

RESOLUTION 11-34 Passed April 25, 2011

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN A SECURITY AGREEMENT WITH WESTERN PETROLEUM COMPANY ASSURING PAYMENT FOR AVIATION FUELS AT THE DEKALB TAYLOR MUNICIPAL AIRPORT.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute a Security Agreement with Western Petroleum Company to assure payment for aviation fuels at DeKalb Taylor Municipal Airport (DTMA), a copy of which is attached hereto and made a part hereof as Exhibit "A".

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 25th day of April, 2011 and approved by me as Mayor on the same day. Passed on omnibus roll call vote: 6-0-1. Aye: Teresinski, Verbic, Gallagher, Naylor, Baker, Kammes. Nay: None. Abstain: Simpson.

ATTEST:


STEVEN C KAPITAN, City Clerk


KRIS POVLSSEN, Mayor



EXHIBIT A



WESTERN PETROLEUM COMPANY

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of 1st May, 2011, is made between CITY OF DEKALB, a municipality organized under the laws of Illinois and located at 3232 Pleasant St. in DeKalb, Illinois 60115 (the "Debtor"), and WESTERN PETROLEUM COMPANY located at Cabriole Center, 9531 West 78th Street, Eden Prairie, MN 55344 ("Secured Party").

WHEREAS, Secured Party has agreed to make loans and extend financing to Debtor; and

WHEREAS, it is a condition precedent to Secured Party's making any loans to Debtor that Debtor execute and deliver to Secured Party a security agreement in substantially the form hereof; and

WHEREAS, Debtor wishes to grant security interests in favor of Secured Party as herein provided;

NOW, THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. All terms defined in the Uniform Commercial Code of the State of Minnesota (the "UCC") and used herein shall have the same meanings as specified in the UCC. The term "Obligations," as used herein, means all of the indebtedness, obligations and liabilities of Debtor to Secured Party, individually or collectively, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising under or in respect of the the Fuel Supply Agreement dated 1st May, 2011, between Debtor and Secured Party, and any other instruments or agreements executed and delivered pursuant thereto or in connection therewith or this Agreement. The term "Event of Default", as used herein, means the failure of Debtor to pay or perform any of the Obligations as and when due to be paid or performed and any Event of Default as defined or described in any note or other agreement evidencing any of the Obligations.

2. Grant of Security Interest. Debtor hereby grants to Secured Party, to secure the payment and performance in full of all of the Obligations, a security interest in the following properties, assets and rights of Debtor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral"): all Jet Fuel, Aviation Gasoline, and other products and inventory sold to Debtor by Secured Party; all signs, imprinters, and quality control equipment; together with all other property associated therewith and any accessions thereto; and all insurance claims and proceeds, tort claims, software, engineering drawings, service marks, and all licenses, permits and all recorded data of any kind or nature, regardless of the medium of

recording including, without limitation, all software, writings, plans, specifications and schematics relating to any of the foregoing.

3. **Authorization to File Financing Statements.** Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) describe the Collateral, and (b) contain any other information required by Article 9 of the UCC. Debtor agrees to furnish any such information to Secured Party promptly upon request. Debtor also ratifies its authorization for Secured Party to have filed in any Uniform Commercial Code jurisdiction any financing statements or amendments thereto if filed prior to the date hereof.

4. **Other Actions.** To further insure the attachment, perfection and first priority of, and the ability of Secured Party to enforce, Secured Party's security interest in the Collateral, Debtor agrees, in each case at Debtor's own expense, to take the following actions with respect to the following Collateral:

4.1. **Collateral in the Possession of a Bailee.** If any goods are at any time in the possession of a bailee, Debtor shall promptly notify Secured Party thereof and, if requested by Secured Party, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to Secured Party, that the bailee holds such Collateral for the benefit of Secured Party and shall act upon the instructions of Secured Party, without the further consent of Debtor. Secured Party agrees with Debtor that Secured Party shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by Debtor with respect to the bailee.

4.2 **Other Actions as to any and all Collateral.** Debtor further agrees to take any other action reasonably requested by Secured Party to insure the attachment, perfection and first priority of, and the ability of Secured Party to enforce, Secured Party's security interest in any and all of the Collateral.

5. **Representations and Warranties Concerning Debtor's Legal Status.** Debtor represents and warrants to Secured Party as follows: (a) Debtor's exact legal name is stated on the first page of this Agreement, (b) Debtor is an organization of the type and organized in the jurisdiction set forth on the first page of this Agreement, and (c) Debtor's place(s) of business, its chief executive office, and its mailing address are set forth on Schedule 1 to this Agreement.

6. **Covenants Concerning Debtor's Legal Status.** Debtor covenants with Secured Party as follows: (a) without providing at least 30 days prior written notice to Secured Party, Debtor will not change its name, its place of business or, if more than one place of business, its chief executive office, or its mailing address or organizational identification number if it has one, (b) if Debtor does not have an organizational identification number and later obtains one, Debtor shall forthwith notify Secured Party of such organizational identification number, and (c) Debtor will not change its type of organization, jurisdiction of organization or other legal structure.

7. **Representations and Warranties Concerning Collateral.** Debtor further represents and warrants to Secured Party that Debtor is the owner of the Collateral, free from any

adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement.

8. Covenants Concerning Collateral. Debtor further covenants with Secured Party as follows: (a) the Collateral will be kept at those locations listed on Schedule 1, and Debtor will not remove the Collateral from such locations, without providing at least 30 days prior written notice to Secured Party, (b) except for the security interest herein granted, Debtor shall be the owner of the Collateral free from any lien, security interest or other encumbrance, and Debtor shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to Secured Party, (c) Debtor shall not pledge, mortgage or create, or suffer to exist a security interest in the Collateral in favor of any person other than Secured Party, (d) Debtor will keep the Collateral in good order and repair and will not use the same in violation of law or any policy of insurance thereon, (e) Debtor will permit Secured Party, or its designee, to inspect the Collateral at any reasonable time, wherever located, (f) Debtor will pay promptly when due all taxes, assessments, governmental charges and levies upon the Collateral or incurred in connection with the use or operation of such Collateral or incurred in connection with this Agreement, (g) Debtor will continue to operate its business in compliance with all applicable provisions of federal, state and local statutes and ordinances, and (h) Debtor will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Collateral or any interest therein except that debtor may sell inventory in ordinary course of business.

9. Insurance. Debtor will maintain with financially sound and reputable insurers insurance with respect to its properties and business against such casualties and contingencies as shall be in accordance with general practices of businesses engaged in similar activities in similar geographic areas. Such insurance shall be in such minimum amounts that Debtor will not be deemed a co-insurer under applicable insurance laws, regulations and policies and otherwise shall be in such amounts, contain such terms, be payable to Secured Party as loss payee (or in the case of liability insurance list Secured Party as an additional insured), be in such forms and be for such periods as may be reasonably satisfactory to Secured Party. All policies of insurance shall provide for at least 30 days prior written cancellation notice to Secured Party. In the event of failure by Debtor to provide and maintain insurance as herein provided, Secured Party may, at its option, provide such insurance and charge the amount thereof to Debtor. Debtor shall furnish Secured Party with certificates of insurance and policies evidencing compliance with the foregoing insurance provision. See attached Exhibit A and Exhibit B.

10. Collateral Protection Expenses; Preservation of Collateral.

10.1. Expenses Incurred by Lender. In its discretion, with prior notification to Customer, Secured Party may discharge taxes and other encumbrances at any time levied or placed on any of the Collateral, make repairs thereto and pay any necessary filing fees or, if Debtor fails to do so, insurance premiums. Debtor agrees to reimburse Secured Party on demand for any and all expenditures so made. Secured Party shall have no obligation to Debtor to make any such expenditures, nor shall the making thereof relieve Debtor of any default.

10.2. Lender's Obligations and Duties. Anything herein to the contrary notwithstanding, Debtor shall remain liable under each contract or agreement comprised in the

Collateral to be observed or performed by Debtor thereunder. Secured Party shall not have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by Secured Party of any payment relating to any of the Collateral, nor shall Secured Party be obligated in any manner to perform any of the obligations of Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by Secured Party in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement. Secured Party shall not have any obligation to present or file any claim or to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to Secured Party or to which Secured Party may be entitled at any time or times. Secured Party's sole duty with respect to the custody, safe keeping and physical preservation of the 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 Secured Party deals with similar property for its own account.

11. Power of Attorney. Debtor hereby irrevocably constitutes and appoints Secured Party and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Debtor or in Secured Party's own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement, including without limitation the filing of financing statements with respect hereto, with or without Debtor's signature, or a photocopy of this Agreement in substitution for a financing statement, as Secured Party may deem appropriate and to execute in Debtor's name such financing statements and amendments thereto and continuation statements which may require Debtor's signature. This power of attorney is a power coupled with an interest and shall be irrevocable. The powers conferred on Secured Party hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers.

12. Remedies. If an Event of Default shall have occurred and be continuing, Secured Party may, without notice to or demand upon Debtor, declare this Agreement to be in default, and Secured Party shall thereafter have in any jurisdiction in which enforcement hereof is sought in the state of Illinois, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC or of any jurisdiction in which the Collateral is located, including, without limitation, the right to padlock the Collateral and prevent access by Debtor to the Collateral and to Debtor's use of the Collateral and the right to take possession of the Collateral, and for that purpose Secured Party may, so far as Debtor can give authority therefor, enter upon any premises on which the Collateral may be situated and remove the same therefrom. Secured Party may in its discretion require Debtor to assemble all or any part of the Collateral at such location or locations within the jurisdictions of Debtor's principal office(s) or at such other locations as Secured Party may reasonably designate. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party shall give to Debtor at least ten business days prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. Debtor hereby acknowledges that ten business days prior written notice of such sale or sales shall be reasonable notice. In addition, Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of

Secured Party's rights hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights with respect thereto.

13. No Waiver by Lender. Secured Party shall not be deemed to have waived any of its rights hereunder unless such waiver shall be in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a waiver of any right on any future occasion. All rights and remedies of Secured Party with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Secured Party deems expedient.

14. Proceeds of Dispositions; Expenses. Debtor shall pay to Secured Party on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Secured Party in protecting, preserving or enforcing Secured Party's rights under or in respect of any of the Obligations or any of the Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale of the Obligations or Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Secured Party may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the UCC, any excess shall be returned to Debtor, and Debtor shall remain liable for any deficiency in the payment of the Obligations.

15. Overdue Amounts. Until paid, all amounts due and payable by Debtor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the rate of interest set forth in the Obligations of Debtor.

16. Governing Law; Consent to Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS. Debtor agrees that any suit for the enforcement of this Agreement may be brought in state or federal courts sitting in DeKalb County, Illinois and consents to the non-exclusive jurisdiction of such courts. Debtor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

17. Waiver of Jury Trial. THE PARTIES WAIVE THEIR RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

18. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon Debtor and its respective successors and assigns, and shall inure to the benefit of Secured Party and its successors and assigns. If any

term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. Debtor acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF, intending to be legally bound, Debtor has caused this Agreement to be duly executed as of the date first above written.

ATTEST:

Steve Kapitan
STEVE KAPITAN
CITY CLERK



CITY OF DEKALB

By: [Signature]

Name: KRIS PORSSEN

Title: Mayor

WESTERN PETROLEUM COMPANY

By: [Signature]

D. G. Jewett
Vice President

**Schedule 1 to
Security Agreement**

Western Petroleum Company, Secured Party

City of DeKalb, Debtor

Debtor's Locations
City of DeKalb
3232 Pleasant St.
DeKalb, Illinois 60115

Place(s) of Business
City of DeKalb
3232 Pleasant St.
DeKalb, Illinois 60115

Chief Executive Office and Mailing Address
City of DeKalb
3232 Pleasant St.
DeKalb, Illinois 60115

Collateral Locations

City of DeKalb
3232 Pleasant St.
DeKalb, Illinois 60115