, written or oral, to the Lease except as included in Exhibit A.

3. [The term of the Lease commenced on \_\_\_\_\_, \_\_\_\_ and, unless sooner terminated in accordance with its terms, the term will end on \_\_\_\_\_, with options to extend for successive periods of \_\_\_\_\_ years each.][The term of the Lease is month-to-month and will expire upon thirty (30) days' prior written notice delivery to Tenant.] [Except the foregoing options to extend, if any,] there are no termination options, purchase options or rights of first refusal regarding the Property except as set forth in the Lease.

4. Tenant is currently paying \$\_\_\_\_\_ per month as rent under the Lease, which rent obligation is not past due or delinquent in any respect and has been paid through and including \_\_\_\_\_, 2007. [No percentage rent is due under the Lease.] [Percentage rent is due under the Lease, which percentage rent is calculated as follows: \_\_\_\_\_, which rent obligation is not past due or delinquent in any respect and

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has been paid through and including \_\_\_\_\_, 2007. Percentage rent paid in 2007 through \_\_\_\_\_ [current month], 2007 equaled \$\_\_\_\_\_. Percentage rent paid in 2006 equaled \$\_\_\_\_\_.] No rent under the Lease has been paid more than thirty (30) days in advance. The estimated additional rent payable pursuant to the Leases has been paid through and including \_\_\_\_\_, 2007 in the following amounts:

[COMPLETE PRIOR TO SENDING, IF APPLICABLE]

Common Area Maintenance	_____
Insurance	_____
Real Estate Taxes	_____
Water/Sewer	_____
Trash	_____
Utilities	_____
Reserve for Major Repairs	_____
Sign	_____

None of the additional rent set forth above is past due or delinquent in any respect.

5. [Tenant has not made any payment to Landlord as a security deposit or rental deposit.] [Tenant has made a payment to Landlord in the amount of \$

\_\_\_\_\_ as a security deposit.]

6. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises. To the knowledge of the undersigned, Landlord has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises.

7. All exhibits attached hereto are by this reference incorporated fully herein.

8. The undersigned is duly authorized to execute and deliver this estoppel certificate.

9. This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by Purchaser and the other Beneficiaries, and if any mortgage loan encumbering the Property becomes the subject of any securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities and any servicer and/or trustee acting in respect of such securitization.

EXECUTED as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit 3.4(b)**

**Form of REA Estoppel**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Proposed assignment of the REA (defined below) pursuant to that certain Purchase and Sale Agreement between \_\_\_\_\_ ("Seller") and \_\_\_\_\_ ("Purchaser") dated \_\_\_\_\_, 2007 regarding \_\_\_\_\_ (the "Property")

Ladies and Gentlemen:

II. The following statements are made with the knowledge that Purchaser is relying on them in connection with the purchase of the Property and the assignment to Purchaser of the REA (defined below) in connection therewith, and Purchaser and Seller and their respective lenders, successors and assigns, and successor owners of the Property (collectively, the "Beneficiaries") may rely on them for that purpose.

The undersigned hereby certifies to Purchaser and the other Beneficiaries that the following statements are true, correct and complete as of the date hereof:

1. The undersigned is a party to the documents identified on Exhibit A attached hereto (collectively, the "REA"). Seller is a party to the REA with respect to the Property. There have been no amendments, modifications or revisions to the REA, written or oral, except as set forth on Exhibit A.

2. The REA is presently in full force and effect.

3. No party is in default under the REA beyond any applicable notice or cure period, including, without limitation, any common area maintenance obligations under the REA, no event has occurred that with the giving of notice or passage of time, or both, could constitute a default under the REA, and no party to the REA owes any payment or other funds under the REA to a third party or other party thereto.

4. There are no unpaid assessments or charges existing under the REA that are due from Seller or previous owners or occupants of the Property. The amount of assessments or charges assessed against all of the Property subject to the REA for 2005 was \$\_\_\_\_\_, which amount was timely paid in full. No assessments or charges have been paid more than one (1) month in advance.

5. All construction work, if any, required to be performed by Seller under the REA has been completed as required thereunder and has been accepted by the other party thereto.

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6. The undersigned is duly authorized to execute and deliver this estoppel certificate.

7. This estoppel certificate is binding upon the undersigned and its successors and assigns and may be relied upon by Purchaser and the other Beneficiaries, and if any mortgage loan encumbering the Property becomes the subject of any securitization, may also be relied upon by the credit rating agency, if any, rating the securities collateralized by the mortgage loan as well as any issuer of such securities and any servicer and/or trustee acting in respect of such securitization.

EXECUTED as of the day of , 2007.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Exhibit 4.2(a)(i)**

**Form of Deed**

[see attachment]

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RECORDING REQUESTED BY

AND WHEN RECORDED MAIL

TO:

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Special Warranty Deed**

For the consideration of Ten Dollars (\$10.00), and other valuable considerations, I or we,  
\_\_\_\_\_, do/does hereby convey to  
\_\_\_\_\_ the real property situated in \_\_\_\_\_ County, \_\_\_\_\_ described as Parcel Nos.  
\_\_\_\_\_ [the fee parcels] on Exhibit A attached hereto and made a part hereof.

TOGETHER WITH: any and all rights, benefits, privileges, easements, tenements, hereditaments, rights-of-way and other appurtenances thereon or in any way appertaining thereto, including without limitation Grantor's interest in Parcel Nos. \_\_\_\_\_ [the appurtenant easements] described on Exhibit A attached hereto and made a part hereof;

SUBJECT ONLY TO: (i) real estate taxes and assessments which are a lien but not yet due and payable, (ii) building and zoning laws, ordinances and regulations, (iii) public streets and rights of way and (iv) such other matters set forth on Exhibit B attached hereto and made a part hereof. And the Grantor hereby binds itself and its successors to warrant and defend the title against all acts of the Grantor herein, and no other, subject to the matters set forth.

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**Exhibit 4.2(a)(ii)**

**Form of Space Lease Assignment**

[see attachment]

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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "Assignment") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2007, between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor") and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

1. Property. The "Property" shall mean the land legally described in Exhibit A attached to this Assignment, together with the buildings, structures and other improvements located thereon.

2. Leases and Tenancies. The "Leases" shall mean all leases and any amendments thereto identified on Exhibit B attached to this Assignment.

3. Assignment. For good and valuable consideration received by Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby gives, grants, conveys and assigns to Assignee as of the date hereof, the entire right, title and interest of Assignor in and to the Leases.

4. Assumption. Assignee hereby assumes, and agrees to be bound by and to perform, all of the covenants, agreements and obligations of Assignor under the Leases accruing on or after the date hereof.

5. Third Parties. No third party shall have the benefit of any of the provisions of this Assignment, nor is this Assignment made with the intent that any person or entity other than Assignor or Assignee rely hereon.

6. Indemnification by Assignor. Assignor hereby indemnifies Assignee, and agrees to defend and hold Assignee harmless from and against any and all liability, loss, cost, damage and/or expense, including without limitation reasonable attorneys' fees, which Assignee shall incur in connection to the Leases by reason of any failure or alleged failure of Assignor to have complied with or to have fully performed, before the date hereof, all obligations on its part to have been performed, complied with or discharged under any of the terms and conditions of the Leases.

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7. Indemnification by Assignee. Assignee hereby indemnifies Assignor, and agrees to defend and hold Assignor harmless from and against any and all liability, loss, cost, damage and/or expense, including without limitation reasonable attorneys' fees, which Assignor shall incur in connection with the Leases by reason of any failure or alleged failure of Assignee, as the successor to Assignor, to comply with or to fully perform, on and after the date hereof, all obligations to be performed or complied with under any of the terms and conditions in of the Leases.

8. Counterparts. This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as a single instrument. For purposes of this Agreement, a facsimile of an executed counterpart shall constitute an original.

9. Successors and Assigns. The terms and conditions of this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

[signatures on following page]

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IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

**ASSIGNEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[\*\*add appropriate notary blocks]**

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**Exhibit 4.2(a)(iii)**

**Form of Non-Foreign Transferor Certification**

NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by \_\_\_\_\_, a \_\_\_\_\_ limited liability company ("Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate, or foreign person (as those terms are defined in the Internal Revenue Code and the Income Tax Regulations promulgated thereunder);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's address is .

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury the undersigned declares that it has examined this certification and to the best of its knowledge and belief it is true, correct and complete, and it further declares that it has authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 2007

Transferor:

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

Name: \_\_\_\_\_

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

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**Exhibit 4.2(a)(vii)**

**Form of Date-Down Letter**

CLOSING CERTIFICATE

\_\_\_\_\_, a \_\_\_\_\_ limited liability company ("Seller"), hereby certifies and confirms for the benefit of \_\_\_\_\_ ("Purchaser"), that all representations and warranties made by Seller in the Purchase and Sale Agreement dated \_\_\_\_\_, 2007, by and between Seller and Purchaser, are true and correct in all material respects as of the date hereof.

DATED as of the \_\_\_\_ day of \_\_\_\_\_, 2007.

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

Name: \_\_\_\_\_

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

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**Exhibit 4.2(a)(x)**

**Form of REA Assignment**

[see attachment]

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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ASSIGNMENT AND ASSUMPTION

OF RECIPROCAL EASEMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF RECIPROCAL EASEMENT AGREEMENT (this "Assignment") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor") and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

1. Property. The "Property" shall mean the land legally described in Exhibit A attached to this Assignment, together with the buildings structures and other improvements located thereon.
  2. REA. The "REA" shall mean the agreements affecting the Property, or any part thereof, listed on Exhibit B attached to this Assignment as amended or supplemented from time to time.
  3. Assignment. For good and valuable consideration received by Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby gives, grants, conveys and assigns to Assignee as of the date hereof the entire right, title and interest of Assignor in and to the REA.
  4. Assumption. Assignee hereby assumes, and agrees to be bound by and to perform, all of the covenants, agreements and obligations of Assignor under the REA described on Exhibit B accruing on or after the date hereof.
  5. Indemnification by Assignor. Assignor hereby indemnifies Assignee, and agrees to defend and hold Assignee harmless from and against any and all liability, loss, cost, damage and/or expense, including, without limitation, reasonable attorneys' fees, which Assignee shall incur in connection to the REA by reason of any failure or alleged failure of Assignor to have complied with or to have fully performed, before the date hereof, all obligations on its part to have been performed, complied with or discharged under any of the terms and conditions of the REA.
  6. Indemnification by Assignee. Assignee hereby indemnifies Assignor, and agrees to defend and hold Assignor harmless from and against any and all liability, loss, cost, damage and/or expense, including without limitation reasonable attorneys' fees, which Assignor shall incur in connection with the REA by reason of any failure or alleged failure of Assignee, as
-

the successor to Assignor, to comply with or to fully perform, on and after the date hereof, all obligations to be performed or complied with under any of the terms and conditions in of the REA.

7. Counterparts. This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as a single instrument. For purposes of this Agreement, a facsimile of an executed counterpart shall constitute an original.

8. Successors and Assigns. The terms and conditions of this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

[signatures on following page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

**ASSIGNEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**\*\*add appropriate notary blocks**

---

**Exhibit 4.2(a)(xii)**

**Form of Bill of Sale and Assignment**

[see attachment]

---

BILL OF SALE AND ASSIGNMENT

This BILL OF SALE AND ASSIGNMENT (this "Bill of Sale") is made and entered into as of \_\_\_\_\_, 2007, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

In consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign, transfer, convey and deliver to Assignee, its successors and assigns, all of Seller's right title and interest in and to the Personal Property and Intangible Property, as such terms are defined in the Purchase and Sale Agreement, by and between Assignor and Assignee, dated as of

\_\_\_\_\_, 2007 (the "Purchase Agreement").

Assignor warrants to Assignee that Assignor owns all right, title and interest in the Personal Property and Intangible Property free and clear of any lien, security interest or adverse claim.

[signatures on following page]

---

IN WITNESS WHEREOF, Assignor and Assignee have executed this Bill of Sale as of the day and year first above written.

**ASSIGNEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---



**Exhibit 12(f)**

**Insurance Certificate**

[see attachment]

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**Schedule 2.1(a)(iv)**

**Schedule of Space Lease Documents**

Store 88 – 1801 Norman Drive, Valdosta, Georgia

Lease dated January 30, 2006 between Kelly & Cohen Appliances, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

Store 108 – 2619 Dawson Road, Albany, Georgia

Lease dated September 23, 2005 between Kelly & Cohen Appliances, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

Store 142 - 6748 N.W. Cache Road, Lawton, Oklahoma

Lease dated October 14, 2005 between Stereo Town, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

Store 163 - 2376 David Lyle Boulevard, Rock Hill, South Carolina

Lease dated January 30, 2006 between Kelly & Cohen Appliances, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

Store 214 - 2200 Orchard Crossing, Benton Harbor, Michigan

Lease dated December 10, 2003 between Rex Radio and Television, Inc., as landlord, and Goodwill Industries of Southwestern Michigan, Inc., as tenant

Store 265(a) – 2350 Airline Drive, Bossier City, Louisiana

Lease dated February 24, 2006 between Rex Radio and Television, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

Store 265(b) – 2350 Airline Drive, Bossier City, Louisiana

Lease dated August 9, 2001 between Rex Radio and Television, Inc., as landlord, and Nexola Communications, Inc., as tenant

Store 288 - 8165 US Highway 1/141, Iron Mountain, Michigan

Lease dated October 14, 2005 between Rex Radio and Television, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

Letter from landlord dated April 20, 2006 representing that actual real estate tax base for 2004 is \$12,029.00 (rather than \$6,209.81 as set forth in Section A.11.b.2 of the Lease)

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Store 307 - 2651 SE Washington Boulevard, Bartlesville, Oklahoma

Lease dated October 14, 2005 between Stereo Town, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

Store 309 - 1600 Memorial Road, Houghton, Michigan

Lease dated October 14, 2005 between Rex Radio and Television, Inc., as landlord, and Dollar Tree Stores, Inc., as tenant

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**Schedule 2.3(a)(i)**

**Schedule of Twenty Leased Properties**

<b>Store No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>
3	2119 E. Dorothy Lane	Kettering	OH	45420	Montgomery	10,507
32	2440 Broad Street	Sumter	SC	29151	Sumter	13,527
45	8522 US Hwy 441	Leesburg	FL	34788	Lake	12,000
103	1821 Beltline Road SW	Decatur	AL	35601	Morgan	11,000
129	2920 Cheney Highway	Titusville	FL	32780	Brevard	12,000
147	1414 Poleline Road East	Twin Falls	ID	83301	Twin Falls	11,988
194	4322 John Ben Sheppard	Odessa	TX	79762	Ector	11,009
202	4903 Milan Road	Sandusky	OH	44870	Erie	11,918
207	2550 E. Morris Blvd.	Morristown	TN	37813	Hamblen	7,650
218	2152 Dell Range Blvd.	Cheyenne	WY	82009	Laramie	11,700
219	3650 E. 2nd Street	Casper	WY	82601	Natrona	13,932
233	107 Sandy Court	Danville	VA	24541	Danville City	11,900
238	4361 Venture Drive	Peru	IL	61354	La Salle	15,000
254	1573 N. State Rte 50	Bradley	IL	60915	Kankakee	11,748
276	2250 Tiffin Ave.	Findlay	OH	45840	Hancock	11,984
280	5071 State Hwy 23	Oneonta	NY	13820	Otsego	11,400
283	13115 Lee Highway	Bristol	VA	24202	Bristol	11,988
306	1611 West Rose Street	Walla Walla	WA	99362	Walla Walla	11,400
314	2200 E. Main Street	Owosso	MI	48867	Shiawassee	11,988
324	3869 N. Gloster	Tupelo	MS	38801	Lee	11,720

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**Schedule 2.3(a)(ii)**

**Schedule of Twenty Non-Leased Properties**

<b>Store No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>
10	5225 Highway 18 South	Jackson	MS	39209	Hinds	11,996
52	2651 29th St.	Greeley	CO	80631	Weld	12,980
61	1725 32nd Ave. S.	Grand Forks	ND	58201	Grand Forks	11,844
67	241 W. 15th Street	Panama City	FL	32401	Bay	8,746
78	3548 Rt. 281	Cortland	NY	13045	Cortland	11,988
97	2717 W. 26th Street	Erie	PA	16506	Erie	12,000
112	4099 McDonald Drive	Dubuque	IA	52002	Dubuque	11,830
120	803 S. Wheatley Street	Ridgeland	MS	39158	Madison	9,920
144	946 Orleans Road	Charleston	SC	29407	Charleston	11,058
145	1817 S. Ave. West	Missoula	MT	59801	Missoula	11,840
155	2827 Watson Blvd.	Warner Robins	GA	31093	Houston	11,900
169	2045 Statesville Blvd.	Salisbury	NC	28144	Rowan	10,064
183	7130 Rivers Ave.	Charleston	SC	29418	Charleston	9,600
193	106 East Loop 281	Longview	TX	75601	Gregg	11,918
216	4130 E. Wilder Road	Bay City	MI	48706	Bay	13,940
221	2223 Colorado Boulevard	Denton	TX	76205	Denton	11,985
231	3501 4th St. SW	Mason City	IA	50401	Cerro Gordo	11,988
248	20839 State Route 3	Watertown	NY	13601	Jefferson	11,880
252	96 Airport Beltway	Hazleton	PA	18201	Luzerne	11,988
272	2749 Military Road	Niagara Falls	NY	14305	Niagara	11,988

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**Schedule 2.3(e)**

**Schedule of Twenty-Two Properties**

<b>Store No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>
3	2119 E. Dorothy Lane	Kettering	*/OH	45420	Montgomery	10,507
32	2440 Broad Street	Sumter	SC	29151	Sumter	13,527
45	8522 US Hwy 441	Leesburg	FL	34788	Lake	12,000
103	1821 Beltline Road SW	Decatur	AL	35601	Morgan	11,000
129	2920 Cheney Highway	Titusville	FL	32780	Brevard	12,000
133	4436 Tamiami Trail	Naples	FL	33962	Collier	11,958
143	28270 S. Tamiami Trail	Bonita Springs	FL	34134	Lee	11,988
147	1414 Poleline Road East	Twin Falls	ID	83301	Twin Falls	11,988
194	4322 John Ben Sheppard	Odessa	TX	79762	Ector	11,009
202	4903 Milan Road	Sandusky	OH	44870	Erie	11,918
207	2550 E. Morris Blvd.	Morristown	TN	37813	Hamblen	7,650
218	2152 Dell Range Blvd.	Cheyenne	WY	82009	Laramie	11,700
219	3650 E. 2nd Street	Casper	WY	82601	Natrona	13,932
233	107 Sandy Court	Danville	VA	24541	Danville City	11,900
238	4361 Venture Drive	Peru	IL	61354	La Salle	15,000
254	1573 N. State Rte 50	Bradley	IL	60915	Kankakee	11,748
264	2313 N. Monroe	Monroe	MI	48162	Monroe	16,488
280	5071 State Hwy 23	Oneonta	NY	13820	Otsego	11,400
283	13115 Lee Highway	Bristol	VA	24202	Bristol	11,988
306	1611 West Rose Street	Walla Walla	WA	99362	Walla Walla	11,400
314	2200 E. Main Street	Owosso	MI	48867	Shiawassee	11,988
324	3869 N. Gloster	Tupelo	MS	38801	Lee	11,720

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Schedule 3.1(a)(xix)

Schedule of Service Contracts

NONE

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**Schedule 3.3(f)**

**Additional Properties**

<b>Store No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>
60	3501 6th Ave. S.E.	Aberdeen	South Dakota	SD	57401	Brown	11,956
254	1573 N. State Rte 50	Bradley	Illinois	IL	60915	Kankakee	11,748
271	979 St. Rte 5 & US 20	Geneva	New York	NY	14556	Ontario	11,970
292	2100 Memorial Drive	Waycross	Georgia	GA	31501	Ware	11,988
248	20839 State Route 3	Watertown	New York	NY	13601	Jefferson	11,880
118	1305 81 E. Ash Street	Piqua	Ohio	OH	45356	Miami	12,000
104	120 N. Range Line	Joplin	Missouri	MO	65801	Jasper	12,000
316	1603 E. Dixie Drive	Asheboro	North Carolina	NC	27203	Randolph	12,000

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**Schedule 3.3(i)**

**Environmental Assessment Properties**

<b>Store</b>							
<b>No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>
290	2615 Lincoln Way	Clinton	Iowa	IA	52732	Clinton	11,988
276	2250 Tiffin Ave.	Findlay	Ohio	OH	45840	Hancock	11,984
231	3501 4th St. SW	Mason City	Iowa	IA	50401	Cerro Gordo	11,988
291	1823 S. West Avenue	Freeport	Illinois	IL	61032	Stephenson	11,970

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**Schedule 3.6(a)(vii)**

**Schedule of 25 Properties**

<b>Store No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>
60	3501 6th Ave. S.E.	Aberdeen	South Dakota	SD	57401	Brown	11,956
108	2619 Dawson Road	Albany	Georgia	GA	31707	Dougherty	10,000
307	2654 S.E. Washington Blvd.	Bartlesville	Oklahoma	OK	74006	Washington	12,000
143	28270 S. Tamiami Trail	Bonita Springs	Florida	FL	34134	Lee	11,988
265	2350 Airline Drive	Bossier City	Louisiana	LA	71111	Bossier Parish	14,985
254	1573 N. State Rte 50	Bradley	Illinois	IL	60915	Kankakee	11,748
283	13115 Lee Highway	Bristol	Virginia	VA	24202	Bristol	11,988
219	3650 E. 2nd Street	Casper	Wyoming	WY	82601	Natrona	13,932
218	2152 Dell Range Blvd.	Cheyenne	Wyoming	WY	82009	Laramie	11,700
290	2615 Lincoln Way	Clinton	Iowa	IA	52732	Clinton	11,988
276	2250 Tiffin Ave.	Findlay	Ohio	OH	45840	Hancock	11,984
271	979 St. Rte 5 & US 20	Geneva	New York	NY	14556	Ontario	11,970
242	1804 N. Diers Avenue	Grand Island	Nebraska	NE	68803	Hall	14,652
52	2651 29th St.	Greeley	Colorado	CO	80631	Weld	12,980
288	W8165 Hwy 2 & 141 South	Iron Mountain	Michigan	MI	49801	Dickinson	11,988
142	6748 NW Cache Road	Lawton	Oklahoma	OK	73505	Comanche	12,000
231	3501 4th St. SW	Mason City	Iowa	IA	50401	Cerro Gordo	11,988
145	1817 S. Ave. West	Missoula	Montana	MT	59801	Missoula	11,840
133	4436 Tamiami Trail	Naples	Florida	FL	33962	Collier	11,958
175	30512 U.S. Hwy 19 S.	Palm Harbor	Florida	FL	34684	Pinellas	11,000
238	4361 Venture Drive	Peru	Illinois	IL	61354	La Salle	15,000
217	1612 Highway 50 West	Pueblo	Colorado	CO	81008	Pueblo	11,988
324	3869 N. Gloster	Tupelo	Mississippi	MS	38801	Lee	11,720
88	1801 Norman Drive	Valdosta	Georgia	GA	31601	Lowndes	12,000
306	1611 West Rose Street	Walla Walla	Washington	WA	99362	Walla Walla	11,400

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**Schedule 6.1(c)(i)**

**Schedule of Purchase Option Agreements**

<b>Store No.</b>	<b>Property Address</b>	<b>Purchase Option Agreement</b>
103	1821 Beltline Road SW Decatur, AL 35601	Deed from Beltline-Decature to Seller, dated October 22, 1986
160	1145 East Main Street Carbondale, IL 62901	Supplemental Agreement, between Kelly & Cohen Appliances, Inc. and UM Partners, dated June 5, 1994 (recorded)
201	331 Graft Road New Philadelphia, OH 44663	General Warranty Deed, by Newtowne Mall Associates Limited Partnership, as grantor, to Rex, as grantee, dated August 25, 1993
207	2550 E. Morris Blvd. Morristown, TN 37813	Special Warranty Deed, by CBL Morristown, Ltd., as grantor, to Kelly & Cohen Appliances, Inc., as grantee, dated October 15, 1993
252	96 Airport Beltway Hazelton, PA 18201	Supplemental Agreement, dated November 26, 1971, and recorded in Book 1737, Page 1058.
316	1603 E. Dixie Drive Asheboro, NC 27203	Easement and Restriction Agreement dated September 5, 2000, by and among Randolph Fringe Land, Ltd., Kelly & Cohen Appliances, Inc. and JG Randolph LLC (recorded) (referenced also in Special Warranty Deed, by Randolph Fringe Land, Ltd., as grantor, to Kelly & Cohen Appliances, Inc., as grantee, dated September 5, 2000)

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**Schedule 6.1(c)(ii)**

**Schedule of Right of First Refusal Agreements**

<b>Store No.</b>	<b>Property Address</b>	<b>Right of First Refusal Agreements</b>
103	1821 Beltline Road SW Decatur, AL 35601	Deed from Beltline-Decatur to Seller, dated October 22, 1986
145	1817 S. Ave. West Missoula, MT 59801	Right of First Refusal, between Kelly & Cohen Appliances, Inc. and Southgate Mall Associates, LLP ("Southgate"), dated November 4, 1998
155	2827 Watson Blvd. Warner Robbins, GA 31093	Right of First Refusal to Purchase, between Kelly & Cohen Appliances, Inc. and S.G.I., Inc., dated August 15, 1994
160	1145 East Main Street Carbondale, IL 62901	Supplemental Agreement, between Kelly & Cohen Appliances, Inc. and UM Partners, dated June 5, 1994 (recorded)
207	2550 E. Morris Blvd. Morristown, TN 37813	Special Warranty Deed, by CBL Morristown, Ltd., as grantor, to Kelly & Cohen Appliances, Inc., as grantee, dated October 15, 1993
214	2200 Orchard Crossing Benton Harbor, Michigan 49022	Lease Agreement, by and between Goodwill Industries of Southwestern Michigan, Inc. and Rex Radio and Television, Inc., dated December 10, 2003
223	3035 Northridge East Ashtabula, OH 44004	Grant Deed from Ashtabula Mall Company to Seller, dated c. August 10, 1995, and recorded in Vol. 082, Page 9878 of the county records.
264	2313 N. Monroe Monroe, MI 48162	Grant Deed from Frenchtown Square Partnership to Kelly & Cohen, dated c. December 7, 1999, recorded in Liber 1872, Page 0009.
316	1603 E. Dixie Drive Asheboro, NC 27203	Easement and Restriction Agreement dated September 5, 2000, by and among Randolph Fringe Land, Ltd., Kelly & Cohen Appliances, Inc. and JG Randolph LLC (recorded) (referenced also in Special

**Store  
No.**

**Property Address**

**Right of First Refusal Agreements**

Warranty Deed, by Randolph Fringe Land, Ltd., as grantor, to Kelly & Cohen Appliances, Inc., as grantee, dated September 5, 2000)

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**Schedule 6.1(e)**

**Schedule of Litigation**

NONE

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**Schedule 6.1(h)**

**Schedule of Leasing Commissions**

NONE

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**Schedule 6.1(j)**

**Schedule of Required Consents**

NONE

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**Schedule 15.17**

**Purchase Price Allocations**

<b>Store No.</b>	<b>Address</b>	<b>City</b>	<b>State</b>	<b>ZIP</b>	<b>County</b>	<b>SF</b>	<b>Allocated Purchase Price</b>
103	1821 Beltline Road SW	Decatur	AL	35601	Morgan	11,000	\$ 1,320,000
145	1817 S. Ave. West	Missoula	MT	59801	Missoula	11,840	\$ 1,598,400
155	2827 Watson Blvd. 1145 East Main	Warner Robins	GA	31093	Houston	11,900	\$ 1,428,000
160	Street	Carbondale	IL	62901	Jackson	11,211	\$ 1,345,320
207	2550 E. Morris Blvd.	Morristown	TN	37813	Hamblen	7,650	\$ 918,000
214	2200 Orchard Crossing	Benton Harbor	MI	49022	Berrien	11,985	\$ 1,477,579
223	3035 Northridge East	Ashtabula	OH	44004	Ashtabula	11,960	\$ 1,435,200
264	2313 N. Monroe	Monroe	MI	48162	Monroe	16,488	\$ 1,731,240
316	1603 E. Dixie Drive	Asheboro	NC	27203	Randolph	12,000	\$ 1,440,000
<b>TOTALS</b>						<b>106,034</b>	<b>\$12,693,739.00</b>

April 16, 2007

REX Stores Corporation  
2875 Needmore Road  
Dayton, Ohio 45414

Dear Sirs/Madams:

We have audited the consolidated financial statements of REX Stores Corporation as of January 31, 2007 and 2006, and for each of the three years in the period ended January 31, 2007, included in your Annual Report on Form 10-K to the Securities and Exchange Commission and have issued our report thereon dated April 16, 2007, which expresses an unqualified opinion and includes an explanatory paragraph concerning the adoption of Statement of Financial Accounting Standards No. 123R, *Share-Based Payments*. Note 2 to such consolidated financial statements contains a description of your adoption during the year ended January 31, 2007 of the change in the method of accounting from the lower of cost or market using the last-in, first-out method to the lower of cost or market using the first-in, first-out method for certain inventory. In our judgment, such change is to an alternative accounting principle that is preferable under the circumstances.

Yours truly,

Deloitte & Touche LLP

Cincinnati, Ohio

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## SUBSIDIARIES OF REX STORES CORPORATION

<u>Name</u>	<u>State of Incorporation</u>
Rex Radio and Television, Inc. <sup>(1)</sup>	Ohio
Stereo Town, Inc.	Georgia
Kelly & Cohen Appliances, Inc. <sup>(1)</sup>	Ohio
Rex Kansas, Inc. <sup>(2)</sup>	Kansas
AVA Acquisition Corp.	Delaware
Rex Louisiana, Inc. <sup>(3) (4)</sup>	Ohio
Rex Alabama, Inc. <sup>(2)</sup>	Ohio
REX Investment, LLC <sup>(5)</sup>	Ohio
rexstores.com, Inc.	Ohio
Rex Acquisition, LLC <sup>(3)</sup>	Ohio
Farmers Energy Incorporated	Delaware
Farmers Energy Big River Holding, LLC <sup>(6)</sup>	Ohio
Farmers Energy Big River, LLC <sup>(7)</sup>	Ohio
Farmers Energy Levelland Holding, LLC <sup>(6)</sup>	Ohio
Farmers Energy Levelland, LLC <sup>(7)</sup>	Ohio
Farmers Energy Millennium Holding, LLC <sup>(6)</sup>	Ohio
Farmers Energy Millennium, LLC <sup>(7)</sup>	Ohio
Farmers Energy One Earth Holding, LLC <sup>(6)</sup>	Ohio
Farmers Energy One Earth, LLC <sup>(7)</sup>	Ohio

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Farmers Energy Patriot Holding, LLC<sup>(6)</sup>

Ohio

Farmers Energy Patriot, LLC<sup>(7)</sup>

Ohio

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(1) Wholly-owned subsidiary of AVA Acquisition Corp.

(2) Wholly-owned subsidiary of Rex Radio and Television, Inc.

(3) Non-operating subsidiary.

(4) Wholly-owned subsidiary of Kelly & Cohen Appliances, Inc.

(5) AVA Acquisition Corp. is the managing member and owns a 98.032% Class A interest, a 95.46% Class B interest and a 100% Class C interest.

(6) First-tier wholly-owned subsidiary of Farmers Energy Incorporated.

(7) Second-tier wholly-owned subsidiary of Farmers Energy Incorporated.

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 33-3836, 033-81706, 033-62645, 333-69081, 333-69089, 333-35118, and 333-69690 on Forms S-8 of our reports dated April 16, 2007 relating to the consolidated financial statements and consolidated financial statement schedules of REX Stores Corporation (which expresses an unqualified opinion on the Company's consolidated financial statements and includes an explanatory paragraph referring to the Company's change effective February 1, 2006 in its accounting for stock based compensation), and management's report on the effectiveness of internal control over financial reporting, appearing in this Annual Report on Form 10-K of REX Stores Corporation for the year ended January 31, 2007.

Deloitte & Touche LLP

April 16, 2007

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## CERTIFICATIONS

I, Stuart A. Rose, certify that:

1. I have reviewed this annual report on Form 10-K of REX Stores Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 16, 2007

/s/ STUART A. ROSE

Stuart A. Rose  
Chairman of the Board and  
Chief Executive Officer

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I, Douglas L. Bruggeman, certify that:

1. I have reviewed this annual report on Form 10-K of REX Stores Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 16, 2007

/s/DOUGLAS L. BRUGGEMAN

Douglas L. Bruggeman  
Vice President, Finance, Treasurer and  
Chief Financial Officer

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION  
1350, AS ADOPTED PURSUANT TO SECTION 906 OF  
THE SARBANES-OXLEY ACT OF 2002**

The undersigned officers of REX Stores Corporation (the "Company") hereby certify, to their knowledge, that the Company's Annual Report on Form 10-K for the period ended January 31, 2007, which this certificate accompanies, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained therein fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/STUART A. ROSE  
Stuart A. Rose

/s/DOUGLAS L. BRUGGEMAN  
Douglas L. Bruggeman

Dated: April 16, 2007

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