

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported) NOVEMBER 10, 2005  
-----

PACIFIC ETHANOL, INC.

-----  
(Exact name of registrant as specified in its charter)

DELAWARE	000-21467	41-2170618
-----	-----	-----
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

5711 N. WEST AVENUE, FRESNO, CALIFORNIA	93711
-----	-----
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (559) 435-1771  
-----

-----  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (SEE General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

(1) INVESTMENT BY CASCADE INVESTMENT, L.L.C.

PURCHASE AGREEMENT DATED NOVEMBER 14, 2005 BETWEEN PACIFIC ETHANOL, INC.  
AND CASCADE INVESTMENT, L.L.C.

On November 14, 2005, Pacific Ethanol, Inc. (the "Company") entered into a Purchase Agreement (the "Purchase Agreement") with Cascade Investment, L.L.C. (the "Purchaser"). The Purchase Agreement provides for the sale by the Company and the purchase by the Purchaser of 5,250,000 shares of the Company's Series A Cumulative Redeemable Convertible Preferred Stock (the "Preferred Stock") for an aggregate purchase price of \$84 million. The Preferred Stock is to be created under the Certificate of Designations described below. Of the \$84 million aggregate purchase price, \$4 million is payable to the Company at

closing and \$80 million is to be deposited into a restricted cash account and disbursed in accordance with the Deposit Agreement described below. The Company is entitled to use the initial \$4 million of proceeds for general working capital and must use the remaining \$80 million for the construction or acquisition of one or more ethanol production facilities in accordance with the terms of the Deposit Agreement. The Purchase Agreement includes customary representations and warranties on the part of both the Company and the Purchaser.

The closing of the purchase and sale of the Preferred Stock (the "Closing") is subject to numerous customary conditions. The Closing is subject to approval of the transaction by the stockholders of the Company. The Closing is also subject to additional conditions, including appropriate filings and approvals under the Hart-Scott-Rodino Act of 1976, the appointment of two persons as members of the Board of Directors of the Company to be designated by the Purchaser, one of whom is to be appointed as Chairman of the Compensation Committee of the Board of Directors of the Company. In addition, the Closing is subject to execution and delivery in form and substance satisfactory to the Purchaser of agreements relating to the construction, operation and financing of the Company's Madera County, California ethanol production facility. An additional condition to the Closing provides that the Closing must occur on or before March 31, 2006 unless the Purchaser has extended the Closing date.

FORM OF CERTIFICATE OF DESIGNATIONS, POWERS, PREFERENCES AND RIGHTS OF THE  
SERIES A CUMULATIVE REDEEMABLE CONVERTIBLE PREFERRED STOCK

The Certificate of Designations, Powers, Preferences and Rights of the Series A Cumulative Redeemable Convertible Preferred Stock (the "Certificate of Designations") provides for 7,000,000 shares of preferred stock to be designated as Series A Cumulative Redeemable Convertible Preferred Stock. The Certificate of Designations is to be filed on or prior to the Closing. The 5,250,000 shares of Preferred Stock to be issued under the Purchase Agreement have a purchase price of \$16 per share. The Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Preferred Stock are entitled to quarterly cumulative dividends payable in arrears in cash in an amount equal to 5% of the purchase price per share of the Preferred Stock; however, such dividends may, at the option of the Company, be paid in additional shares of Preferred Stock based on the value of the purchase price per share of the Preferred Stock. The holders of Preferred Stock have a liquidation preference over the holders of the Company's common stock equivalent to the

-2-

purchase price per share of the Preferred Stock plus any accrued and unpaid dividends on the Preferred Stock. A liquidation will be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the capital stock or assets of the Company or a merger, consolidation, share exchange, reorganization or other transaction or series of related transaction, unless holders of 66 2/3% of the Preferred Stock vote affirmatively in favor of or otherwise consent to such transaction.

The holders of the Preferred Stock have conversion rights initially equivalent to two shares of common stock for each share of Preferred Stock. The conversion ratio is subject to customary antidilution adjustments. In addition, antidilution adjustments are to occur in the event that the Company issues equity securities at a price equivalent to less than \$8 per share, including derivative securities convertible into equity securities (on an as-converted or as-exercised basis). Certain specified issuances will not result in antidilution adjustments (the "Anti-Dilution Excluded Securities"), including (i) securities issued to employees, officers or directors of the Company under any option plan, agreement or other arrangement duly adopted by the Company, the issuance of which is approved by the Compensation Committee of the Board of Directors of the Company, (ii) the Preferred Stock and any common stock issued upon conversion of the Preferred Stock, (iii) securities issued upon conversion or exercise of any derivative securities outstanding on the date the Certificate of Designations is first filed with the Delaware Secretary of State, and (iv) securities issued in connection with a stock split, stock dividend, combination, reorganization, recapitalization or other similar event for which adjustment to the conversion ratio of the Preferred Stock is already made. The shares of Preferred Stock are also subject to forced conversion upon the occurrence of a transaction that

would result in an internal rate of return to the holders of the Preferred Stock of 25% or more. The forced conversion is to be based upon the conversion ratio as last adjusted. Notwithstanding the foregoing, no shares of Preferred Stock will be subject to forced conversion unless the shares of common stock issued or issuable to the holders upon conversion of the Preferred Stock are registered for resale with the Securities and Exchange Commission and eligible for trading on The Nasdaq Stock Market or such other exchange approved by holders of 66 2/3% of the then outstanding shares of Preferred Stock. Accrued but unpaid dividends on the Preferred Stock are to be paid in cash upon any conversion of the Preferred Stock.

The holders of Preferred Stock vote together as a single class with the holders of the Company's common stock on all actions to be taken by the Company's stockholders. Each share of Preferred Stock entitles the holder to the number of votes equal to the number of shares of the Company's common stock into which each share of Preferred Stock is convertible. Notwithstanding the foregoing, the holders of Preferred Stock are afforded numerous customary protective provisions with respect to certain actions that may only be approved by holders of a majority of the shares of Preferred Stock. These protective provisions include limitations on (i) the increase or decrease of the number of authorized shares of Preferred Stock, (ii) increase or decrease of the number of authorized shares of other capital stock, (iii) generally any actions that have an adverse effect on the rights and preferences of the Preferred Stock, (iv) the authorization, creation or sale of any securities senior to or on parity with the Preferred Stock as to voting, dividend, liquidation or redemption rights, including subordinated debt, (v) the authorization, creation or sale of any securities junior to the Preferred Stock as to voting, dividend, liquidation or redemption rights, including subordinated debt, other than the Company's common stock, (vi) the authorization, creation or sale of any shares of Preferred Stock

-3-

other than the shares of Preferred Stock authorized, created and sold under the Purchase Agreement, (vii) engaging in a transaction that would result in an internal rate of return to holders of Preferred Stock of less than 25%, (viii) the alteration of the number of members of the Board of Directors of the Company to more than nine or less than seven, and (ix) effecting any material change in the Company's industry focus.

The holders of the Preferred Stock are afforded preemptive rights with respect to certain securities offered by the Company. Each holder is to have the right to purchase a pro rata portion of such securities equivalent to the number of shares of common stock into which that holder's Preferred Stock is convertible, divided by the number of shares of common stock into which all holders' Preferred Stock is convertible, plus any amounts not purchased by other holders of Preferred Stock. In the event of a public offering of the Company's common stock for a purchase price of at least \$12 per share and a total aggregate offering price of at least \$50 million, the preemptive rights of the holders of Preferred Stock are to be limited to 50% of the securities offered. Notwithstanding the foregoing, certain proposed securities offerings will not result in preemptive rights in favor of the holders of the Preferred Stock. These offerings include offerings of Anti-Dilution Excluded Securities as well as the issuance of securities other than for cash pursuant to a merger, consolidation, acquisition or similar business combination by the Company approved by the Board of Directors of the Company.

The holders of Preferred Stock are entitled to redemption rights. Holders of 66 2/3% of the Preferred Stock may elect redemption upon the occurrence of certain specified events. The number of shares of Preferred Stock to be redeemed is to be determined by dividing the balance of the restricted cash amount (as provided for in the Deposit Agreement described below) by \$80 million. The redemption price is equal to the per share purchase price of the Preferred Stock, which is subject to adjustment as discussed above and in the Certificate of Designations, plus any accrued but unpaid dividends, plus any amount sufficient to yield an internal rate of return of 5%. If less than all Preferred Stock is to be redeemed, then shares of Preferred Stock are to be redeemed on a pro rata basis from the holders of the Preferred Stock in proportion to the number of shares of Preferred Stock held by them. The events triggering redemption rights include, (i) the withdrawal or use by the Company of funds from the restricted cash account (as provided for in the Deposit

Agreement described below) in violation of the terms of the Deposit Agreement, (ii) the public disclosure by the Company of its intent not to build or acquire additional ethanol production facilities for an indefinite period or for a period of at least two years from the time of the disclosure, (iii) the failure by the Company to withdraw any funds from the restricted cash account for a period of two years, and (iv) amounts remain in the restricted cash account after December 31, 2009.

FORM OF DEPOSIT AGREEMENT BETWEEN PACIFIC ETHANOL, INC. AND THE TRUSTEE  
NAMED THEREIN

The Deposit Agreement between the Company and a trustee to be named on or prior to the Closing (the "Deposit Agreement"), is to be executed at the Closing. The Deposit Agreement provides for the creation of a restricted cash account into which \$80 million of the aggregate purchase price for the Preferred Stock is to be deposited. The Company may not withdraw funds from the restricted cash account except in accordance with the terms of the Deposit Agreement. Under the Deposit Agreement, the Company may requisition funds from the restricted cash account for the payment of construction costs in connection with the

-4-

construction of ethanol production facilities. The total amounts that may be disbursed from the restricted cash account with respect to a particular ethanol production facility are limited to a specified project limit. The project limit for the Company's proposed ethanol production facility in Madera County, California is \$20 million. The project limit for other ethanol production facilities to be constructed by the Company, if any, is the "equity portion" multiplied by the total budgeted costs of construction for such facility. The "equity portion" is limited to 30% for the first ethanol production facility, not including the Madera County facility, and 25% for each subsequent ethanol production facility.

The Company may, with the consent of the Purchaser, also requisition funds from the restricted cash account for the payment of acquisition costs in connection with the acquisition of one or more ethanol production facilities. In addition, the Company may requisition funds from the restricted cash account to pay for the redemption of the Preferred Stock as provided in the Certificate of Designations.

FORM OF REGISTRATION RIGHTS AND STOCKHOLDERS AGREEMENT BETWEEN PACIFIC  
ETHANOL, INC. AND CASCADE INVESTMENT, L.L.C.

The Registration Rights and Stockholders Agreement (the "Rights Agreement") between the Company and the Purchaser is to be executed at the Closing. The Rights Agreement is to be effective until the holders of the Preferred Stock, and their affiliates, as a group, own less than 10% of the Preferred Stock issued under the Purchase Agreement, including common stock into which such Preferred Stock has been converted (the "Termination Date"). The Rights Agreement provides that holders of a majority of the Preferred Stock, including common stock into which such Preferred Stock has been converted, may demand and cause the Company, at any time after the first anniversary of the Closing, to register on their behalf the shares of common stock issued, issuable or that may be issuable upon conversion of the Preferred Stock (the "Registrable Securities"). Following such demand, the Company is required to notify any other holders of the Preferred Stock or Registrable Securities of its intent to file a registration statement and, to the extent requested by such holders, include them in the related registration statement. The Company is required to keep such registration statement effective until such time as all of the Registrable Securities are sold or until such holders may avail themselves of Rule 144(k), which requires, among other things, a minimum two-year holding period and requires that any holder availing itself of Rule 144(k) not be an affiliate of the Company. The holders are entitled to three demand registrations on Form S-1 and unlimited demand registrations on Form S-3; however, the Company is not obligated to effect more than two demand registrations on Form S-3 in any twelve month period.

In addition to the demand registration rights afforded the holders under the Rights Agreement, the holders are entitled to "piggyback" registration rights. These rights entitle the holders who so elect to be included in

registration statements to be filed by the Company with respect to other registrations of equity securities. The holders are entitled to unlimited "piggyback" registration rights.

Certain customary limitations to the Company's registration obligations are included in the Rights Agreement. These limitations include the right of the Company to, in good faith, delay or withdrawal registrations requested by the holders under demand and "piggyback" registration rights, and the right to exclude certain portions of holders' Registrable Securities upon the advice of

-5-

its underwriters. Following the registration of securities in which holders' Registrable Securities are included, the Company is obligated to refrain from registering any of its equity securities or securities convertible into equity securities until the earlier of the sale of all Registrable Securities subject to such registration statement and 180-days following the effectiveness of such registration statement. The Rights Agreement also provides for customary registration procedures. The Company is responsible for all costs of registration, plus reasonable fees of one legal counsel for the holders, which fees are not to exceed \$25,000 per registration.

The Rights Agreement includes customary cross-indemnity provisions under which the Company is obligated to indemnify the holders and their affiliates as a result of losses caused by untrue or allegedly untrue statements of material fact contained or incorporated by reference in any registration statement under which Registrable Securities are registered, including any prospectuses or amendments related thereto. The Company's indemnity obligations also apply to omissions of material facts and to any failure on the part of the Company to comply with any law, rule or regulation applicable to such registration statement. Each holder is obligated to indemnify the Company and its affiliates as a result of losses caused by untrue or allegedly untrue statements of material fact contained in any registration statement under which Registrable Securities are registered, including any prospectuses or amendments related thereto, which statements were furnished in writing by that holder to the Company, but only to the extent of the net proceeds received by that holder with respect to securities sold pursuant to such registration statement. The holders' indemnity obligations also apply to omissions of material facts on the part of the holders.

The Rights Agreement provides for the nomination of two individuals by the Purchaser for election to the Board of Directors of the Company. In addition, the Purchaser is entitled to appoint directors or managers with respect to the Company's subsidiaries. The Company is also required to permit one of the Purchaser's director designees or other designee to attend, as a non-voting observer, all meetings of the Company's Executive Committee, when and if formed, the Company's Audit Committee, and the boards of directors of subsidiaries of the Company to the extent there is no existing director designee or other designee of the Purchaser in attendance. The Company is also required to send to Purchaser's director or other designee all information and materials provided by the Company to any members of such committees and boards of directors. In addition, the Company is obligated to cause each person serving from time to time as an executive officer, director or manager of the Company or any subsidiary, to execute a voting letter that grants an irrevocable proxy to the Purchaser with respect to securities held by such persons to vote to carry out the foregoing provisions.

The Rights Agreement provides for the initial appointment of two persons designated by the Purchaser to the Board of Directors of the Company, and the appointment of one of such persons as the Chairman of the Compensation Committee of the Board of Directors of the Company. Following the Termination Date, the Purchaser is required to cause its director designees, and all other designees, to resign from all applicable committees and boards of directors, effective as of the Termination Date.

The Rights Agreement also provides for the delivery by the Company of financial information regarding the Company within certain specified time periods following the conclusion of each calendar quarter and the full calendar year. In addition, the Rights Agreement provides for reasonable access on the part of the Purchaser to all of the Company's books, records and other

information and the opportunity to discuss the same with management of the Company.

-6-

VOTING AGREEMENT DATED NOVEMBER 14, 2005 BY AND AMONG PACIFIC ETHANOL, INC., CASCADE INVESTMENT, L.L.C. AND THE STOCKHOLDERS NAMED THEREIN

On November 14, 2005, William L. Jones, Neil M. Koehler, Ryan W. Turner, Kenneth J. Friedman and Frank P. Greinke, each of whom is a director and/or executive officer of the Company (the "Stockholders"), and the Company, entered into a Voting Agreement (the "Voting Agreement") with the Purchaser. The Stockholders collectively hold an aggregate of 9,162,704 shares of the Company's common stock. The Voting Agreement provides that the Stockholders may not transfer their shares of the Company's common stock, and must keep their shares free of all liens, proxies, voting trusts or agreements, until the Voting Agreement is terminated. The Voting Agreement provides that the Stockholders will each vote or execute a written consent in favor of the transactions contemplated by the Purchase Agreement (the "Transactions"). In addition, under the Voting Agreement, each Stockholder grants an irrevocable proxy to Neil M. Koehler to act as such Stockholder's proxy and attorney-in-fact to vote or execute a written consent in favor of the Transactions. The Voting Agreement is effective until the earlier of the approval of the Transactions by the Company's stockholders or the termination of the Purchase Agreement in accordance with its terms.

(2) COMPENSATION OF NON-EMPLOYEE DIRECTORS

On July 26, 2005, the Compensation Committee and the Board of Directors of the Company adopted resolutions approving various matters relating to compensation of non-employee directors. On November 10, 2005, the Compensation Committee and the Board of Directors of the Company adopted resolutions clarifying, and to the extent already clear, modifying, the compensation of non-employee directors, as described below.

On November 10, 2005, and effective as of May 18, 2005, compensation for non-employee directors was established, as described in Exhibit 10.6 to this Form 8-K and incorporated herein by reference. Previously, on July 26, 2005 and effective as of May 18, 2005, compensation for non-employee directors was established as set forth in Exhibit 10.1 to the Company's Form 8-K for July 26, 2005 filed with the Securities and Exchange Commission on August 1, 2005. Under the previous compensation schedule, enacted July 26, 2005, all non-employee directors were to receive \$1,500 per meeting of the Board of Directors or any committee meeting attended in person or via telephone, with the Chairman of the Audit Committee to receive an additional \$2,000 for each Audit Committee meeting attended.

Under the clarified/modified compensation schedule, enacted November 10, 2005 and effective as of May 18, 2005, all non-employee directors are to receive \$1,500 per meeting of the Board of Directors attended in person or via telephone, with no amounts payable to members of committees of the Board of Directors for their attendance at committee meetings. In addition, under the clarified/modified compensation schedule, the Chairman of the Audit Committee is to receive an additional fee of \$3,500 for each calendar quarter of service, which is in addition to the fees payable for attendance at meetings of the Board of Directors.

-7-

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(a) Financial Statements of Businesses Acquired.

-----  
None.

(b) Pro Forma Financial Information.

-----  
None.

(c) Exhibits.  
-----

Number -----	Description -----
10.1	Purchase Agreement dated November 14, 2005 between Pacific Ethanol, Inc. and Cascade Investment, L.L.C.
10.2	Form of Certificate of Designations, Powers, Preferences and Rights of the Series A Cumulative Redeemable Convertible Preferred Stock
10.3	Form of Deposit Agreement between Pacific Ethanol, Inc. and the Trustee named therein
10.4	Form of Registration Rights and Stockholders Agreement between Pacific Ethanol, Inc. and Cascade Investment, L.L.C.
10.5	Voting Agreement dated November 14, 2005 by and among Pacific Ethanol, Inc., Cascade Investment, L.L.C. and the Stockholders named therein
10.6	Description of Non-Employee Director Compensation

-8-

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: November 14, 2005

PACIFIC ETHANOL, INC.

By: /S/ RYAN W. TURNER  
-----

Ryan W. Turner  
Chief Operating Officer

-9-

EXHIBITS FILED WITH THIS REPORT

Number -----	Description -----
10.1	Purchase Agreement dated November 14, 2005 between Pacific Ethanol, Inc. and Cascade Investment, L.L.C.
10.2	Form of Certificate of Designations, Powers, Preferences and Rights of the Series A Cumulative Redeemable Convertible Preferred Stock
10.3	Form of Deposit Agreement between Pacific Ethanol, Inc. and the Trustee named therein
10.4	Form of Registration Rights and Stockholders Agreement between Pacific Ethanol, Inc. and Cascade Investment, L.L.C.
10.5	Voting Agreement dated November 14, 2005 by and among Pacific

Ethanol, Inc., Cascade Investment, L.L.C. and the Stockholders  
named therein

10.6 Description of Non-Employee Director Compensation



## PURCHASE AGREEMENT

BETWEEN

PACIFIC ETHANOL, INC.

AND

CASCADE INVESTMENT, L.L.C.

DATED NOVEMBER 14, 2005

&lt;TABLE&gt;

## TABLE OF CONTENTS

<S>		<C>
ARTICLE I. THE PREFERRED SHARES.....		1
SECTION 1.01	Issuance, Sale and Delivery of the Preferred Shares at the Closing.....	1
SECTION 1.02	Closing.....	1
SECTION 1.03	Use of Proceeds.....	2
ARTICLE II. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.....		2
SECTION 2.01	Organization and Qualifications.....	2
SECTION 2.02	Certificate of Incorporation and Bylaws.....	2
SECTION 2.03	Corporate Power and Authority.....	2
SECTION 2.04	Authorization; Validity.....	3
SECTION 2.05	No Conflicts; No Violation.....	3
SECTION 2.06	Authorized Capital Stock.....	3
SECTION 2.07	Financial Statements.....	5
SECTION 2.08	No Undisclosed Liabilities.....	5
SECTION 2.09	Changes.....	5
SECTION 2.10	Litigation; Compliance with Law.....	7
SECTION 2.11	Proprietary Information of Third Parties.....	9
SECTION 2.12	Intellectual Property.....	9
SECTION 2.13	Real Property.....	10
SECTION 2.14	Assets.....	11
SECTION 2.15	Insurance.....	11
SECTION 2.16	Taxes.....	12
SECTION 2.17	Agreements.....	13
SECTION 2.18	Loans and Advances.....	15
SECTION 2.19	Assumptions, Guaranties, Etc. of Indebtedness of Other Persons.....	16
SECTION 2.20	Customers and Suppliers.....	16
SECTION 2.21	Approvals.....	16
SECTION 2.22	Offering of the Preferred Shares.....	16
SECTION 2.23	Offering Exemption.....	17
SECTION 2.24	Brokers; Financial Advisors.....	17
SECTION 2.25	Transactions With Affiliates.....	17
SECTION 2.26	Employees.....	17
SECTION 2.27	Environmental and Safety Laws.....	18
SECTION 2.28	Employee Benefit Plans and Employment Agreements.....	20
SECTION 2.29	Foreign Corrupt Practices Act; USA Patriot Act.....	22
SECTION 2.30	Illegal or Unauthorized Payments; Political Contributions.....	22
SECTION 2.31	Pending Changes.....	22
SECTION 2.32	Investment Company Act.....	22
SECTION 2.33	Registration Rights.....	22
SECTION 2.34	Books and Records.....	22
SECTION 2.35	Disclosure.....	23
ARTICLE III. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PURCHASER.....		24
SECTION 3.01	Representations and Warranties of the Purchaser.....	24
SECTION 3.02	Restricted Securities.....	24
SECTION 3.03	Legend.....	24

ARTICLE IV. CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER AND THE COMPANY.....	25
SECTION 4.01            Conditions to the Purchaser's Obligations at the Closing.....	25
SECTION 4.02            Conditions to the Company's Obligations at the Closing.....	28
ARTICLE V. COVENANTS OF THE COMPANY.....	29
SECTION 5.01            Reserve for Conversion Shares.....	29
SECTION 5.02            Corporate Existence.....	29
SECTION 5.03            Preservation of Property and Assets.....	29
SECTION 5.04            Properties, Business, Insurance.....	30
SECTION 5.05            Directors and Officers Insurance.....	30
SECTION 5.06            Inspection, Consultation and Advice.....	30
SECTION 5.07            Restrictive Agreements Prohibited.....	30
SECTION 5.08            Transactions with Affiliates.....	30
SECTION 5.09            Payment of Taxes and Indebtedness.....	31
SECTION 5.10            Internal Accounting Controls.....	31
SECTION 5.11            Activities of Subsidiaries.....	31
SECTION 5.12            Stockholder Approval.....	31
SECTION 5.13            Change of Operations.....	32
SECTION 5.14            Indemnity.....	32
SECTION 5.15            Compliance with Laws.....	32
SECTION 5.16            Keeping of Records and Books of Account.....	33
ARTICLE VI. COVENANT OF THE COMPANY AND THE PURCHASER.....	33
SECTION 6.01            HSR Act Filings.....	33
ARTICLE VII. MISCELLANEOUS.....	33
SECTION 7.01            Expenses.....	33
SECTION 7.02            Survival of Agreements.....	34
SECTION 7.03            Brokerage.....	34
SECTION 7.04            Parties in Interest.....	34
SECTION 7.05            Specific Performance.....	34
SECTION 7.06            Further Assurances.....	34
SECTION 7.07            Submission to Jurisdiction; Consent to Service of Process.....	34
SECTION 7.08            Notices.....	35
SECTION 7.09            Governing Law.....	35
SECTION 7.10            Entire Agreement.....	35
SECTION 7.11            Counterparts.....	35
SECTION 7.12            Amendments and Waivers.....	35
SECTION 7.13            Severability.....	36
SECTION 7.14            Titles and Subtitles; Interpretive Matters.....	36
SECTION 7.15            Facsimile Signatures.....	36
SECTION 7.16            Other Remedies.....	36
SECTION 7.17            Certain Defined Terms.....	36

#### INDEX TO SCHEDULES

SCHEDULE 2.01	Organization
SCHEDULE 2.06	Stockholders, Options, Warrants, Voting Agreements, etc.
SCHEDULE 2.08	No Undisclosed Liabilities
SCHEDULE 2.09	Changes to Financial Statements
SCHEDULE 2.10	Litigation
SCHEDULE 2.12	Intellectual Property
SCHEDULE 2.13(a)	Owned Real Property
SCHEDULE 2.13(b)	Leased Real Property
SCHEDULE 2.14	Exceptions to Title
SCHEDULE 2.15	Insurance
SCHEDULE 2.17	Agreements
SCHEDULE 2.19	Assumptions, Guaranties, Etc. of Indebtedness of Other Persons
SCHEDULE 2.20	Customers and Suppliers
SCHEDULE 2.24	Brokers; Financial Advisors
SCHEDULE 2.25	Transactions with Affiliates
SCHEDULE 2.26(b)	Officers, Employees, Consultants, etc.
SCHEDULE 2.26(e)	Employment Agreements
SCHEDULE 2.27(b)	Environmental Reports
SCHEDULE 2.28	Employee Benefits
SCHEDULE 2.33	Registration Rights

#### INDEX TO EXHIBITS

EXHIBIT A	Certificate of Incorporation
-----------	------------------------------

EXHIBIT B	Certificate of Designations
EXHIBIT C	Form of Opinion Letter
EXHIBIT D	Amended 1995 Incentive Stock Plan
EXHIBIT E	2004 Stock Option Plan
EXHIBIT F	Form of Deposit Agreement
EXHIBIT G	Form of Registration Rights Agreement
EXHIBIT H	Form of Voting Agreement

iii

</TABLE>

## PACIFIC ETHANOL, INC.

### PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made on the 14th day of November, 2005 (the "AGREEMENT"), by and between Pacific Ethanol, Inc., a Delaware corporation (the "COMPANY"), and Cascade Investment, L.L.C., a Washington limited liability company (the "PURCHASER"). Certain capitalized terms used herein are defined in Section 7.17 of this Agreement.

WHEREAS, the Company desires to issue and sell to the Purchaser 5,250,000 shares (the "PREFERRED SHARES") of the Company's Series A Cumulative Redeemable Convertible Preferred Stock, par value \$.001 per share (the "SERIES A PREFERRED Stock"), and the Purchaser desires to purchase the Preferred Shares on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS the Company, certain of its officers and directors, and the Purchaser are executing and delivering simultaneously herewith the Voting Agreement pursuant to which such officers and directors have agreed, among other things, to vote all of their shares of the Company's Common Stock, par value \$.001 per share (the "COMMON STOCK") in favor of (a) the sale and issuance of the Preferred Shares to the Purchaser, (b) the issuance of 20% or more of the shares of the Company's Common Stock, issued or issuable upon conversion of the Preferred Shares, and (c) any and all other transactions contemplated hereby or in the other Transaction Documents, at any annual or special meeting of stockholders of the Company at which such matters are put to a vote.

NOW, THEREFORE, in consideration of the premises, representations, warranties and the mutual covenants contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### ARTICLE I.

##### THE PREFERRED SHARES

SECTION 1.01 ISSUANCE, SALE AND DELIVERY OF THE PREFERRED SHARES AT THE CLOSING. At the Closing (as defined in Section 1.02 hereof), on the terms and subject to the conditions of this Agreement, the Company shall issue and sell to the Purchaser, and the Purchaser shall purchase from the Company, 5,250,000 Preferred Shares for the aggregate purchase price of \$84,000,000.

##### SECTION 1.02 CLOSING.

(a) The Closing shall take place at 10:00 a.m. at the offices of Rutan & Tucker, LLP, 611 Anton Blvd., Costa Mesa, California, on the Closing Date. At the Closing, the Company shall issue and deliver to the Purchaser a stock certificate or certificates in definitive form, registered in the name of the Purchaser, representing 5,250,000 Preferred Shares. As payment in full for the Preferred Shares being purchased by it under this Agreement, and against delivery of the stock certificate or certificates therefor as aforesaid, on the Closing Date, the Purchaser shall (a) pay to the Company by wire transfer or by

such other method as may be reasonably acceptable to the Company, immediately available funds in the amount of \$4,000,000, and (b) make a deposit of \$80,000,000 into the restricted cash account established by the Company pursuant to the Deposit Agreement with a bank or trust company approved by the Purchaser (the "TRUSTEE"). Such amounts shall be paid to the respective accounts as shall have been designated in writing to the Purchaser at least two (2) business days prior to the Closing Date by the Company and the Trustee.

(b) The Company shall reimburse the Purchaser for the costs and expenses described in Section 7.01 by wire transfer or by such other method as may be reasonably acceptable to the Purchaser, in immediately available funds. Such amounts shall be paid to the account of the Purchaser as shall have been designated in writing to the Company at least two (2) business days prior to the Closing Date by the Purchaser.

SECTION 1.03 USE OF PROCEEDS. The Company agrees to use the net proceeds from the sale and issuance of the Preferred Shares pursuant to this Agreement for (a) with respect to the portion of the proceeds deposited with the Trustee, the construction of ethanol production facilities in accordance with the terms of the Deposit Agreement, and (b) with respect to the portion of the proceeds paid directly to the Company, working capital.

## ARTICLE II.

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Purchaser that:

SECTION 2.01 ORGANIZATION AND QUALIFICATIONS. The Company and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization as set forth in SCHEDULE 2.01 and has the requisite power and authority to own, lease and operate its assets, properties and business and to carry on its business as it is now being conducted or proposed to be conducted. The Company and each of its Subsidiaries is duly qualified as a foreign corporation to transact business, and is in good standing, in each jurisdiction where it owns or leases real property or maintains employees or where the nature of its activities make such qualification necessary.

SECTION 2.02 CERTIFICATE OF INCORPORATION AND BYLAWS. The Company has delivered to the Purchaser true, correct, and complete copies of the Company's Certificate of Incorporation, including all certificates of amendment, a copy of which is attached hereto as Exhibit A, and the Certificate of Designations, Powers, Preferences and Rights of Series A Cumulative Redeemable Convertible Preferred Stock in the form included in Exhibit B attached hereto (the "CERTIFICATE OF DESIGNATIONS" and, together with the certificate of incorporation and all certificates of amendment thereof, the "AMENDED CHARTER") and the Company's Bylaws (the "BYLAWS"), in each case, as in effect on the date hereof.

SECTION 2.03 CORPORATE POWER AND AUTHORITY. The Company has all requisite power and authority to execute and deliver each of the Transaction Documents to which it is a party. The Company has all requisite legal and corporate power and authority to issue, sell and deliver the Preferred Shares to the Purchaser hereunder, to issue and deliver additional shares of Series A Preferred Stock as dividends in accordance with Section 3(a) of the Certificate of Designations (the "Dividend Shares") and to issue and deliver the shares of

Common Stock issuable upon conversion of the Series A Preferred Stock (the "CONVERSION Shares"). The Conversion Shares have been duly reserved for issuance and when issued will be duly and validly issued, fully paid and nonassessable.

SECTION 2.04 AUTHORIZATION; VALIDITY. The Company's: (a) execution and delivery of the Transaction Documents and performance of its obligations thereunder, (b) execution and filing of the Certificate of Designations, (c) issuance, sale and delivery of the Preferred Shares and, when declared as a dividend, the Dividend Shares, and (d) issuance and delivery of the Conversion Shares have been duly authorized by all requisite corporate action or will have been so authorized prior to the Closing Date and, other than stockholder approval and approvals of or required by the NASDAQ National Market, if any, no other corporate action on the part of the Company or any Subsidiary or other approval or authorization is required on the part of the Company, any Subsidiary or any person by Law or otherwise in order to make the Transaction Documents the valid, binding and enforceable obligations of the Company. Each of the Transaction Documents, when executed and delivered by the Company, will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its respective terms.

SECTION 2.05 NO CONFLICTS; NO VIOLATION. The Company is not in violation of or default under any provision of its Amended Charter or Bylaws. No Subsidiary is in violation of or default under any provision of its articles or certificate of incorporation or bylaws or, if such Subsidiary is not a corporation, similar organizational and formation documents. The execution, delivery, and performance of, and compliance with, the Transaction Documents and the consummation of the transactions contemplated hereby and thereby, including the issuance, sale and delivery of the Preferred Shares and any Dividend Shares and issuance and delivery of the Conversion Shares, have not and will not (a) violate any Law or any order, injunction, ruling, writ, award, judgment or decree of any court or other agency of government or authority which is applicable to the Company or any Subsidiary or any of their assets, properties or businesses, or any provision of any indenture, agreement, contract, license, arrangement, understanding, evidence of indebtedness, note, lease or other instrument to which the Company or any Subsidiary or any of their assets,

properties or businesses is bound, (b) conflict with, result in a breach of, or constitute (or, with due notice or lapse of time or both, would constitute) a default under, or give rise to any right of termination, acceleration or cancellation under, any such indenture, agreement, contract, license, arrangement, understanding, evidence of indebtedness, note, lease or other instrument, or (c) result in the creation or imposition of any lien, charge, restriction, claim or encumbrance of any nature whatsoever upon the Company or any Subsidiary or any of their assets, properties or businesses. No provision of any Transaction Document violates, conflicts with, results in a breach of or constitutes (or, with due notice or lapse of time or both, would constitute) a default by any other party under any other indenture, agreement, contract, license, arrangement, understanding, evidence of indebtedness, note, lease or other instrument.

#### SECTION 2.06 AUTHORIZED CAPITAL STOCK.

(a) The Company's authorized capital stock consists of 10,000,000 shares of Preferred Stock, par value \$.001 per share (the "PREFERRED STOCK"), and 100,000,000 shares of Common Stock. At the date of this Agreement, 28,667,185 shares of Common Stock are outstanding, and no shares of Preferred Stock are outstanding. In addition, there are 927,500 shares of Common Stock

3

reserved for issuance upon exercise of outstanding options for Common Stock, 2,499,833 additional shares of Common Stock reserved for issuance upon exercise of options available for grant under the Stock Option Plans (as defined in Section 4.01(j) hereof), 3,116,088 shares of Common Stock reserved for issuance upon exercise of warrants, and no shares are held in the Company's treasury. The stockholders of record and holders of subscriptions, warrants, options, convertible securities, and other rights (contingent or other) to purchase or otherwise acquire equity securities of the Company, and the number of shares of Common Stock and the number of such subscriptions, warrants, options, convertible securities, and other such rights held by each are as set forth in the attached SCHEDULE 2.06. The designations, powers, preferences, rights, qualifications, limitations and restrictions in respect of each class and series of the Company's authorized capital stock are as set forth in the Certificate of Incorporation, a copy of which is attached hereto as EXHIBIT A, and all such designations, powers, preferences, rights, qualifications, limitations and restrictions are valid, binding and enforceable and in accordance with all applicable laws. Except as set forth in the attached SCHEDULE 2.06: (i) no Person owns of record any share of, or is known to the Company to own beneficially more than 5% of, the Common Stock, (ii) no subscription, warrant, option, convertible security, or other right (contingent or other) to purchase or otherwise acquire equity securities of the Company is authorized or outstanding and (iii) there is no commitment by the Company to issue shares, subscriptions, warrants, options, convertible securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset. Except as set forth in the attached SCHEDULE 2.06, the Company has no obligation (contingent or other) to purchase, repurchase, redeem, retire or otherwise acquire any of its equity securities or any interest therein or to pay any dividend or make any other distribution in respect thereof. Except as set forth in the attached SCHEDULE 2.06, no stock plan, stock purchase, stock option or other agreement or understanding between the Company and any holder of any equity securities of the Company or rights to purchase equity securities of the Company provides for acceleration or other changes in the vesting provisions or other terms of such securities, as the result of any merger, sale of stock or assets, change in control or other similar transaction by the Company. Except for the Voting Agreement, the Registration Rights Agreement and such other agreements as set forth in the attached SCHEDULE 2.06, there are no voting trusts or agreements, stockholders' agreements, pledge agreements, buy-sell agreements, rights of first refusal, preemptive rights or other similar rights or proxies relating to any of the Company's securities (whether or not the Company is a party thereto), or agreements relating to the issuance, sale, redemption, transfer or other disposition of the Company's securities. The Conversion Shares issuable upon conversion of the Preferred Shares shall constitute, at the time of the Closing, not less than 24.3% of the Company's outstanding capital stock, calculated on a fully-diluted basis, including dilution for all shares issued or issuable under the Stock Option Plans (as defined in Section 4.01(j)). All of the outstanding shares of Common Stock of the Company are duly authorized and validly issued, are fully paid and nonassessable and are owned of record by the stockholders and the amounts set forth in SCHEDULE 2.06 and have been issued in compliance with all applicable federal and state securities laws.

(b) The Preferred Shares shall have been duly authorized and the Preferred Shares, when issued in accordance with this Agreement, and the Dividend Shares, when issued in payment of any dividend, will be duly and validly issued, fully paid and nonassessable shares of Series A Preferred Stock and will be free and clear of all liens, charges, restrictions, claims and

encumbrances, other than liens, charges, restrictions, claims and encumbrances that were created by the Purchaser and restrictions on transfer imposed by this Agreement, the Securities Act of 1933, as amended (the "SECURITIES ACT") and applicable state securities laws. The Conversion Shares shall have been duly reserved for issuance upon conversion of the Preferred Shares and, if any Dividend Shares shall be issued, the Dividend Shares and, when so issued, will be duly authorized, validly issued, fully paid and nonassessable shares of Common Stock and will be free and clear of all liens, charges, restrictions, claims and encumbrances, other than liens, charges, restrictions, claims and encumbrances that were created by the Purchaser and restrictions on transfer imposed by this Agreement the Securities Act and applicable state securities laws. Neither the issuance, sale or delivery of the Preferred Shares or of any Dividend Shares nor the issuance or delivery of the Conversion Shares will be subject to any preemptive right of the Company's stockholders or to any right of first refusal or other right in favor of any Person. The consummation of the transactions contemplated hereunder will not result in any anti-dilution adjustment or other similar adjustment to the outstanding shares of any of the Company's outstanding convertible, exercisable or exchangeable securities. Any Person with any right (other than the Purchaser) to purchase securities of the Company, which would be triggered as a result of the transactions contemplated under this Agreement, has waived such rights.

SECTION 2.07 FINANCIAL STATEMENTS. The Company has delivered to the Purchaser the audited financial statements of the Company and its Subsidiaries as at and for the years ended December 31, 2002, 2003 and 2004 and unaudited financial statements as at and for the fiscal quarters ended March 31, 2005, June 30, 2005 and September 30, 2005 (the "FINANCIAL STATEMENTS"). Each of the Financial Statements was prepared in good faith, is complete and correct, and has been prepared in accordance with United States generally accepted accounting principles ("GAAP") consistently applied throughout the periods covered thereby and fairly and accurately present the financial condition and operating results of the Company and its Subsidiaries as of the dates, and for the periods, indicated therein, and are consistent with the books and records of the Company and each of its Subsidiaries (which books and records are correct and complete) except that the unaudited financial statements as at and for the fiscal quarters ended March 31, 2005, June 30, 2005 and September 30, 2005 are subject to normal year-end adjustments.

SECTION 2.08 NO UNDISCLOSED LIABILITIES. None of the Company or its Subsidiaries has any liabilities (whether accrued, absolute, contingent or otherwise, and whether due or to become due or asserted or unasserted), except (a) liabilities provided for in the Financial Statements (other than liabilities which, in accordance with GAAP, need not be disclosed), and (b) liabilities (including accounts payable) incurred since the date of the Financial Statements in the ordinary course of business consistent with past practice. The Company knows of no basis for the assertion against the Company or any of its Subsidiaries of any liabilities not adequately reflected or reserved against in the Financial Statements. Except as disclosed in the Financial Statements and in Schedule 2.08, none of the Company or its Subsidiaries is a guarantor or indemnitor of any indebtedness of any other person or entity.

SECTION 2.09 CHANGES. Except as expressly contemplated by the Transaction Documents or as set forth on SCHEDULE 2.09, since June 30, 2005:

(a) there has been no Material Adverse Change nor has any event occurred which could reasonably be expected to result in any Material Adverse Change;

(b) there has not been any payment of, or declaration, setting a record date, setting aside or authorizing the payment of, any dividend or other distribution in respect of any shares of capital stock of the Company or any purchase, repurchase, retirement, redemption or other acquisition by the Company, of any of the outstanding shares of capital stock or other securities of, or other ownership interest in, the Company;

(c) there has not been any transfer, issue, sale or other disposition by the Company of any shares of capital stock or other securities of the Company or any grant of options, warrants, calls or other rights to purchase or otherwise acquire shares of such capital stock or such other securities;

(d) none of the Company or its Subsidiaries has materially increased the compensation payable or to become payable, or awarded or paid any bonuses to employees, officers, directors, consultants, advisors, agents, stockholders or representatives of the Company or any Subsidiary nor has the Company or any

Subsidiary either entered into any employment, deferred compensation, severance or similar agreements (nor amended any such agreement) or agreed to materially increase the compensation payable or to become payable by it to any of its employees, officers, directors, consultants, advisors, agents, stockholders or representatives or agreed to materially increase the coverage or benefits available under any severance pay, deferred compensation, bonus or other incentive compensation, pension or other employee benefit plan, payment or arrangement made to, for or with such employees, officers, directors, consultants, advisors, agents, stockholders or representatives;

(e) none of the Company or its Subsidiaries has made any loans, advances, guarantees or capital contributions to, or investments in, any Person or paid any fees or expenses to or entered into any arrangement, transaction or agreement with any Affiliate of the Company or any members of their immediate families other than ordinary advances for expenses incurred in the ordinary course of business;

(f) there has not been satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company or any Subsidiary, except in the ordinary course of business and that has not resulted in a Material Adverse Change;

(g) there has not been any termination or material change to a material contract or arrangement by which the Company or any Subsidiary or any of their assets are bound or subject;

(h) there has not been any resignation or termination of employment of any employee, officer, director, consultant, advisor, agent or representative of the Company or any of its Subsidiaries;

(i) none of the Company or its Subsidiaries has transferred any tangible or intangible assets or granted any rights under any contracts, leases, licenses, agreements or Intellectual Property (as defined in Section 2.12 hereof) used by the Company or any Subsidiary in its business which could reasonably be expected to result in a Material Adverse Change;

(j) there has not been any damage, destruction or loss, whether or not covered by insurance, with respect to the property or assets of the Company or any Subsidiary having a replacement cost of more than \$10,000 for any single loss or \$25,000 for all such losses in the aggregate;

6

(k) none of the Company or its Subsidiaries has mortgaged, pledged or subjected to any lien or encumbrance any of its assets, acquired any assets, or sold, assigned, transferred, conveyed, leased or otherwise disposed of any assets, except for assets acquired or sold, assigned, transferred, conveyed, leased or otherwise disposed of in the ordinary course of business consistent with the its past practice or liens for taxes not yet due or payable;

(l) none of the Company or its Subsidiaries has canceled or compromised any debt or claim, or amended, canceled, terminated, relinquished, waived or released any contract or right or settled any claim;

(m) none of the Company or its Subsidiaries has made, or entered into any binding commitment to make, any capital expenditures or capital additions or betterments in excess of \$100,000 in the aggregate;

(n) none of the Company or its Subsidiaries has incurred any debts, obligations or liabilities, whether due or to become due, except current liabilities incurred in the usual and ordinary course of business, none of which current liabilities (individually or in the aggregate) has resulted in, or could reasonably be expected to result in, a Material Adverse Change;

(o) none of the Company or its Subsidiaries has entered into any material transaction except for the Transaction Documents;

(p) none of the Company or its Subsidiaries has made any change in its accounting principles, methods or practices or depreciation or amortization policies or rates theretofore adopted;

(q) none of the Company or its Subsidiaries has disclosed to any Person any trade secrets except for disclosures made to Persons subject to valid and enforceable confidentiality agreements;

(r) none of the Company or its Subsidiaries has suffered or experienced any change in the relationship or course of dealings between the Company or such Subsidiary and any of its suppliers or customers which supply goods or services to the Company or such Subsidiary or purchase goods or services from the Company or such Subsidiary, which has resulted in, or could reasonably be expected to result in, a Material Adverse Change;

(s) none of the Company or any of its subsidiaries has made any payment to, or received any payment from, or made or received any investment in, or entered into any transaction or series of related transactions (including without limitation, the purchase, sale, exchange or lease of assets, property or services, or the making of a loan or guarantee) with any Affiliate; and

(t) none of the Company or its Subsidiaries has entered into any agreement or commitment (contingent or otherwise) to do any of the foregoing.

7

#### SECTION 2.10 LITIGATION; COMPLIANCE WITH LAW.

(a) Except as set forth in SCHEDULE 2.10, there is no (i) action, suit, claim, proceeding or investigation pending or, to the Company's knowledge, threatened, against or affecting the Company or any Subsidiary or any of their properties or assets, at law or in equity, or before or by any federal, state, municipal or other governmental body, department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) arbitration proceeding pending or, to the Company's knowledge, threatened, against or affecting the Company or any Subsidiary or any of their properties or assets or (iii) governmental inquiry pending or, to the Company's knowledge, threatened, against or affecting the Company or any Subsidiary or any of their properties or assets (including without limitation any inquiry as to the Company's or any of its Subsidiary's qualification to hold or receive any license or permit), and to the best of the Company's knowledge, there is no basis for any of the foregoing. None of the Company or its Subsidiaries has received any opinion or memorandum or legal advice from legal counsel to the effect that it is exposed, from a legal standpoint, to any liability or disadvantage which may result in a Material Adverse Change. None of the Company or its Subsidiaries is in default with respect to any order, writ, judgment, injunction or decree known to or served upon the Company or such Subsidiary of any court or of any federal, state, municipal or other governmental body, department, commission, board, bureau, agency or instrumentality, domestic or foreign. There is no action, suit, proceeding or investigation by the Company or any Subsidiary pending, threatened or contemplated against others.

(b) The Company and each Subsidiary has complied, in all respects, with all Laws, applicable to it and its business, operations, properties, assets, products and services. The Company and each Subsidiary has all necessary permits, licenses, registrations, franchises, approvals, exemptions and other authorizations required to conduct its business as conducted and to consummate the transactions contemplated by this Agreement and the other Transaction Documents and believes it can obtain any similar permits, licenses, registrations, franchises, approvals, exemptions and other authorizations for the conduct of its business as currently planned by the Company and the Subsidiaries to be conducted. The Company and each Subsidiary has been operating its business pursuant to and in compliance with the terms of all such permits, licenses, registrations, franchises, approvals, exemptions and other authorizations. Such permits, licenses, registrations, franchises, approvals, exemptions and other authorizations have been validly issued. No default or violation, or event that with the lapse of time or giving of notice or both would become a default or violation, has occurred in the due observance of any such permits, licenses, registrations, franchises, approvals, exemptions and other authorizations. All such permits, licenses, registrations, franchises, approvals, exemptions and other authorizations are in full force and effect without further consent or approval of any Person. None of the Company or its Subsidiaries has received any notice from any source (i) to the effect that it lacks any such permits, licenses, registrations, franchises, approvals, exemptions or other authorizations required in connection with its current or proposed operations or otherwise asserting a violation of law applicable to the conduct of its business, (ii) threatening to revoke any permit, license, registration, franchise, approval, exemption or other authorization or (iii) restricting or in any way limiting its operations as currently conducted or proposed to be conducted, in each case which has not been heretofore remedied or resolved.

8

(c) There is no existing Law, and the Company is not aware of any proposed Law, which would prohibit or restrict the Company or any Subsidiary from, or otherwise materially adversely affect the Company or any such Subsidiary in, conducting its business in any jurisdiction in which it is now conducting business or in which it proposes to conduct business. None of the Company or its Subsidiaries has received any notices of violation or alleged violation of any Law, by any federal, state, municipal or other governmental body, department, commission, board, bureau, agency or instrumentality, domestic



or foreign.

SECTION 2.11 PROPRIETARY INFORMATION OF THIRD PARTIES. No third party has claimed or, to the best of the Company's knowledge, has reason to claim, that any Person employed by or affiliated with the Company or its Subsidiaries has (a) violated or may be violating any of the terms or conditions of his employment, non-competition, non-disclosure or similar agreement with such third party, (b) disclosed or may be disclosing or utilized or may be utilizing any trade secret or proprietary information or documentation of such third party or (c) interfered or may be interfering in the employment relationship between such third party and any of its present or former employees. No third party has requested information from the Company or any of its Subsidiaries which suggests that such a claim might be contemplated. To the best of the Company's knowledge, no Person employed by or Affiliate of the Company or any of its Subsidiaries has employed or proposes to employ any trade secret or any information or documentation proprietary to any former employer, and to the best of the Company's knowledge, no Person employed by or Affiliate of the Company or any of its Subsidiaries has violated any confidential relationship which such Person may have had with any third party in connection with the development, manufacture or sale of any product or proposed product or the development or sale of any service or proposed service of the Company or any of its Subsidiaries, and the Company has no reason to believe there will be any such employment or violation. To the best of the Company's knowledge, neither the execution or delivery of the Transaction Documents, nor the carrying on of the businesses of the Company and its Subsidiaries as officers, employees or agents by any officer, director or key employee of the Company or any of its Subsidiaries, nor the conduct or proposed conduct of the Company's or any such Subsidiary's business, will conflict with or result in a breach of the terms, conditions or provisions of or constitute a default under any contract, covenant or instrument under which any such Person is obligated to a third party.

#### SECTION 2.12 INTELLECTUAL PROPERTY.

(a) The Company and each Subsidiary has, or has the right to use pursuant to license or other written authorization, all right, title and interest in and to all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, processes, formulae, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, computer programs (including all source codes) and related documentation, technical information, manufacturing, engineering and technical drawings, know-how, concepts and all proprietary rights and intellectual property and copies and tangible embodiments thereof (in whatever form or medium) all pending applications for and registrations of patents, trademarks, service marks and copyrights (together, "INTELLECTUAL PROPERTY") necessary for its business as now conducted and as proposed to be conducted, without any conflict with or infringement of the rights of others. Set forth in

SCHEDULE 2.12 is a list of all patents and registered trademarks and copyrights owned or licensed by the Company and its Subsidiaries and each other material item of Intellectual Property used by the Company and its Subsidiaries. All registrations on behalf of the Company or its Subsidiaries with and applications to governmental or regulatory authorities in respect of all Intellectual Property of the Company and its Subsidiaries are valid and in full force and effect and are not subject to any other actions by the Company or any of its Subsidiaries to maintain their validity or effectiveness. The Company and each of its Subsidiaries has taken reasonable security measures to protect the secrecy, confidentiality and value of its trade secrets. Except as set forth in SCHEDULE 2.12, there are no outstanding options, licenses, or agreements of any kind relating to the Intellectual Property of the Company or its Subsidiaries, nor are the Company or its Subsidiaries bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other Person.

(b) None of the Company or its Subsidiaries has, nor has any of them received any communications alleging that it has, violated or, by conducting its business as now conducted or as proposed to be conducted, would violate any of the Intellectual Property of any other Person. None of the Company or its Subsidiaries is aware that any of its Intellectual Property is being infringed by any other Person. None of the Company or its Subsidiaries is aware, after due and proper investigation, that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the Company's or such Subsidiary's interests or that would conflict with the Company's or such Subsidiary's business as now conducted or as proposed to be conducted. None of the Company or its Subsidiaries is aware of any instances where its employees, agents, advisors, consultants or

representatives have transferred Intellectual Property of the Company or any Subsidiary without the consent of the Company or such Subsidiary.

#### SECTION 2.13 REAL PROPERTY.

(a) SCHEDULE 2.13(a) sets forth a complete list of all real property and interests in real property owned by the Company or its Subsidiaries. The Company or a Subsidiary has good, clear and marketable title to the real property described on SCHEDULE 2.13(a) and such real property is free and clear of all mortgages, pledges, security interests, liens, charges, claims, restrictions and other encumbrances (including without limitation, easements and licenses). There are no condemnation, environmental, zoning or other land use regulation proceedings, either instituted or, to the best of the Company's knowledge, planned to be instituted, which would adversely affect the use or operation of such real property for its intended uses and purposes, or the value of such real property, and none of the Company or its Subsidiaries has received notice of any special assessment proceedings which would affect such real property.

(b) SCHEDULE 2.13(b) sets forth a complete list of all real property and interests in real property leased by the Company or its Subsidiaries (each a "REAL PROPERTY LEASE", and collectively, the "REAL PROPERTY LEASES") as lessee. Neither the Company nor any of its Subsidiaries leases any real property as lessor. No condemnation, environmental, zoning or other land use regulation proceedings have been instituted or, to the best of the Company's knowledge after due inquiry, are planned to be instituted, which would affect the use or operation of the Company's and its Subsidiaries' properties and assets for their

10

respective intended uses and purposes, or the value of such properties, and none of the Company or its Subsidiaries has received notice of any special assessment proceedings which would affect such properties and assets.

(c) Each of the Real Property Leases is a valid and subsisting agreement, duly authorized and entered into and enforceable in accordance with its terms. There is no default under any Real Property Lease by the Company or any Subsidiary or, to the Company's knowledge, by any other party thereto, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder. The Company has delivered or otherwise made available to the Purchaser and its counsel true, correct and complete copies of the Real Property Leases, together with all amendments, modifications, supplements or side letters affecting the obligations of any party thereunder. (d) No previous or current party to any Real Property Lease has given notice of or made a claim with respect to any breach or default thereunder by the Company or any Subsidiary. With respect to those Real Property Leases that were assigned or subleased to the Company or any Subsidiary by a third party, all necessary consents to such assignments or subleases have been obtained except as set forth in Schedule 2.13(b).

SECTION 2.14 ASSETS. Except as set forth in Schedule 2.14, the Company and each of its Subsidiaries has good, legal and marketable title to all of its personal property and assets, in each case free and clear of all liens, charges, restrictions, claims or encumbrances of any nature whatsoever. With respect to the personal property and assets that the Company and its Subsidiaries lease (each a "PERSONAL PROPERTY LEASE", and collectively, the "PERSONAL PROPERTY LEASES") (a) the Company and each of its Subsidiaries is in compliance with its respective Personal Property Leases, (b) the Personal Property Leases are enforceable in accordance with their terms, and (c) the Company or its Subsidiary, as applicable, holds a valid leasehold interest free and clear of any liens, charges, restrictions, claims or encumbrances of any nature whatsoever. Each of the Personal Property Leases is a valid and subsisting agreement, duly authorized and entered into and enforceable in accordance with its terms, and there is no default under any Personal Property Lease by the Company or any Subsidiary or, to the Company's knowledge, by any other party thereto, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder. The Company has delivered or otherwise made available to the Purchaser and its counsel true, correct and complete copies of the Personal Property Leases, together with all amendments, modifications, supplements or side letters affecting the obligations of any party thereunder. All items of personal property and assets owned or leased by the Company and its Subsidiaries are in good operating condition, normal wear and tear excepted, are reasonably fit and useable for the purposes for which they are being used, are adequate and sufficient for the business of the Company or its Subsidiary, as applicable, and conform in all material respects with all applicable laws. The carrying value of the assets of the Company and its Subsidiaries on the Financial Statements is not overstated.

SECTION 2.15 INSURANCE. There is in full force and effect one or more policies of insurance issued by insurers of recognized responsibility, insuring the Company and its Subsidiaries and their properties, business and projects

against such losses and risks, and in such amounts, on both a per occurrence and an aggregate basis, as are customary in the case of corporations of established reputation engaged in the same or similar business and similarly situated. The

Company has not received any notice or communication, either oral or written (a) regarding the actual or possible cancellation or invalidation of any of such policies or regarding any actual or possible adjustment in the amount of premiums payable with respect to any of said policies, (b) regarding any actual or possible refusal of coverage under, or any actual or possible rejection of any claim under, any of such policies, (c) that the Company or any Subsidiary will be unable to renew its existing insurance coverage as and when the same shall expire, or (d) that the issuer of any such policies may be unwilling or unable to perform any of its obligations thereunder. There is no pending claim under any of the insurance policies of the Company or any of its Subsidiaries, and no event has occurred or condition or circumstance exists that might (with or without notice or lapse of time) directly or indirectly give rise to, or serve as a basis for, any such claim. None of the Company or its Subsidiaries is in default with respect to any provision contained in any insurance policy, and none of the Company or its Subsidiaries has failed to give any notice or present any presently existing claims under any insurance policy in due and timely fashion. SCHEDULE 2.15 sets forth a list of each insurance policy (specifying the insurer, the amount of coverage, the type of insurance, the policy number, the expiration date, the annual premium maintained by the Company and each of its Subsidiaries relating to its properties, assets, business or personnel.

SECTION 2.16 TAXES. The Company and each of its Subsidiaries has accurately and timely filed all federal, state, county and local tax returns and reports required to be filed by it within the applicable period, and the Company and each of its Subsidiaries has paid all taxes shown to be due by such returns as well as all other taxes, assessments and governmental charges which have become due or payable. Such returns and reports are true and correct in all material respects. The Company and each of its Subsidiaries has established adequate reserves for all taxes accrued but not yet payable. All tax elections of any type which the Company or its Subsidiaries has made as of the date hereof are set forth in the Financial Statements. None of the federal income tax returns of the Company or its Subsidiaries has ever been audited by the Internal Revenue Service. No claim or deficiency assessment with respect to or proposed adjustment of the Company's or its Subsidiaries' federal, state, county or local taxes is currently assessed or pending or threatened, and there is no basis for any such claim, assessment or adjustment. There is no tax lien (other than for current taxes not yet due and payable), whether imposed by any federal, state, county or local taxing authority, outstanding against the assets, properties or businesses or the Company or its Subsidiaries. None of the Company or its Subsidiaries has executed any waiver of the statute of limitations on the assessment or collection of any tax or governmental charge. None of the Company or its Subsidiaries is a party to any agreement relating to the sharing, allocation or indemnification of taxes. None of the Company, its Subsidiaries or any of their present or former stockholders has ever made an election pursuant to Section 1362 or Section 341(f) of the Internal Revenue Code of 1986, as amended (the "CODE"), that the Company or any Subsidiary be taxed as a Subchapter S corporation or a collapsible corporation or any other election pursuant to the Code (other than elections that relate solely to methods of accounting, depreciation or amortization) that would result in a Material Adverse Change. The Company's net operating losses for federal income tax purposes as set forth in the Financial Statements are not subject to any limitations imposed by Section 382 of the Code and the full amount of such net operating losses are available to offset the Company's taxable income for the current fiscal year and, to the extent not so used, succeeding fiscal years. Consummation of the transactions contemplated by the Transaction Documents or by any other agreement, understanding or commitment (contingent or otherwise) to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is otherwise bound will not have the effect of limiting the Company's

ability to use such net operating losses in full to offset such taxable income. The Company and each Subsidiary has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories. The Company and each Subsidiary has properly charged, collected and paid all applicable sales, use and other similar taxes.

SECTION 2.17 AGREEMENTS.

(a) None of the Company or its Subsidiaries is a party to or otherwise bound by any agreement, instrument, commitment or restriction which individually or in the aggregate could result in a Material Adverse Change. Except as set forth in SCHEDULE 2.17, none of the Company or its Subsidiaries is a party to, or is it or any of its assets or properties bound by, any :

(i) distributor, dealer, manufacturer's representative or sales agency agreement which is not terminable on less than ninety (90) days notice without cost or other liability to the Company or its Subsidiaries;

(ii) agreement with any labor union or collective bargaining agreement;

(iii) agreement with any supplier containing any provision permitting any party other than the Company or its respective Subsidiary to renegotiate the price or other terms, or containing any pay-back or other similar provision, upon the occurrence of a failure by the Company or its respective Subsidiary to meet its obligations under the agreement when due or the occurrence of any other event;

(iv) agreement for the future purchase of fixed assets or for the future purchase of materials, supplies, services or equipment in excess of the normal operating requirements of the Company and its Subsidiaries or at an excessive price, or any agreement that will result in a loss to the Company or any Subsidiary upon completion of performance;

(v) agreement for the employment of any officer, employee or other Person (whether of a legally binding nature or in the nature of informal understandings) on a full-time, part-time or consulting basis which is not terminable on notice without cost or other liability to the Company or its Subsidiaries;

(vi) bonus, pension, profit-sharing, retirement, hospitalization, insurance, stock purchase, stock bonus or option or other plan, agreement or understanding pursuant to which benefits are provided to any employees, officers, directors, consultants, advisors, agents, stockholders or representatives of the Company or its Subsidiaries;

(vii) loan agreement, credit agreement, promissory note, indenture, subordination agreement, letter of credit or other agreement relating to the borrowing of money or to the mortgaging or pledging of, or otherwise placing a lien or security interest on, any asset of the Company or its Subsidiaries;

(viii) guaranty of any obligation for borrowed money or otherwise;

13

(ix) voting trust or agreement, stockholders' agreement, pledge agreement, buy-sell agreement, first refusal or preemptive rights agreement relating to any securities of the Company or its Subsidiaries;

(x) acquisition, sale or lease agreement outside of the ordinary course of business of the Company or its Subsidiaries;

(xi) partnership or joint venture agreement;

(xii) agreement (A) which prohibits or requires consent for (1) a Change of Control or merger of the Company or any Subsidiary, (2) the sale of all or substantially all of the assets of the Company or any Subsidiary, (3) the transfer or issuance of any securities of the Company or any Subsidiary, or (4) the assignment, subletting or other transfer of the rights under such agreement, or (B) which terminates, is subject to termination, is materially and adversely affected or is subject to being materially and adversely affected as a result of the occurrence of any event described in subsection (A) hereof;

(xiii) agreement, or group of related agreements with the same party or any group of affiliated parties, under which the Company or any Subsidiary has advanced or agreed to advance money or has agreed to lease any property as lessee or lessor;

(xiv) agreement or obligation (contingent or otherwise) to issue, sell, transfer, assign or otherwise distribute or dispose of, repurchase, redeem or otherwise acquire, or retire any shares of its capital stock or any of the other equity securities of the Company or any Subsidiary;

(xv) assignment, license or other agreement with respect to any form of intangible property;

(xvi) agreement under which the Company has granted any Person

any registration rights;

(xvii) agreement under which the Company or any Subsidiary has limited or restricted its right to operate or to compete with any Person in any respect;

(xviii) agreement, or group of related agreements with the same party, involving more than \$10,000.00 or continuing over a period of more than six (6) months from the date or dates thereof (including renewals or extensions optional with another party), which agreement or group of agreements is not terminable by the Company or a Subsidiary, as applicable, without penalty upon notice of thirty (30) days or less, or any agreement not made in the ordinary course of business;

(xix) agreement with any federal, state, municipal or other governmental body, department, commission, board, bureau, agency or instrumentality, domestic or foreign;

(xx) agreement, instrument, commitment, plan or arrangement, a copy of which would be required to be filed with the Securities and Exchange Commission (the "COMMISSION") as an exhibit to a registration statement filed on Form S-1 if the Company were registering securities under the Securities Act;

14

(xxi) confidentiality agreement or standstill agreement;

(xxii) agreement with any current or former officer or director of the Company or any Subsidiary, or any "affiliate" or "associate" of such persons (as such terms are defined in the rules and regulations promulgated under the Securities Act;

(xxiii) any material agreement with any current or former stockholder;

(xxiv) any other agreement material to the business of the Company or any Subsidiary, regardless of the dollar value of the amounts receivable by or payment obligations of the Company or any Subsidiary thereunder; or

(xxv) binding commitment or agreement to enter into any of the foregoing.

(b) The Company or Subsidiary, as applicable, and, to the best of the Company's knowledge, each other party thereto: (i) have performed all the obligations required to be performed by them to date (or each non-performing party has received a valid, enforceable and irrevocable written waiver with respect to its non-performance), and (ii) have received no notice of default and are not in default (or, with due notice or lapse of time or both, would be in default) under any agreement, contract, license, understanding, evidence of indebtedness, note, indenture, instrument, commitment, plan or arrangement to which the Company or such Subsidiary is a party or by which it or its property or assets may be bound. None of the Company or its Subsidiaries has a present expectation or intention of terminating or not fully performing all its obligations under any agreement, contract, license, understanding, evidence of indebtedness, note, indenture, instrument, commitment, plan or arrangement, and the Company has no knowledge of any breach or anticipated breach by the other party to any agreement, contract, license, understanding, evidence of indebtedness, note, indenture, instrument, commitment, plan or arrangement to which the Company or any Subsidiary is a party.

(c) No previous or current party to any agreement or contract listed in SCHEDULE 2.17 has given written notice to the Company or any Subsidiary of, or made any claim with respect to, a desire or intention to exercise any optional termination, cancellation or acceleration right thereunder, and the Company has no knowledge of any notice of, or claim with respect to, any such desire or intention. None of the Company or its Subsidiaries has and, to the Company's knowledge, no other party to any agreement or contract listed in SCHEDULE 2.17 has, granted or been granted any waiver or indulgence under any such agreement or contract or repudiated any provision thereof. The Company has delivered or otherwise made available to the Purchaser true, correct and complete copies (or summaries of any oral agreements) of each of the agreements listed in SCHEDULE 2.17, together with all amendments, modifications, supplements or side letters affecting the obligations of any party thereunder. Each of these agreements is valid and enforceable against the Company or its respective Subsidiary, as applicable, in accordance with its terms.

SECTION 2.18 LOANS AND ADVANCES. None of the Company or its Subsidiaries has any outstanding loans or advances to any Person and none of them is obligated to make any such loans or advances, except, in each case, for ordinary course advances to employees in respect of reimbursable business

expenses anticipated to be incurred by them in connection with their performance of services for the Company or such Subsidiary, as applicable.

15

SECTION 2.19 ASSUMPTIONS, GUARANTIES, ETC. OF INDEBTEDNESS OF OTHER PERSONS. None of the Company or its Subsidiaries has assumed, guaranteed, endorsed or otherwise become directly or contingently liable for any indebtedness of any other Person (including, without limitation, liability by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor, or otherwise to assure the creditor against loss), except for guaranties by endorsement of negotiable instruments for deposit or collection in the ordinary course of business and except as set forth on Schedule 2.19.

SECTION 2.20 CUSTOMERS AND SUPPLIERS. SCHEDULE 2.20 sets forth a complete list of all significant customers and suppliers of the Company and each Subsidiary. Except as set forth in SCHEDULE 2.20, no customer or supplier which is significant to the Company or any Subsidiary, has terminated or breached, materially reduced or threatened to terminate, breach or materially reduce its purchases from or provision of products or services to the Company or any of its Subsidiaries.

SECTION 2.21 APPROVALS. Subject to the accuracy of the Purchaser's representations and warranties set forth in Article III hereof, no registration or filing with, or consent or approval of or other action by, any federal, state or other governmental agency or instrumentality or any third party is or will be necessary for the Company's valid execution, delivery and performance of the Transaction Documents, the issuance, sale and delivery of the Preferred Shares or, upon conversion thereof, the Company's issuance and delivery of the Conversion Shares, other than those (i) which have previously been obtained or made, (ii) which are required to be obtained from stockholders at the stockholder vote to be held in connection with the approval of the transactions contemplated by the Transaction Documents, (iii) which are required to be made under federal or state securities laws, which will be obtained or made, and will be effective within the time periods required by law, or (iv) which are required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR ACT").

SECTION 2.22 OFFERING OF THE PREFERRED SHARES. Assuming the accuracy of the Purchaser's representations and warranties set forth in Article III hereof, the Company has complied with all applicable federal and state securities laws in connection with the offer, issuance and sale of the Preferred Shares and any Dividend Shares and, upon conversion thereof, the issuance and delivery of the Conversion Shares. Neither the Company nor any Person authorized or employed by the Company as agent, broker, dealer or otherwise in connection with the offering or sale of the Preferred Shares, the Dividend Shares and the Conversion Shares or any security of the Company similar to the Preferred Shares, the Dividend Shares or the Conversion Shares has offered the Preferred Shares, the Dividend Shares, the Conversion Shares or any such similar security for sale to, or solicited any offer to buy the Preferred Shares, the Dividend Shares, the Conversion Shares or any such similar security from, or otherwise approached or negotiated with respect thereto with, any Person or Persons other than the Purchaser. Neither the Company nor any Person acting on its behalf has taken or will take any other action (including, without limitation, any offer, issuance or sale of any security of the Company under circumstances which might require the integration of such security with the Preferred Shares, the Dividend Shares or the Conversion Shares under the Securities Act or the rules and regulations of the Commission promulgated thereunder), in either case so as to subject the offering, issuance or sale of the Preferred Shares, the Dividend Shares and the Conversion Shares to the registration provisions of the Securities Act. Neither the Company nor any Person acting on its behalf has offered the Preferred Shares

16

or the Conversion Shares to any Person by means of general or public solicitation or general or public advertising, such as by newspaper or magazine advertisements, by broadcast media, or at any seminar or meeting whose attendees were solicited by such means.

SECTION 2.23 OFFERING EXEMPTION. Assuming the accuracy of the Purchaser's representations and warranties set forth in Article III hereof, the offer, issuance and sale of the Preferred Shares and any Dividend Shares and, upon conversion thereof, the issuance and delivery of the Conversion Shares, are exempt from registration under the Securities Act, and will be registered or qualified (or exempt from registration or qualification) under applicable state securities and "blue sky" laws, as currently in effect.

SECTION 2.24 BROKERS; FINANCIAL ADVISORS. Except as set forth in SCHEDULE 2.24, no agent, broker, investment banker, finder, financial advisor or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from the Company or its Subsidiaries, directly or indirectly, in connection with the transactions contemplated by the Transaction Documents, and no Person is entitled to any fee or commission or like payment from the Company or its Subsidiaries in respect thereof based in any way on agreements, arrangements or understandings made by or on behalf of the Company or any Subsidiary.

SECTION 2.25 TRANSACTIONS WITH AFFILIATES. Except as set forth on SCHEDULE 2.25, no employee, officer, director, consultant, advisor, agent, stockholder or representative of the Company or any Subsidiary, or member of the family of any such Person, or any corporation, limited liability company, partnership, trust or other entity in which any such Person, or any member of the family of any such Person, has a substantial interest or is an officer, director, trustee, partner or holder of more than three percent (3%) of the outstanding capital stock thereof, is a party to any transaction with the Company or any Subsidiary, including any contract, agreement or other arrangement providing for the employment of, furnishing of services by, rental of real or personal property from or otherwise requiring payments to any such Person, other than employment-at-will arrangements in the ordinary course of business. To the Company's knowledge, none of the Persons described in this Section 2.25 has any direct or indirect ownership interest in any Person with which the Company or any Subsidiary is affiliated or with which the Company or any Subsidiary has a business relationship, or any Person that competes with the Company or any Subsidiary.

SECTION 2.26 EMPLOYEES.

(a) To the Company's knowledge, no key employee and no group of the Company's or any Subsidiary's employees or independent contractors has any plans to terminate his, her or its employment or relationship as an employee or independent contractor with the Company or any such Subsidiary, nor does the Company or any Subsidiary have any present intention to terminate the employment of any key employee, group of employees, or independent contractors.

(b) SCHEDULE 2.26(b) sets forth a true and complete list of (i) the names of the officers of the Company and each Subsidiary, together with the title or job classification of each such Person and the total compensation anticipated to be paid to each such Person by the Company and/or any Subsidiary during calendar year 2005, (ii) the name and amount of annual compensation of each employee of the Company and each Subsidiary, together with such employee's

17

job title and amounts and forms of compensation and fringe and severance benefits, and (iii) the name and amount of annual compensation of each consultant, contractor or subcontractor equivalent of the Company and each Subsidiary for which a Form 1099 has been, or will be, filed. Except as provided on SCHEDULE 2.26(B), none of these individuals has an employment agreement or understanding with the Company or any Subsidiary, whether oral or written, which is not terminable on notice by the Company or such Subsidiary without cost or other liability to the Company or such Subsidiary.

(c) To the Company's knowledge, no employee of the Company or any Subsidiary is a party to or is otherwise bound by any agreement or arrangement (including, without limitation, confidentiality agreements, noncompetition agreements, licenses, covenants or commitments of any nature) or subject to any judgment, decree, or order of any court or governmental body, (i) that would conflict with such employee's obligation to diligently promote and further the Company's or such Subsidiary's interests or perform the duties that have been assigned to such employee or (ii) that would conflict with the Company's or such Subsidiary's business as now conducted or as proposed to be conducted.

(d) None of the Company or its Subsidiaries is delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed through the date hereof or amounts required to be reimbursed to them through the date hereof. The Company and its Subsidiaries are in compliance in all material respects with all applicable federal, state and local laws, rules and regulations respecting employment, employment practices, labor, terms and conditions of employment and wages and hours. None of the Company or its Subsidiaries is bound by or subject to (and none of their assets or properties are bound by or subject to) any written or oral commitment or arrangement with any labor union, and no labor union has requested or sought to represent any of the employees, representatives or agents of the Company or its Subsidiaries. There is no labor strike, dispute, slowdown or stoppage pending or, to the best of the Company's knowledge, threatened against or involving the Company or any Subsidiary.

(e) SCHEDULE 2.26(e) sets forth all written employment agreements to

which the Company or any Subsidiary is a party, each of which is legal, valid, binding and enforceable. To the best of the Company's knowledge, no employee of or consultant to the Company or any Subsidiary is in violation of any material term of any employment contract or any other contract or agreement relating to the relationship of any such employee or consultant with the Company or such Subsidiary.

#### SECTION 2.27 ENVIRONMENTAL AND SAFETY LAWS.

(a) The Company and each Subsidiary, the operations of their businesses, and any real property that the Company or any Subsidiary owns, leases or otherwise occupies complies and has at all times complied with all federal, state and local laws, judgments, decrees, orders, consent agreements, authorizations, permits, licenses, rules, regulations, common or decision law (including, without limitation, principles of negligence and strict liability) relating in any way to the protection, investigation or restoration of the environment (including, without limitation, natural resources), the generation, use, handling, transportation or disposal of Hazardous Materials or the health or safety matters of humans and other living organisms, including the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental

18

Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Federal Clean Water Act, as amended, the Federal Clean Air Act, as amended, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act or any state and local analogue (hereinafter "ENVIRONMENTAL LAWS"). No expenditures are presently required to comply with any such applicable Environmental Laws.

(b) (i) None of the Company or its Subsidiaries has received any notice of a complaint, order, directive, claim, request for information, citation or other communication, written or oral, or any notice of any claim, lawsuit or proceeding raising a claim or potential claim against the Company, any Subsidiary or any of their predecessors or any of their respective real properties now or since formerly owned, leased or operated or other assets indicating or alleging any damage to the environment or any liability or obligation under or violation of any Environmental Law, and the Company is not aware of any basis therefor, and (ii) none of the Company or its Subsidiaries is subject to any order, decree, injunction or other directive of any governmental body or authority.

(c) (i) None of the Company or its Subsidiaries has used and, to the Company's knowledge, no other person has used any portion of any property currently or previously owned, operated or leased by the Company or any Subsidiary for the generation, handling, processing, treatment, transportation storage or disposal of Hazardous Materials; (ii) none of the Company or its Subsidiaries owns or operates any underground tank or other underground storage receptacle for Hazardous Materials, any asbestos-containing materials or polychlorinated biphenyls, and, to the Company's knowledge, no underground tank or other underground storage receptacle for Hazardous Materials, asbestos-containing materials or polychlorinated biphenyls is located on any portion of any property currently owned, operated or leased by the Company or any Subsidiary and (iii) to the Company's knowledge, none of the Company or its Subsidiaries has caused or suffered to occur any Releases or threatened Releases of Hazardous Materials on, at, in, under, above, to, from or about any property currently or owned, operated or leased by the Company or any Subsidiary.

(d) The Company and its Subsidiaries have obtained and are maintaining in full force and effect all necessary permits, licenses and approvals required by all Environmental Laws applicable to any owned, operated or leased properties and the business operations operated thereon, and each of the Company and its Subsidiaries is in compliance with all such permits, licenses and approvals. The Company is not aware of any reason why all necessary permits, licenses and approvals which have not been currently required for existing activities of the Company and its Subsidiaries but which will be required by Environmental Laws to construct, own, test or operate the properties and business operations contemplated by the Company and its Subsidiaries cannot be obtained in the ordinary course of business without material difficulty or delay.

(e) The execution, delivery and performance of this Agreement is not subject to any Environmental Laws which condition, restrict or prohibit the sale, lease or other transfer of property or operations, including any so-called "environmental cleanup responsibility acts" or requirements for the transfer of permits, approvals, or licenses. To the Company's knowledge, there have been no environmentally related audits, studies, reports, analyses (including soil and groundwater analyses), or investigations of any kind performed with respect to the currently or previously owned, leased, or operated properties of the Company or its Subsidiaries except as set forth in Schedule 2.27(e).



## SECTION 2.28 EMPLOYEE BENEFIT PLANS AND EMPLOYMENT AGREEMENTS.

(a) Set forth in SCHEDULE 2.28(a) is a list of each employee benefit plan (whether or not within the meaning of ss. 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), multiemployer plan (within the meaning of ERISA ss. 3(37) or 4001(a)(3) (a "MULTIEMPLOYER PLAN")), written or oral employment or consulting agreement, change in control agreement, severance pay plan or agreement, employee relations policy (or practice, agreement or arrangement), agreements with respect to leased or temporary employees, vacation plan or arrangement, sick pay plan, stock purchase plan, stock option plan, fringe benefit plan, incentive plan, bonus plan, cafeteria or flexible spending account plan and any deferred compensation agreement (or plan, program, or arrangement) covering any present or former employee of the Company and which is, or at any time during the six year period preceding the Closing Date was, sponsored or maintained by (or to which contributions are, or at any time during the six year period preceding the Closing Date were, or were required to have been, made by) either (1) the Company, or (2) any other organization which together with the Company is treated as a single employer under ERISA ss. 4001 or Code ss. 414 (an "ERISA AFFILIATE"). Each and every such plan, program, policy, practice, arrangement and agreement is hereinafter referred to as a "BENEFIT PLAN."

(b) There has been delivered to the Buyer (i) current, accurate and complete copies of each Benefit Plan (including any amendments thereto), trust agreement, insurance or annuity contract, and all summary plan descriptions, summaries of material modification, general notices to employees or beneficiaries and other material agreements, documents or instruments relating thereto; (ii) the most recent audited financial statement with respect to each Benefit Plan required to have an audited financial statement; (iii) copies of the most recent determination letters with respect to any Benefit Plan which is intended to qualify under the Code ss. 401(a) (a "QUALIFIED PLAN"); and (iv) copies of the three most recent annual reports (Forms 5500) with respect to each Benefit Plan required to file an annual report.

(c) With respect to each Benefit Plan, (i) the Company and each ERISA Affiliate has complied in all material respects with all provisions of such plan, ERISA, the Code and other applicable laws and regulations, and no act or omission by the Company, any ERISA Affiliate, or any fiduciary of any such plan has occurred, no event has occurred and no condition exists that will or could be expected to give rise to liability for a breach of fiduciary responsibilities under ERISA, or to any fines, penalties, excise taxes, corrective payments, fees, sanctions or other payments under ERISA, the Code or other applicable laws or regulations; (ii) each such plan which is a pension plan, within the meaning of ERISA ss. (3)(2), is a Qualified Plan and has received from the IRS within the last three years a favorable determination letter, and no event has occurred that could give rise to disqualification or loss of tax-exempt status of any such plan or related trust; (iii) each such plan which is an "employee welfare benefit plan" within the meaning of Section 3(1) of ERISA is funded through an insurance company contract; (iv) each such plan which is a "group health plan" (within the meaning of ERISA ss. 607(1) or Code ss. 5000(b)(1)) has been operated at all times in compliance with the Health Insurance Portability and Accountability Act of 1996 and the continuation coverage provisions described in Code ss. 4980B, ERISA ss. 601 through 608, and any similar provisions under

applicable state law; (v) no such plan provides for any post-employment life, medical, dental or other welfare benefits (whether or not insured) for any current or former employee except as required under Code ss. 4980B, ERISA ss. 601 through 608 or applicable state or local law; (vi) there are no investigations, applications or other matters initiated by the Company or by any governmental agency that are pending before the IRS, the United States Department of Labor or any other federal, state or local governmental agency; (vii) there have been no claims or notice of claims filed under any fiduciary liability insurance policy, fiduciary bond or indemnification agreement covering any such plan, or any fiduciary with respect to such plan; (viii) there are no actions, investigations, suits or claims (other than routine claims for benefits in the ordinary course) pending or threatened, and there are no facts which could give rise to any such actions, investigations, suits or claims (other than routine claims for benefits in the ordinary course), which could subject either the Company or any Affiliate to any liability; (ix) all contributions, insurance and annuity premiums and salary deferrals elected by an employee or required to have been made by the Company or any ERISA Affiliate under law or under the terms of any Benefit Plan for all complete and partial periods up to and including the date hereof have been made, will be made to the appropriate plan on or before such date or have been reflected on the Financial Statements; (x) any compensation payable thereunder to a covered employee within the meaning of

Code ss.162(m)(3) is deductible by the Company as a compensation expense under Code ss.162; (xi) no such plan directly or indirectly extends, maintains, arranges or renews credit to or for any officer or director; (xii) none of the Company, any ERISA Affiliate or any other person has engaged in a prohibited transaction (within the meaning of Code ss.4975 or ERISA ss.406) which could subject either the Company or any ERISA Affiliate to any taxes, penalties or other liabilities resulting from prohibited transactions under Code ss.4975 or under ERISA ss.409 or 502(i); and (xiii) neither the Company nor any ERISA Affiliate currently sponsors, maintains or is obligated to contribute to, and at no time during the last six years, has sponsored, maintained or been obligated to contribute to, any Benefit Plan, including a Multiemployer Plan, subject to Title IV of ERISA or Code ss. 412.

(d) The events contemplated by this Agreement (either alone or together with any other event) will not (i) entitle any employees to severance pay, unemployment compensation, or other similar payments under any Benefit Plans or Law applicable to the Company or any Subsidiary, (ii) accelerate the time of payment or vesting or increase the amount of benefits due under any Benefit Plan or compensation to any employees of the Company or any Subsidiary, or (iii) result in any payments under any Benefit Plan or Law applicable to the Company or any Subsidiary becoming due to any employee.

(e) The Company and each ERISA Affiliate may, in any manner, subject to the limitations imposed by applicable law and reasonable notice provisions under the applicable Benefit Plan, and without the consent of any employee, beneficiary or other person, prospectively terminate, modify or amend any such Benefit Plan or any other plan, program or practice (or its participation in such Benefit Plan or any other plan, program or practice) effective as of any date on or after the date hereof; and no representations or communications (directly or indirectly, orally, in writing or otherwise) with respect to participation, eligibility for benefits, vesting, benefit accrual coverage or other material terms of any Benefit Plan have been made prior to the Closing Date to any employee, beneficiary or other person other than those which are in accordance with the terms and provisions of each such Plan as in effect immediately prior to the Closing Date.

21

SECTION 2.29 FOREIGN CORRUPT PRACTICES ACT; USA PATRIOT ACT. None of the Company, its Subsidiaries or, to the best of the Company's knowledge, any employees, officers, directors, consultants, advisors, agents, stockholders or representatives of the Company or other Person acting on behalf of the Company or any Subsidiary, has violated, or taken any action which would cause the Company to be in violation of, the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), or the USA Patriot Act, or any rules and regulations thereunder. Each of the Company's and its Subsidiaries' internal management and accounting practices and controls are adequate to ensure compliance with the FCPA and the USA Patriot Act. There is not now, and there has never been, any employment by the Company or any Subsidiary of, or beneficial ownership in the Company or any Subsidiary by, any governmental or political official in any country in the world.

SECTION 2.30 ILLEGAL OR UNAUTHORIZED PAYMENTS; POLITICAL CONTRIBUTIONS. None of the Company, its Subsidiaries or, to the best of the Company's knowledge, any employees, officers, directors, consultants, advisors, agents, stockholders or representatives of the Company or other Person acting on behalf of the Company or any Subsidiary has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, in contravention of applicable law: (a) as a kickback or bribe to any Person, or (b) to any political organization, or the holder of or any aspirant to any elective or appointive public office, except for personal political contributions not involving the direct or indirect use of the Company's or any Subsidiary's funds.

SECTION 2.31 PENDING CHANGES. To the Company's knowledge, there is no pending or threatened change in any Law, rule, regulation or order applicable to its business, operations, properties, assets, products and services which is likely to result in a Material Adverse Change. To the best of the Company's knowledge, there has been no discovery, change or development in the development, design, manufacture or marketing of any product or service or proposed product or service of the Company or any Subsidiary, or any product or service that is or may be competitive with any such product or service or of any new or improved materials, products, services or processes useful in the business or the proposed business of the Company or any Subsidiary, to which an informed investor in the Company would attach importance in its decision to make an investment in the Company.

SECTION 2.32 INVESTMENT COMPANY ACT. The Company is not, nor is it directly or indirectly controlled by or acting on behalf of, any Person that is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

SECTION 2.33 REGISTRATION RIGHTS. Except for as set forth in SCHEDULE 2.33 and the rights granted to the Purchaser under the Registration Rights Agreement, no Person has demand or other rights to cause the Company to file any registration statement under the Securities Act relating to any securities of the Company or any right to participate in any such registration statement, including, without limitation, piggyback registration rights.

SECTION 2.34 BOOKS AND RECORDS. Each of the Company's and its Subsidiaries' books of account, ledgers, order books, records and documents accurately and completely reflect in accordance with usual and customary prudent business practices all material information relating to the Company's or Subsidiary's, as appropriate, business, the location and collection of the Company's or Subsidiary's, as appropriate, assets, and the nature of all

22

transactions giving rise to the Company's or Subsidiary's, as appropriate, obligations and accounts receivable. The Company has previously delivered to the Purchaser and its counsel complete and correct copies of the Amended Charter and Bylaws and all amendments thereto, as in effect at the time of the Closing and all minutes and consents reflecting meetings and actions taken by the Company's Board of Directors (the "BOARD") and stockholders. Such minutes and consents constitute complete and accurate records of all meetings and consents in lieu of meetings of the Board and its committees, or body performing a similar function and holders of its securities since its date of incorporation or formation.

#### SECTION 2.35 DISCLOSURE.

(a) The Company has disclosed to the Purchaser all facts material to the business, operations, assets, liabilities, prospects, properties, condition (financial or otherwise) and results of operations of the Company and each Subsidiary. None of this Agreement, or any Schedule or Exhibit to this Agreement, or any other Transaction Documents or statements, documents or agreements filed by the Company with the Commission pursuant to the requirements of the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT"), or any other statements, documents or certificates made or delivered in connection herewith or therewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein and therein not misleading in light of the circumstances under which such statements were made. None of the statements, documents, certificates or other items prepared or supplied by the Company with respect to the transactions contemplated hereby contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances under which such statements were made. There is no fact which the Company has not disclosed to the Purchaser and its counsel in writing and of which the Company is aware which has resulted in, or could result in, a Material Adverse Change or a material adverse effect on the ability of the Company to perform its obligations under the Transaction Documents. The Company has filed with the Commission, within the applicable timeframes, all statements, documents and agreements required to be filed pursuant to the Exchange Act and the rules and regulations of the Commission thereunder. All such statements, documents and agreements, at the times they were filed with the Commission, complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder. The financial projections and other estimates provided to the Purchaser were prepared by the Company based on the Company's experience in the industry and on assumptions of fact and opinion as to future events which the Company, at the date of the issuance of the financial projections, believed to be reasonable and which the Company currently believes are reasonable. As of the date hereof, no facts have come to the Company's attention that would, in its opinion, require the Company to revise or amplify the assumptions underlying such projections and other estimates or the conclusions derived therefrom.

(b) All representations, warranties, covenants and agreements set forth or delivered in connection with this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby as provided in Section 6.02 hereof and shall not be affected by any examination made by, for or on behalf of, the Purchaser, the knowledge of the Purchaser or the Purchaser's acceptance of any certificate or opinion.

23

#### ARTICLE III.

##### REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PURCHASER

##### SECTION 3.01 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER. The

Purchaser represents and warrants to the Company that:

(a) it is an entity all of the equity interests of which are owned by "accredited investors" within the meaning of Rule 501 of Regulation D under the Securities Act, as presently in effect;

(b) the Preferred Shares being purchased by it are being acquired for its own account for the purpose of investment and not with a view to, or for resale in connection with, any distribution thereof within the meaning of the Securities Act; and

(c) it understands that (i) the Preferred Shares and the Conversion Shares have not been registered under the Securities Act by reason of their issuance in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4(2) thereof or Rule 505 or 506 promulgated under the Securities Act, (ii) the Preferred Shares and, upon conversion thereof, the Conversion Shares must be held indefinitely (subject, however, to the Company's obligation to redeem the Preferred Shares in accordance with the terms thereof, and to the Company's obligation to effect the registration of registrable securities in accordance with the Registration Rights Agreement) unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration, and (iii) the Preferred Shares and the Conversion Shares will bear the legend to such effect set forth in Section 3.03 hereof.

SECTION 3.02 RESTRICTED SECURITIES. The Purchaser agrees not to make any disposition of all or any portion of the Preferred Shares or the Conversion Shares unless and until such securities are registered under the Securities Act and under any other applicable securities laws or such sale or transfer is exempt from such registration.

SECTION 3.03 LEGEND. The Purchaser acknowledges that the certificates evidencing the Preferred Shares and the Conversion Shares will bear the legend set forth below:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

The legend set forth above shall be removed by the Company from any certificate evidencing Preferred Shares or Conversion Shares, and the Company shall issue a certificate without such legend to the holder thereof, upon delivery to the Company of an opinion by counsel (which may be counsel for the Company) that a registration statement under the Securities Act is at that time in effect with respect to the legended security or that such security can be freely transferred in a public sale without such a registration statement being in effect and that such transfer will not jeopardize the exemption or exemptions from registration pursuant to which the Company issued the Preferred Shares or Conversion Shares; provided, however, that no opinion shall be required for dispositions pursuant to Rule 144(k) under the Securities Act.

#### ARTICLE IV.

##### CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER AND THE COMPANY

SECTION 4.01 CONDITIONS TO THE PURCHASER'S OBLIGATIONS AT THE CLOSING. The Purchaser's obligation to purchase and pay for the Preferred Shares on the Closing Date is, at its option, subject to the satisfaction, on or before such Closing Date, of the following conditions, any of which may be waived in whole or in part by the Purchaser:

(a) OPINION OF COMPANY'S COUNSEL. The Purchaser shall have received from Rutan & Tucker LLP, counsel for the Company, an opinion dated the Closing Date, in form and scope satisfactory to the Purchaser and its counsel, in the form set forth in EXHIBIT C.

(b) REPRESENTATIONS AND WARRANTIES TO BE TRUE AND CORRECT. The representations and warranties of the Company under this Agreement and in each other Transaction Document shall be true, complete and correct on and as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of such date, and the Company's Chief Executive Officer shall have certified to such effect to the Purchaser in writing.

(c) PERFORMANCE. The Company shall have performed and complied with all agreements and covenants contained herein required to be performed or complied with by it prior to or at the Closing Date, and the Company's Chief Executive

Officer shall have certified to the Purchaser in writing to such effect and to the further effect that all of the conditions set forth in this Article IV have been satisfied.

(d) ALL PROCEEDINGS TO BE SATISFACTORY. All corporate and other proceedings to be taken by the Company in connection with the transactions contemplated hereby and all documents incident thereto shall be satisfactory in form and substance to the Purchaser and its counsel, and the Purchaser and its counsel shall have received all such counterpart originals or certified or other copies of such documents as they reasonably may request.

(e) APPROVALS; NO VIOLATION OF LAW. The Company shall have obtained any and all consents, waivers, approvals or authorizations, with or by any governmental body and all consents, waivers, approvals or authorizations of any other Person, including stockholder approval, required for the valid execution of this Agreement and each of the other Transaction Documents and for the consummation of the transactions contemplated hereby and thereby, and the purchase and payment of the Preferred Shares at the Closing Date on the terms and conditions as provided herein shall not violate any Law applicable to the Company or the Purchaser.

(f) NO INJUNCTION. No governmental body or any other Person shall have issued an order, injunction, judgment, decree, ruling or assessment which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby, nor, to the Company's knowledge, shall any such order, injunction, judgment, decree, ruling or assessment be threatened or pending.

25

(g) HSR ACT FILINGS. Any waiting period under the HSR Act applicable to the transactions contemplated hereby, shall have expired or been terminated.

(h) REGISTRATION RIGHTS AGREEMENT; DEPOSIT AGREEMENT; VOTING LETTERS. The Company and the other parties named therein shall have executed and delivered the Registration Rights Agreement and the Deposit Agreement and each executive officer and director of the Company and each executive officer, director and manager of each of its Subsidiaries shall have executed and delivered a Voting Letter.

(i) NO MATERIAL ADVERSE CHANGE. No Material Adverse Change shall have occurred between the date of this Agreement and the Closing Date, and the Company's Chief Executive Officer shall have certified to such effect to the Purchaser in writing.

(j) STOCK OPTION PLANS. The Company's Amended 1995 Incentive Stock Plan set forth in Exhibit D attached hereto, and 2004 Stock Option Plan set forth in Exhibit E attached hereto (the "Stock Option Plans"), shall be the Company's only stock option plans and shall not have been amended or modified in any way since the date of this Agreement.

(k) QUALIFICATION UNDER STATE SECURITIES LAWS. All registrations, qualifications, permits and approvals required prior to issuance under applicable state securities laws shall have been obtained for the lawful execution, delivery and performance of this Agreement and each of the other Transaction Documents, including without limitation, the offer, sale, issuance and delivery of the Preferred Shares to be purchased hereunder.

(l) CERTIFICATE OF DESIGNATIONS. On or prior to the Closing, the Certificate of Designations shall have been filed with the Secretary of State of the State of Delaware, and the Amended Charter shall be in full force and effect on the Closing Date.

(m) APPOINTMENT OF DIRECTORS. The number of directors constituting the entire Board of Directors shall have been fixed at seven and the Purchaser's designees shall have been appointed as directors and as Chairman of the Compensation Committee of the Board of Directors in accordance with the Registration Rights Agreement.

(n) PREEMPTIVE RIGHTS. All stockholders of the Company having any preemptive, first refusal or other rights with respect to the issuance of the Preferred Shares, the Dividend Shares or the Conversion Shares shall have irrevocably waived the same in writing.

(o) EXPENSES. The Company shall have paid the fees and expenses of the Purchaser, including the fees and disbursements of the Purchaser's counsel invoiced at the Closing, in accordance with Section 7.01 hereof.

(p) SUPPORTING DOCUMENTS. The Purchaser and its counsel shall have received copies of the following documents:

(i) (A) the Amended Charter (including the Certificate of

Designations of the Preferred Shares), certified as of a recent date by the Secretary of State of the State of Delaware, and (B) a certificate of said Secretary dated as of a recent date as to the Company's due incorporation and good standing and the Company's payment of all excise taxes, and listing all documents of the Company on file with said Secretary;

26

(ii) a certificate of the Company's Secretary dated the Closing Date, certifying: (A) that attached thereto is a true and complete copy of the Bylaws as in effect on the date of such certification; (B) that attached thereto is a true and complete copy of all resolutions adopted by the Board and the Company's stockholders authorizing the Certificate of Designations, the execution, delivery, and performance of each of the Transaction Documents, the issuance, sale and delivery of the Preferred Shares and the Dividend Shares and the reservation of the Conversion Shares, and that all such resolutions are in full force and effect and are the only resolutions adopted in connection with the transactions contemplated by the Transaction Documents; (C) that the Amended Charter has not been amended since the date of the last amendment referred to in the certificate delivered pursuant to clause (i) (A) above; and (D) to the incumbency and specimen signature of each officer of the Company executing any of the Transaction Documents, the stock certificates representing the Preferred Shares and any certificate or instrument furnished pursuant hereto, and a certification by another officer of the Company as to the incumbency and signature of the officer signing the certificate referred to in this clause (ii); and

(iii) such additional supporting documents and other information with respect to the operations and affairs of the Company and its Subsidiaries as the Purchaser or its counsel reasonably may request.

(q) CROSS-RECEIPT. The Company and the Purchaser shall have executed and delivered a cross-receipt acknowledging the Company's delivery to the Purchaser of the Preferred Shares and the Purchaser's payment therefor.

(r) NO ACCELERATION OF VESTING, ETC. Neither the Board nor any committee responsible for the administration of options or warrants of the Company shall have made any determination that could result in the acceleration of the vesting or rights to exercise options or warrants or cause an accelerated pay-out of any such options.

(s) SETTLEMENT AGREEMENT. The Settlement Agreement, dated November 1, 2005 ("Settlement Agreement"), among the Company, Cagan-McAfee Capital Partners, LLC ("CMCP") and Chadbourn Securities, Inc. ("Chadbourn"), (i) shall be in full force and effect and (ii) shall not have been modified, amended or supplemented without the express written consent of the Purchaser. All amounts payable by the Company under the Settlement Agreement shall have been paid and CMCP and Chadbourn shall have executed and delivered a receipt acknowledging such payment. Except as set forth in the Settlement Agreement, no other agreements or obligations shall exist between (i) the Company or any of its Subsidiaries and (ii) CMCP or Chadbourn or any of their Affiliates.

(t) TERM LOAN AGREEMENT. The Term Loan Agreement, dated as of June 16, 2003 ("LDI Loan Agreement"), between the Company and Lyles Diversified, Inc. ("LDI"), as amended, and the Deed of Trust (Non-Construction) Security Agreement and Fixture Filing with Assignment of Rents, dated June 20, 2003 (the "Security Agreement"), between the Company and LDI, shall have been terminated and all obligations thereunder shall have been satisfied, and LDI shall have provided the Company with a written release from the Security Agreement, or provisions satisfactory to the Purchaser shall have been made for such termination, satisfaction and release. In addition, LDI shall have waived all of its rights under Section 2.4 of the LDI Loan Agreement or have agreed to an amendment to Section 2.4 of the LDI Loan Agreement satisfactory to the Purchaser.

27

(u) SHARE EXCHANGE AGREEMENT. The Share Exchange Agreement, dated as of May 14, 2004, among Accessity Corp., the predecessor of the Company, Pacific Ethanol, Inc., a California corporation, Reenergy, LLC, Kinergy Marketing, LLC and certain other persons named therein, shall have been amended to provide or clarify that neither the issuance of the Preferred Shares, the Dividend Shares nor the Conversion Shares nor the execution, delivery or performance of the Transaction Documents shall violate the provisions of Section 14.5 thereof.

(v) MADERA PLANT. Subsidiaries of the Company shall have executed and delivered agreements in form and substance satisfactory to the Purchaser relating to the construction, operation and financing of the Madera ethanol production facility and the Schedules to this Agreement shall have been amended

to reflect such agreements.

(w) OUTSIDE DATE. The Closing shall occur on or before March 31, 2006 unless the Purchaser shall have consented in writing to the Closing occurring on or prior to a later date as specified in writing by the Purchaser to the Company.

All such documents shall be satisfactory in form and substance to the Purchaser and its counsel.

#### SECTION 4.02 CONDITIONS TO THE COMPANY'S OBLIGATIONS AT THE CLOSING.

The Company's obligation to sell and issue the Preferred Shares being sold and issued by it on the Closing Date is, at its option, subject to the satisfaction, on or before such Closing Date, of the following conditions, any of which may be waived in whole or in part by the Company:

(a) REPRESENTATIONS AND WARRANTIES TO BE TRUE AND CORRECT. The representations and warranties of the Purchaser contained in Article III shall be true, complete and correct on and as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of such date.

(b) REGISTRATION RIGHTS AGREEMENT. The Purchaser shall have executed and delivered the Registration Rights Agreement.

(c) CROSS RECEIPT. The Company and the Purchaser shall have executed and delivered a cross-receipt acknowledging the Company's delivery to the Purchaser of the Preferred Shares and the Purchaser's payment therefor.

(d) PURCHASE PRICE PAID. The Purchaser shall have paid the purchase price for the Preferred Shares to the Company as set forth in Section 1.02(a) hereof.

(e) STOCKHOLDER APPROVAL. The Company shall have obtained stockholder approval for this Agreement and the transactions contemplated hereby, including (i) the issuance of the Preferred Shares to the Purchaser, (ii) the issuance of the Dividend Shares and (iii) the issuance of Common Stock upon conversion of the Preferred Shares and Dividend Shares.

### ARTICLE V.

#### COVENANTS OF THE COMPANY

The Company covenants and agrees with the Purchaser that:

SECTION 5.01 RESERVE FOR CONVERSION SHARES. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, for the purpose of effecting the conversion of the Preferred Shares and any Dividend Shares and otherwise complying with the terms of this Agreement, such number of its duly authorized shares of Common Stock as shall be sufficient to effect the conversion of the Preferred Shares and any Dividend Shares from time to time outstanding or otherwise to comply with the terms of this Agreement. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of the Preferred Shares and any Dividend Shares or otherwise to comply with the terms of this Agreement, the Company will forthwith take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes. The Company will obtain any authorization, consent, approval or other action by or make any filing with any court or governmental or administrative body that may be required under applicable state securities laws in connection with the issuance of shares of Common Stock upon conversion of the Preferred Shares and any Dividend Shares.

SECTION 5.02 CORPORATE EXISTENCE. The Company shall preserve and maintain, and, except as otherwise permitted by Section 5.16, cause each Subsidiary to preserve and maintain, its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, and qualify and remain qualified, and cause each subsidiary to qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is necessary or desirable in view of its business and operations or the ownership or lease of its properties.

SECTION 5.03 PRESERVATION OF PROPERTY AND ASSETS. The Company shall, and shall cause each of its Subsidiaries to (a) maintain or cause to be maintained in good repair, working order and condition the properties now or hereafter owned, leased or otherwise possessed by it (and make or cause to be made all needed and proper repairs, renewals, replacements and improvements thereto) which are necessary so that the business carried on in connection

therewith may be properly conducted at all times and (b) maintain and hold in full force and effect all franchises, licenses, permits, certificates, authorizations, qualification, accreditations and other rights, consents and approvals (whether issued, made or given by a governmental body or otherwise), necessary to own and operate its properties and to carry on its business as presently conducted and as presently planned to be conducted. The Company shall not cause or permit a Release of any Hazardous Material on, at, in, under, above, to, from or about any of the property where such Release would violate in any respect, or form the basis for any claims under, any Environmental Laws.

29

SECTION 5.04 PROPERTIES, BUSINESS, INSURANCE. The Company shall obtain and maintain and cause each of its Subsidiaries to maintain as to its respective properties and business, with financially sound and reputable insurers, insurance against such casualties and contingencies and of such types and in such amounts as is customary for companies similarly situated.

SECTION 5.05 DIRECTORS AND OFFICERS INSURANCE. The Company will obtain and maintain directors and officers liability insurance acceptable to the Purchaser and will at all times exercise the powers granted to it by its Amended Charter, its Bylaws, and by applicable law to indemnify and hold harmless to the fullest extent permitted by applicable law present or former directors and officers of the Company against any threatened or actual claim, action, suit, proceeding or investigation made against them arising from their service in such capacities (or service in such capacities for another enterprise at the request of the Company).

SECTION 5.06 INSPECTION, CONSULTATION AND ADVICE. The Company shall permit, and cause each of its Subsidiaries to permit, the Purchaser and such persons as it may designate to visit and inspect any of the properties of the Company or its Subsidiaries, examine their books and take copies and extracts therefrom, discuss the affairs, finances and accounts of the Company or its Subsidiaries with their officers, employees and public accountants (and the Company hereby authorizes said accountants to discuss with the Purchaser and such designees such affairs, finances and accounts), and consult with and advise the management of the Company and its Subsidiaries as to the Company's and its Subsidiaries' affairs, finances and accounts.

SECTION 5.07 RESTRICTIVE AGREEMENTS PROHIBITED. None of the Company or its Subsidiaries shall become a party to any agreement which by its terms restricts the Company's performance of this Agreement or any of the other Transaction Documents.

SECTION 5.08 TRANSACTIONS WITH AFFILIATES. Except for transactions contemplated by this Agreement or as otherwise approved by the Board, including the members of the Board nominated and elected by the Purchaser, none of the Company or its Subsidiaries shall enter into any transaction with any director, officer, employee or holder of more than three percent (3%) of the outstanding capital stock of any class or series of capital stock of the Company or any Subsidiary, member of the family of any such Person, or any corporation, partnership, trust or other entity in which any such Person, or member of the family of any such Person, is a director, officer, trustee, partner or holder of more than three percent (3%) of the outstanding capital stock thereof.

30

SECTION 5.09 PAYMENT OF TAXES AND INDEBTEDNESS. The Company shall pay and discharge, and cause each Subsidiary to pay and discharge, all taxes, assessments and governmental charges or levies imposed upon it or upon its income, profits or business, or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any properties of the Company or its Subsidiaries; PROVIDED, HOWEVER, that neither the Company nor any Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim which is being contested or extended in good faith and by appropriate proceedings if the Company or such Subsidiary shall have set aside on its books sufficient reserves, if any, with respect thereto. The Company shall pay and cause any Subsidiary to pay, when due, or in conformity with customary trade terms, all lease obligations, all trade debt, and all other indebtedness incident to the operations of the Company or such Subsidiary, except such as are being contested in good faith and by proper proceedings if the Company or Subsidiary concerned shall have set aside on its books sufficient reserves, if any, with respect thereto.

SECTION 5.10 INTERNAL ACCOUNTING CONTROLS. The Company shall devise and maintain systems, and shall cause each of its Subsidiaries to make and keep books, records and accounts which, in reasonable detail, accurately and fairly



reflect its transactions and dispositions of its assets and shall devise and maintain, and shall cause each of its Subsidiaries to devise and maintain, internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management's general or specific authorization, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and to maintain accountability for assets, (c) access to assets is permitted only in accordance with management's general or specific authorization, and (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

SECTION 5.11 ACTIVITIES OF SUBSIDIARIES. Except as shall have been approved in writing by the Purchaser, the Company shall not permit any Subsidiary to consolidate or merge, or sell or transfer all or substantially all its assets, except that any Subsidiary may (i) consolidate or merge into or with or sell or transfer assets to any other Subsidiary of the Company, or (ii) merge into or sell or transfer assets to the Company. The Company shall not sell, pledge or otherwise transfer any shares of capital stock of, or membership interest in, any Subsidiary, or permit any Subsidiary to issue, sell, pledge or otherwise transfer any shares of its capital stock or membership interests or the capital stock of, or membership interest in, any Subsidiary, except, in either case, to the Company or another Subsidiary or except as shall have been approved in writing by the Purchaser. The Company shall not permit any Subsidiary to purchase or set aside any sums for the purchase of, or pay any dividend or make any distribution on, any shares of its stock, except for dividends or other distributions payable to the Company or another Subsidiary.

SECTION 5.12 STOCKHOLDER APPROVAL. As soon as practicable after the date hereof, the Company shall use its best efforts to hold a meeting of the Company's stockholders in compliance with the rules of the Commission regarding proxies, consents and authorizations of stockholders in Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder and shall make all appropriate filings related thereto (including, without limitation, the filing of any effective proxy statement) with the Commission to give effect thereto, to approve this Agreement and the transactions contemplated hereby, including (a) the sale and issuance of the Preferred Shares to the Purchaser,

31

(b) the issuance of the Dividend Shares, and (c) the issuance the Common Stock upon conversion of the Preferred Shares and Dividend Shares. The Board of Directors of the Company shall recommend such approval and shall take all lawful action to solicit such approval. The Company shall use its best efforts to deliver to the Purchaser a copy of such proxy statement and any amendments and supplements thereto at least five days prior to the filing thereof with the SEC.

SECTION 5.13 CHANGE OF OPERATIONS. The Company shall not, and shall not permit any of its Subsidiaries to, change the general character of its business as conducted on the date hereof or as presently proposed to be conducted, or engage in any type of business not directly related to such business as presently and normally conducted or as presently proposed to be conducted.

#### SECTION 5.14 INDEMNITY.

(a) The Company agrees to indemnify, defend and hold harmless the Purchaser, its Affiliates and their respective directors, managers, officers, members, stockholders, employees, Affiliates, agents, trustees, advisors (including, without limitation, attorneys, accountants and financial advisors), attorneys-in-fact, successors and assigns (collectively, "INDEMNIFIED Parties") from and against any and all losses, claims, liabilities, damages, deficiencies, costs or expenses (including, without limitation, interest, penalties, reasonable attorneys' fees, disbursements and related charges and any costs or expenses that an Indemnified Party incurs to enforce its right to indemnification) (collectively, "LOSSES") based upon, arising out of or otherwise in respect of any inaccuracy in or breach of any representations, warranties, covenants or agreements of the Company contained in this Agreement or any of the other Transaction Documents.

(b) The provisions of this Section 5.14 shall not limit or impair any right or remedy arising from breach of this Agreement or any of the other Transaction Documents. In addition to any other remedy provided by law, injunctive relief may be obtained to enjoin the breach, or threatened breach, of any provision of this Agreement and each party shall be entitled to specific performance by the others of their obligations hereunder and thereunder. All remedies, either under this Agreement, by law or as may otherwise be afforded to the Purchaser or the Company, as the case may be, shall be cumulative.

SECTION 5.15 COMPLIANCE WITH LAWS. The Company shall comply, and cause each Subsidiary to comply, with all applicable Laws.

SECTION 5.16 KEEPING OF RECORDS AND BOOKS OF ACCOUNT. The Company shall keep, and cause any Subsidiary to keep, adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all transactions of the Company and each of its Subsidiaries, and in which, for each fiscal year, all proper reserves for depreciation, depletion, obsolescence, amortization, taxes, bad debts and other purposes in connection with its business shall be made.

#### ARTICLE VI.

##### COVENANT OF THE COMPANY AND THE PURCHASER

SECTION 6.01 HSR ACT FILINGS. The Company and the Purchaser shall (i) file or cause to be filed, as promptly as practicable but in no event later than the tenth (10th) business day after the execution and delivery of this Agreement, with the Federal Trade Commission and the United States Department of Justice, all reports and other documents required to be filed by such party under the HSR Act concerning the transactions contemplated hereby and (ii) promptly comply with or cause to be complied with any requests by the Federal Trade Commission or the United States Department of Justice for additional information concerning such transactions, in each case so that the initial thirty (30) day waiting period applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall expire as soon as practicable after the execution and delivery of this Agreement. The Company and the Purchaser each agree to request, and to cooperate with the other party in requesting, early termination of any applicable waiting period under the HSR Act.

#### ARTICLE VII.

##### MISCELLANEOUS

SECTION 7.01 EXPENSES. At the Closing the Company shall reimburse the Purchaser for all legal and accounting fees and expenses, up to \$250,000, incurred by the Purchaser in connection with the transactions contemplated hereby. The Company agrees that the fees and expenses incurred by the Purchaser through the Closing Date in connection with the transactions contemplated hereby may be paid directly by the Purchaser to such persons and deducted from the purchase price payable at the Closing. In the event that the Closing shall not occur and the Preferred Shares are not sold to the Purchaser, the Company agrees to reimburse the Purchaser for all legal and accounting fees up to \$100,000. The Company shall pay all costs and expenses that it incurs in connection with the transactions as well as any fees or expenses incurred in connection with any filing pursuant to the HSR Act. The Company further agrees to reimburse the Purchaser on demand for the Purchaser's reasonable out of pocket expenses incurred in connection with any amendment to, or waiver or enforcement of, this Agreement or the other Transaction Documents. The Company shall also pay all stamp and other taxes and duties levied in connection with the issuance of the Preferred Shares and any Dividend Shares or, upon conversion thereof, the Conversion Shares.

SECTION 7.02 SURVIVAL OF AGREEMENTS. All covenants, agreements, representations and warranties made in any of the Transaction Documents or any certificate or instrument delivered to the Purchaser pursuant to or in connection with any of the Transaction Documents shall survive the execution and delivery of all of the Transaction Documents, the issuance, sale and delivery of the Preferred Shares, and the issuance and delivery of the Conversion Shares, and all statements contained in any certificate or other instrument delivered by the Company hereunder or thereunder or in connection herewith or therewith shall be deemed to constitute representations and warranties made by the Company.

SECTION 7.03 BROKERAGE. Each party hereto will indemnify and hold harmless the others against and in respect of any claim for brokerage or other commissions relative to the Transaction Documents or to the transactions contemplated thereby, based in any way on agreements, arrangements or understandings made or claimed to have been made by such party with any third party.

SECTION 7.04 PARTIES IN INTEREST. All representations, warranties, covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not. Without limiting the generality of the foregoing, all representations, covenants and agreements benefiting the Purchaser shall inure to the benefit of any and all subsequent holders from time to time of Preferred Shares or Conversion

Shares, as the case may be. Nothing in this Agreement shall create or be deemed to create any third-party beneficiary rights in any Person other than the parties to this Agreement or their respective successors and assigns except as expressly provided in this Agreement.

SECTION 7.05 SPECIFIC PERFORMANCE. Each of the parties hereto acknowledges and agrees that the breach of this Agreement would cause irreparable damage to the other party hereto and that the other party hereto will not have an adequate remedy at law. Therefore, the obligations of each of the parties hereto under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies, however, shall be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise.

SECTION 7.06 FURTHER ASSURANCES. The Company and the Purchaser each agree to execute and deliver such other documents or agreements as may be necessary or desirable for the implementation of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

SECTION 7.07 SUBMISSION TO JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) The parties hereto hereby irrevocably submit to the exclusive jurisdiction of any federal or state court located within King County, Washington, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the

34

maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 7.08 hereof.

SECTION 7.08 NOTICES. Any notice, request, demand or other communication required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (a) the date of personal delivery, (b) the date of transmission by facsimile, with confirmed transmission and receipt, (c) two (2) days after deposit with a nationally-recognized courier or overnight service and (d) five (5) days after mailing via first-class mail. All notices not delivered personally or by facsimile will be sent with postage and other charges prepaid and properly addressed to the party to be notified at the address set forth for such party (i) if to the Purchaser, to Cascade Investment, L.L.C., 2365 Carillon Point, Kirkland, WA 98033, attention: Michael Larson, with a copy to Thelen Reid & Priest LLP, 875 Third Avenue, New York, NY 10022, attention: John T. Hood, facsimile (212) 603-2001, and (ii) if to the Company, to Pacific Ethanol, Inc., 5711 N. West Ave., Fresno, CA 93711, attention: Neil Koehler, with a copy to Rutan & Tucker LLP, 611 Anton Boulevard, 14th Floor, Costa Mesa, CA 92626, attention: Larry A. Cerutti, facsimile (714) 546-9035. Any party hereto (and such party's permitted assigns) may change such party's address for receipt of future notices hereunder by giving written notice to the Company and the Purchaser.

SECTION 7.09 GOVERNING LAW. This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Washington, without giving effect to the principles of conflicts of laws thereunder which would specify the application of the law of another jurisdiction.

SECTION 7.10 ENTIRE AGREEMENT. This Agreement, including the Schedules and Exhibits hereto, together with the other Transaction Documents, constitutes the sole and entire agreement of the parties with respect to the subject matter hereof. All Schedules and Exhibits hereto are hereby incorporated herein by reference.

SECTION 7.11 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 7.12 AMENDMENTS AND WAIVERS. This Agreement may not be amended

or modified, and no provisions hereof may be waived, without the written consent of the Company and the Purchaser. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

35

SECTION 7.13 SEVERABILITY. If any provision of this Agreement shall be declared void or unenforceable by any judicial or administrative authority, the validity of any other provision and of the entire Agreement shall not be affected thereby.

SECTION 7.14 TITLES AND SUBTITLES; INTERPRETIVE MATTERS. The titles and subtitles used in this Agreement are for convenience of reference only and are not to be considered in construing or interpreting any term or provision of this Agreement. No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

SECTION 7.15 FACSIMILE SIGNATURES. Any signature page delivered by a fax machine shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto. Any party who delivers such a signature page agrees to deliver promptly an original counterpart to each party to whom the faxed signature page was sent.

SECTION 7.16 OTHER REMEDIES. In addition to those remedies specifically set forth herein and in the Transaction Documents, if any, each party may proceed to protect and enforce its rights under this Agreement and the Transaction Documents either by suit in equity and/or by action at law, including, but not limited to, an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or in the Transaction Documents. No right or remedy conferred upon or reserved to any party under this Agreement or the Transaction Documents is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to every other right and remedy given under this Agreement and the Transaction Documents or now and hereafter existing under applicable law.

SECTION 7.17 CERTAIN DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"AFFILIATE" means, with respect to any Person, (i) any other Person of which securities or other ownership interests representing more than fifty percent (50%) of the voting interests are, at the time such determination is being made, owned, Controlled or held, directly or indirectly, by such Person, or (ii) any other Person which, at the time such determination is being made, is Controlling, Controlled by or under common Control with, such Person. As used herein, "CONTROL", whether used as a noun or verb, refers to the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a Person, whether through the ownership of voting securities or otherwise.

"CHANGE OF CONTROL" shall mean (A) the acquisition at any time by a "person" or "group" (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act who or which are the beneficial owners (as defined in Rule 13(d)-3 under the Exchange Act), directly or indirectly, of securities representing more than 50% of the combined voting power in the election of

36

directors of the then outstanding securities of the Company or any successor of the Company, unless the acquisition of securities resulting in such ownership by such person or group had been approved unanimously by the Board; (B) approval by the stockholders of the Company of any sale or disposition of substantially all of the assets or earning power of the Company; or (C) approval by the

stockholders of the Company of any merger, consolidation, or statutory share exchange to which the Company is a party as a result of which the persons who were stockholders immediately prior to the effective date of the merger, consolidation or share exchange shall have beneficial ownership of less than 50% of the combined voting power in the election of directors of the surviving corporation.

"CLOSING" shall mean the consummation of the transactions contemplated by this Agreement and the Transaction Documents.

"CLOSING DATE" shall mean the third (3rd) business day after the conditions in Sections 4.01(e) and (g) and Section 4.02(e) hereof are either satisfied, or waived by the party entitled to waive such conditions, or such other date as may be mutually agreed to by the Company and the Purchaser.

"DEPOSIT AGREEMENT" shall mean the Deposit Agreement between the Company and a bank or trust company consented to by the Purchaser, in the form attached hereto as Exhibit F.

"HAZARDOUS MATERIAL" shall mean any element, compound, substance or other material (including, without limitation, any pollutant, contaminant, hazardous waste, hazardous substance, chemical substance, or product) that is listed, classified or regulated pursuant to any Environmental Law, including, without limitation, any petroleum product, by-product or additive, asbestos, presumed asbestos-containing material, asbestos-containing material, medical waste, chlorofluorocarbon, hydro chlorofluorocarbon, lead-containing paint, polychlorinated biphenyls, radioactive material or radon.

"LAW", with respect to any Person, shall mean such Person's certificate of incorporation or other organizational documents, its by-laws and any foreign, federal, state or local law, statute, rule, regulation, ordinance, code, directive, writ, injunction, decree, judgment or order applicable to such Person.

"MATERIAL ADVERSE CHANGE" shall mean a material adverse change in the business, operations, assets, liabilities, prospects, properties, condition (financial or otherwise) or results of operations of (i) the Company and its Subsidiaries, taken as a whole, (ii) Pacific Ethanol California, Inc. and its Subsidiaries, taken as a whole or (iii) Kinergetics Marketing, LLC and its Subsidiaries, taken as a whole.

"PERSON" shall mean an individual, corporation, trust, partnership, limited liability company, joint venture, unincorporated organization, government body or any agency or political subdivision thereof, or any other entity.

"REGISTRATION RIGHTS AGREEMENT" shall mean the Registration Rights and Stockholders Agreement between the Company and the Purchaser, in the form attached hereto as Exhibit G.

"RELEASE" shall mean any past or present release, spill, leak, leaching, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping.

37

"SUBSIDIARY(IES)" shall mean any other corporation, limited liability company, association, joint stock company, joint venture or business trust of which, as of the date hereof or hereafter, (i) more than fifty percent (50%) of the outstanding voting stock, share capital or other equity interests is owned either directly or indirectly by any Person or one or more of its Subsidiaries, or (ii) the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by any Person and/or its Subsidiaries. Unless otherwise specified to the contrary herein, Subsidiary(ies) shall refer to the Company's Subsidiary(ies).

"TRANSACTION DOCUMENTS" shall mean this Agreement, the Registration Rights Agreement, the Deposit Agreement, the Voting Agreement, each Voting Letter and all other agreements and instruments and any other documents, certificates, instruments or agreements executed pursuant to or in connection with any such document or this Agreement, as such documents may be amended from time to time.

"VOTING AGREEMENT" shall mean the Voting Agreement among the Company, certain of its executive officers and directors, and the Purchaser in the form attached hereto as Exhibit H.

"VOTING LETTER" shall have the meaning set forth in the Registration Rights Agreement.

IN WITNESS WHEREOF, the Company and the Purchaser have executed this Purchase Agreement as of the day and year first above written.

COMPANY:

PACIFIC ETHANOL, INC.

By: /s/ Neil M. Koehler

-----

Name: Neil M. Koehler

Title: Chief Executive Officer

Address: 5711 N. West Avenue  
Fresno, California 93711

PURCHASER:

CASCADE INVESTMENT, L.L.C.

By: /s/ Michael Larson

-----

Name: Michael Larson

Title: Business Manager

## EXHIBIT B

CERTIFICATE OF DESIGNATIONS,  
POWERS, PREFERENCES AND RIGHTS OF THE SERIES A  
CUMULATIVE REDEEMABLE CONVERTIBLE PREFERRED STOCK

OF

PACIFIC ETHANOL, INC.

PURSUANT TO SECTION 151 OF THE  
-----  
DELAWARE GENERAL CORPORATION LAW  
-----

Pacific Ethanol, Inc. (the "CORPORATION"), organized and existing under the laws of the State of Delaware, does, by its \_\_\_\_\_ and under its corporate seal, hereby certify that pursuant to the authority contained in Article Fourth of its Certificate of Incorporation and in accordance with the provisions of Section 151 of the Delaware General Corporation Law, its Board of Directors has adopted the following resolution creating the following classes and series of the Corporation's Preferred Stock and determining the voting powers, designations, powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof, of such classes and series:

RESOLVED, that, pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation of the Corporation (the "CERTIFICATE OF INCORPORATION"), there is hereby created the following series of Preferred Stock:

- o 7,000,000 shares shall be designated Series A Cumulative Redeemable Convertible Preferred Stock, par value \$0.001 per share (the "SERIES A PREFERRED STOCK").

The designations, powers, preferences, and rights and the qualifications, limitations and restrictions of the Series A Preferred Stock in addition to those set forth in the Certificate of Incorporation shall be as follows:

Section 1. DESIGNATION AND AMOUNT. 7,000,000 shares of the unissued preferred stock of the Corporation shall be designated as Series A Cumulative Redeemable Convertible Preferred Stock, par value \$.001 per share. The Series A Preferred Stock shall be issued in accordance with the Purchase Agreement at a purchase price of \$16.00 per share (the "SERIES A ISSUE PRICE").

Section 2. RANK. The Series A Preferred Stock shall rank: (i) subject to the requirements of Section 7, junior to any other class or series of capital stock of the Corporation hereafter created specifically ranking as to dividend rights, redemption rights, liquidation preference and other rights senior to the Series A Preferred Stock (the "SENIOR SECURITIES"); (ii) senior to all of the Corporation's common stock, par value \$0.001 per share (the "COMMON STOCK"); (iii) senior to any class or series of capital stock of the Corporation hereafter created not specifically ranking as to dividend rights, redemption

rights, liquidation preference and other rights senior to or on parity with any Series A Preferred Stock of whatever subdivision (collectively, with the Common Stock, the "JUNIOR SECURITIES"); and (iv) subject to the requirements of Section 7, on a parity with any class or series of capital stock of the Corporation hereafter created specifically ranking as to dividend rights, redemption rights, liquidation preference and other rights on a parity with the Series A Preferred Stock (the "PARITY SECURITIES").

Section 3. DIVIDENDS. (a) So long as shares of Series A

Preferred Stock remain outstanding, the holders of each share of the Series A Preferred Stock shall be entitled, from and after the date of issuance of such share, to receive, and shall be paid quarterly in arrears (beginning on the last day of the calendar quarter following the date of the initial issuance of Series A Preferred Stock) in cash out of funds legally available therefor, cumulative dividends, of an amount equal to 5.00% of the Series A Issue Price per share (as adjusted for any stock dividends, stock splits, combinations, recapitalizations involving equity securities of the Corporation, reclassifications or other similar events involving a change with respect to the Series A Preferred Stock) per annum with respect to each share of the Series A Preferred Stock; PROVIDED, HOWEVER, that such dividend may, at the option of the Corporation, be paid to the holders of Series A Preferred Stock in shares of the Series A Preferred Stock valued at the Series A Issue Price (as adjusted for any stock dividends, stock splits, combinations, recapitalizations involving equity securities of the Corporation, reclassifications or other similar events involving a change with respect to the Series A Preferred Stock). The holders of shares of Series A Preferred Stock shall be entitled to receive such dividends immediately after the payment of any dividends to Senior Securities required by the Corporation's Certificate of Incorporation, as amended or amended and restated and in effect, including for this purpose any certificate(s) of designation (the "CHARTER"), prior and in preference to any dividends paid to Junior Securities but in parity with any distribution to the holders of Parity Securities.

(b) In case the Corporation shall at any time or from time to time declare, order, pay or make a dividend or other distribution (including, without limitation, any distribution of stock or other securities or property or rights or warrants to subscribe for securities of the Corporation or any of its subsidiaries by way of a dividend, distribution or spin-off) on its Common Stock, other than (i) a distribution made in compliance with the provisions of Section 4 or (ii) a dividend or distribution made in Common Stock, the holders of the Series A Preferred Stock shall be entitled to receive from the Corporation with respect to each share of Series A Preferred Stock held, any dividend or distribution that would be received by a holder of the number of shares (including fractional shares) of Common Stock into which such Series A Preferred Stock is convertible on the record date for such dividend or distribution, with fractional shares of Common Stock deemed to be entitled to the corresponding fraction of any dividend or distribution that would be received by a whole share. Any such dividend or distribution shall be declared, ordered, paid and made at the same time such dividend or distribution is declared, ordered, paid and made on the Common Stock. No dividend or distribution shall be declared, ordered, paid or made on the Common Stock unless the dividend or distribution on the Series A Preferred Stock provided for by this paragraph shall be declared, ordered, paid or made at the same time.

#### Section 4. LIQUIDATION PREFERENCE.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, immediately after any distributions to Senior Securities required by the Charter, and prior and in preference to any distribution to Junior Securities but in parity with any distribution to the holders of Parity Securities, an amount per share equal to the sum of the Series A Issue Price (as adjusted for any stock splits, combinations, recapitalizations involving equity securities of the Corporation, reclassifications of other similar events involving a change with respect to the Series A Preferred Stock) and any accrued but unpaid dividends on the Series A Preferred Stock. If upon the occurrence of such event, and after the payment in full of the preferential amounts with respect to the Senior Securities, the assets and funds available to be distributed among the holders of the Series A Preferred Stock and the holders of any Parity Securities shall be insufficient to permit the payment to such holders of the full preferential amounts due to the holders of the Series A Preferred Stock and holders of the Parity Securities, respectively, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series A Preferred Stock and the Parity Securities, pro rata, based on the amount each such holder would receive if such full preferential amounts were paid unless otherwise provided in the



Charter.

(b) Upon the completion of the distributions required by Section 4(a), if assets remain in the Corporation, they shall be distributed to the holders of Junior Securities other than Common Stock with respect to any liquidation preference payable to such holders.

(c) Upon the completion of the distributions required by Section 4(a) and Section 4(b), if assets remain in the Corporation, they shall be distributed pro rata, on an as-converted to Common Stock basis, to the holders of Common Stock and Series A Preferred Stock.

(d) A sale, lease, conveyance or disposition of all or substantially all of the capital stock or assets of the Corporation or a merger, consolidation, share exchange, reorganization or other transaction or series of related transactions (whether involving the Corporation or a subsidiary thereof) in which the Corporation's stockholders immediately prior to such transaction do not retain a majority of the voting power in the surviving entity (a "TRANSACTION"), shall be deemed to be a liquidation, dissolution or winding up within the meaning of this Section 4, unless (i) the holders of 66 2/3% of the then outstanding shares of the Series A Preferred Stock, vote affirmatively or consent in writing that such transaction shall not be treated as a liquidation, dissolution or winding up within the meaning of this Section 4 or (ii) such Transaction shall have resulted in the conversion of the Series A Preferred Stock in accordance with Section 5(b); PROVIDED, HOWEVER, that each holder of Series A Preferred Stock shall have the right to elect the conversion benefits of the provisions of Section 5(a) or other applicable conversion provisions in lieu of receiving payment in liquidation, dissolution or winding up of the Corporation pursuant to this Section; and PROVIDED, FURTHER, that shares of the surviving entity held by holders of the capital stock of the Corporation acquired by means of other than the Transaction shall not be used in determining if the shareholders of the Corporation own a majority of the voting power of the surviving entity, but shall be used for determining the total outstanding voting power of such entity.

3

(e) Prior to the closing of a Transaction described in Section 4(d) which would constitute a liquidation, dissolution or winding up within the meaning of this Section 4, the Corporation shall, at its sole option, either (i) make all distributions of cash or other property that it is required to make to the holders of Series A Preferred Stock pursuant to the first sentence of Section 4(a), (ii) set aside sufficient funds or other property from which the distributions required to be made to such holders can be made, or (iii) establish an escrow or other similar arrangement with a third party pursuant to which the proceeds payable to the Corporation from the Transaction will be used to make the liquidating payments to such holders immediately after the consummation of the Transaction. In the event that the Corporation is unable to fully comply with any of the foregoing alternatives, the Corporation shall either: (x) cause such closing to be postponed until the Corporation complies with one of the foregoing alternatives, or (y) cancel such Transaction, in which event the rights of the holders of Series A Preferred Stock shall be the same as existing immediately prior to such proposed Transaction.

Section 5. CONVERSION OF SERIES A PREFERRED STOCK. The Corporation and the record holders of the Series A Preferred Stock shall have conversion rights as follows:

(a) RIGHT TO CONVERT. Each record holder of Series A Preferred Stock shall be entitled to convert whole shares of Series A Preferred Stock for the Common Stock issuable upon conversion of the Series A Preferred Stock, at any time at the option of the holder thereof, subject to adjustment as provided in Section 5(d) hereof, as follows: Each share of Series A Preferred Stock shall be convertible into such number of fully paid and nonassessable shares of Common Stock as is obtained by (I) multiplying the number of shares of Series A Preferred Stock so to be converted by the Series A Issue Price and (II) dividing the result thereof by the Conversion Price. The Conversion Price shall initially be \$8.00 per share of Series A Preferred Stock, subject to adjustment as provided in Section 5(d). Accrued but unpaid dividends will be paid in cash upon any such conversion.

(b) FORCED CONVERSION. (i) In the event of a Transaction which will result in an Internal Rate of Return to holders of Series A Preferred Stock of 25.00% or more, each share of outstanding Series A Preferred Stock shall, concurrently with the closing of such Transaction, be converted into fully-paid and non-assessable shares of Common Stock. Any such conversion shall be made into the number of shares of Common Stock determined pursuant to Section 5(a) using the Conversion Price, as last adjusted. Accrued but unpaid dividends will be paid in cash on any such conversion.

(ii) Notwithstanding anything to the contrary herein, no shares of outstanding Series A Preferred Stock shall be converted into Common Stock pursuant to this Section 5(b) unless at the time of such proposed conversion the Corporation shall have on file with the Securities and Exchange Commission an effective registration statement with respect to the shares of Common Stock issued or issuable to the holders on conversion of the Series A Preferred Stock then issued or issuable to such holders and such shares of Common Stock are eligible for trading on NASDAQ (or approved by and listed on a stock exchange approved by the holders of 66 2/3% of the then outstanding shares of Series A Preferred Stock).

4

(c) MECHANICS OF CONVERSION. In order to convert Series A Preferred Stock into full shares of Common Stock if (i) such conversion is pursuant to Section 5(a), the holder shall (A) fax a copy of a fully executed notice of conversion ("NOTICE OF CONVERSION") to the Corporation at the office of the Corporation or to the Corporation's designated transfer agent (the "TRANSFER AGENT") for the Series A Preferred Stock stating that the holder elects to convert, which notice shall specify the date of conversion, the number of shares of Series A Preferred Stock to be converted, the Conversion Price (together with a copy of the front page of each certificate to be converted) and (B) surrender to a common courier for either overnight or two (2) day delivery to the office of the Corporation or its transfer agent, the original certificates representing the Series A Preferred Stock (the "PREFERRED STOCK CERTIFICATES") being converted, duly endorsed for transfer, and (ii) such conversion is pursuant to Section 5(b), the Corporation shall fax a copy of a Notice of Conversion to the holders of Series A Preferred Stock stating that the shares of Series A Preferred Stock shall be converted into Common Stock, which notice shall describe the Transaction and the calculation of the Internal Rate of Return and specify the date of such conversion, the number of shares of Series A Preferred Stock that are being converted, the Conversion Price and a calculation of the number of shares of Common Stock issuable upon such conversion (together with a copy of the front page of each certificate to be converted); PROVIDED, HOWEVER, that the Corporation's failure to deliver a Notice of Conversion to each holder shall not affect the conversion of such shares of Series A Preferred Stock on the date of the closing of the Transaction and the cancellation of the certificates representing such shares of Series A Preferred Stock. In the event of a conversion pursuant to Section 5(b), the outstanding shares of Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent and the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless either the Preferred Stock Certificates are delivered to the Corporation or the Transfer Agent as provided above, or the holder notifies the Corporation or its Transfer Agent that such certificates have been lost, stolen or destroyed (subject to the requirements of Section 5(c)(i) below).

(i) LOST OR STOLEN CERTIFICATES. Upon receipt by the Corporation of evidence of the loss, theft, destruction or mutilation of any Preferred Stock Certificates representing shares of Series A Preferred Stock, and (in the case of loss, theft or destruction) of indemnity or security reasonably satisfactory to the Corporation, and upon surrender and cancellation of the Preferred Stock Certificates, if mutilated, the Corporation shall execute and deliver new Preferred Stock Certificates of like tenor and date; provided that the Corporation shall pay all costs of delivery (including insurance against loss and theft until delivered in an amount satisfactory to the holders of Series A Preferred Stock). However, the Corporation shall not be obligated to reissue such lost or stolen Preferred Stock Certificates if the

holder contemporaneously requests the Corporation to convert such Series A Preferred Stock into Common Stock or if such shares of Series A Preferred Stock have been otherwise converted into Common Stock.

(ii) DELIVERY OF COMMON STOCK UPON CONVERSION. The Corporation no later than 6:00 p.m. (Pacific time) on the third (3rd) business day after receipt by the Corporation or its transfer agent of all necessary documentation duly executed and in proper form required for conversion, including the original Preferred Stock Certificates to be converted (or after provision for security or indemnification in the case of lost, stolen

5

or destroyed certificates, if required), shall issue and surrender to a common courier for either overnight or (if delivery is outside the United States) two (2) day delivery to the holder as shown on the stock records of the Corporation a certificate for the number of shares of Common Stock to which the holder shall be entitled as aforesaid.

(iii) DATE OF CONVERSION. The date on which a voluntary conversion pursuant to Section 5(a) occurs (the "DATE OF VOLUNTARY CONVERSION") shall be deemed to be the date the applicable Notice of Conversion is faxed to the Corporation or the Transfer Agent, as the case may be, provided that the copy of the Notice of Conversion is faxed to the Corporation on or prior to 6:00 p.m. (Pacific time) on the Date of Conversion. A forced conversion pursuant to Section 5(b) shall occur on the date on which such forced conversion is deemed to occur pursuant to Section 5(b) (the "DATE OF FORCED CONVERSION", and together with the Date of Voluntary Conversion, the "DATE OF CONVERSION"). The original Preferred Stock Certificates representing the shares of Series A Preferred Stock to be converted shall be surrendered by depositing such certificates with a common courier for either overnight or two (2) day delivery, as soon as practicable following the Date of Voluntary Conversion or as soon as practicable following the date such holder receives notice of the Date of Forced Conversion. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Date of Conversion.

(iv) NO FRACTIONAL SHARES ON CONVERSION. No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall (after aggregating all shares into which shares of Series A Preferred held by each holder could be converted) pay cash equal to such fraction multiplied by the market price per share of Common Stock (as determined in a reasonable manner by the Board) at the close of business on the Date of Conversion.

(d) ADJUSTMENT OF CONVERSION PRICE.

(i) ADJUSTMENTS OF CONVERSION PRICE UPON ISSUANCE OF COMMON STOCK. If at any time after the first filing of this Certificate of Designations, the Corporation shall issue or sell, or is, in accordance with Section 5(d)(i)(A) through (G) below, deemed to have issued or sold, any shares of Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale or deemed issue or sale, then, forthwith upon such issue or sale or deemed issue or sale, the Conversion Price shall be reduced to the price determined by dividing (x) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue or sale multiplied by the then existing Conversion Price and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (y) the total number of shares of Common Stock outstanding immediately after such issue or sale. For purposes of determining the number of shares of Common Stock outstanding as provided in clauses (x) and (y) above, the number of shares of Common Stock issuable upon conversion of all outstanding shares of Series A Preferred Stock, exercise of all outstanding Options (as defined below) and conversion of all outstanding Convertible Securities (as defined below) shall be deemed to be outstanding.

6

For purposes of this Section 5(d)(i), the following subparagraphs (A) to (G) of this Section 5(d)(i) shall also be applicable:

(A) ISSUANCE OF RIGHTS OR OPTIONS. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "OPTIONS" and such convertible or exchangeable stock or securities being called "CONVERTIBLE SECURITIES") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof (in all cases excluding the effect of a net issue election), by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options and thereafter shall be deemed to be outstanding. Except as otherwise provided in Section 5(d)(i)(C), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(B) ISSUANCE OF CONVERTIBLE SECURITIES. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding; PROVIDED that (a) except as otherwise provided in Section 5(d)(i)(C), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible

Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this Section 5(d)(i), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(C) CHANGE IN OPTION PRICE OR CONVERSION RATE. Upon the happening of any of the following events, namely, if (1) the purchase price or exercise price provided for in any Option referred to in Section 5(d)(i)(A), (2) the number of shares into which the Option is exercisable, (3) the

additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 5(d)(i)(A) or (B), or (4) the rate at which Convertible Securities referred to in Section 5(d)(i)(A) or (B) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price in effect at the time of such event shall forthwith be readjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold.

(D) STOCK DIVIDENDS. In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation (other than Common Stock or Series A Preferred Stock) payable in Common Stock, then any Common Stock issuable in payment of such dividend or distribution shall be deemed to have been issued or sold for \$.001 per share, unless the holders of at least 66 2/3% of the then outstanding Series A Preferred Stock shall have consented to such dividend or distribution.

(E) CONSIDERATION FOR STOCK. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board.

(F) RECORD DATE. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

8

(G) TREASURY SHARES. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this Section 5(d)(i).

(ii) CERTAIN ISSUES OF COMMON STOCK  
EXCEPTED. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in the case of the issuance or sale from and after the date of filing of this Certificate of Designations of Anti-Dilution Excluded Securities (as defined below).

(iii) ADJUSTMENTS FOR SUBDIVISIONS, COMMON STOCK DIVIDENDS, COMBINATIONS OR CONSOLIDATIONS OF COMMON STOCK. If the outstanding shares of Common Stock shall be subdivided or increased, by stock split, stock dividend or otherwise, into a greater number of shares of Common Stock, the Conversion Price shall concurrently with the effectiveness of such subdivision or payment of such stock dividend, be proportionately decreased. If the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock,

the Conversion Price shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(iv) ADJUSTMENTS FOR RECLASSIFICATION, EXCHANGE AND SUBSTITUTION. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of the Series A Preferred Stock immediately before that change.

(v) ADJUSTMENTS FOR MERGER, SALE, LEASE OR CONVEYANCE. In case of any share exchange, reorganization, consolidation with or merger of the Corporation with or into another corporation, or in case of any sale, lease, conveyance or disposition to another Corporation of the assets of the Corporation as an entirety or substantially as an entirety, which is not treated as a liquidation, dissolution or winding up pursuant to Section 4(d) above, the Series A Preferred Stock shall after the date of such share exchange, reorganization, consolidation, merger, sale, lease, conveyance or disposition be convertible into the number of shares of stock or other securities or property (including cash) to which the Common Stock issuable (at the time of such consolidation, merger, sale, lease, conveyance or disposition) upon conversion of the Series A Preferred Stock would have been entitled upon such share exchange, reorganization, consolidation, merger, sale, lease, conveyance or disposition; and in any such case, if necessary, the provisions set forth herein

9

with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to any shares of stock or other securities or property thereafter deliverable on the conversion of the shares of Series A Preferred Stock.

(vi) FRACTIONAL SHARES. If any adjustment under this Section 5(d) would create a fractional share of Common Stock or a right to acquire a fractional share of Common Stock, such fractional share shall be rounded to the nearest whole number of shares with one-half share being rounded up.

(vii) NOTICE OF ADJUSTMENT. Concurrent with any adjustment pursuant to this Section 5(d), the Corporation shall provide prompt notice to the holders of Series A Preferred Stock notifying such holders of any such adjustment.

Section 6. VOTING RIGHTS. Except to the extent otherwise expressly provided by law and in Section 7, the Series A Preferred Stock shall vote together with all other classes and series of voting stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series A Preferred Stock shall entitle the holder thereof to the number of votes equal to the number of shares of Common Stock into which each share of Series A Preferred Stock is convertible (determined without regard to Section 5(c)(iv)) on all matters to be voted on by the stockholders of the Corporation.

Section 7. PROTECTIVE PROVISIONS. The Corporation shall not, without first obtaining the written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock voting as a separate class:

(i) increase or decrease the total number of authorized shares of Series A Preferred Stock or the authorized shares of Common Stock reserved for issuance upon conversion of the Series A Preferred Stock (except as otherwise required by the Charter or this Certificate of

Designations);

(ii) increase or decrease the number of authorized shares of Preferred Stock or Common Stock (except as otherwise required by the Charter or this Certificate of Designations);

(iii) alter, amend, repeal, substitute or waive any provision of the Charter or the Corporation's bylaws, so as to affect adversely the voting powers, preferences or other rights, including, without limitation, the liquidation preferences, dividend rights, conversion rights, redemption rights or any reduction in the stated value of the Series A Preferred Stock, whether by merger, consolidation or otherwise;

(iv) authorize, create, issue or sell any Senior Securities or any Parity Securities or securities that are convertible into Senior Securities or Parity Securities with respect to voting, dividend, liquidation or redemption rights, including subordinated debt;

(v) authorize, create, issue or sell any Junior Securities other than Common Stock or securities that are convertible into Junior Securities other than Common Stock with respect to voting, dividend, liquidation or redemption rights, including subordinated debt;

10

(vi) authorize, create, issue or sell any Series A Preferred Stock other than the Series A Preferred Stock authorized, created, issued and sold pursuant to the Purchase Agreement and Series A Preferred Stock issued in accordance with Section 3(a) and Series A Preferred Stock issued in replacement or exchange therefore;

(vii) engage in a Transaction which would result in an Internal Rate of Return to holders of Series A Preferred Stock of less than 25.00%;

(viii) declare or pay any dividends or distributions on the capital stock of the Corporation in a cumulative amount in excess of the dividends and distributions paid on the Series A Preferred Stock in accordance with this Certificate of Designations;

(ix) authorize or effect the voluntary liquidation, dissolution, recapitalization, reorganization or winding up of the business of the Corporation;

(x) purchase, redeem or otherwise acquire any capital stock of the Corporation other than Series A Preferred Stock, or any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, capital stock of the Corporation or securities convertible into or exchangeable for capital stock of the Corporation;

(xi) change the number of members of the Board to be more than nine members or less than seven members;

(xii) effect any material change in the industry focus of the Corporation and its subsidiaries, considered on a consolidated basis;

(xiii) authorize or engage in, or permit any subsidiary of the Corporation to authorize or engage in, any transaction or series of transactions with a current or former officer, director or member of the Corporation or any of its subsidiaries with value in excess of \$100,000, excluding compensation or the grant of Options approved by the Board; or

(xiv) authorize or engage in, or permit any subsidiary of the Corporation to authorize or engage in, any transaction with any entity or person that is affiliated with any current or former director, officer or member of the Corporation or any of its subsidiaries, excluding any director nominated by the initial holder of the Series A Preferred Stock in accordance with the Registration Rights Agreement.

Section 8. STATUS OF CONVERTED STOCK. In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 5 hereof, the shares so converted shall be canceled, shall return to the status of authorized but unissued Preferred Stock of no designated series, and shall not be issuable by the Corporation as Series A Preferred Stock.

Section 9. PREEMPTIVE RIGHTS. (a) The Corporation shall not issue, sell or exchange, agree to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange, (i) any shares of the capital stock of the Corporation, (ii) any option, warrant or other right to subscribe for, purchase or otherwise acquire any capital stock of the Corporation, or (iii) any securities convertible into capital stock of the Corporation (collectively, the "Offered Securities"), unless in each such case the Corporation shall have first

11

complied with this Section 9. The Corporation shall deliver to each holder of the Series A Preferred Stock a written notice of any proposed or intended issuance, sale or exchange of Offered Securities (the "Offer"), which Offer shall (i) identify and describe the Offered Securities, (ii) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (iii) identify the persons or entities (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged, and (iv) offer to issue and sell to or exchange with such holder of the Series A Preferred Stock (A) a pro rata portion of the Offered Securities determined by dividing (x) the aggregate number of shares of Common Stock then held by such holder of the Series A Preferred Stock (giving effect to the conversion of all shares of convertible preferred stock then held by such holder) by (y) the total number of shares of Common Stock then held by all holders of the Series A Preferred Stock (giving effect to the conversion of all outstanding shares of convertible preferred stock then held by such holders) (such pro rata portion of the Offered Securities, the "Basic Amount"), and (B) any additional portion of the Offered Securities attributable to the Basic Amounts of other holders of the Series A Preferred Stock as such holder shall indicate it will purchase or acquire should the other holders subscribe for less than their Basic Amounts (the "Undersubscription Amount"). In the case of a public offering of Common Stock of the Corporation for a purchase price of at least \$12.00 and a total gross offering price of at least \$50,000,000.00, the rights of the holders of the Series A Preferred Stock shall be limited to 50% of the Offered Securities.

(b) To accept an Offer, in whole or in part, a holder of the Series A Preferred Stock must deliver a written notice to the Corporation prior to the end of the 30-day period of the Offer, setting forth the portion of the holder's Basic Amount that such holder elects to purchase and, if such holder shall elect to purchase all of its Basic Amount, the Undersubscription Amount (if any) that such holder elects to purchase (the "Notice of Acceptance"). If the Basic Amounts subscribed for by all holders of the Series A Preferred Stock are less than the total of all of the Basic Amounts available for purchase, then each holder who has set forth an Undersubscription Amount in its Notice of Acceptance shall be entitled to purchase, in addition to the Basic Amounts subscribed for, the Undersubscription Amount it has subscribed for; provided, however, that if the Undersubscription Amounts subscribed for exceeds the difference between the total of all of the Basic Amounts available for purchase and the Basic Amounts subscribed for (the "Available Undersubscription Amount") each holder of Series A Preferred Stock who has subscribed for any Undersubscription Amount shall be entitled to purchase only that portion of the Available Undersubscription Amount as the Undersubscription Amounts subscribed for by such holder bears to the total Undersubscription Amounts subscribed for by all holders of the Series A Preferred Stock, subject to rounding by the Board to the extent it deems reasonably necessary.

(c) The Corporation shall have 90 days from the expiration of the period set forth in Section 9(b) to issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by the holders of the Series A Preferred Stock (the "Refused Securities"), but only to the offerees or purchasers described in the Offer (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) which are not more favorable, in the aggregate, to the acquiring person or persons or less favorable to the



Corporation than those set forth in the Offer.

12

(d) In the event the Corporation shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 9(c)), then each holder of the Series A Preferred Stock may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that the holder of the Series a Preferred Stock elected to purchase pursuant to Section 9(b) multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Corporation actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to Purchasers pursuant to Section 9(b) prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any holder of the Series A Preferred Stock so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Corporation may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Purchasers in accordance with Section 9(a).

(e) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, the holders of the Series A Preferred Stock shall acquire from the Corporation, and the Corporation shall issue to the holders of the Series A Preferred Stock, the number or amount of Offered Securities specified in the Notices of Acceptance, as reduced pursuant to Section 9(d) if the holders have so elected, upon the terms and conditions specified in the Offer. The purchase by the holders of the Series A Preferred Stock of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Corporation and the holders of a purchase agreement relating to such Offered Securities satisfactory in form and substance to the holders of the Series A Preferred Stock and their respective counsel.

(f) Any Offered Securities not acquired by the holders of the Series A Preferred Stock or other persons in accordance with Section 9(c) may not be issued, sold or exchanged until they are again offered to the holders of the Series A Preferred Stock under the procedures specified in this Section 9.

(g) The rights of the holders of the Series A Preferred Stock under this Section 9 shall not apply to Preemptive Rights Excluded Securities.

(h) The failure of any holder of Series A Preferred Stock to exercise its rights under this Section 9 shall not be deemed to be a waiver of its rights hereunder in connection with any subsequent issuance, sale or exchange, agreement to issue, sell or exchange, or reservation or setting aside for issuance, sale or exchange of Offered Securities.

Section 10. RESERVATION OF STOCK. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of shares of Series A Preferred Stock issued or issuable to the holders, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Series A Preferred Stock, in addition to such other remedies as shall be available to the holder of Series A Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its

13

authorized but unissued shares of Common Stock to such number as shall be

sufficient for such purposes, including, without limitation, using best efforts to obtain stockholder approval of any necessary amendment to the Charter.

Section 11. REDEMPTION RIGHTS. The holders of the Series A Preferred Stock shall have redemption rights as follows:

(a) Upon the occurrence of a Redemption Event, the Series A Preferred Stock shall be subject to redemption, at the option of the holders of 66 2/3% of the then outstanding shares of Series A Preferred Stock, on the date specified by the holders of Series A Preferred Stock exercising such option (the "SERIES A REDEMPTION DATE"). The number of shares of the Series A Preferred Stock to be so redeemed shall be obtained by multiplying the number of shares of Series A Preferred Stock then outstanding by a fraction, the numerator of which is the Restricted Cash Amount and the denominator of which is \$80,000,000.00. The redemption price for shares of Series A Preferred Stock subject to such redemption shall be equal to the Series A Issue Price (as adjusted for any stock splits, combinations, recapitalizations involving a change with respect to the Series A Preferred Stock) per share plus any accrued but unpaid dividends plus an amount sufficient to yield an Internal Rate of Return of 5.00%, payable in immediately available funds. If less than all of the shares of the outstanding Series A Preferred Stock are to be redeemed pursuant to this Section 11(a), such shares shall be redeemed pro rata from the holders thereof in proportion to the number of shares held by such holders (with adjustments to avoid redemption of fractional shares).

(b) The funds legally available to the Corporation for the payment of the redemption price of any Junior Securities shall be used first to pay the redemption price of Series A Preferred Stock on the dates established for redemption pursuant to Section 11(a) and no such funds shall be used (or will be required to be used) to pay the redemption price of any Junior Securities unless the Corporation has paid, or reserved funds sufficient to pay, the entire redemption price of Series A Preferred Stock. If the funds legally available to the Corporation for the payment of the redemption price of the Series A Preferred Stock are not sufficient to redeem all of the shares of the Series A Preferred Stock required to be redeemed on any date, such funds shall be used to redeem the number of shares of Series A Preferred Stock which may be redeemed from such amount on a pro rata basis. If additional funds become available for the redemption of additional shares of Series A Preferred Stock required to be so redeemed, the Corporation shall immediately use such funds to redeem shares of Series A Preferred Stock until such time as all of the shares of Series A Preferred Stock required to be redeemed pursuant to this Section 11 have been redeemed.

(c) If, on the dates established for redemption pursuant to Section 11(a), all of the shares of Series A Preferred Stock to be redeemed on each such date are not redeemed in full, all rights in respect of such shares of Series A Preferred Stock that have not been redeemed, including the right to receive the applicable redemption price, plus accrued and unpaid dividends, shall continue to be outstanding as evidenced by the certificates representing such shares. The exercise by the holders of the option to redeem any shares of Series A Preferred Stock which were not redeemed on the dates established for redemption pursuant to Section 11(a), may be rescinded by such holders at any time following the date established for such redemption by written notice to the Corporation. All shares of Series A Preferred Stock

redeemed pursuant to Section 11(a) shall be retired and shall be restored to the status of authorized and unissued shares of Preferred Stock, without designation as to series or class and may thereafter be reissued, subject to compliance with the terms hereof, as shares of any series of Preferred Stock other than shares of Series A Preferred Stock.

(d) (i) If the Corporation is unable to make any such payment of the redemption price after redemption was required to be paid pursuant to Section 11(a) a default in the payment of the redemption price for the purpose of this section shall be deemed to have occurred, and having so occurred, such default shall be deemed to exist thereafter until, but only until, all amounts payable pursuant to this section have been paid. If and whenever a default in the payment of the redemption price shall occur, and in

addition to any other remedies available at law, a special meeting of shareholders of the Corporation shall be held for the purpose of electing directors upon the written request of the holders of at least 10% of the total number of shares of Series A Preferred Stock then outstanding. Such meeting shall be called by the secretary of the Corporation upon such written request and shall be held at the earliest practicable date upon like notice as that required for the annual meeting of shareholders of the Corporation and at the place for the holding of such annual meeting. If notice of such special meeting shall not be mailed by the secretary within thirty days after personal service of such written request upon the secretary of the Corporation or within thirty days of mailing the same in the United States of America by registered mail addressed to the secretary at the principal office of the Corporation, then the holders of at least 10% of the total number of shares of Series A Preferred Stock then outstanding may designate in writing one of their number to call such meeting and the person so designated may call such meeting upon like notice as that required for the annual meeting of shareholders and to be held at the place for the holding of such annual meeting. Any holder of Series A Preferred Stock so designated shall have access to the stock books of the Corporation for the purpose of causing a meeting of shareholders to be called pursuant to the foregoing provisions of this subdivision.

(ii) At any such special meeting, or at the next annual meeting of shareholders of the Corporation for the election of directors and at each other meeting, annual or special, for the election of directors held thereafter (unless at the time of any such meeting such default in the payment of the redemption price shall no longer exist), the holders of the outstanding shares of Series A Preferred Stock, voting separately as a class, shall have the right to elect the smallest number of directors which shall constitute at least a majority of the total number of directors of the Corporation, or two directors, whichever shall be greater, and the holders of the outstanding shares of Common Stock, voting as a class, shall have the right to elect all other members of the Board, anything herein or in the bylaws of the Corporation to the contrary notwithstanding. The terms of office, as directors, of all persons who may be directors of the Corporation at any time when such special right to elect directors shall become vested in the holders of the Series A Preferred Stock shall terminate upon the election of any new directors to succeed them as aforesaid.

(iii) At any meeting, annual or special, of the Corporation, at which the holders of Series A Preferred Stock shall have the special right to elect directors as aforesaid, the presence in person or by proxy of the holders of a majority of the total number of shares of Series A Preferred Stock then outstanding shall be required to constitute a quorum of such class for the election of directors, and the presence in person or by proxy of the holders of a majority of the total number of shares of Common Stock then outstanding shall be required to constitute a quorum of such class for the election of directors; provided, however, that the absence of a quorum of the holders of shares of any such class shall not prevent the election at any such meeting or adjournment thereof of directors by the other class, if necessary quorum of the holders of such other class shall be present at such meeting or any adjournment thereof; and provided further, that in the absence of a quorum of holders of shares of any class, a majority of the holders of the shares of such class who are present in person or by proxy shall have power to adjourn the

election of the directors to be elected by such class from time to time, without notice other than announcement at the meeting, until the requisite quorum of holders of such class shall be present in person or by proxy, but no such adjournment shall be made to a date beyond the date for the mailing of the notice of the next annual meeting of shareholders of the Corporation or special meeting in lieu thereof.

(iv) So long as a default in the payment of the redemption price shall exist, any vacancy in the office of a director elected by the holders of the Series A Preferred Stock may be filled at any meeting of shareholders, annual or special, for the election of directors held thereafter, and a special meeting of shareholders, or of the holders of shares of the Series A Preferred Stock, may be called for the purpose of filling any such vacancy. So long as a default in the payment of the redemption price shall

exist, any vacancy in the office of a director elected by the holders of the Common Stock may be filled by majority vote of the remaining directors elected by the holders of the Common Stock.

(v) If and when the default in the payment of the redemption price which permitted the election of directors by the holders of the Series A Preferred Stock shall cease to exist, the holders of the Series A Preferred Stock shall be divested of any special right with respect to the election of directors, and the voting power of the holders of the Series A Preferred Stock and of the holders of the Common Stock shall revert to the status existing before the first dividend payment date on which dividends on the Series A Preferred Stock were not paid in full, subject to revesting in the event of each and every subsequent like default in preferred dividends. Upon the termination of any such special right, the terms of office of all persons who may have been elected directors by vote of the holders of the Series A Preferred Stock pursuant to such special right shall forthwith terminate, and the resulting vacancies shall be filled by the majority of the remaining directors.

Section 12. DEFINITIONS. As used in this Certificate, the following capitalized terms have the following meanings.

"ANTI-DILUTION EXCLUDED SECURITIES" mean any of the following securities: (1) securities issued to employees, officers or directors of the Corporation or options to purchase Common Stock granted by the Corporation to employees, officers or directors of the Corporation pursuant to any option plan, agreement or other arrangement duly adopted by the Corporation and the grant of which is approved by the compensation committee of the Board; (2) the Series A Preferred Stock and any Common Stock issued upon conversion of the Series A Preferred Stock; (3) for the avoidance of doubt, securities issued on the conversion of any Convertible Securities or the exercise of any Options, in each case, outstanding on the date of the first filing of this Certificate of Designations; and (4) for the avoidance of doubt, securities issued in

16

connection with a stock split, stock dividend, combination, reorganization, recapitalization or other similar event for which adjustment is made in accordance with Section 5(d) (iii) or (iv).

"DEPOSIT AGREEMENT" means that certain Deposit Agreement, dated on or about the date hereof, between the Corporation and a bank or trust company, entered into pursuant to the Purchase Agreement.

"INTERNAL RATE OF RETURN" means the discount rate that makes the net present value of all cash payments equal zero. In determining the Internal Rate of Return, the initial investment of the holders of the Series A Preferred Stock shall include all transaction costs and expenses incurred by the initial holder of the Series A Preferred Stock in connection with the transactions contemplated by the Purchase Agreement and all additional costs and expenses of the holders of Series A Preferred Stock in respect of the investment incurred through the date of the determination shall be treated as cash expenditures when made. For purposes of determining the Internal Rate of Return, any dividends, distributions or payments other than in cash shall be deemed to have no value. In determining the Internal Rate of Return in respect of a Transaction, the final payment for purposes of such determination shall be the cash, if any, distributable or payable to holders of the Series A Preferred Stock upon the closing of the Transaction assuming that the holders had converted all of the outstanding Series A Preferred Stock to Common Stock immediately prior to the closing of the Transaction.

"PURCHASE AGREEMENT" means that certain Purchase Agreement, dated November 14, 2005, between the Corporation and Cascade Investment, L.L.C.

"PREEMPTIVE RIGHTS EXCLUDED SECURITIES" mean any of the following securities: (1) securities issued to employees, officers or directors of the Corporation or options to purchase Common Stock granted by the Corporation to employees, officers or directors of the Corporation pursuant to any option plan, agreement or other arrangement duly adopted by the Corporation and the grant of which is approved by the compensation committee of the Board; (2) the Series A Preferred Stock and any Common Stock issued on conversion of

the Series A Preferred Stock; (3) for the avoidance of doubt, securities issued on the conversion of any Convertible Securities or the exercise of any Options, in each case, outstanding on the date of the first filing of this Certificate of Designations; (4) for the avoidance of doubt, securities issued in connection with a stock split, stock dividend, combination, reorganization, recapitalization or other similar event for which adjustment is made in accordance with Section 5(d)(iii), (iv) or (v); and (5) the issuance of securities of the Corporation issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination by the Corporation approved by the Board.

"REDEMPTION EVENT" means (i) the Corporation withdraws or utilizes funds from the Restricted Cash Account in violation of the terms of the Deposit Agreement, (ii) the Corporation publicly disclosed an intent not to build or acquire additional ethanol production facilities for an indefinite period or for a period of at least two years from the time of the announcement, (iii) fails to withdraw funds from the Restricted Cash Account for a period of two years, or (iv) amounts remain in the Restricted Cash Account after December 31, 2009.

17

"REGISTRATION RIGHTS AGREEMENT" means that certain Registration Rights and Stockholder's Agreement, dated on or about the date hereof, between the Corporation and Cascade Investment, L.L.C.

"RESTRICTED CASH ACCOUNT" means the account established and maintained pursuant to the Deposit Agreement.

"RESTRICTED CASH AMOUNT" means the total amount of money in the Restricted Cash Account on the Series A Redemption Date prior to any disbursement thereof on such date and after giving effect to the sale or other liquidation of all investments held in such account together with, if the Corporation shall have withdrawn or utilized moneys from the Restricted Cash Account in violation of the terms of the Deposit Agreement, the amount of any moneys so withdrawn or utilized.

SIGNATURE ON FOLLOWING PAGE.

18

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be duly executed on its behalf by its \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

PACIFIC ETHANOL, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

19

## DEPOSIT AGREEMENT

BETWEEN

PACIFIC ETHANOL, INC.

AND

[ ], AS TRUSTEE

DATED [\_\_\_\_\_] , 200\_

<TABLE>  
<S> <C>

## TABLE OF CONTENTS

-----

PAGE

ARTICLE I.	APPOINTMENT OF TRUSTEE; ESTABLISHMENT OF RESTRICTED CASH ACCOUNT.....	1
SECTION 1.01	Appointment of Trustee.....	1
SECTION 1.02	Establishment of Restricted Cash Account.....	1
SECTION 1.03	Investment and Liquidation of Deposit Fund.....	2
ARTICLE II.	REPRESENTATIONS, WARRANTIES AND COVENANTS.....	2
SECTION 2.01	Representations and Warranties of the Company.....	2
SECTION 2.02	Covenant of the Company.....	2
ARTICLE III.	DISBURSEMENT FROM THE RESTRICTED CASH ACCOUNT.....	2
SECTION 3.01	Disbursements for Payment of Construction Costs.....	2
SECTION 3.02	Disbursements for Payment of Acquisition Costs.....	3
SECTION 3.03	Disbursements upon Redemption of Preferred Shares.....	3
SECTION 3.04	Trustee's Reliance on Requisitions.....	3
SECTION 3.05	Records of Disbursements.....	4
ARTICLE IV.	RIGHTS AND DUTIES OF TRUSTEE; RESIGNATION.....	4
SECTION 4.01	Rights and Duties of Trustee.....	4
SECTION 4.02	Resignation or Removal.....	4
SECTION 4.03	Compensation of Trustee.....	4
SECTION 4.04	Indemnity.....	5
ARTICLE V.	MISCELLANEOUS.....	5
SECTION 5.01	No Assignment.....	5
SECTION 5.02	Further Assurances.....	5
SECTION 5.03	Notices.....	5
SECTION 5.04	Governing Law.....	5
SECTION 5.05	Submission to Jurisdiction; Consent to Service of Process.....	6
SECTION 5.06	Third Party Beneficiary.....	6
SECTION 5.07	Entire Agreement.....	6
SECTION 5.08	Counterparts.....	6
SECTION 5.09	Amendments and Termination.....	6
SECTION 5.10	Severability.....	7
SECTION 5.11	Titles and Subtitles; Interpretive Matters.....	7
SECTION 5.12	Facsimile Signatures.....	7
SECTION 5.13	Certain Defined Terms.....	7

## INDEX TO EXHIBITS

-----

EXHIBIT A	Trustee Wire Instructions
EXHIBIT B	Form of Construction Cost Requisition
EXHIBIT C	Form of Acquisition Cost Requisition

&lt;/TABLE&gt;

PACIFIC ETHANOL, INC.

DEPOSIT AGREEMENT

THIS DEPOSIT AGREEMENT is made on the [\_\_] day of [\_\_], 200\_ (the "AGREEMENT"), by and between Pacific Ethanol, Inc., a Delaware corporation (the "COMPANY"), and [ ], a [ ], in its capacity as trustee (the "TRUSTEE"). Certain capitalized terms used herein are defined in Section 5.13 of this Agreement.

WHEREAS, the Company and Cascade Investment, L.L.C., a Washington limited liability company (the "PURCHASER") have entered into a Purchase Agreement, dated as of November 14, 2005 (the "PURCHASE AGREEMENT"), pursuant to which the Purchaser has purchased from the Company, and the Company has sold to the Purchaser, the Preferred Shares (as defined in the Purchase Agreement);

WHEREAS, pursuant to the terms of the Purchase Agreement, \$80,000,000 of the purchase price paid by the Purchaser to the Company in consideration of the Preferred Shares is to be deposited into a restricted cash account (the "RESTRICTED CASH ACCOUNT") to be held by the Trustee and applied in the manner provided in this Agreement;

WHEREAS, to induce the Purchaser to acquire the Preferred Shares, the Company has agreed to enter into this Agreement, establish the Restricted Cash Account and utilize the amounts maintained in the Restricted Cash Account in accordance with this Agreement; and

WHEREAS, the parties hereto desire to set forth the terms of the Restricted Cash Account and to appoint the Trustee to act in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises, representations, warranties and the mutual covenants contained in this Agreement and the Purchase Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I.

APPOINTMENT OF TRUSTEE; ESTABLISHMENT OF RESTRICTED CASH ACCOUNT

SECTION 1.01 APPOINTMENT OF TRUSTEE. The Company hereby appoints the Trustee as the trustee under this Agreement, and the Trustee accepts this appointment in accordance with the terms and conditions set forth in this Agreement and agrees to assume and perform the duties of the trustee pursuant to this Agreement.

SECTION 1.02 ESTABLISHMENT OF RESTRICTED CASH ACCOUNT. Subject to the terms and conditions set forth in this Agreement, on the date hereof the Purchaser has deposited with the Trustee an amount equal to \$80,000,000 (the "DEPOSIT AMOUNT") by wire transfer of immediately available funds to the account of the Trustee referenced on EXHIBIT A attached hereto. The Deposit Amount, together with any and all interest, income and other earnings thereon, is referred to as the "DEPOSIT FUND." The Trustee shall hold, invest, manage, administer, distribute and dispose of the Deposit Fund in accordance with the terms and conditions of this Agreement.

SECTION 1.03 INVESTMENT AND LIQUIDATION OF DEPOSIT FUND.

(a) Pending disbursement, the Trustee shall invest and reinvest the Deposit Fund in Permitted Investments, and liquidate such Permitted Investments, pursuant to and in accordance with the written instructions of an Authorized Officer of the Company as provided to the Trustee from time to time. Interest, income and other earnings, if any, earned on the investment of any Deposit Fund moneys shall be credited to the Restricted Cash Account. The Trustee shall not be liable for any loss resulting from any investment made, or any sale or redemption of any investment made, in accordance with instructions received from an Authorized Officer of the Company or in accordance with paragraph (b) of this Section 1.03.

(b) If and when cash is required to be disbursed in accordance with this Agreement, and cash is not otherwise available in the Restricted Cash Account, the Trustee is authorized, without instructions from an Authorized Officer of the Company, to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) in such manner as the Trustee shall direct; provided that the Trustee shall attempt to liquidate any and all investments as so needed in such manner as will minimize, to the extent reasonably practicable, the costs, penalties and losses associated with any such liquidation.

ARTICLE II.

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.01 REPRESENTATIONS AND WARRANTIES OF THE COMPANY. Each submission of a requisition to the Trustee shall constitute a representation and warranty by the Company that all of the information contained in such requisition is true and correct.

SECTION 2.02 COVENANT OF THE COMPANY. The Company covenants and agrees that it shall not withdraw moneys from the Restricted Cash Account or utilize any moneys that have been withdrawn from the Restricted Cash Account except in accordance with the terms and provisions of this Agreement and the applicable requisition under which such moneys are to be withdrawn.

ARTICLE III.

DISBURSEMENT FROM THE RESTRICTED CASH ACCOUNT

SECTION 3.01 DISBURSEMENTS FOR PAYMENT OF CONSTRUCTION COSTS. The Trustee is hereby authorized and directed to disburse moneys in the Restricted Cash Account to or upon the order of the Company, from time to time, upon receipt by it of a requisition signed by two Authorized Officers of the Company, which requisition shall state with respect to each payment to be made: (1) the requisition number, (2) identify the ethanol production facility in respect of which such requisition is being made, (3) the name and address of the Person to whom payment is due or has been made, (4) the aggregate amount paid or to be paid to such Person, (5) an accurate description of the work performed, services rendered, materials, equipment or supplies delivered or any other purpose for which such payment was or is to be made, with invoices with respect thereto

2

attached, (6) the proposed date of payment and the payment or wire instructions for the payment or transfer of such amounts by the Trustee to such Person, (7) that each obligation, item of cost or expense mentioned therein has been properly incurred and has been paid or is then due and payable (or is required to be deposited at this time as equity in a Subsidiary project financing under a binding agreement with a third party which is not an Affiliate) as an item of the Cost of Construction, is a proper charge against the Restricted Cash Account, and has not been the basis of any previous payment therefrom, (8) all amounts previously drawn from the Restricted Cash Account under Construction Cost Requisitions (i) have been applied to pay the Costs of Construction listed on the applicable Construction Cost Requisition with respect to which such amounts were drawn or (ii) have not yet been expended and are still available to the Company or a Subsidiary of the Company for the payment of Costs of Construction, (9) that the amount of such requisition, together with all amounts previously drawn from the Restricted Cash Account under Construction Cost Requisitions relating to the ethanol production facility in respect of which the drawing is being made, does not exceed the Project Limit, and (10) that the Purchaser shall have approved, in writing, the terms of the debt, if any, incurred by the Company or a Subsidiary of the Company to finance a portion of the Costs of Construction of the ethanol production facility in respect of which the drawing is being made. A form of Construction Cost Requisition is attached hereto as EXHIBIT B.

SECTION 3.02 DISBURSEMENTS FOR PAYMENT OF ACQUISITION COSTS. The Trustee is hereby authorized and directed to disburse moneys in the Restricted Cash Account to or upon the order of the Company and consented to by the Purchaser, from time to time, upon receipt by it of a requisition signed by two Authorized Officers of the Company, with a consent thereto signed by an officer of the Purchaser, which requisition shall state with respect to each payment to be made: (1) the requisition number, (2) the name and address of the Person to whom payment is due or has been made, (3) the aggregate amount paid or to be paid to such Person, (4) the proposed date of payment and the payment or wire instructions for the payment or transfer of such amounts by the Trustee to such Person, and (5) that such payment obligation has been incurred in connection with the acquisition of an ethanol production facility by the Company or a Subsidiary of the Company and is currently payable, is a proper charge against the Restricted Cash Account, and has not been the basis of any previous payment therefrom. A form of Acquisition Cost Requisition is attached hereto as EXHIBIT C.

SECTION 3.03 DISBURSEMENTS UPON REDEMPTION OF PREFERRED SHARES. The Trustee is hereby authorized and directed to disburse all moneys in the Restricted Cash Account to or upon the order of the Company upon receipt by it of a written requisition signed by two Authorized Officers of the Company, which instrument shall state (1) the name and address of the Person to whom payment shall be made, (2) the aggregate amount to be paid to such Person, (3) the proposed date of payment and the payment or wire instructions for the payment or



transfer of such amounts by the Trustee to such Person, and (4) that such payment is being made to fund the payment of the redemption price of the Preferred Shares on the date that the Preferred Shares are being redeemed in accordance with the terms and provisions thereof, is a proper charge against the Restricted Cash Account, and has not been the basis of any previous payment therefrom.

SECTION 3.04 TRUSTEE'S RELIANCE ON REQUISITIONS. In paying any requisition under this Article III, the Trustee may rely as to the completeness and accuracy of all statements in such requisition upon the approval of such requisition by an Authorized Officer of the Company, execution thereof to be conclusive evidence of such approval, and the Company hereby covenants and agrees to indemnify and save harmless the Trustee from any liability incurred in connection with the payment of any requisition so executed by an Authorized Officer of the Company.

3

SECTION 3.05 RECORDS OF DISBURSEMENTS. The Trustee shall keep and maintain adequate records pertaining to all requisitions and disbursements from the Restricted Cash Account and, if requested by the Company or the Purchaser, shall promptly provide such requestor with a copy of each such requisition submitted to the Trustee for payment under this Article III.

ARTICLE IV.

RIGHTS AND DUTIES OF TRUSTEE; RESIGNATION

SECTION 4.01 RIGHTS AND DUTIES OF TRUSTEE. It is understood and agreed that the Trustee:

(a) undertakes to perform only those duties as are expressly set forth in this Agreement;

(b) shall not be required to take any action which is contrary to this Agreement or applicable law;

(c) shall not be liable for any action taken or omitted to be taken in good faith by it hereunder, except to the extent that any loss or damage results from the Trustee's gross negligence or willful misconduct; and

(d) shall be protected in acting upon any document, instrument or signature believed by it to be genuine, and it may be assumed that any person purporting to give any notice or instructions in accordance with this Agreement has been duly authorized to do so. The Trustee may consult with legal counsel, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder and in good faith in accordance therewith.

SECTION 4.02 RESIGNATION OR REMOVAL. The Trustee may resign at any time by giving sixty (60) days' written notice to the Company and the Purchaser, and, in the event of such resignation, the Company and the Purchaser shall jointly appoint a successor trustee. The Trustee may be removed at any time with or without cause by joint action of both the Company and the Purchaser. No such resignation or removal shall become effective until a successor trustee shall have accepted such appointment and executed an instrument by which it shall have assumed all of the rights and obligations of the Trustee hereunder. If no successor trustee shall have been appointed and accepted such appointment within sixty (60) days after the retiring Trustee's giving of notice of resignation or the removal of the retiring Trustee, then the retiring Trustee may petition a court for the appointment of a successor trustee.

SECTION 4.03 COMPENSATION OF TRUSTEE. The Company shall pay to the Trustee compensation as shall be agreed to from time to time by the Company and the Trustee, and shall reimburse the Trustee for reasonable fees, costs and expenses, including reasonable attorneys' fees, incurred by the Trustee in connection with the performance of its duties and obligations under this Agreement.

4

SECTION 4.04 INDEMNITY. The Company agrees to indemnify, defend and hold harmless the Trustee, its Affiliates and their respective directors, managers, officers, members, stockholders, employees, Affiliates, agents, trustees, advisors (including, without limitation, attorneys, accountants and financial advisors), attorneys-in-fact, successors and assigns (collectively, "Indemnified Parties") from and against any and all losses, claims, liabilities, damages, deficiencies, costs or expenses (including, without limitation,

interest, penalties, reasonable attorneys' fees, disbursements and related charges and any costs or expenses that an Indemnified Party incurs to enforce its right to indemnification) (collectively, "Losses") based upon, arising out of or otherwise in respect of the execution, delivery and performance of this Agreement, except that the Company shall not be required to indemnify, defend and hold harmless the Trustee or any other Indemnified Party against any Losses resulting from its own gross negligence or willful misconduct.

#### ARTICLE V.

##### MISCELLANEOUS

SECTION 5.01 NO ASSIGNMENT. No assignment of any rights or delegation of any obligations provided for in this Agreement may be made by any party without the express written consent of the Company, the Trustee and the Purchaser. This Agreement shall be binding upon the successors and permitted assigns of the parties.

SECTION 5.02 FURTHER ASSURANCES. The Company and the Trustee each agree to execute and deliver such other documents or agreements as may be necessary or desirable for the implementation of this Agreement and the consummation of the transactions contemplated hereby.

SECTION 5.03 NOTICES. Any notice, request, demand or other communication required or permitted to be given to the Company, the Trustee or the Purchaser pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (a) the date of personal delivery, (b) the date of transmission by facsimile, with confirmed transmission and receipt, (c) two (2) days after deposit with a nationally-recognized courier or overnight service and (d) five (5) days after mailing via first-class mail. All notices not delivered personally or by facsimile will be sent with postage and other charges prepaid and properly addressed to the Company, the Trustee or the Purchaser, as applicable, at the following address: (i) if to the Company, to Pacific Ethanol, Inc., 5711 N. West Ave., Fresno, CA 93711, attention: Neil Koehler, with a copy to Rutan & Tucker LLP, 611 Anton Boulevard, 14th Floor, Costa Mesa, CA 92626, attention: Larry A. Cerutti, facsimile (714) 546-9035, (ii) if to the Trustee, to [\_\_\_\_], attention: [\_\_\_\_], with a copy to [\_\_\_\_], attention: [\_\_\_\_], and (iii) (i) if to the Purchaser, to Cascade Investment, L.L.C., 2365 Carillon Point, Kirkland, WA 98033, attention: Michael Larson, with a copy to Thelen Reid & Priest LLP, 875 Third Avenue, New York, NY 10022, attention: John T. Hood, facsimile (212) 603-2001. The Company, the Trustee and the Purchaser (and their permitted assigns) may change such address for receipt of future notices hereunder by giving written notice to the Company, the Trustee and the Purchaser.

#### 5

SECTION 5.04 GOVERNING LAW. This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Washington, without giving effect to the principles of conflicts of laws thereunder which would specify the application of the law of another jurisdiction.

##### SECTION 5.05 SUBMISSION TO JURISDICTION; CONSENT TO SERVICE OF PROCESS.

(a) The parties hereto hereby irrevocably submit to the exclusive jurisdiction of any federal or state court located within King County, Washington, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 5.03 hereof.

SECTION 5.06 THIRD PARTY BENEFICIARY. The Purchaser shall be a third party beneficiary of this Agreement.

SECTION 5.07 ENTIRE AGREEMENT. This Agreement, including the Exhibits hereto, constitutes the sole and entire agreement of the parties with respect to the subject matter hereof. All Exhibits hereto are hereby incorporated herein by reference.

SECTION 5.08 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 5.09 AMENDMENTS AND TERMINATION. This Agreement may not be amended, supplemented, modified or terminated, and no provisions hereof may be waived, without the written consent of the Company, the Trustee, and the Purchaser. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of the Company, the Trustee or the Purchaser, shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by the Company, the Trustee or the Purchaser of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

This Agreement shall terminate upon the disbursement of the entire Deposit Fund in the Restricted Cash Account pursuant to Article III.

6

SECTION 5.10 SEVERABILITY. If any provision of this Agreement shall be declared void or unenforceable by any judicial or administrative authority, the validity of any other provision and of the entire Agreement shall not be affected thereby.

SECTION 5.11 TITLES AND SUBTITLES; INTERPRETIVE MATTERS. The titles and subtitles used in this Agreement are for convenience of reference only and are not to be considered in construing or interpreting any term or provision of this Agreement. No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

SECTION 5.12 FACSIMILE SIGNATURES. Any signature page delivered by a fax machine shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto. Any party who delivers such a signature page agrees to deliver promptly an original counterpart to each party to whom the faxed signature page was sent.

SECTION 5.13 CERTAIN DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"AFFILIATE" means, with respect to any Person, (i) any other Person of which securities or other ownership interests representing more than fifty percent (50%) of the voting interests are, at the time such determination is being made, owned, Controlled or held, directly or indirectly, by such Person, or (ii) any other Person which, at the time such determination is being made, is Controlling, Controlled by or under common Control with, such Person. As used herein, "CONTROL", whether used as a noun or verb, refers to the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of a Person, whether through the ownership of voting securities or otherwise.

"ACQUISITION COST REQUISITION" shall mean an Acquisition Cost Requisition from the Company to the Trustee, in the form attached hereto as Exhibit C.

"AUTHORIZED OFFICER" shall mean the Chief Executive Officer, President, Chief Financial Officer, Chief Operating Officer or Treasurer of the Company.

"CONSTRUCTION COST REQUISITION" shall mean a Construction Cost Requisition from the Company to the Trustee, in the form attached hereto as Exhibit B.

"COST(S) OF CONSTRUCTION" shall mean the following costs and expenses incurred by the Company or a Subsidiary of the Company in the construction of an ethanol production facility prior to the commercial operation date of such facility: (a) costs and expenses incurred by the Company or the Subsidiary under engineering, procurement and construction contracts relating to the facility, and other costs and expenses directly related to the design, engineering, construction, installation, start-up, and testing of the facility and operating expenses with respect to the facility payable prior to the commercial operation date of the facility; (b) fees and expenses incurred by or on behalf of the

Company or the Subsidiary in connection with the development of the facility, including financial, accounting, legal, environmental site assessment, surveying and consulting fees and the costs of preliminary engineering, (c) the costs of obtaining governmental approvals, permits and licenses for the facility prior to the commercial operation date of the facility; (d) interest on the loans incurred to finance the construction of the facility which is payable prior to

7

the commercial operation date of the facility; (e) financing expenses, costs and charges in connection with the facility, and the fees and expenses of the counsel, independent engineers, consultants incurred in connection with the financing of the cost of construction of the facility; (f) insurance premiums with respect to the title insurance policy, title continuations and the insurance relating to the facility; (g) all costs, fees and expenses incurred by the Company or the Subsidiary in accordance with the construction budget and other costs directly related to the design, engineering, construction, installation, start-up and testing of the facility being constructed thereunder; (h) amounts necessary to fund a debt service reserve account required under the loan agreement or related financing agreements relating to the financing of the facility and (i) all other costs and expenses included in the construction budget for the facility.

"PERMITTED INVESTMENT" shall mean (a) obligations of or guaranteed by the United States of America (or of any agency directly backed by the full faith and credit of the United States of America), maturing not more than 12 months after the acquisition thereof, (b) commercial paper rated "A-1" by Standard & Poor's Rating Services ("S&P") or "P-1" by Moody's Investors Service, Inc. ("MOODY'S"), maturing not more than 180 days after the acquisition thereof, and (c) bankers' acceptances, certificates of deposits, term deposits or Eurodollar term deposits issued by a bank which is rated "AA" or better by S&P or "Aa" or better by Moody's, maturing not more than 180 days after the acquisition thereof.

"PROJECT LIMIT" shall mean (a)(i) with respect to the Madera ethanol production facility, \$20,000,000, and (ii) with respect to each other ethanol production facility being constructed by the Company or a Subsidiary of the Company, the product of (A) the Equity Portion, and (B) the total budgeted Costs of Construction for such facility as determined in good faith by the Board of Directors of the Company, or (b) such other amount in respect of an ethanol production facility as shall have been consented to in writing by the Purchaser. "EQUITY PORTION" shall mean 0.30 for the first ethanol production facility (other than the Madera ethanol production facility) in respect of which a Construction Cost Requisition is submitted to the Trustee and 0.25 for each subsequent ethanol production facility in respect of which a Construction Cost Requisition is submitted.

"PERSON" shall mean an individual, corporation, trust, partnership, limited liability company, joint venture, unincorporated organization, government body or any agency or political subdivision thereof, or any other entity.

"SUBSIDIARY(IES)" shall mean any other corporation, limited liability company, association, joint stock company, joint venture or business trust or which, as of the date hereof or hereafter, (i) more than fifty percent (50%) of the outstanding voting stock, share capital or other equity interests is owned either directly or indirectly by any Person or one or more of its Subsidiaries, or (ii) the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by any Person and/or its Subsidiaries. Unless otherwise specified to the contrary herein, Subsidiary(ies) shall refer to the Company's Subsidiary(ies).

[SIGNATURE PAGES FOLLOW]

8

IN WITNESS WHEREOF, the Company and the Trustee have executed this Deposit Agreement as of the day and year first above written.

PACIFIC ETHANOL, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[ ]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

9

EXHIBIT A to  
Deposit Agreement

TRUSTEE WIRE INSTRUCTIONS

[To Come]

10

EXHIBIT B to  
Deposit Agreement

CONSTRUCTION COST REQUISITION

NO. \_\_\_\_\_

[Date]

[Insert Name of Trustee]  
as Trustee under the Deposit Agreement  
referred to below

[Insert Trustee Address]

[ ]  
[ ]

Attention: [ ]

Re: Deposit Agreement dated [ ], 200\_ (the "DEPOSIT AGREEMENT")  
between Pacific Ethanol, Inc., a Delaware corporation (the "COMPANY"),  
and [ ], a [ ], in its  
capacity as trustee (the "TRUSTEE").

Ladies and Gentlemen:

This requisition (this "CONSTRUCTION COST REQUISITION") is delivered to  
you pursuant to Section 3.01 of the Deposit Agreement. Each capitalized term  
used herein and not otherwise defined herein shall have the definition assigned  
to that term in the Deposit Agreement. The information relating to this  
Construction Cost Requisition is as follows:

1. The aggregate amount to be withdrawn from the Restricted Cash  
Account in accordance with this Construction Cost Requisition is \$\_\_\_\_\_.

2. This Construction Cost Requisition is to be used to pay Costs of  
Construction relating to the \_\_\_\_\_ ethanol production facility.

3. Set forth on Schedule 1 attached hereto is (i) the name and address  
of each Person to whom any payment is to be made or has been made, (ii) the  
aggregate amount to be paid to such Person on the disbursement date, or to be  
paid to the Company on the disbursement date for amounts paid to such Person  
which have not been the basis of any previous payment, (iii) an accurate  
description of the work performed, services rendered, materials, equipment or  
supplies delivered or any other purpose for which each payment was or is to be  
made, with invoices with respect thereto attached, and (iv) the proposed date of

payment and the payment or wire instructions for the payment or transfer of such amounts by the Trustee to each such Person.

4. The proceeds of this Construction Cost Requisition withdrawn from the Restricted Cash Account will be used to pay Costs of Construction in accordance with the Deposit Agreement.

5. Each obligation, item of cost or expense covered by this Construction Cost Requisition has been properly incurred and has been paid or is now due and payable (or is required to be deposited at this time as equity in a Subsidiary project financing under a binding agreement with a third party which is not an Affiliate) as an item of the Costs of Construction, is a proper charge against the Restricted Cash Account, and has not been the basis of any previous payment from the Restricted Cash Account.

6. The proceeds of this Construction Cost Requisition, together with all amounts previously drawn from the Restricted Cash Account under Construction Cost Requisitions relating to the ethanol production facility in respect of which this drawing is being made, does not exceed the Project Limit.

Furthermore, (a) all amounts previously drawn from the Restricted Cash Account under Construction Cost Requisitions (i) have been applied to pay the Costs of Construction listed on the applicable Construction Cost Requisition with respect to which such amounts were drawn or (ii) have not yet been expended and are still available to the Company or a Subsidiary of the Company for the payment of Costs of Construction and (b) the Purchaser has approved, in writing, the terms of the debt, if any, incurred by the Company or a Subsidiary of the Company to finance a portion of the Costs of Construction of the ethanol production facility in respect of which the drawing is being made.

Very truly yours,  
  
PACIFIC ETHANOL, INC.  
  
By: \_\_\_\_\_  
Name:  
Title:  
  
By: \_\_\_\_\_  
Name:  
Title:

Schedule 1 to EXHIBIT B  
(Construction Cost Requisition)

NAME	AMOUNT OF PAYMENT	PURPOSE	DATE OF PAYMENT	INSTRUCTIONS
-----	-----	-----	-----	-----

EXHIBIT C to  
Deposit Agreement

ACQUISITION COST REQUISITION  
-----

NO. \_\_\_\_\_

[Date]

[Insert Name of Trustee]  
as Trustee under the Deposit Agreement  
referred to below  
[Insert Trustee Address]  
[ ]  
[ ]

Attention: [ ]

Re: Deposit Agreement dated [ ], 200\_ (the "DEPOSIT AGREEMENT")  
between Pacific Ethanol, Inc., a Delaware corporation (the "COMPANY"),  
and [ ], a [ ], in its  
capacity as trustee (the "TRUSTEE").

Ladies and Gentlemen:

This requisition (this "ACQUISITION COST REQUISITION") is delivered to  
you pursuant to Section 3.02 of the Deposit Agreement. Each capitalized term  
used herein and not otherwise defined herein shall have the definition assigned  
to that term in the Deposit Agreement. The information relating to this  
Acquisition Cost Requisition is as follows:

1. The aggregate amount to be withdrawn from the Restricted Cash  
Account in accordance with this Acquisition Cost Requisition is \$\_\_\_\_\_.

2. Set forth on Schedule 1 attached hereto is (i) the name and address  
of each Person to whom any payment is to be made or has been made, (ii) the  
aggregate amount to be paid to such Person on the disbursement date, or to be  
paid to the Company on the disbursement date for amounts paid to such Person  
which have not been the basis of any previous payment, and (iii) the proposed  
date of payment and the payment or wire instructions for the payment or transfer  
of such amounts by the Trustee to each such Person.

3. The proceeds of this Acquisition Cost Requisition withdrawn from the  
Restricted Cash Account will be used to pay obligations incurred in connection  
with the acquisition of an ethanol production facility by the Company or a  
Subsidiary of the Company and is currently payable in accordance with the  
Deposit Agreement.

14

4. Each obligation, item of cost or expense covered by this Acquisition  
Cost is a proper against the Restricted Cash Account and has not been the basis  
of any previous payment from the Restricted Cash Account.

Very truly yours,

PACIFIC ETHANOL, INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

CONSENTED TO BY:

CASCADE INVESTMENT, L.L.C.

By: \_\_\_\_\_  
Name:  
Title:

15

NAME	AMOUNT OF PAYMENT	DATE OF PAYMENT	INSTRUCTIONS
-----	-----	-----	-----



## PACIFIC ETHANOL, INC.

## REGISTRATION RIGHTS AND STOCKHOLDERS AGREEMENT

THIS REGISTRATION RIGHTS AND STOCKHOLDERS AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 200\_, is by and among PACIFIC ETHANOL, INC., a Delaware corporation (the "Company") and CASCADE INVESTMENT, L.L.C., a Washington limited liability company (the "Investor").

WHEREAS, the Company and the Investor have entered into a Purchase Agreement, dated November 14, 2005 and as amended from time to time (the "Purchase Agreement"), providing for the purchase by the Investor of shares of the Company's Series A Cumulative Redeemable Convertible Preferred Stock (such shares, together with any additional shares of the Company's Series A Cumulative Redeemable Convertible Preferred Stock issued as a dividend thereon, the "Shares") which are convertible into shares of the Company's common stock, \$.001 par value per share (the "Common Stock"), subject to the terms and provisions of the Purchase Agreement;

WHEREAS, simultaneously with, and as a condition to, the closing of the transactions contemplated in the Purchase Agreement, the Company and the Investor desire to enter into this Agreement to provide certain registration and other rights with respect to the Common Stock and the Shares held by or issuable to the Investor and to establish certain corporate governance and other rights of the Investor; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and the Purchase Agreement, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1 . DEFINITIONS. As used in this Agreement, the following terms have the meanings indicated below or in the referenced sections of this Agreement:

"Adjustment Provisions." As defined in SECTION 3(A).

"Affiliate." As defined in the Purchase Agreement.

"Agreement." As defined in the recitals hereof.

"Applicable Boards." As defined in SECTION 10(a)(iii).

"Capital Stock." With respect to any Person at any time, means any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of capital stock, partnership interests (whether general or limited), member interests or equivalent ownership interests in or issued by such Person, including, in the case of the Company, any and all shares of Common Stock and Shares.

"Closing." As defined in the Purchase Agreement.

"Common Stock." As defined in the recitals hereof.

"Company." As defined in the recitals hereof.

"Company Board." The board of directors of the Company.

"Demand Registration." As defined in SECTION 3(A).

"Director." Any member or any of the Applicable Boards.

"Equity Securities." Any and all shares of Capital Stock of the Company, securities of the Company convertible into, or exchangeable or

exercisable for, such shares, and options, warrants or other rights to acquire such shares.

"Exchange Act." The Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

"GAAP." Generally accepted accounting principals, as in effect in the United States of America from time to time applied on a consistent basis.

"Investor." As defined in the recitals hereof, and its successors, assigns and transferees.

"Investor Designees." As defined in SECTION 10(a)(iii).

"Investor Directors." As defined in SECTION 10(a)(i) hereof.

"Investor Securities." The Shares issued pursuant to the Purchase Agreement and the Common Stock issued upon the conversion thereof.

"Majority of the Registrable Securities." As defined in SECTION 2(b).

"NASD." The National Association of Securities Dealers, Inc.

"Person." An individual, a partnership, a corporation, a limited liability company or partnership, an association, a joint stock company, a trust, a business trust, a joint venture, an unincorporated organization or a government entity or any department, agency, or political subdivision thereof.

"Piggyback Registration." As defined in SECTION 4(a) hereof.

"Proportional." When used to determine the number of individuals that the Investor is entitled to nominate to any board of directors at any particular time, means the number (rounded to the nearest whole number) determined by multiplying the aggregate number of members of such board by a fraction, the numerator of which shall be the number of Investor Directors that the Investor is entitled to designate to the Company Board pursuant to subsection (a) of SECTION 10 at such time and the denominator of which shall be the total number of directors constituting the entire Company Board at such time; PROVIDED, HOWEVER, that, notwithstanding the foregoing, in no event shall such number be less than one (1).

2

"Purchase Agreement." As defined in the recitals hereof.

"Registrable Securities." Any Common Stock issued or issuable upon conversion or exercise of the Shares or deriving therefrom, and all other shares of Common Stock of the Company or any successor owned from time to time by the Investor; PROVIDED, that a Registrable Security ceases to be a Registrable Security when (i) it is registered under the Securities Act and disposed of in accordance with the registration statement covering it or (ii) it is sold or transferred in accordance with the requirements of Rule 144 (or similar provisions then in effect) promulgated by the SEC under the Securities Act ("Rule 144").

"Registration Expenses." As defined in SECTION 6(a) hereof.

"Registration Statement." Registration Statement shall mean any registration statements contemplated by SECTION 3 and any additional registration statements contemplated by SECTION 4, including (in each case) the prospectus, amendments and supplements to such registration statement or prospectus, all exhibits attached thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"Representatives." Of a Person means the officers, employees, independent accountants, independent legal counsel and other representatives of such Person.

"Rule 415." Rule 415 (or similar provisions then in effect) promulgated

by the SEC under the Securities Act.

"SEC." The United States Securities and Exchange Commission.

"Securities Act." The Securities Act of 1933, as amended, and the rules and regulations thereunder.

"Shares." As defined in the recitals hereof.

"Stockholder." As defined in the recitals hereof.

"Subsequent Shares." As defined in SECTION 3(A).

"Subsidiary." Of a Person means any corporation or other entity (including a limited liability company, partnership or other business entity) in which such Person, directly or indirectly, owns outstanding Capital Stock or other Voting Securities having the power, under ordinary circumstances, to elect a majority of the directors or members of the governing body of such corporation or other entity or with respect to which such Person otherwise has the power to direct the management and policies of such corporation or other entity.

"Subsidiary Boards." As defined in SECTION 10(a)(iii).

3

"Termination Date." The date that the Investor and its Affiliates, as a group, own less than 10% of the Investor Securities. For purposes of calculating such percentage of ownership, each Share shall be deemed to be equivalent to the number of shares of Common Stock into which they are convertible.

"Voting Letter." As defined in SECTION 10(a)(vi).

"Voting Securities." At any time, shares of any class of Equity Securities that are ordinarily entitled to vote (without regard to the occurrence of any additional event or contingency) generally in the election of directors.

SECTION 2. Securities Subject to this Agreement.

(a) HOLDERS OF REGISTRABLE SECURITIES. A Person is deemed to be a holder of Registrable Securities whenever that Person owns, directly or beneficially, or has the right to acquire, Registrable Securities, disregarding any legal restrictions upon the exercise of that right.

(b) MAJORITY OF REGISTRABLE SECURITIES. As used in this Agreement, the term "Majority of the Registrable Securities" means more than 50% of the Registrable Securities being registered or, where the context requires, a majority in interest of the Registrable Securities.

SECTION 3. DEMAND REGISTRATION.

(a) REQUEST FOR REGISTRATION. Subject to the provisions of SECTION 3(B), at any time after the first anniversary of the Closing, (A) one or more holders of Shares or Common Stock representing a Majority of the Registrable Securities may demand that the Company register all or part of its Registrable Securities under the Securities Act (a "DEMAND REGISTRATION") on Form S-1 (or a similar form then in effect) promulgated by the SEC under the Securities Act, provided that the Company shall not be obligated to effect a Demand Registration (i) during the one hundred eighty (180) days period commencing with the date of any secondary public offering or (ii) if the Company delivers notice to the holders of Registrable Securities within thirty (30) days of any registration request of its intent to file a registration statement for a secondary public offering within sixty (60) days and (B) one or more holders Shares or Common Stock representing a Majority of the Registrable Securities may request a Demand Registration on Form S-3 (or a similar form then in effect), provided that the Registrable Securities to be covered by any such Form S-3 shall be expected to result in aggregate gross proceeds of not less than \$1,000,000. Within ten (10) days after receipt of a demand, the Company will notify in writing all holders of Registrable Securities of the demand. Any holder who wants to include its Registrable Securities in the Demand Registration must notify the Company within

ten (10) business days of receiving the notice of the Demand Registration. Except as provided in this SECTION 3, the Company will include in all Demand Registrations all Registrable Securities for which the Company receives the timely written requests for inclusion. Any such request to be included in a Demand Registration shall not be counted as a Demand Registration under this SECTION 3. All demands or requests made pursuant to this SECTION 3(A) must specify the number of Registrable Securities to be registered and the intended method of disposing of the Registrable Securities. The Company acknowledges that the plan of distribution contemplated by any such Registration Statement shall include offers and sales through underwriters or agents, offers and sales

directly to investors, block trades and such other methods of offer and sale and that offers and sales may be on a continued or delayed basis under Rule 415. The Company will cause such Registration Statement to remain effective until such time as all of the shares of Common Stock designated thereunder are sold or the holders thereof are entitled to rely on Rule 144(k) for sales of Registrable Securities without registration under the Securities Act and without compliance with the public information, sales volume, manner of sale or notice requirements of Rule 144(c), (e), (f) or (h). The Company acknowledges that at the time the Company files any Registration Statement pursuant to this SECTION 3 the number of Registrable Securities may not be fixed due to the antidilution and other provisions related to the Shares ("Adjustment Provisions") and due to possible future issuances of Shares as dividends on the Shares ("Subsequent Shares"). Accordingly, the Company agrees that it will register the number of shares of Common Stock issuable upon conversion of Shares held by or issuable to the Investor as of the date of the filing of the Registration Statement and, to the extent permitted under the applicable rules under the Securities Act, the additional number of shares of Common Stock issuable pursuant to the Adjustment Provisions. The Company agrees that, thereafter, it will file, as soon as practicable but in no event later than thirty (30) days after the issuance of additional Registrable Securities that are not covered by such Registration Statement (due to the effect of the Adjustment Provisions and the Subsequent Shares) such amendments and/or supplements to the Registration Statement, and such additional Registration Statements as are necessary in order to ensure that at least 100% of the number of shares of Common Stock issuable on conversion of the Shares held by or issuable to the Investor are included in a Registration Statement, and the Company will use its reasonable best efforts to cause such amendments, supplements and additional Registration Statements to be declared effective within ninety (90) days following the issuance of such additional Registrable Securities that are not otherwise covered by an effective Registration Statement.

(b) NUMBER OF DEMANDS. The holders of Registrable Securities shall have the right to three (3) Demand Registrations on Form S-1 (or a similar form then in effect) and shall have the right to an unlimited number of Demand Registrations on Form S-3 (or a similar form then in effect); PROVIDED, that the Company shall not be obligated to effect more than two (2) Demand Registrations on Form S-3 in any twelve (12) month period.

(c) REGISTRATION EXPENSES. The Company shall pay or reimburse to the holders of the Registrable Securities included in a Demand Registration all Registration Expenses of those holders in connection with any Demand Registration (including the reasonable fees and disbursements of one counsel for such holders in connection with each such Demand Registration not to exceed \$25,000 per registration, as described in SECTION 6).

(d) SELECTION OF UNDERWRITERS. The holders of the Registrable Securities initiating a Demand Registration shall, after consultation with the Company, select the investment banker(s) and manager(s) that will administer the offering; PROVIDED, that the Company shall have given its prior written consent to such selection. The Company and the holders of Registrable Securities whose shares are being registered shall enter into a customary underwriting agreement with such investment banker(s) and manager(s).

(e) PRIORITY ON DEMAND RESTRICTIONS. If the managing underwriter shall advise the Company, in writing or otherwise, that an underwriters' over-allotment option, not in excess of fifteen percent (15%) of the total offering to be so effected, is necessary or desirable for the marketing of such

offering, all Registrable Securities which are to be included in such offering pursuant to this SECTION 3(E) and any other securities shall be allocated pro rata to the primary portion of such offering and the underwriters' over-allotment portion on the basis of the total number of Registrable Securities and other securities requested to be included in the registration. If any holder of Registrable Securities (other than the holder making the demand) disapproves of the terms of the underwriting, such holder may withdraw therefrom by giving written notice to the Company and the managing underwriter.

(f) DELAY IN FILING. Notwithstanding the foregoing, the Company may delay in filing a registration statement in connection with a Demand Registration and may withhold efforts to cause the registration statement to become effective, if the Company determines in good faith that such registration might involve initial or continuing disclosure obligations that the Board of Directors of the Company determines, in good faith, will not be in the best interest of the Company's stockholders. The Company may exercise such right to delay or withhold efforts not more than once in any twelve (12) month period and for not more than ninety (90) days at a time. If, after a registration statement becomes effective, the Company advises the holders of registered shares that the Company considers it appropriate for the registration statement to be amended, the Company shall use its best efforts to amend such registration statement, and the holders of such shares shall suspend any further sales of their registered shares until the Company advises them that the amended registration statement has been declared effective.

(g) EFFECTIVE DEMAND REGISTRATION. A registration shall not constitute a Demand Registration until it has become effective and remains continuously effective for the lesser of (i) the period during which all Registrable Securities registered in the Demand Registration are sold and (ii) three hundred sixty (360) days; PROVIDED, HOWEVER, that a registration shall not constitute a Demand Registration if (x) after such Demand Registration has become effective, such registration or the related offer, sale or distribution of Registrable Securities thereunder is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason not attributable to the holder requesting the Demand Registration and such interference is not thereafter eliminated, or (y) the conditions specified in the underwriting agreement, if any, entered into in connection with such Demand Registration are not satisfied or waived, other than by reason of a failure on the part of the holder requesting the Demand Registration.

#### SECTION 4. PIGGYBACK REGISTRATIONS.

(a) RIGHT TO PIGGYBACK. Whenever the Company proposes to register any of its securities in an underwritten offering under the Securities Act, whether for its own account or for the account of another stockholder (except for the registration of securities to be offered pursuant to an employee benefit plan on Form S-8, pursuant to a registration made on Form S-4 or any successor forms then in effect) at any time other than pursuant to a Demand Registration and the registration form to be used may be used for the registration of the Registrable Securities (a "Piggyback Registration"), it will so notify in writing all holders of Registrable Securities no later than the earlier to occur of (i) the tenth (10th) day following the Company's receipt of notice of exercise of other demand registration rights, or (ii) forty-five (45) days prior to the anticipated filing date. Subject to the provisions of SECTION 4(c), the Company will include in the Piggyback Registration all Registrable Securities with respect to which the Company has received written requests for inclusion within

fifteen (15) days after the issuance of the Company's notice. Such Registrable Securities may be made subject to an underwriters' over-allotment option, if so requested by the managing underwriter. The holders of Registrable Securities may withdraw all or any part of the Registrable Securities from a Piggyback Registration at any time before ten (10) business days prior to the effective

date of the Piggyback Registration. In any Piggyback Registration, the Company, the holders of Registrable Securities and any Person who hereafter becomes entitled to register its securities in a registration initiated by the Company must sell their securities on the same terms and conditions. A registration of Registrable Securities pursuant to this SECTION 4 shall not be counted as a Demand Registration pursuant to SECTION 3.

(b) PIGGYBACK EXPENSES. The Company shall pay or reimburse to the holders of the Registrable Securities included in a Piggyback Registration all Registration Expenses of those holders in connection with the Piggyback Registration (including the reasonable fees and disbursements of one counsel for such holders in connection with each such Piggyback Registration not to exceed \$25,000 per Piggyback Registration, as described in SECTION 6).

(c) UNDERWRITING; PRIORITY ON PIGGYBACK REGISTRATIONS. The right of any such holder to be included in an underwritten registration pursuant to this SECTION 4 shall be conditioned upon such holder's participation in such underwriting and the inclusion of such holder's Registrable Securities in the underwriting to the extent provided herein. All holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. If the managing underwriter gives the Company its written opinion that the total number or dollar amount of securities requested to be included in the registration exceeds the number or dollar amount of securities that can be sold, the Company will include the securities in the registration in the following order of priority: (i) first, subject to the first proviso below, all securities the Company or the stockholder, if any, on whose account securities are being registered proposes to sell; (ii) second, subject to the first proviso below, up to the full number or dollar amount of Registrable Securities requested to be included in the registration (allocated pro rata among the holders of Registrable Securities requested to be included in the registration, on the basis of the dollar amount or number of Registrable Securities requested to be included, as the case may be); and (iii) third, any other securities (provided they are of the same class as the securities sold by the Company) requested to be included, allocated among the holders of such securities in such proportions as the Company and those holders may agree; PROVIDED, that at least twenty-five percent (25%) of the Registrable Securities requested to be included in such registration shall be included in the offering; PROVIDED, FURTHER, that, (i) the holders of Registrable Securities shall not be subject to any cutback in the amount of Registrable Securities requested to be included in the registration unless all other holders of securities requesting to be included in such registration other than the stockholder, if any, on whose account securities are being registered have been excluded from such registration. In the event that the managing underwriter advises the Company that an underwriters' over-allotment option is necessary or advisable, the allocation provided for in this SECTION 4(C) shall apply to the determination of which securities are to be included in the registration of such shares. Except with the prior written consent of each holder of Registrable Securities, the Company shall not grant to any holder of the Company's securities any right to Piggyback Registration which would reduce the amount of Registrable Securities includable in such registration.

(d) SELECTION OF UNDERWRITERS. If any Piggyback Registration is an underwritten offering, the Company will select as the investment banker(s) and manager(s) that will administer the offering a nationally recognized investment banker(s) and manager(s) with demonstrable industry-specific expertise and experience. The Company and the holders of Registrable Securities whose shares are being registered shall enter into a customary underwriting agreement with such investment banker(s) and manager(s), PROVIDED, that the liability of any holder of Registrable Securities shall be limited to such holder's net proceeds received from the sale of its Registrable Securities in such offering and such limitation shall not be amended by an underwriting agreement or arrangement.

(e) RIGHT TO TERMINATE REGISTRATION. The Company shall have the right to terminate or withdraw any registration initiated by it under this SECTION 4 prior to the effectiveness of such registration whether or not any holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with

SECTION 7 hereof.

(f) OTHER REGISTRATIONS. The Company agrees that after filing a registration statement with respect to Registrable Securities pursuant to SECTION 3 or this SECTION 4 that has not been withdrawn or abandoned, the Company will not register any of its equity securities or securities convertible or exchangeable into or exercisable for its equity securities under the Securities Act, whether on its own behalf or at the request of any holder of those securities until the earlier of (i) the sale of all such Registrable Securities subject to such registration statement and (ii) one hundred eighty (180) days from the effective date of the previous registration, and the parties hereto agree that the Company will not be required to effect any such registration notwithstanding the other provisions of this Agreement. This 180-day hiatus does not apply to registrations of securities (i) to be issued in connection with employee benefit plans, (ii) to permit exercise or conversions of previously issued options, warrants, or other convertible securities, (iii) in connection with a Demand Registration or (iv) made on Form S-4 (or any successor form).

#### SECTION 5. REGISTRATION PROCEDURES.

(a) OBLIGATIONS OF THE COMPANY. Whenever required to register any Registrable Securities, the Company shall as expeditiously as practicable:

(1) prepare and file with the SEC to permit a public offering and resale of the Registrable Securities under the Securities Act which offering may, if so requested, be on a delayed or continuous basis under Rule 415 a registration statement on the appropriate form and use best efforts to cause the registration statement to become effective. At least ten (10) days before filing a registration statement or prospectus or at least three (3) business days before filing any amendments or supplements thereto, the Company will furnish to the counsel of the holders of a Majority of the Registrable Securities being registered copies of all documents proposed to be filed for that counsel's review and approval, which approval shall not be unreasonably withheld or delayed;

(2) immediately notify each seller of Registrable Securities of any stop order threatened or issued by the SEC and take all actions reasonably required to prevent the entry of a stop order or if entered to have it rescinded or otherwise removed;

8

(3) prepare and file with the SEC such amendments and supplements to the registration statement and the corresponding prospectus necessary to keep the registration statement effective, in the case of the registration required by SECTION 3 hereof for the period provided in SECTION 3 and in any other case for one hundred twenty (120) days or such shorter period as may be required to sell all Registrable Securities covered by the registration statement; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the registration statement during each period in accordance with the sellers' intended methods of disposition as set forth in the registration statement;

(4) furnish to each seller of Registrable Securities a sufficient number of copies of the registration statement, each amendment and supplement thereto (in each case including all exhibits), the corresponding prospectus (including each preliminary prospectus), and such other documents as a seller may reasonably request to facilitate the disposition of the seller's Registrable Securities;

(5) use its best efforts to register or qualify the Registrable Securities under securities or blue sky laws of jurisdictions in the United States of America as any seller requests within twenty (20) days following the original filing of a registration statement and do any and all other reasonable acts and things that may be necessary or advisable to enable the seller to consummate the disposition of the seller's Registrable Securities in such

jurisdiction; PROVIDED, HOWEVER, that the Company shall not be obligated to qualify as a foreign corporation to do business under the laws of any jurisdiction in which it is not then qualified or to file any general consent to service of process;

(6) notify each seller of Registrable Securities, at any time when a prospectus is required to be delivered under the Securities Act, of any event as a result of which the prospectus or any document incorporated therein by reference contains an untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which such statements were made, and use best efforts to prepare a supplement or amendment to the prospectus or any such document incorporated therein so that thereafter the prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which such statements were made;

(7) cause all registered Registrable Securities to be listed on each securities exchange, if any, on which similar securities issued by the Company are then listed;

(8) provide an institutional transfer agent and registrar and a CUSIP number for all Registrable Securities on or before the effective date of the registration statement;

(9) enter into such customary agreements, including an underwriting agreement in customary form and take all other actions in connection with those agreements as the holders of a Majority of the Registrable Securities being registered or the underwriters, if any, reasonably request to expedite or facilitate the disposition of the Registrable Securities;

9

(10) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to the registration statement, and any attorney, accountant, or other agent of any seller or underwriter, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors and employees to supply all information reasonably requested by any seller, underwriter, attorney, accountant, or other agent in connection with the registration statement; PROVIDED that an appropriate confidentiality agreement is executed by any such seller, underwriter, attorney, accountant or other agent;

(11) in connection with any underwritten offering, obtain a "comfort" letter from the Company's independent public accountants in customary form and covering those matters customarily covered by "comfort" letters as the holders of a Majority of the Registrable Securities being registered or the managing underwriter reasonably requests, addressed to the underwriters and to the holders of the Registrable Securities being registered;

(12) in connection with any underwritten offering, furnish an opinion of counsel representing the Company for the purposes of the registration, in the form and substance customarily given to underwriters in an underwritten public offering and reasonably satisfactory to counsel representing the holders of Registrable Securities being registered and the underwriter(s) of the offering, addressed to the underwriters and to the holders of the Registrable Securities being registered;

(13) use its best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement complying with the provisions of Section 11(a) of the Securities Act and covering the period of at least twelve (12) months, but not more than eighteen (18) months, beginning with the first month after the effective date of the



Registration Statement;

(14) cooperate with each seller of Registrable Securities and each underwriter participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the NASD; and

(15) take all other steps reasonably necessary to effect the registration of the Registrable Securities contemplated hereby.

(b) SELLER INFORMATION. In the event of any registration by the Company, from time to time, the Company may require each seller of Registrable Securities subject to the registration to furnish to the Company information regarding such seller, the Registrable Securities held by them, and the distribution of the securities subject to the registration, and such seller shall furnish all such information reasonably requested by the Company.

(c) NOTICE TO DISCONTINUE. Each holder of Registrable Securities agrees by acquisition of such securities that, upon receipt of any notice from the Company of any event of the kind described in SECTION 5(a)(6), the holder will discontinue disposition of Registrable Securities until the holder receives copies of the supplemented or amended prospectus contemplated by SECTION 5(a)(6). In addition, if the Company requests, the holder will deliver to the

10

Company (at the Company's expense) all copies, other than permanent file copies then in the holder's possession, of the prospectus covering the Registrable Securities current at the time of receipt of the notice. If the Company gives any such notice, the time period mentioned in SECTION 5(a)(3) shall be extended by the number of days elapsing between the date of notice and the date that each seller receives the copies of the supplemented or amended prospectus contemplated in SECTION 5(a)(6).

(d) NOTICE BY HOLDERS. Whenever the holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement, those holders shall notify the Company, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event concerning that holder of the Registrable Securities, as a result of which the prospectus included in the registration statement contains an untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

#### SECTION 6. REGISTRATION EXPENSES.

All costs and expenses incurred in connection with the Company's performance of or compliance with this Agreement (the "Registration Expenses") shall be paid by the Company as provided in this Agreement. The term "Registration Expenses" includes without limitation all registration filing fees, reasonable professional fees and other reasonable expenses of the Company's compliance with federal, state and other securities laws (including fees and disbursements of counsel for the underwriters in connection with state or other securities law qualifications and registrations), printing expenses, messenger, telephone and delivery expenses; reasonable fees and disbursements of counsel for the Company and for one counsel for the holders of Registrable Securities not to exceed \$25,000 per registration; reasonable fees and disbursement of the independent certified public accountants selected by the Company (including the expenses of any audit or "comfort" letters required by or incident to performance of the obligations contemplated by this Agreement); fees and expenses of the underwriters (excluding discounts and commissions); fees and expenses of any special experts retained by the Company at the request of the managing underwriters in connection with the registration; and applicable stock exchange and NASDAQ registration and filing fees. The term "Registration Expenses" does not include underwriting fees or commissions or transfer taxes, all of which shall be paid by each of the sellers of Registrable Securities with respect to the Registrable Securities sold by such seller.

#### SECTION 7. INDEMNIFICATION.

-----

(a) INDEMNIFICATION BY COMPANY. In the event of any registration of Registrable Securities under the Securities Act pursuant to this Agreement, to the full extent permitted by law, the Company agrees to indemnify and hold harmless each holder of Registrable Securities, its officers, directors, trustees, partners, employees, advisors and agents, and each Person who controls the holder (within the meaning of the Securities Act and the Exchange Act) against any and all losses, claims, damages, liabilities and expenses arising out of (i) any untrue or allegedly untrue statement of material fact contained in or incorporated by reference into any registration statement or any amendment thereof under which such Registrable Securities were registered under the Securities Act, any prospectus or preliminary prospectus contained therein or any amendment thereof or any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, except to the extent the untrue statement or omission resulted

11

from information that the holder furnished in writing to the Company expressly for use therein, and (ii) any failure to comply with any law, rule or regulation applicable to such registration. Such indemnity shall remain in full force and effect, regardless of any investigation made by such indemnified party, and shall survive the transfer of such Registrable Securities by such holder. In connection with a firm or best efforts underwritten offering, to the extent customarily required by the managing underwriter, the Company will indemnify the underwriters, their officers and directors and each Person who controls the underwriters (within the meaning of the Securities Act and the Exchange Act), to the extent customary in such agreements.

(b) INDEMNIFICATION BY HOLDERS OF SECURITIES. In connection with any registration statement, each participating holder of Registrable Securities will furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any registration statement or prospectus. Each participating holder agrees, severally and not jointly, to indemnify and hold harmless, to the extent permitted by law, the Company, its directors, officers, trustees, partners, employees, advisors and agents, and each Person who controls the Company (within the meaning of the Securities Act and the Exchange Act) against any and all losses, claims, damages, liabilities and expenses arising out of any untrue or allegedly untrue statement of a material fact or any omission or alleged omission to state a material fact required to be stated in the registration statement or prospectus or any amendment thereof or supplement thereto necessary to make the statements therein not misleading, but only to the extent that the untrue statement or omission is contained in or omitted from any information or affidavit the holder furnished in writing to the Company expressly for use therein and only in an amount not exceeding the net proceeds received by the holder with respect to securities sold pursuant to such registration statement. Such indemnity shall remain in full force and effect, regardless of any investigation made by the Company, and shall survive the transfer of such Registrable Securities by such holder. In connection with a firm or best efforts underwritten offering, to the extent customarily required by the managing underwriter, each participating holder of Registrable Securities will indemnify the underwriters, their officers and directors and each Person who controls the underwriters (within the meaning of the Securities Act and the Exchange Act), to the same extent as it has indemnified the Company; PROVIDED, that the indemnity obligations of any holder contained in such agreement shall be limited to the amount of such holder's net proceeds received from the sale of its Registrable Securities in such offering.

(c) INDEMNIFICATION PROCEEDINGS. Any Person entitled to indemnification under this Agreement will (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in the indemnified party's reasonable judgment a conflict of interest may exist between the indemnified and indemnifying parties with respect to the claim, permit the indemnifying party to assume the defense of the claim with counsel reasonably satisfactory to the indemnified party. If the indemnifying party does not assume the defense, the indemnifying party will not be liable for any settlement made without its consent (but that consent may not be unreasonably withheld). No indemnifying party will consent to entry of any judgment or will enter into any settlement that does not include as an unconditional term thereof the claimant's or plaintiff's release of the indemnified party from all liability concerning

the claim or litigation or which includes any non-monetary settlement. An indemnifying party who is not entitled to or elects not to assume the defense of a claim will not be under an obligation to pay the fees and expenses of more than one counsel for all parties indemnified by the indemnifying party with respect to the claim, unless in the reasonable judgment of any indemnified party

a conflict of interest may exist between the indemnified party and any other indemnified party with respect to the claim, in which event the indemnifying party shall be obligated to pay the fees and expenses of no more than one additional counsel for the indemnified parties.

(d) CONTRIBUTION. IF THE INDEMNIFICATION PROVIDED FOR IN SECTION 7(A) OR (B) IS unavailable to an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party thereunder shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnified party and the indemnifying party in connection with the statements or omissions that resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative fault of the indemnified party and the indemnifying party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnified party and the indemnifying party and the parties' relative intent and knowledge.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this SECTION 7(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding anything herein to the contrary, no participating holder of Registrable Securities acting as an indemnifying party shall be required to contribute any amount in excess of the amount by which the net proceeds of the offering (before deducting expenses, if any) received by such participating holder exceeds the amount of any damages that such participating holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

The obligations of the Company and the holders of Registrable Securities under this SECTION 7 shall survive the completion of any offering of Registrable Securities in a registration statement, including the termination of this Agreement.

SECTION 8. RULE 144. With a view to making available to the holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in SEC Rule 144 or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of the first registration filed by the Company for an offering of its securities to the general public;

(b) File with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and

(c) So long as a holder owns any Registrable Securities, furnish to such holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 of the

Securities Act, and of the Exchange Act (at any time after it has become subject to such reporting requirements); a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as a holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

SECTION 9. PARTICIPATION IN UNDERWRITTEN REGISTRATION. No Person may participate in any underwritten registration without (a) agreeing to sell securities on the basis provided in underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements (the holders of Registrable Securities in a Demand Registration pursuant to SECTION 3(D) and the Company in a piggyback registration pursuant to SECTION 4(D)), and (b) completing and executing all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required by the underwriting arrangements.

SECTION 10. BOARD REPRESENTATION. (a) During the period commencing on the date of the Closing and ending on the Termination Date:

(i) the Investor shall be entitled to nominate two individuals for election to the Company Board, and each party hereto that holds Voting Securities agrees to vote such Voting Securities in favor of the election of such individuals (the "Investor Directors") to the Company Board;

(ii) the Company agrees, by action of the Company Board, (i) to establish, by appointment from among the members of the Company Board, and maintain a Compensation Committee and (ii) to the greatest extent permitted by applicable law and the rules and regulations of NASDAQ or any national securities exchange on which the Company's Common Stock is listed, to appoint to the Compensation Committee one of the Investor Directors, as designated by the Investor;

(iii) if requested by the Investor, the Company agrees to elect or to cause to be elected, through action of the Company Board, to the board of directors of or management committee, as the case may be, each Subsidiary of the Company (the "Subsidiary Boards" and, together with the Company Board, the "Applicable Boards") a number of individuals designated by the Investor, who need not be directors, officers or employees of the Company or any of its Subsidiaries, that is, in the case of each Subsidiary Board, as nearly as is practicable, Proportional to the number of members of each such Subsidiary Board (together with the Investor's designated member of the Compensation Committee, the "Investor Designees");

(iv) the Company agrees to permit one of the Investor Directors or another individual designated by the Investor, who need not be a director, officer or employee of the Company or any of its Subsidiaries, to attend as a non-voting observer all meetings of the Executive Committee and the Audit Committee and Subsidiary Boards for which there shall be no Investor Designee and to transmit to such individual, at the time and in the manner sent to other members of such committees and board, all information and materials provided by the Company to such committee and board members;

14

(v) the Company agrees to provide advance notice in accordance with the Delaware General Corporation Law and the Company's bylaws to each Investor Director with respect to each regular and special meeting of the Company Board and the Compensation Committee which notice shall, in the case of each special meeting, include a reasonable summary of the subject matter of the meeting; and

(vi) the Company agrees to cause each person serving from time to time as an executive officer, director or manager of the Company or any Subsidiary of the Company (other than the Investor Directors and the Investor Designees) to execute and deliver to the Investor a Voting Letter substantially in the form of EXHIBIT A hereto (each a "Voting Letter").

(b) Each party hereto agrees to take such actions, including actions as necessary or desirable to nominate and elect individuals to the intended offices

and, in the case of the Company, actions by the Company Board, as shall be necessary or desirable in order that, effective as of the Closing:

(i) the Company Board shall include the Investor Directors;

(ii) the Compensation Committee shall include the Investor Director required by SECTION 10(a);

(iii) each other Applicable Board shall include the Investor Designees to the extent required by subsection (ii) of SECTION 10(a); and

(iv) each current executive officer and director of the Company and each current executive officer, director or manager of any of its Subsidiaries shall have executed and delivered to the Investor, a Voting Letter.

(c) No Investor Director or Investor Designee shall be subject to removal, without cause, from any Applicable Board or the Compensation Committee other than with the express written consent of the Investor. If the Investor shall determine to remove any Investor Director or Investor Designee from any Applicable Board or the Compensation Committee, each party hereto agrees, upon written notice to such effect from the Investor, to take all actions reasonably necessary or desirable, including the voting of outstanding Voting Securities held by such party, in order to effect such action. Following such removal of an Investor Director or Investor Designee, the parties shall comply with the other provisions of this Section to ensure that the removed individual is replaced by another Investor Director or Investor Designee, as appropriate.

(d) If a vacancy is created on any Applicable Board or the Compensation Committee by virtue of the death, disability, retirement, resignation or removal of any Investor Director or Investor Designee from any Applicable Board or the Compensation Committee, each party hereto shall, to the extent permitted by applicable laws and regulations, take promptly any and all actions, including the voting of outstanding Voting Securities held by such party and, in the case of the Company, actions by the Company Board, necessary or desirable to fill such vacancy with an individual designated in writing by the Investor so as to give effect to the provisions of SECTION 10(a).

15

(e) Immediately following the Termination Date, the Investor shall cause the Investor Directors or Investor Designees to resign from all of the Applicable Boards, effective as of the Termination Date. The Investor agrees to take all actions reasonably necessary or desirable, including the voting of outstanding Voting Securities held by it, in order to effect such action.

SECTION 11. AVAILABLE FINANCIAL INFORMATION. For so long as the Company is not a reporting issuer under the Exchange Act or, if having been such a reporting issuer, it shall cease to be such a reporting issuer or for so long as the Company shall fail to comply with its reporting obligations under the Exchange Act, the Company shall, to the extent that the Investor beneficially owns any of the Shares or Common Stock, deliver, or cause to be delivered, to the Investor:

(a) as soon as practicable after the end of each fiscal year of the Company, and in any event within ninety (90) days thereafter, a consolidated and consolidating balance sheets of the Company as of the end of such fiscal year, and consolidated and consolidating statements of income, changes in shareholders' equity and cash flows of the Company for such year, prepared in accordance with GAAP and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and followed promptly thereafter (to the extent not then available) by such financial statements accompanied by the audit report with respect thereto of independent public accountants of recognized national standing selected by the Company; and

(b) as soon as practicable after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company, and in any event within forty-five (45) days after the end of each such period, consolidated balance sheets of the Company as of the end of each quarterly period, and consolidated statements of income, changes in shareholders' equity and cash flows of the Company for such period and for the current fiscal year to

date, prepared in accordance with GAAP and setting forth in comparative form the figures for the corresponding periods of the previous fiscal year, subject to changes resulting from normal year-end audit adjustments, all in reasonable detail and certified by the principal financial or accounting officer of the Company.

SECTION 12. ACCESS. During the period commencing on the date of the Closing and ending on the Termination Date, the Company shall afford, provide and furnish, and shall cause its Subsidiaries and the Representatives of the Company and its Subsidiaries to afford, provide and furnish to the Investor and their Representatives:

(i) during normal business hours and upon reasonable advance notice, reasonable access to the Representatives, properties, plants and other facilities and to all books and records of the Company and each of its Subsidiaries;

(ii) all financial, operating and other data and information regarding the Company and its Subsidiaries as the Investor and its Representatives may reasonably request; and

(iii) the opportunity to discuss the affairs, finances, operations and accounts of the Company and its Subsidiaries with the Company's officers on a periodic basis.

#### SECTION 13. MISCELLANEOUS.

(a) RECAPITALIZATIONS, EXCHANGES, ETC. The provisions of this Agreement shall apply to the full extent set forth herein with respect to (i) the Registrable Securities, (ii) any and all shares of voting common stock of the

16

Company into which the Registrable Securities are converted, exchanged or substituted in any recapitalization or other capital reorganization by the Company and (iii) any and all equity securities of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in conversion of, in exchange for or in substitution of, or as a dividend upon, the Registrable Securities and shall be appropriately adjusted for any stock dividends, splits, reverse splits, combinations, recapitalizations and the like occurring after the date hereof. The Company shall use its best efforts to cause any successor or assign (whether by sale, merger or otherwise) to enter into a new registration rights agreement with the holders of Registrable Securities on terms substantially the same as this Agreement as a condition of any such transaction.

(b) AMENDMENT. This Agreement may be amended or modified only by a written agreement executed by (i) the Company and (ii) the Investor.

(c) ATTORNEYS' FEES. In any legal action or proceeding brought to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all reasonable expenses, charges, court costs and attorneys' fees in addition to any other available remedy at law or in equity.

(d) BENEFIT OF PARTIES; ASSIGNMENT. Subject to the terms and conditions of the Purchase Agreement and this subsection (d), including, without limitation, the transfer restrictions contained therein, all of the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns, including, without limitation, all subsequent holders of securities entitled to the benefits of this Agreement who agree in writing to become bound by the terms of this Agreement.

(e) CAPTIONS. The captions of the sections and subsections of this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision of this Agreement.

(f) COOPERATION. The parties agree that after execution of this Agreement they will from time to time, upon the request of any other party and without further consideration, execute, acknowledge and deliver in proper form

any further instruments and take such other action as any other party may reasonably require to carry out effectively the intent of this Agreement.

(g) COUNTERPARTS; FACSIMILE EXECUTION. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile execution and delivery of this Agreement shall be legal, valid and binding execution and delivery for all purposes.

(h) ENTIRE AGREEMENT. Each party hereby acknowledges that no other party or any other person or entity has made any promises, warranties, understandings or representations whatsoever, express or implied, not contained in the Transaction Documents (as defined in the Purchase Agreement) and acknowledges that it has not executed this Agreement in reliance upon any such promises, representations, understandings or warranties not contained herein or therein and that the Transaction Documents supersede all prior agreements and understandings between the parties with respect thereto. There are no promises, covenants or undertakings other than those expressly set forth or provided for in the Transaction Documents.

17

(i) GOVERNING LAW. The internal law of the State of Washington will govern the interpretation, construction, and enforcement of this Agreement and all transactions and agreements contemplated hereby, notwithstanding any state's choice of law rules to the contrary.

(j) SUBMISSION TO JURISDICTION; CONSENT TO SERVICE OF PROCESS. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of any federal or state court located within King County, Washington, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action or proceeding related thereto shall be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(k) NO INCONSISTENT AGREEMENTS. The Company represents and warrants that, except as disclosed in the Purchase Agreement, it has not granted to any Person the right to request or require the Company to register any securities issued by the Company other than the rights contained herein. The Company shall not, except with the prior written consent of at least a majority in interest of the Registrable Securities held by the Investor, enter into any agreement with respect to its securities that shall grant to any Person registration rights that in any way conflict with or are prior to or equal in right to the rights provided under this Agreement.

(l) NOTICES. All notices, requests, demands, or other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and properly addressed to the addresses of the parties set forth in the Purchase Agreement or to such other address(es) as the respective parties hereto shall from time to time designate to the other(s) in writing. All notices shall be effective upon receipt.

(m) SPECIFIC PERFORMANCE. Each of the parties agrees that damages for a breach of or default under this Agreement would be inadequate and that in addition to all other remedies available at law or in equity that the parties and their successors and assigns shall be entitled to specific performance or injunctive relief, or both, in the event of a breach or a threatened breach of this Agreement.

(n) VALIDITY OF PROVISIONS. Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, that decision shall not affect the validity of the remaining portion, which shall continue in full force and effect as if this Agreement had been executed with the invalid portion eliminated; provided, however, that this Agreement shall be

interpreted to carry out to the greatest extent possible the intent of the parties and to provide to each party substantially the same benefits as such party would have received under this Agreement if such invalid part of this Agreement had been enforceable. Whenever the words "include" or "including" are used in the Agreement, they shall be deemed to be followed by the words "without limitation."

18

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

PACIFIC ETHANOL, INC.

By: \_\_\_\_\_  
Name:  
Title:

CASCADE INVESTMENT, L.L.C.

By: \_\_\_\_\_  
Name:  
Title:

19

EXHIBIT A  
-----

\_\_\_\_\_, 200\_

Pacific Ethanol, Inc.  
5711 N. West Ave.  
Fresno, CA 93711  
Attention: \_\_\_\_\_

Cascade Investment, L.L.C.  
2365 Carillon Point  
Kirkland, WA 98033  
Attention: \_\_\_\_\_

#### VOTING LETTER AGREEMENT

Ladies and Gentlemen:

This letter agreement (this "Voting Letter Agreement") sets forth certain agreements relating to a Registration Rights and Stockholders Agreement (the "Registration Rights and Stockholders Agreement") dated as of \_\_\_\_\_, 200\_, by and among Pacific Ethanol, Inc., a Delaware corporation (the "Company") and Cascade Investment, L.L.C., a Washington limited liability company (the "Investor"). Capitalized terms used herein without definition have the meanings ascribed to them in the Registration Rights and Stockholders Agreement. In order to induce the Investor to enter into the Purchase Agreement and purchase the Shares and in consideration of the agreements set forth in this Registration Rights and Stockholders Agreement, the undersigned, an executive officer, director or manager of the Company or one of its Subsidiaries (the "Insider"), agrees as follows:

1. The Insider hereby grants to the Company an irrevocable proxy, coupled with an interest, to vote all of the Voting Securities now or hereafter owned by such Insider or over which such Insider has voting control in favor of



the Investor Directors at any general or special meeting of stockholders of the Company at which directors are to be elected. The Insider further agrees to take such other actions as may be within his or her authority as an officer or director of the Company and/or one of the Subsidiaries of the Company to carry out the provisions of SECTION 10 of the Registration Rights and Stockholders Agreement.

2. The Insider further agrees that such Insider will not vote any Voting Securities owned by such Insider or over which such Insider has voting control, or take any action by written consent, or take any other action as a shareholder of the Company, to circumvent the voting arrangements required by SECTION 10 of the Registration Rights and Stockholders Agreement or this Voting Letter Agreement. The Insider hereby agrees to vote or cause to be voted or cause such Insider's designees as directors to vote all Voting Securities owned by such Insider or over which such Insider has voting control so as to comply with SECTION 10 of the Registration Rights and Stockholders Agreement and this

Voting Letter Agreement. The provisions set forth herein constitute a voting agreement under Section 218 of the Delaware General Corporation Law, as amended, and, in connection therewith, the Insider expressly consents to the enforcement of this Voting Letter Agreement by specific performance.

3. This Voting Letter Agreement shall terminate on the earlier of the Termination Date and the date that the Insider is not an officer, director, manager or employee of the Company or any of its Subsidiaries.

[4. To the extent, if any, that the provisions of this Voting Letter Agreement would conflict with the provisions of the Voting Agreement, dated as of October 27, 2003, relating to the election of Frank P. Greinke as a director, the provisions of this Voting Letter Agreement shall supercede and control. The Insider further consents and agrees that \_\_\_\_\_ and \_\_\_\_\_ may execute and deliver a voting letter agreement substantially similar to this Voting Letter Agreement.] [To be included in Messrs. Jones, Turner and Greinke's Voting Letter Agreements. Blanks to be filled in with the names of the other two such persons.]

Very truly yours,

By: \_\_\_\_\_  
Name:  
Title:

## VOTING AGREEMENT

THIS VOTING AGREEMENT (this "Agreement"), dated as of November 14, 2005, is by and among Pacific Ethanol, Inc., a Delaware corporation (the "Company"), Cascade Investment, L. L. C., a Washington limited liability company (the "Purchaser") and the persons listed on SCHEDULE I hereto (each a "Stockholder", and, collectively, the "Stockholders").

WHEREAS, the Purchaser and the Company propose to enter into a Purchase Agreement of even date herewith (the "Purchase Agreement") providing for the purchase by the Purchaser of certain cumulative redeemable convertible preferred stock of the Company (the "Preferred Shares") (the transactions contemplated by the Purchase Agreement, including without limitation the issuance of securities thereunder, the "Transactions");

WHEREAS, as a condition to the execution and delivery of the Purchase Agreement, the Purchaser has requested that the Stockholders enter into this Agreement;

WHEREAS, the Stockholders believe that the execution, delivery and performance of the Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Company and its stockholders; and

WHEREAS, each Stockholder is the record and beneficial owner, or the trustee of a trust whose beneficiaries are the beneficial owners, of such number of shares of Common Stock of the Company set forth opposite such Stockholder's name on SCHEDULE I hereto (such shares of Common Stock, as such shares may be adjusted by stock dividend, stock split, recapitalization, combination or exchange of shares, merger, consolidation, reorganization or other change or transaction, together with shares of Common Stock that may be acquired after the date hereof by such Stockholder, including shares of Common Stock issued upon the exercise of options or warrants to purchase Common Stock (as the same may be adjusted as aforesaid), being collectively referred to herein as the "Shares").

NOW, THEREFORE, in consideration of the premises and the representations, warranties and agreements contained herein, the Stockholders agree as follows:

1. REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS. Each Stockholder hereby, severally and not jointly, represents and warrants as follows:

(a) AUTHORITY. The Stockholder has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the Stockholder. This Agreement has been duly executed and delivered by the Stockholder and constitutes a valid and binding obligation of the Stockholder enforceable against the Stockholder in accordance with its terms. Except as set forth on SCHEDULE II hereto, neither the execution, delivery or performance of this Agreement by the Stockholder nor the consummation by the Stockholder of the transactions contemplated hereby will (i) require any filing with, or permit, authorization, consent or approval of, any federal, state, local or municipal foreign or other government or subdivision,

branch, department or agency thereof or any governmental or quasi-governmental authority of any nature, including any court or other tribunal, (a "Governmental Entity"), (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default under, or give rise to any right of termination, amendment, cancellation or acceleration under, or result in the creation of any pledge, claim, lien, option, charge, encumbrance or security interest of any kind or nature whatsoever (a "Lien") upon any of the properties or assets of the Stockholder under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, permit, concession, franchise, contract, agreement or other instrument or obligation (a

"Contract") to which the Stockholder is a party or by which the Stockholder or any of the Stockholder's properties or assets, including the Stockholder's Shares, may be bound or (iii) violate any judgment, order, writ, preliminary or permanent injunction or decree (an "Order") or any statute, law, ordinance, rule or regulation of any Governmental Entity (a "Law") applicable to the Stockholder or any of the Stockholder's properties or assets, including the Stockholder's Shares.

(b) THE SHARES. Subject to the terms of this Agreement, the Stockholder's Shares and the certificates representing such Shares are now, and at all times during the term hereof will be, held by such Stockholder, or by a nominee or custodian for the benefit of such Stockholder. The Stockholder has good and marketable title to such Shares, free and clear of any Liens, proxies, voting trusts or agreements, understandings or arrangements, except, in the case of certain of the Stockholders, as set forth in SCHEDULE I hereto. The Stockholder owns of record or beneficially no Common Stock or other voting interest in the Company other than such Stockholder's Shares and shares of Company Common Stock issuable upon the exercise of options and warrants, in each case as set forth on SCHEDULE I hereto.

(c) PURCHASE AGREEMENT. Each Stockholder understands and acknowledges that the Purchaser is entering into the Purchase Agreement in reliance upon such Stockholder's execution and delivery of this Agreement.

2. BOARD APPROVAL. Each Stockholder understands and acknowledges that the Board of Directors of the Company has, to the extent required by applicable law, duly and validly authorized and approved, this Agreement, the Purchase Agreement and the transactions contemplated hereby and thereby.

3. AGREEMENTS OF ALL STOCKHOLDERS. Each Stockholder, severally and not jointly, agrees as follows:

(a) Until the Transactions are consummated or the Purchase Agreement is terminated in accordance with its terms, the Stockholder shall not, (i) except as otherwise expressly provided herein, sell, transfer, pledge, assign or otherwise dispose of, or enter into any contract, option or other arrangement (including any profit sharing arrangement) or understanding with respect to the sale, transfer, pledge, assignment or other disposition of, the Shares to any person, (ii) enter into or exercise its rights under any voting arrangement, whether by proxy, voting agreement, voting trust, power-of-attorney or otherwise, with respect to the Shares or (iii) take any other action that would in any way restrict, limit or interfere with the performance of its obligations hereunder or the transactions contemplated hereby.

2

(b) At any meeting of Stockholders of the Company called to vote upon the Transactions and the Purchase Agreement or at any adjournment thereof or in any other circumstances upon which a vote, consent or other approval (including by written consent) with respect to the Transactions and the Purchase Agreement or which is necessary to consummate the Transactions or for the Company to perform its obligations under the Purchase Agreement is sought, each Stockholder shall, including by executing a written consent if requested by the Company, vote (or cause to be voted) such Stockholder's Shares in favor of the Transactions and the adoption by the Company of the Purchase Agreement.

(c) The Stockholders understand and acknowledge that the Purchaser is entering into the Purchase Agreement in reliance upon the agreements of the Stockholders herein.

4. GRANT OF IRREVOCABLE PROXY COUPLED WITH AN INTEREST; APPOINTMENT OF PROXY.

(a) Each Stockholder hereby irrevocably grants to, and appoints Neil Koehler, and any other individual who shall hereafter be designated by the Stockholders, and each of them, as such Stockholder's proxy and attorney-in-fact (with full power of substitution), for and in the name, place and stead of such Stockholder, to vote such Stockholder's Shares, or grant a consent or approval in respect of such Shares, at any meeting of stockholders of the Company or at any adjournment thereof or in any other circumstances upon which their vote,

consent or other approval is sought in favor of the Transaction, the adoption by the Company of the Purchase Agreement and the approval of the other transactions contemplated by the Purchase Agreement; including, without limitation, the authorization and issuance of the Preferred Shares and the issuance of any Common Stock issuable upon conversion or exercise of the Preferred Shares.

(b) Each Stockholder represents that any prior proxies heretofore given in respect of such Stockholder's Shares are not irrevocable, and that any such prior proxies are hereby revoked.

(c) EACH STOCKHOLDER HEREBY AFFIRMS THAT THE PROXY SET FORTH IN THIS SECTION 4 IS COUPLED WITH AN INTEREST AND IS IRREVOCABLE UNTIL SUCH TIME AS THIS AGREEMENT TERMINATES IN ACCORDANCE WITH ITS TERMS. Such Stockholder hereby further affirms that the irrevocable proxy is given in connection with the execution of the Purchase Agreement, and that such irrevocable proxy is given to secure the performance of the duties of such Stockholder under this Agreement. Such Stockholder hereby ratifies and confirms all that such irrevocable proxy may lawfully do or cause to be done by virtue hereof. Such irrevocable proxy is executed and intended to be irrevocable in accordance with the provisions of Section 218 of the Delaware General Corporation Law.

5. TRANSFERS OF SHARES. During the term of this Agreement, no Stockholder shall Transfer any Shares unless the Person receiving Transfer of such Shares executes an Instrument of Accession in the form attached hereto as EXHIBIT A agreeing to be bound by the terms of this Agreement. As used herein, "Transfer" shall mean and include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of any of the Shares.

3

6. FURTHER ASSURANCES. Each Stockholder will, from time to time, execute and deliver, or cause to be executed and delivered, such additional or further transfers, assignments, endorsements, consents and other instruments as the Company or the Purchaser may reasonably request for the purpose of effectively carrying out the transactions contemplated by this Agreement and to vest the power to vote such Stockholder's Shares as contemplated by Section 4.

7. TERMINATION. This Agreement, and all rights and obligations of the parties hereunder, shall terminate upon the earlier of (i) the approval of the Transactions and the adoption by the Company of the Purchase Agreement at any meeting of the stockholders of the Company or at any adjournment thereof and (ii) the termination of the Purchase Agreement in accordance with its terms. Nothing in this Section 7 shall relieve any Stockholder from liability for willful breach of this Agreement.

8. GENERAL.

(a) COUNTERPARTS. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

(b) DEFINITIONS. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Purchase Agreement.

(c) ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES. Each party hereby acknowledges that no other party or any other person or entity has made any promises, warranties, understandings or representations whatsoever, express or implied, not contained in this Agreement and acknowledges that it has not executed this Agreement in reliance upon any such promises, representations, understandings or warranties not contained herein and that this Agreement supersedes all prior agreements and understandings between the parties with respect thereto. There are no promises, covenants or undertakings other than

those expressly set forth or provided for in this Agreement.

(d) GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to any applicable conflicts of law.

(e) TITLES AND SUBTITLES. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(f) NOTICES. All notices and other communications required or permitted hereunder shall be in writing. Notices shall be delivered personally, via recognized overnight courier (such as Federal Express, DHL or Airborne Express) or via certified or registered mail. Notices may be delivered via facsimile or e-mail, provided that by no later than two days thereafter such notice is confirmed in writing and sent via one of the methods described in the previous sentence. Notices shall be addressed to the address of each Stockholder as is set forth on the books and records of the Company, or at such other address or facsimile number as such Stockholder shall have furnished in writing to the other parties hereto. All notices shall be effective upon receipt.

4

(g) SEVERABILITY Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction to the greatest extent possible to carry out the intentions of the parties hereto.

(h) DELAYS OR OMISSIONS. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such nonbreaching or nondefaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

(i) FACSIMILE SIGNATURES. Any signature page delivered by a fax machine shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto.

(j) AMENDMENT AND WAIVER. This Agreement may be amended by the parties hereto by execution of an instrument in writing signed on behalf of the Stockholders holding a majority of Shares held by all of the Stockholders and the written consent of the Company and the Purchaser. Any amendment signed by the Stockholders holding a majority of Shares held by all of the Stockholders shall bind all of the Stockholders. Any action, extension or waiver by any party of any provision hereto shall be valid only if set forth in an instrument in writing signed on behalf of such party. An action, extension or waiver signed by the Stockholder holding a majority of Shares held by all of the Stockholders shall bind all of the Stockholders.

9. ENFORCEMENT. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in a court of the United States. This being in addition to any other remedy to which they are entitled at law or in equity. In addition, each of the parties hereto waives any right to trial by jury with respect to any claim or proceeding related to or arising out of this Agreement or any of the transactions contemplated hereby.

10. NOTIFICATION REQUIREMENT. Each Stockholder hereby agrees, while this Agreement is in effect, to promptly notify the Company and the Purchaser of the number of Shares acquired by such Stockholder, if any, after the date

hereof.

5

IN WITNESS WHEREOF, each party hereto has signed this Agreement as of the date first written above.

Counterpart Signatures Follow

6

Execution of Voting Agreement by Counterpart Signatures

The undersigned hereby executes the Voting Agreement, dated as of November 14, 2005 by and among Pacific Ethanol, Inc., Cascade Investment, L.L.C. and the Stockholders listed on Schedule I hereto.

PACIFIC ETHANOL, INC.

By: /s/ Ryan W. Turner

-----  
Name: Ryan W. Turner  
Title: Chief Operating Officer

7

Execution of Voting Agreement by Counterpart Signatures

The undersigned hereby executes the Voting Agreement, dated as of November 14, 2005 by and among Pacific Ethanol, Inc., Cascade Investment, L.L.C. and the Stockholders listed on Schedule I hereto.

CASCADE INVESTMENT, L.L.C.

By: /s/ Michael Larson

-----  
Name: Michael Larson  
Title: Business Manager

8

Execution of Voting Agreement by Counterpart Signatures

The undersigned hereby executes the Voting Agreement, dated as of November 14, 2005 by and among Pacific Ethanol, Inc., Cascade Investment, L.L.C. and the Stockholders listed on Schedule I hereto.

STOCKHOLDERS

By: /s/ William L. Jones

William L. Jones

By: /s/ Neil M. Koehler

Neil M. Koehler

By: /s/ Ryan W. Turner

Ryan W. Turner

By: /s/ Kenneth J. Friedman

Kenneth J. Friedman

By: /s/ Frank P. Greinke

Frank P. Greinke

9

SCHEDULE I

STOCKHOLDER	COMMON STOCK	OPTIONS/WARRANTS
William L. Jones(1)	2,500,000	50,000
Neil M. Koehler	4,188,139	—
Ryan W. Turner(1)	914,166	—
Kenneth J. Friedman	60,399	33,000
Frank P. Greinke(1)	1,500,000	15,000
TOTAL	9,162,704	98,000

(1) See Voting Agreement, dated as of October 27, 2003, among Southern Counties Oil Co., William C. Jones and Maurine Jones, Ryan W. Turner and Wendy Turner and Andrea Jones.

10

SCHEDULE II

REQUIRED FILINGS:

Filings with the Securities and Exchange Commission pursuant to the requirements of the Securities Exchange Act of 1934, as amended.

## EXHIBIT A

-----

## FORM OF INSTRUMENT OF ACCESSION

-----

## INSTRUMENT OF ACCESSION

-----

Reference is made to that certain Voting Agreement, dated as of November 14, 2005, a copy of which attached hereto (as amended and in effect from time to time, the "Voting Agreement"), among Pacific Ethanol, Inc., a Delaware corporation (the "Company"), Cascade Investment, L. L. C., a Washington limited liability company, and the Stockholders (as defined therein).

The undersigned, \_\_\_\_\_, in order to become the owner or holder of [identify Securities being Transferred] (the "Securities") of the Company hereby agrees that by his, her or its execution hereof the undersigned is a Stockholder party to the Voting Agreement subject to all of the restrictions and conditions applicable to Stockholders set forth in such Voting Agreement, and all of the Shares purchased by the undersigned in connection herewith (and any and all debt and equity of the Company issued in respect hereof) are subject to all the restrictions and conditions applicable to such Shares as set forth in the Voting Agreement. This Instrument of Accession shall take effect and shall become a part of said Voting Agreement immediately upon execution.

Executed as of the date set forth below under the laws of the State of Delaware.

Signature

-----

Address

-----

-----

-----

Date:

-----



## DESCRIPTION OF NON-EMPLOYEE DIRECTOR COMPENSATION

Effective as of May 18, 2005, non-employee directors of Pacific Ethanol, Inc. (the "Company") receive \$1,500 per board meeting attended, in person or via telephone, in consideration for their services as members of the Board of Directors. Effective as of May 18, 2005, the Chairman of the Board of Directors receives \$80,000 annually for his services as Chairman of the Board of Directors. In addition, effective as of May 18, 2005, the Chairman of the Audit Committee receives a fee of \$3,500 for each calendar quarter of service, in consideration for his services as Chairman of the Audit Committee, which amount is in addition to the fees payable for attendance at meetings of the Board of Directors.

Non-employee directors are reimbursed for certain reasonable and documented expenses in connection with attendance at meetings of the Board of Directors and its committees.

Non-employee directors may also receive options from time to time under the Company's stock option plans and otherwise.

The following non-employee directors received grants of non-qualified stock options in the following amounts to purchase shares of common stock of the Company:

DIRECTOR -----	NO. OF SHARES -----
William L. Jones	50,000
Terry L. Stone	20,000
Kenneth J. Friedman	15,000
Frank P. Greinke	15,000
John Pimentel	15,000

In addition, new directors, upon their appointment, are to receive grants of non-qualified stock options to purchase 15,000 shares of common stock of the Company.

The options granted or to be granted shall include the following terms:

- o The options shall be granted under the Company's 2004 Stock Option Plan (the "2004 Plan") to the extent shares are then available under the 2004 Plan and the grant under the 2004 Plan can be made in compliance with applicable securities laws.
- o The exercise price of the options shall be equal to the Fair Market Value of a share of the Company's common stock as defined in the 2004 Plan.
- o The expiration date of the options shall be ten years after their date of grant or such earlier date as is provided in the 2004 Plan or in the applicable stock option agreements.
- o The options shall fully vest and become exercisable one year following their date of grant.