

## AMENDED CREDIT AGREEMENT

This Amended Credit Agreement (the "Agreement") is made and entered into as of the 7 of March, 2011 by and between Northern Beef Packers, Limited Partnership, a South Dakota limited partnership, (hereinafter referred to as "Borrower") of 38749 135<sup>th</sup> Street, Aberdeen, South Dakota, 57401 and SDIF Limited Partnership 6 of 416 Production Street North, Aberdeen, South Dakota 57401, (hereinafter referred to as "Lender"):

WHEREAS, Borrower has requested a Loan, as hereinafter defined, from Lender in the principal amount of up to Sixty Million Dollars (\$60,000,000) to be funded by up to One Hundred Twenty (120) investors (EB-5 Investors) participating in the EB-5 Program, more specifically known as the Immigration and Nationality Act, Section 203(b)(5) et seq. (the "EB-5 Program"); and

WHEREAS, Lender has agreed to make the Loan to Borrower upon and subject to the terms and conditions set forth herein and the other documents evidencing and securing the loan.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein the receipt and sufficiency of which, when performed, are hereby acknowledged, the Borrower and Lender hereby agree as follows:

### **SECTION 1** **Loan Terms**

1.1 Description of the Project. The project involved is a beef packing plant currently under construction in Aberdeen, South Dakota (Project) located on land described in Exhibit A attached hereto (Land), which is to be owned and operated by Borrower

1.2 Loan. Borrower acknowledges and agrees that the Loan will be funded by Lender solely from investment proceeds arising out of the EB-5 Program and that the Lender shall have no obligation to make or fund the Loan unless and until it receives investment proceeds arising out of the EB-5 Program. Subject to the terms of this Agreement, Lender agrees to make the proceeds arising out of the EB-5 Program available to Borrower as follows:

(a). Lender shall loan up to Sixty Million Dollars (\$60,000,000) (the "Loan") as the same is raised pursuant to the offering being conducted by Lender under the EB-5 program. The parties agree that Lender may make the first Loan disbursement to Borrower only after Lender has received funds under the EB-5 Program in an initial amount of Five Million Dollars (\$5,000,000). Disbursements shall be made solely at Lender's discretion.

(b). All subsequent disbursements or installments shall be in the minimum amount of Two Million Dollars (\$2,000,000) or higher, unless otherwise agreed upon by the

parties. Said disbursements shall be made as soon as practical after Lender has received said sums.

1.3 Note. The Loan shall be evidenced by a Note in a form and substance satisfactory to Lender and its legal counsel (the "Note") attached as Exhibit B.

1.4 Collateral. As collateral for the payment, of all amounts that become due and owing to Lender under this Agreement, the Note, the Security Agreement, the Mortgage, the Collateral Assignment, the Pledge Agreement, the previous Credit Agreement dated November 4, 2010, except as amended herein, any and all other documents which Borrower, Guarantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified. Borrower agrees to grant Lender a security interest in and a first lien, (subject to subordinations, to Lenders in the amounts listed on Exhibit C), upon all assets now owned or hereinafter acquired by Borrower, including, but not limited to, all equipment, furniture, fixtures, accounts receivable, livestock, supplies, cash and inventory, as well as a mortgage on the real estate together with all tenements, hereditaments and appurtenances thereto and all fixtures, equipment and improvements attached thereto or located thereon (the "Real Estate"), and all additions and proceeds thereof. Said security interests shall be evidenced and perfected as provided in a Security Agreement (the "Security") and mortgage (the "Mortgage") in a form and substance satisfactory to Lender and its legal counsel. In addition to the first lien as specified herein, all ownership shares of Borrower held by General Partner and Limited Partners shall be pledged as additional collateral as outlined in the Pledge Agreement. For purposes of this Agreement, the Security Agreement, the Mortgage, the Collateral Agreement, the Note, Pledge Agreement, the previous Credit Agreement dated November 4, 2010, except as amended herein, any and all other documents which Borrower, Guarantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified, are collectively referred to herein as the "Loan Documents."

1.5 Security Interest. Lender shall be granted a first security interest in all collateral of the plant as set forth in Exhibit D, (subject to subordinations as set forth in Exhibit C only), and all ownership shares of Borrower held by General Partner and Limited Partners as set forth in the Pledge Agreement.

1.6 Term. The term of the Loan shall be for five (5) years from the date the initial Loan Disbursement is made, (hereinafter referred to as "Initial Funding Date.") The Note shall run for said five years and be due and payable in full five years from the Initial Funding Date.

1.7 Interest. Interest shall accrue at a yearly rate of Three and One-Half Percent (3.5%) on any unpaid principal balance until the full amount of principal has been paid. Interest shall be computed on a 365-day year. Interest shall be paid annually on the anniversary of the initial Funding Date, which parties acknowledge such date to be November

4, 2010. Therefore, interest shall be paid annually on said Anniversary Date for all interest then due and owing. If not paid when due, then principal and interest shall accrue interest at the default rate on both the unpaid principal and unpaid interest.

1.8 Origination Fee. Borrower shall pay an origination fee of One Percent (1%) of the amount borrowed up to \$60,000,000. The origination fee shall be paid within Five (5) days after each disbursement of the Loan on the amount disbursed as described in Section 1.2 above.

1.9 Fees. Borrower shall pay all reasonable attorney fees and costs incurred by Lender in furtherance of this Loan including, but not limited to preparing all documents and completing all items necessary for closing this transaction. Borrower shall also be responsible for any fees incurred by Lender in monitoring all disbursements of funds and any reasonable costs incurred in obtaining investor approvals. These fees include, but are not limited to any attorney fees paid to Siegel, Barnett & Schutz, L.L.P. or other attorneys, any bank fees charged, consulting, monitoring or other fees charged by any entity hired by Borrower or Lender to monitor the construction and operation of said beef plant during the term of this Agreement. Said fees shall be paid immediately upon demand by Lender. Lender shall be entitled to withhold from any disbursement any amount which it anticipates will be charged throughout the life of this Loan.

1.10 Prepayment. No prepayment shall be allowed until all EB-5 investors have received conditional removal of all conditions affecting their permanent residency status by the Department of Immigration or as agreed upon by the parties. Once conditional removal of all such conditions for each individual investor has been received, prepayment shall be allowed at the discretion of Borrower. Prepayments shall be applied first against any accrued and unpaid interest, then any remaining sum shall be applied against the unpaid principal balance. Such prepayments shall not relieve Borrower of the obligation to continue to make any regularly scheduled or required repayment of the outstanding indebtedness hereunder.

1.11 Spending of Funds. Borrower agrees and warrants that all money it receives pursuant to this Agreement, shall be invested in the Project and only used for advancement of the Project, which includes paying off of any construction loans, satisfying liens, purchases of equipment, supplies, land, building, operation of the Project, or any others listed in the Lender Approved Budget. Said funds shall not be used for any other purpose unless agreed upon in writing by the parties.

1.12 Title Insurance. Within thirty (30) days following the execution of this Agreement, Borrower agrees to provide the Lender a title commitment obtained through Clark Title Company, issued by a reputable title insurance company licensed to do business in the State of South Dakota and agreeing to insure title to the Real Estate in Lender in the aggregate amount of Sixty Million Dollars (\$60,000,000), subject only to easements and restrictions of record as of the date of this Agreement, liens for unpaid real estate taxes for calendar years 2009 and 2010, if any, (the "Title Insurance"), any Mechanic's Lien set forth on Exhibit C. Borrower shall cause such policy of Title Insurance to be issued to Lender at Borrower's sole cost and expense.

1.13 EB-5 Program. The parties acknowledge that Borrower has previously received equity funding from Sixty-nine (69) EB-5 Equity Investors (EB-5 Equity Funding). The parties further agree and understand that the original EB-5 Equity Funding in the Project is separate and distinct from the Loan. The Loan is additional funding to obtain up to Sixty Million Dollars (\$60,000,000) in new funds, which meet the Loan Criteria Program set forth by the United States Department of Immigration and qualifying for the EB-5 Program.

1.14 Non-Revolving Loan.

The parties acknowledge that the above Loan is a Non-Revolving Loan.

The parties acknowledge that during the term of this Agreement and any disbursements being made by Lender, Borrower shall meet all conditions set forth in Sections 2, 4 and 8 of this Agreement, unless any conditions are waived by Lender.

**SECTION 2**  
**Representations and Warranties of Borrower**

Borrower represents and warrants to Lender that each of the statements contained in this Section 2 is true, correct and complete as of the date of this Agreement, and will be true, correct and complete at and as the credit or loan proceeds are made available to Borrower and throughout the term of this Agreement. Borrower acknowledges that Lender is relying on each of the representations and warranties set forth in this Section 2 as a material inducement to enter into and perform its obligations under this Agreement. Unless otherwise expressly limited, all of the representations and warranties set forth herein shall survive execution and delivery of the Note, other Loan Documents, and funding of the Loan. Accordingly, Borrower hereby represents and warrants as follows:

2.1 Organization and Good Standing of Borrower. Borrower is a South Dakota limited partnership, duly organized, validly existing and in good standing under the laws of the State of South Dakota, and is authorized to do business in each state in which the nature of its business requires that it be so licensed.

2.2 Authority of Borrower. Borrower has full right, power and authority necessary to execute, enter into and deliver this Agreement, the Note and the Loan Documents, and to perform the obligations required to be observed and performed by the Borrower. The entry into this Agreement, the Note and the Loan Documents by Borrower and its performance has been approved by all necessary action, including the approval of its partners in accordance with its Certificate of Limited Partnership, Partnership Agreement, and the laws of the State of South Dakota.

2.3 Valid Agreements. This Agreement, the Note, and the Loan Documents will, when the same are signed and delivered to Lender, constitute legal, valid and binding agreements that are enforceable against Borrower in accordance with their terms.

2.4 Non-Contravention. The execution, delivery and performance of this Agreement, the Note and the Loan Documents will not, with or without notice or the passage of time, violate any provision or any requirement of law or of any contractual obligation to which Borrower is bound and will not result in or require the creation or imposition of any lien on any of the properties or revenues of Borrower pursuant to any provision or requirement of applicable law or any contractual obligation which Borrower or its properties are or may in the future be bound.

2.5 Third Party Consents. No consent, authorization or waiver by or filing with any governmental agency or any other person, firm or entity not a party to this Agreement is required to be obtained or made by Borrower in connection with the execution or performance of this Agreement, the Note, the Loan Documents, or the observance or performance of any obligation, undertaking or agreement required to be observed or performed by the Borrower herein or therein.

2.6 Taxes. Except as to the unpaid taxes disclosed in Exhibit E, Borrower has filed or caused to be filed all federal, state, county and local tax returns which are required to be filed, and have paid or caused to be paid all personal property, real estate, income or other taxes, and all special assessments, withholding, contributions and governmental charges and levies (collectively and individually referred to as "Taxes") as shown on such returns and reports, or on any assessment received by Borrower, to the extent that such Taxes have become due (except for current Taxes not delinquent and Taxes being contested as provided by law, in good faith and by appropriate legal proceedings for which adequate reserves have been provided, and as to which no foreclosure, sale or similar proceedings have been commenced).

2.7 Liens. None of the Borrower's assets, properties or real estate is subject to any mortgage, pledge or other lien, encumbrance or security interest, except as set forth in Exhibit C.

2.8 Adverse Contracts. Neither Borrower nor any of its properties are a party to any agreement or instrument, (except all the Loan Documents entered into with Senior Lender), or subject to any charter or other restriction, or any judgment, decree or order of any court or governmental body, which could reasonably be expected to have a material adverse effect on the ability of Borrower to observe or perform any of its obligations, undertakings or agreements under this Agreement, the Note, or the Loan Documents. Borrower does not have knowledge of or notice that is in default on the performance, observance or fulfillment of any obligation, covenants, or conditions contained in any such agreement, instrument, charter or other restriction, judgment, decree or order of any court or governmental body, which could be reasonably expected to have such an effect.

2.9 Litigation. Except as disclosed in Exhibit F, no litigation, including derivative actions, arbitration proceedings, law suits, governmental proceedings or investigations, are pending or, to the knowledge of Borrower, threatened against Borrower.

2.10 Sell, Convey and Transfer. Except for sales, conveyances or transfers on commercially reasonable terms for adequate consideration made in the ordinary course of Borrower's business, Borrower has not sold, conveyed, transferred, disposed of, or otherwise further encumbered any of its properties or assets within the last ninety (90) days.

2.11 Lawful Interest. The amounts to be received by Lender as interest payments under the Note and/or other Loan Documents are lawful and are neither usurious nor illegal under the laws of the State of South Dakota.

2.12 Environmental Compliance. Borrower is in compliance with all environmental protection laws in each jurisdiction where it is presently doing business, except for a small diesel fuel spill, the remediation of which is in the current budget and will be remedied. Borrower has not received any written notice from any governmental agency regarding any action or investigation, pending or contemplated, pertaining to any alleged violation of any environmental protection laws with respect to any real or personal property presently or previously owned by Borrower.

2.13 ERISA. Borrower has fulfilled all obligations under the Employee Retirement Income Security Act of 1974, as amended, in respect of any employee benefit plan maintained for employees of Borrower, no reportable event or prohibited transaction has occurred with respect to any such employee benefit plan, and all such employee benefit plans are fully funded.

2.14 Compliance with Laws. Borrower is not in violation of any federal, state or municipal statute, law, ordinance, code, notice, rule or regulation, nor has Borrower failed to obtain any license, permit, franchise or other governmental authorization necessary to the ownership of its properties or the conduct of its businesses in a timely manner to the extent that such license, permit, franchise or other governmental authorization has become obtainable.

2.15 Defaults. Borrower is not in default of any contract, agreement or undertaking to which it is a party, nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute an event of default thereunder or an Event of Default, as defined in Section 6 of this Agreement.

2.16 Permits. Borrower has obtained all necessary local, state and federal permits and licenses for construction of its project and facilities to the extent that such permits and licenses are obtainable. In the event parties become aware of any other permits or licenses that are required then Borrower shall promptly obtain such permits and licenses. In the event such permits and licenses are not immediately obtained when required, then Lender shall have the option of withholding any further disbursements until said permits and/or licenses have been obtained.

2.17 Packers and Stockyards Act, 1921. Borrower has complied in all material respects with the Packers and Stockyards Act, 1921, as amended (7 U.S.C. § 181-229) and the regulations promulgated thereunder so that the trust for the benefit of all unpaid cash sellers or

growers of beef thereby shall not arise in connection with its purchase of any such livestock. Borrower has not taken any action which would impair its ability to benefit from the trust established under such Act in connection with any sales by the Borrower of beef covered by such Act.

2.18 Job Creation. Borrower represents and warrants that it will meet all job creation requirements as indicated by the direct and indirect multiplier set forth by INS, which translates to Three (3) jobs for every Five Hundred Thousand Dollars (\$500,000) loaned to the Project. A total loan amount of up to \$60,000,000 will require the creation of Three Hundred Sixty (360) jobs. Borrower agrees it will meet the job creation of Three Hundred Sixty (360) jobs or the number of jobs required based upon the final Loan Amount, within Two and One-half (2.5) years after the Initial Funding Date, as required by the EB-5 Program. The parties agree that these jobs are in addition to the original job creation required by the equity funding already in place.

2.19 First Series of Limited Partners.

Prior to the date of this Agreement, each of the Sixty-nine (69) EB-5 Investors (EB-5 Equity Investors) purchased and received one (1) Limited Partnership Unit in Borrower for Five Hundred Thousand Dollars (\$500,000) per unit. Neither the Borrower, General Partner or any affiliate of Borrower or General Partner has any obligation to repurchase or redeem any of the Borrower's Limited Partnership Units issued to the 2008 EB-5 Equity Investors by Borrower nor any liability contingent or otherwise to the 2008 EB-5 Equity Investors pursuant to any agreement or under Law. In addition, Borrower has made no representation, warranty or covenant to any 2008 EB-5 Equity Investor or other third party concerning the completion date, cost of construction of the improvements, the date of commencement of Borrower's business as a packer, the property, the number of jobs to be created, the continual operational costs of the company once the plant has been completed. Except for any rights provided under the Laws of the State of South Dakota, the Limited Partners of Borrower (acting individually or collectively) are not entitled to remove or replace the General Partner or any additional General Partners.

2.20 Epoch Star Limited.

No further borrowing shall be made with Epoch Star Limited.

2.21 Plans and Specifications.

The Plans and Specifications are complete and adequate for the Construction of the Improvements. The Plans and Specifications have been approved or will be approved when needed by all Governmental Authorities having or claiming jurisdiction over the Property and by the beneficiary of each restrictive covenant affecting the Property whose approval is required. To the best of Borrower's knowledge, the Improvements, if constructed substantially in accordance with the Plans and Specifications, will fully comply with all applicable Laws, including those Laws relating to access and facilities for disabled persons.

## 2.22 Utilities.

All utility services necessary for the Construction of the Improvements and the operation thereof for their intended purposes are available at the boundaries of the Land (or will be available upon the completion of work shown in the Plans and Specifications), including telephone service, cable television, water supply, storm and sanitary sewer facilities, natural gas and electric facilities, including cabling for telephonic and data communication, and the capacity to send and receive wireless communication.

The foregoing representations and warranties are in addition to the representations and warranties of the Borrower set forth in the Note and other Loan Documents, all of which are incorporated herein by this reference, and all of which shall be deemed to have been made by Borrower at and as of the date thereof with the same force and effect as if the same were set forth in the body of this Agreement in their entirety, and all such representations and warranties shall likewise survive the funding of the Loan and the execution and delivery of the Note and other Loan Documents.

## 2.23 Separate Taxation of Property of Borrower.

Borrower represents that Borrower owns the real and personal property subject to this Agreement and that said property is taxed separately from any other property of Borrower.

# **SECTION 3** **Representations and Warranties of Lender**

Lender represents and warrants to Borrower that each of the statements contained in this Section 3 is true, correct and complete as of the date of this Agreement and will be true, correct and complete in all material respects at or upon each disbursement of the Loan being made to Borrower. Lender acknowledges that Borrower is relying on each of the representations and warranties set forth in this Section 3 as a material inducement to enter into and perform its obligations under this Agreement. Unless otherwise expressly limited, all of the representations and warranties set forth herein shall survive execution and delivery of the Note and the funding of the Loan. Accordingly, Lender hereby represents and warrants as follows:

3.1 Organization and Good Standing of Lender. Lender is a South Dakota limited partnership duly organized, validly existing and in good standing under the laws of the State of South Dakota and is authorized to do business in South Dakota.

3.2 Authority of Lender. Lender has full right, power and authority necessary to execute, enter into and deliver this Agreement and all other Loan Documents and to perform the obligations required to be observed and performed by Lender.

3.3 Valid Agreement. This Agreement and all other Loan Documents will, when the same are signed and delivered to Borrower, constitute legal, valid and binding agreements that are enforceable against Lender in accordance with their terms.



3.4 Non-Contravention. The execution, delivery and performance of this Agreement and any Loan Documents will not, with or without notice or the passage of time, violate any provision or any material requirement of law or of any material contractual obligation to which Lender is bound.

3.5 Third Party Consents. Except as provided in this Agreement, no consent, authorization or waiver by or filing with any governmental agency or any other person, firm or entity not a party to this Agreement is required to be obtained or made by Lender in connection with the execution or performance of this Agreement, or the observance or performance of any obligation, undertaking or agreement required to be observed or performed by Lender herein or therein. If any consent hereinafter is determined to be necessary, Lender shall immediately obtain the same.

3.6 EB-5 Program. The Loan qualified under the EB-5 Program as an investment that would enable Lender to obtain immigrant visas for its limited partners.

## **SECTION 4**

### **Affirmative Covenants and Agreements**

Until all obligations of Borrower hereunder and under the Note are paid and fulfilled in full, the Borrower agrees to comply with each of the following covenants and conditions:

#### 4.1 Construction.

Borrower shall cause all of said funds advanced to be used in construction or related Lender approved budgeted expenses of the improvements at the beef plant and to be commenced and prosecuted in a good and workmanlike manner and shall cause the same to be completed in accordance with the Project Schedule and substantially and in accordance with the plans and specifications and Budget:

Architect or Project Manager shall deliver to Lender within ten (10) days of each calendar month end commencing with the month in which the first advance of this loan is made, a written monthly status report regarding the status of construction of improvements and any deviations from the project schedule and if deviations are made the specific reason therefore from the Project Schedule of Plans and Specifications and/or Budget and if any deviations are made, specifically explain and justify the reason for such deviations

(a) Purpose, Reallocation, Revenues from Property. Funds shall be advanced by Lender in accordance with the terms of this Agreement to pay those expenses related to the Loan and the Property that are described in the Budget provided by Borrower, but not, in the aggregate with respect to any line item set forth in the Budget, in excess of the amount of the Loan to be disbursed for such line item, as set forth in the Budget without Lender's prior written consent. Borrower will receive each advance in trust for the purpose of paying only those costs for which the advance is made and will utilize the funds advanced for no other purpose. With the prior approval of Lender not to be unreasonably withheld or delayed, any cost savings, actual or estimated, affecting any approved line item within the Budget may be reallocated by Borrower to any other line item within the Budget. Upon completion of the Improvements and the payment of all costs in connection therewith, any undisbursed proceeds of the Loan shall be allocated to the interest reserve or to such other line item as Lender shall approve.

Each disbursement from a contingency reserve shall be subject to approval by Lender as to the amount and purpose for which such disbursement will be used, which approval shall not be unreasonably withheld or delayed. No prior approval is needed for items less than Twenty-five Thousand Dollars (\$25,000).

(b) Draw Requests. Unless otherwise agreed by Lender, advances shall be made as funds become available in increments of not less than Two Million Dollars (\$2,000,000) based on Draw Requests signed by an authorized signor in the form attached hereto as Exhibit H or in another form approved by Lender. Each draw request for hard costs shall be set forth on AIA Forms G702 and G703 or another form approved by Lender, and shall be reviewed by the Loan Monitor, signed by the Project Manager and approved by the Architect. Draw requests for hard costs shall show the percentage of completion of construction and shall set forth in trade breakdown form and in such detail as may be required by Lender the amounts expended and/or costs incurred for work done and materials incorporated in the Improvements. Retainage will be withheld and released in accordance with the terms of Exhibit I. Each draw request shall be supported by such information and documentation (such as paid receipt, invoices, statements of accounts, contracts, lien releases, etc.) as Lender may reasonably require to assure that amounts requested are to be used to reimburse Borrower for costs previously paid by Borrower or to pay costs incurred or to be incurred by Borrower that are to be paid from proceeds of the Loan, as set forth in the Budget.

(c) Liability of Lender. Lender shall in no event be responsible or liable to any Person other than Borrower for the disbursement of or failure to disburse the Loan proceeds or any part thereof and neither the Project Manager, Loan Monitor, Contractor nor any subcontractor, sub-subcontractor, laborer or material supplier shall have any right or claim against Lender under this Agreement or the other Loan Documents.

(d) Loan Monitor Fee. Borrower agrees to pay to reimburse SDRCL, Inc. or SDIF LP a any reasonable fee for the Loan Monitor, or any other consultant hired by Lender to oversee said Project for the term of the Loan. Said fee shall be payable monthly and either shall be withheld from any construction advance sums prior to full disbursement or promptly paid upon request.

(e) After any advance being made, Loan Monitor shall provide a written report indicating that the work for which payment is being funded, has been completed in accordance with the Plans and Specifications using the AIA Contractor Payment Documents.

(f) All payments pursuant to this Section (b) shall be handled through the title insurance company and the title insurance company shall be required to obtain all lien waivers and perform any other customary and usual duties title companies are usually required to perform.

#### 4.2 Approval of Construction.

No work associated with the Construction of the Improvements shall be commenced by Borrower unless and until the Plans and Specifications have been approved by Lender, by all

Governmental Authorities having or claiming jurisdiction over the Land and Improvements, by the beneficiary of any applicable restrictive covenant whose approval is required, and by any other party whose approval is required under applicable agreements, and unless and until all building, construction and other permits necessary or required in connection with such work have been validly issued and all fees, bonds and any other security required in connection therewith have been paid or posted.

#### 4.3 Compliance with Laws; Encroachments.

The Improvements shall be constructed in accordance with all applicable Laws. The Improvements shall be constructed entirely on the Land and shall not encroach upon any easement or right-of-way, or upon the land of others. Construction of the Improvements shall occur wholly within all applicable building restriction lines and set-backs, however established, and shall be in strict compliance with all applicable use or other restrictions and the provisions of any prior agreements, declarations, covenants and all applicable zoning and subdivision ordinances and regulations.

#### 4.4 Inspections; Cooperation.

Borrower shall permit representatives of Lender and the Loan Monitor to enter upon the Land, to inspect the Improvements and any and all materials to be used in connection with the development of the Land and the construction of the Improvements, to examine all detailed plans and shop drawings and similar materials as well as all records and books of account maintained by or on behalf of Borrower relating thereto and to discuss the affairs, finances and accounts pertaining to the Loan and the Improvements with representatives of Borrower. Borrower shall at all times cooperate and cause the Contractor and each and every one of its subcontractors, sub-subcontractors and material suppliers to cooperate with the representatives of Lender and the Loan Monitor in connection with or in aid of the performance of Lender's functions under this Agreement. Except in the event of an emergency or during the occurrence and continuance of a Default or Event of Default, Lender shall give Borrower at least twenty-four hours' notice by telephone in each instance before entering upon the Land and/or exercising any other rights granted in this Section.

#### 4.5 Contracts, Vouchers and Receipts.

(a) Borrower shall furnish to Lender, promptly on demand, any contracts, subcontracts, sub-subcontractors, bills of sale, statements, receipted vouchers or other agreements relating to the development of the Land or the Construction of the Improvements, including any such items pursuant to which Borrower has any claim of title to any materials, fixtures or other articles delivered or to be delivered to the Land or incorporated or to be incorporated into the Improvements. Borrower shall furnish to Lender, promptly on demand, a verified written statement, in such form and detail as Lender may require, setting forth the names and addresses of all contractors, subcontractors, sub-subcontractors and suppliers furnishing labor or materials in the development of the Land or the construction of the Improvements and showing all amounts paid for labor and materials and all items of labor and materials furnished or to be furnished for which payment has not been made and the amounts to be paid therefor.

(b) All contracts for the performance of any work or the supplying of any labor, materials or services for the design or Construction of the Improvements, shall provide that all rights and liens of the applicable contractor, architect, engineer, supplier, surveyor or other party and any right to remove removable Improvements are subordinate to Lender's rights and liens, shall require all subcontracts, sub-subcontracts and purchase orders to contain a provision waiving to the extent permitted by applicable law and, to the extent not waivable,

subordinating the subcontractors', sub-subcontractors' and mechanics' and materialmen's liens and any right to remove removable Improvements to Lender's rights and liens for all work performed for which payments are made to the applicable contractor, architect, engineer, suppliers, surveyor or other party.

(c) The parties agree that the Construction Contract, Architectural Contract, and any other contracts entered into by Borrower shall be collaterally assigned to Lender at Lender's request.

#### 4.6 Payment and Performance of Contractual Obligations.

Borrower shall perform in a timely manner all of its obligations under the Architect's Contract, the Construction Contract and any and all other contracts and agreements related to the construction or operation of the Improvements, and Borrower will pay when due all bills for services or labor performed and materials supplied in connection with the development of the Land and the construction of the Improvements. Within sixty (60) days after the filing of any mechanic's lien or other lien or encumbrance against the Property, Borrower will promptly discharge the same by payment or filing a bond or as otherwise as permitted by Law. So long as Lender's first priority security interest in the Property and all other assets pledged to Lender has been protected by the filing of a bond or otherwise in a manner satisfactory to Lender in its sole discretion, Borrower shall have the right to contest any claim, lien or encumbrance, provided that Borrower does so diligently and without prejudice to Lender or delay in completing construction of the Improvements. Borrower shall furnish to Lender prior to commencement of work associated with Construction of the Improvements evidence, in form, substance and amount satisfactory to Lender, of the performance bonds procured for all contractors and material subcontractors and suppliers of construction hard costs naming Lender as an obligee unless arrangements satisfactory to Lender have been made for payment by Lender directly to any such contractor, subcontractor or supplier.

#### 4.7 Correction of Construction Defects.

Promptly following any demand by Lender, Borrower shall correct or cause the correction of any structural defects in the Improvements, any work that fails to comply with the requirements of Section 4.3 and any material departures or deviations from the Plans and Specifications not approved in writing by Lender.

#### 4.8 Insurance.

Borrower shall maintain the following insurance at its sole cost and expense:

(a) Insurance against Casualty to the Property under a policy or policies covering such risks as are presently included in "special form" (also known as "all risk") coverage, including such risks as are ordinarily insured against by similar businesses, but in any event including fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke, vandalism, malicious mischief and acts of terrorism. Such insurance shall name Lender as mortgagee and loss payee. Unless otherwise agreed in writing by Lender, such insurance shall be for the full insurable value of the Property, with a deductible amount, if any, satisfactory to Lender. No policy of insurance shall be written such that the proceeds thereof will produce less than the minimum coverage required by this Section by reason of co-insurance provisions or otherwise. The term "full insurable value" means one hundred percent (100%) of the actual replacement cost of the Property (excluding

foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items).

(b) Comprehensive (also known as commercial) general liability insurance on an "occurrence" basis against claims for "personal injury" liability and liability for death, bodily injury and damage to property, products and completed operations, with respect to coverage limits satisfactory to Lender with respect to any one occurrence and the aggregate of all occurrences during any given annual policy period. Such insurance shall name Lender as an additional insured.

(c) Workers' compensation insurance for all employees of Borrower in such amount as is required by Law and including employer's liability insurance, if required by Lender.

(d) During any period of construction upon the Property, Borrower shall maintain, or cause others to maintain, builder's risk insurance (non-reporting form) of the type customarily carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the Property.

(e) If at any time any portion of any structure on the Property is insurable against Casualty by flood and is located in a Special Flood Hazard Area under the Flood Disaster Protection Act of 1973, as amended, a flood insurance policy in form and amount acceptable to Lender but in no amount less than the amount sufficient to meet the requirements of applicable Law as such requirements may from time to time be in effect.

(f) Loss of rental value insurance or business interruption insurance in an amount acceptable to Lender.

(g) Such other and further insurance as may be required from time to time by Lender in order to comply with regular requirements and practices of Lender in similar transactions including, if required by Lender, wind insurance and earthquake insurance, so long as any such insurance is generally available at commercially reasonable premiums as determined by Lender from time to time.

(h) In addition to the foregoing, Borrower shall cause the Contractor to provide and maintain comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of the Contractor meeting, respectively, the requirements of Subsections (b) and (c), above.

(j) Each policy of insurance (i) shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and are qualified or authorized by the Laws of the State to assume the risks covered by such policy, (ii) with respect to the insurance described under the preceding Subsections (a), (b) and (c), shall have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of and entitling Lender without contribution to collect any and all proceeds payable under such insurance, either as sole payee or as joint payee with Borrower, (iii) shall provide that such policy shall not be canceled or modified without at least *thirty (30) days* prior written notice to Lender, and (iv) shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Borrower which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Borrower shall promptly pay all premiums when due on such insurance and, not less than thirty (30) days prior to the expiration dates of each such policy, Borrower will deliver to Lender acceptable

evidence of insurance, such as a renewal policy or policies marked "premium paid" or other evidence satisfactory to Lender reflecting that all required insurance is current and in force. Borrower will immediately give Notice to Lender of any cancellation of, or change in, any insurance policy. Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (A) the existence, nonexistence, form or legal sufficiency thereof, (B) the solvency of any insurer, or (C) the payment of losses. Borrower may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies, subject to Lender's approval in each instance as to limits, coverages, forms, deductibles, inception and expiration dates, and cancellation provisions. A summary of the insurance coverages are set forth on Exhibit J hereto.

#### 4.9 Adjustment of Condemnation and Insurance Claims.

Borrower shall give prompt Notice to Lender of any Casualty or any Condemnation or threatened Condemnation. Except as provided below, Lender is authorized, at its sole and absolute option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any Condemnation or Casualty, and to make proof of loss for and to settle or compromise any Claim in connection therewith. In such case, Lender shall have the right to receive all Condemnation Awards and Insurance Proceeds, and may deduct therefrom all payments of its Expenses. However, so long as no Event of Default has occurred and is then continuing, and Borrower is diligently pursuing its rights and remedies with respect to a Claim, (i) Lender will obtain Borrower's written consent (which consent shall not be unreasonably withheld or delayed) before making proof of loss for or settling or compromising such Claim and (ii) Lender shall allow Borrower within a reasonable period of time to make proof of loss, settle or compromise any Claim below the Loss Threshold. Borrower agrees to diligently assert its rights and remedies with respect to each Claim and to promptly pursue the settlement and compromise of each Claim, if the Claim in excess of the Loss Threshold, subject to Lender's approval, which approval shall not be unreasonably withheld or delayed. Notwithstanding any provision to the contrary in this Agreement, if prior to the receipt by Lender of any Condemnation Award or Insurance Proceeds, the Property shall have been sold pursuant to the provisions of the Mortgage, Lender shall have the right to receive such funds (a) to the extent of any deficiency found to be due upon such sale with interest thereon (whether or not a deficiency judgment on the Mortgage shall have been sought or recovered or denied), and (b) to the extent necessary to reimburse Lender for its Expenses. If any Condemnation Awards or Insurance Proceeds are paid to Borrower, Borrower shall receive the same in trust for Lender (other than Net Proceeds below the Loss Threshold so long as no Event of Default has occurred and is continuing) and within ten (10) days after Borrower's receipt of any Condemnation Awards or Insurance Proceeds (other than such Net Proceeds below the Loss Threshold), Borrower shall deliver such awards or proceeds to Lender in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Lender. Borrower agrees to execute and deliver from time to time, upon the request of Lender, such further instruments or documents as may be requested by Lender to confirm the grant and assignment to Lender of any Condemnation Awards or Insurance Proceeds.

#### 4.10 Utilization of Net Proceeds.

(a) All Net Proceeds of the Loss Threshold must be utilized either for payment of the Obligations or for the restoration of the Property. Net Proceeds may be utilized for the restoration of the Property only if no Event of Default shall exist and is then continuing, and only if in the reasonable judgment of Lender (i) there has been no material adverse change in the Borrower's ability to complete Construction of the Improvements in accordance with the Project Schedule, the Budget and Plan Specifications or the financial viability of the operation

of the Improvements, (ii) the Net Proceeds, together with other funds deposited with Lender for that purpose, are sufficient to pay the cost of the restoration pursuant to a budget and plans and specifications approved by Lender, and (iii) the restoration can be completed prior to Maturity Date and prior to the date required by the Take Out Financing Arrangements. Otherwise, Net Proceeds shall be utilized for payment of the Obligations.

(b) If Net Proceeds are to be utilized for the restoration of the Property, the Net Proceeds must be deposited in an interest-bearing account established by Lender with a financial institution of Lender's choice, which account will be assigned to Lender as additional security for the Loan. Disbursements of funds from the account will be made in a manner consistent with, and subject to, the requirements for the funding of advances of the Loan and the terms of this Agreement regarding the disbursement of Loan proceeds.

#### 4.11 Management; Key Personnel.

Borrower at all times shall provide for competent and responsible management and operation of the Property. Borrower shall notify Lender, in writing, prior to the hiring of any new Senior Management Personnel of each of Borrower or the General Partner or the Amendment of any substantial terms of the employment of said Senior Management Personnel. The hiring or changing terms of employment of any such Senior Management Personnel shall be subject to Lender's prior written approval, not to be unreasonably withheld or delayed. Any Senior Management Personnel contracts affecting the Property must also be approved in writing by Lender prior to execution of the same. Any termination of Senior Management Personnel shall be subject to notice to Lender; however, Borrower need not obtain prior written approval.

#### 4.12 Books and Records; Financial Statements; Tax Returns.

Borrower will keep and maintain full and accurate books and records administered in accordance with GAAP, consistently applied, showing in detail the earnings and expenses of the Property and the operation thereof. Borrower will keep and maintain its books and records, including recorded data of any kind and regardless of the medium of recording, at the address of Borrower set forth in Section 9.3. Borrower shall permit Lender, or any Person authorized by Lender, to inspect and examine such books and records (regardless of where maintained) and all supporting vouchers and data and to make copies and extracts therefrom at all reasonable times and as often as may be requested by Lender. Borrower will furnish or cause to be furnished to Lender annual financial statements, including balance sheets and income statements, for Borrower, each Guarantor and the Property, within ninety (90) days after each fiscal year end for the respective reporting party. In addition, Borrower will furnish or cause to be furnished to Lender, with reasonable promptness (but in any event within five (5) Business Days), such interim financial statements of Borrower, each Guarantor and the Property, together with such additional information, reports or statements in connection therewith, as Lender may from time to time request. All financial statements must be in form and detail acceptable to Lender and must be certified as to accuracy by Borrower or the respective Guarantor, as the case may be, and must be audited by a nationally recognized independent certified public accounting firm. Borrower shall provide, upon Lender's request, convenient facilities for the audit and verification of any such statement. All certifications and signatures on behalf of corporations, partnerships, limited liability companies and other entities shall be by a representative of the reporting party satisfactory to Lender. All financial statements for individuals shall be on Lender's then-current personal financial statement form or in another form satisfactory to Lender.

#### 4.13 Estoppel Certificates.

Within ten (10) days after any request by Lender or a proposed assignee or purchaser of the Loan or any interest therein, Borrower shall certify in writing to Lender, or to such proposed assignee or purchaser, the then unpaid balance of the Loan and whether Borrower claims any right of defense or setoff to the payment or performance of any of the Obligations, and if Borrower claims any such right of defense or setoff, Borrower shall give a detailed written description of such claimed right.

#### 4.14 Lender's Rights to Pay and Perform.

If, after any required notice, Borrower fails to promptly pay or perform any of the obligations owing or due to any third party in connection with Construction of the Improvements or otherwise related to the transactions contemplated by the Loan Documents within any applicable grace or cure periods, Lender, without Notice to or demand upon Borrower, and without waiving or releasing any such obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Borrower. Lender may enter upon the Property for that purpose and take all action thereon as Lender considers necessary or appropriate. At the option of Lender, following the occurrence and during the continuance of an Event of Default, Lender may apply any undisbursed Loan proceeds to the satisfaction of the conditions of the Loan Documents, irrespective of the allocation of such Loan proceeds in the Budget. Without limiting the generality of the foregoing, Lender may pay directly from the proceeds of the Loan all interest bills rendered by Lender in connection with the Loan, and following the occurrence and during the continuance of an Event of Default may make advances directly to the Contractors, the title insurance company, any subcontractor, sub-subcontractor or material supplier, or to any of them jointly. The execution hereof by Borrower shall, and hereby does, constitute an irrevocable authorization to so advance the proceeds of the Loan. No further direction or authorization from Borrower shall be necessary to warrant such direct advances. The Loan Amount shall be secured by the Mortgage and other Security Documents and shall satisfy the obligations of Lender hereunder to the extent of the amount of the disbursement.

#### 4.15 Reimbursement; Interest.

If Lender shall incur any Expenses or pay any Claims by reason of the Loan or the rights and remedies provided under the Loan Documents (regardless of whether or not any of the Loan Documents expressly provide for an indemnification by Borrower against such Claims), Lender's payment of such Expenses and Claims shall constitute advances to Borrower which shall be paid by Borrower to Lender on demand, together with interest thereon from the date incurred until paid in full at the rate of interest then applicable to the Loan under the terms of the Note. Each advance shall be secured by the Mortgage and the other Security Documents fully as if made to Borrower, regardless of the disposition thereof by the party or parties to whom such advance is made. Notwithstanding the foregoing, however, in any action or proceeding to foreclose the Mortgage, to exercise Lender's rights with respect to any other Collateral or to recover or collect the Obligations, the provisions of Law governing the recovery of costs, disbursements and allowances shall prevail unaffected by this Section.

#### 4.16 Notification by Borrower.

Borrower will promptly give Notice to Lender of the occurrence of any Default or Event of Default hereunder or under any of the other Loan Documents. Borrower will also promptly give Notice to Lender of any claim of a default by Borrower, or any claim by Borrower of a default by any other party, under the Architect's Contract, the Construction Contract and any other contracts with



respect to the Construction of the Improvements. If none of the foregoing events has occurred, the chief financial officer of Borrower shall certify thereto to Lender in writing which shall be delivered to Lender, together with the delivery of the annual financial statement and any interim financial statement referred to in Section 4.12.

#### 4.17 Indemnification by Borrower.

Borrower agrees to indemnify Lender and to hold Lender harmless from and against, and to defend Lender by counsel approved by Lender against, any and all Claims directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including any Claim arising out of or resulting from (a) construction of any Improvements, including any defective workmanship or materials; (b) any failure by Borrower to comply with the requirements of any Laws or to comply with any agreement that applies or pertains to the Property, including any agreement with a broker or "finder" in connection with the Loan or other financing of the Property; (c) any other Default or Event of Default hereunder or under any of the other Loan Documents; or (d) any assertion or allegation that Lender is liable for any act or omission of Borrower or any other Person in connection with the ownership, development, financing, leasing, operation or sale of the Property; provided, however, that Borrower shall not be obligated to indemnify Lender with respect to any Claim arising solely from the gross negligence or willful misconduct of Lender. The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed, assignment or conveyance in lieu thereof and any other action by Lender to enforce the rights and remedies of Lender hereunder or under the other Loan Documents.

#### 4.18 Fees and Expenses.

Borrower shall pay all fees, charges, costs and expenses reasonably required to satisfy the conditions of the Loan Documents. Without limitation of the foregoing, Borrower will pay, when due, and if paid by Lender will reimburse Lender on demand for, all reasonable fees and expenses of the Loan Monitor, the title insurer, environmental engineers, appraisers, surveyors and Lender's counsel in connection with the closing, administration, modification, monitoring or any "workout" of the Loan, or the enforcement of Lender's rights and remedies under any of the Loan Documents.

#### 4.19 Appraisals.

Lender may obtain from time to time an appraisal of all or any part of the Property, prepared in accordance with written instructions from Lender, from a third-party appraiser satisfactory to, and engaged directly by, Lender. The cost of one such appraisal obtained by Lender and the cost of each such appraisal obtained by Lender following the occurrence of an Event of Default shall be borne by Borrower and shall be paid by Borrower on demand.

#### 4.20 Principal Depository.

Borrower shall maintain with Wells Fargo Bank all of its principal deposit accounts for the maintenance of business including the Borrower's Deposit Account, cash management, operating and administrative deposit accounts. Borrower shall not maintain any other depository accounts without Lender's prior written consent.

#### 4.21 Board Representation.

In the event Borrower operates with a Board of Directors, then from and after the Closing

Date during the term of this Agreement, a representative of Lender will be notified of, and shall be permitted to attend, each of Borrower's and each of Guarantor's Board of Directors meetings (or the equivalent thereof) as an observer.

#### 4.22 Compliance with Packers and Stockyard Act, Etc.

Borrower shall (a) complete all Construction of Improvements and other processes and procedures needed to commence Borrower's business as a packer at the Property, (b) upon commencement of Borrower's business, operate as a packer in full compliance with Chapter 40-15A of the South Dakota Codified Laws, the applicable regulations, orders and directives of the South Dakota Animal Industry Board, the Packers and Stockyards Act and its applicable regulations, (c) obtain, maintain and timely renew all licenses, permits and bonds necessary to operation the business as a packer, (d) timely pay for all acquired livestock so as not to grant, incur or suffer the creation of any lien in favor of livestock sellers that is unpaid outside the ordinary course of business, (e) maintain sole title to all purchased livestock, (f) satisfy all requirements of the Food Security Act, the Packers and Stockyards Act sufficient to obtain clear title to all purchased livestock, (g) comply with all employment and labor laws with respect to the Borrower's labor force, (h) satisfy and comply with all procedures, regulations, certification elements and directives required in the receipt, slaughter, processing, packaging, storing and shipping of livestock and the resulting meat products, and (i) provide contemporaneous notice to Lender of any and all claims on any bond and any and all warnings, compliance directives, orders, adverse inspection reports, notice of violations or revocation, and commencement of any administrative proceeding related to any permit, bond or license affecting the facility or Borrower's operation as a packer.

#### 4.23 AECOM Report.

As described more fully in the draft Phase I Environmental Site Assessment and Environmental Compliance Review of Northern Beef Packers, Aberdeen, South Dakota, dated May 7, 2010, prepared by AECOM Technical Services, approximately 800 gallons of diesel fuel was released on the Land in August 2007. Lender understands that the diesel impacted soil and cause such soil to be disposed of off-site in accordance with applicable Law and take all other investigation and remedial actions (collectively, such excavation, off-site disposal, investigation and remedial actions are referred to herein as "Response Actions") to the extent such Response Actions are (i) required pursuant to applicable Law or by a Governmental Authority or (ii) requested, in writing, by Lender. In order to cover the cost of such Response Actions, the amount of Thirty-one Thousand Dollars (\$31,000) shall be included in the Budget. The Borrower shall not use the \$31,000 for any purpose other than to cover the cost of Response Actions as described in this Section 4.24 without the written consent of Lender.

4.24 Existence. To preserve and maintain the organizational existence, rights, franchises, licenses, trademarks, copyrights and privileges of Borrower.

4.25 Sale, Merger or Consolidation. To not liquidate, dissolve, merge or otherwise consolidate Borrower with or into any other entity, or sell, lease, transfer or otherwise dispose of all or any substantial part of the assets of Borrower, without Lender's approval.

4.26 Financial Statements. Borrower agrees to prepare yearly reports, as specified by Lender setting forth the operation, job creation and other financial information concerning

the operation. Said reports are to be provided at the same time as the audited financial statements.

4.27 Inspection. To permit Lender, or any employee or agent of Lender, upon at least twenty-four (24) hours telephonic notice, at any time during regular business hours to inspect the properties and all books of Borrower.

4.28 Indebtedness. To not incur, permit to remain outstanding, assume or in any way become committed for indebtedness in respect of borrowed money, except: (i) indebtedness incurred hereunder; (ii) trade debt incurred for adequate consideration, on commercially reasonable terms, and in the usual and normal course of business; and (iii) indebtedness disclosed in Exhibit C.

4.29 Liens. To not create, suffer or permit to exist any lien or encumbrance of any kind or nature upon any of its assets now owned or hereinafter owned or acquired, except for (i) liens, mortgages, and encumbrances in favor of Lender; (ii) indebtedness owed to Senior Lender previously incurred; (iii) liens for taxes, assessments and other governmental charges not yet due or which are being contested in good faith and for which reserves have been made as shall be required by generally accepted accounting principles; and (iv) liens of landlords, vendors, carriers, warehousemen, mechanics, laborers and materialmen arising at law in the ordinary course of business for sums not yet due or being contested in good faith and for which reserves have been made as shall be required by generally accepted accounting principles.

4.30 Taxes. To pay and discharge all taxes, assessments and governmental charges or levies imposed on Borrower, upon its income or profits or upon any properties belonging to Borrower prior to the date on which penalties attach thereto; provided that Borrower shall not be required to pay any such tax, assessment, charge, levy or claim that is being contested in good faith and by appropriate legal proceedings and as to which adequate reserves shall have been established, and as to which no foreclosure, sale or similar proceedings have been commenced.

4.31 Investments and Loans. To not make any loan, advance, extension of credit, or capital contribution to any person or legal entity.

4.32 Maintenance of Properties. To maintain, or cause to be maintained, in good repair, working order and condition (ordinary wear and tear excepted), all of Borrower's properties, whether real or personal, owned or held under lease, and specifically including, without limitation, the property subject to the Loan Documents, and from time to time make or cause to be made all repairs, renewals, replacements, additions, betterments and improvements that may be reasonably required to keep and maintain such property in good condition and repair and in working order, wear and tear excepted.

4.33 Franchises and Intellectual Property. To take all reasonable acts to preserve the Borrower's ownership rights to all of its franchise agreements and intellectual property, including, but not limited to, trade names, entity names, trademarks, copyrights and patents.

websites, and website domain names, and to take diligent action to challenge any cancellation or infringement thereof by third parties.

4.34 Laws and Regulations. To comply in all respects with any and all applicable federal, state, county and local laws, statutes, ordinances, orders, rules, codes and regulations with respect to its real and personal property, businesses, assets, inventory, and employees.

4.35 Notification of Legal Actions. To notify Lender in writing within Five (5) days of receipt of any information indicating that any legal action has been or may be commenced or threatened against Borrower where the amount in controversy, either directly or indirectly, alone or in combination with any other actions, suits or proceedings exceed the sum of Fifty Thousand Dollars (\$50,000).

4.36 Adverse Change. Upon obtaining any knowledge of any material adverse change in the financial condition or future prospects of Borrower, to promptly provide Lender with written notice describing in detail the nature of such adverse change.

4.37 Managers and Principal Place of Business. To not change the officers, directors or managers of Borrower or other employees earning more than One Hundred Thousand Dollars (\$100,000) per year, or the location of the executive office or principal place of business of Borrower without Lender's approval.

4.38 Sell, Convey and Transfer. To not sell, convey, transfer, dispose of, or further encumber the properties of Borrower, pledge of partnership interests of Borrower, or any part thereof or any interest therein except as provided in this Agreement or any of the Loan Documents, whether voluntarily, involuntarily, directly, indirectly, or otherwise.

4.39 Indemnification. At Borrower's expense, to protect, defend and indemnify, and save and hold Lender harmless from and against any and all judgments, liabilities, losses, damages, costs or expenses, including without limitation, court costs and reasonable attorney fees, which arise out of, are caused by, or relate to any claim, demand, suit, cause of action, investigation or proceeding brought or asserted against Lender by any person or entity to the extent the same relate to this Agreement, the Loan, the Note, any of the Loan Documents and/or any other documents, certificate or agreement delivered by Borrower to Lender in connection herewith or therewith. Borrower shall immediately pay Lender upon demand all such judgments, liabilities, losses, damages, costs and expenses, including court costs and reasonable attorney fees, incurred by Lender as result of any legal or other action arising out of this Agreement, any of the Loan Documents, and/or any document, certificate or agreement delivered by Borrower to Lenders in connection therewith.

4.40 Further Assurances. Following the making of the Loan or any installment thereof, the Borrower shall promptly, at the request of the Lender, take such action and execute and deliver to Lender such further assignments, endorsements, consents, instruments, agreements and/or other documents as Lender may reasonably request in order to perfect Lender's security interests and otherwise consummate and carry out the transactions

contemplated by this Agreement, the Note and/or any of the Loan Documents for the benefit of Lender.

4.41 Third Party Claims. Lender shall not be liable to, and Borrower shall save Lender harmless from and against all claims of materialmen, contractors, subcontractors, laborers and others for goods and delivered by them to Borrower or any of its properties or services performed by them for Borrower or any of its properties or otherwise in connection with Borrower. Borrower shall not be considered to be the agent of Lender for any purpose whatsoever.

4.42 Capital Expenditures. At any time following the initial completion of construction of the Project, Borrower will not make any capital expenditure in excess of Five Hundred Thousand Dollars (\$500,000) without prior written consent of Lender.

4.43 Restricted Payments. Borrower shall not, and will not be permitted to, declare or make, or agree to make, or pay, either directly or indirectly, any distribution or dividend to any of its members or owners hereunder unless specifically approved by Lender.

4.44 Compensation to Management. Borrower shall not pay any bonus or management fees to any executive, employee, partner, member or director in excess of any salary set forth at the time of the execution of this Agreement and in event, no such payments shall exceed Two Hundred Fifty Thousand Dollars (\$250,000) in any aggregate rolling twelve-month period unless such compensation to management has been approved by Lender.

4.45 Packers and Stockyards Act, 1921. The Borrower shall comply in all material respects with the Packers and Stockyards Act, 1921, as amended (7 U.S.C. § 181-229) and the regulations promulgated thereunder so that the trust for the benefit of all unpaid cash sellers or growers of beef thereby shall not arise in connection with its purchase of any such livestock. Borrower shall not taken any action which would impair its ability to benefit from the trust established under such Act in connection with any sales by the Borrower of beef covered by such Act.

The foregoing covenants are in addition to the obligations, undertakings and agreements of the Borrower contained in the Note and other Loan Documents, each of which are incorporated herein by this reference, and all of which shall be deemed to have been made by Borrower herein at and as of the date hereof, and as though made hereunder at and as of the date hereof with the same force and effect as if the same were set forth in the body of this Agreement in their entirety, and all such obligations, undertakings and agreements shall survive the disbursing of the Loan and the execution and delivery of the Note and the Loan Documents.

4.46 Permits. Borrower shall secure all necessary city, local, state or federal permits required to operate said Project.

4.47 E-Verify. Borrower agrees that "U.S. law requires companies to employ only individuals who may legally work in the United States - with U.S. Citizens, or foreign

citizens who have the necessary employment authorization. This diverse workforce contributes greatly to the vibrancy and strength of our economy, but that same strength also attracts unauthorized employment. E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. E-Verify is fast, free and easy to use -- and it's the best way employers can ensure a legal workforce."

"As a condition for maintaining/satisfying Lender's loan to Borrower in good faith and to avoid defaulting on the loan with respect to effectively determining that any and all persons hired and employed by Borrower are legal, Borrower will register to participate and abide by all the requirements for voluntarily participating in the U.S. Government's "E-Verify" employment authorization verification program, operated by the U.S. Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS). Failure by Borrower to register and fully abide by all the terms and conditions for use of E-Verify in verifying an employee's employment authorization will be reason or grounds for declaring the borrower to be in default of the loan, with the full outstanding balance subject to full and immediate payment to Lender.

## **SECTION V.**

### **Negative Covenants.**

#### **5.1      Conditional Sales.**

Borrower shall not incorporate in the Improvements any property acquired under a conditional sales contract or lease or as to which the vendor retains title or a security interest that is not included in the Budget, without the prior written consent of Lender.

#### **5.2      Changes to Plans and Specifications.**

Borrower shall not make or permit any changes in the Plans and Specifications, including any such changes that alter, diminish or add to the work to be performed or change the design of the Improvements, without the prior written consent of Lender and under such reasonable conditions as Lender may establish. Lender's prior written consent shall not be required, however, as to any change order which (a) individually does not cause the fixed or guaranteed maximum price of the Construction Contract to be increased or decreased by more than \$25,000 and, when added to all previous change orders, does not cause such price to be increased or decreased by more than \$100,000 in the aggregate, (b) does not result in a material change to the design of the Improvements, and (c) has been approved in writing by the Architect and any Governmental Authority, tenant or other party whose approval is required.

#### **5.3      Insurance Policies and Bonds.**

Borrower shall not do or permit to be done anything that would affect the coverage or indemnities provided for pursuant to the provisions of any insurance policy, performance bond, labor and material payment bond or any other bond given in connection with the development of the Land or the construction of the Improvements.

#### 5.4 Restrictions on Indebtedness.

Borrower will not create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any indebtedness other than:

- (a) Customary accounts payable paid prior to any delinquency to trade creditors incurred for services or goods purchased in the ordinary course of Borrower's business or in connection with the development or Construction of the Improvements in accordance with the Plans and Specifications and the Budget, provided that the aggregate amount of all such accounts shall not exceed \$50,000 at any time, other than approved product categories;
- (b) Indebtedness to Lender under any of the Loan Documents;
- (c) Endorsements for collection, deposit or negotiation and warranties of products or services, in each case, incurred in the ordinary course of business.

#### 5.5 Restrictions on Liens.

Borrower will not (i) create or incur or suffer to be created or incurred or to exist any lien or encumbrance (including, without limitation, any lease) upon any of the Property of any character whether now owned or hereafter acquired, or upon the income or profits therefrom; (ii) transfer any of the Property or the income or profits therefrom; (iii) acquire, or agree or have an option to acquire, any property or assets upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (iv) suffer to exist for a period of more than thirty (30) days after the same shall have been incurred any indebtedness or claim or demand against it that if unpaid might by law or upon bankruptcy or insolvency, or otherwise, be given any priority whatsoever over its general creditors; or (v) sell, assign, pledge or otherwise transfer any receivables with or without recourse; provided that Borrower may create or incur or suffer to be created or incurred or to exist:

- (a) Deposits or pledges made in connection with, or to secure payment of, workmen's compensation, unemployment insurance, old age pensions or other social security obligations;
- (b) Liens on the Property as and to the extent permitted by the Mortgage; and
- (c) Liens in favor of Lender under the Loan Documents.

Borrower will not enter into or permit to exist any arrangement or agreement (excluding this Agreement and the other Loan Documents) which directly or indirectly prohibits Borrower or any Guarantor from creating, assuming or incurring any lien upon its properties, revenues or assets whether now owned or hereafter acquired in favor of Lender under the Loan Documents.

#### 5.6 Restrictions on Investments.

Borrower will not make or permit to exist or to remain outstanding any investment except investments in:

- (a) marketable direct or guaranteed obligations of the United States of America that mature within one (1) year from the date of purchase by the Borrower;
- (b) demand deposits, certificates of deposit, bankers acceptances and time deposits of United States banks having total assets in excess of \$1,000,000,000; and

- (c) securities commonly known as "commercial paper" issued by a corporation organized and existing under the laws of the United States of America or any state thereof that at the time of purchase have been rated and the ratings for which are not less than "P 1" if rated by Moody's, and not less than "A 1" if rated by S&P,

provided, however, that such investments (other than demand deposits referred to in Section 5.6(b) above) will be considered investments permitted by this Section 5.6 only if all actions have been taken to the satisfaction of Lender to provide to Lender a first priority perfected security interest in all of such investments free of all liens.

5.7 Merger, Consolidation and Disposition of Assets.

- (a) Borrower will not become a party to any merger, amalgamation or consolidation, or agree to or effect any asset acquisition or stock acquisition (other than the acquisition of assets in the ordinary course of business consistent with past practices).
- (b) Borrower will not become a party to or agree to or effect any disposition of assets, other than the sale of inventory and the disposition of obsolete assets, in each case in the ordinary course of business consistent with past practices.

5.8 Sale and Leaseback.

Borrower will not enter into any arrangement, directly or indirectly, whereby Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that Borrower intends to use for substantially the same purpose as the property being sold or transferred.

5.9 Transactions with Affiliates.

Borrower shall not without prior approval engage in any transaction with any affiliate other than for services as employees, officers, and directors pursuant to contracts disclosed previously to Borrower including any contract agreement or other arrangement providing for the furnishings of services to or by, providing for rental of real or personal property to or from or otherwise requiring payments to or from any such affiliate or to the knowledge of Borrower, any corporation, partnership, trust, or other entity in which such affiliate has its substantial interest or is an officer, director, trustee, or partner on terms more favorable to such person than what would have been attainable on an arm's length basis in the ordinary course of business or the value of which the aggregate amount exceeds One Hundred Thousand Dollars (\$100,000) per fiscal year of Borrower. Borrower shall not enter into Management Agreements, Service Agreements or other similar agreements with General Partner.

5.10 Change in Nature of Business; New Line of Business.

Borrower will not engage in any line of business substantially different from the lines of business conducted by Borrower on the date hereof or engage or enter into any new line of business.

5.11 Financial Covenants.

- (a) Tangible Net Worth. Borrower will not permit Tangible Net Worth at any time to be less than an amount equal to the unpaid principal amount of the Loan multiplied by 1.25.



(b) Funded Indebtedness to Shareholder's Equity. Borrower will not permit Funded Indebtedness at any time to be more than 1.50 times Shareholder's Equity.

(c) Compensation to Senior Managers. Borrower will not pay or become legally obligated to pay any bonus, fees, salaries or other compensation to Senior Managers exceeding Two Hundred Fifty Thousand Dollars (\$250,000) in any rolling twelve-month period. "Senior Manager" means and includes any executive, employee, officer, partner, member director, or manager whose annual compensation is One Hundred Thousand Dollars (\$100,000) or more.

(d) Interest Coverage Ratio. From and after such time as the Property is operational as a meatpacking plant, Borrower will not permit the Interest Coverage Ratio at any time to be less than 1.50.

5.12 Change in Control. Without the prior written consent of Lender, there shall be no change in the day-to-day control and management of Borrower or General Partner, and no change in the Organizational Documents of Borrower or General Partner. General Partner shall not withdraw or be removed from Borrower without the prior written consent of Lender, it being acknowledged and agreed by Borrower and General Partner that any purported withdrawal by or removal of General Partner without the prior written consent of Lender shall be null and void.

## **SECTION 6**

### **Default**

6.1 Events of Default. Each of the following occurrences or events shall constitute an "Event of Default" for purposes of this Agreement:

6.1.1 Nonpayment. The failure of Borrower to make any payment of principal or interest as set forth on the Note or any payment of any other amount payable to or for the benefit of the Lender by Borrower under this Agreement, the Note, other Loan Documents or any other document, instrument or agreement delivered by Borrower to Lender in connection herewith, when and as due.

6.1.2 Nonperformance. The failure of Borrower to observe or perform any of the obligations, undertakings or agreements that are required to be observed or performed by it under the terms of this Agreement, the Note, the Loan Documents or any other documents, instruments, or agreements delivered to Lender by Borrower in connection herewith or therewith (other than payment) if such failure continues beyond the grace period applicable thereto, or such shorter period as may be reasonably specified in a written notice thereof from Lender in the event such failure could reasonably be expected to result in immediate loss or damage or irreparable harm to Lender to a material degree.

6.1.3 Dissolution or Transfer. The dissolution, liquidation, merger or consolidation of Borrower with or into any other entity, or the sale of all or any substantial portion of the assets of Borrower.

6.1.4 Warranties. Any material representation, warranty, schedule, certificate, financial statement, report, notice or other writing furnished by or on behalf of Borrower to Lender or any representation or warranty contained in this Agreement, the Note, the Loan Documents and/or any document, certificate or agreement furnished by Borrower to Lender in connection herewith or therewith being false or misleading as and when given or becoming false and misleading at any time in the future.

6.1.5 ERISA. The occurrence of any reportable event under the Employee Retirement Income Security Act of 1974, as amended, in respect of any employee benefit plan maintained for employees of Borrower.

6.1.6 Litigation. The entry of any financial judgment resulting from judicial or administrative action against Borrower or with respect to its assets, in which the amount of such judgment alone or in combination with any other unsatisfied judgment exceeds Fifty Thousand and No/100 Dollars (\$50,000.00), if such judgment remains undischarged for a period of sixty (60) days or more after the date on which such judgment becomes final without any right of appeal to a higher court, and unless Borrower shall have taken whatever action is required, including without limitation, posting a supersedeas bond, to stay proceedings to enforce such judgment.

6.1.7 Nonperformance on other Indebtedness. The occurrence of any default or event of default, subject to curative rights, if any, or any event which requires the prepayment of borrowed money or the acceleration of the maturity or payment thereof, under the terms of any evidence of indebtedness or other contract or agreement issued or assumed or entered into by Borrower with any third party where the amount involved, alone or in combination with any other default or event, could reasonably be expected to exceed Fifty Thousand and No/100 Dollars (\$50,000.00).

6.1.8 Bankruptcy – Filing of Petition. The filing by Borrower of a petition seeking relief, or a consent or answer consenting to a petition seeking relief against Borrower under the Federal Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal, state, local or foreign law regarding bankruptcy, insolvency or creditors rights generally, or the consent by Borrower to the institution of proceedings thereunder or the filing of any such petition or for the appointment or taking possession of any substantial portion of Borrower's assets by receiver, liquidator, assignee, trustee, custodian or similar official.

6.1.9 Bankruptcy – Entry of Order for Relief. The entry of a decree or order by any court for relief in respect of Borrower under the Federal Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal, state, local or foreign law regarding bankruptcy,