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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)

June 8, 2010

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**PACIFIC ETHANOL, INC.**

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction  
of incorporation)

000-21467

(Commission File Number)

41-2170618

(IRS Employer  
Identification No.)

400 Capitol Mall, Suite 2060, Sacramento, CA

(Address of principal executive offices)

95814

(Zip Code)

Registrant's telephone number, including area code:

(916) 403-2123

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(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 1.03. Bankruptcy or Receivership.

As previously disclosed, on May 17, 2009, five indirect wholly-owned subsidiaries of Pacific Ethanol, Inc. (the “Company”), namely, Pacific Ethanol Holding Co. LLC (“PEHC”), Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton, LLC and Pacific Ethanol Magic Valley, LLC (the “Debtors”), each commenced a case by filing a voluntary petition for relief under Chapter 11 (“Chapter 11”) of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The cases are being jointly administered as *In re Pacific Ethanol Holding Co. LLC, et al.*, Chapter 11 Case No. 09-11713 (KG). Neither the Company, nor any of its direct or indirect subsidiaries other than the Debtors, filed petitions for relief under the Bankruptcy Code.

On April 16, 2010, the Debtors filed with the Bankruptcy Court an Amended Joint Plan of Reorganization (the “Plan”), which was supplemented by a supplement to the Plan filed by the Debtors with the Bankruptcy Court on May 28, 2010. On June 8, 2010 (the “Confirmation Date”), the Bankruptcy Court entered the Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ Amended Joint Plan of Reorganization (the “Confirmation Order”), which approved and confirmed the Plan. A copy of the Plan, as confirmed by the Bankruptcy Court, is filed as Exhibit 2.1 to this Current Report on Form 8-K and is incorporated herein by this reference. A copy of the Confirmation Order is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by this reference.

The Debtors plan to emerge from Chapter 11 after satisfying the remaining conditions to effectiveness contemplated under the Plan (the first business day after all conditions to the effectiveness of the Plan have been satisfied or waived, the “Effective Date”). While the Company can make no assurance as to when, or ultimately if, the Plan will become effective, it is currently anticipated that the Effective Date will occur prior to the end of June 2010. It is also possible that additional technical amendments could be made to the Plan prior to its effectiveness.

The following is a summary of certain material matters contemplated to occur either pursuant to or in connection with the implementation and effectiveness of the Plan. This summary does not include a description of all of the terms, conditions and other provisions of the Plan and is not intended to be a complete description, or a substitute for a full and complete reading, of the Plan. This summary is qualified in all respects by reference to the full text of the Plan. All capitalized terms used but not otherwise defined in this Current Report on Form 8-K have the meanings set forth in the Plan.

#### Generally

The prominent economic terms of the Plan include, but are not limited to, the restructuring of approximately \$287.0 million in prepetition and postpetition secured indebtedness under the Debtors’ Credit Agreement, dated as of February 27, 2007, as amended (“Prepetition Credit Agreement”), and Amended and Restated Debtor-in-Possession Credit Agreement, dated as of June 3, 2009, as amended (“Postpetition Credit Agreement”), pursuant to an Exit Facility to be entered into on the Effective Date by the Debtors, WestLB, AG, New York Branch (“WestLB”) and certain other lenders. The Plan contemplates that the Exit Facility will be comprised of:

- Exit Facility Revolving Loans in an aggregate principal amount not to exceed \$15.0 million to fund working capital requirements so long as two of the four ethanol plants owned by the Debtors are not in operation (referred to as “Cold Shutdown” in the Plan). If at any time more than two ethanol plants are in Cold Shutdown, the aggregate principal amount of the Exit Facility Revolving Loans may be increased by an amount approved by WestLB as agent and the required lenders under the Exit Facility Revolving Loans; provided that in no event shall the aggregate principal amount of the Exit Facility Revolving Loans exceed \$35.0 million.
- Exit Facility Term A-1 Loans in the aggregate principal amount of \$25.0 million, the proceeds of which will be used to pay in full in cash all revolving loans made under the Postpetition Credit Agreement between the petition date and the Effective Date.
- Exit Facility Term A-2 Loans in the aggregate principal amount of \$25.0 million issued in cancellation of an equal amount of prepetition loans that were deemed converted to DIP Roll Up Loans under the Postpetition Credit Agreement.

#### Ownership of Debtors

Pursuant to the Plan, on the Effective Date, 100% of the ownership interest in PEHC will be transferred to a newly-formed limited liability company (“New PE Holdco”) solely owned by Prepetition Lenders and Exit Facility Lenders, resulting in the Debtors becoming direct and indirect wholly-owned subsidiaries of New PE Holdco. The ownership interests in New PE Holdco will be allocated approximately 73% to the Prepetition Lenders and approximately 27% to the Exit Facility Lenders. On and after the Effective Date, the agent under the Exit Facility, initially WestLB, will have authority to appoint the managers, directors and officers of each of the Debtors.

#### Company’s Call Option

Pursuant to the Plan, certain of the Prepetition Lenders have elected to grant the Company the right to acquire from such Prepetition Lenders membership interests in New PE Holdco in an amount up to 25%, in the aggregate (the “Offered Interests”), of the total membership interests in New PE Holdco for a total price of \$30,000,000 in cash (or \$1,200,000 for each one percent of membership interest in New PE Holdco). The Company may exercise its option to purchase all or a portion of the Offered Interests at any time prior to or on the 90<sup>th</sup> day after the Effective Date, after which the Company’s option to purchase the Offered Interests will terminate.

#### Assets and Liabilities of Debtors

Information as to the assets and liabilities of the Debtors as of March 31, 2010 (the “Debtors’ Financial Information”) is incorporated herein by reference to Note 11 to the Consolidated Financial Statements in the Company’s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2010 filed with the Securities and Exchange Commission on May 14, 2010. The Debtors’ Financial Information contains financial statements and other financial information that have not been audited by the Company’s independent registered public accounting firm and may be subject to future reconciliation or adjustments.

Asset Management and Marketing Agreements

Under the Plan, the Company will continue after the Effective Date to manage and operate the ethanol plants owned by the Debtors under the terms of an amended and restated asset management agreement and will continue to market all of the ethanol and distillers grains produced by such plants under the terms of amended and restated agreements with Kinery Marketing and Pacific Ag Products, each a subsidiary of the Company.

**Item 8.01. Other Events.**

On June 9, 2010, the Company issued a press release concerning the Confirmation Order, a copy of which is furnished (not filed) as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated herein by this reference.

**Item 9.01. Financial Statements and Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
2.1	Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code as filed with the United States Bankruptcy Court for the District of Delaware on April 16, 2010 (*)
99.1	Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code as entered by the United States Bankruptcy Court for the District of Delaware on June 8, 2010 (*)
99.2	Press Release dated June 9, 2010 (*)

\* Filed herewith

## SIGNATURES

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: June 11, 2010

PACIFIC ETHANOL, INC.

By: /S/ CHRISTOPHER W. WRIGHT  
Christopher W. Wright,  
Vice President, General Counsel & Secretary

**EXHIBITS FILED WITH THIS REPORT**

<u>Exhibit No.</u>	<u>Description</u>
2.1	Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code as filed with the United States Bankruptcy Court for the District of Delaware on April 16, 2010
99.1	Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code as entered by the United States Bankruptcy Court for the District of Delaware on June 8, 2010
99.2	Press Release dated June 9, 2010

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Exhibir 2.1

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Case No. 09-11713 (KG)  
PACIFIC ETHANOL HOLDING CO. LLC, *et al.*, )  
Debtors. )  
)  
)  
) *Chapter 11*  
) Jointly Administered  
)  
)  
)  
)  
----- )

**DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

COOLEY GODWARD KRONISH LLP  
Attorneys for Debtors and  
Debtors in Possession  
1114 Avenue of the Americas  
New York, New York 10036  
(212) 479-6000

Dated: New York, New York  
April 16, 2010

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Case No. 09-11713 (KG)
PACIFIC ETHANOL HOLDING CO. LLC, <i>et al.</i>	)	
Debtors.	)	
	)	
	)	
	)	<i>Chapter 11</i>
	)	Jointly Administered
	)	
	)	
	)	
-----	)	

**DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Pacific Ethanol Holding Co. LLC and its direct subsidiaries, as debtors and debtors in possession, propose the following amended joint plan of reorganization under section 1121(a) of title 11 of the United States Code. The Creditors' Committee supports the Plan and the releases provided for herein.

ARTICLE I

DEFINITIONS AND CONSTRUCTION OF TERMS

Definitions. As used herein, the following terms have the respective meanings specified below:

1.01. Accounts Banks means the Exit Facility Accounts Bank, Postpetition Accounts Bank and Prepetition Accounts Bank.

1.02. Administrative Expense Claim means any right to payment (other than DIP Claims) constituting a cost or expense of administration of any of the Chapter 11 Cases under sections 503(b) and 507(a)(1) of the Bankruptcy Code, including, without limitation, all compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code. Any fees or charges assessed against the estates of the Debtors under section 1930 of chapter 123 of title 28 of the United States Code shall be excluded from the definition of Administrative Expense Claim and shall be paid in accordance with Section 13.05.

1.03. Affiliate means, with respect to any Person, any other Person controlling, controlled by, or under common control with, such Person.

1.04. Agents means (i) WestLB, as Administrative Agent and Collateral Agent under the Prepetition Credit Agreement, and (ii) WestLB, as Administrative Agent and Collateral Agent under the Postpetition Credit Agreement, and, in each case, any successor thereto.

1.05. Allowed means, with reference to any Claim against the Debtors, (i) any Claim that has been listed by the Debtors in their Schedules, as such Schedules may be amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim has been filed, (ii) any Claim allowed under the Plan, (iii) any Claim that is compromised, settled, or otherwise resolved pursuant to the authority granted to the Plan Administrator pursuant to a Final Order of the Bankruptcy Court or under Section 8.05 of the Plan, or (iv) any Claim that, if Disputed, has been (A) Allowed by Final Order or (B) in the case of Tort Claims, deemed Allowed pursuant to Section 8.03; *provided, however*, that Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder. Unless otherwise specified herein or by order of the Bankruptcy Court, “Allowed Claim” shall not, for any purpose under the Plan, include interest, penalty or premium on such Claim from and after the Petition Date. In the event that a Claim is resolved as provided in subsection (iii) or (iv) of this Section 1.04, it shall be an “Allowed Claim” for purposes of the Plan in the amount agreed to by the parties or ordered by the Bankruptcy Court (or, in the case of Tort Claims, an administrative or judicial tribunal of appropriate jurisdiction).

1.06. Asset Management Agreement means that certain Asset Management Agreement by and between PEI and PEH, Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton, LLC and Pacific Ethanol Magic Valley, LLC dated May 14, 2009, if and as assumed by the Debtors pursuant to the Plan, and as amended thereafter from time to time.

1.07. Avoidance Actions has the meaning ascribed to such term in Section 10.09.

1.08. Ballot means the form distributed to each holder of an impaired Claim that is entitled to vote to accept or reject the Plan on which such holder shall indicate acceptance or rejection of the Plan.

1.09. Bankruptcy Code means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

1.10. Bankruptcy Court means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases.

1.11. Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and any Local Rules of the Bankruptcy Court.

1.12. Bar Date means October 15, 2009, the bar date established in the Bar Date Order for the filing of proofs of Claim and requests for payment of Administrative Expense Claims (except for Governmental Claims, and subject to Section 7.09).



- 1.13. Bar Date Order means the Order of the Bankruptcy Court entered on September 2, 2009 Docket No. 217 establishing the bar date for the filing of proofs of Claim and requests for payment of Administrative Expense Claim.
- 1.14. Boardman Plant means the Debtors' ethanol plant in Boardman, Oregon.
- 1.15. Business Day means any day other than a Saturday, Sunday, or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.
- 1.16. Call Option has the meaning ascribed to such term in Section 6.05(a).
- 1.17. Call Option Agreement means the agreement to be entered into by and among PEI and any Granting Lenders in connection with, and conditioned upon, the consummation of the Restructuring Transaction, substantially in the form of such agreement filed with the Plan Supplement.
- 1.18. Call Option Price has the meaning ascribed to such term in Section 6.05(a).
- 1.19. Cash means legal tender of the United States of America.
- 1.20. Catch-Up Distribution means, as of any Distribution Date, a distribution in an amount equal to the aggregate amount that the holder of a previously Disputed Claim that has become an Allowed Claim would have received on one or more previous Distribution Dates if such holder's Claim had been Allowed as of each such Distribution Date.
- 1.21. Causes of Action means any and all actions, causes of action, controversies, liabilities, obligations, rights, suits, damages, judgments, Claims, and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, through and including the Effective Date.
- 1.22. Chapter 11 Cases means the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors, styled *In re Pacific Ethanol Holding Co. LLC, et al.*, Chapter 11 Case No. 09-11713 (KG), which are currently pending before the Bankruptcy Court.
- 1.23. Charter Documents means the respective limited liability company agreements, articles of incorporation, by-laws or other applicable corporate or limited liability company formation and governance documents of New PE Holdco and the Debtors or the Reorganized Debtors, as applicable, as the same may be adopted, amended, restated, supplemented or otherwise modified from time to time in accordance with the Plan.
- 1.24. Claim shall have the meaning set forth in section 101(5) of the Bankruptcy Code.
- 1.25. Class means a category of holders of Claims as set forth in Article III.

1.26. Cold Shutdown means, in respect of a Plant, the maintenance of such Plant in a state in which the Plant facilities are not producing ethanol, ethanol work in process has been completed, and wherein (i) Plant systems and equipment preservation are being managed in accordance with manufacturer recommendations and (ii) Plant facilities operate with a reduced headcount. “Cold Shutdown” contemplates minimized usage of a Plant’s utility systems but does not contemplate any cessation of compliance monitoring with respect to all material governmental approvals that are required under applicable law to be maintained by any Debtor in connection with the operation of a Plant at its full nameplate capacity.

1.27. Collateral means any property or interest in property of the Debtors subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable state law.

1.28. Confirmation Date means the date that the Confirmation Order is entered.

1.29. Confirmation Hearing means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.30. Confirmation Order means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.31. Core Agreements means that certain (i) Port of Morrow Lease by and between the Port of Morrow and Pacific Ethanol Columbia, LLC dated April 20, 2006, (ii) First Addendum to Lease by and between the Stockton Port District and Pacific Ethanol Stockton LLC dated August 1, 2008, (iii) Memorandum of Lease by and between the Stockton Port District and Pacific Ethanol Stockton LLC dated August 1, 2008, and (iv) Lease (Ordinance No. 218) by and between the Stockton Port District and Pacific Ethanol Stockton LLC dated February 5, 2007, in each case as amended, restated, supplemented or otherwise modified from time to time.

1.32. Creditors’ Committee means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

1.33. Cure Claim means any Allowed Claim arising as a result of any and all defaults under any executory contract or unexpired lease to be assumed or assumed and assigned by the Debtors during the Chapter 11 Cases in accordance with section 365 of the Bankruptcy Code.

1.34. Debtors in Possession means the Debtors in their capacity as debtors in possession in the Chapter 11 Cases pursuant to sections 1101, 1107(a), and 1108 of the Bankruptcy Code.

1.35. Debtors means PEH, Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton LLC and Pacific Ethanol Magic Valley, LLC.

1.36. DIP Advance Claims means all Claims under the DIP Financing Orders and Postpetition Credit Agreement on account of DIP Revolving Loans (as defined in the Postpetition Credit Agreement) made on or after the Petition Date, including without limitation, all Claims for payment of principal, interest, fees and other amounts with respect thereto. For the avoidance of doubt, the term “DIP Advance Claims” shall not include any Roll-Up Claims.

1.37. DIP Claims means all DIP Advance Claims and Roll-Up Claims.

1.38. DIP Financing Orders means, collectively, the interim order entered by the Court on May 19, 2009 authorizing, *inter alia*, post-petition financing on an interim basis for the benefit of the Debtors D.I. 36; the final order entered by the Court on June 3, 2009 authorizing, *inter alia*, post-petition financing on a final basis for the benefit of the Debtors D.I. 78; the order entered by the Court on October 23, 2009 authorizing the Debtors to amend the terms of the post-petition financing for the benefit of the Debtors D.I. 306; the order entered by the Court on December 10, 2009 authorizing the Debtors to further amend the terms of the post-petition financing for the benefit of the Debtors D.I. 357; and the order entered by the Court on March 23, 2010 authorizing the Debtors to further amend the terms of the post-petition financing for the benefit of the Debtors D.I. 496; and any amendments, modifications or supplements to any of the foregoing.

1.39. Disbursing Agent means the Plan Administrator, or its designee, in its capacity as Disbursing Agent pursuant to the Plan.

1.40. Disclosure Statement means the disclosure statement relating to the Plan, including, without limitation, all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.41. Disputed means, with respect to any Claim:

(a) if no proof of Claim or request for payment of Administrative Expense Claim has been filed by Bar Date or the Second Bar Date, as applicable, or has otherwise been deemed timely filed under applicable law, (i) a Claim that is listed on a Debtor's Schedules as disputed, contingent or unliquidated or (ii) a Claim that is not listed on a Debtor's Schedules;

(b) if a proof of Claim or request for payment of Administrative Expense Claim has been filed by the Bar Date or the Second Bar Date, as applicable, or has otherwise been deemed timely filed under applicable law, a Claim for which an objection, complaint or request for estimation has been filed by the Plan Administrator, and such objection, complaint or request has not been withdrawn or denied in its entirety by a Final Order;

(c) a Claim for which a proof of Claim or request for payment of Administrative Expense Claim is required to be filed under the Plan and no such proof of Claim or request for payment of Administrative Expense Claim is timely filed; or

(d) a Tort Claim.

1.42. Distribution Date means any date on which a distribution is made to holders of Allowed Claims by the Disbursing Agent.

1.43. Effective Date means the first (1<sup>st</sup>) Business Day on which the conditions specified in Section 11.01 of the Plan have been satisfied or waived.

1.44. Equity Interests means the PEH Equity Interests, the Subsidiary Equity Interests, and any other membership or equity interest, share of common or preferred stock or any other instrument evidencing an equity or other ownership interest in any Debtor, whether or not transferable, and any option, warrant, or right, contractual or otherwise, to acquire any such interest, in each case solely to the extent existing prior to the Effective Date. For the avoidance of doubt, the term "Equity Interests" excludes the membership or other equity interests in New PE Holdco, Reorganized PEH and all other Reorganized Debtors in existence on and after the Effective Date.

- 1.45. Estate means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.
- 1.46. Exit Facility has the meaning ascribed to such term in section 6.01(a).
- 1.47. Exit Facility Agent means WestLB, as Administrative Agent and Collateral Agent under the Exit Facility and any successor agent appointed pursuant to the terms of the Exit Facility Credit Agreement.
- 1.48. Exit Facility Accounts Bank means Amarillo National Bank as accounts bank under the Exit Facility Credit Agreement and any successor accounts bank appointed in accordance with the terms thereof.
- 1.49. Exit Facility Borrowers means each of the Reorganized Debtors.
- 1.50. Exit Facility Credit Agreement means the credit agreement(s) and other agreements setting forth the terms of the Exit Facility to be filed by the Debtors with the Plan Supplement, as any of the foregoing may be amended, restated, supplemented or otherwise modified from time to time.
- 1.51. Exit Facility Lenders means the lenders from time to time party to the Exit Facility Credit Agreement and their respective successors and assigns.
- 1.52. Exit Facility Loans means the Exit Facility Revolving Loans and the Exit Facility Term A Loans.
- 1.53. Exit Facility Revolving Loans means the first-priority, senior, secured revolving loans in the principal amount not to exceed the Exit Revolving Loan Commitment to be made available to the Reorganized Debtors under the Exit Facility and subject to the terms of the Exit Facility Credit Agreement, as and to the extent provided for in Article VI.
- 1.54. Exit Facility Term A Loans means the Exit Facility Term A-1 Loans and the Exit Facility Term A-2 Loans.
- 1.55. Exit Facility Term A-1 Loans means the loans to be made as of the Effective Date by the applicable Exit Facility Lenders under the Exit Facility and subject to the terms of the Exit Facility Credit Agreement, as and to the extent provided for in Article VI.
- 1.56. Exit Facility Term A-2 Loans means the loans deemed to have been made as of the Effective Date on account of the conversion of Roll-Up Claims into loans under the Exit Facility Credit Agreement, as and to the extent provided for in Article VI.

1.57. Exit Revolving Loan Commitment means (i) for as long as at least two Plants are in commercial operation and any remaining Plants are in Cold Shutdown, Exit Facility Revolving Loans in the aggregate principal amount of up to \$15.0 million to fund working capital requirements, and (ii) at any time that more than two Plants are in Cold Shutdown additional Exit Facility Revolving Loans, in an aggregate principal amount based upon a budget approved by the Exit Facility Agent and the required Exit Facility Lenders, in each case as provided for, and subject to the conditions set forth in, the Exit Facility Credit Agreement; provided that in no event shall the aggregate principal amount of the Exit Revolving Loan Commitment exceed \$35.0 million.

1.58. Final Order means an order of the Bankruptcy Court or any other court of competent jurisdiction as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Plan Administrator or, in the event that any of the foregoing has been sought, such order of the Bankruptcy Court or other court of competent jurisdiction shall have been determined by the highest court to which such order was appealed, or certiorari, reargument, or rehearing shall have been denied and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to such order shall not cause such order not to be a Final Order.

1.59. General Unsecured Claim means any Claim other than Administrative Expense Claims, Priority Tax Claims, DIP Claims, Other Priority Claims, Secured Tax Claims, Prepetition Facility Secured Claims, Other Secured Claims, Subordinated Claims, the PEI Claim or Prepetition Facility Deficiency Claims.

1.60. Governmental Claim means any Claim held by any governmental unit (as defined in Section 101(27) of the Bankruptcy Code).

1.61. Governmental Unit Bar Date means November 13, 2009, the bar date established in the Bar Date Order for the filing of proofs of Governmental Claims by any governmental unit (as defined in section 101(27) of the Bankruptcy Code).

1.62. Granting Lender has the meaning ascribed to such term in Section 6.05(a).

1.63. GUC Account means an account with a nationally recognized financial institution to be established by the Debtors prior to the Effective Date to hold the GUC Amount pending distribution to holders of Allowed General Unsecured Claims.

1.64. GUC Amount means an amount equal to (i) \$300,000, plus (ii) (a) the amount, if any, of actual savings relative to the Permitted Fee Amounts, calculated based upon the actual amount of the Allowed Professional Compensation and Reimbursement Claims of the Creditors' Committee accrued between December 1, 2009 and the Effective Date, and after giving effect to any allocation of such savings to prior or successive months during such period, plus (b) an amount equal to all Allowed Professional Compensation and Reimbursement Claims of the Creditors' Committee accrued through November 2009 that have been voluntarily waived or reduced.

- 1.65. Insured Claim means any Claim arising from an incident or occurrence that is covered under the Debtors' insurance policies.
- 1.66. Lien shall have the meaning set forth in section 101 of the Bankruptcy Code.
- 1.67. Madera Plant means the Debtors' ethanol plant in Madera, California.
- 1.68. Magic Valley Plant means the Debtors' ethanol plant in Burley, Idaho.
- 1.69. New PE Holdco means New PE Holdco, LLC, a Delaware limited liability company to be established effective as of the Effective Date.
- 1.70. New PE Holdco Membership Interests means the membership interests in New PE Holdco, all of which will be held by the Exit Facility Lenders and the Prepetition Lenders (or their respective designees, as applicable).
- 1.71. Offered Interests has the meaning ascribed to such term in Section 6.05(a).
- 1.72. Operating Agreement of New PE Holdco means the limited liability company agreement of New PE Holdco, substantially in the form of such agreement filed with the Plan Supplement.
- 1.73. Operating Agreement of Reorganized PEH means the amended and restated Limited Liability Company Agreement of Reorganized PEH, substantially in the form of such agreement filed with the Plan Supplement.
- 1.74. Other Priority Claim means any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.
- 1.75. Other Secured Claim means any Secured Claim, other than a Secured Tax Claim, Prepetition Facility Secured Claim or DIP Claim.
- 1.76. PEH means Debtor Pacific Ethanol Holding Co. LLC.
- 1.77. PEH Equity Interests means all membership interests in PEH existing as of the Petition Date.
- 1.78. PEI means Pacific Ethanol, Inc.
- 1.79. PEI Claim means the \$68,743,378.94 claim (Claim No. 90) asserted by PEI in the proof of claim filed by PEI in the Chapter 11 Cases on or about October 14, 2009, and any new, amended, modified or supplemental Claim filed by PEI or any of the non-Debtor Affiliates of PEI, including, but not limited to, rejection damage claims asserted by any of them.

1.80. Permit means any governmental license, permit, charter, franchise, authorization or other similar grant held by any of the Debtors as of the Effective Date.

1.81. Permitted Fee Amounts means Allowed Professional Compensation and Reimbursement Claims of the Creditors' Committee for the period between December 1, 2009 and the Effective Date in an amount not to exceed, in the aggregate (x) \$50,000 for the month of December 2009, and (y) for each subsequent month, (i) \$25,000 per month, or (ii) in each month or months in which a motion for approval of (a) a sale of the Debtors' assets pursuant to section 363 of the Bankruptcy Code or other similar transaction or (b) a disclosure statement or plan of reorganization for the Debtors' is pending before the Bankruptcy Court, \$30,000. For the avoidance of doubt, nothing herein shall limit the rights of the Debtors, the Reorganized Debtors, the Plan Administrator or any other party in interest to object to the reasonableness of any Professional Compensation and Reimbursement Claims of the Creditors' Committee notwithstanding the fact that such Claims, together with all other applicable Professional Compensation and Reimbursement Claims of the Creditors' Committee, do not exceed the Permitted Fee Amounts.

1.82. Person means any individual, entity, trust, corporation, limited liability company partnership, company, association, estate or other entity or organization, including any governmental or political entity, subdivision or agency.

1.83. Petition Date means May 17, 2009.

1.84. Plan means this amended chapter 11 plan of reorganization, including, without limitation, the Plan Supplement and all exhibits, supplements, appendices, and schedules hereto and thereto the Plan Supplement, as any of the same may be altered, amended, or modified from time to time as provided herein.

1.85. Plan Administration Account means an account with a nationally recognized financial institution to be established or designated by the Debtors prior to the Effective Date to hold the Cash to be made available to the Plan Administrator in accordance with, and as set forth in, the Plan Administration Budget.

1.86. Plan Administration Budget means a budget reasonably determined by the Debtors with the consent of the Exit Facility Agent in its sole and absolute discretion, sufficient for the Plan Administrator to pay all costs of implementing the Plan including, without limitation, (i) the costs of winding up the affairs of the Debtors subsequent to the Effective Date, pursuing, adjudicating or liquidating Causes of Action, resolving Disputed Claims, and retaining professionals (including those retained by the Debtors and not paid as of the Effective Date), employees, and consultants, (ii) the fees and expenses of the Plan Administrator, the U.S. Trustee, and the Disbursing Agent, (iii) the payment of all Cure Claims and Rejection Claims, if any, and (iv) an amount sufficient to establish a reserve for the full amount of all Claims other than General Unsecured Claims that are Disputed as of the Effective Date, which budget will be filed with the Plan Supplement.

1.87. Plan Administrator means the chief operating officer, as of the Effective Date, of PEH or, if none, a person designated or engaged by the Debtors with the consent of the Agents (in their respective sole and absolute discretion) immediately prior to the Effective Date, which Plan Administrator would continue to serve after the Effective Date unless and until a successor Plan Administrator is designated pursuant to Section 5.06(f).

- 1.88. Plan Supplement has the meaning ascribed to such term in Section 13.09.
- 1.89. Plan Supplement Documents has the meaning ascribed to such term in Section 13.09.
- 1.90. Plants means, collectively, the Madera Plant, the Boardman Plant, the Stockton Plant and the Magic Valley Plant.
- 1.91. Postpetition Accounts Bank means Amarillo National Bank as accounts bank under the Postpetition Credit Agreement and any successor accounts bank appointed in accordance with the terms thereof.
- 1.92. Postpetition Agent means WestLB, as Administrative Agent and Collateral Agent under the Postpetition Credit Agreement and any successor agent appointed in accordance with the terms thereof.
- 1.93. Postpetition Credit Agreement means that certain Amended and Restated Debtor-in-Possession Credit Agreement, dated as of June 3, 2009, as amended October 23, 2009, as further amended December 10, 2009, as further amended March 23, 2010 and as may be amended, restated, supplemented or otherwise modified from time to time, by and among the Debtors as borrowers, the Postpetition Accounts Bank and the Postpetition Lenders.
- 1.94. Postpetition Lenders means, collectively, the Postpetition Agent and the banks and financial institutions that are from time to time lender parties to the Postpetition Credit Agreement and their respective successors and assigns.
- 1.95. Prepetition Accounts Bank means Amarillo National Bank as accounts bank under the Prepetition Credit Agreement and any successor accounts bank appointed in accordance with the terms thereof.
- 1.96. Prepetition Agent means WestLB, as Administrative Agent and Collateral Agent, under the Prepetition Credit Agreement and any successor agent appointed in accordance with the terms thereof.
- 1.97. Prepetition Credit Agreement means that certain Credit Agreement, dated as of February 27, 2007, as amended, restated, supplemented or otherwise modified from time to time, between the Debtors as borrowers and guarantors, the Prepetition Accounts Bank and the Prepetition Lenders.
- 1.98. Prepetition Facility Claims means the Prepetition Facility Deficiency Claims and the Prepetition Facility Secured Claims.
- 1.99. Prepetition Facility Deficiency Claim means the amount by which the Claims of the Prepetition Lenders and the Prepetition Accounts Bank under the Prepetition Credit Agreement, including, without limitation, all claims on account of or arising under any Swap Contract (as defined in the Prepetition Credit Agreement), exceeds the value of the Collateral of the Debtors securing such Claims.



1.100. Prepetition Facility Secured Claim means the Claims of the Prepetition Lenders and the Prepetition Accounts Bank under the Prepetition Credit Agreement, including, without limitation, all claims on account of or arising under any Swap Contract (as defined in the Prepetition Credit Agreement), to the extent of the value of the Collateral of the Debtors securing such Claims.

1.101. Prepetition Lender Newco Interests has the meaning ascribed to such term in Section 6.02.

1.102. Prepetition Lenders means the Prepetition Agent and the banks and financial institutions that are from time to time lender parties to the Prepetition Credit Agreement and their respective successors and assigns.

1.103. Priority Tax Claim means any Claim of a governmental unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.104. Pro Rata Share means, with respect to any Claim in a Class, at any time, the ratio of the amount of such Claim to the aggregate amount of all Claims (including Disputed Claims) in such Class.

1.105. Professional Compensation and Reimbursement Claims has the meaning ascribed to such term in Section 2.02.

1.106. Record Date means the date of the hearing before the Bankruptcy Court on the Debtors' motion for approval of the Disclosure Statement.

1.107. Rejection Claim means any Claim arising from the rejection by any of the Debtors of an executory contract or unexpired lease in the Chapter 11 Cases.

1.108. Released Parties means (a) each present and former director, officer, employee, manager, partner, member and Advisor of (i) the Debtors, (ii) the holders of Prepetition Facility Claims and DIP Claims, (iii) the Agents, Exit Facility Agent, Prepetition Accounts Bank, Postpetition Accounts Bank, Exit Facility Accounts Bank and the Exit Facility Lenders; (b) each holder of Prepetition Facility Claims or Postpetition Secured Claim; and (c) each of the Agents, Exit Facility Agent, Prepetition Accounts Bank, Postpetition Accounts Bank, Exit Facility Accounts Bank and the Exit Facility Lenders. For purposes of this definition, "Advisors" means each financial advisor, investment banker, professional, accountant, and attorney, and each of their respective employees, parent corporations, subsidiaries, Affiliates and partners.

1.109. Reorganization Transaction means one or more related transactions pursuant to which the plan shall be implemented and the Reorganized Debtors shall continue to operate on a going concern basis subsequent to their emergence from the Chapter 11 Cases.

- 1.110. Reorganized Debtors means, collectively, each of the Debtors upon and after the Effective Date.
- 1.111. Reorganized PEH means PEH upon and after the Effective Date.
- 1.112. Reorganized Subsidiaries means the Reorganized Debtors other than Reorganized PEH.
- 1.113. Roll-Up Claims means all Claims for principal, interest, fees and other amounts owed by the Debtors on account of Roll-Up Loans.
- 1.114. Roll-Up Loans means the prepetition loans that were deemed converted, pursuant to the DIP Financing Orders and section 2.02 of the Postpetition Credit Agreement, to “DIP Roll Up Loans” (as defined therein).
- 1.115. Schedules means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications thereto filed with the Bankruptcy Court through and including the Confirmation Date.
- 1.116. Second Bar Date means the 30<sup>th</sup> day after notice of the occurrence of the Effective Date is filed with the Bankruptcy Court.
- 1.117. Secured Claim means any Claim (i) to the extent reflected in the Schedules or upon a proof of claim as a secured claim, which is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (ii) that is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.
- 1.118. Secured Lenders means the Prepetition Lenders and the Postpetition Lenders.
- 1.119. Secured Tax Claim means any Secured Claim that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.
- 1.120. Sponsor Support Agreement means that certain Amended and Restated Sponsor Support Agreement, dated as of October 22, 2008, among PEH, PEI and WestLB, as administrative agent.
- 1.121. Stockton Plant means the Debtors’ ethanol plant in Stockton, California.
- 1.122. Subordinated Claim means any Claim against any of the Debtors, whether or not the subject of an existing lawsuit, (i) arising from rescission of a purchase or sale of shares or any other securities, if any, of any of the Debtors or an Affiliate of any of the Debtors, (ii) for damages arising from the purchase or sale of any such security, (iii) for violations of the securities laws, misrepresentations, or any similar Claims, including, to the extent related to the forgoing or otherwise subject to subordination under section 510(b) of the Bankruptcy Code, but not limited to, any attorneys’ fees, other charges, or costs incurred on account of the forgoing Claims, or, (iv) except as otherwise provided for in the Plan, for reimbursement, contribution, or indemnification allowed under section 502 of the Bankruptcy Code on account of any such Claim, including Claims based upon allegations that the Debtors made false and misleading statements and engaged in other deceptive acts in connection with the sale of securities.

- 1.123. Subsidiary Equity Interests means all membership interests of each of the Debtors (other than PEH) existing as of the Petition Date.
- 1.124. Tax Code means the Internal Revenue Code of 1986, as amended.
- 1.125. Tort Claim means any Claim against any of the Debtors, whether or not the subject of an existing lawsuit, arising from or relating to personal injury, wrongful death, property damage, products liability, discrimination, employment or any other similar basis. A Tort Claim may also be an Insured Claim.
- 1.126. U.S. Trustee means the Office of the United States Trustee for the District of Delaware.
- 1.127. West LB means WestLB, AG, New York Branch.

Interpretation; Application of Definitions and Rules of Construction. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter. Unless otherwise specified, all section, article, schedule, or exhibit references in the Plan are to the respective Section in, Article of, Schedule to, or Exhibit to, the Plan. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular Section, subsection, or clause contained in the Plan. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. A term used herein that is not defined herein, but that is used in the Bankruptcy Code, shall have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

## ARTICLE II

### TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, PRIORITY TAX CLAIMS AND DIP ADVANCE CLAIMS

2.01. Administrative Expense Claims. Subject to Section 2.02, except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment, each holder of an Allowed Administrative Expense Claim shall, to the extent such Allowed Administrative Expense Claim has not been paid by the Debtors in Possession in the ordinary course of their business, receive Cash in an amount equal to such Allowed Administrative Expense Claim as soon as is practicable following the later of the Effective Date and the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim; *provided, however,* that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors in Possession shall be paid in full and performed by the Debtors in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions. The Holder of an Allowed Administrative Expense Claim shall not be entitled to, and shall not be paid, any interest, penalty, or premium thereon, and any interest, penalty, or premium asserted with respect to an Administrative Claim shall be deemed disallowed and expunged without the need for any further Order of the Bankruptcy Court.

2.02. Professional Compensation and Reimbursement Claims. All Persons seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date pursuant to sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code ("Professional Compensation and Reimbursement Claims") (i) shall file their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by no later than the date that is ninety (90) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court and (ii) if granted such an award by the Bankruptcy Court, shall be paid in full (subject, in the case of Professional Compensation and Reimbursement Claims of the Creditors' Committee, to the Permitted Fee Amounts) in such amounts as are Allowed by the Bankruptcy Court (A) on the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or as soon thereafter as is practicable or (B) upon such other terms as may be mutually agreed upon between such holder of an Administrative Expense Claim and the Plan Administrator. Claims for payment of fees and reimbursement of expenses of professionals retained by the Plan Administrator and the Debtors (if applicable) accrued on and after the Effective Date shall not be subject to approval by the Bankruptcy Court. The Permitted Fee Amounts are an aggregate cap on Professional Compensation and Reimbursement Claims of the Creditors' Committee. Any and all Professional Compensation and Reimbursement Claims incurred by the Creditors' Committee in excess of the Permitted Fee Amounts shall be deemed disallowed in full without recourse and the professionals retained by the Creditors' Committee shall be paid an aggregate amount equal to the Permitted Fee Amounts, distributed among such professionals pro rata based on the proportion each such professional's fees and expenses bears to the total fees and expenses incurred by all such professionals, unless otherwise agreed by and among the Creditors' Committee and such professionals.

2.03. Priority Tax Claims. Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Plan Administrator, in full satisfaction, settlement, and release of such Allowed Priority Tax Claim, (a) in accordance with Bankruptcy Code section 1129(a)(9)(C) and (D), equal Cash payments made on or before the last Business Day of every fiscal year after the Effective Date, over a period not exceeding five years after the assessment of the tax on which such Claim is based, totaling the principal amount of such Claim, plus interest on any outstanding balance of such Allowed Priority Tax Claim, calculated from the later of the Effective Date and the date the Priority Tax Claim is Allowed at a rate to be determined pursuant to section 511 of the Bankruptcy Code; (b) such other treatment agreed to by the Holder of such Allowed Priority Tax Claim, *provided* such treatment is no more favorable than the treatment set forth in clause (a) hereof, or (c) payment in full in Cash. The Holder of an Allowed Priority Tax Claim shall not be entitled to assess any premium or penalty on such Claim and any asserted premium or penalty shall be deemed disallowed and expunged under the Plan without the need for a further order of the Bankruptcy Court. The Plan Administrator shall have the right to pay any Allowed Priority Tax Claim, or any remaining balance of such Claim, in accordance with the foregoing, at any time on or after the Effective Date, without premium or penalty of any kind.

2.04. DIP Advance Claims. All DIP Advance Claims are deemed Allowed under the Plan. Except to the extent that a holder of a DIP Advance Claim agrees to a less favorable treatment, each holder of a DIP Advance Claim shall receive payment in full in Cash, as and to the extent provided for in Section 6.01(c).

### ARTICLE III

#### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

As set forth more fully below, the Plan is premised upon the substantive consolidation of the Debtors solely for purposes of making distributions under the Plan. Accordingly, for such purposes, the assets and liabilities of the Debtors are deemed the assets and liabilities of a single, consolidated entity.

Claims, other than Administrative Expense Claims (including Professional Compensation and Reimbursement Claims), DIP Advance Claims and Priority Tax Claims, are classified for all purposes, including voting, confirmation, and distribution pursuant to the Plan, as follows:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
Class 1	Other Priority Claims	Unimpaired	No (deemed to accept)
Class 2	Secured Tax Claims	Unimpaired	No (deemed to accept)
Class 3	Other Secured Claims	Unimpaired	No (deemed to accept)
Class 4	Prepetition Facility Claims	Impaired	Yes
Class 5	Roll-Up Claims	Impaired	Yes
Class 6	General Unsecured Claims	Impaired	Yes
Class 7	Subordinated Claims	Impaired	No (deemed to reject)
Class 8	PEH Equity Interests	Impaired	No (deemed to reject)
Class 9	Subsidiary Equity Interests	Unimpaired	No (deemed to accept)

ARTICLE IV

TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.01. CLASS 1 - OTHER PRIORITY CLAIMS.

(a) Impairment and Voting. Class 1 is unimpaired by the Plan. Each holder of an Allowed Other Priority Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Other Priority Claim agrees to a less favorable treatment, each holder of an Allowed Other Priority Claim shall receive Cash in an amount equal to such Allowed Other Priority Claim as soon as is practicable following the later of the Effective Date and the date such Other Priority Claim becomes an Allowed Other Priority Claim.

4.02. CLASS 2 – SECURED TAX CLAIMS.

(a) Impairment and Voting. Class 2 is unimpaired by the Plan. Each holder of an Allowed Secured Tax Claim is presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed Secured Tax Claim agrees to a less favorable treatment, each holder of an Allowed Secured Tax Claim shall receive, at the sole option of the Plan Administrator, (i) Cash in an amount equal to such Allowed Secured Tax Claim, including any interest on such Allowed Secured Tax Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, on the later of the Effective Date and the date such Allowed Secured Tax Claim becomes an Allowed Secured Tax Claim, or as soon thereafter as is practicable, (ii) equal annual Cash payments in an aggregate amount equal to such Allowed Secured Tax Claim, together with interest at a rate to be determined pursuant to section 511 of the Bankruptcy Code, commencing upon the later of the Effective Date and the date such Secured Tax Claim becomes an Allowed Secured Tax Claim through the fifth (5th) anniversary of the date of assessment of such Allowed Secured Tax Claim, or (iii) such other terms determined by the Bankruptcy Court to provide the holder of such Allowed Secured Tax Claim deferred Cash payments having a value, as of the Effective Date, equal to such Allowed Secured Tax Claim. The Holder of an Allowed Secured Tax Claim shall not be entitled to assess any premium or penalty on such Claim and any asserted premium or penalty shall be deemed disallowed and expunged under the Plan without the need for a further order of the Bankruptcy Court. The Plan Administrator shall have the right to pay any Allowed Secured Tax Claim, or any remaining balance of such Claim, in accordance with the foregoing, at any time on or after the Effective Date, without premium or penalty of any kind.

4.03. CLASS 3 - OTHER SECURED CLAIMS.

(a) Impairment and Voting. Class 3 is unimpaired by the Plan. Each holder of an Allowed Other Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions/Reinstatement of Claims. Except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment, as soon as is practicable following the later of the Effective Date and the date such Other Secured Claim becomes an Allowed Other Secured Claim, at the sole option of the Plan Administrator, (i) each Allowed Other Secured Claim shall be reinstated and rendered unimpaired in accordance with section 1124(2) of the Bankruptcy Code, notwithstanding any contractual provision or applicable nonbankruptcy law that entitles the holder of an Allowed Other Secured Claim to demand or receive payment of such Allowed Other Secured Claim prior to the stated maturity of such Allowed Other Secured Claim from and after the occurrence of a default, (ii) each holder of an Allowed Other Secured Claim shall receive Cash in an amount equal to such Allowed Other Secured Claim, including any non-default interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (iii) each holder of an Allowed Other Secured Claim shall receive the Collateral securing its Allowed Other Secured Claim and any non-default interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, in full and complete satisfaction of such Allowed Other Secured Claim.

4.04. CLASS 4 - PREPETITION FACILITY CLAIMS. All Prepetition Facility Claims are deemed Allowed under the Plan.

(a) Impairment and Voting. Class 4 is impaired by the Plan. Each holder of a Prepetition Facility Claim is entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of a Prepetition Facility Claim agrees to a less favorable treatment, each holder of a Prepetition Facility Claim shall own its pro rata share of New PE Holdco which, after giving effect to the transactions set forth in Article VI, will be the owner of all the membership interests in Reorganized PEH. As a condition to its receipt of such interests, and subject to consummation of the Reorganization Transaction, such holder of a Prepetition Facility Claim will discharge its Prepetition Facility Claim.

4.05. CLASS 5 - ROLL-UP CLAIMS. All Roll-Up Claims are deemed Allowed under the Plan.

(a) Impairment and Voting. Class 5 is impaired by the Plan. Each holder of a Roll-Up Claim is entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of a Roll-Up Claim agrees to a less favorable treatment, each holder of a Roll-Up Claim shall receive on the Effective Date or as soon thereafter as is practicable its share of the Exit Facility Term A-2 Loans, as and to the extent provided for in Section 6.01(c).

4.06. CLASS 6 - GENERAL UNSECURED CLAIMS.

(a) Impairment and Voting. Class 6 is impaired by the Plan. Each holder of an Allowed General Unsecured Claim is entitled to vote to accept or reject the Plan.

(b) Distributions. Except to the extent that a holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of the GUC Amount. The Disbursing Agent shall make an initial distribution, and one or more distributions thereafter, as and when determined by the Plan Administrator, from the GUC Account to holders of Allowed General Unsecured Claims on the Effective Date or as soon thereafter as is practicable, after the imposition of a reserve for all Disputed General Unsecured Claims (i.e., a reserve equal to the then applicable aggregate distribution percentage multiplied by the aggregate total of the full face amount of all Disputed General Unsecured Claims). As Disputed General Unsecured Claims are resolved, the Disbursing Agent shall make one or more additional distributions from the GUC Account to holders of Allowed General Unsecured Claims, in each case so as to effectuate such Catch-Up Distributions as are warranted.

4.07. CLASS 7 – SUBORDINATED CLAIMS.

(a) Impairment and Voting. Class 7 is impaired by the Plan. Each holder of a Subordinated Claim is conclusively presumed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. No property will be distributed to or retained by the holders of Subordinated Claims on account of such Claims.

4.08. CLASS 8 – PEH EQUITY INTERESTS.

(a) Impairment and Voting. Class 8 is impaired by the Plan. Each holder of a PEH Equity Interest is conclusively presumed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

(b) Distributions. No property will be distributed to or retained by the holders of PEH Equity Interests on account of such PEH Equity Interests. All PEH Equity Interests shall be deemed extinguished effective as of the Effective Date.

4.09. CLASS 9 – SUBSIDIARY EQUITY INTERESTS.

(a) Impairment and Voting. Class 9 is unimpaired by the Plan. Each holder of a Subsidiary Equity Interest is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

(b) Treatment. All Subsidiary Equity Interests shall remain unimpaired as provided for in Section 5.05, and shall survive in full force and effect on and after the Effective Date solely for the purpose of preserving the corporate structure for the benefit of the Holders of Prepetition Facility Claims, such that as of the Effective Date, Reorganized PEH shall be the owner of all the membership interests of the Reorganized Subsidiaries.



## ARTICLE V

### IMPLEMENTATION OF THE PLAN

5.01. Funding of GUC Amount and Approval of Plan Administration Budget. The GUC Amount shall be fully funded (through one or more transfers to the GUC Account) and the Plan Administration Budget approved, on or before the Effective Date; provided, however, that the Plan Administration Budget may be modified by the Plan Administrator from time to time to the extent the Plan Administrator reasonably determines such modifications are necessary to enable the Plan Administrator to carry out its duties under the Plan, subject to the consent of the Exit Facility Agent in its sole and absolute discretion. The costs, fees and expenses reflected in the Plan Administration Budget shall be paid, in such amounts and at such time as set forth in the Plan Administration Budget, from the Plan Administration Account (as such account shall be funded from time to time, but in any case prior to the time any such budgeted amount is due in accordance with the Plan Administration Budget).

5.02. Reorganization Transaction.

(a) The Reorganization Transaction shall be implemented as set forth in Article VI.

(b) The consummation of the Reorganization Transaction shall be conditioned upon the occurrence of each of the following on or prior to the Effective Date, (i) all DIP Advance Claims will be paid in full, as and to the extent provided for in Section 6.01(c), (ii) the holders of Roll-Up Claims will receive Exit Facility Term A-2 Loans, as and to the extent provided for in Section 6.01(c), (iii) each holder of Prepetition Facility Claims will have been issued its pro rata share of New PE Holdco (and the transactions set forth in Article VI shall have been consummated such that New PE Holdco will be the owner of all the membership interests in Reorganized PEH, and Reorganized PEH shall be the owner of all the membership interests of the Reorganized Subsidiaries), (iv) all Allowed Administrative Claims, Other Priority Claims, Secured Tax Claims, Priority Tax Claims and Other Secured Claims will be paid in full or otherwise satisfied as provided in Articles II and IV, as applicable, (v) the Plan Administration Budget shall have been established as provided for herein, and (vi) the GUC Amount will be fully funded. The amounts needed to fund the foregoing amounts, as applicable, may be paid from (A) the proceeds of the Exit Facility as and to the extent permitted, (B) the proceeds of the loans under the Postpetition Credit Agreement as and to the extent permitted, or (C) as otherwise agreed to by the Postpetition Agent and the Exit Facility Agent, on behalf of the Postpetition Lenders and Exit Facility Lenders, respectively, provided all such amounts are funded or made available on or prior to the Effective Date. The Reorganization Transaction shall be, according to its terms, subject to and conditioned upon the approval of the Bankruptcy Court.

5.03. Intercompany Claims. All Claims (a) held by any Debtor against any other Debtor, (b) held by any Debtor against any non-Debtor Affiliate of such Debtor or (c) held by any non-Debtor Affiliate of any Debtor against such Debtor, including, without limitation any Claims (i) recorded in any account reflecting intercompany book entries, (ii) any Claim not reflected in book entries that is held by a Debtor or non-Debtor Affiliate of a Debtor, and (iii) any derivative Claim asserted or assertable by or on behalf of a Debtor or non-Debtor Affiliate of a Debtor, as applicable, shall be deemed extinguished and null and void, *ab initio*, effective as of the Effective Date; *provided, however,* that (y) Administrative Expense Claims of non-Debtor Affiliates of the Debtors accrued subsequent to the Petition Date shall not be so extinguished and shall be payable as and to the extent provided for in the DIP Financing Orders and the Plan, and (b) the Reorganized Debtors shall retain their claims under the Sponsor Support Agreement as and to the extent provided in Section 10.05(c).

5.04. Title to Accounts. Title to all of the Debtors' bank accounts, including without limitation the GUC Account and the Plan Administration Account shall vest in the Reorganized Debtors, effective as of the Effective Date, without any further order of the Bankruptcy Court or further action on the part of any Person. On and after the Effective Date, the GUC Account and the Plan Administration Account shall be deemed to be accounts in the name of the Reorganized Debtors without any further action by any Person or any further order of the Bankruptcy Court.

5.05. Cancellation of Existing Membership Interests in PEH; Issuance of New Membership Interests to New PE Holdco. Effective as of the Effective Date, all PEH Equity Interests shall be deemed cancelled and null and void. The Subsidiary Equity Interests shall not be impaired by the Plan and shall remain in full force and effect on the Effective Date and thereafter, solely for the purpose of preserving the corporate structure for the benefit of the Holders of Prepetition Facility Claims, until they are transferred, otherwise conveyed or cancelled in accordance with applicable law. On the Effective Date, 100% of the newly-issued membership interests in Reorganized PEH shall have been transferred to New PE Holdco, pursuant to the Plan and on the terms set forth in the Operating Agreement of Reorganized PEH.

5.06. Plan Administrator.

(a) Plan Implementation. The Plan Administrator shall be authorized and obligated to implement the Plan on and after the Effective Date. The Plan Administrator shall be acting for the benefit of the Debtors or the Reorganized Debtors, as applicable, and the duties, rights and obligations of the Plan Administrator may be modified at any time by the Reorganized Debtors. The Plan Administrator shall be deemed appointed as of the Effective Date without the need for any further order of the Bankruptcy Court. In the exercise of its reasonable business judgment, the Plan Administrator shall, in an expeditious but orderly manner and subject to the provisions of the Plan, make timely distributions and not unduly prolong the duration of the Chapter 11 Cases.

(b) Role of the Plan Administrator. The Plan Administrator shall have the following duties and powers in furtherance of and consistent with the purpose of the Plan. The provisions of this Section do not apply to actions taken by the Plan Administrator in any capacity other than as Plan Administrator.

(i) Implement and enforce all provisions of the Plan.

(ii) Exercise in the Plan Administrators reasonable business judgment all power and authority to file, prosecute, collect, compromise and resolve, in the name of the Debtors or the Reorganized Debtors, as applicable, all Disputed Claims, Causes of Action and Avoidance Actions.

- (iii) Maintain the Debtors' books and records, maintain accounts, make distributions, and take other actions consistent with the Plan and the implementation hereof.
- (iv) Collect and liquidate at the direction of the Debtors or Reorganized Debtors, as applicable, all assets of the Estates pursuant to the Plan and to administer the winding up of the Debtors' affairs including, but not limited to, closing the Chapter 11 Cases.
- (v) Incur any reasonable and necessary expenses in connection with the implementation of the Plan subject to and in accordance with the Plan Administration Budget, which expenses shall be paid in accordance with Section 13.06.
- (vi) Make decisions regarding (a) the retention or engagement of professionals, employees, and consultants by the Plan Administrator (b) payment, subject to and in accordance with the Plan Administration Budget, of the fees and charges incurred by the Plan Administrator on or after the Effective Date for fees and other expenses of professionals employees, and consultants retained by the Plan Administrator, disbursements, expenses, or related support services relating to the winding down of the Debtors and implementation of the Plan, in each case without further Bankruptcy Court approval.
- (vii) File tax returns.
- (viii) Seek a determination of tax liability under section 505 of the Bankruptcy Code or otherwise and to pay, as provided in the Plan Administration Budget, any taxes incurred by the Debtors at any time.
- (ix) Collect any accounts receivable or other claims of the Debtors not otherwise disposed of pursuant to the Plan.
- (x) Invest Cash in the GUC Account and the Plan Administration Account in accordance with section 345 of the Bankruptcy Code or as otherwise permitted by a Final Order of the Bankruptcy Court and as deemed appropriate by the Plan Administrator.
- (xi) Enter into any agreement or execute any document required by or consistent with the Plan and perform all of the Debtors' obligations thereunder, as applicable.
- (xii) With the consent of the Exit Facility Agent in its sole and absolute discretion, abandon in any commercially reasonable manner any assets of the Debtors and the Estates remaining after the Effective Date, which Plan Administrator reasonably concludes are of no benefit to the Estates.
- (xiii) Take such other actions not inconsistent with the provisions of the Plan which the Plan Administrator deems reasonably necessary or desirable with respect to administering the Plan.

(c) Indemnification of Plan Administrator. The Plan Administrator and the Plan Administrator's agents and professionals, shall not be liable for actions taken or omitted in its capacity as, or on behalf of, the Plan Administrator, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Plan Administrator, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or *ultra vires* acts. Any indemnification or reimbursement Claims of the Plan Administrator (and the other parties entitled to indemnification under this Subsection (c)) shall be satisfied by the Reorganized Debtors; *provided, however*, the Plan Administrator shall return any portion of such funds used to defend any action in which the Plan Administrator is found to have (i) acted with willful misconduct, gross negligence or bad faith, (ii) engaged in self-dealing, (iii) breached its fiduciary duty, or (iv) committed *ultra vires* acts. The Plan Administrator shall be entitled to rely, in good faith, on the advice of its retained professionals. The provisions of this Subsection do not apply to actions taken by the Plan Administrator in any capacity other than as Plan Administrator or as Disbursing Agent.

(d) Plan Administration Budget. The Plan Administrator shall perform its duties within the parameters of the Plan Administration Budget, including without limitation using the Cash in the Plan Administration Account and the GUC Account consistent therewith and with the terms and obligations of the Plan and the Plan Administration Budget, in each case in order to carry out its duties under the Plan.

(e) Taxes. The Plan Administrator shall have the powers of administration regarding all of the Debtors' tax obligations, including the filing of tax returns.

(i) Where and as applicable, the Plan Administrator shall (A) complete and file within ninety (90) days after the Effective Date (or such longer period as authorized by the Bankruptcy Court) the Debtors' final federal, state, and local tax returns, (B) request an expedited determination of any unpaid tax liability of the Debtors, the Reorganized Debtors or the Estates under section 505 of the Bankruptcy Code for all taxable periods through the liquidation of the Reorganized Debtors as determined under applicable tax laws, and (C) represent the interest and account of the Reorganized Debtors or the Estates before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit.

(ii) The Plan Administrator may request that the Bankruptcy Court determine the amount of any Tax Claim pursuant to section 505 and/or section 502(c) of the Bankruptcy Code regardless of whether the Debtors previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate Claims at any time.

(f) Resignation, Death, or Removal of Plan Administrator. The Plan Administrator may resign at any time upon sixty (60) days' written notice in accordance with the notice provisions of the Plan, but shall serve until a successor Plan Administrator is appointed. No successor Plan Administrator hereunder shall have any liability or responsibility for the acts or omissions of any predecessor Plan Administrators. The Plan Administrator may be terminated at any time, with or without cause, upon mutual consent of the Exit Facility Agent and counsel for the Debtors' estates. In the event the Plan Administrator has been terminated, resigns, dies, or is otherwise unwilling or unable to continue carrying out its duties as the Plan Administrator, a successor Plan Administrator shall be designated upon the mutual agreement of the Exit Facility Agent and counsel for the Estates, and if such parties cannot agree, the Bankruptcy Court shall retain jurisdiction to determine a successor Plan Administrator. Every successor Plan Administrator appointed pursuant hereto shall execute, acknowledge, and deliver to the Bankruptcy Court an instrument in writing accepting such appointment hereunder, and thereupon such successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor.

(g) Termination of Duties of Plan Administrator. The duties of the Plan Administrator will terminate upon the later to occur of (i) all assets held or controlled by the Plan Administrator have been distributed in accordance with the terms of this Plan and (ii) upon material completion of all other duties and functions of the Plan Administrator set forth herein, but in no event later than 180 days after the Effective Date, unless extended by order of the Bankruptcy Court.

5.07. Powers of Officers.

The officers of the Debtors prior to the Effective Date (and the Plan Administrator thereafter) or the officers or other authorized Persons of Reorganized Debtors, as the case may be, shall have the power to enter into or execute any documents or agreements that they deem reasonable and appropriate to effectuate the terms of the Plan.

5.08. Retention of Counsel.

On and after the Effective Date, (i) the Reorganized Debtors may continue to retain Cooley Godward Kronish LLP as their legal counsel, and (ii) the Plan Administrator may retain Cooley Godward Kronish LLP as its counsel.

ARTICLE VI

REORGANIZATION TRANSACTION

6.01. Exit Facility.

(a) Parties. The Exit Facility Lenders, as lenders, will make (severally and not jointly) the Exit Facility Loans to the Exit Facility Borrowers upon the terms and conditions set forth in the Exit Facility Credit Agreement (the "Exit Facility"). The respective obligations of the Exit Facility Borrowers under the Exit Facility shall be joint and several.

(b) Exit Facility Revolving Loans. The Exit Facility Credit Agreement shall include a post-Effective Date revolving credit facility under which loans in an aggregate maximum principal amount not to exceed the Exit Revolving Loan Commitment shall be available to the Exit Facility Borrowers from time to time. The Exit Facility Revolving Loans shall be funded by the Exit Facility Lenders on a several and not joint basis. The availability of the Exit Facility Revolving Loans shall be subject to the terms and conditions set forth in the Exit Facility Credit Agreement.

(c) Exit Facility Term A Loans.<sup>1</sup>

(i) DIP Advance Claims. On the Effective Date, each holder of a DIP Advance Claim shall be paid in full in Cash from the proceeds of the Exit Facility Term A-1 Loans and such DIP Advance Claim shall be deemed cancelled and of no further force or effect.

(ii) Roll-Up Claims. On the Effective Date, each Roll-Up Claim shall be deemed converted, as of the Effective Date, into an Exit Facility Term A-2 Loan in a principal amount equal to the unpaid amount of the Roll-Up Claim so converted, and such Roll-Up Claims shall be deemed cancelled and of no further force or effect. To the extent not previously reduced in connection with the Postpetition Credit Agreement, the amount of the Prepetition Facility Claim held by each holder of a Roll-Up Claim shall be deemed reduced by an amount equal to such converted Roll-Up Claim as and when provided in the DIP Financing Orders.

(d) Terms of Exit Facility Loans. The anticipated terms (including interest rates, fees, priorities, terms and other provisions) of the Exit Facility Loans are set forth in Exhibit A attached hereto; *provided, however*, that the actual terms and conditions of the Exit Facility Loans shall be as set forth in the Exit Facility Credit Agreement, which will be filed with the Plan Supplement and will be controlling in the event of any conflict between the terms of the Exit Facility Credit Agreement and the terms set forth in Exhibit A.

6.02. Ownership of New PE Holdco Membership Interests. As of the Effective Date, New PE Holdco Membership Interests will be owned as follows: (a) approximately 27% by the Exit Facility Lenders (or their respective designees) pro rata based on their respective combined share of (i) the Exit Revolving Loan Commitment and (ii) the Exit Facility Term A-1 Loans, and (b) the remaining approximately 73% by the Prepetition Lenders pro rata based on their (or their respective designees') respective percentage holdings of the Prepetition Facility Claims (after giving effect to any reduction of such holdings in respect of converted Roll-Up Claims, as described in Section 6.01(c)) (the "Prepetition Lender Newco Interests"). The Prepetition Lenders will have the opportunity to grant a Call Option with respect to their Prepetition Lender Newco Interests (see Section 6.05).

6.03. Discharge of Claims.

(a) The Prepetition Lenders agree to discharge one-hundred percent (100%) of their Prepetition Facility Claims in exchange for ownership of one-hundred percent of the equity interests in Reorganized PEH.

(b) On the Effective Date, immediately prior to the contribution of any Prepetition Facility Claims to New PE Holdco (as described in Section 6.04), each Prepetition Lender shall enter into a discharge agreement, in form and substance reasonably acceptable to the Debtors, pursuant to which such Prepetition Lender shall acknowledge and agree to the cancellation and discharge of its pro rata portion of any Prepetition Facility Claims not to be contributed to New PE Holdco by such Prepetition Lender.

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<sup>1</sup> The amount of the Exit Facility Term A Loans will be equal to the amount of the loans actually funded under the Postpetition Credit Agreement as of the Effective Date plus an equal amount representing the Roll-Up Claims.

(c) In furtherance, and not in limitation of the generality of the foregoing or of Sections 10.03 and 10.04, all DIP Claims, all Prepetition Facility Claims and the PEI Claim shall be deemed fully satisfied and discharged in exchange for the implementation of the Reorganization Transaction.

6.04. Reorganized PEH Membership Interests. On the Effective Date, 100% of the newly-issued membership interests in Reorganized PEH shall be transferred to New PE Holdco in exchange for New PE Holdco's discharge of all the Prepetition Facility Claims contributed to it by its members upon its formation immediately prior to the consummation of the Restructuring Transaction.

6.05. Call Option.

(a) PEI has proposed acquiring from the Prepetition Lenders up to 25% of the aggregate New PE Holdco Membership Interests for a total price of up to \$30,000,000 in cash (or \$1,200,000 for each one percent of the aggregate New PE Holdco Membership Interests) (the "Call Option Price"). In order to effect this acquisition, as part of the Reorganization Transaction each Prepetition Lender will have the opportunity, but not the obligation, to elect to grant (any Prepetition Lender so granting, a "Granting Lender") to PEI the right to acquire at the Call Option Price (a "Call Option") all or a portion of the Prepetition Lender Newco Interests granted it hereunder (the Prepetition Lender Newco Interests underlying any Call Option, the "Offered Interests"); *provided, however* that if the Granting Lenders grant Call Options with respect to Offered Interests that in the aggregate exceed 25% of the New PE Holdco Membership Interests, the 25% of New PE Holdco Membership Interests to be purchased by PEI will be allocated among the Granting Lenders on a pro rata basis based upon the proportion each such Granting Lender's Offered Interests bears to the Offered Interests of all the Granting Lenders. Each Granting Lender will elect to grant its Call Option on the Ballot, which election will be expressed in terms of all or a portion of such Granting Lender's Prepetition Facility Claims; *provided* that if a Granting Lender elects the Call Option for less than all of its Prepetition Facility Claims, the amount of such Granting Lender's Prepetition Facility Claims not subject to the Call Option shall not be less than \$2,000,000.

(b) The Call Options shall be exercisable, pursuant to the Call Option Agreement, at the option of PEI within 90 days after the Confirmation Date for all or some portion of the Offered Interests; *provided* that if PEI elects to purchase some, but not all, of the Offered Interests, the Offered Interests PEI does elect to purchase will be allocated among the Granting Lenders on a pro rata basis based upon the proportion each such Granting Lender's Offered Interests bears to the total Offered Interests of all Granting Lenders.

(c) The terms and conditions of the Call Options, including representations, warranties and covenants customary for equity call options as are mutually agreed upon by PEI and the Granting Lenders, will be more fully set forth in the Call Option Agreement.

6.06. Corporate Action. Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including (i) all actions necessary to consummate the Reorganization Transaction, including without limitation those necessary or desirable to cause the consummation of the transactions specified in Section 5.02, (ii) all actions otherwise necessary to implement the Operating Agreement of New PE Holdco and (iii) all other actions contemplated by the Plan (whether to occur before, on or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan, shall occur in accordance with the Plan and any applicable Charter Documents or governing agreements and shall be in effect, without any requirement of further action by the security holders, members of boards of managers, managers, directors or officers of the Debtors or the Reorganized Debtors. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and directed to issue, execute and deliver the agreements, documents, securities, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors, including, without limitation, (x) the Plan Supplement Documents and (y) any and all other agreements, documents, securities and instruments relating to the foregoing (including without limitation security documents). The authorizations and approvals contemplated by this Section 6.06 shall be effective notwithstanding any requirements under non-bankruptcy law.

6.07. Corporate Governance.

(a) Operating Agreement of New PE Holdco. The Operating Agreement of New PE Holdco will be filed under seal with the Plan Supplement and, pursuant to the Confirmation Order, effective as of the Effective Date shall establish the rights and obligations of the holders of the New PE Holdco Membership Interests and the governance of New PE Holdco.

(b) Operating Agreement of Reorganized PEH.

(i) The Operating Agreement of Reorganized PEH will be filed with the Plan Supplement and will be executed and delivered as part of the Reorganization Transaction, and the Reorganized Debtors shall promptly make such filings with the Secretary of State of Delaware and such other authorities as are required under applicable law.

(ii) On, as of or after the Effective Date, Reorganized PEH may (x) cause such amendments to or amendment and restatement of the limited liability company agreements of the Reorganized Subsidiaries and/or (y) cause one or more of the Reorganized Subsidiaries to be converted to corporations, in each case as Reorganized PEH deems necessary or desirable to effectuate the Plan and/or carry out the businesses of the Reorganized Debtors.

(c) Reorganized Debtors' Officers and Boards of Managers. As of the Effective Date, the term of the current members of the boards of managers of the Debtors shall be deemed expired, and the management of each Reorganized Debtor, including appointment of the initial manager(s), board of managers, officer(s) and/or other applicable management Person(s), shall be determined in accordance with such Reorganized Debtor's Charter Documents. The form of management and identities, affiliations and the amount of any compensation of any initial managers, members of any boards of managers, officers and/or other applicable management Persons of Reorganized PEH and each of the Reorganized Subsidiaries will be disclosed in the Plan Supplement. Any successors to Reorganized Debtors' initial management shall be designated by the Exit Facility Agent, and shall be appointed in compliance with their respective Charter Documents.



(d) Indemnification of Officers and Managers. Upon the Effective Date, the respective Charter Documents of each Reorganized Debtor shall contain provisions which (i) eliminate the personal liability of the Debtors' and the Reorganized Debtors' then-present and any future managers, directors and officers for post-emergence monetary damages resulting from breaches of their fiduciary duties to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized; and (ii) require such Reorganized Debtor, subject to appropriate procedures, to indemnify its managers, officers, and other employees serving on or after the Effective Date for all claims and actions to the fullest extent permitted by applicable law in the state in which the subject Reorganized Debtor is organized, it being expressly understood that in no event shall the Reorganized Debtors be responsible for any indemnification claims relating to any event or matter arising on or prior to the Effective Date.

6.08. Approval of Exit Facility. The Exit Facility and the execution and delivery by the Reorganized Debtors of the Exit Facility Credit Agreement and the Plan Supplement Documents, as applicable, shall be approved pursuant to the Confirmation Order.

6.09. Securities Law Matters. Pursuant to, in accordance with, and solely to the extent provided under section 1145 of the Bankruptcy Code, (i) the issuance by New PE Holdco of the New PE Holdco Membership Interests to the Exit Facility Lenders and Prepetition Lenders (or their respective designees, as applicable) pursuant to the Operating Agreement of New PE Holdco, and (ii) the transfer of the membership interests in Reorganized PEH to New PE Holdco pursuant to Section 5.05 and the Operating Agreement of Reorganized PEH shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code, and may each be sold with registration to the extent permitted under section 1145 of the Bankruptcy Code, and each shall be deemed to be a public offering pursuant to section 1145(c) of the Bankruptcy Code.

6.10. Books and Records. On the Effective Date, title to the books and records of the Debtors shall be deemed vested in the Reorganized Debtors; *provided, however,* that the Plan Administrator shall maintain such books and records, on behalf of the Reorganized Debtors, as provided in Section 5.06(b)(iii) and pursuant to the terms and conditions of Section 5.06. On and after the Effective Date, upon reasonable prior notice, the Reorganized Debtors shall provide the Plan Administrator and other representatives of the Debtors' estates with reasonable access, during normal business hours, to the books and records in their custody and control.

6.11. Effective Date and Closing of Reorganization Transaction. The Debtors shall use commercially reasonable efforts to cause the Effective Date to occur, the Exit Facility to close, and the Reorganization Transaction to close, in each case, as soon as is reasonably practicable following the date of this Plan.

## ARTICLE VII

### PROVISIONS REGARDING VOTING AND DISTRIBUTIONS UNDER THE PLAN

7.01. Voting of Claims. Each holder of an Allowed Claim in an impaired Class of Claims that is entitled to vote on the Plan pursuant to Article IV of the Plan shall be entitled to vote separately to accept or reject the Plan as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court.

7.02. Nonconsensual Confirmation. If any impaired Class of Claims entitled to vote shall not accept the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, the Debtors reserve the right to amend the Plan in accordance with Section 13.10 or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code or both.

7.03. Distributions. All distributions of Cash under the Plan shall be made by the Disbursing Agent, who shall make distributions as and when directed by the Plan Administrator and in accordance with the Plan.

7.04. Distributions of Cash. Any payment of Cash made pursuant to the Plan shall, at the Disbursing Agent's option, be made by check drawn on a domestic bank or wire transfer.

7.05. Timing of Distributions. In the event that any payment, distribution, or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or distribution or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

7.06. Delivery of Distributions. Subject to Bankruptcy Rule 9010, all distributions of Cash under the Plan to holders of Allowed Claims shall be made to the holder of each Allowed Claim at the address of such holder as listed on the Schedules as of the Bar Date, unless the Disbursing Agent has been properly notified in writing of a change of address. In the event that any distribution to any such holder is returned as undeliverable, the Disbursing Agent shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder, at which time such distribution shall be made to such holder; *provided, however*, that, with respect to any Claim of any creditor whose distribution is returned as undeliverable, any interest payable on such Claim shall cease accruing on the date that such undeliverable distribution was first distributed; *provided further, however*, that, at the expiration of ninety (90) days from the date such distribution is first made such distribution shall be deemed unclaimed property and shall be treated in accordance with Section 7.10.

7.07. Minimum Distributions. No payment of Cash of less than fifty dollars (\$50) shall be made to any holder of a Claim unless a request therefor is made in writing to the Disbursing Agent.

7.08. Distributions to Holders as of the Record Date. As of the close of business on the Record Date, the Claims register shall be closed, and there shall be no further changes in the record holder of any Claim. Neither the Plan Administrator nor the Disbursing Agent shall have any obligation to recognize any transfer of any Claim occurring after the Record Date (including Administrative Expense Claims accruing on or after the Bar Date). The Plan Administrator and the Disbursing Agent shall instead be authorized and entitled to recognize and deal for all purposes under the Plan with only (i) those record holders stated on the Claims register as of the close of business on the Bar Date, (ii) those holders of Administrative Expense Claims accrued after September 1, 2009 that timely file requests for payment prior to the Second Bar Date, and (iii) those holders of Governmental Claims that file proofs of claim prior to the Governmental Unit Bar Date.

7.09. Second Bar Date. The Confirmation Order shall provide that notwithstanding anything in the Plan or the Bar Date Order to the contrary, requests for payment of Administrative Expense Claims accrued on or after the September 1, 2009 must be filed on or before the Second Bar Date and that the Plan Administrator shall have no obligation to recognize or make any payment upon any such Claim filed after the Second Bar Date.

7.10. Unclaimed Distributions. All distributions under the Plan that are unclaimed for a period of at least ninety (90) days after distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and reverted in the Reorganized Debtors and any entitlement of any holder of any Claim to such distributions shall be extinguished and forever barred.

7.11. Cancellation and Surrender of Existing Securities and Agreements. Notwithstanding any other provision of the Plan, as a condition precedent to receiving any distribution under the Plan, each holder of a promissory note, or other instrument or security evidencing a Claim must tender such promissory note or other instrument or security to the Plan Administrator or must execute and deliver an affidavit of loss and furnish an indemnity or bond in substance and amount reasonably satisfactory to the Plan Administrator. Any holder of a Claim that fails to surrender such instrument or to provide the affidavit and indemnity or bond before the later of six months following the (i) Effective Date or (ii) the date such holder's Claim becomes an Allowed Claim shall be deemed to have forfeited all rights and/or Claims and may not receive or participate in any distribution under the Plan.

7.12. Setoffs. The Disbursing Agent may, but shall not be required to, set off against any Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made), any Claims of any nature whatsoever that any of the Debtors may have had prior to the Effective Date may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by of any such Claim that any of the Debtors may have had prior to the Effective Date against the holder of such Claim.

7.13. Votes Solicited in Good Faith. The Debtors have, and upon confirmation of the Plan shall be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code. The Debtors (and each of their respective Affiliates, agents, directors, officers, members, employees, advisors, and attorneys) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance and sale (if applicable) of the securities offered, issued and sold under the Plan and therefore have not been, and on account of such offer, issuance and sale will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer or issuance of the securities offered and distributed under the Plan.

7.14. Tax Matters Concerning Distributions. The aggregate consideration distributed to the Holders of Allowed Claims hereunder shall be treated as first satisfying an amount equal to the principal amount of each such Allowed Claim and, for those Allowed Claims that include unpaid interest accrued prior to the Petition Date, any remaining consideration shall be treated as satisfying such interest.

## ARTICLE VIII

### PROCEDURES FOR TREATING DISPUTED CLAIMS

8.01. Objections to Claims. Any objections to Claims other than Governmental Claims shall be filed and served on or before the later of (i) thirty (30) days after the Second Bar Date, which date may be extended at the sole and absolute discretion of the Plan Administrator for a period of an additional ninety (90) days by filing a notice of such extension with the Bankruptcy Court and without any requirement for the service of notice or approval of such extension by the Bankruptcy Court, and (ii) such date as may be fixed by the Bankruptcy Court, after the giving of proper notice in accordance with Bankruptcy Rule 2002 and a hearing, whether fixed before or after the date specified in clause (i) above. Objections to Governmental Claims shall be filed on or before the later of (i) 120 days after the Effective Date and (ii) such date as may be fixed by the Bankruptcy Court, after notice and a hearing, whether fixed before or after the date specified in clause (i) above.

8.02. No Distributions Pending Allowance. Notwithstanding any other provision of the Plan, if any Claim or portion thereof is Disputed, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Claim shall have become an Allowed Claim through settlement and/or an order of the Bankruptcy Court. The Disbursing Agent shall only make distributions on account of Claims that have become fully Allowed. If and when a previously Disputed Claim becomes a fully Allowed Claim, the Disbursing Agent shall make a Catch-Up Distribution on account of such claim to the extent warranted on the next Distribution Date.

8.03. Tort Claims. All Tort Claims are Disputed Claims. No distributions shall be made on account of any Tort Claim unless and until such Claim is liquidated and becomes an Allowed Claim. Any Tort Claim which has not been liquidated prior to the Effective Date and as to which a proof of claim was timely filed in the Chapter 11 Cases, shall be determined and liquidated in the administrative or judicial tribunal in which it is pending on the Effective Date or, if no action was pending on the Effective Date, in any administrative or judicial tribunal of appropriate jurisdiction. Any Tort Claim determined and liquidated (i) pursuant to a judgment obtained in accordance with this Section and applicable nonbankruptcy law which is no longer appealable or subject to review, or (ii) in any alternative dispute resolution or similar proceeding as same may be approved by order of a court of competent jurisdiction, shall be paid as follows: (A) to the extent such liquidated Claim is, in whole or in part, an Insured Claim, the insured portion shall be paid by the applicable insurer pursuant to the provisions of Section 8.04 and (B) to the extent any portion of such liquidated Claim is not covered by any of the Debtors' insurance policies, such uninsured portion shall be deemed an Allowed Claim in Class 6 and treated in accordance with Section 4.06. Nothing contained in this Section shall constitute or be deemed a waiver of any Claim, right, or Cause of Action that any Debtor may have had prior to the Effective Date against any Person in connection with or arising out of any Tort Claim, including, without limitation, any rights under section 157(b) of title 28 of the United States Code. Notwithstanding any other provision of the Plan, interest shall not commence accruing on any Tort Claim until such Claim has been liquidated and Allowed as set forth in this Section 8.03.

8.04. Distributions Relating to Allowed Insured Claims. Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the provisions of any applicable insurance policy. Nothing contained herein shall constitute or be deemed a waiver of any Cause of Action that the Reorganized Debtors may hold against any other Person, including, without limitation, insurers under any of the Debtors' or Reorganized Debtors' insurance policies.

8.05. Resolution of Claims. On and after the Effective Date, the Plan Administrator shall have the authority to litigate, compromise, settle, otherwise resolve, or withdraw any objections to Claims and compromise, settle, or otherwise resolve Disputed Claims without approval of the Bankruptcy Court.

8.06. Estimation. Notwithstanding any other provision in the Plan to the contrary, the Plan Administrator may at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Plan Administrator has previously objected to such Claim. The Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim. In the event that the Bankruptcy Court estimates any Disputed Claim, such estimated amount may constitute either (i) the Allowed amount of such Claim, (ii) the amount on which a reserve is to be calculated for purposes of any reserve requirement to the Plan, or (iii) a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, Plan Administrator may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

8.07. No Interest or Penalties. No interest or penalties shall be paid on account of Disputed Claims, including, without limitation, Disputed Claims that become Allowed Claims.

## ARTICLE IX

### EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.01. Assumption or Rejection of Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases that exist between the Debtors and any Person shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion or notice for approval of the assumption, assumption and assignment, or rejection of such executory contract or unexpired lease has been filed and served prior to the Effective Date, (iii) that is specifically designated on Schedule A-1 as a contract or lease to be assumed as modified by mutual agreement of the Debtors on one hand and the Exit Facility Agent on the other hand (for the avoidance of doubt, any such contract or lease that is not so mutually modified shall be deemed rejected by the Debtors as of the Effective Date), which contracts and/or leases, as so mutually modified, will be filed with the Plan Supplement or (iv) that is specifically designated as a contract or lease to be assumed on Schedule A to the Plan; *provided, however*, that the Debtors reserve the right, on or prior to the Effective Date and subject to the consent of the Exit Facility Agent in its sole and absolute discretion, to amend Schedule A to delete any executory contract or unexpired lease therefrom or add any executory contract or unexpired lease thereto, in which event such executory contract(s) or unexpired lease(s) shall be deemed to be, respectively, assumed or rejected; *provided, further, however*, that the Debtors shall not (y) remove any Core Agreement from Schedule A or (z) add any executory contract or unexpired lease thereto, unless, in each case, the Exit Facility Agent shall have consented to such removal in its sole and absolute discretion. The Debtors shall provide notice of any amendments to Schedule A to the parties to the executory contracts and unexpired leases affected thereby. In the event Schedule A has been amended as provided for in this Section 9.01(a), the Debtors shall file an amended version of Schedule A with the Plan Supplement. The listing of a document on Schedule A shall not constitute an admission by the Debtors that such document is an executory contract or an unexpired lease or that the Debtors have any liability thereunder. Notwithstanding anything to the contrary herein or on any schedule hereto, Permits shall not be deemed rejected by virtue of the Plan notwithstanding the fact that they may be deemed executory contracts.

9.02. Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases. Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the executory contracts and unexpired leases to be assumed or assumed and assigned pursuant to Section 9.01, and (ii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases to be rejected pursuant to Section 9.01.

9.03. Inclusiveness. Unless otherwise specified thereon, each executory contract and unexpired lease listed or to be listed on Schedule A or Schedule A-1 shall include modifications, amendments, supplements, restatements, or other agreements made directly or indirectly, as of the Effective Date, by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such modifications, amendments, supplements, restatements or other such agreements or documents are listed on Schedule A or Schedule A-1.

9.04. Cure of Defaults. Except as may otherwise be agreed to by the parties, within thirty (30) days after the Effective Date, the Plan Administrator shall pay all undisputed Cure Claims. All disputed defaults that are required to be cured shall be cured either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Reorganized Debtors' liability with respect thereto, or as may otherwise be agreed to by the parties.

9.05. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan. Claims arising out of the rejection of an executory contract or unexpired lease pursuant to Section 9.01 must be filed with the Bankruptcy Court and served upon the Plan Administrator no later than thirty (30) days after the later of (i) notice of entry of an order approving the rejection of such executory contract or unexpired lease, (ii) notice of entry of the Confirmation Order, and (iii) notice of an amendment to Schedule A. All such Claims not filed within such time will be forever barred from assertion against the Debtors, Reorganized Debtors, their respective property and their successors and assigns.

## ARTICLE X

### EFFECT OF CONFIRMATION

10.01. No Survival of Corporate Reimbursement Obligations. The obligations of the Debtors and Reorganized Debtors to defend, indemnify, reimburse or limit the liability of their present and former directors, officers or employees who were directors, officers, members, managers, or employees, respectively, prior to the Effective Date, in their capacity as directors, officers, members, managers or employees, against any Claims or obligations pursuant to the Debtors' Charter Documents, applicable state law or specific agreement, or any combination of the foregoing, shall not survive confirmation of the Plan, and shall be discharged irrespective of whether indemnification, defense, reimbursement, or limitation is owed in connection with an event occurring before, on or after the Effective Date; *provided; however*, that nothing in this Section 10.01 shall impair the rights of any Person on account of any timely filed Proof of Claim on account of any Claim accrued prior to the Petition Date based upon any of the foregoing obligations.

10.02. Vesting of Assets. Upon the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the estates of the Debtors shall vest in the Reorganized Debtors free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided herein. From and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as provided herein.

10.03. Discharge of Claims. Except as otherwise provided herein or in the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made hereunder shall be in exchange for and in complete satisfaction, discharge, and release of all existing debts and Claims of any kind, nature, or description whatsoever, including any interest accrued on such Claims from and after the Petition Date, against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, upon the Effective Date, all existing Claims against the Debtors shall be, and shall be deemed to be, discharged and terminated, and all holders of Claims and Equity Interests shall be precluded and enjoined from asserting against the Debtors, their estates, the Reorganized Debtors, or any of their respective assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder has filed a proof of Claim.

10.04. Discharge of Debtors. Upon the Effective Date, except as otherwise expressly provided herein, each holder (as well as any trustees and agents on behalf of each holder) of a Claim or Equity Interest and any Affiliate of such holder shall be deemed to have forever waived, released, and discharged the Debtors, the Reorganized Debtors and the Estates, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, rights, including rights of setoff and recoupment, and liabilities that arose prior to the Effective Date. Upon the Effective Date, all such Persons shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim.

10.05. Release of Claims

(a) Releases by Debtors and the Creditors' Committee. Except for the right to enforce the Plan, each Debtor and Reorganized Debtor, the Creditors' Committee, and each of their respective present and former directors, officers, employees, managers, partners, members and Advisors, shall be deemed, effective upon the occurrence of the Effective Date, to forever release, waive and discharge each of the Released Parties of and from any and all claims, obligations, suits, judgments, damages, debts, rights, causes of action and liabilities whatsoever in connection with or related to the Debtors, the Reorganized Debtors, the Chapter 11 cases, or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Chapter 11 cases, or the Plan; *provided, however*, that the foregoing shall not operate as a waiver or release from any causes of action arising out of the willful misconduct or gross negligence of any such Person as determined by a final order entered by a court of competent jurisdiction.

(b) Releases by Holders of Claims. Except for the right to enforce the Plan, each Person who votes to accept the Plan, or who, directly or indirectly, is entitled to receive a distribution under the Plan, including Persons entitled to receive a distribution via an attorney, agent, trustee or securities intermediary, shall be deemed, effective upon the occurrence of the Effective Date, to forever release, waive and discharge each of the Released Parties of and from any and all claims, obligations, suits, judgments, damages, debts, rights, causes of action and liabilities whatsoever in connection with or related to the Debtors, the Reorganized Debtors, the Chapter 11 cases, or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Chapter 11 cases, or the Plan; *provided, however*, that the foregoing shall not operate as a waiver or release from any causes of action arising out of the willful misconduct or gross negligence of any such Person as determined by a final order entered by a court of competent jurisdiction.



(c) Mutual Releases of Debtors and non-Debtor Affiliates. As of the Effective Date, (i) the Debtors, on behalf of themselves and the Estates, on the one hand, and (ii) each non-Debtor Affiliate of any Debtor, on the other, and each of their respective successors, assigns and any and all Persons who may purport to claim by, through, for or because of them (other than as set forth in Section 10.05(d)(D)), shall be deemed to forever release, waive and discharge all Claims and Causes of Action arising prior to the Effective Date that such Person has, had or may have against the other, including, without limitation, the PEI Claim; *provided, however*, that the releases provided in this paragraph shall have no effect on: (A) the liability of any Person that would otherwise result from the failure of such Person to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan; (B) the liability of a Person that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct; (C) Administrative Expense Claims of non-Debtor Affiliates of the Debtors accrued subsequent to the Petition Date, which shall not be so extinguished and shall be payable as and to the extent provided for in the DIP Orders and the Plan; or (D) the liability of PEI to the Reorganized Debtors under Section 2.01(b) of the Sponsor Support Agreement, the cost of which currently is estimated at approximately \$200,000.

(d) Mutual Releases of Lenders and non-Debtor Affiliates. As of the Effective Date, (i) the Secured Lenders, the Exit Facility Lenders and the Accounts Banks on the one hand, and (ii) each non-Debtor Affiliate of any Debtor, on the other, and each of their respective successors, assigns and any and all Persons who may purport to claim by, through, for or because of them, shall be deemed to forever release, waive and discharge all Claims and Causes of Action arising prior to the Effective Date that such Person has, had or may have against each other in connection with or related to the Debtors or the Chapter 11 Cases, *provided, however*, that the releases provided in this paragraph shall have no effect on: (A) the liability of any Person that would otherwise result from the failure of such Person to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan; (B) the liability of any Person that would otherwise result from any such act, omission or occurrence to the text that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct; (C) the liability of PEI to the Reorganized Debtors under Section 2.01(b) of the Sponsor Support Agreement, the cost of which currently is estimated at approximately \$200,000; or (D) any claims of the Debtors against non-Debtor Affiliates that are not released pursuant to Section 10.05(c) to the extent such claims can be, and are, asserted by any Secured Lender and/or Exit Facility Lender on behalf of the Debtors or otherwise.

(e) Injunction Related to Releases. The Confirmation Order will enjoin permanently the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to this Section 10.05.

10.06. Injunction. Except as otherwise provided in the Plan or an order of the Court, on and after the Confirmation Date, all Persons who have held, hold or may hold Claims against or Equity Interests in the Debtors or their estates are, with respect to any such Claims or Equity Interests, permanently enjoined from and after the Confirmation Date from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, their estates, the Reorganized Debtors, the Released Parties, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons (collectively, the "Injunction Parties"), or against any property of the Injunction Parties; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means whether directly or indirectly, of any judgment, award, decree or order against the Injunction Parties or against any property of the Injunction Parties; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Injunction Parties or against any property of the Injunction Parties; (d) asserting any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due the Injunction Parties; and (e) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of the Plan.

10.07. Term of Injunctions or Stays. Unless otherwise provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Petition Date, shall remain in full force and effect until the earlier of the time the Chapter 11 Cases are closed and the time the Chapter 11 Cases are dismissed.

10.08. Exculpation. None of the Released Parties, the Reorganized Debtors, the Plan Administrator, the Disbursing Agent, the Creditors' Committee, or their respective present or former subsidiaries, Affiliates, agents, directors, officers, employees, members, shareholders, managers, agents, attorneys, other advisors and representatives, and each of the successors and assigns of each of the foregoing shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, arising out of or in preparation for filing, the Chapter 11 Cases, the preparation or negotiation of the Disclosure Statement and Plan, the solicitation of votes in connection with the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence. Nothing in this Section 10.08 shall limit the liability of the professionals of the foregoing exculpated parties to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility. This provision shall not be deemed to act to release any Avoidance Actions.

10.09. Avoidance Actions. Except to the extent released under the Plan, from and after the Effective Date, the Plan Administrator shall have the right to prosecute any avoidance or equitable subordination or recovery actions under sections 105, 502(d), 510, 542 through 551, and 553 of the Bankruptcy Code (collectively, "Avoidance Actions") that belonged to the Debtors or Debtors in Possession immediately prior to the Petition Date, and all such Avoidance Actions may be investigated, prosecuted and/or settled by the Plan Administrator to the full extent the Debtors were authorized to take such actions prior to the Effective Date. Avoidance Actions against holders of Allowed General Unsecured Claims shall not be pursued; provided, however, that the Debtors', Reorganized Debtors' and the Plan Administrator's rights and defenses with respect to General Unsecured Claims shall be fully preserved, including the assertion of Avoidance Action Claim for defensive or setoff purposes in connection with objections to Claims or otherwise.

10.10. Retention of Causes of Action/Reservation of Rights.

(a) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Reorganized Debtors may have or choose to assert on behalf of the Estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any Person, to the extent such Person asserts a crossclaim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Reorganized Debtors, their officers, directors, or representatives, or (ii) the turnover of any property of the Estates; *provided, however*, that the Reorganized Debtors shall not retain the right to prosecute any Causes of Action against any Person released pursuant to Section 10.05.

(b) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Petition Date, against or with respect to any Claim left unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff, and other legal or equitable defenses which the Debtors had immediately prior to the Petition Date fully as if the Chapter 11 Cases had not been commenced. All of the Debtors' legal and equitable rights respecting any Claim left unimpaired by the Plan are and shall be specifically and unequivocally preserved for the benefit of the Reorganized Debtors and may be asserted by the Reorganized Debtors on and after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

10.11. Substantive Consolidation. The Confirmation Order shall approve the consolidation of the Debtors solely for the purpose of implementing the Plan, including for purposes of voting, confirmation and distributions to be made under the Plan. Pursuant to such order: (1) all assets and liabilities of the Debtors shall be deemed merged; (2) all guarantees by one Debtor of the obligations of any other Debtor shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the Debtors; and (3) each and every Claim filed or to be filed in the Chapter 11 Case of any of the Debtors shall be deemed filed against all of the Debtors and shall be deemed one Claim against all of the Debtors. Such consolidation (other than for the purpose of implementing the Plan) shall not affect: (1) the legal and organizational structures of the Debtors; or (2) distributions from any insurance policies or proceeds of such policies. In addition, such consolidation shall not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code. If any party in interest challenges the proposed limited substantive consolidation, the Debtors reserve the right to establish at the Confirmation Hearing the ability to confirm the Plan on an entity-by entity basis.

ARTICLE XI

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

11.01. Effectiveness. The Plan shall not become effective unless and until the following conditions shall have been satisfied or waived pursuant to Section 11.03:

- (a) The Confirmation Order, in form and substance acceptable to the Debtors, shall have been entered and become a Final Order;
- (b) The Reorganization Transaction satisfying the requirements of Section 5.02 shall have been consummated and the amounts specified in Section 5.02 shall have been fully paid or funded, as applicable;
- (c) All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed;
- (d) The Debtors shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, audited financial statements, and documents that are necessary to implement the Plan and consummate the Reorganization Transaction, and that are required by law, regulation, or order; and
- (e) Any other actions the Debtors determine are necessary to implement the terms of the Plan shall have been taken.

11.02. Failure of Conditions. In the event that one or more of the conditions specified in Section 11.01 have not occurred or otherwise been waived pursuant to Section 11.03 on or before the thirty first day after the date the Confirmation Order is entered by the Bankruptcy Court, as such date may be extended from time to time by the mutual agreement, of the Exit Facility Agent and the Debtors, in their respective sole and absolute discretion, (i) the Confirmation Order shall be vacated, (ii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iii) the Debtors' obligations with respect to Claims and Equity Interests shall remain unchanged (subject to a reduction of such Claims for any amounts distributed by the Plan Administrator prior to such date) and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

11.03. Waiver of Conditions. The Debtors, with the consent of the Agents and the Exit Facility Agent in their respective sole and absolute discretion and to the extent not prohibited by applicable law, may waive one or more of the conditions precedent to effectiveness of the Plan set forth in Section 11.01 other than the condition specified in Section 11.01(b).

ARTICLE XII

RETENTION OF JURISDICTION

12.01. Subject to Section 8.03, the Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases and the allowance of cure amounts and Claims resulting therefrom and any disputes with respect to executory contracts or unexpired leases relating to facts and circumstances arising out of or relating to the Chapter 11 Cases;
- (b) To hear and determine any and all adversary proceedings, applications, and contested matters;
- (c) To hear and determine any objection to any Claim;
- (d) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (e) To issue such orders in aid of execution and consummation of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- (f) To consider any amendments to, or modifications of, the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (g) To hear and determine all applications for compensation and reimbursement of expenses of professionals under sections 330, 331, and 503(b) of the Bankruptcy Code;
- (h) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan;
- (i) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;
- (j) To recover all assets of the Debtors and property of the Debtors and the Estates, wherever located;

- (k) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of tax under section 505(b) of the Bankruptcy Code);
- (l) To resolve any Disputed Claims;
- (m) To determine the scope of any discharge of any Debtor under the Plan or the Bankruptcy Code;
- (n) To resolve any disputes (i) regarding the payment of fees and reimbursement of expenses of any professional retained by the Plan Administrator or the Debtors (if applicable) on and after the Effective Date and (ii) between the Exit Facility Agent and counsel for the Estates regarding the choice of a successor Plan Administrator;
- (o) To hear any other matter not inconsistent with the Bankruptcy Code; and
- (p) To enter a final decree closing the Chapter 11 Cases.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

13.01. Settlement and Compromise. Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3)(A) of the Bankruptcy Code, this Plan, including without limitation, the substantive consolidation provisions set forth in Section 10.11, serves as an implementation of the global settlement which represents a good faith compromise and settlement of all Equity Interests in the Debtors and any Claims brought, asserted or assertable, or that could have been brought, asserted or assertable, by any creditor or any other interested party. The classification, treatment, distribution, releases and other benefits provided to creditors under the Plan serve as consideration for the settlement. The entry of the Confirmation Order shall constitute the Court's approval of the implementation of the global settlement and the related waivers and releases set forth herein shall be binding on all creditors, the Creditors Committee and any other party in interest. The Bankruptcy Court's findings shall constitute its determination that the global settlement and its implementation herein is in the best interest of the Debtors, their estates, the creditors and other parties in interest, and is fair, equitable and within the range of reasonableness.

13.02. Effectuating Documents and Further Transactions. The Plan Administrator is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions, all on behalf of the Debtors or Reorganized Debtors, as applicable, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and any securities issued pursuant to the Plan.

13.03. Withholding and Reporting Requirements. In connection with the Plan and all instruments issued in connection therewith and distributed thereon, any party issuing any instrument or making any distribution under the Plan, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

13.04. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or other instrument of transfer under the Plan, including, without limitation, any merger agreements or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

13.05. Payment of Statutory Fees. On the Effective Date, and thereafter as may be required, the Plan Administrator shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

13.06. Post-Effective Date Professional Fees and Expenses. From and after the Effective Date, the Plan Administrator shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professional Persons thereafter incurred by the Reorganized Debtors and/or the Plan Administrator, including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of the Plan.

13.07. Dissolution of the Creditors' Committee. The Creditors' Committee shall terminate effective as of the Effective Date and as of such date its members and employees or agents (including attorneys, financial advisors, accountants, and other professionals) shall be released and discharged from any further authority, duties, responsibilities, and obligations relating to, arising from, or in connection with their service on the Creditors' Committee.

13.08. Disposition of Remaining Funds. At such time as the Plan Administrator determines that it has fully implemented of the Plan and liquidated and wound down the affairs of the Debtors, in the event there are any remaining funds of the Estates in the possession of the Plan Administrator, the Plan Administrator shall transfer such funds to the Reorganized Debtors, including any de minimus amounts remaining in the GUC Account to the extent such amounts are not reasonably sufficient to make a distribution to General Unsecured Creditors practicable.

13.09. Plan Supplement. The Debtors will file with the Clerk of the Bankruptcy Court at least ten (10) days prior to the Confirmation Hearing a supplement to the Plan (the "Plan Supplement"), which shall include: (a) an amended Schedule A, if amended pursuant to Section 9.01(a), (b) the form of Exit Facility Credit Agreement, (c) the forms of Operating Agreement of New PE Holdco and Operating Agreement of Reorganized PEH, (d) the form of management and identities, affiliations and the amount of any compensation of any initial managers, members of any boards of managers, officers and/or other applicable management Persons of Reorganized PEH and each of the Reorganized Subsidiaries, (e) those forms of contracts or leases listed on Schedule A-1 that are modified by mutual agreement of the Debtors on one hand and the Exit Facility Agent on the other hand, in the form as so mutually modified, (f) the form of the Call Option Agreement and (g) any other appropriate documents (the "Plan Supplement Documents"); *provided, however*, the Debtors may amend (i) Schedule A through and including the Confirmation Date to delete any executory contract or unexpired lease therefrom or add any executory contract or unexpired lease thereto, in which event such executory contract(s) or unexpired lease(s) shall be deemed to be, respectively, assumed or rejected (*provided, however*, that the Debtors shall not (y) remove any Core Agreement from Schedule A or (z) add any executory contract or unexpired lease thereto, unless, in each case, the Exit Facility Agent shall have consented to such removal in its sole and absolute discretion) and (ii) each of the other Plan Supplement Documents through and including the Effective Date in a manner consistent with the Plan and Disclosure Statement and subject to the consent of the Agents, in their respective sole and absolute discretion, to such amendments. The Debtors shall provide notice of any amendments to Schedule A to the parties to the executory contracts and unexpired leases affected by such amendment. Upon its filing with the Bankruptcy Court, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims or Equity Interests may obtain a copy of the Plan Supplement upon written request to Plan Administrator in accordance with Section 13.20 of the Plan.

13.10. Amendment or Modification of the Plan. Alterations, amendments, or modifications of or to the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended, or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with section 1125 of the Bankruptcy Code. The Plan may be altered, amended, or modified at any time after the Confirmation Date and before the Effective Date, provided that the Plan, as altered, amended, or modified, satisfies the requirements of sections 1122 and 1123 of the Bankruptcy Code and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended, or modified, under section 1129 of the Bankruptcy Code and the circumstances warrant such alterations, amendments, or modifications. A holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified, if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim of such holder.

13.11. Revocation or Withdrawal of the Plan. The Debtors reserve the right, in consultation with the Agents, to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any or Equity Interests in or Claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

13.12. Vacatur of Confirmation Order. If a Final Order denying confirmation of the Plan is entered, or if the Confirmation Order is vacated, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall (a) constitute a waiver, release or discharge of any Claims against or Equity Interests in the Debtors; (b) prejudice in any manner the rights of the holder of any Claim against, or Equity Interest in, the Debtors; (c) prejudice in any manner any right, remedy or claim of the Debtors; or (d) be deemed an admission against interest by the Debtors.



13.13. Severability. If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

13.14. Expedited Tax Determination. The Plan Administrator may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtors at any time.

13.15. Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit or schedule hereto or in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

13.16. Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtors, the holders of Claims and Equity Interests and their respective successors and assigns, including, without limitation, the Plan Administrator.

13.17. Exhibits/Schedules. All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein.

13.18. Waiver of Federal Rule of Civil Procedure 62(a) and Bankruptcy Rule 6004(h). The Debtors may request that the Confirmation Order include (a) a finding that Federal Rules of Civil Procedure 62(a) and/or Bankruptcy Rule 6004(h) shall not apply to the Confirmation Order, and/or (b) authorization for the Debtors to consummate the Plan immediately after entry of the Confirmation Order.

13.19. Notice of Confirmation of Plan and Effective Date. On or before ten (10) Business Days after the occurrence of the Effective Date, the Plan Administrator shall mail or cause to be mailed to all Holders of Claims and Equity Interests, a notice that informs such Holders of (a) entry of the Confirmation Order; (b) the Effective Date; (c) the Second Bar Date; and (d) such other matters as the Plan Administrator deems to be appropriate.

13.20. Notices. All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to Debtors:

PACIFIC ETHANOL HOLDING CO. LLC  
400 Capital Mall, Suite 2060  
Sacramento, California 95814  
Attn: Christopher W. Wright, Esq.  
Telephone: (916) 403-2130  
Facsimile: (916) 446-3936

With a copy, which shall not constitute notice, to:

COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, NY 10036  
Attn: Lawrence C. Gottlieb, Esq.  
Richard S. Kanowitz, Esq.  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275

If to the Plan Administrator:

c/o COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, NY 10036  
Attn: Lawrence C. Gottlieb, Esq.  
Richard S. Kanowitz, Esq.  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275

With copies, which shall not constitute notice, to:

The Reorganized Debtors (pursuant to this Section 13.20)

and

SIDLEY AUSTIN LLP  
555 West Fifth Street, 40<sup>th</sup> Floor  
Los Angeles, CA 90013  
Attn: Jennifer Hagle, Esq.  
Telephone: (213) 896-6015  
Facsimile: (213) 896-6600

If to the Exit Facility Agent:

WestLB AG, NEW YORK BRANCH  
1121 Avenue of the Americas  
New York, NY 10036  
Attention: Dominick D'Ascoli  
Phone: (212) 597-8546  
Facsimile: (212) 597-1157  
Email Address: dominick\_dascoli@westlb.com

With a copy, which shall not constitute notice, to:

SIDLEY AUSTIN LLP  
555 West Fifth Street, 40<sup>th</sup> Floor  
Los Angeles, CA 90013  
Attn: Jennifer Hagle, Esq.  
Telephone: (213) 896-6015  
Facsimile: (213) 896-6600  
Email: jhagle@sidley.com

If to the Reorganized Debtors:

c/o Exit Facility Agent  
WestLB AG, NEW YORK BRANCH  
1121 Avenue of the Americas  
New York, NY 10036  
Attention: Dominick D'Ascoli  
Phone: (212) 597-8546  
Facsimile: (212) 597-1157  
Email Address: dominick\_dascoli@westlb.com

With a copy, which shall not constitute notice, to:

SIDLEY AUSTIN LLP  
555 West Fifth Street, 40<sup>th</sup> Floor  
Los Angeles, CA 90013  
Attn: Jennifer Hagle, Esq.  
Telephone: (213) 896-6015  
Facsimile: (213) 896-6600  
Email: jhagle@sidley.com

Dated: New York, New York  
April 16, 2010

Respectfully submitted,

PACIFIC ETHANOL HOLDINGS CO. LLC, *et al.*  
(for itself and on behalf of each of the Debtors)

By: /s/ Neil M. Koehler  
Name: Neil M. Koehler  
Title: President and Chief Executive Officer

Counsel:

Lawrence C. Gottlieb, Esq. (LG-2565)  
Richard S. Kanowitz, Esq. (RK-0677)

COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275

Attorneys for Debtors and  
Debtors in Possession



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:	)	Case No. 09-11713 (KG)
PACIFIC ETHANOL HOLDING CO. LLC, <i>et al.</i> ,	)	
Debtors.	)	Chapter 11
	)	
	)	Jointly Administered
	)	
	)	Docket Ref. Nos. 541, 543, 558, 586, 587, 588 and 597

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
CONFIRMING DEBTORS’ AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Pacific Ethanol Holding Co., LLC, Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton LLC and Pacific Ethanol Magic Valley, LLC, debtors and debtors-in-possession in the above-captioned Chapter 11 Cases (collectively, the “Debtors”), proposed the *Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated April 16, 2010 (D.I. 541) (as it may be amended, modified or supplemented, the “Plan”),<sup>1</sup> and that certain supplement to the Plan, dated May 28, 2010 (D.I. 586) (as the documents contained therein have been or may be further amended, modified or supplemented, the “Plan Supplement”);

WHEREAS, the Court, on April 23, 2010, entered its *Order Approving (A) Disclosure Statement, (B) Notice of Disclosure Statement Hearing, (C) Contents of Solicitation Packages*,

<sup>1</sup> Capitalized terms and phrases not defined herein have the meanings given to them in the Plan. The rules of interpretation set forth in the Plan apply to the Findings of Fact and Conclusions of Law (the “Findings and Conclusions”) contained herein, and to this Order (this “Confirmation Order”). In addition, in accordance with Article I of the Plan, any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

A copy of the Plan is attached hereto as Exhibit A and incorporated herein by reference.

(D) *Procedures for the Distribution of Solicitation Packages and the Solicitation and Tabulation of Votes to Accept or Reject Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* and (E) *Certain Related Relief* (D.I. 558) (the "Disclosure Statement Order"), by which the Court, among other things, approved the Debtors' proposed disclosure statement (the "Disclosure Statement"), established procedures for the solicitation and tabulation of votes to accept or reject the Plan and scheduled a hearing to consider Confirmation of the Plan for June 8, 2010 at 1 p.m. (Eastern time) (the "Confirmation Hearing");

WHEREAS, an affidavit of service was executed by James F. Daloia, Esq., of Epiq Bankruptcy Solutions, LLC, with respect to the mailing of notice of the Confirmation Hearing and solicitation materials in respect of the Plan in accordance with the Disclosure Statement Order (collectively, the "Affidavit of Service") and was filed with the Court on May 11, 2010 (D.I. 574);

WHEREAS, the affidavits regarding the publication of the *Notice of (A) Deadline for Casting Votes to Accept or Reject Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (B) Hearing to Consider Confirmation of Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code and (C) Related Matters* in the *Sacramento Bee*, the *Oregonian*, the *Times-News* (Twin Falls, ID), and the national edition of *The New York Times*, as set forth in the Disclosure Statement Order (collectively, the "Publication Affidavits"), were filed with the Court on May 12, 2010 (D.I. 576);

WHEREAS, Epiq Bankruptcy Solutions, LLC, the Court-appointed solicitation and tabulation agent in respect of the Plan, filed the *Declaration of Christina F. Pullo of Epiq Bankruptcy Solutions, LLC Certifying Voting On, and Tabulation of Ballots Accepting and Rejecting, the Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (Memorandum of Law (defined below), Exhibit B) (the "Voting Affidavit") on June 4, 2010, attesting to the results of the tabulation of the properly executed and timely received Ballots for the Plan as follows:

**Class 4 Claimants.** The Debtors received **16 acceptances out of 16 votes** from holders of Claims under Class 4 (Prepetition Facility Claims), with Class 4 claimants who voted in favor of the Plan holding Claims in the amount of **\$237,022,232.18** for voting purposes, such acceptances being **100 percent in number and 100 percent in amount** of all ballots received from holders of Class 4 Claims (Voting Affidavit, Exhibit A);

**Class 5 Claimants.** The Debtors received **9 acceptances out of 9 votes** from holders of Claims under Class 5 (Roll-Up Claims), with Class 5 claimants who voted in favor of the Plan holding Claims in the amount of **\$24,464,319.81** for voting purposes, such acceptances being **100 percent in number and 100 percent in amount** of all ballots received from holders of Class 5 Claims (Voting Affidavit, Exhibit A);

**Class 6 Claimants.** The Debtors received **34 acceptances out of 37 votes** from holders of Claims under Class 6 (General Unsecured Claims), with Class 6 claimants who voted in favor of the Plan holding Claims in the amount of **\$298,567.69** for voting purposes, such acceptances being **91.89 percent in number and 94.13 percent** in amount of all ballots received from holders of Class 6 Claims (Voting Affidavit, Exhibit A);

WHEREAS, the Debtors filed the *Memorandum of Law in Support of Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (D.I. [\_\_\_\_]) (the "Memorandum of Law") on June 4, 2010;

WHEREAS, the *Declaration of Thomas E. Lumsden in Support of Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Lumsden Declaration") and the *Declaration of Bryon T. McGregor in Support of Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "McGregor Declaration") (Memorandum of Law, Exhibit A and Exhibit C, respectively) were submitted in support of confirmation of the Plan;



WHEREAS, the Court has reviewed the Plan, the Disclosure Statement, the Disclosure Statement Order, the Voting Affidavit, the Affidavit of Service, the Publication Affidavits, the Memorandum of Law, the Lumsden Declaration, the McGregor Declaration, and the other papers before the Court in connection with the confirmation of the Plan;

WHEREAS, the Confirmation Hearing was held on June 8, 2010 at 1 p.m. (Eastern time) before the Honorable Kevin Gross, United States Bankruptcy Judge for the District of Delaware;

WHEREAS, the Court heard the statements of counsel in support of and in opposition to confirmation as reflected in the record made at the Confirmation Hearing;

WHEREAS, the Court has considered all evidence presented at the Confirmation Hearing;

WHEREAS, the Court made certain findings of fact and conclusions of law on the record at the Confirmation Hearing, which findings and conclusions shall be deemed to be incorporated herein in their entirety;

NOW, THEREFORE, the Court hereby enters the following Findings of Fact and Conclusions of Law with respect to confirmation of the Plan:<sup>2</sup>

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<sup>2</sup> These Findings and Conclusions constitute the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable herein by Bankruptcy Rules 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is referred to as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is referred to as a finding of fact.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. FINDINGS AND CONCLUSIONS.**

The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

**A. JURISDICTION, VENUE, CORE PROCEEDING (28 U.S.C. §§ 157(B)(2), 1334(A)).** The Court has jurisdiction over the Debtors' chapter 11 cases pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court has jurisdiction to enter a final order with respect thereto. The Debtors are eligible debtors under section 109 of the Bankruptcy Code. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Debtors are proper plan proponents under section 1121(a) of the Bankruptcy Code.

**B. CHAPTER 11 PETITIONS.** On May 17, 2009 (the "Petition Date"), each Debtor commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed pursuant to section 1104 of the Bankruptcy Code. A statutory committee of unsecured creditors has been appointed pursuant to section 1102 of the Bankruptcy Code. Further, in accordance with an order of this Court, the Debtors' cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

**C. JUDICIAL NOTICE.** The Court takes judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases.

**D. NOTICE OF CONFIRMATION HEARING.** Notice of the Confirmation Hearing and the relevant deadlines for submission of objections and Ballots, as prescribed by this Court in the Disclosure Statement Order, has been provided, as more fully reflected in the Affidavit of Service and the Publication Affidavits, and such notice is adequate and sufficient pursuant to section 1128 of the Bankruptcy Code, Bankruptcy Rules 2002(b) and 3020(b) and other applicable law and rules.

**E. TRANSMISSION OF BALLOTS.** Ballots were transmitted to holders of Claims in Classes eligible to vote on the Plan in accordance with the Disclosure Statement Order.

**F. GOOD FAITH FORMULATION AND SOLICITATION.** The Debtors, as well as all other parties that participated in the formulation of the Plan, acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to section 1125(e) of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018, with respect to the formulation of the Plan, the solicitation of acceptances with regard thereto and the other property to be distributed thereunder. Pursuant to sections 1125(e) and 1145(a) of the Bankruptcy Code, the transmittal of solicitation materials, the solicitation of acceptances of the Plan and the offering, issuance and distribution of consideration pursuant to the Plan are not, and will not be, governed by or subject to any otherwise applicable law, rule or regulation governing the solicitation of acceptance of a plan of reorganization or the offer, issuance or purchase of securities.

**G. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE.**

**1. Section 1129(a)(1) – Compliance of the Plan with Applicable Provisions of the Bankruptcy Code.**

The Plan complies with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 of the Bankruptcy Code.

**a. Sections 1122 and 1123(a)(1)-(4) – Classification and Treatment of Claims and Interests.**

i. In accordance with section 1122(a) of the Bankruptcy Code, Article III of the Plan classifies each Claim against and Equity Interest in the Debtors into a Class containing only substantially similar Claims or Equity Interests. Further, the treatment of each Claim or Equity Interest within a Class is the same as the treatment of each other Claim or Equity Interest in such Class.

ii. In accordance with section 1123(a)(1) of the Bankruptcy Code, Article III of the Plan properly classifies all Claims and Equity Interests that require classification. Article III of the Plan segregates into separate classes Other Priority Claims (Class 1), Secured Tax Claims (Class 2), Other Secured Claims (Class 3), Prepetition Facility Claims (Class 4), Roll-Up Claims (Class 5), General Unsecured Claims (Class 6), Subordinated Claims (Class 7), PEH Equity Claims (Class 8) and Subsidiary Equity Interests (Class 9).<sup>3</sup> The number of classes reflects the diverse characteristics of those Claims and Equity Interests, and the legal rights under the Bankruptcy Code of each of the holders of Claims or Equity Interests within a particular Class are substantially similar to other holders of Claims or Equity Interests within that Class.

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<sup>3</sup> In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified.

iii. In accordance with section 1123(a)(2) of the Bankruptcy Code, Article III of the Plan identifies and describes each Class of Claims or Equity Interests that is not impaired under the Plan. Article III of the Plan indicates that Classes 1-3 and 9 are unimpaired.

iv. In accordance with section 1123(a)(3) of the Bankruptcy Code, Article III of the Plan identifies and describes any Class of Claims or Equity Interests that is impaired under the Plan. Article III of the Plan indicates that Classes 4-8 are impaired.

v. In accordance with section 1123(a)(4) of the Bankruptcy Code, the Plan provides the same treatment for each Claim or Equity Interest of a particular Class unless the holder of such a Claim or Equity Interest agrees to less favorable treatment. (Plan Article IV.)

vi. Due to their entitlement to priority status under section 507 of the Bankruptcy Code, Other Priority Claims have been separately classified in Class 1. (Plan Section 4.01). Based on their secured status, Secured Tax Claims and Other Secured Claims have been separately classified in Classes 2 and 3. (Plan Sections 4.02 and 4.03). Prepetition Facility Claims and Roll-Up Claims have been separately classified in Classes 4 and 5, respectively, due to the distinctive basis for such claims. (Plan Sections 4.04 and 4.05). General Unsecured Claims and Subordinated Claims have been separately classified in Classes 6 and 7 due to the distinctive bases for such claims. (Plan Sections 4.06 and 4.07). The two Classes of Equity Interests are segregated according to the differing nature of such interests and comprised of (i) the equity interests of debtor Pacific Ethanol Holding Co., LLC ("PEH") (Class 8) and (ii) the subsidiary debtor equity interests held directly by PEH (Class 9). (Plan Sections 4.08 and 4.09).

**b. Section 1123(a)(5) – Adequate Means for Implementation of the Plan.**

In accordance with section 1123(a)(5) of the Bankruptcy Code, the Plan, including Article V of the Plan, provides adequate means for its implementation, including, *inter alia*: (i) the funding of the GUC Amount under Section 5.01 of the Plan; (ii) the appointment of the Plan Administrator under section 5.06 of the Plan; (iii) the consummation of the Reorganization Transaction as contemplated by Article VI of the Plan; (iv) the extinguishment of certain intercompany claims under Section 5.03 of the Plan; (v) the vesting of title to all of the Debtors' bank accounts in the Reorganized Debtor under Section 5.04 of the Plan; and (vi) the cancellation of the existing Equity Interests in PEH and the issuance of new membership interests in Reorganized PEH, which will be transferred to New PE Holdco, pursuant to Section 5.05 of the Plan.

**c. Section 1123(a)(6) – Prohibition Against the Issuance of Nonvoting Equity Securities and Adequate Provisions for Voting Power of Classes of Securities.**

The Operating Agreement of Reorganized PEH (filed as Exhibit C to the Plan Supplement), provides that Reorganized PEH shall be owned and managed by a single member.

**d. Section 1123(a)(7) – Selection of Directors and Officers in a Manner Consistent with the Interests of Creditors and Equity Security Holders and Public Policy.**

In accordance with section 1123(a)(7) of the Bankruptcy Code, the provisions of the Plan and the Reorganized Debtors' charters, bylaws or similar constituent documents regarding the manner of selection of officers and directors of the Reorganized Debtors are consistent with the interests of creditors and equity security holders and with public policy. The Debtors have disclosed all necessary information regarding the Reorganized Debtors' officers and directors in the Plan Supplement. To the extent that section 1129(a)(5) is applicable to the selection of the Plan Administrator, the identity and the terms of retention of the Plan Administrator have been disclosed in the Plan and Plan Supplement.

**e. Section 1123(a)(8) – Payment of Earnings From Personal Services or Other Income of a Debtor As Necessary for the Execution of the Plan**

Section 1123(a)(8) of the Bankruptcy Code is not applicable to the Debtors because the Debtors are not individuals.

**f. Section 1123(b)(1) – Impairment of Claims and Interests.**

As permitted by section 1123(b)(1) of the Bankruptcy Code, Article IV of the Plan provides for the impairment of certain classes of Claims and Equity Interests, while leaving other Classes unimpaired. The Plan thus modifies the rights of the holders of certain Claims and Equity Interests and leaves the rights of others unaffected.

**g. Section 1123(b)(2) – Assumption, Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases.**

In accordance with section 1123(b)(2) of the Bankruptcy Code, Article IX and other provisions of the Plan provide for the assumption or rejection of the executory contracts and unexpired leases of the Debtors that have not been previously assumed or rejected pursuant to section 365 of the Bankruptcy Code and appropriate authorizing orders of the Court; *provided, however*, that the Debtors reserve the right, at any time prior to the Effective Date, to amend Schedule A to the Plan to: (i) delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant to Section 9.02 of the Plan; or (ii) add any executory contract or unexpired lease to Schedule A, thus providing for its assumption pursuant to Section 9.02 of the Plan.

**h. Section 1123(b)(3) – Retention, Enforcement and Settlement of Claims Held by the Debtors.**

In accordance with section 1123(b)(3) of the Bankruptcy Code, Section 10.10 of the Plan provides for the retention and enforcement by the Reorganized Debtors of any rights and Causes of Action that the Debtors may hold against any Person or entity to the extent not released under the Plan or otherwise. (Plan Section 10.10).

**i. Section 1123(b)(5) – Modification of the Rights of Holders of Claims.**

Article IV of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of each class of Claims and Equity Interests. (Plan Article IV).

**j. Section 1123(b)(6) – Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code.**

In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with the applicable provisions of the Bankruptcy Code, including the provisions of: (i) Article VI of the Plan relative to the Reorganization Transaction; (ii) Article VII of the Plan governing voting and distributions on account of Allowed Claims; (iii) Article VIII of the Plan establishing procedures for resolving Disputed Claims and making distributions on account of such Disputed Claims once resolved; (iv) Article X of the Plan regarding the release of Claims and injunctions against certain actions; and, (v) Article XII of the Plan regarding retention of jurisdiction by the Court over certain matters after the Effective Date.

**k. Section 1123(d) – Cure of Defaults.**

In accordance with section 1123(d) of the Bankruptcy Code, Section 9.04 of the Plan provides for the satisfaction of cure amount claims associated with each executory contract and unexpired lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code.



**2. Section 1129(a)(2) – Compliance with Applicable Provisions of the Bankruptcy Code.**

The Debtors have complied with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(2) of the Bankruptcy Code, including section 1125 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018. The Disclosure Statement and the procedures by which the Ballots for acceptance or rejection of the Plan were solicited and tabulated were fair, properly conducted and in accordance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and the Disclosure Statement Order. Votes with respect to the Plan were solicited in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order, including the inclusion of the letter from the Creditors' Committee recommending acceptance of the Plan in the solicitation packages. The Debtors, the Reorganized Debtors, the Prepetition Lenders, the Postpetition Lenders and the Creditors' Committee, as well as their respective members and each of their respective directors, officers, employees, agents, members and professionals, acting in such capacity, have acted in "good faith," within the meaning of section 1125(e) of the Bankruptcy Code.

**3. Section 1129(a)(3) – Proposal of the Plan in Good Faith.**

The Debtors proposed the Plan in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the formulation of the Plan. Based on the evidence presented at the Confirmation Hearing, the Court finds and concludes that the Plan has been proposed with the legitimate purpose of maximizing the returns available to creditors and other parties in interest. The Plan itself and the arms' length negotiations among the Debtors, the Prepetition Lenders, the Postpetition Lenders and the Creditors' Committee, to the Plan's formulation, as well as the overwhelming support of creditors for the Plan, provide independent evidence of the Debtors' good faith in proposing the Plan.

**4. Section 1129(a)(4) – Court Approval of Certain Payments as Reasonable.**

In accordance with section 1129(a)(4) of the Bankruptcy Code, no payment for services or costs and expenses in or in connection with these bankruptcy cases, or in connection with the Plan and incident to these bankruptcy cases, including Professional Compensation and Reimbursement Claims, has been or will be made by a Debtor other than payments that have been authorized by order of the Court. Article II of the Plan provides for the payment of Administrative Expense Claims, including Professional Compensation and Reimbursement Claims, which are subject to the Court's approval and the standards of the Bankruptcy Code. In connection with the foregoing, Article XII of the Plan provides that the Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for the periods ending on or before the Effective Date.

**5. Section 1129(a)(5) – Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy.**

In the Disclosure Statement, the Plan, and the Plan Supplement, the Debtors have disclosed all necessary information regarding the Debtors' and Reorganized Debtors' officers and directors and, for the officers of the Reorganized Debtors who may constitute insiders, the compensation paid or to be paid. To the extent that section 1129(a)(5) is applicable to the selection of the Plan Administrator, the identity and the terms of retention of the Plan Administrator has been disclosed in the Plan Supplement. The appointment of the Plan Administrator is consistent with the interests of creditors and equity security holders and with public policy.

**6. Section 1129(a)(6) – Approval of Rate Changes.**

The Debtors' current businesses do not involve the establishment of rates over which any regulatory commission has or will have jurisdiction after confirmation.

**7. Section 1129(a)(7) – Best Interests of Holders of Claims and Interests.**

Each impaired creditor in Classes 4-8 that has not accepted the Plan will on account of such Claim, as demonstrated by the liquidation analyses included as Exhibit III to the Disclosure Statement, receive or retain property under the Plan having a value, as of the Effective Date, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The best interests test has further been satisfied as to Classes 4-8 and is inapplicable to Classes 1-3 and 9.

**8. Section 1129(a)(8) – Acceptance of the Plan by Each Impaired Class.**

a. Pursuant to section 1129(a)(8) of the Bankruptcy Code, all classes of Claims and Equity Interests other than Classes 7 and 8 have either accepted the Plan or are unimpaired. Specifically, Classes 4, 5 and 6 the only classes entitled to vote on the Plan, overwhelmingly voted to accept the Plan. (Voting Affidavit, Exhibit A) Classes 1-3 and 9 are unimpaired under the Plan and, therefore, are deemed to have accepted the Plan. (Plan Article III). Holders of Claims in Classes 7 and 8 will not receive or retain any property under the Plan and are deemed to have rejected the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has been satisfied with respect to all Classes other than Classes 7 and 8.

b. Nonetheless, as explained in Section I.A.17 of these Findings and Conclusions, the Plan satisfies the "cramdown" requirements of section 1129(b) of the Bankruptcy Code necessary to obtain Confirmation of the Plan, notwithstanding the deemed rejection by Classes 7 and 8.

**9. Section 1129(a)(9) – Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code.**

a. The Plan also meets the requirements regarding the payment of Administrative Expense Claims, Other Priority Claims and Priority Tax Claims, as set forth in section 1129(a)(9) of the Bankruptcy Code. Section 2.01 of the Plan provides that, subject to certain bar date provisions in the Plan and unless otherwise agreed by the holder of an Administrative Expense Claim and the applicable Debtor or the Plan Administrator, each holder of an Allowed Administrative Expense Claim shall receive, in full satisfaction of its Administrative Expense Claim, Cash equal to the allowed amount of such Administrative Expense Claim either (i) as soon as reasonably practicable after the Effective Date or (ii) if the Administrative Expense Claim is not Allowed as of the Effective Date, 30 days after the date on which such Administrative Expense Claim becomes an Allowed Administrative Expense Claim. (Plan Section 2.01).

b. Pursuant to Section 2.01 of the Plan, Allowed Administrative Expense Claims based on liabilities incurred by a Debtor in the ordinary course of its business shall be paid by the Debtors and, after the Effective Date, the Plan Administrator, pursuant to the terms and conditions of the particular transaction giving rise to those Administrative Expense Claims, without further action by the holders of such Administrative Expense Claims or further approval by the Court. Id.

c. Section 2.03 of the Plan provides that each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Plan Administrator, in full satisfaction, settlement, and release of such Allowed Priority Tax Claim, (a) in accordance with Bankruptcy Code section 1129(a)(9)(C) and (D), equal Cash payments made on or before the last Business Day of every fiscal year after the Effective Date, over a period not exceeding five years after the assessment of the tax on which such Claim is based, totaling the principal amount of such Claim, plus interest on any outstanding balance of such Allowed Priority Tax Claim, calculated from the later of the Effective Date and the date the Priority Tax Claim is Allowed at a rate to be determined pursuant to section 511 of the Bankruptcy Code; (b) such other treatment agreed to by the Holder of such Allowed Priority Tax Claim, *provided* such treatment is no more favorable than the treatment set forth above, or (c) payment in full in Cash.

d. Section 4.01(b) of the Plan provides that, except to the extent that a holder of an Allowed Other Priority Claim agrees to a less favorable treatment, each holder of an Allowed Other Priority Claim shall receive Cash in an amount equal to such Allowed Other Priority Claim as soon as is practicable following the later of the Effective Date and the date such Other Priority Claim becomes an Allowed Other Priority Claim.

**10. Section 1129(a)(10) – Acceptance By at Least One Impaired, Non-Insider Class.**

As indicated in the Voting Affidavit and as reflected in the record of the Confirmation Hearing, Classes 4, 5 and 6 are impaired under the Plan and have voted to accept the Plan with respect to all Debtors under the Plan. (Voting Affidavit, Exhibit A) These results do not include the acceptance by any insider.

**11. Section 1129(a)(11) – Feasibility of the Plan.**

The McGregor Declaration and the other evidence proffered or adduced at the Confirmation Hearing regarding feasibility (i) is persuasive and credible; (ii) has not been controverted by other evidence; and (iii) establishes that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further reorganization, of the Reorganized Debtors. Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

**12. Section 1129(a)(12) – Payment of Bankruptcy Fees.**

Section 13.05 of the Plan provides that on or after the Effective Date, Administrative Expense Claims for fees payable pursuant to section 1930 of title 28 of the United States Code will be paid in Cash equal to the amount of such Administrative Expense Claim by the Plan Administrator. All fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date shall be paid by the Plan Administrator in accordance therewith until the earlier of the conversion or dismissal of the applicable Bankruptcy Case under section 1112 of the Bankruptcy Code, or the closing of the applicable Bankruptcy Case pursuant to section 350(a) of the Bankruptcy Code.

**13. Section 1129(a)(13) – Retiree Benefits.**

Neither the Reorganized Debtors nor the Plan Administrator shall be obligated to pay retiree benefits (as defined in section 1114(a) of the Bankruptcy Code).

**14. Section 1129(a)(14) – Domestic Support Obligations.**

The Debtors are not obligated to pay any domestic support obligations. Accordingly, the requirements of section 1129(a)(14) of the Bankruptcy Code do not have to be met.

**15. Section 1129(a)(15) – Payment of Unsecured Claims In Case of Individual Debtor.**

The Debtors are not individuals. Accordingly, the requirements of section 1129(a)(15) of the Bankruptcy Code do not have to be met.

**16. Section 1129(a)(16) – Restrictions on Transfers of Property of Nonprofit Entities.**

The Debtors are not a corporation or trust that is not a moneyed, business, or commercial corporation or trust. Accordingly, the Plan complies with section 1129(a)(16) of the Bankruptcy Code.

**17. Section 1129(b) – Confirmation of the Plan Over the Nonacceptance of Impaired Classes.**

a. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding that Classes 7 and 8 are impaired and deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Plan satisfies the "fair and equitable" requirement of section 1129(b)(2)(B) with respect to Classes 7 and 8 because the only class junior to Classes 7 and 8, Class 9, has not been provided property of any value under the Plan. Pursuant to section 5.05 of the Plan, Class 9 Equity Interests shall survive and remain in full force and effect on and after the Effective Date solely for the purpose of preserving the corporate structure of the Subsidiary Debtors solely for the benefit of the Prepetition Facility Claims, such that as of the Effective Date, Reorganized PEH shall be the owner of all of the membership interests of the Reorganized Subsidiaries.

b. The Plan does not unfairly discriminate against the holders of Claims and Equity Interests in Classes 7 and 8 because (i) Subordinated Claims in Class 7 are subordinated to other unsecured claims under applicable law, and as a result, Class 7 Claims are properly placed in a separate class and there is no discrimination with respect to Class 7 as a result of that class receiving no consideration under the Plan; and (ii) holders of Class 8 PEH Equity Interests are not receiving worse treatment under the Plan than holders of Class 9 Subsidiary Equity Interests even though the Subsidiary Equity Interests are not being cancelled under the Plan.

c. Accordingly, the requirements of section 1129(b) are satisfied with respect to Class 5 under the Plan.

**18. Section 1129(d) – Purpose of Plan.**

The principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, and there has been no filing by any governmental unit asserting such avoidance.

**19. Section 1141(d)(3) – Post-Plan Consummation Engagement in Business.**

Because the Debtors will engage in business following consummation of the Plan, section 1141(d)(3) is not applicable.

**H. BURDEN OF PROOF.**

The Debtors have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code, by a preponderance of evidence, which is the applicable evidentiary standard in the Court. The Court also finds that the Debtors have satisfied the elements of section 1129(a) and (b) of the Bankruptcy Code under the clear and convincing standard of proof.

**I. SATISFACTION OF CONDITIONS PRECEDENT TO CONFIRMATION.**

The conditions precedent to the Effective Date of the Plan have been, or are reasonably likely to be, satisfied.

**J. IMPLEMENTATION/NEGOTIATION IN GOOD FAITH.**

All documents necessary to implement the Plan, including those contained in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith and at arms' length and shall, upon completion of documentation and execution be valid, binding, and enforceable agreements and not be in conflict with any federal or state law. The Plan Supplement Documents are necessary and appropriate to implement the Plan.

**K. COMPREHENSIVE SETTLEMENT OF CLAIMS AND CONTROVERSIES.**

Based upon the representations and arguments of counsel for the Debtors and all other testimony either actually given, proffered or otherwise adduced at or in connection with the Confirmation Hearing and the full record of these bankruptcy cases, the findings and conclusions of which are hereby incorporated by reference as if fully set forth herein, the Court finds that, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan, including the releases, exculpations and injunctions, set forth in Section 10.05 have been provided in exchange for good consideration and substantial and critical contributions to the Debtors' reorganization, are in the best interests of the estates, are fair and equitable and constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Equity Interest may have with respect to any Claim or Equity Interest or any distribution to be made pursuant to the Plan on account of any Allowed Claim or Equity Interest. The releases set forth in section 10.05 are integral elements of the restructuring and resolution of these cases in accordance with the Plan. All holders of Claims and Equity Interests received adequate notice of the release, exculpation and injunction provisions described in the Plan and had sufficient opportunity to object to such provisions.



**L. INJUNCTION, EXCULPATION, AND RELEASE.** The Court has jurisdiction under sections 1334(a) and (b) of title 28 of the United States Code to approve the exculpation, injunctions and stays, injunction against interference with the Plan, and releases set forth in Sections 10.5, 10.6, 10.7 and 10.8 of the Plan, respectively. Section 105(a) of the Bankruptcy Code permits issuance of the injunctions and approval of the releases set forth in Section 10.5 of the Plan if, as has been established here based upon the record in these Chapter 11 Cases and the evidence presented at the Confirmation Hearing, such provisions (i) were integral to the agreement among the various parties in interest and are essential to the formulation and implementation of the Plan, as provided in section 1123 of the Bankruptcy Code, (ii) confer substantial benefits on the Debtors' Estates, (iii) are fair, equitable and reasonable, and (iv) are in the best interests of the Debtors, their Estates, and parties in interest. Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the releases, exculpation, and injunctions set forth in the Plan and implemented by this Order are fair, equitable, reasonable, and in the best interests of the Debtors, the Reorganized Debtors and their Estates, creditors and equity holders. The releases of non-Debtors under the Plan are fair to holders of Claims and are necessary to the proposed Reorganization Transaction, thereby satisfying the requirements of In re Continental Airlines, Inc., 203 F.3d 203, 214 (3d Cir. 2000). Such releases are given in exchange for and are supported by fair, sufficient, and adequate consideration provided by each and all of the parties providing such releases. The record of the Confirmation Hearing and these Chapter 11 Cases is sufficient to support the releases, exculpation, and injunctions provided for in Sections 10.5, 10.6, 10.7 and 10.8 of the Plan. Accordingly, based upon the record of these Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or presented at the Confirmation Hearing, this Court finds that the injunctions, exculpation, and releases set forth in Article 10 of the Plan are consistent with the Bankruptcy Code and applicable law. The failure to implement the injunctions, exculpation and releases would seriously impair the Debtors' ability to confirm the Plan.

**M. CONSOLIDATION OF THE ESTATES.**

There are no pending objections to the consolidation of the Debtors' estates pursuant to Section 10.11 of the Plan for the purpose of implementing the Plan. In the absence of any creditor objection to the consolidation, and in light of the overwhelming creditor support for the Plan, the consolidation of the Debtors' estates is consensual. For the foregoing reasons, the consolidation provided for in the Plan is in the best interests of the Debtors' estates and creditors.

**N. EXIT FINANCING.** Upon diligent inquiry, the Debtors have determined that the Exit Facility Credit Agreement and related Plan Supplement Documents (collectively, the "Exit Financing") are the best financing alternatives available to the Debtors. The Exit Financing has been negotiated in good faith and at arms' length and each party thereto may rely upon the provisions of this Order in closing the Exit Financing. The availability of Exit Financing is necessary to the consummation of the Plan and the operation of the Reorganized Debtors, and constitutes reasonably equivalent value and fair consideration. The material documentation for the Exit Financing is set forth in the Plan Supplement, and the terms of the Exit Financing reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are in the best interests of the Debtors' Estates and their creditors.

**O. SATISFACTION OF CONDITIONS TO CONFIRMATION.**

Article XI of the Plan contains conditions precedent to confirmation that must be satisfied or duly waived pursuant to Section 11.03 of the Plan. Pursuant to these Findings and Conclusions and the Confirmation Order, the conditions precedent set forth in Section 11.01 of the Plan have been satisfied or duly waived.

**P. RETENTION OF JURISDICTION.**

This Court properly may retain jurisdiction over the matters set forth in Article XII of the Plan.

**Q. EXEMPTIONS FROM TAXATION.**

Pursuant to section 1146(a) of the Bankruptcy Code, the following may not be taxed under any law imposing a stamp tax or similar tax: (1) any Reorganization Transaction; or (2) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements or agreements of consolidation, disposition, liquidation or dissolution executed in connection with any transaction pursuant to the Plan.

**ORDER**

**ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

**II. GENERAL PROVISIONS REGARDING CONFIRMATION OF THE PLAN AND APPROVAL OF PLAN-RELATED DOCUMENTS.**

**A. FINDINGS AND CONCLUSIONS.**

The above-referenced findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact shall be determined to be a conclusion of law, it shall be deemed so, and vice versa.

**B. CONFIRMATION OF THE PLAN.**

The Plan and each of its provisions (whether or not specifically approved herein) and all exhibits thereto are CONFIRMED in each and every respect, pursuant to section 1129 of the Bankruptcy Code; *provided, however*, that if there is any direct conflict between the terms of the Plan or any exhibit thereto and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. The record of the Confirmation Hearing is closed.

**C. CONDITIONS TO CONFIRMATION AND CONSUMMATION OF THE PLAN.**

Nothing in this Confirmation Order or in the Findings and Conclusions shall in any way affect the provisions of Article XI of the Plan, which includes provisions regarding (1) the conditions precedent to Confirmation of the Plan and to the Effective Date of the Plan, (2) the waiver of any such conditions, and (3) the effect that the nonoccurrence of such conditions may have with regard to the Plan and this Confirmation Order. Upon the satisfaction or waiver of the conditions contained in Section 11.01 of the Plan and the occurrence of the Effective Date, substantial consummation of the Plan, within the meaning of section 1127 of the Bankruptcy Code, is deemed to occur.

**D. EFFECTS OF CONFIRMATION.**

Subject to Section I.C of this Confirmation Order, notwithstanding any otherwise applicable law, immediately upon the entry of this Confirmation Order, the terms of the Plan and this Confirmation Order shall be binding upon all entities, including the Debtors, the Reorganized Debtors, any and all holders of Claims, demands or interests (irrespective of whether such Claims or interests are impaired under the Plan or whether the holders of such Claims or Equity Interests accepted, rejected or are deemed to have accepted or rejected the Plan), any and all nondebtor parties to executory contracts and unexpired leases with any of the Debtors and any and all entities who are parties to or are subject to the settlements, compromises, releases, waivers, discharges and injunctions described herein and in the Findings and Conclusions and the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing.

**E. APPROVAL, MODIFICATION AND EXECUTION OF PLAN-RELATED DOCUMENTS.**

1. The Plan and all exhibits thereto, including each of the Plan Supplement Documents, substantially in the form as they exist at the time of the entry of this Confirmation Order are approved in all respects.

2. All relevant parties, including the Debtors, the Reorganized Debtors and the Plan Administrator, shall be authorized, without further action, notice or order of the Court, to execute the applicable Plan-related documents, including any and all documents filed in the Plan Supplement, and make modifications to such documents in accordance with the Plan's terms and the terms of the Plan-related documents, if applicable, between the time of entry of this Confirmation Order and the Effective Date of the Plan.

3. The Debtors are hereby authorized to amend or modify the Plan at any time prior to the substantial consummation of the Plan, but only in accordance with section 1127 of the Bankruptcy Code and Section 13.10 of the Plan. In addition, without the need for a further order or authorization of the Court or further notice to any entities, but subject to the express provisions of this Confirmation Order and Section 13.10 of the Plan, the Debtors shall be authorized and empowered to make modifications to the documents filed with the Court, including exhibits to the Plan or documents forming part of the evidentiary record at the Confirmation Hearing, consistent with the terms of such documents in their reasonable business judgment as may be necessary. The Debtors and Reorganized Debtors may amend any of the documents in the Plan Supplement as and to the extent provided in Section 13.09 of the Plan.

### **III. CLAIMS BAR DATES AND OTHER CLAIMS MATTERS.**

#### **A. GENERAL BAR DATE PROVISIONS FOR ADMINISTRATIVE EXPENSE CLAIMS.**

1. Except as set forth in Section 2.01 of the Plan, and except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment, each holder of an Allowed Administrative Expense Claim shall, to the extent such Allowed Administrative Expense Claim has not been paid by the Debtors in the ordinary course of their business, receive Cash in an amount equal to such Allowed Administrative Expense Claim as soon as is practicable following the later of the Effective Date and the date such Administrative Expense Claim becomes an Allowed Administrative Expense Claim, subject to and in accordance with the Plan Administration Budget (attached hereto as Exhibit B); *provided, however*, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtors shall be paid in full and performed by the Debtors in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions. The holder of an Allowed Administrative Expense Claim shall not be entitled to, and shall not be paid, any interest, penalty, or premium thereon, and any interest, penalty, or premium asserted with respect to an Administrative Expense Claim shall be deemed disallowed and expunged without the need for any further Order of the Bankruptcy Court.

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<sup>4</sup> Distributions to be made by the Plan Administrator pursuant to the terms of the Plan shall be subject to and in accordance with the Plan Administration Budget, which budget includes, *inter alia*, the payment of the Allowed General Unsecured Claims, Allowed Administrative Expense Claims, and Professional Compensation and Reimbursement Claims.

2. Notwithstanding anything in the Plan or the Bar Date Order to the contrary, requests for payment of Administrative Expense Claims (other than requests for payment of Professional Compensation and Reimbursement Claims) accrued on or after the September 1, 2009 must be filed on or before the Second Bar Date and that the Plan Administrator shall have no obligation to recognize or make any payment upon any such Claim filed after the Second Bar Date.

**B. BAR DATE FOR PROFESSIONAL FEE CLAIMS.**

Professionals or other entities asserting a Professional Compensation and Reimbursement Claim for services rendered before the Effective Date must, unless previously filed, file and serve on the entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Court, an application for final allowance of such Professional Compensation and Reimbursement Claim no later than 90 days after the Effective Date. Objections to any Professional Compensation and Reimbursement Claim must be filed and served on the Plan Administrator and the requesting party by the later of (1) 50 days after the Effective Date or (2) 20 days after the filing of the applicable request for payment of the Professional Compensation and Reimbursement Claim.

**C. BAR DATE FOR REJECTION DAMAGES CLAIMS.**

Notwithstanding anything in the Bar Date Order to the contrary, if the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Rejection Claim will be forever barred and will not be enforceable against the Debtors' estates unless a proof of Claim is filed and served on the Plan Administrator, pursuant to the procedures specified in this Confirmation Order or another order of the Court, no later than thirty (30) days after the later of (i) notice of entry of an order approving the rejection of such executory contract or unexpired lease, (ii) notice of entry of the Confirmation Order, and (iii) notice of an amendment to Schedule A, pursuant to Section 9.05 of the Plan.

**D. ENFORCEMENT OF BAR DATE ORDER.**

In accordance with the Bar Date Order and section 502(b)(9) of the Bankruptcy Code, any entity that failed to file a proof of Claim by the applicable Bar Date or was not otherwise permitted to file a proof of Claim after the applicable Bar Date by a Final Order of the Court is and shall be barred, estopped and enjoined from asserting any Claim against the Debtors (i) in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such entity as undisputed, noncontingent and liquidated; or (ii) of a different nature or a different classification than any Claim identified in the Schedules on behalf of such entity. All Claims filed after the applicable Bar Date and for which no Final Order has been entered by the Court determining that such Claims were timely filed shall be disallowed and expunged. Any distribution on account of such Claims shall be limited to the amount, if any, listed in the applicable Schedules as undisputed, noncontingent and liquidated.



#### IV. MATTERS RELATING TO IMPLEMENTATION OF THE PLAN.

##### A. ACTIONS IN FURTHERANCE OF THE PLAN.

1. Pursuant to section 1142 of the Bankruptcy Code and the business corporation law of any state (collectively, the “Reorganization Effectuation Statutes”), without further action by the Court or, as applicable, the stockholders, members, managers of any Debtor or Reorganized Debtor, the Debtors, the Reorganized Debtors, the Plan Administrator and the directors and officers and of the appropriate Debtor or Reorganized Debtor (collectively, the “Responsible Officers”), are authorized to: (a) take any and all actions necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby, including those transactions identified in Article VI of the Plan; and (b) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, releases, agreements and documents necessary to implement, effectuate and consummate the Plan (collectively, the “Plan-Related Documents”), including those contracts, instruments, releases, agreements and documents identified in Article VI of the Plan. In furtherance, and not in limitation, of the foregoing, interest on the Roll-Up Claims to be converted into Exit Facility Term A-2 Loans shall be calculated in accordance with Section 6.01(c)(ii) of the Plan at the pre-petition non-default rate which, in turn, shall be calculated, for purposes of the Plan, at an interest rate equal to the Base Rate (as defined in the Prepetition Credit Agreement) plus 2.8% (representing a “blended” rate based on the interest rates applicable to the Prepetition Term Loans (as defined in the Postpetition Credit Agreement)).

2. To the extent that, under applicable non-bankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the stockholders or directors of any of the Debtors or Reorganized Debtors, this Confirmation Order shall, pursuant to section 1142 of the Bankruptcy Code and the Reorganization Effectuation Statutes, constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the directors and stockholders of the appropriate Debtor or Reorganized Debtor.

3. The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of any Debtor or Reorganized Debtor or any officer thereof to take any and all actions necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby. In addition to the authority to execute and deliver, adopt or amend, as the case may be, the contracts, instruments, releases and other agreements specifically granted in this Confirmation Order, each of the Debtors and the Reorganized Debtors is authorized and empowered, without further action in the Court or its directors, managers, trustees, members or stockholders, to take any and all such actions as any of its Responsible Officers may determine are necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby.

**B. PLAN ADMINISTRATOR.**

1. The Plan Administrator shall be authorized and obligated to implement the Plan on and after the Effective Date. The Plan Administrator shall be acting for the benefit of the Debtors or the Reorganized Debtors, as applicable, and the duties, rights and obligations of the Plan Administrator may be modified at any time by the Reorganized Debtors. The Plan Administrator shall be the representative of the estates of each of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

2. Pursuant to section 1142 of the Bankruptcy Code, the Plan Administrator shall be authorized and empowered to take any and all such actions as necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby, including those releases, agreements, documents and transactions identified in Articles V and VI and X of the Plan

**C. FUNDING OF THE PLAN ADMINISTRATION ACCOUNT.**

The Plan Administrator shall perform its duties within the parameters of the Plan Administration Budget, including without limitation using the Cash in the Plan Administration Account consistent therewith and with the terms and obligations of the Plan and the Plan Administration Budget, in each case in order to carry out its duties under the Plan.

**D. EXPENSES FOR PROFESSIONALS OF THE DISTRIBUTION TRUST.**

The Plan Administrator may employ, without further order of the Court, professionals (including Professionals previously retained by the Debtors) to assist in carrying out its duties hereunder and may compensate and reimburse the expenses of these professionals without further order of the Court from the Plan Administration Cash Account, subject to and in accordance with the Plan and the Plan Administration Budget.

**E. REVESTING OF ASSETS.**

Upon the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all property of the estates of the Debtors that is not transferred pursuant to the Plan shall vest in the Reorganized Debtors free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan. From and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as provided herein.

**F. PRESERVATION OF RIGHTS OF ACTION, SETTLEMENT OF CLAIMS AND RELEASES.**

1. Except, and solely to the extent, provided for in Section 10.09 of the Plan, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Reorganized Debtors may have or choose to assert on behalf of the estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including, without limitation, (i) any and all Claims against any Person, to the extent such Person asserts a crossclaim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Reorganized Debtors, their officers, directors, or representatives, or (ii) the turnover of any property of the Estates; provided, however, that the Reorganized Debtors shall not retain the right to prosecute any Causes of Action against any Person released pursuant to Section 10.05 of the Plan.

2. Nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Petition Date, against or with respect to any Claim left unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such Claims, Causes of Action, rights of setoff, and other legal or equitable defenses which the Debtors had immediately prior to the Petition Date fully as if the Chapter 11 Cases had not been commenced. All of the Debtors' legal and equitable rights respecting any Claim left unimpaired by the Plan are and shall be specifically and unequivocally preserved for the benefit of the Reorganized Debtors and may be asserted by the Reorganized Debtors on and after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

**G. RELEASE OF LIENS.**

Except as otherwise provided in the Plan, Plan Supplement Documents, this Confirmation Order or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and consistent with the treatment provided for Claims and Equity Interests in Article IV of the Plan, all Liens on, in or against the Debtors' assets shall be fully released and discharged, and all of the right, title and interest of any holder of such Liens, including any rights to any Collateral thereunder, shall revert to the Reorganized Debtors and their successors and assigns.

**H. DISCHARGE OF CLAIMS.**

1. Except as otherwise provided in the Plan or in the Confirmation Order, the rights afforded in the Plan and the payments and distributions to be made hereunder will discharge all existing debts and Claims against the Debtors of any kind, nature or description whatsoever against or in the Debtors or any of their assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code. Except as provided in the Plan, on the Effective Date, all existing Claims against the Debtors are, and are deemed to be, discharged and terminated, and all holders of Claims are precluded and enjoined from asserting against the Reorganized Debtors or any of their assets or properties and the Plan Administrator any other or further Claim based upon any act or omission, transaction or other activity of any kind or nature that occurred on or prior to the Effective Date, whether or not such holder has filed a proof of Claim.

2. As of the Effective Date, and in consideration of the distributions to be made under the Plan, except as otherwise expressly provided in the Plan, each holder (as well as any trustees and agents on behalf of each holder) of a Claim against the Debtors and any affiliate of such holder are deemed to have forever waived, released and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, Equity Interests, rights, and liabilities that arose prior to the Effective Date. As of the Effective Date, all such persons are precluded and enjoined, pursuant to section 524 of the Bankruptcy code from asserting against the Debtors and the Plan Administrator or any of their respective assets or properties any such discharged Claim, except as provided for in the Plan.

**I. EXEMPTIONS FROM TAXATION.**

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any stamp tax, real estate transfer tax, sales and use tax or similar tax: (i) any Reorganization Transaction; or (ii) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements or agreements of consolidation, disposition, liquidation or dissolution executed in connection with any transaction pursuant to the Plan.

**V. RECORD DATE**

Except as otherwise provided in a Final Order of the Court, the transferees of any Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Record Date. The Plan Administrator will have no obligation to recognize the transfer or sale of any Claim that occurs after the Record Date and will be entitled for all purposes herein to recognize and make distributions only to those holders who are holders of such Claims as of the close of business on the Record Date.

**VI. CONSOLIDATION OF THE ESTATES**

**A.** The consolidation of the estates is approved to the limited extent set forth herein and in Section 10.11 of the Plan, including for purposes of voting, Confirmation and distributions to be made under the Plan. Specifically, (1) all assets and liabilities of the Debtors shall be deemed merged; (2) all guarantees by one Debtor of the obligations of any other Debtor shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the Debtors; and (3) each and every Claim filed or to be filed in the chapter 11 case of any of the Debtors shall be deemed filed against all of the Debtors and shall be deemed one Claim against all of the Debtors.

**B.** Such consolidation (other than for the purpose of implementing the Plan) shall not affect: (1) the legal and organizational structures of the Debtors; or (2) distributions from any insurance policies or proceeds of such policies. In addition, such consolidation shall not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code. If any party in interest challenges the proposed limited substantive consolidation, the Debtors reserve the right to establish at the Confirmation Hearing the ability to confirm the Plan on an entity-by entity basis.

**VII. RELEASES AND EXCULPATION PROVISIONS.**

**A. RELEASE OF CLAIMS**

**1. Releases by Debtors and the Creditors' Committee.**

Except for the right to enforce the Plan, each Debtor and Reorganized Debtor, the Creditors' Committee, and each of their respective present and former directors, officers, employees, managers, partners, members and Advisors, shall be deemed, effective upon the occurrence of the Effective Date, to forever release, waive and discharge each of the Released Parties of and from any and all claims, obligations, suits, judgments, damages, debts, rights, causes of action and liabilities whatsoever in connection with or related to the Debtors, the Reorganized Debtors, the Chapter 11 Cases, or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Chapter 11 Cases, or the Plan; *provided, however*, that the foregoing shall not operate as a waiver or release from any causes of action arising out of the willful misconduct or gross negligence of any such Person as determined by a final order entered by a court of competent jurisdiction.

**2. Releases by Holders of Claims.**

Except for the right to enforce the Plan, each Person who voted to accept the Plan, or who, directly or indirectly, is entitled to receive a distribution under the Plan, including Persons entitled to receive a distribution via an attorney, agent, trustee or securities intermediary, shall be deemed, effective upon the occurrence of the Effective Date, to forever release, waive and discharge each of the Released Parties of and from any and all claims, obligations, suits, judgments, damages, debts, rights, causes of action and liabilities whatsoever in connection with or related to the Debtors, the Reorganized Debtors, the Chapter 11 Cases, or the Plan, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, the Chapter 11 Cases, or the Plan; *provided, however*, that the foregoing shall not operate as a waiver or release from any causes of action arising out of the willful misconduct or gross negligence of any such Person as determined by a final order entered by a court of competent jurisdiction.



**3. Mutual Releases of Debtors and non-Debtor Affiliates.**

As of the Effective Date, (i) the Debtors, on behalf of themselves and the Estates, on the one hand, and (ii) each non-Debtor Affiliate of any Debtor, on the other, and each of their respective successors, assigns and any and all Persons who may purport to claim by, through, for or because of them (other than as set forth in Section 10.05(d)(D) of the Plan), shall be deemed to forever release, waive and discharge all Claims and Causes of Action arising prior to the Effective Date that such Person has, had or may have against the other, including, without limitation, the PEI Claim; *provided, however*, that the releases provided herein shall have no effect on: (A) the liability of any Person that would otherwise result from the failure of such Person to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan; (B) the liability of a Person that would otherwise result from any such act, omission or occurrence to the extent that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct; (C) Administrative Expense Claims of non-Debtor Affiliates of the Debtors accrued subsequent to the Petition Date, which shall not be so extinguished and shall be payable as and to the extent provided for in the DIP Orders and the Plan; or (D) the liability of PEI to the Reorganized Debtors under Section 2.01(b) of the Sponsor Support Agreement, the cost of which currently is estimated at approximately \$200,000.

**4. Mutual Releases of Lenders and non-Debtor Affiliates.**

As of the Effective Date, (i) the Secured Lenders, the Exit Facility Lenders and the Accounts Banks on the one hand, and (ii) each non-Debtor Affiliate of any Debtor, on the other, and each of their respective successors, assigns and any and all Persons who may purport to claim by, through, for or because of them, shall be deemed to forever release, waive and discharge all Claims and Causes of Action arising prior to the Effective Date that such Person has, had or may have against each other in connection with or related to the Debtors or the Chapter 11 Cases, *provided, however*, that the releases provided in this paragraph shall have no effect on: (A) the liability of any Person that would otherwise result from the failure of such Person to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be assumed, entered into or delivered in connection with the Plan; (B) the liability of any Person that would otherwise result from any such act, omission or occurrence to the text that such act, omission or occurrence is determined in a Final Order to have constituted gross negligence or willful misconduct; (C) the liability of PEI to the Reorganized Debtors under Section 2.01(b) of the Sponsor Support Agreement, the cost of which currently is estimated at approximately \$200,000; or (D) any claims of the Debtors against non-Debtor Affiliates that are not released pursuant to Section 10.05(c) to the extent such claims can be, and are, asserted by any Secured Lender and/or Exit Facility Lender on behalf of the Debtors or otherwise.

**B. EXCULPATION PROVISIONS.**

From and after the Effective Date, none of the Released Parties, the Reorganized Debtors, the Plan Administrator, the Disbursing Agent, the Creditors' Committee, or their respective present or former subsidiaries, affiliates, agents, directors, officers, employees, members, shareholders, managers, agents, attorneys, other advisors and representatives, and each of the successors and assigns of each of the foregoing shall have or incur any liability to any holder of a Claim or equity interest for any act or omission in connection with, related to, arising out of or in preparation for filing, the Debtors' Chapter 11 Cases, the preparation or negotiation of the Disclosure Statement and Plan, the solicitation of votes in connection with the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence; provided, however, that nothing herein or in the Plan shall limit the liability of the professionals of the foregoing exculpated parties to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility.

## VIII. INJUNCTIONS.

**A.** This order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to Section 10.05 of the Plan.

**B.** Except as otherwise provided in the Plan or an order of the Court, on and after the Confirmation Date, all Persons who have held, hold or may hold Claims against or Equity Interests in the Debtors or their estates are, with respect to any such Claims or Equity Interests, permanently enjoined from and after the Confirmation Date from: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, their estates, the Reorganized Debtors, the Released Parties, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons (collectively, the “Injunction Parties”), or against any property of the Injunction Parties; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means whether directly or indirectly, of any judgment, award, decree or order against the Injunction Parties or against any property of the Injunction Parties; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Injunction Parties or against any property of the Injunction Parties; (d) asserting any right of setoff, subrogation, or recoupment of any kind, directly or indirectly, against any obligation due the Injunction Parties; and (e) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of the Plan.

**IX. EXIT FINANCING.**

**A. APPROVAL OF EXIT FACILITY LOANS**

1. The Reorganized Debtors are hereby authorized, empowered, and directed to execute and deliver the Exit Financing documents, including the Exit Facility Credit Agreement, and consummate any and all of the transactions contemplated thereunder without the need for any further action of this Court or any Person. Upon the execution and delivery of the Exit Facility documents, each of them shall be valid, duly authorized, and enforceable according to their terms. The terms and conditions of the Exit Facility Loans are hereby approved and the Reorganized Debtors are authorized to comply with and perform all of the terms and conditions contained therein.

**B. AUTOMATIC EFFECTIVENESS OF LIENS.**

1. This Confirmation Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the any and all liens related to the Exit Financing (the "Exit Financing Liens"), without the necessity of filing or recording any financing statement or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Exit Financing Liens, or to entitle the Exit Facility Agent and the Exit Facility Lenders to the priorities granted herein. Notwithstanding the foregoing, the Exit Facility Agent is authorized to file, as it in its sole discretion deems necessary, such financing statements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the Exit Facility Liens and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Effective Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the Exit Financing Liens. The Reorganized Debtors are authorized and directed to execute and deliver promptly upon demand to the Exit Facility Agent all such financing statements, mortgages, notices and other documents as the Exit Facility Agent or the Exit Facility Lenders may reasonably request. The Exit Facility Agent, may, in its sole discretion, file a photocopy of this Confirmation Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument, and all filing and recording offices are hereby directed to accept such copy of this Confirmation Order for filing and recording.

**C. REVERSAL OF CONFIRMATION ORDER**

1. In the event that the Exit Financing is consummated and this Confirmation Order is thereafter reversed, revoked, modified or otherwise upset on appeal and the effect of such reversal, revocation, or modification is to compel the Debtors to return to chapter 11 (such event being a "Reversal"), then:

a. Any credit extended under the Exit Financing facilities shall be deemed to have been extended in good faith (as that term is used in section 364(e) of the Bankruptcy Code).

b. In no event shall any fees paid in connection with the Exit Financing be subject to recovery from the parties to the Exit Financing documents.

c. The Exit Financing documents shall constitute legal, valid, binding and duly authorized obligations of the Debtors or the Reorganized Debtors, as applicable, enforceable in accordance with their terms, and shall create the security interests, liens and mortgages purported to be created thereby. The Exit Facility Agents shall be authorized to file or record at any time and from time to time such financing statements or other security documents naming the Exit Facility Agents as secured party for the benefit of the secured parties under the Exit Financing documents.

**X. DOCUMENTS, MORTGAGES AND INSTRUMENTS.** Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Order.

**XI. REVERSAL/STAY/MODIFICATION/VACATUR OF ORDER.** Except as otherwise provided in this Order, if any or all of the provisions of this Order are hereafter reversed, modified, vacated, or stayed by subsequent order of this Court, or any other court of competent jurisdiction, such reversal, stay, modification or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority, or lien incurred or undertaken by the Debtors or the Reorganized Debtors, as applicable, prior to the effective date of such reversal, stay, modification, or vacatur. Notwithstanding any such reversal, stay, modification, or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, or in reliance on, this Order prior to the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the provisions of this Order and the Plan or any amendments or modifications thereto.

**XII. MODIFICATIONS**

Without need for further order or authorization of the Court, the Debtors or the Reorganized Debtors are authorized and empowered to make any and all modifications to the Plan, any and all documents included as part of the Plan Supplement, and any other document that is necessary to effectuate the Plan, which modifications do not materially modify the terms of such documents and are consistent with the Plan.

**XIII. RETENTION OF JURISDICTION BY THE COURT.**

Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, pursuant to Article XII of the Plan, this Court shall retain such exclusive jurisdiction over these bankruptcy cases and any matter related to the bankruptcy cases after the Effective Date as is legally permissible, including exclusive jurisdiction over the matters described in Section 12.01 of the Plan. To the extent that it is not legally permissible for the Court to have exclusive jurisdiction over any of the matters described in Article XII of the Plan, the Court shall have nonexclusive jurisdiction over such matters to the extent legally permissible.

**XIV. DISSOLUTION OF THE CREDITORS' COMMITTEE**

On the Effective Date, the Creditors' Committee shall dissolve, and the members thereof shall be released and discharged from all duties and obligations arising from or related to their membership. The professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to assert any Professional Compensation or Reimbursement Claims for any services rendered or expenses incurred on behalf of the Creditors' Committee after the Effective Date, except for fees for time spent and expenses incurred: (a) in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or Filed and served after the Effective Date pursuant to the Plan; or (b) in connection with any appeal pending as of the Effective Date, including any appeal of the Confirmation Order.

**XV. NOTICE OF ENTRY OF CONFIRMATION ORDER.**

**A.** Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c), the Plan Administrator is directed to serve, within 5 days after the occurrence of the Effective Date, a notice of the entry of this Confirmation Order, which shall include notice of the bar dates established by the Plan and this Confirmation Order and notice of the Effective Date, substantially in the form of Exhibit C attached hereto and incorporated herein by reference (the “Confirmation Notice”), on all parties that received notice of the Confirmation Hearing; provided, however, that the Plan Administrator shall be obligated to serve the Confirmation Notice only on the record holders of Claims or Equity Interests as of the Confirmation Date, provided, further, that the Plan Administrator shall not be required to serve the Confirmation Notice on any holder of Claims or Equity Interests where the prior service of the notice of the Confirmation Hearing was returned to the Debtors as undeliverable and no forwarding address has been provided.

**B.** No later than 20 Business Days after the Effective Date, the Plan Administrator is directed to publish the version of the Confirmation Notice attached hereto as Exhibit D once in the *Sacramento Bee*, the *Oregonian*, the *Times-News* (Twin Falls, ID), and the national edition of *The New York Times*.



**XVI. ASSUMPTION OF SPONSOR SUPPORT AGREEMENT.**

The Sponsor Support Agreement is consensually assumed under, and as modified and amended by, the Plan; provided however, that all obligations and liabilities under the Sponsor Support Agreement, except as expressly preserved, are released pursuant to section 10.05 of the Plan.

**XVII. PERMITS.**

Notwithstanding any provision in the Plan, this Confirmation Order and any implementing Plan documents, the Permits, which are issued by the Internal Revenue Service and U.S. Environmental Protection Agency (collectively, "Federal Parties") that are indicated on Schedule A to the Plan, shall be treated, determined, paid and administered in the ordinary course of business by the Debtors and upon the Effective Date, by the Reorganized Debtors, which Reorganized Debtors shall comply with all applicable non-bankruptcy law, federal regulations and statutes with regard to such Permits. Upon the Confirmation Date, and unless the Federal Parties advise the Debtors to the contrary prior thereto, on the Effective Date, the Permits shall be in full force and effect. In addition, the Federal Parties shall be bound by the Governmental Unit Bar Date, the Bar Date Order, and the Second Bar Date for any Claims that accrued on and after September 1, 2009, provided due process has been provided. The Federal Parties' rights to offset or recoup any amounts due under, or relating to, any Permits are expressly preserved. Nothing herein shall constitute a ruling that any permit or license is an executory contract.

**XVIII. WAIVER OF THE STAY OF BANKRUPTCY RULE 3020(e).**

Pursuant to Bankruptcy Rule 3020(e), this Confirmation Order shall not be stayed and shall be immediately effective upon entry on the docket of the Bankruptcy Court.

Dated: June 8, 2010

/S/ KEVIN GROSS  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE







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**Pacific Ethanol, Inc.**

**FOR IMMEDIATE RELEASE**

INVESTOR RELATIONS:  
916-403-2755  
866-508-4969  
[InvestorRelations@pacificethanol.net](mailto:InvestorRelations@pacificethanol.net)

MEDIA CONTACT:  
Paul Koehler, Pacific Ethanol, Inc.  
503-235-8241  
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**ETHANOL PRODUCTION SUBSIDIARIES  
TO EMERGE FROM BANKRUPTCY**

- **Plan of reorganization is confirmed**
- **Pacific Ethanol obtains option to purchase equity interest in production facility subsidiaries**
- **Pacific Ethanol to eliminate approximately \$290 million of liabilities from its balance sheet**

**Sacramento, CA, June 9, 2010 – Pacific Ethanol, Inc. (the “Company”)** (NASDAQ CM: **PEIX**), the leading West Coast marketer and producer of low carbon renewable fuels, announced the confirmation of its plan of reorganization (“Confirmed Plan”) for its wholly-owned subsidiary, Pacific Ethanol Holding Co. LLC (“PEH”), together with PEH’s four wholly-owned ethanol production facility subsidiaries (“Plant Subsidiaries”). The Confirmed Plan, which was unanimously approved by the secured lenders, is expected to be effective by the end of June 2010.

Upon the effective date, the ownership of PEH and the Plant Subsidiaries will be transferred to a newly formed holding company (“New PEH”). As part of the Confirmed Plan, the Company has an option to purchase up to 25% of the total ownership interests in New PEH for up to \$30 million in cash, which is exercisable within 90 days from the effective date.

The Confirmed Plan will result in the elimination of approximately \$290 million of the Company’s debt and other liabilities. New PEH will have term debt of \$50 million with a working capital line of credit of up to \$15 million, which may be increased to up to \$35 million, under the terms of the credit facility.

The Company and its subsidiaries, other than PEH and the Plant Subsidiaries, have not filed for protection under the U.S. Bankruptcy Code. As a result, their ownership structure, particularly as it relates to ownership of the Company by its common and preferred stockholders, will not change under the terms of the Confirmed Plan.

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**Pacific Ethanol, Inc.**

Under the terms of the Confirmed Plan, the Company will continue to staff, manage and operate the Plant Subsidiaries for a negotiated fee and profit-sharing arrangement. In addition, the Company, through its other subsidiaries not in bankruptcy, will continue marketing ethanol for third parties as well as the ethanol and related feed products produced by the Plant Subsidiaries.

Neil Koehler, the Company's CEO and President said, "Achieving a confirmed plan of reorganization is a significant milestone in our restructuring efforts. New liquidity and low debt levels provided by the plan support our efforts to optimize operations at the two facilities currently running, and as market conditions permit, resume operations at the two idled facilities. Holding an option to purchase an equity interest in the facilities at a significant discount to replacement costs is a valuable opportunity for Pacific Ethanol. With the federal Renewable Fuel Standard requiring increasing levels of ethanol to be blended into gasoline and the implementation of California's Low Carbon Fuel Standard beginning in 2011, we are optimistic about the future of the ethanol industry and the success of our company."

Details of the Confirmed Plan will be reported on Form 8-K, to be filed with the Securities and Exchange Commission.

**Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995**

With the exception of historical information, the matters discussed in this press release are forward-looking statements that involve a number of risks and uncertainties. The actual future results of Pacific Ethanol could differ from those statements. Factors that could cause or contribute to such differences include, but are not limited to, the ability of Pacific Ethanol to continue as the leading producer and marketer of low carbon renewable fuels in the Western United States; sustained improvement in market conditions for producing ethanol; the ability of the two idled Plant Subsidiaries to resume operations; the ability of Pacific Ethanol to reschedule, restructure or otherwise satisfy its indebtedness; the ability of Pacific Ethanol to raise sufficient debt or equity financing, or both, to fund the exercise of its option to purchase an equity interest in New PEH and for working capital purposes; the accounting effects of the Confirmed Plan; the price of ethanol relative to the price of corn and other production inputs; the price of ethanol relative to the price of gasoline and the factors contained in the "Risk Factors" section of Pacific Ethanol's Form 10-K filed with the Securities and Exchange Commission on March 31, 2010.

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