

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) December 19, 2012

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**

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

Financing Transaction

On December 19, 2012, Pacific Ethanol, Inc. (the "Company") entered into a Securities Purchase Agreement (the "Purchase Agreement") with 5 accredited investors (the "Investors"). Under the terms of the Purchase Agreement, the Company agreed to sell \$22,192,490.64 in aggregate principal amount of its senior unsecured notes (the "Notes") and warrants (the "Warrants") to purchase an aggregate of 25,630,286 shares of the Company's common stock, \$0.001 par value per share ("Common Stock"), to the Investors in a private offering (the "Financing Transaction") for aggregate gross proceeds of \$22,192,490.64. In connection with the sale of the Notes and the Warrants, the Company will enter into a registration rights agreement with the Investors (the "Registration Rights Agreement"). Lazard Capital Markets LLC served as the sole placement agent for the Financing Transaction.

The following is intended to provide a summary of the terms of the agreements and securities described above. This summary is qualified in its entirety by reference to the full text of the agreements, each of which is attached as an exhibit to this Current Report on Form 8-K. Readers should review those agreements for a complete understanding of the terms and conditions associated with these transactions. The full text of the press release announcing the Financing Transaction is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by this reference.

The sale of the Notes and the Warrants to the Investors is expected to close (the "Closing") on or prior to January 18, 2013 (the actual date of the Closing is referred to herein as the "Closing Date"), subject to satisfaction of customary closing conditions. The Closing is also contingent upon (i) the maturity date applicable to certain loans issued by certain indirect partially owned subsidiaries of the Company being extended immediately prior to the Closing ("Extension of Maturity of Plant Debt") and (ii) satisfactory evidence that the Acquisition of New PE Holdco Membership Interests (as defined below) and the Acquisition of Plant Debt (as defined below) will be consummated concurrently with the Closing.

There can be no assurance that the Financing Transaction will be consummated. The Company or any Investor may terminate the Purchase Agreement if the Closing does not occur on or prior to January 18, 2013.

This current report on Form 8-K does not constitute an offer to sell or the solicitation of an offer to buy the Notes or the Warrants.

Securities Purchase Agreement

The Purchase Agreement provides for the sale to the Investors of the Notes and the Warrants for aggregate gross proceeds of \$22,192,490.64. Under the terms of the Purchase Agreement, the Company is obligated to use:

- \$21,538,595.64 of the gross proceeds of the Financing Transaction to purchase from certain of the Investors an aggregate principal amount of \$21,538,595.64 of Tranche A-2 Term Loans (the "Acquisition of Plant Debt") issued under and as defined in that certain Second Amended and Restated Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein (the "Second Lien Credit Agreement"); and
- \$653,895 of the gross proceeds of the Financing Transaction (together with an additional \$653,895) to purchase from certain of the Investors 130.779 membership interest units of New PE Holdco LLC (the "Acquisition of New PE Holdco Membership Interests").

Under the terms of the Purchase Agreement, the Company is prohibited from issuing more than 3,289,727 Interest Shares (as defined below) unless the Company has obtained either (1) stockholder approval of the issuance of more than such number of shares of our common stock pursuant to NASDAQ Marketplace Rule 5635(d) or (2) a waiver from The NASDAQ Stock Market of the Company's compliance with Rule 5635(d).

The Purchase Agreement also obligates the Company to indemnify the Investors and various related parties for certain losses including those resulting from (i) any misrepresentation or breach of any representation or warranty made by the Company, (ii) any breach of any obligation of the Company, and (iii) certain claims by third parties.

The Purchase Agreement contains representations and warranties of the Company and the Investors which are typical for transactions of this type. The representations and warranties made by the Company in the Purchase Agreement are qualified by reference to certain exceptions contained in disclosure schedules delivered to the Investors. Accordingly, the representations and warranties contained in the Purchase Agreement should not be relied upon by others who have not reviewed those disclosure schedules and the documentation surrounding the transaction as a whole.

Notes

The Notes will be issued at the Closing and will have an aggregate principal amount of \$22,192,490.64. The Notes will mature on March 30, 2016 (the "Maturity Date"). The Notes bear interest at the rate of 5% per annum, subject to adjustment. If the aggregate outstanding principal balance of the Notes is not less than \$11,096,245.32 by January 15, 2014, the interest rate will increase commencing on January 15, 2014 by 1% per annum on each calendar January 15, April 15, July 15 and October 15 until the aggregate outstanding principal balance of the Notes is less than \$11,096,223. The interest rate will also increase by an additional 2% per annum above the interest rate otherwise applicable upon the occurrence, and during the continuance, of an event of default (as described below) until such event of default has been cured.

Payment of Principal and Optional Prepayment

The Company is required to pay all outstanding principal and any accrued and unpaid interest on the Notes on the Maturity Date. The Company may, at its option, prepay the Notes at any time without premium or penalty.

Mandatory Prepayment

If at any time the Company receives net cash proceeds from an issuance of equity or equity linked securities of the Company, certain sales of assets of the Company or any of its wholly or partially owned subsidiaries or as a result of the Company or any of its wholly or partially owned subsidiaries incurring certain indebtedness, then the Company will be obligated to prepay the Notes using 100% of all such net cash proceeds, provided that in connection with proceeds received in connection with an Equity Linked Issuance (as defined in the Notes), the Company will be obligated to use all such net cash proceeds to either prepay the Notes or purchase outstanding debt issued by its indirect partially owned subsidiaries under the Second Lien Credit Facility, in respective proportions established by the terms of the Notes.

Payments of Interest – Interest Shares

Interest on the Notes is payable in cash in arrears on the 15th calendar day of each month beginning on March 15, 2013 (each an “Interest Payment Date”). Subject to the satisfaction of the Equity Conditions (as defined below), at the option of the Company, the Company may elect to pay interest due and payable on any Interest Payment Date in shares of Common Stock, provided that the interest rate applicable to any outstanding amounts that Company pays in Interest Shares shall increase by 2% per annum from the then applicable interest rate for the period for which such interest is paid. The number of Interest Shares to be issued, at the Company’s election, on any particular Interest Payment Date shall equal to the quotient of (x) the amount of interest payable (assuming payment in Interest Shares) on such Interest Payment Date divided by (y) the product of (i) the weighted average price of the Common Stock for 30 trading days immediately preceding (but excluding) the Interest Payment Date and (ii) 0.95.

In order for the interest to be paid in Interest Shares, all of the following conditions, among others, must be satisfied (or waived by the Investors) during the five trading days prior to the applicable Interest Payment Due Date through the Interest Payment Date (collectively, the “Equity Conditions”):

- The Interest Shares are either (i) covered by an effective registration statement and the Company shall not have had knowledge of any fact that would cause such registration statement not to be effective and available for the resale of the Interest Shares or (ii) are eligible for resale without restriction and without the need for registration under any applicable federal or state securities laws and the Company shall not have had knowledge of any fact that would cause the Interest Shares not to be eligible for sale pursuant to Rule 144 of the Securities Act of 1933, as amended (the “Securities Act”) and any applicable state securities laws;
- The Common Stock shall have been listed or designated for quotation on an exchange or market permitted by the Notes (including The NASDAQ Capital Market) and shall not have been suspended from trading on such exchange or market (other than suspensions of not more than two (2) days due to business announcements by the Company), nor shall delisting or suspension by such exchange or market be threatened or pending either in writing by such exchange or market (provided, that, until June 3, 2013, the pending or threatened delisting of the Company as a result of the failure to maintain a \$1.00 minimum share price shall be disregarded);
- The Interest Shares may be issued without violating the regulations of the eligible exchange or market on which the Common Stock is then listed or designated for quotation;
- There shall not have been (a) a public announcement of a proposed fundamental transaction, (b) an event of default under the Notes or (c) an event that after the passage of time would constitute a event of default under the Notes;
- The issuance of the Interest Shares will not result in the holder of the Note beneficially owning in excess of 4.99% of the Company’s outstanding shares of Common Stock (which limit may be lowered or raised to an amount not in excess of 9.99%, in either case at the option of the holder, provided that, any increase will only be effective upon 61-days’ prior notice to the Company);
- The Company shall have delivered Interest Shares on a timely basis;
- The Company shall not have publicly announced that certain types of transactions involving a change of control are pending, proposed or intended that have not been abandoned, terminated or consummated;
- No event shall have occurred that constitutes, or with the passage of time or giving of notice would constitute, an event of default under the Notes; and
- The holder of the Note must not be in possession of any material, non-public information relating to the Company (other than certain material, non-public information relating to the Company provided to the holder of the Note in accordance with the terms of the Note).

If the Company cannot make an interest payment in shares of Common Stock because one of the conditions described above is not satisfied, the Company must make such payment in cash.

Events of Default

The Notes contain a variety of events of default which are typical for transactions of this type. A holder of a Note may declare all amounts owed under such holder's Note due and payable if there is an event of default; in addition, the all amounts owed the Notes will become immediately due and payable upon certain events of default.

Covenants

The Notes contain a variety of obligations on the part of the Company not to engage in certain activities, which are typical for transactions of this type, as well as the following covenants:

- The payments due under the Notes will rank senior to all other indebtedness of the Company and its subsidiaries, other than permitted senior indebtedness;
- The Company and its subsidiaries will not incur other indebtedness, except for certain permitted indebtedness;
- The Company and its subsidiaries will not incur any liens, except for certain permitted liens;
- The Company and its subsidiaries will not, directly or indirectly, redeem or repay all or any portion of any indebtedness (except for certain permitted indebtedness) if at the time such payment is due or is made or, after giving effect to such payment, an event constituting, or that with the passage of time and without being cured would constitute, an event of default has occurred and is continuing;
- The Company and its subsidiaries will not redeem, repurchase or pay any dividend or distribution on its respective capital stock without the prior consent of the holders of the Notes, other than certain permitted distributions; and
- The Company and its subsidiaries will not sell, lease, assign, transfer or otherwise dispose of any assets of the Company or any subsidiary, except for certain permitted dispositions (including the sales of inventory or receivables in the ordinary course of business).

Warrants

The Warrants will be issued at closing, will be immediately exercisable and, in the aggregate, entitle the holders thereof to purchase up to an aggregate of 25,630,286 shares of Common Stock (the "Warrant Shares") for a period of five years at an exercise price of \$0.52 per share (the "Warrant Exercise Price"), subject to adjustment. The Warrants include both cash and cashless exercise provisions.

The Warrant Exercise Price is subject to adjustment for stock splits, combinations or similar events, and, in such event, the number of shares issuable upon the exercise of the Warrant will also be adjusted such that the aggregate Warrant Exercise Price shall be the same immediately before and immediately after such adjustment. In addition, the Warrant Exercise Price is also subject to a "weighted-average" anti-dilution adjustment in the event that the Company issues or is deemed to have issued certain securities at a price lower than applicable the Warrant Exercise Price.

The Warrants impose penalties on the Company for failure to deliver the shares of Common Stock issuable upon exercise.

Under the terms of the Warrants, each Investor is prohibited from exercising a Warrant to the extent that, as a result of the exercise, such Investor will beneficially own in excess of 4.99% of the Company's outstanding shares of Common Stock (which limit may be lowered or raised to an amount not in excess of 9.99%, in either case at the option of the holder, provided that any increase will only be effective upon 61-days' prior notice to the Company).

If the Company issues options, convertible securities, warrants, stock, or similar securities to holders of shares of its Common Stock, the holders of the Warrants have the right to acquire the same as if it had exercised its Warrants. If the Company makes a distribution of its assets to holders of shares of its Common Stock, the holders of the Warrants have the right to acquire the same as if it had exercised its Warrants.

The Warrants contain provisions prohibiting the Company from entering into certain transactions involving a change of control, unless the successor assumes in writing all of the obligations of the Company under the Warrants. Upon the occurrence of a transaction involving a permitted change of control, the holders of the Warrants will have the right, among others, to have the Warrants repurchased for a purchase price in cash equal to the Black Scholes value (as calculated pursuant to the Warrants) of the then unexercised portion of the Warrants.

Registration Rights Agreement

The Registration Rights Agreement requires that the Company file a registration statement with the Securities and Exchange Commission (the "SEC") within 30 days of the Closing Date (the "Initial Registration Statement") for the resale by the Investors of 33,000,000 shares of Common Stock, representing all of the Warrant Shares and 7,369,286 Interest Shares (collectively, the "Required Registration Amount").

In the event the number of shares available under any Registration Statement is insufficient to cover the Required Registration Amount, the Company must amend such registration statement (if permissible), or file with the SEC a new registration statement, or both, so as to cover at least the Required Registration Amount, as of the trading day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but not later than 15 days after the necessity therefor arises.

The Company is obligated to use its commercially reasonable best efforts to keep a registration statement it is required to file under the Registration Rights Agreement effective (and the prospectus contained therein available for use) for resales by the Investors on a delayed or continuous basis at then-prevailing market prices at all times until the earlier of (i) the date on which the Investors have sold all of the Registrable Securities, (ii) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement without restriction pursuant to Rule 144 (including, without limitation, volume restrictions and without the need for current public information required by Rule 144(c), if applicable) or (ii) the date on which all of the Warrants have expired or exercised.

Acquisition of New PE Holdco Membership Interests

On December 19, 2012, the Company entered into the following agreements:

- an Agreement for Purchase and Sale of Units in New PE Holdco LLC (the “Candlewood Purchase Agreement”) with Candlewood Special Situations Fund, LP (“Candlewood”) under which the Company agreed to purchase 60.090 units of New PE Holdco LLC (“New PE Holdco”) from Candlewood for an aggregate purchase price of \$600,900 in cash;
- an Agreement for Purchase and Sale of Units in New PE Holdco LLC (the “CCVF Purchase Agreement”) with CCVF PacEth LLC (“CCVF”) under which the Company agreed to purchase 5.409 units of New PE Holdco from CCVF for an aggregate purchase price of \$54,090 in cash; and
- an Agreement for Purchase and Sale of Units in New PE Holdco LLC (the “Candlewood Credit Value Purchase Agreement”) with Candlewood Credit Value Fund II, LP (“Candlewood Credit Value”) under which the Company agreed to purchase 5.410 units of New PE Holdco from Candlewood Credit Value for an aggregate purchase price of \$54,100 in cash.

In addition, the Company and Credit Suisse Loan Funding LLC have agreed that the Company and Credit Suisse Securities (USA) LLC (“Credit Suisse”) will enter into an Agreement for Purchase and Sale of Units in New PE Holdco LLC (the “CS Purchase Agreement”) under which the Company will purchase 59.870 units of New PE Holdco from Credit Suisse for an aggregate purchase price of \$598,700 in cash.

The Candlewood Purchase Agreement, the CS Purchase Agreement, the CCVF Purchase Agreement and the Candlewood Credit Value Purchase Agreement are collectively referred to as the “Unit Purchase Agreements” in this Current Report on Form 8-K.

The 130.779 units to be purchased represent approximately 13% of the total outstanding membership interests of New PE Holdco and, following the closing of the Unit Purchase Agreements, the Company will own approximately 80% of the outstanding membership interests of New PE Holdco.

The closing of each of the Unit Purchase Agreements is conditioned on the Closing of the Purchase Agreement described above under the heading “Financing Transaction” and is required to occur substantially concurrently with the Closing of the Financing Transaction. Each of the Unit Purchase Agreements will terminate if the closing of such agreement does not occur on or prior to January 18, 2013. There can be no assurance that the CS Purchase Agreement will be executed or that the closing of the Unit Purchase Agreements will be consummated.

The forgoing description is intended to provide a summary of the material terms of the Unit Purchase Agreements. This summary is qualified in its entirety by reference to the full text of the Unit Purchase Agreements, a form of which is filed as an exhibit to this Current Report on Form 8-K. Readers should review the form of the Unit Purchase Agreements for a complete understanding of the terms and conditions associated with these transactions.

Acquisition of Plant Debt and Extension of Maturity of Plant Debt

Subject to the consummation of the Financing Transaction, the Company has agreed to use \$21,538,595.64 of the gross proceeds of the Financing Transaction to purchase from certain of the Investors an aggregate principal amount of \$21,538,595.64 of Tranche A-2 Term Loans (the "Purchased Debt") issued under and as defined in that the Second Lien Credit Agreement. The Investors that have agreed to sell the Purchased Debt to the Company have also agreed to extend the maturity date applicable to the Purchased Debt from June 30, 2013 to June 30, 2016, with such amendment to be effective immediate prior to the closing of the Financing Transaction.

In addition, Investors holding sufficient debt to amend the Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein (the "First Lien Credit Agreement") have agreed to amend the terms of the First Lien Credit Agreement to extend the maturity date of the \$10.0 million revolving line of credit from June 25, 2013 to June 25, 2015 with such amendment to be effective immediate prior to the closing of the Financing Transaction.

There can be no assurance that the closing of Acquisition of Plant Debt or Extension of Maturity of Plant Debt will be consummated.

Item 3.02. Unregistered Sales of Equity Securities.

On December 19, 2012, the Company entered into the Purchase Agreement pursuant to which the Company agreed to issue the Notes and Warrants to 5 accredited investors. The description of the Financing Transaction in Item 1.01 of this Current Report on Form 8-K is incorporated in its entirety by this reference into this Item 3.02.

If issued, the Notes and the Warrants will be issued in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act and Rule 506 promulgated by the SEC thereunder.

There can be no assurance that the sale of the Notes and the Warrants will be consummated. This current report on Form 8-K does not constitute an offer to sell or the solicitation of an offer to buy Notes or Warrants.

Item 9.01. Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Securities Purchase Agreement, dated December 19, 2012, between the Company and the Investors (*) (#)
10.2	Form of Notes (*) (#)
10.3	Form of Warrants (*) (#)
10.4	Form of Registration Rights Agreement (*) (#)
10.5	Form of Agreement for Purchase and Sale of Units in New PE Holdco LLC (*)
99.1	Press Release

(#) Certain of the agreements filed as exhibits to this report contain representations and warranties made by the parties thereto. The assertions embodied in such representations and warranties are not necessarily assertions of fact, but a mechanism for the parties to allocate risk. Accordingly, investors should not rely on the representations and warranties as characterizations of the actual state of facts or for any other purpose at the time they were made or otherwise.

(*) Filed as an exhibit hereto.

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: December 19, 2012

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>
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SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (the “**Agreement**”), dated as of December 19, 2012 by and among Pacific Ethanol, Inc., a Delaware corporation with headquarters located at 400 Capitol Mall, Suite 2060, Sacramento, CA 95814 (the “**Company**”), and the investors listed on the schedule of investors attached hereto as Exhibit A (individually, an “**Investor**” and collectively, the “**Investors**”).

RECITALS

A. The Company and each Investor are executing and delivering this Agreement in reliance upon the exemption from registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the “**1933 Act**”), and Rule 506 of Regulation D (“**Regulation D**”) as promulgated by the United States Securities and Exchange Commission (the “**SEC**”) under the 1933 Act.

B. The Company has authorized the issuance and sale of a new series of senior unsecured notes in the aggregate principal amount of \$22,192,490.64, in substantially the form attached hereto as Exhibit B (the “**Notes**”, such term to include any such notes issued in substitution therefor pursuant to the terms thereof), and warrants, in substantially the form attached hereto as Exhibit C (the “**Warrants**”) to purchase shares of Common Stock.

C. Each Investor, severally and not jointly, wishes to purchase, and the Company wishes to sell, upon the terms and conditions stated in this Agreement, (i) that aggregate principal amount of Notes, set forth opposite such Investor’s name in column two on the schedule of investors set forth in Exhibit A (which aggregate principal amount of Notes for all Investors shall be \$22,192,490.64) for the applicable purchase price set forth opposite such Investor’s name in column three of Exhibit A (which aggregate purchase price of Notes for all Investors shall be \$20,572,438.82) and (ii) Warrants, representing the right to acquire up to that number of shares of Common Stock set forth opposite such Investor’s name in column four on the schedule of investors set forth in Exhibit A (which aggregate number of shares of Common Stock for all Investors shall be, as of the Closing Date, 25,630,286; the shares of Common Stock issuable upon exercise of or otherwise pursuant to the Warrants, collectively, the “**Warrant Shares**”) for the applicable purchase price set forth opposite such Investor’s name in column five of Exhibit A (which aggregate purchase price of Warrants for all Investors shall be \$1,620,051.82).

D. At the Closing, the parties hereto shall execute and deliver a Registration Rights Agreement, in form attached hereto as Exhibit D (the “**Registration Rights Agreement**”), pursuant to which the Company has agreed to provide certain registration rights with respect to the Registrable Securities (as defined in the Registration Rights Agreement), under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

E. Immediately preceding the Closing, each Investor contemplated to execute and deliver counterparts of the First Lien Credit Agreement Amendment in substantially the form attached hereto as Exhibit E and the Second Lien Credit Agreement Amendment in substantially the form attached hereto as Exhibit F, shall execute and deliver such documents.

F. At the Closing, the Company and each Investor contemplated to execute and deliver a Purchase and Sale Agreement for the purchase by and sale to the Company of membership interests in New PE Holdco in the form attached hereto as Exhibit G shall execute and delivery such document and each Investor contemplated to execute and deliver a Lender Assignment Agreement to effect the assignment to the Company of the Purchased Tranche A-2 Loans shall execute and delivery such document.

G. The Notes, the Warrants, the Interest Shares and the Warrant Shares issued pursuant to this Agreement are collectively referred to herein as the “**Securities**”.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and the Investors agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the meanings indicated:

“**1933 Act**” has the meaning set forth in the Recitals.

“**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the 1933 Act.

“**Agent**” has the meaning set forth in Section 3.1(m).

“**Agreement**” has the meaning set forth in the Preamble.

“**Board of Directors**” means the Company’s board of directors.

“**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

“**Buy-In Price**” has the meaning set forth in Section 4.1(d).

“**Closing**” means the closing of the purchase and sale of the Notes and Warrants pursuant to Section 2.1.

“**Closing Date**” means 10:00 a.m., New York City Time, on the first (1st) Business Day on which the conditions to the Closing set forth in Sections 2.2, 5.1 and 5.2 are satisfied or waived (or such later date and time as is mutually agreed to by the Company and each Investor).

“**Closing Price**” means, for any date, the closing price per share of the Common Stock for such date (or the nearest preceding date) on the Principal Market or exchange or quotation system on which the Common Stock is then listed or quoted.

“**Company**” has the meaning set forth in the Preamble.

“**Company Counsel**” means Troutman Sanders LLP, counsel to the Company.

“**Common Stock**” means (i) the Company’s shares of common stock, \$0.001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

“**Contingent Obligation**” has the meaning set forth in Section 3.1(aa).

“**Credit Agreements**” means the First Lien Credit Agreement and the Second Lien Credit Agreement.

“**Current Holdings Schedule**” means a schedule approved by each of the Investors and provided to the Company as of the date of this Agreement.

“**Disclosure Materials**” has the meaning set forth in Section 3.1(h).

“**DTC**” has the meaning set forth in Section 4.1(c).

“**8-K Filing**” has the meaning set forth in Section 4.6.

“**Eligible Market**” means any of The New York Stock Exchange, The NYSE Amex LLC, The NASDAQ Capital Market or The NASDAQ Global Select Market.

“**Environmental Laws**” has the meaning set forth in Section 3.1(dd).

“**Excluded Investors**” means the Agent and its Affiliates.

“**First Lien Credit Agreement**” means that certain Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein.

“**First Lien Credit Agreement Amendment**” means that certain Amendment No. 1 to the First Lien Credit Agreement in the form attached hereto as Exhibit E.

“**GAAP**” has the meaning set forth in Section 3.1(h).

“**Hazardous Materials**” has the meaning set forth in Section 3.1(dd).

“**Indebtedness**” has the meaning set forth in Section 3.1(aa).

“**Insolvent**” has the meaning set forth in Section 3.1(i).

“**Intellectual Property Rights**” has the meaning set forth in Section 3.1(t).

“**Interest Shares**” means shares of Common Stock that have been issued or may be issued to pay interest due and payable on under the terms of the Notes.

“**Investor**” has the meaning set forth in the Preamble.

“**Lien**” means any lien, charge, claim, security interest, encumbrance, right of first refusal or other restriction.

“**Losses**” means any and all losses, claims, damages, liabilities, settlement costs and expenses, including, without limitation and reasonable attorneys’ fees.

“**Material Adverse Effect**” means (i) a material adverse effect on the results of operations, assets, business or financial condition of the Company and the Subsidiaries, taken as a whole on a consolidated basis or (ii) materially and adversely impair the Company’s ability to perform its obligations under any of the Transaction Documents, provided, that none of the following alone shall be deemed, in and of itself, to constitute a Material Adverse Effect: (i) a change in the market price or trading volume of the Common Stock or (ii) changes in general economic conditions or changes affecting the industry in which the Company operates generally (as opposed to Company-specific changes) so long as such changes do not have a disproportionate effect on the Company and its Subsidiaries taken as a whole.

“**Material Permits**” has the meaning set forth in Section 3.1(v).

“**New PE Holdco**” means New PE Holdco LLC, a Delaware limited liability company.

“**Non-Public Information**” means material, non-public information relating to the Company.

“**Notes**” has the meaning set forth in the Recitals.

“**Person**” means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, or joint stock company.

“**Press Release**” has the meaning set forth in Section 4.6.

“**Principal Market**” means The NASDAQ Capital Market.

“**Proceeding**” means an action, claim, suit, investigation or proceeding (including, without limitation, or a partial proceeding, such as a deposition), whether commenced or threatened in writing.

“**Purchase and Sale Agreements**” means each of the agreements, in the form attached hereto as Exhibit G, between the Company and each applicable holder of membership interests in New PE Holdco set forth on Exhibit K pursuant to which the Company will purchase from such holders the number of membership interest units of New PE Holdco set forth therein (each at a price of \$10,000 per unit).

“**Purchased Tranche A-2 Loans**” has the meaning set forth in Section 4.7.

“**Registrable Securities**” has the meaning ascribed to it in the Registration Rights Agreement.

“**Regulation D**” has the meaning set forth in the Recitals.

“**Required Delivery Date**” has the meaning set forth in Section 4.1(c).

“**Rule 144**” and “**Rule 424**” means Rule 144 and Rule 424, respectively, promulgated by the SEC pursuant to the 1933 Act, as such Rules may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

“**SEC**” means the Securities and Exchange Commission.

“**Second Lien Credit Agreement**” means that certain Second Amended and Restated Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein.

“**Second Lien Credit Agreement Amendment**” means that certain Amendment No. 1 to the Second Lien Credit Agreement in the form attached hereto as Exhibit F.

“**SEC Reports**” has the meaning set forth in Section 3.1(h).

“**Securities**” has the meaning set forth in the Recitals.

“**Shares**” means shares of the Company’s Common Stock.

“**Short Sales**” has the meaning set forth in Section 3.2(h).

“**Subsidiary**” means any direct or indirect wholly-owned subsidiary of the Company.

“**Trading Day**” means (a) any day on which the Common Stock is listed or quoted and traded on its primary Trading Market, (b) if the Common Stock is not then listed or quoted and traded on any Eligible Market, then a day on which trading occurs on The NASDAQ Capital Market (or any successor thereto), or (c) if trading ceases to occur on The NASDAQ Capital Market (or any successor thereto), any Business Day.

“**Trading Market**” means the Principal Market or any other Eligible Market, or any national securities exchange, market or trading or quotation facility on which the Common Stock is then listed or quoted.

“**Transaction Documents**” means this Agreement, the schedules and exhibits attached hereto, the Notes, the Warrants, the Registration Rights Agreement and the Transfer Agent Instructions.

“**Transfer Agent**” means American Stock Transfer & Co, LLC, or any successor transfer agent for the Company.

“**Transfer Agent Instructions**” means, with respect to the Company, the Irrevocable Transfer Agent Instructions, in the form of Exhibit H, executed by the Company and delivered to and acknowledged in writing by the Transfer Agent.

“**Warrants**” has the meaning set forth in the Recitals.

“**Warrant Shares**” has the meaning set forth in the Recitals.

ARTICLE II PURCHASE AND SALE

2.1 Closing. Subject to the terms and conditions set forth in this Agreement, at the Closing the Company shall issue and sell to each Investor, and each Investor shall, severally and not jointly, purchase from the Company, such Notes and Warrants for the price set forth opposite such Investor’s name on Exhibit A hereto under the applicable headings thereunder. The date and time of the Closing and shall be 10:00 a.m., New York City Time, on the Closing Date. The Closing shall take place at the offices of the Company’s Counsel.

2.2 Closing Deliveries.

(a) At the Closing, the Company shall deliver or cause to be delivered to each Investor the following:

(i) a Note, free and clear of all restrictive and other legends (except as expressly provided for in Section 4.1(b)), dated as of the Closing Date and issued in the name of such Investor (or in the name of its nominee), evidencing the aggregate principal amount of Notes set forth opposite such Investor’s name on Exhibit A hereto under the heading “Notes”, duly executed and delivered by the Company;

(ii) a Warrant, dated as of the Closing Date and issued in the name of such Investor (or in the name of its nominee), pursuant to which such Investor shall have the right to acquire such number of Warrant Shares set forth opposite such Investor’s name on Exhibit A hereto under the heading “Warrant Shares”, duly executed and delivered by the Company;

(iii) the Registration Rights Agreement, duly executed and delivered by the Company;

(iv) if such Investor is a party thereto, the First Lien Credit Agreement Amendment, duly executed and delivered by each party thereto other than such Investor;

(v) if such Investor is a party thereto, the Second Lien Credit Agreement Amendment, duly executed and delivered by each party thereto other than such Investor;

(vi) if such Investor is contemplated to be party to a Purchase and Sale Agreement hereunder, a Purchase and Sale Agreement, duly executed and delivered by each party thereto other than any Investor;

(vii) if such Investor is contemplated to sell Purchased Tranche A-2 Loans in connection herewith, a "Lender Assignment Agreement" as defined in the Second Lien Credit Agreement, duly executed and delivered by each party thereto other than such Investor, together with the purchase price for the applicable assignment thereunder, to effect the assignment of the Purchased Tranche A-2 Loans;

(viii) a legal opinion of Company Counsel dated as of the Closing Date, in the form of Exhibit I, executed by such counsel and delivered to the Investors and the Agent;

(ix) duly executed Transfer Agent Instructions acknowledged by the Company's transfer agent;

(x) a certificate evidencing the formation and good standing of the Company issued by the Secretary of State of the State of Delaware, as of a date within ten (10) days of the Closing Date;

(xi) a copy of the Company's Certificate of Incorporation, as amended, certified by the Secretary of State of the State of Delaware within thirty (30) days of the Closing Date;

(xii) a certificate executed by the Secretary of the Company and dated as of the Closing Date, certifying as to (i) the resolutions adopted by the Company's board of directors approving this Agreement, (ii) the Certificate of Incorporation of the Company and (iii) the Company's bylaws, as amended, each as in effect at the Closing;

(xiii) a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, certifying the satisfaction of each of the conditions set forth in Sections 5.1(a) (except as to representations that speak as of a specified date, in which case such representations shall be true and correct as of such specified date) and Section 5.1(b) (except that such certification shall only be required with respect to the Company and not any Investor);

(xiv) a letter from the Company's Transfer Agent certifying the number of shares of Common Stock outstanding as of a date within five (5) days of the Closing Date; and

(xv) approval by each applicable Trading Market of an additional shares listing application covering all of the Registrable Securities.

- (b) At the Closing, each Investor shall deliver or cause to be delivered to the Company the following:
- (i) the Registration Rights Agreement, duly executed and delivered by such Investor;
 - (ii) the First Lien Credit Agreement Amendment, duly executed and delivered by such Investor, if such Investor is contemplated to be a party thereto;
 - (iii) the Second Lien Credit Agreement Amendment, duly executed and delivered by such Investor, if such Investor is contemplated to be a party thereto;
 - (iv) if applicable, a Purchase and Sale Agreement, duly executed and delivered by such Investor, if such Investor is contemplated to be a party to a Purchase and Sale Agreement;
 - (v) if applicable, a “Lender Assignment Agreement” as defined in the Second Lien Credit Agreement, duly executed and delivered by such Investor, to effect the assignment of the Purchased Tranche A-2 Loans (if such Investor is contemplated sell any Purchase Tranche A-2 Loans in connection herewith);
 - (vi) the purchase price set forth opposite such Investor’s name on Exhibit A hereto under the heading “Purchase Price” in United States dollars and in immediately available funds, by wire transfer to an account designated in writing to such Investor by the Company for such purpose.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Investors and the Agent as follows (which representations and warranties shall be deemed to apply, where appropriate, to each Subsidiary of the Company):

(a) Subsidiaries. The Company has no Subsidiaries other than those listed in Schedule 3.1(a) hereto. Except as disclosed in Schedule 3.1(a) hereto, the Company owns, directly or indirectly, all of the capital stock or comparable equity interests of each Subsidiary free and clear of any Lien and all the issued and outstanding shares of capital stock or comparable equity interest of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights.

(b) Organization and Qualification. Each of the Company and the Subsidiaries is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as applicable), with the requisite legal authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to do business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect.

(c) Authorization; Enforcement. The Company has the requisite corporate authority to enter into and to consummate the transactions contemplated by each of the Transaction Documents to which it is a party and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of each of the Transaction Documents to which it is a party by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further consent or action is required by the Company, its Board of Directors or its stockholders. Each of the Transaction Documents to which it is a party has been (or upon delivery will be) duly executed by the Company and is, or when delivered in accordance with the terms hereof, will constitute, the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors rights generally, and (ii) the effect of rules of law governing the availability of specific performance and other equitable remedies.

(d) No Conflicts. Except as set forth on Schedule 3.1(d) hereto, the execution, delivery and performance of the Transaction Documents to which it is a party by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Notes and the Warrants and reservation for issuance of the Warrant Shares) do not, and will not, (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound, or affected, except to the extent that such conflict, default, termination, amendment, acceleration or cancellation right would not reasonably be expected to have a Material Adverse Effect, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including, assuming the accuracy of the representations and warranties of the Investors set forth in Section 3.2 hereof, federal and state securities laws and regulations and the rules and regulations of any self-regulatory organization to which the Company or its securities are subject, including all applicable Trading Markets), or by which any property or asset of the Company or a Subsidiary is bound or affected, except to the extent that such violation would not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, the issuance of all Warrant Shares pursuant to the terms of the Warrants and the issuance of an aggregate of up to 3,289,727 Interest Shares pursuant to the terms of the Notes does not require any approval of the stockholders of the Company under the rules and regulations of the Principal Market and does not violate any rule or regulation of the Principal Market.

(e) No Consents. Except for the approval the Company's stockholders to (i) increase the Company's authorized shares of Common Stock, and (ii) to issue more than 19.99% of the Company's outstanding shares of Common Stock on the date hereof, which approval, in each case, may be required for the Company to issue more than 3,289,727 Interest Shares under the Notes (and is not otherwise required), neither the Company nor any of its Subsidiaries is required to obtain any consent, authorization or order of, or make any filing or registration with (other than the filing of one or more registration statements with the Securities and Exchange Commission in accordance with the requirements of the Registration Rights Agreement, a Form D with the Securities and Exchange Commission, a Listing of Additional Shares with NASDAQ, a Shares Outstanding Change Form with NASDAQ and any filings as may be required by any state securities agencies), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for the Company to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof.

(f) The Securities. The Securities (including the Warrant Shares and an aggregate of 3,289,727 shares of Common Stock that may be issued as Interest Shares) are duly authorized and, when issued and paid for in accordance with the Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens and will not be subject to preemptive or similar rights of stockholders (except for rights that have been waived or complied with). The Company has reserved from its duly authorized capital stock 25,000,000 shares of Common Stock issuable upon exercise of the Warrants and, at the Closing, will have reserved from its duly authorized capital stock all 25,630,285 shares of Common Stock issuable upon exercise of the Warrants. Any Interest Shares issued pursuant to the terms of the Notes, when and if issued, will be duly authorized, duly and validly issued, fully paid and nonassessable, free and clear of all Liens and will not be subject to preemptive or similar rights of stockholders (except for rights that have been waived or complied with). The offer, issuance and sale of the Notes, the Interest Shares, the Warrants and the Warrant Shares to the Investors pursuant to the Agreement, and in the case of the Warrant Shares and Interest Shares, pursuant to the Warrants and Notes, respectively, are exempt from the registration requirements of the 1933 Act.

(g) Capitalization. The aggregate number of shares and type of all authorized, issued and outstanding classes of capital stock, options and other securities of the Company (whether or not presently convertible into or exercisable or exchangeable for shares of capital stock of the Company) is set forth in Schedule 3.1(g) hereto. All outstanding shares of capital stock are duly authorized, validly issued, fully paid and nonassessable and have been issued in compliance in all material respects with all applicable securities laws. Except as disclosed in Schedule 3.1(g) hereto, the Company did not have outstanding at December 19, 2012 any other options, warrants, script rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or entered into any agreement giving any Person any right to subscribe for or acquire, any shares of Common Stock, or securities or rights convertible or exchangeable into shares of Common Stock. Except as set forth on Schedule 3.1(g) hereto, and except for customary adjustments as a result of stock dividends, stock splits, combinations of shares, reorganizations, recapitalizations, reclassifications or other similar events, there are no anti-dilution or price adjustment provisions contained in any security issued by the Company (or in any agreement providing rights to security holders) and the issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investors) and will not result in a right of any holder of securities to adjust the exercise, conversion, exchange or reset price under such securities. To the knowledge of the Company, except as disclosed in the SEC Reports and any Schedules filed with the SEC pursuant to Rule 13d-1 of the 1933 Act by reporting persons or in Schedule 3.1(g) hereto, no Person or group of related Persons beneficially owns (as determined pursuant to Rule 13d-3 under the 1933 Act), or has the right to acquire, by agreement with or by obligation binding upon the Company, beneficial ownership of in excess of 5% of the outstanding Common Stock.

(h) SEC Reports; Financial Statements. The Company has filed all reports required to be filed by it under the 1933 Act, including pursuant to Section 13(a) or 15(d) thereof, for the 12 months preceding the date hereof on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension and has filed all reports required to be filed by it under the 1933 Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof. Such reports required to be filed by the Company under the 1933 Act, including pursuant to Section 13(a) or 15(d) thereof, together with any materials filed or furnished by the Company under the 1933 Act, whether or not any such reports were required being collectively referred to herein as the “**SEC Reports**” and, together with this Agreement and the Schedules to this Agreement, the “**Disclosure Materials**.” There are no unresolved comment letters from the Staff of the SEC. As of their respective dates, the SEC Reports filed by the Company complied in all material respects with the requirements of the 1933 Act and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed by the Company, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (“**GAAP**”), except as may be otherwise specified in such financial statements, the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP or may be condensed or summary statements, and fairly present in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, year-end audit adjustments. All material agreements to which the Company or any Subsidiary is a party or to which the property or assets of the Company or any Subsidiary are subject are included as part of or identified in the SEC Reports, to the extent such agreements are required to be included or identified pursuant to the rules and regulations of the SEC.

(i) Since the date of the latest audited financial statements included within the SEC Reports, except as disclosed in the SEC Reports, (i) there has been no event, occurrence or development that, individually or in the aggregate, has had or that would result in a Material Adverse Effect, (ii) the Company has not incurred any material liabilities other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company’s financial statements pursuant to GAAP or required to be disclosed in filings made with the SEC, (iii) the Company has not altered its method of accounting or the changed its auditors, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders, in their capacities as such, or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (except for repurchases by the Company of shares of capital stock held by employees, officers, directors, or consultants pursuant to an option of the Company to repurchase such shares upon the termination of employment or services), and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock-based plans. The Company has not taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so. The Company is not as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the applicable Closing, will not be Insolvent (as defined below). For purposes of this Section 3.1(i), “**Insolvent**” means (i) the present fair saleable value of the Company’s assets is less than the amount required to pay the Company’s total Indebtedness (as defined in Section 3.1(aa)), (ii) the Company is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) the Company intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) the Company has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted.

(j) Absence of Litigation. Except as set forth on Schedule 3.1(j) hereto, there is no action, suit, claim, or proceeding, or, to the Company's knowledge, inquiry or investigation, before or by any court, public board, government agency, self-regulatory organization (including the Principal Market) or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries that could, individually or in the aggregate, have a Material Adverse Effect.

(k) Compliance. Neither the Company nor any Subsidiary, except in each case as would not, individually or in the aggregate, reasonably be expected to have or result in a Material Adverse Effect, (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received written notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any order of any court, arbitrator or governmental body, or (iii) is or has been in violation of any statute, rule or regulation of any governmental authority.

(l) Title to Assets. Except as set forth on Schedule 3.1(l) hereto, the Company and the Subsidiaries have good and marketable title to all real property owned by them that is material to the business of the Company and the Subsidiaries and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for Liens that do not, individually or in the aggregate, have or result in a Material Adverse Effect. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases of which the Company and the Subsidiaries are in material compliance.

(m) No General Solicitation; Placement Agent's Fees. Neither the Company, nor any of its affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commission (other than for persons engaged by any Investor or its investment advisor) relating to or arising out of the issuance of the Securities pursuant to this Agreement. The Company shall pay, and hold each Investor harmless against, any liability, loss or expense (including, without limitation, reasonable attorney's fees and out-of-pocket expenses) arising in connection with any such claim for fees arising out of the issuance of the Securities pursuant to this Agreement. The Company acknowledges that it has engaged Lazard Capital Markets LLC as its lead placement agent (the "**Agent**") in connection with the sale of the Securities. Other than the Agent, the Company has not engaged any placement agent or other agent in connection with the sale of the Securities.

(n) Private Placement. Neither the Company nor any of its Affiliates nor, any Person acting on the Company's behalf has, directly or indirectly, at any time within the past six months, made any offer or sale of any security or solicitation of any offer to buy any security under circumstances that would (i) eliminate the availability of the exemption from registration under Regulation D under the 1933 Act in connection with the offer and sale by the Company of the Securities as contemplated hereby or (ii) cause the offering of the Securities pursuant to the Transaction Documents to be integrated with prior offerings by the Company for purposes of any applicable law, regulation or stockholder approval provisions, including, without limitation, under the rules and regulations of any Trading Market. The Company is not required to be registered as, and is not an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company is not required to be registered as, a United States real property holding corporation within the meaning of the Foreign Investment in Real Property Tax Act of 1980.

(o) Listing and Maintenance Requirements. Except as disclosed in Schedule 3.1(o), the Company has not, in the twelve months preceding the date hereof, received notice (written or oral) from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is in compliance with all such listing and maintenance requirements. The Company has taken no action designed to delist, or that is reasonably likely to have the effect of delisting, the Common Stock from the Principal Market, and the Company has undertaken commercially reasonable efforts to maintain such listing of its Common Stock. The issuance by the Company of the Securities shall not have the effect of delisting or suspending the Common Stock from the Principal Market.

(p) Registration Rights. Except as described in Schedule 3.1(p), the Company has not granted or agreed to grant to any Person any rights (including “piggy-back” registration rights) to have any securities of the Company registered with the SEC or any other governmental authority that have not been satisfied or waived.

(q) Application of Takeover Protections. There is no control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company’s charter documents or the laws of its state of incorporation that is or could become applicable to any of the Investors as a result of the Investors and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including, without limitation, as a result of the Company’s issuance of the Securities and the Investors’ ownership of the Securities.

(r) Disclosure. Except for this Agreement, the Schedules to this Agreement, and information previously disclosed to the Investors in connection with or pursuant to the Credit Agreements or the governing documents of New PE Holdco, the Company confirms that neither it nor any officers, directors or Affiliates, has provided any of the Investors (other than Excluded Investors) or their agents or counsel with any information that constitutes or might constitute Non-Public Information. The Company understands and confirms that each of the Investors will rely on the foregoing representations in effecting purchases and sales of securities of the Company (other than Excluded Investors). All disclosure provided by the Company to the Investors regarding the Company, its business and the transactions contemplated hereby, including the Schedules to this Agreement, furnished by or on the behalf of the Company are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. To the Company’s knowledge, except for the transactions contemplated by this Agreement, no event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed. The Company acknowledges and agrees that no Investor (other than Excluded Investors) makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those set forth in the Transaction Documents.

(s) Acknowledgment Regarding Investors’ Purchase of Securities. Based upon the assumption that the transactions contemplated by this Agreement are consummated in all material respects in conformity with the Transaction Documents, the Company acknowledges and agrees that each of the Investors (other than Excluded Investors) is acting solely in the capacity of an arm’s length purchaser with respect to the Transaction Documents and the transactions contemplated hereby. The Company further acknowledges that no Investor (other than Excluded Investors) is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and any advice given by any Investor (other than Excluded Investors) or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to the Investors’ purchase of the Securities. The Company further represents to each Investor that the Company’s decision to enter into this Agreement has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(t) Patents and Trademarks. The Company and its Subsidiaries own, or possess adequate rights or licenses to use, all trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights (“**Intellectual Property Rights**”) necessary to conduct their respective businesses now conducted. None of the Company’s Intellectual Property Rights have expired or terminated, or are expected to expire or terminate, within three years from the date of this Agreement. The Company does not have any knowledge of any infringement by the Company or its Subsidiaries of Intellectual Property Rights of others. Except as disclosed in the SEC Reports, there is no claim, action or proceeding being made or brought, or to the knowledge of the Company, being threatened, against the Company or its Subsidiaries regarding its Intellectual Property Rights.

(u) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses and location in which the Company and the Subsidiaries are engaged.

(v) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports (“**Material Permits**”), except where the failure to possess such permits does not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, and neither the Company nor any Subsidiary has received any written notice of proceedings relating to the revocation or modification of any Material Permit.

(w) Transactions With Affiliates and Employees. Except as set forth or incorporated by reference in the Company’s SEC Reports, none of the officers, directors or employees of the Company is presently a party to any transaction that would be required to be reported on Form 10-K with the Company or any of its Subsidiaries (other than for ordinary course services as employees, officers or directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such officer, director or employee or, to the Company’s knowledge, any corporation, partnership, trust or other entity in which any such officer, director, or employee has a substantial interest or is an officer, director, trustee or partner.

(x) Internal Accounting Controls. Except as set forth in the Company’s SEC Reports, the Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management’s general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(y) Sarbanes-Oxley Act. Except as set forth in the Company’s SEC Reports, the Company is in compliance in all material respects with applicable requirements of the Sarbanes-Oxley Act of 2002 and applicable rules and regulations promulgated by the SEC thereunder, except where such noncompliance would not have, individually or in the aggregate, a Material Adverse Effect.

(z) Foreign Corrupt Practices. Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or other Person acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

(aa) Indebtedness. Except as disclosed in the SEC Reports and in Schedule 3.1(aa), neither the Company nor any of its Subsidiaries (i) has any outstanding Indebtedness (as defined below), (ii) is in violation of any term of or in default under any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (iii) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Schedule 3.1(aa) provides a description of the terms of any such outstanding Indebtedness. For purposes of this Agreement: (x) "**Indebtedness**" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; (y) "**Contingent Obligation**" means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; and (z) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(bb) Employee Relations. Neither Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company believes that its relations with its employees are as disclosed in the SEC Reports. Except as disclosed in the SEC Reports, during the period covered by the SEC Reports, no executive officer of the Company or any of its Subsidiaries (as defined in Rule 501(f) of the 1933 Act) has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. To the knowledge of the Company or any such Subsidiary, no executive officer of the Company or any of its Subsidiaries is in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any such Subsidiary to any liability with respect to any of the foregoing matters.

(cc) Labor Matters. The Company and its Subsidiaries are in compliance in all material respects with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(dd) Environmental Laws. The Company and its Subsidiaries (i) are in compliance in all material respects with any and all Environmental Laws (as hereinafter defined), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance in all material respects with all terms and conditions of any such permit, license or approval where, in each of the foregoing clauses (i), (ii) and (iii), the failure to so comply would be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The term "**Environmental Laws**" means all federal, state, local or foreign laws relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata), including, without limitation, laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "**Hazardous Materials**") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations issued, entered, promulgated or approved thereunder.

(ee) Subsidiary Rights. Except as set forth in Schedule 3.1(ee), the Company or one of its Subsidiaries has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company or such Subsidiary.

(ff) Tax Status. The Company and each of its Subsidiaries (i) has made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

(gg) Ranking of Notes. Other than as set forth in Schedule 3.1(gg), no Indebtedness of the Company or any of its Subsidiaries is senior to or ranks *pari passu* with the Notes in right of payment, whether with respect of payment of redemptions, interest, damages or upon liquidation or dissolution or otherwise.

3.2 Representations and Warranties of the Investors. Each Investor hereby, as to itself only and for no other Investor, represents and warrants to the Company as follows:

(a) Organization; Authority. Such Investor is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with the requisite corporate, partnership or other power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The purchase by such Investor of the Securities hereunder has been duly authorized by all necessary action on the part of such Investor. This Agreement has been duly executed and delivered by such Investor and constitutes the valid and binding obligation of such Investor, enforceable against it in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors rights generally, and (ii) the effect of rules of law governing the availability of specific performance and other equitable remedies.

(b) No Public Sale or Distribution. Such Investor is (i) acquiring the Notes and the Warrants, (ii) upon exercise of the Warrants will acquire the Warrant Shares issuable upon exercise thereof and (iii) upon issuance of the Interest Shares will acquire the Interest Shares, in the ordinary course of business for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under the 1933 Act or under an exemption from such registration and in compliance with applicable federal and state securities laws, and such Investor does not have a present arrangement to effect any distribution of the Securities to or through any person or entity; provided, however, that by making the representations herein, such Investor does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the 1933 Act.

(c) Investor Status. At the time such Investor was offered the Securities, it was, and at the date hereof it is, an “accredited investor” as defined in Rule 501(a) under the 1933 Act or a “qualified institutional buyer” as defined in Rule 144A(a) under the 1933 Act.

(d) Experience of Such Investor. Such Investor, either alone or together with its representatives has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Investor understands that it must bear the economic risk of this investment in the Securities indefinitely, and is able to bear such risk and is able to afford a complete loss of such investment.

(e) Access to Information. Such Investor acknowledges that it has reviewed the Disclosure Materials and has been afforded: (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information (other than Non-Public Information) about the Company and the Subsidiaries and their respective financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Neither such inquiries nor any other investigation conducted by or on behalf of such Investor or its representatives or counsel shall modify, amend or affect such Investor’s right to rely on the truth, accuracy and completeness of the Disclosure Materials and the Company’s representations and warranties contained in the Transaction Documents. Such Investor acknowledges receipt of copies of the SEC Reports.

(f) No Governmental Review. Such Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(g) No Conflicts. The execution, delivery and performance by such Investor of this Agreement and the consummation by such Investor of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Investor or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Investor is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Investor, except in the case of clauses (ii) and (iii) above, for such that are not material and do not otherwise affect the ability of such Investor to consummate the transactions contemplated hereby.

(h) Illegal Transactions. No Investor, directly or indirectly, and no Person acting on behalf of or pursuant to any understanding with any Investor, has engaged in any purchases or sales of the securities of the Company (including, without limitation, any Short Sales involving any of the Company's securities) since the time that such Investor was first contacted by the Company, the Agent or any other Person regarding this investment in the Company. Such Investor covenants that neither it nor any Person acting on its behalf or pursuant to any understanding with such Investor will engage, directly or indirectly, in any transactions in the securities of the Company (including Short Sales) prior to the time the transactions contemplated by this Agreement are publicly disclosed. "Short Sales" include, without limitation, all "short sales" as defined in Rule 200 promulgated under Regulation SHO under the 1933 Act and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers.

(i) Restricted Securities. The Investors understand that the Securities are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances.

(j) Legends. It is understood that, except as provided in Section 4.1(b) of this Agreement, certificates evidencing the Securities may bear the legend set forth in Section 4.1(b).

(k) No Legal, Tax or Investment Advice. Such Investor understands that nothing in this Agreement or any other materials presented by or on behalf of the Company to the Investor in connection with the purchase of the Securities constitutes legal, tax or investment advice. Such Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Securities. Such Investor understands that the Agent has acted solely as the agent of the Company in this placement of the Securities, and that the Agent makes no representation or warranty with regard to the merits of this transaction or as to the accuracy of any information such Investor may have received in connection therewith. Such Investor acknowledges that he has not relied on any information or advice furnished by or on behalf of the Agent.

(l) Ownership of Tranche A-2 Term Loans. On the Closing Date, such Investor (or if applicable, its Affiliate) will own, at a minimum, the "Tranche A-2 Term Loans" issued under and as defined in the Second Lien Credit Agreement, as amended to date, in the amount set forth next to such Investor's (or if applicable, its Affiliate's) name on Exhibit J hereto.

(m) Ownership of New PE Holdco Units. On the Closing Date, such Investor (or if applicable, its Affiliate) will own, at a minimum, free and clear of liens, the number of membership interest units of New PE Holdco set forth next to such Investor's (or if applicable, its Affiliate's) name on Exhibit K hereto.

(n) Current Holdings Schedule. As of the date of this Agreement, such Investor (or if applicable, its Affiliate) (i) is a lender holding the loans outstanding under the Credit Agreements set forth next to such Investor's (or if applicable, its Affiliate's) name on the Current Holdings Schedule, and (ii) has entered into one or more trade confirmations for the acquisition by such Investor (or if applicable, its Affiliate) of the loans outstanding under the Credit Agreements set forth next to such Investor's (or if applicable, its Affiliate's) name on the Current Holdings Schedule, the closing of which is not subject to any conditions other than the payment of the purchase price therefor and conditions that are primarily administrative in nature.

ARTICLE IV
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Investors covenant that the Securities will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the 1933 Act or pursuant to an available exemption from the registration requirements of the 1933 Act, and in compliance with any applicable state securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or to the Company, the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration under the 1933 Act. Notwithstanding the foregoing, the Company hereby consents to and agrees to register on the books of the Company and with its transfer agent, without any such legal opinion, except to the extent that the transfer agent requests such legal opinion, any transfer of Securities by an Investor to an Affiliate of such Investor, provided that the transferee certifies to the Company that it is an “accredited investor” as defined in Rule 501(a) under the 1933 Act and provided that such Affiliate does not request any removal of any existing legends on any certificate evidencing the Securities.

(b) The Investors agree to the imprinting, so long as is required by this Section 4.1(b), of the following legend on any certificate evidencing any of the Securities; provided however, that no such legend shall be imprinted on any Interest Shares:

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE [EXERCISABLE] HAVE BEEN][THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN] REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(c) Certificates evidencing Securities shall not be required to contain the legend set forth in Section 4.1(b) above or any other legend (i) while a registration statement covering the resale of such Securities is effective under the 1933 Act, (ii) following any sale of such Securities pursuant to Rule 144 (assuming the transferor is not an affiliate of the Company), (iii) if such Securities (including the Securities underlying such Securities) are eligible to be sold, assigned or transferred without restriction (including, without limitation, volume limitations) pursuant to Rule 144 (taking account of any Staff position with respect to “affiliate” status) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) (provided that an Investor provides the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144 which shall not include an opinion of counsel), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Investor provides the Company with an opinion of counsel to such Investor, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the 1933 Act or (v) if such legend is not required under applicable requirements of the 1933 Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the SEC). If a legend is not required pursuant to the foregoing, the Company shall, at its own expense, no later than three (3) Trading Days following the delivery by an Investor to the Company or the Transfer Agent (with notice to the Company) of a legended certificate representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Investor as may be required above in this Section 4.1(c), as directed by such Investor, either: (A) provided that the Company’s transfer agent is participating in the Depository Trust Company (“DTC”) Fast Automated Securities Transfer Program and such Securities are Warrant Shares, credit the aggregate number of shares of Common Stock to which such Investor shall be entitled to such Investor’s or its designee’s balance account with DTC through its Deposit Withdrawal at Custodian system or (B) if the Company’s transfer agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and dispatch by overnight courier to such Investor, a certificate representing such Securities that is free from all restrictive and other legends, registered in the name of such Investor or its designee (the date by which such credit is so required to be made to the balance account of such Investor’s or such Investor’s nominee with DTC or such certificate is required to be delivered to such Investor pursuant to the foregoing is referred to herein as the “**Required Delivery Date**”).

(d) If the Company fails to so properly deliver such unlegended certificates or so properly credit the balance account of such Investor’s or such Investor’s nominee with DTC by the Required Delivery Date, and if on or after the Required Delivery Date such Investor purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Investor of shares of Common Stock that such Investor anticipated receiving from the Company without any restrictive legend, then, in addition to all other remedies available to such Investor, the Company shall, within three (3) Trading Days after such Investor’s request and in such Investor’s sole discretion, either (i) pay cash to such Investor in an amount equal to such Investor’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the “**Buy-In Price**”), at which point the Company’s obligation to deliver such certificate or credit such Investor’s balance account shall terminate, or (ii) promptly honor its obligation to deliver to such Investor a certificate or certificates or credit such Investor’s DTC account representing such number of shares of Common Stock that would have been issued if the Company timely complied with its obligations hereunder and pay cash to such Investor in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number Warrant Shares that the Company was required to deliver to such Investor by the Required Delivery Date times (B) the Closing Price of the Common Stock on the Required Delivery Date.

(e) The Company will not object to and shall permit (except as prohibited by law) an Investor to pledge or grant a security interest in some or all of the Securities in connection with a bona fide margin agreement or other loan or financing arrangement secured by the Securities, and if required under the terms of such agreement, loan or arrangement, the Company will not object to and shall permit (except as prohibited by law) such Investor to transfer pledged or secured Securities to the pledges or secured parties. Except as required by law, such a pledge or transfer would not be subject to approval of the Company, no legal opinion of the pledgee, secured party or pledgor shall be required in connection therewith, and no notice shall be required of such pledge. Each Investor acknowledges that the Company shall not be responsible for any pledges relating to, or the grant of any security interest in, any of the Securities or for any agreement, understanding or arrangement between any Investor and its pledgee or secured party. At the appropriate Investor's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the 1933 Act or other applicable provision of the 1933 Act to appropriately amend the list of Selling Stockholders thereunder. Provided that the Company is in compliance with this Section 4.1(e), the Company's indemnification obligations pursuant to Section 6.4 shall not extend to any Proceeding or Losses arising out of or related to this Section 4.1(e).

4.2 Reporting Status. Until the date on which the Investors shall have sold all of the Registrable Securities, the Company shall timely file all reports required to be filed with the SEC pursuant to the 1933 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1933 Act even if the 1933 Act or the rules and regulations thereunder would no longer require or otherwise permit such termination. From the time Form S-3 is available to the Company for the registration of the Warrant Shares, the Company shall take all actions necessary to maintain its eligibility to register the Warrant Shares for resale by the Investors on Form S-3.

4.3 Integration. The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate thereof shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the 1933 Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the 1933 Act of the sale of the Securities to the Investors or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market.

4.4 Acknowledgement Regarding Investors' Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding, but subject to compliance by the Investors with applicable law, it is understood and acknowledged by the Company (i) that none of the Investors have been asked to agree, nor has any Investor agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) that past or future open market or other transactions by any Investor, including, without limitation, short sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities; (iii) that any Investor, and counter parties in "derivative" transactions to which any such Investor is a party, directly or indirectly, presently may have a "short" position in the Common Stock, and (iv) that each Investor shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (a) one or more Investors may engage in hedging activities at various times during the period that the Securities are outstanding, (b) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted and (c) nothing contained herein shall preclude any Investor from having taken or from taking any action in respect of the identification of the availability of, or securing of, available shares to borrow in order to effect short sales or similar transactions.

4.5 Reservation of Securities. From and after the Closing Date, the Company shall maintain a reserve from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may be required to fulfill its obligations to issue the Warrant Shares under the Transaction Documents. In the event that at any time the then authorized shares of Common Stock are insufficient for the Company to satisfy its obligations to issue such Warrant Shares under the Transaction Documents, the Company shall promptly take such actions as may be required to increase the number of authorized shares.

4.6 Securities Laws Disclosure: Publicity. The Company shall, on or before the fourth (4th) Business Day after the execution of this Agreement by all parties hereto, issue a press release (the "**Press Release**") reasonably acceptable to the Investors disclosing all the material terms of the transactions contemplated by the Transaction Documents. On or before the fourth (4th) Business Day following the date of this Agreement, the Company shall file a Current Report on Form 8-K describing all the material terms of the transactions contemplated by the Transaction Documents in the form required by the 1933 Act and attaching all the material Transaction Documents (including, without limitation, this Agreement (and all schedules to this Agreement), the form of the Notes, the form of the Warrants and the form of the Registration Rights Agreement) (including all attachments, the "**8-K Filing**"). The Company shall not, and the Company shall cause each of its Subsidiaries and each of its and their respective officers, directors, employees and agents not to, except in compliance with the procedure set forth in Section 14 of the Note, provide any Investor with any material, non-public information regarding the Company or any of its Subsidiaries from and after the issuance of the Press Release without the express prior written consent of such Investor. In the event of a breach of any of the foregoing covenants or any of the covenants or agreements contained in the Transaction Documents by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees and agents (as determined in the reasonable good faith judgment of such Investor), including without limitation the agreements contained in Section 14 of the Notes, in addition to any other remedy provided herein or in the Transaction Documents, such Investor shall have the right to make a public disclosure, in the form of a press release, public advertisement or otherwise, of such breach or such Non-Public Information, as applicable, without the prior approval by the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees or agents. No Investor shall have any liability to the Company, any of its Subsidiaries, or any of its or their respective officers, directors, employees, stockholders or agents, for any such disclosure. Subject to the foregoing, neither the Company, its Subsidiaries nor any Investor shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, the Company shall be entitled, without the prior approval of any Investor, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith and (ii) as is required by applicable law and regulations (provided that in the case of clause (i) each Investor shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Without the prior written consent of the applicable Investor, the Company shall not (and shall cause each of its Subsidiaries and Affiliates to not) disclose the name of such Investor in any filing, announcement, release or otherwise; provided however that such Investor's name may be disclosed by the Company (i) to the extent such disclosure is required in the 8-K Filing or (ii) in the registration statement filed pursuant to and in accordance with the terms of the Registration Rights Agreement.

4.7 Use of Proceeds. The Company shall use (i) \$21,538,595.64 of the gross proceeds from the sale of the Securities to consummate, on the Closing Date, the purchase by the Company from the Investors of an aggregate principal amount of \$21,538,595.64 of “Tranche A-2 Term Loans” issued under and as defined in the Second Lien Credit Agreement, as such credit facility may have been or may be amended, restated or otherwise modified from time to time, on the terms, in the amounts and from the applicable Investors set forth on Exhibit J (the “**Purchased Tranche A-2 Loans**”) and (ii) \$653,895.00 of the gross proceeds from the sale of the Securities to consummate, on the Closing Date, the purchase by the Company of an aggregate of 130.77 membership interest units of New PE Holdco pursuant to the Purchase and Sale Agreements in the amounts and from the applicable holders set forth on Exhibit K.

4.8 NASDAQ Ownership Limitations. In no event shall the Company issue any Interest Shares to the Investors pursuant to the terms of the Transaction Documents if the sum of (i) the aggregate number of Interest Shares proposed to be issued by the Company, (ii) any Interest Shares previously issued pursuant to the terms of the Notes, and (iii) the aggregate number Warrant Shares that may be issued pursuant to the exercise of the Warrants at any time exceeds 19.99% of the total number of shares of Common Stock outstanding on the date hereof unless the Company has obtained either (i) stockholder approval for the issuance of more than such number of shares of Common Stock pursuant to NASDAQ Listing Rule 5635(d) or (ii) a waiver from NASDAQ of compliance with Rule 5635(d).

4.9 Current Holdings Schedule. From and after the date of this Agreement and until the Closing Date, each Investor (or if applicable, its Affiliate) agrees that it shall not sell, transfer or assign any of its rights or holdings described in the Current Holdings Schedule (other than as contemplated by this Agreement).

ARTICLE V
CONDITIONS

5.1 Conditions Precedent to the Obligations of the Investors. The obligation of each Investor to acquire Securities at the Closing is subject to the satisfaction or waiver by such Investor, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company contained herein shall be true and correct in all material respects as of the date when made and as of the Closing as though made on and as of such date;

(b) Performance. The Company and each other Investor shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by it at or prior to the Closing;

(c) Listing. The Common Stock (i) shall be designated for quotation or listed on the Trading Market and (ii) shall not have been suspended, as of the Closing Date, by the SEC or the Trading Market from trading on the Trading Market nor shall suspension by the SEC or the Trading Market have been threatened, as of the Closing Date, either (a) in writing by the SEC or the Trading Market or (b) by falling below the minimum listing maintenance requirements of the Trading Market;

(d) Consents and Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities (including, without limitation, the approval of the Trading Market);

(e) No Material Adverse Effect. Between the execution of this Agreement and the Closing, no event or series of events (other than stock price fluctuations) shall have occurred which reasonably would be expected to have or result in a Material Adverse Effect; and

(f) Closing Documents. Each Investor shall have received each document required to be delivered to it at or prior to the Closing pursuant to Section 2.2(a).

(g) Concurrent Transactions. The closing of the purchase and sale of the Purchased Tranche A-2 Loans contemplated by Section 4.7 and the closing of the purchase and sale of the membership interest units of New PE Holdco contemplated by Section 4.7 shall, in each case, occur substantially concurrently with the Closing.

(h) Credit Agreement Amendments. Each of the First Lien Credit Agreement and the Second Lien Credit Agreement Amendment shall be in full force effect prior to the Closing.

(i) Certain Transactions. All transactions entered by such Investor for the purchase by such Investor of Purchased Tranche A-2 Loans or membership interest units of New PE Holdco, in each case, contemplated hereunder to be sold to the Company shall have been consummated.

5.2 Conditions Precedent to the Obligations of the Company. The obligation of the Company to sell the Securities at the Closing is subject to the satisfaction or waiver by the Company, at or before the Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Investors contained herein shall be true and correct in all material respects as of the date when made and as of the Closing Date as though made on and as of such date;

(b) Performance. The Investors shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Investors at or prior to the Closing;

(c) Closing Documents. Receipt by the Company of each document required to be delivered to it at or prior to the Closing pursuant to Section 2.2(b); and

(d) Consents and Approvals. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the sale of the Securities (including, without limitation, the approval of the Trading Market).

(e) Concurrent Transactions. The closing of the purchase and sale of the Purchased Tranche A-2 Loans contemplated by Section 4.7 and the closing of the purchase and sale of the membership interest units of New PE Holdco contemplated by Section 4.7 shall, in each case, occur substantially concurrently with the Closing.

(f) Credit Agreement Amendments. Each of the First Lien Credit Agreement and the Second Lien Credit Agreement Amendment shall be in full force effect prior to the Closing.

ARTICLE VI MISCELLANEOUS

6.1 Termination. This Agreement may be terminated by the Company or any Investor, by written notice to the other parties, if the Closing has not been consummated by the twentieth (20th) Business Day following the date of this Agreement; provided that no such termination will affect the right of any party to sue for any breach by the other party (or parties).

6.2 Fees and Expenses. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement; provided, however, that, notwithstanding the foregoing, at the Closing, (i) the Company shall reimburse the Investors for reasonable fees and expenses paid by such Investors to counsel for the Investors in the amount equal to \$50,000 plus 50% of such fees and expenses over \$50,000, and (ii) the Investors shall pay 50% of fees and expenses of their Counsel over \$50,000. The Company shall pay all Transfer Agent fees, stamp taxes and other taxes and duties levied in connection with the sale and issuance of their applicable Securities.

6.3 Entire Agreement. The Transaction Documents, together with the Exhibits and Schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. At or after the Closing, and without further consideration, the Company will execute and deliver to the Investors such further documents as may be reasonably requested in order to give practical effect to the intention of the parties under the Transaction Documents.

6.4 Indemnification. In consideration of each Investor's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under the Transaction Documents, the Company shall defend, protect, indemnify and hold harmless each Investor and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "**Indemnitees**") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "**Indemnified Liabilities**"), incurred by any Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (i) the execution, delivery, performance or enforcement of the Transaction Documents or any other certificate, instrument or document contemplated hereby or thereby, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Securities, (iii) any disclosure made by such Investor pursuant to Section 4.6, or (iv) the status of such Investor as an investor in the Company pursuant to the transactions contemplated by the Transaction Documents; provided, however, that no Investor will be entitled to indemnification hereunder for any Indemnified Liabilities proximately resulting from such Investor's material breach of applicable laws, rules or regulations, including, without limitation, any breach by such Investor of any federal or state securities laws, rules or regulations with respect to Short Sales or other hedging activities. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law. Except as otherwise set forth herein, the mechanics and procedures with respect to the rights and obligations under this Section 6.4 shall be the same as those set forth in Section 6 of the Registration Rights Agreement.

6.5 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified in this Section prior to 6:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified in this Section on a day that is not a Trading Day or later than 6:30 p.m. (New York City time) on any Trading Day, (c) the Trading Day following the date of deposit with a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses, facsimile numbers and email addresses for such notices and communications are those set forth on the signature pages hereof, or such other address or facsimile number as may be designated in writing hereafter, in the same manner, by any such Person.

6.6 Amendments; Waivers. No provision of this Agreement may be amended or waived other than by an instrument in writing signed by the Company and the holders of a majority of the then outstanding Registrable Securities (excluding any Registrable Securities held by the Company or any of its Subsidiaries), provided that any party may give a waiver in writing as to itself. No consideration shall be offered or paid to any Investor to amend or consent to a waiver or modification of any provision of any of this Agreement unless the same consideration also is offered to all of the Investors.

6.7 Construction. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

6.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investors. Any Investor may assign its rights under this Agreement to any Person to whom such Investor assigns or transfers any Securities, provided (i) such transferor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company after such assignment, (ii) the Company is furnished with written notice of (x) the name and address of such transferee or assignee and (y) the Registrable Securities with respect to which such registration rights are being transferred or assigned, (iii) following such transfer or assignment, the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act and applicable state securities laws, (iv) such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions hereof that apply to the "Investors" and (v) such transfer shall have been made in accordance with the applicable requirements of this Agreement and with all laws applicable thereto.

6.9 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

6.10 Governing Law; Venue; Waiver of Jury Trial. THE CORPORATE LAWS OF THE STATE OF DELAWARE SHALL GOVERN ALL ISSUES CONSIDERING THE RELATIVE RIGHTS OF THE COMPANY AND ITS STOCKHOLDERS, AND ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTIONS) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTIONS OTHER THAN THE STATE OF NEW YORK. THE COMPANY AND INVESTORS HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN FOR THE ADJUDICATION OF ANY DISPUTE BROUGHT BY THE COMPANY OR ANY INVESTOR HEREUNDER, IN CONNECTION HERewith OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVE, AND AGREE NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING BROUGHT BY THE COMPANY OR ANY INVESTOR, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, OR THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. THE COMPANY AND INVESTORS HEREBY WAIVE ALL RIGHTS TO A TRIAL BY JURY.

6.11 Survival. The representations and warranties, agreements and covenants contained herein shall survive the Closing.

6.12 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or email attachment, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or email-attached signature page were an original thereof.

6.13 Severability. If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

6.14 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) the Transaction Documents, whenever any Investor exercises a right, election, demand or option owed to such Investor by the Company under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then, prior to the performance by the Company of the Company's related obligation, such Investor may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights.

6.15 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and the execution by the holder thereof of a customary lost certificate affidavit of that fact and an agreement to indemnify and hold harmless the Company for any losses in connection therewith. The applicants for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs associated with the issuance of such replacement Securities.

6.16 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Investors and the Company will be entitled to seek specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations described in the foregoing sentence and hereby agrees to waive in any action for specific performance of any such obligation (other than in connection with any action for temporary restraining order) the defense that a remedy at law would be adequate.

6.17 Payment Set Aside. To the extent that the Company makes a payment or payments to any Investor hereunder or any Investor enforces or exercises its rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company by a trustee, receiver or any other person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

6.18 Adjustments in Share Numbers and Prices. In the event of any stock split, subdivision, dividend or distribution payable in shares of Common Stock (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly shares of Common Stock), combination or other similar recapitalization or event occurring after the date hereof and prior to the Closing, each reference in any Transaction Document to a number of shares or a price per share shall be amended to appropriately account for such event.

6.19 Independent Nature of Investors' Obligations and Rights. The obligations of each Investor under the Transaction Documents are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute the Investors as, and the Company acknowledges that the Investors do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Investors are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Investors are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by the Transaction Documents. The decision of each Investor to purchase Securities pursuant to the Transaction Documents has been made by such Investor independently of any other Investor. Each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with such Investor making its investment hereunder and that no other Investor will be acting as agent of such Investor in connection with monitoring such Investor's investment in the Securities or enforcing its rights under the Transaction Documents. The Company and each Investor confirms that each Investor has independently participated with the Company and its Subsidiaries in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Investor, and was done solely for the convenience of the Company and its Subsidiaries and not because it was required or requested to do so by any Investor. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company, each Subsidiary and a Investor, solely, and not between the Company, its Subsidiaries and the Investors collectively and not between and among the Investors.

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

PACIFIC ETHANOL, INC.

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

Address for Notice:

400 Capitol Mall, Suite 2060
Sacramento, CA 95814
Facsimile No.: 916-403-2785
Telephone No.: 916-403-2130
Attn: Christopher W. Wright, Esq.

With a copy to:

Troutman Sanders LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614-2545
Facsimile No.: 949-622-2739
Telephone No.: 949-622-2710
Attn: Larry A. Cerutti

Signature Page to Securities Purchase Agreement

INVESTORS:

CWD OC 522 MASTER FUND LTD.

By: Candlewood Investment Group, as investment manager

By: /s/ David Koenig
Name: David Koenig
Title: Authorized Signatory

Address for Notices:

CWD OC 522 Master Fund Ltd.
c/o Candlewood Investment Group
777 Third Ave, Suite 19B, NY NY 10017
Attention: Peter Dowling
Phone: 212-439-4489
Fax: 646-380-3565
Email: Loans@candlewoodgroup.com

CANDLEWOOD SPECIAL SITUATIONS MASTER FUND,

LTD.

By: Candlewood Investment Group, as investment manager

By: /s/ David Koenig
Name: David Koenig
Title: Authorized Signatory

Address for Notices:

Candlewood Special Situations Master Fund, Ltd.
c/o Candlewood Investment Group
777 Third Ave, Suite 19B, NY NY 10017
Attention: Peter Dowling
Phone: 212-439-4489
Fax: 646-380-3565
Email: Loans@candlewoodgroup.com

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CREDIT SUISSE LOAN FUNDING LLC

By: /s/ Robert Healey
Name: Robert Healey
Title: Authorized Signatory

By: /s/ Robert Franz
Name: Robert Franz
Title: Managing Director

Address for Notices:

Credit Suisse Loan Funding LLC
Eleven Madison Avenue, 5th Floor
Attn: Jonothan Satran
New York, NY 10010-3629
Phone: (212) 325 9922
Fax: (212) 538 8119
Email: jonathan.satran@credit-suisse.com

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CCVF PacEth LLC

By: Credit Value Partners LP, as investment manager

By: /s/ Michael Geroux

Name: Michael Geroux

Title: Partner

Address for Notices:

Operations Notices:

Email: creditvaluenotices@cvp7.com

Fax: 646-380-3563

Credit Contact:

Name: Ryan Eckert

E-mail: reckert@cvp7.com

Phone: (212) 493-4465

CANDLEWOOD CREDIT VALUE FUND II, LP

By: Credit Value Partners LP, as investment manager

By: /s/ Michael Geroux

Name: Michael Geroux

Title: Partner

Address for Notices:

Operations Notices:

Email: creditvaluenotices@cvp7.com

Fax: 646-380-3563

Credit Contact:

Name: Ryan Eckert

E-mail: reckert@cvp7.com

Phone: (212) 493-4465

Signature Page to Securities Purchase Agreement

Subsidiaries

1. Kinergy Marketing LLC
 2. Pacific Ethanol Management Services Corp.
 3. Pacific Ethanol Development, LLC*
 4. Pacific Ag Products, LLC
-

Conflicts

1. The Company is obligated to pay, and after January 1, 2014 may be compelled to pay, an aggregate amount of \$6,583,000 of accrued and unpaid dividends on the Company's Series B Cumulative Convertible Preferred Stock.
 2. The Company has various reporting obligations under the Credit Agreements and the governing documents of New PE Holdco under which the Company is obligated to deliver to the Investors Non-Public Information that the Company does not disclose in its filings under the Exchange Act.
-

Capitalization

Preferred stock, \$0.001 par value; 10,000,000 shares authorized; Series A Convertible Preferred Stock: 1,684,375 shares authorized; 0 shares outstanding; Company's Series B Cumulative Convertible Preferred Stock: 1,580,790 shares authorized; 926,942 shares issued and outstanding. The Certificate of Designations that governs the Company's Series B Cumulative Convertible Preferred Stock contain certain anti-dilution protection provisions.

Common Stock, \$0.001 par value; 300,000,000 shares authorized; 144,672,406 shares issued and outstanding.

Warrants: warrants to purchase up to 75,589,674 shares of Common Stock. Of this amount, warrants to purchase 252,101 shares of Common Stock contain "full ratchet" anti-dilution protection provisions and 74,406,250 shares of Common Stock contain "weighted-average" anti-dilution protection provisions

Options: options to purchase up to 194,774 shares of Common Stock are outstanding.

The following Persons beneficially own more in excess of 5% of the outstanding shares of Common Stock: Neil M. Koehler, Heights Capital Management, Inc., Capital Ventures International, The Goldman Sachs Group, Inc. and Lyles United, LLC.

Absence of Litigation

1. The Company received a letter from The NASDAQ Stock Market on June 6, 2012, indicating that the bid price of the Company's common stock for the last 30 consecutive business days had closed below the minimum \$1.00 per share required for continued listing. The Company was provided an initial period of 180 calendar days, or until December 3, 2012, in which to regain compliance. The Company was then provided an additional period of 180 calendar days, or until June 3, 2013, in which to regain compliance.
-

Title to Assets

1. The obligations of Kinergy Marketing LLC and Pacific Ag. Products, LLC under the Amended and Restated Loan and Security Agreement (the "**Kinergy Credit Facility**"), dated May 4, 2012, by and among Kinergy Marketing LLC and Pacific Ag. Products, LLC, as Borrowers, and Wells Fargo Capital Finance, LLC, as Agent, are secured by a continuing first priority security interest in all personal and real property and fixtures, and interests in property and fixtures, of Kinergy Marketing LLC and Pacific Ag. Products, LLC. The Kinergy Credit Facility is guaranteed by the Company.
-

SCHEDULE 3.1(o)
to Securities Purchase Agreement

1. The Company received a letter from The NASDAQ Stock Market on June 6, 2012, indicating that the bid price of the Company's common stock for the last 30 consecutive business days had closed below the minimum \$1.00 per share required for continued listing. The Company was provided an initial period of 180 calendar days, or until December 3, 2012, in which to regain compliance. The Company was then provided an additional period of 180 calendar days, or until June 3, 2013, in which to regain compliance.
-

Registration Rights

1. The Company has certain demand and piggy-back registration right obligations under the Registration Rights Agreement dated as of March 27, 2008 by and among the Company and Lyles United, LLC.
-

Indebtedness

Indebtedness and Other Contracts

1. The Kinergy Credit Facility, is a revolving credit facility under which the Borrowers' borrowing capacity is capped at \$30,000,000 with an accordion for an additional \$10,000,000.
 2. Promissory Note in the principal amount of \$1,000,000 dated March 29, 2009 in favor of Neil M. Koehler, as amended. \$750,000 remains outstanding on said note.
 3. Agricredit Acceptance LLC Lease Agreement between Pacific Ag. Products, LLC and Kirby Manufacturing, Inc. dated September 17, 2008. Pacific Ag. Products, LLC's liability under the Lease is approximately \$30,000.
 4. Accrued and unpaid dividends on the Company's Series B Cumulative Convertible Preferred Stock in the aggregate amount of \$6,583,000.
 5. Commercial Insurance Premium Finance And Security Agreement between the Company and BankDirect Capital Finance, a division of Texas Capital Bank, N.A dated October 31, 2012. The Company's liability under the Agreement is approximately \$69,000.
 6. Premium Finance Agreement- Promissory Note between the Company and AFCO Acceptance Corporation dated October 29, 2012. The Company's liability under the Note is approximately \$367,000.
-

Subsidiary Rights

The Company is limited to the amount of dividends it may receive from its wholly-owned subsidiary, Kinergy Marketing LLC, under the terms of the Kinergy Credit Facility. Kinergy Marting LLC is limited to the amount of dividends it may receive from its wholly-owned subsidiary, Pacific Ag Products, LLC, under the terms of the Kinergy Credit Facility.

Ranking of Notes

1. The obligations of Kinergy Marketing LLC and Pacific Ag. Products, LLC under the Kinergy Credit Facility are secured by a continuing first priority security interest in all personal and real property and fixtures, and interests in property and fixtures, of Kinergy Marketing LLC and Pacific Ag. Products, LLC. The Kinergy Credit Facility is guaranteed by the Company.
-

Exhibit A

Schedule of Investors

<u>Investor</u>	<u>Aggregate Principal Amount of Notes</u>	<u>Purchase Price of Notes</u>	<u>Warrant Shares</u>	<u>Purchase Price of Warrants</u>	<u>Total Purchase Price</u>
CWD OC 522 Master Fund Ltd.	\$3,508,296.05	\$3,252,190.44	4,051,739	\$256,105.61	\$3,508,296.05
Candlewood Special Situations Master Fund, Ltd.	\$7,050,551.95	\$6,535,861.65	8,142,697	\$514,690.29	\$7,050,551.95
Credit Suisse Loan Funding LLC	\$11,579,547.64	\$10,734,240.66	13,373,066	\$845,306.98	\$11,579,547.64
CCVF PacEth LLC	\$27,045.00	\$25,070.72	31,389	\$1,974.29	\$27,045.00
Candlewood Credit Value Fund II, LP	\$27,050.00	\$25,075.35	31,395	\$1,974.65	\$27,050.00
Total	\$22,192,490.64	\$20,572,438.82	25,630,286	\$1,620,051.82	\$22,192,490.64

Exhibit B

Form of Note

[See Exhibit 10.2 to the Company's Current Report on Form 8-K filed on December 19, 2012.]

Exhibit C

Form of Warrant

[See Exhibit 10.3 to the Company's Current Report on Form 8-K filed on December 19, 2012.]

Exhibit D

Form of Registration Rights Agreement

[See Exhibit 10.4 to the Company's Current Report on Form 8-K filed on December 19, 2012.]

Exhibit E

Form of First Lien Credit Agreement Amendment

[Attached]

FORM OF
FIRST AMENDMENT TO
CREDIT AGREEMENT

This FIRST AMENDMENT TO CREDIT AGREEMENT (this "Amendment"), dated as of _____, 20__, is entered into by and among PACIFIC ETHANOL HOLDING CO. LLC, a Delaware limited liability company ("Pacific Holding"), PACIFIC ETHANOL MADERA LLC, a Delaware limited liability company ("Madera"), PACIFIC ETHANOL COLUMBIA, LLC, a Delaware limited liability company ("Boardman"), PACIFIC ETHANOL STOCKTON LLC, a Delaware limited liability company ("Stockton"), and PACIFIC ETHANOL MAGIC VALLEY, LLC, a Delaware limited liability company ("Burley" and, together with Pacific Holding, Madera, Boardman and Stockton, the "Borrowers"), Pacific Holding, as Borrowers' Agent, New PE Holdco LLC, a Delaware limited liability company, as Pledgor (the "Pledgor"), each of the Lenders, WELLS FARGO BANK, N.A., as administrative agent for the Lenders ("Administrative Agent"), WELLS FARGO BANK, N.A., as collateral agent for the Senior Secured Parties ("Collateral Agent") and AMARILLO NATIONAL BANK, as accounts bank ("Accounts Bank"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Credit Agreement (as hereinafter defined).

RECITALS

WHEREAS, Borrowers, Borrowers' Agent, Pledgor, the Lenders party thereto, Administrative Agent, Collateral Agent, Accounts Bank and Credit Suisse Loan Funding LLC, as syndication agent, entered into that certain Credit Agreement dated as of October 29, 2012 (the "Credit Agreement");

WHEREAS, Borrowers and Borrowers' Agent have requested, and the Lenders, Administrative Agent, Collateral Agent and Accounts Bank have agreed to, certain amendments to the Credit Agreement upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, the parties hereto agree that upon the occurrence of the Amendment Effective Date (as hereinafter defined), the Credit Agreement is hereby amended as follows:

SECTION 1. Amendments to Credit Agreement. The Credit Agreement is hereby amended to delete the definition of "Maturity Date" in the Credit Agreement in its entirety and replaced such definition with the following:

"Maturity Date" means June 25, 2015 or such later date on or prior to June 25, 2016, as may be agreed to in any Maturity Date Extension.

SECTION 2. Consent to Amendment of Senior Credit Agreement. Each Lender hereby consents to the execution and delivery by each party thereto of the First Amendment to Second Amended and Restated Credit Agreement of even date herewith and substantially in the form attached hereto as Exhibit A (the "Junior Credit Agreement Amendment").

SECTION 3. Payment of Costs and Fees. Each Borrower (i) reaffirms its obligations under Section 11.07 of the Credit Agreement and (ii) without limiting the provisions set forth in Section 11.07 of the Credit Agreement, acknowledges, consents and agrees that it shall promptly pay, upon receipt of invoices therefor, to the Administrative Agent and each Lender all reasonable out-of-pocket costs, fees, expenses and charges of every kind in connection with the preparation, negotiation, execution and delivery of this Amendment incurred by or on behalf of such Persons, including, without limitation, the reasonable fees and disbursements of Sidley Austin LLP, counsel to certain Lenders.

SECTION 4. Acknowledgements.

- 4.1. Reaffirmation of Obligations. Each Loan Party hereby (a) hereby reaffirms, acknowledges, confirms and agrees to its respective guarantees, pledges and grants of security interests and other commitments and Obligations under the Financing Documents and (b) confirms and agrees that the Financing Documents and all guarantees, pledges and grants of security interests and other commitments and Obligations thereunder shall continue to be in full force and effect following the effectiveness of the Amendment. All Obligations under the Credit Agreement and the other Financing Documents owing by the Loan Parties to the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender, as the case may be, are unconditionally owing by the Borrower to the Administrative Agent, the Collateral Agent and each Lender, as the case may be, without offset, defense or counterclaim of any kind, nature or description whatsoever.
 - 4.2. Acknowledgement of Security Interests. Each Loan Party hereby acknowledges, confirms and agrees that the Collateral Agent, for itself and the benefit of Senior Secured Parties, has and shall continue to have valid, enforceable and perfected first-priority liens (subject only to Permitted Liens) upon and security interests in the Collateral granted to the Collateral Agent, for itself and the benefit of Senior Secured Parties, pursuant to the Financing Documents.
 - 4.3. Binding Effect of Documents. Each Loan Party hereby acknowledges, confirms and agrees that: (i) each of the Financing Documents to which it is a party has been duly executed and delivered to the Administrative Agent, the Collateral Agent, the Accounts Bank and the Lenders thereto by it, and each is in full force and effect as of the Effective Date, (ii) the agreements and obligations of such Loan Party contained in the Credit Agreement as amended by this Amendment (the "Amended Credit Agreement"), in each of the other Financing Documents and in this Amendment constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, and such Loan Party has no valid defense to the enforcement of the obligations under the Amended Credit Agreement or the other Financing Documents, except as enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws limiting creditors rights generally and except as enforceability may be limited by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender are and shall be entitled to the rights, remedies and benefits provided for in the Financing Documents and under applicable law or at equity.
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SECTION 5.

Representations and Warranties of Loan Parties. Each of the Loan Parties hereby represents and warrants in favor of the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender as follows:

- 5.1. The execution, delivery and performance by such Loan Party of this Amendment and the performance of the Amended Credit Agreement are within such Loan Party's powers and have been duly authorized by all necessary action on the part of such Loan Party.
 - 5.2. This Amendment has been duly executed and delivered by such Loan Party and each of this Amendment, the Amended Credit Agreement and the other Financing Documents constitutes a legal, valid and binding obligation of such Loan Party enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws limiting creditors rights generally and except as enforceability may be limited by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
 - 5.3. The execution, delivery or performance of this Amendment by such Loan Party (i) does not require any consent or approval of, registration of filing with, or any other action by, any Person (including, without limitation, any Governmental Authority) except (A) such as have been obtained or made and are in full force and effect and (B) filings necessary to perfect Liens created by the Financing Documents, (ii) will not violate the organizational or governing documents of any Loan Party and (iii) will not violate any applicable Law or any Contractual Obligation applicable to or binding upon such Loan Party or any of their respective properties or assets.
 - 5.4. No event has occurred or is continuing, that would constitute a Default or an Event of Default under the Credit Agreement, the Amended Credit Agreement or any other Financing Document.
 - 5.5. As of the Effective Date no litigation by, investigation known to such Loan Party by, or proceeding of, any Governmental Authority is pending or, to the knowledge of such Loan Party, has been threatened against such Loan Party which (i) challenges such Loan Party's right, power, or competence to enter into this Amendment or perform any of its obligations under this Amendment, the Amended Credit Agreement or any other the Financing Documents or the validity or enforceability of this Amendment, the Amended Credit Agreement or any other Financing Document or any action taken under this Amendment, the Amended Credit Agreement or any other Financing Document or (ii) is reasonably likely, if adversely decided, to have a Material Adverse Effect.
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- 5.6. After giving effect to this Amendment, the representations and warranties of such Loan Party contained in the Amended Credit Agreement and the other Financing Documents are true and correct in all material respects (provided, that if any representation or warranty is by its terms qualified by concepts of materiality, such representation shall be true and correct in all respects) on and as of the Effective Date with the same effect as if such representations and warranties had been made on and as of such date, except that any such representation or warranty which is expressly made only as of a specified date need be true only as of such date.

SECTION 6. Conditions to Effectiveness of this Amendment. This Amendment shall become effective as of the first date on or prior to January 15, 2013 on which each of the following conditions has been satisfied (or waived in writing by the Lenders) (the “Amendment Effective Date”):

- 6.1. Amendment. The Administrative Agent shall have received duly executed counterparts of this Amendment from each Loan Party, each of the Lenders, the Collateral Agent, the Administrative Agent and the Accounts Bank.
- 6.2. Junior Credit Agreement Amendment. The substantially concurrent occurrence of the “Amendment Effective Date” as defined in the Junior Credit Agreement Amendment.
- 6.3. Closing under Securities Purchase Agreement. All conditions precedent to the “Closing” as defined in the Securities Purchase Agreement, dated as of December 19, 2012 by and among Pacific Ethanol and the investors party thereto, have been satisfied (other than the occurrence of the “Amendment Effective Date” as defined in each of this Amendment and in the Junior Credit Agreement Amendment).
- 6.4. Costs and Expenses. The Borrowers shall have paid all fees, costs and expenses incurred in connection with this Amendment and any other Financing Documents that have been invoiced and are required to be paid hereunder or under the Credit Agreement (including, without limitation, reasonable legal fees and expenses of the Administrative Agent and each Lender).
- 6.5. Representations and Warranties. The representations and warranties made or deemed made by the Loan Parties under this Amendment shall be true and correct (subject to the materiality qualifiers set forth in such representations and warranties) as of the Amendment Effective Date.
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- 6.6. Customary Closing Documents. The Lenders and the Administrative Agent shall have received such officer's certificates, secretary's certificates, resolutions, lien searches and other customary deliverables as they shall request.

Upon satisfaction of the foregoing closing conditions, at the request of Borrowers' Agent, Administrative Agent and Lenders shall promptly provide written confirmation to Borrowers' Agent of such satisfaction (each as to itself) and identify the Amendment Effective Date.

SECTION 7. Effect on the Financing Documents.

- 7.1. Except for the Administrative Agent's, the Collateral Agent's, the Accounts Bank's and the Lenders' agreement expressly set forth in Section 1, the Credit Agreement and each of the other Financing Documents shall be and remain unchanged and in full force and effect in accordance with their respective terms, are hereby ratified and confirmed in all respects and the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender expressly reserves the right to require strict compliance with the terms of the Credit Agreement (and, following the Amendment Effective Date, the Amended Credit Agreement) and the other Financing Documents. The execution, delivery, and performance of this Amendment shall not operate as a modification or waiver of any right, power, or remedy of any Agent or any Lender under the Credit Agreement (and, following the Amendment Effective Date, the Amended Credit Agreement) or any other Financing Document and no such action shall be construed as (i) a waiver or forbearance of any of the Administrative Agent's, the Collateral Agent's, the Accounts Bank's or the Lenders' rights, remedies, and powers against the Borrowers, any other Loan Party or the Collateral (including, without limitation, the right to terminate without notice the making of Revolving Loans) or (ii) a waiver of any Default or Event of Default. Notwithstanding any provision of this Amendment, nothing herein shall adversely affect the rights, remedies, duties, liabilities, obligations and/or responsibilities of any Lender that has not consented to the terms hereof to the extent such consent may be required pursuant to the Credit Agreement, including Section 11.01 thereof.
- 7.2. Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement," "hereunder," "herein," "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Financing Documents to "the Credit Agreement," "thereunder," "therein," "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified by this Amendment.
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7.3. To the extent that any terms and conditions in any of the Financing Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified hereby (except to the extent that such contradiction or conflict is expressly permitted by this Amendment).

SECTION 8. Governing Law. This Amendment shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without regard to conflicts of law principles that would require the application of laws of another jurisdiction.

SECTION 9. Financing Document. This Amendment shall be deemed to be a Financing Document for all purposes.

SECTION 10. RELEASE BY LOAN PARTIES. As of the Effective Date, each Loan Party hereby waives, releases, remises and forever discharges the Administrative Agent, the Collateral Agent, the Accounts Bank, each Lender, each of the other Senior Secured Parties, each of their respective Affiliates and each of the officers, directors, employees, and professionals of each Lender, the Administrative Agent, the Collateral Agent, the Accounts Bank and each of the other Senior Secured Parties and their respective Affiliates (collectively, the "Releasees"), from any and all claims, demands, obligations, liabilities, causes of action, damages, losses, costs and expenses of any kind or character, known or unknown, past or present, liquidated or unliquidated, suspected or unsuspected, which such Loan Party ever had from the beginning of the world or now has or that any of the Loan Parties' respective successors and assigns hereafter can or may have against any such Releasee which relates, directly or indirectly to the Credit Agreement, any other Financing Document, or to any acts or omissions of any such Releasee relating to the Credit Agreement or any other Financing Document in each case, pertaining to facts, events or circumstances existing on or prior to the date hereof except for the duties and obligations expressly set forth in this Amendment, the Credit Agreement and the other Financing Documents (as modified by the provisions hereof). As to each and every claim released hereunder, each Loan Party hereby represents that it has received the advice of legal counsel with regard to the releases contained herein, and waives the benefits of each provision of applicable federal or state law (including, without limitation, the laws of the state of New York), if any, pertaining to general releases after having been advised by its legal counsel with respect thereto. Each Loan Party understands that the facts which they believe to be true at the time of making the release provided for herein may later turn out to be different than they now believe, and that information which is not now known or suspected may later be discovered. Each Loan Party accepts this possibility, and each Loan Party assumes the risk of the facts being different and new information being discovered; and each Loan Party further agrees that the release provided for herein shall in all respects continue to be effective and not subject to termination or rescission because of any difference in such facts or any new information.

SECTION 11. Severability. Wherever possible, each provision of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

SECTION 12. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers as of the day and year first written above.

PACIFIC ETHANOL HOLDING CO. LLC, as a Borrower and as Borrowers' Agent

By: _____
Name:
Title:

PACIFIC ETHANOL MADERA LLC, as a Borrower

By: _____
Name:
Title:

PACIFIC ETHANOL COLUMBIA, LLC, as a Borrower

By: _____
Name:
Title:

PACIFIC ETHANOL STOCKTON LLC, as a Borrower

By: _____
Name:
Title:

PACIFIC ETHANOL MAGIC VALLEY, LLC, as a Borrower

By: _____
Name:
Title:

NEW PE HOLDCO, LLC, as Pledgor

By: _____
Name:
Title:

AMARILLO NATIONAL BANK, as Accounts Bank

By: _____
Name:
Title:

WELLS FARGO BANK, N.A., as Administrative Agent and
Collateral Agent

By: _____
Name:
Title:

[_____], as a Lender

By: _____
Name:
Title:

EXHIBIT A

Junior Credit Agreement Amendment

[See Exhibit F to the Securities Purchase Agreement filed as Exhibit 10.1 to the current report on Form 8-K filed on December 19, 2012]

Exhibit F

Form of Second Lien Credit Agreement Amendment

[Attached]

FORM OF

FIRST AMENDMENT TO SECOND AMENDED AND RESTATED
CREDIT AGREEMENT

This FIRST AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this "Amendment"), dated as of _____, 20__, is entered into by and among PACIFIC ETHANOL HOLDING CO. LLC, a Delaware limited liability company ("Pacific Holding"), PACIFIC ETHANOL MADERA LLC, a Delaware limited liability company ("Madera"), PACIFIC ETHANOL COLUMBIA, LLC, a Delaware limited liability company ("Boardman"), PACIFIC ETHANOL STOCKTON LLC, a Delaware limited liability company ("Stockton"), and PACIFIC ETHANOL MAGIC VALLEY, LLC, a Delaware limited liability company ("Burley" and, together with Pacific Holding, Madera, Boardman and Stockton, the "Borrowers"), Pacific Holding, as Borrowers' Agent, New PE Holdco LLC, a Delaware limited liability company, as Pledgor (the "Pledgor"), each of the Lenders whose signatures appear on the signature pages to this Amendment (individually, each a "Consenting Lender" and collectively, the "Consenting Lenders"), WELLS FARGO BANK, N.A., as administrative agent for the Lenders ("Administrative Agent"), WELLS FARGO BANK, N.A., as collateral agent for the Senior Secured Parties ("Collateral Agent") and AMARILLO NATIONAL BANK, as accounts bank ("Accounts Bank"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Credit Agreement (as hereinafter defined).

RECITALS

WHEREAS, Borrowers, Borrowers' Agent, the Pledgor, the Lenders party thereto, Administrative Agent, Collateral Agent and Accounts Bank entered into that certain Second Amended and Restated Credit Agreement dated as of October 29, 2012 (the "Credit Agreement");

WHEREAS, Borrowers and Borrowers' Agent have requested, and the Required Lenders, Administrative Agent, Collateral Agent and Accounts Bank have agreed to, certain amendments to the Credit Agreement upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, the parties hereto agree that upon the occurrence of the Amendment Effective Date (as hereinafter defined), the Credit Agreement is hereby amended as follows:

SECTION 1. Amendments to Credit Agreement. The Credit Agreement is hereby amended as of the Amendment Effective Date as follows:

1.1. Section 11.03(j)(v) of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

(v) notwithstanding any provision of this Agreement to the contrary, following (A) the purchase of any Loan or Commitment by an Affiliated Lender and (B) the payment and performance in full of all obligations under all PEI Senior Unsecured Notes, such Affiliated Lender may (but, except as otherwise provided in the foregoing clause (iv), shall not be obligated to) cancel such Loan and/or terminate such Commitment via contribution to the capital of one or more Borrowers or otherwise and such Loans and/or Commitments shall be deemed to be no longer outstanding or available under any provision of the Financing Documents.

- 1.2. The following new defined terms are hereby added to Exhibit A of the Credit Agreement in the appropriate alphabetical order as follows:

“Designated Tranche A-2 Term Loans” means each Tranche A-2 Term Loan held by a Designated Tranche A-2 Lender.”

“Designated Tranche A-2 Lender” means (a) Candlewood Special Situations Master Fund, Ltd., CWD OC 522 Master Fund Ltd. and Credit Suisse Loan Funding LLC, (b) any Affiliated Lender or (c) any assignee of any Lender described in the foregoing clauses (a) and (b).

“PEI Senior Unsecured Notes” means those certain senior unsecured notes to be issued by Pacific Ethanol pursuant to the Securities Purchase Agreement dated as of December 19, 2012 by and among Pacific Ethanol and the investors party thereto.

- 1.3. The definition of “Maturity Date” in the Credit Agreement is hereby deleted in its entirety and replaced with the following:

“Maturity Date” means (a) with respect to the Extended Loans and the Designated Tranche A-2 Term Loans, June 30, 2016, and (b) with respect to all other Loans, the Original Maturity Date.

SECTION 2. Consent to Amendment of Senior Credit Agreement. The Consenting Lenders hereby consent to the execution and delivery by each party thereto of the First Amendment to Credit Agreement of even date herewith and substantially in the form attached hereto as Exhibit A (the “Senior Credit Agreement Amendment”).

SECTION 3. Payment of Costs and Fees. Each Borrower (i) reaffirms its obligations under Section 11.07 of the Credit Agreement and (ii) without limiting the provisions set forth in Section 11.07 of the Credit Agreement, acknowledges, consents and agrees that it shall promptly pay, upon receipt of invoices therefor, to the Administrative Agent and each Consenting Lender all reasonable out-of-pocket costs, fees, expenses and charges of every kind in connection with the preparation, negotiation, execution and delivery of this Amendment incurred by or on behalf of such Persons, including, without limitation, the reasonable fees and disbursements of Sidley Austin LLP, counsel to certain Consenting Lenders.

SECTION 4.

Acknowledgements.

- 4.1. Reaffirmation of Obligations. Each Loan Party hereby (a) hereby reaffirms, acknowledges, confirms and agrees to its respective guarantees, pledges and grants of security interests and other commitments and Obligations under the Financing Documents and (b) confirms and agrees that the Financing Documents and all guarantees, pledges and grants of security interests and other commitments and Obligations thereunder shall continue to be in full force and effect following the effectiveness of the Amendment. All Obligations under the Credit Agreement and the other Financing Documents owing by the Loan Parties to the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender, as the case may be, are unconditionally owing by the Borrower to the Administrative Agent, the Collateral Agent and each Lender, as the case may be, without offset, defense or counterclaim of any kind, nature or description whatsoever.
 - 4.2. Acknowledgement of Security Interests. Each Loan Party hereby acknowledges, confirms and agrees that the Collateral Agent, for itself and the benefit of Senior Secured Parties, has and shall continue to have valid, enforceable and perfected first-priority liens (subject only to Permitted Liens) upon and security interests in the Collateral granted to the Collateral Agent, for itself and the benefit of Senior Secured Parties, pursuant to the Financing Documents.
 - 4.3. Binding Effect of Documents. Each Loan Party hereby acknowledges, confirms and agrees that: (i) each of the Financing Documents to which it is a party has been duly executed and delivered to the Administrative Agent, the Collateral Agent, the Accounts Bank and the Lenders thereto by it, and each is in full force and effect as of the Effective Date, (ii) the agreements and obligations of such Loan Party contained in the Credit Agreement as amended by this Amendment (the "Amended Credit Agreement"), in each of the other Financing Documents and in this Amendment constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, and such Loan Party has no valid defense to the enforcement of the obligations under the Amended Credit Agreement or the other Financing Documents, except as enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws limiting creditors rights generally and except as enforceability may be limited by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender are and shall be entitled to the rights, remedies and benefits provided for in the Financing Documents and under applicable law or at equity.
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SECTION 5.

Representations and Warranties of Loan Parties. Each of the Loan Parties hereby represents and warrants in favor of the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender as follows:

- 5.1. The execution, delivery and performance by such Loan Party of this Amendment and the performance of the Amended Credit Agreement are within such Loan Party's powers and have been duly authorized by all necessary action on the part of such Loan Party.
 - 5.2. This Amendment has been duly executed and delivered by such Loan Party and each of this Amendment, the Amended Credit Agreement and the other Financing Documents constitutes a legal, valid and binding obligation of such Loan Party enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws limiting creditors rights generally and except as enforceability may be limited by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
 - 5.3. The execution, delivery or performance of this Amendment by such Loan Party (i) does not require any consent or approval of, registration of filing with, or any other action by, any Person (including, without limitation, any Governmental Authority) except (A) such as have been obtained or made and are in full force and effect and (B) filings necessary to perfect Liens created by the Financing Documents, (ii) will not violate the organizational or governing documents of any Loan Party and (iii) will not violate any applicable Law or any Contractual Obligation applicable to or binding upon such Loan Party or any of their respective properties or assets.
 - 5.4. No event has occurred or is continuing, that would constitute a Default or an Event of Default under the Credit Agreement, the Amended Credit Agreement or any other Financing Document.
 - 5.5. As of the Effective Date no litigation by, investigation known to such Loan Party by, or proceeding of, any Governmental Authority is pending or, to the knowledge of such Loan Party, has been threatened against such Loan Party which (i) challenges such Loan Party's right, power, or competence to enter into this Amendment or perform any of its obligations under this Amendment, the Amended Credit Agreement or any other the Financing Documents or the validity or enforceability of this Amendment, the Amended Credit Agreement or any other Financing Document or any action taken under this Amendment, the Amended Credit Agreement or any other Financing Document or (ii) is reasonably likely, if adversely decided, to have a Material Adverse Effect.
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- 5.6. After giving effect to this Amendment, the representations and warranties of such Loan Party contained in the Amended Credit Agreement and the other Financing Documents are true and correct in all material respects (provided, that if any representation or warranty is by its terms qualified by concepts of materiality, such representation shall be true and correct in all respects) on and as of the Effective Date with the same effect as if such representations and warranties had been made on and as of such date, except that any such representation or warranty which is expressly made only as of a specified date need be true only as of such date.

SECTION 6. Conditions to Effectiveness of this Amendment. This Amendment shall become effective as of the first date on or prior to January 15, 2013 on which each of the following conditions has been satisfied (or waived in writing by the Required Lenders) (the “Amendment Effective Date”):

- 6.1. Amendment. The Administrative Agent shall have received duly executed counterparts of this Amendment from each Loan Party, the Required Lenders, the Collateral Agent, the Administrative Agent and the Accounts Bank.
- 6.2. Senior Credit Agreement Amendment. The substantially concurrent occurrence of the “Amendment Effective Date” as defined in the Senior Credit Agreement Amendment.
- 6.3. Closing under Securities Purchase Agreement. All conditions precedent to the “Closing” as defined in the Securities Purchase Agreement, dated as of December 19, 2012 by and among Pacific Ethanol and the investors party thereto, have been satisfied (other than the occurrence of the “Amendment Effective Date” as defined in each of this Amendment and in the Senior Credit Agreement Amendment).
- 6.4. Costs and Expenses. The Borrowers shall have paid all fees, costs and expenses incurred in connection with this Amendment and any other Financing Documents that have been invoiced and are required to be paid hereunder or under the Credit Agreement (including, without limitation, reasonable legal fees and expenses of the Administrative Agent and each Consenting Lender).
- 6.5. Representations and Warranties. The representations and warranties made or deemed made by the Loan Parties under this Amendment shall be true and correct (subject to the materiality qualifiers set forth in such representations and warranties) as of the Amendment Effective Date.
- 6.6. Customary Closing Documents. The Consenting Lenders and the Administrative Agent shall have received such officer’s certificates, secretary’s certificates, resolutions, lien searches and other customary deliverables as they shall request.
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Upon satisfaction of the foregoing closing conditions, at the request of Borrowers' Agent, Administrative Agent and Consenting Lenders shall promptly provide written confirmation to Borrowers' Agent of such satisfaction (each as to itself) and identify the Amendment Effective Date.

SECTION 7. Effect on the Financing Documents.

- 7.1. Except for the Administrative Agent's, the Collateral Agent's, the Accounts Bank's and the Consenting Lenders' agreement expressly set forth in Section 1, the Credit Agreement and each of the other Financing Documents shall be and remain unchanged and in full force and effect in accordance with their respective terms, are hereby ratified and confirmed in all respects and the Administrative Agent, the Collateral Agent, the Accounts Bank and each Lender expressly reserves the right to require strict compliance with the terms of the Credit Agreement (and, following the Amendment Effective Date, the Amended Credit Agreement) and the other Financing Documents. The execution, delivery, and performance of this Amendment shall not operate as a modification or waiver of any right, power, or remedy of any Agent or any Lender under the Credit Agreement (and, following the Amendment Effective Date, the Amended Credit Agreement) or any other Financing Document and no such action shall be construed as (i) a waiver or forbearance of any of the Administrative Agent's, the Collateral Agent's, the Accounts Bank's or the Lenders' rights, remedies, and powers against the Borrowers, any other Loan Party or the Collateral (including, without limitation, the right to terminate without notice the making of Revolving Loans) or (ii) a waiver of any Default or Event of Default. Notwithstanding any provision of this Amendment, nothing herein shall adversely affect the rights, remedies, duties, liabilities, obligations and/or responsibilities of any Lender that has not consented to the terms hereof to the extent such consent may be required pursuant to the Credit Agreement, including Section 11.01 thereof.
 - 7.2. Upon and after the effectiveness of this Amendment, each reference in the Credit Agreement to "this Agreement," "hereunder," "herein," "hereof" or words of like import referring to the Credit Agreement, and each reference in the other Financing Documents to "the Credit Agreement," "thereunder," "therein," "thereof" or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement as modified by this Amendment.
 - 7.3. To the extent that any terms and conditions in any of the Financing Documents shall contradict or be in conflict with any terms or conditions of the Credit Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified or amended accordingly to reflect the terms and conditions of the Credit Agreement as modified hereby (except to the extent that such contradiction or conflict is expressly permitted by this Amendment).
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- SECTION 8. Governing Law. This Amendment shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, without regard to conflicts of law principles that would require the application of laws of another jurisdiction.
- SECTION 9. Financing Document. This Amendment shall be deemed to be a Financing Document for all purposes.
- SECTION 10. RELEASE BY LOAN PARTIES. As of the Effective Date, each Loan Party hereby waives, releases, remises and forever discharges the Administrative Agent, the Collateral Agent, the Accounts Bank, each Lender, each of the other Senior Secured Parties, each of their respective Affiliates and each of the officers, directors, employees, and professionals of each Lender, the Administrative Agent, the Collateral Agent, the Accounts Bank and each of the other Senior Secured Parties and their respective Affiliates (collectively, the “Releasees”), from any and all claims, demands, obligations, liabilities, causes of action, damages, losses, costs and expenses of any kind or character, known or unknown, past or present, liquidated or unliquidated, suspected or unsuspected, which such Loan Party ever had from the beginning of the world or now has or that any of the Loan Parties’ respective successors and assigns hereafter can or may have against any such Releasee which relates, directly or indirectly to the Credit Agreement, any other Financing Document, or to any acts or omissions of any such Releasee relating to the Credit Agreement or any other Financing Document in each case, pertaining to facts, events or circumstances existing on or prior to the date hereof except for the duties and obligations expressly set forth in this Amendment, the Credit Agreement and the other Financing Documents (as modified by the provisions hereof). As to each and every claim released hereunder, each Loan Party hereby represents that it has received the advice of legal counsel with regard to the releases contained herein, and waives the benefits of each provision of applicable federal or state law (including, without limitation, the laws of the state of New York), if any, pertaining to general releases after having been advised by its legal counsel with respect thereto. Each Loan Party understands that the facts which they believe to be true at the time of making the release provided for herein may later turn out to be different than they now believe, and that information which is not now known or suspected may later be discovered. Each Loan Party accepts this possibility, and each Loan Party assumes the risk of the facts being different and new information being discovered; and each Loan Party further agrees that the release provided for herein shall in all respects continue to be effective and not subject to termination or rescission because of any difference in such facts or any new information.
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SECTION 11. Severability. Wherever possible, each provision of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

SECTION 12. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers as of the day and year first written above.

PACIFIC ETHANOL HOLDING CO. LLC, as a Borrower and as Borrowers' Agent

By: _____
Name:
Title:

PACIFIC ETHANOL MADERA LLC, as a Borrower

By: _____
Name:
Title:

PACIFIC ETHANOL COLUMBIA, LLC, as a Borrower

By: _____
Name:
Title:

PACIFIC ETHANOL STOCKTON LLC, as a Borrower

By: _____
Name:
Title:

PACIFIC ETHANOL MAGIC VALLEY, LLC, as a Borrower

By: _____
Name:
Title:

NEW PE HOLDCO, LLC, as Pledgor

By:

Name:

Title:

AMARILLO NATIONAL BANK, as Accounts Bank

By:

Name:

Title:

WELLS FARGO BANK, N.A., as Administrative Agent and
Collateral Agent

By:

Name:

Title:

[_____], as a Lender

By:

Name:

Title:



EXHIBIT A

Senior Credit Agreement Amendment

[See Exhibit E to the Securities Purchase Agreement filed as Exhibit 10.1 to the Current Report on Form 8-K filed on December 19, 2012]

Exhibit G

Form of Purchase and Sale Agreement

[See Exhibit 10.5 to the Company's Current Report on Form 8-K filed on December 19, 2012.]

Exhibit H

COMPANY TRANSFER AGENT INSTRUCTIONS

American Stock Transfer & Co., LLC

Attention:

Ladies and Gentlemen:

Reference is made to that certain Securities Purchase Agreement, dated as of December 19, 2012 (the “**Agreement**”), by and among Pacific Ethanol, Inc., a Delaware corporation (the “**Company**”), and the investors named on the schedule of investors attached thereto as Exhibit A (collectively, the “**Holders**”), pursuant to which the Company is issuing Notes (the “**Notes**”), and Warrants (the “**Warrants**”), which are exercisable into shares of Common Stock. Additionally, the Notes are entitled to interest, which, at the option of the Company and subject to certain conditions, may be paid in shares of Common Stock that have been registered for resale (the “**Interest Shares**”).

This letter shall serve as our irrevocable authorization and direction to you (provided that you are the transfer agent of the Company at such time):

(i) to issue shares of Common Stock upon transfer or resale of the Interest Shares (if any); and

(ii) to issue shares of Common Stock upon the exercise of the Warrants (the “**Warrant Shares**”) to or upon the order of a Holder from time to time upon delivery to you of a properly completed and duly executed Exercise Notice, in the form attached hereto as Exhibit I, which has been acknowledged by the Company as indicated by the signature of a duly authorized officer of the Company thereon.

You acknowledge and agree that so long as you have previously received (a) written confirmation from the Company’s legal counsel that either (i) a registration statement covering resales of the Warrant Shares or the Interest Shares has been declared effective by the Securities and Exchange Commission (the “**SEC**”) under the Securities Act of 1933, as amended (the “**1933 Act**”) and that resales of the Warrant Shares or the Interest Shares may be made thereunder, or (ii) sales of the Warrant Shares or the Interest Shares may be made in conformity with Rule 144 under the 1933 Act (“**Rule 144**”), (b) if applicable, a copy of such registration statement, and (c) notice from legal counsel to the Company or any Holder that a transfer of Warrant Shares or Interest Shares has been effected either pursuant to the registration statement (and a prospectus delivered to the transferee) or pursuant to Rule 144, then, unless otherwise required by law, within three (3) business days of your receipt of the notice referred to in (c), you shall issue the certificates representing the Warrant Shares or Interest Shares so sold to the transferees registered in the names of such transferees, and such certificates shall not bear any legend restricting transfer of the Warrant Shares or Interest Shares thereby and should not be subject to any stop-transfer restriction.

A form of written confirmation (to be used in connection with any sale) from the Company's outside legal counsel that a registration statement covering resales of the Warrant Shares or Interest Shares has been declared effective by the SEC under the 1933 Act is attached hereto as Exhibit II.

Please be advised that the Holders are relying upon this letter as an inducement to enter into the Agreement and, accordingly, each Holder is a third party beneficiary to these instructions.

Please execute this letter in the space indicated to acknowledge your agreement to act in accordance with these instructions. Should you have any questions concerning this matter, please contact me at (916) 403-2130.

Very truly yours,

PACIFIC ETHANOL, INC.

By: _____

Name: _____

Title: _____

THE FOREGOING INSTRUCTIONS ARE
ACKNOWLEDGED AND AGREED TO
this ____ day of _____, 20__

AMERICAN STOCK TRANSFER & CO., INC.

By: _____

Name: _____

Title: _____

Exhibit I

Opinion of Company Counsel

Capitalized terms not defined herein shall have the meaning given them in the Agreement.

1. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as presently conducted, as such properties and business are known to us.
 2. The Company has the requisite corporate power and authority to execute, deliver, and perform its obligations under the Agreement. The execution and delivery by the Company of each of the Transaction Documents and the performance by the Company of each of its obligations thereunder at the Closing have been duly authorized by all necessary corporate action on the part of the Company and no further consent or authorization of the Company, its board of directors or its stockholders is required therefor (other than, to the extent more than 3,289,727 shares of Common Stock are issued as Interest Shares pursuant to the Notes, the approval of a majority of the Company's stockholders in order to issue more than 19.99% of the total number of shares of Common Stock outstanding on the date of the Agreement).
 3. The execution and delivery by the Company of the Agreement do not, and the performance by the Company of its obligations to be performed under the Agreement at the Closing will not, result in a breach or violation of: (a) the Company's certificate of incorporation or bylaws, as each are currently in effect; (b) the Delaware General Corporation Law or, to our knowledge, any federal, California or New York law, rule or regulation to which the Company is subject and which in our experience is typically applicable to transactions of the nature contemplated by the Agreement; or (c) the terms of any Material Agreement. The term "Material Agreements" shall mean all the agreements to which the Company is a party and which the Company has filed as an exhibit to the Company's Form 10-K for the fiscal year ended December 31, 2011 (the "2011 Form 10-K"), as an exhibit to the Company's Form 10-Q for the quarterly period ended March 31, 2012, as an exhibit to the Company's Form 10-Q for the quarterly period ended June 30, 2012, as an exhibit to the Company's Form 10-Q for the quarterly period ended September 30, 2012, or as an exhibit to any Form 8-K filed by the Company since the filing of the 2011 Form 10-K through the date hereof with the Securities Exchange Commission.
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4. Other than as specifically contemplated by or described in the Agreement, no approval or authorization by, or filing or qualification with, any United States federal, California or New York governmental authority or under the Delaware General Corporation Law on the part of the Company is required in connection with the valid execution, delivery and performance by the Company of its obligations to be performed under the Agreement at the Closing or the offer, sale and issuance of the Notes and the Warrants at the Closing, except: (a) the filing of a Form D with the Securities and Exchange Commission in connection with an exemption from the registration requirements of Section 5 under the Securities Act of 1933, as amended; (b) such as may be required under the blue sky laws of any jurisdiction in connection with the offer, sale and issuance of the Notes and the Warrants at the Closing; and (c) such as have already been obtained or made by the Company.
 5. The Interest Shares, when and if issued and delivered pursuant to the Notes, and the Warrant Shares, when and if paid for upon exercise of, and issued and delivered pursuant to the Warrants, will be duly authorized, validly issued, fully paid and nonassessable. The Company's board of directors has adopted resolutions to reserve an aggregate of 7,369,714 shares of Common Stock that may be issuable as Interest Shares pursuant to the terms of the Notes, and an aggregate of 25,630,286 shares of Common Stock that are issuable as Warrant Shares upon exercise of the Warrants pursuant to their terms, provided, however, that we express no opinion concerning the effect of such resolutions or reservation.
 6. The Transaction Documents have been duly executed and delivered by the Company and, subject to the exceptions and qualifications set forth below, each constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its respective terms.
 7. To our knowledge, no action, suit, proceeding, inquiry or investigation before or by any court, public board or body or any governmental agency or self-regulatory organization is pending or threatened against the Company which questions the validity of the Agreement or the transactions contemplated thereby or any action taken or to be taken pursuant thereto.
 8. Assuming the accuracy of the representations and warranties made by each of the Investors in Section 3.2 of the Agreement, and assuming that there has been no general solicitation or advertising with respect to the Notes or Warrants to be sold under the Agreement, the issuance and sale of the Notes, the Warrants, the Interest Shares and the Warrant Shares (assuming no commission or other remuneration is paid or given directly or indirectly for soliciting the exercise of the Warrants) pursuant to the Agreement, and in the case of the Interest Shares and the Warrant Shares, pursuant to the Notes and the Warrants, respectively, will be exempt from the registration requirements of Section 5 of the Securities Act of 1933, as amended.
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Exhibit J

Tranche A-2 Term Loans

<u>Investor</u>	<u>Tranche A-2 Term Loans</u>
CWD OC 522 Master Fund Ltd.	\$3,408,468.16
Candlewood Special Situations Master Fund, Ltd.	\$6,849,929.84
Credit Suisse Loan Funding LLC	\$11,280,197.64
Total	\$21,538,595.64

Exhibit K

Ownership of New PE Holdco Units

<u>Investor</u>	<u>Units of New PE Holdco</u>
Candlewood Special Situations Fund, LP	60.090
Credit Suisse Securities (USA) LLC	59.870
CCVF PacEth LLC	5.409
Candlewood Credit Value Fund II, LP	5.410
Total	130.779

THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTION 8 HEREOF.

Pacific Ethanol, Inc.

[FORM OF]

Senior Unsecured Note

Issuance Date: [●] [●], 201__

[\$●]

FOR VALUE RECEIVED, Pacific Ethanol, Inc., a Delaware corporation (the “**Company**”), hereby promises to pay to the order of [INVESTOR] or its registered assigns (“**Holder**”) the amount set out above (as reduced pursuant to the terms hereof pursuant to redemption or otherwise, the “**Principal**”) when due, whether upon the Maturity Date, acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay interest (“**Interest**”) on any outstanding Principal (as defined above) at the applicable Interest Rate (as defined below) from the date set out above as the Issuance Date (the “**Issuance Date**”) until the same becomes due and payable, whether upon the Maturity Date, acceleration, redemption or otherwise (in each case in accordance with the terms hereof). This Senior Unsecured Note (including all Senior Unsecured Notes issued in exchange, transfer or replacement hereof, this “**Note**”) is one of an issue of Senior Unsecured Notes issued pursuant to the Purchase Agreement (as defined below) on the Issuance Date (collectively, the “**Notes**” and such other Senior Unsecured Notes, the “**Other Notes**”). Certain capitalized terms used herein are defined in Section 19.

1. PAYMENTS OF PRINCIPAL.

1.1 On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal, all accrued and unpaid Interest and accrued and all other unpaid amounts hereunder. Any such payment shall be applied pro rata to the Note and the Other Notes in accordance with the respective Principal amounts thereof.

1.2 The Company may, at its sole option, at any time prepay this Note, without premium or penalty, in whole or in part, on one Business Day's prior written notice to the Holder, at a prepayment price equal to the amount of outstanding Principal so to be prepaid, together with accrued and unpaid Interest on such Principal, if any, through the date of such prepayment. Any such payment shall be applied pro rata to the Note and the Other Notes in accordance with the respective Principal amounts thereof.

1.3 Until such time as the outstanding balance of the Note and the Other Notes are paid in full, within three Business Days of the receipt by the Company of any Net Cash Proceeds or any distributions to which the Company is entitled to with respect to Net Cash Proceeds received by any Subsidiary arising from any (i) Asset Sale (other than Asset Sales made pursuant to Section 5.6), (ii) Equity Issuance, (iii) Debt Issuance, or (iv) Property Loss Event, the Company shall prepay the Note and the Other Notes, ratably in accordance with their respective principal amounts, in an amount equal to 100% of such Net Cash Proceeds (or that amount necessary to pay the Note and the Other Notes in full); provided, that any such Net Cash Proceeds (or distributions with respect to Net Cash Proceeds) arising from any Equity Linked Issuance shall, notwithstanding anything to the contrary in this Section 1.3, be applied as follows:

(a) until such time as the Company has made prepayments in accordance with this clause (a) in an aggregate amount equal to \$653,895, to the prepayment of the Notes and Other Notes, ratably in accordance with their respective principal amounts;

(b) after the Company has made all payments required by the foregoing clause (a) and until such time as all 2013 Pacific Holding Debt is owned by the Company or no 2013 Pacific Holding Debt remains outstanding, 100% of such Net Cash Proceeds shall be applied, as elected by the Company, to either (x) the purchase by the Company of the 2013 Pacific Holding Debt (to the extent the same is permitted by the terms of the Pacific Holding Credit Facilities) or (y) the prepayment of the Notes and Other Notes, ratably in accordance with their respective principal amounts; and

(c) after such time as all 2013 Pacific Holding Debt is owned by the Company or no 2013 Pacific Holding Debt remains outstanding, the Reduced Percentage of such Net Cash Proceeds shall be applied to the prepayment of the Notes and Other Notes, ratably in accordance with their respective principal amounts; provided, that no such Net Cash Proceeds shall be applied to make capital contributions or investments in, or otherwise purchase any Indebtedness, equity interests or Convertible Securities of any Subsidiary of the Company (provided however, that for purposes of this clause (b), the proviso in the definition of "Subsidiary" will be disregarded). For the purposes of this Note, the "**Reduced Percentage**" means 75% until the occurrence of a Threshold Balance Reduction, and 50% thereafter.

Until such time as the outstanding balance of the Note and the Other Notes has been paid in full, within three Business Days of the receipt by the Company of any payment of principal or interest on the Specified A-2 Debt (collectively, "**Debt Repayment Amounts**"), the Company shall prepay the Note and the Other Notes, pro rata in accordance with the respective Principal amounts thereof, in an amount equal to such Debt Repayment Amounts.

2. INTEREST; INTEREST RATE.

2.1 Interest on this Note shall accrue at the applicable Interest Rate and shall commence accruing on the Issuance Date and Interest shall be computed on the basis of a 360-day year and twelve 30-day months and, subject to Section 2.2 below, shall be payable in cash to the record Holder in arrears on the 15th day of each calendar month, beginning with March 15, 2013 and on the Maturity Date (each such date, an “**Interest Date**”). From and after the occurrence and during the continuance of any Event of Default, the applicable Interest Rate shall automatically be increased by two percent (2%) per annum above the Interest Rate otherwise applicable in accordance with terms hereof, and all such interest shall be payable on demand. In the event that such Event of Default is subsequently cured, the adjustment referred to in the preceding sentence shall cease to be effective as of the date of such cure, provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure of such Event of Default.

2.2 Notwithstanding the terms of Section 2.1, the Company, may elect, by providing written notice to the Holder as described herein, to pay Interest due and payable on any Interest Date in shares of Common Stock (“**Interest Shares**”) so long as there has been no Equity Conditions Failure (which election must apply to the holders of all of the Other Notes); provided, however, that the Interest Rate applicable to any outstanding amounts that the Company pays in Interest Shares shall be deemed to have been automatically increased by two percent (2%) per annum for the duration of the period for which such Interest is so paid. For any Interest Date on which the Company elects to pay Interest in Interest Shares in lieu of in cash, the Company shall deliver a written notice (each, an “**Interest Election Notice**”) to each holder of the Notes on or prior to the applicable Interest Notice Due Date (the date such notice is delivered to all of the holders of Notes, the “**Interest Notice Date**”) which notice (i) specifies the Company’s election to pay Interest on such Interest Date entirely in Interest Shares, and (ii) certifies that there has been no Equity Conditions Failure as of such Interest Notice Date. If there is an Equity Conditions Failure as of the Interest Notice Date, the Interest Notice shall indicate that unless the Holder waives the Equity Conditions Failure, the Interest shall be paid in cash. If the Company elects for payment of the applicable Interest in Interest Shares and if the Equity Conditions were satisfied as of the applicable Interest Notice Date but an Equity Conditions Failure occurred between the applicable Interest Notice Date and any time prior to the applicable Interest Date, the Company shall provide the Holder a subsequent notice to that effect indicating that unless the Holder waives the Equity Conditions Failure, the Interest shall be paid in cash. If the Equity Conditions are not satisfied (and the Equity Conditions Failure is not waived in writing by the Holder) during such period then, unless the Holder notifies the Company to the contrary in writing prior to the Business Day immediately preceding the Interest Date, the amount of Interest payable on the applicable Interest Date shall be paid in cash. Interest to be paid on an Interest Date in Interest Shares shall be paid in a number of fully paid and nonassessable shares (rounded to the nearest whole share) of Common Stock equal to the quotient of (1) the amount of Interest payable (assuming payment in Interest Shares) on such Interest Date, and (2) the product of (x) the average Weighted Average Price of the Common Shares for the thirty (30) Trading Days immediately preceding (but excluding) the Interest Date and (y) 0.95.

2.3 When any Interest Shares are to be paid on an Interest Date, the Company shall, on the applicable Interest Date (i) if the Company's transfer agent (the "**Transfer Agent**") is participating in the Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program, credit such aggregate number of Interest Shares to which the Holder is entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (ii) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver, to the address of such Holder set forth in the Securities Purchase Agreement or to such address as specified by the Holder in writing to the Company at least two (2) Business Days prior to the applicable Interest Date, a certificate, registered in the name of the Holder or its designee, for the number of Interest Shares to which the Holder shall be entitled. With respect to Interest payable in cash on each Interest Date, the Company shall pay to the Holder, in cash by wire transfer of immediately available funds, the amount of any such Interest payable in cash.

3. RIGHTS UPON EVENT OF DEFAULT.

3.1 Event of Default. Each of the following events shall constitute an "**Event of Default**":

(a) the Company's failure to pay to the Holder any amount of Principal, Interest, or other amounts when and as due under this Note or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest or other non-Principal amounts when and as due, in which case only if such failure remains uncured for a period of at least five (5) days;

(b) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within sixty (60) days of their initiation;

(c) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a UCC foreclosure sale or any other similar action under federal, state or foreign law or of any substantial part of the Company's property or any substantial part of any Subsidiary's property;

(d) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(e) a final judgment, judgments, any arbitration or mediation award or any settlement of any litigation or any other satisfaction of any claim made by any Person pursuant to any litigation, as applicable, (each a “**Judgment**”, and collectively, the “**Judgments**”) with respect to the payment of cash, securities and/or other assets with an aggregate fair market value in excess of \$2,000,000 are rendered against, agreed to or otherwise accepted by, the Company and/or any of its Subsidiaries and which Judgments are not, within thirty (30) days after the entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any Judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the \$2,000,000 amount set forth above so long as the Company provides the Holder written evidence of such insurance coverage or indemnity (which evidence shall be reasonably satisfactory to the Holder) to the effect that such Judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity prior to the later of (i) thirty (30) days after the issuance of such Judgment or (ii) any requirement to pay such Judgment;

(f) the Company and/or any Subsidiary, individually or in the aggregate, fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$2,000,000 due to any third party or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of \$2,000,000, which breach or violation permits the other party thereto to accelerate amounts due thereunder;

(g) any breach or failure in any respect by the Company to comply with any provision of Section 5 of this Note; provided that if such breach or failure is not material or is otherwise inadvertent or unintentional, then no Event of Default shall occur unless such breach or failure is not cured within thirty (30) days of written notice from the Required Holders to the Company;

(h) any Material Adverse Change occurs (other than any Excluded Event) and is not otherwise cured within thirty (30) days of written notice thereof by the Required Holders;

(i) any provision of any Transaction Document (shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document to which it is a party;

(j) any Fundamental Transaction occurs without the written consent of the Required Holders; or

(k) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall promptly deliver written notice thereof via facsimile and overnight courier (with next day delivery specified) (an “**Event of Default Notice**”) to the Holder.

Notwithstanding anything to the contrary set forth above or elsewhere herein, the following Indebtedness and obligations, and any defaults with respect thereto, shall not constitute an Event of Default under Section 3.1(f) above: (i) any payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP and, with respect to any subsidiary, such default is otherwise resolved in a manner which does not result in a Material Adverse Change; (ii) with respect to any Subsidiary, any default with respect to a non-recourse obligation and such default does not otherwise result in a Material Adverse Change; and (iii) any default with respect to any previously accrued and unpaid dividends with respect to the Company’s Series B Cumulative Convertible Preferred Stock outstanding as of the Issuance Date.

3.2 If an Event of Default (other than an Event of Default specified in Section 3.1(b), (c) or (d) above) occurs, then the Holder may, by written notice to the Company, declare this Note to be forthwith due and payable, as to Principal, Interest and any other amounts due hereunder, whereupon this Note shall become forthwith due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Company. If any Event of Default specified in Section 3.1(b), (c) or (d) above occurs, the Principal of and accrued Interest on this Note shall automatically forthwith become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Company.

3.3 If any Event of Default occurs and is continuing, the Holder may pursue any available remedy to collect the payment of Principal, Interest and any other amounts due under this Note or to enforce the performance of any provision of this Note. If an Event of Default occurs and is continuing, the holder of this Note may proceed to protect and enforce its rights by an action at law, suit in equity or other appropriate proceeding. No course of dealing and no delay on the part of the holder of this Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Note upon the holder hereof shall be exclusive of any other right, power or remedy referred to herein or now or hereafter available at law, in equity, by statute or otherwise.

4. **NONCIRCUMVENTION.** The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

5. **COVENANTS.** Until all of the Notes have been redeemed or otherwise satisfied in accordance with their terms:

5.1 **Rank.** All payments due under this Note (a) shall rank *pari passu* with all Other Notes and (b) shall be senior to all other Indebtedness of the Company (excluding any other Permitted Indebtedness of the Company).

5.2 **Incurrence of Indebtedness.** The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, incur or guarantee, assume or suffer to exist any Indebtedness (other than (i) the Indebtedness evidenced by this Note and the Other Notes and (ii) Permitted Indebtedness).

5.3 **Existence of Liens.** The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, allow or suffer to exist any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets owned by the Company or any of its Subsidiaries (collectively, "**Liens**") other than Permitted Liens.

5.4 **Restricted Payments.** The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than Permitted Payments with respect to any Permitted Subsidiary Indebtedness), whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness if at the time such payment is due or is otherwise made or, after giving effect to such payment, (i) an event constituting an Event of Default has occurred and is continuing or (ii) an event that with the passage of time and without being cured would constitute an Event of Default has occurred and is continuing.

5.5 Restriction on Redemption and Cash Dividends. Except for any Permitted Distributions or to otherwise effect payments required by Section 1.3 above in accordance with the Note, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or pay any cash dividend or distribution on any of its capital stock without the prior express written consent of the Holder.

5.6 Restriction on Transfer of Assets. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, sell, lease, license, assign, transfer, convey or otherwise dispose of any assets or rights of the Company or any Subsidiary owned or hereafter acquired whether in a single transaction or a series of related transactions, other than (i) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by the Company and its Subsidiaries that are in the ordinary course of their respective businesses and, after giving effect thereto, would not result in a Material Adverse Change; provided that so long as the Net Cash Proceeds with respect thereto exceed \$200,000, such Net Cash Proceeds are applied in accordance with Section 1.3 above, (ii) sales of product, inventory or receivables in the ordinary course of business, (iii) Permitted Payments or (iv) the sale, leasing, licensing, assignment, transfer, conveyance or other disposition of any assets or rights of any Subsidiary to the extent permitted under the Kinergy Credit Facility or the Pacific Holding Credit Facilities.

5.7 Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by the Company and each of its Subsidiaries on the Issuance Date or any business substantially related or incidental thereto. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, modify its or their corporate structure or purpose in any material respect.

5.8 Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

5.9 Maintenance of Properties, Etc. The Company shall maintain and preserve in all material respects, and cause each of its Subsidiaries to maintain and preserve in all material respects, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all material leases to which it is a party as lessee or under which it occupies property, so as to prevent any material loss or forfeiture thereof or thereunder.

5.10 Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

5.11 Investments. Except for any Permitted Investments, the Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any Excluded Subsidiary, or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other interest in, or make any capital contribution to, any Excluded Subsidiary.

6. AMENDING THE TERMS OF THIS NOTE. No provision of this Note may be modified or amended without the prior written consent of the Required Holders and the Company and upon such due modification or amendment, such modification or amendment shall apply to the Note and all of the Other Notes; provided, however, that (a) no such modification or amendment shall, without the consent of the Holder hereunder, change the stated maturity date of this Note, or reduce the principal amount hereof, or reduce the rate or extend the time of payment of any interest hereon, modify the terms of payment of Interest Shares hereunder, or reduce any amount payable on redemption or prepayment hereof, or impair or affect the right of the Holder to receive payment of principal of, and interest on, the Notes or to institute suit for payment thereof, or impair or affect the right of the Holder to receive any other payment provided for under this Note and (b) the Holder hereunder may waive, reduce or excuse, or forbear from the exercise of any rights and remedies with respect to, any Event of Default under this Note without notice to or the consent of any holder of any of the Other Notes.

7. TRANSFER. This Note may be offered, sold, assigned or transferred by the Holder in whole or in part, subject only to the provisions of the restrictive legend set forth at the top of the first page of this Note; provided that, so long as no Event of Default has occurred and is continuing, any such sale, assignment or transfer shall be subject to the prior written consent of the Company, which consent shall not be unreasonably withheld, delayed or conditioned; provided, further, that any partial offer, sale, assignment or transfer of this Note shall be in a principal amount not less than \$2,500,000.

8. REISSUANCE OF THIS NOTE.

8.1 Transfer. If this Note is to be transferred as permitted under Section 7 above, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 8.3), registered as the Holder may request.

8.2 Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 8.3) representing the outstanding Principal.

8.3 Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding, (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest on the Principal and Interest of this Note, from the Issuance Date.

9. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note (including, without limitation, compliance with Section 5).

10. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements.

11. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Terms used in this Note but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

12. **FAILURE OR INDULGENCE NOT WAIVER.** No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

13. **NOTICES; CURRENCY; PAYMENTS.**

13.1 **Notices.** Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 6.5 of the Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore.

13.2 **Currency.** All principal, interest and other amounts owing under this Note that, in accordance with the terms hereof, are paid in cash shall be paid in U.S. dollars. All amounts denominated in other currencies shall be converted to the U.S. dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. “**Exchange Rate**” means, in relation to any amount of currency to be converted into U.S. dollars pursuant to this Note, the U.S. dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

13.3 **Payments.** Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by wire transfer of immediately available funds in accordance with the Holder’s wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

14. **DISCLOSURE.**

14.1 In connection with information that is either required or permitted to be disclosed to the Holder, whether in such Holder’s capacity as the holder of this Note, a lender under the Pacific Holding Credit Facilities or as a member of New PE Holdco, on the date such information is to be disclosed, the Company, the borrowers under the Pacific Holding Credit Facilities or the manager of New PE Holdco (as the case may be, each a “**Reporting Party**”), may provide the Holder with such information; provided either that (i) such information does not contain Non-Public Information, or (ii) if such information does contain Non-Public Information, such information is Consented Information (as defined below).

14.2 If any such information to be disclosed contains Non-Public Information, the Company shall, or shall cause the Reporting Party to, provide to the Holder a written notice (which notice shall, for the avoidance of doubt, not contain or constitute Non-Public Information), containing the following information: (A) a statement as to whether the information is required to be disclosed under the terms of this Note, the Pacific Holding Credit Facilities and/or the Limited Liability Company Agreement of New PE Holdco (the “**Operating Agreement**”), as applicable, (B) if the information is not so required to be disclosed, a statement that the Reporting Party desires voluntarily to disclose such information, (C) a general description of such information (which description shall not include, and shall not constitute, Non-Public Information), (D) a statement as to whether the Holder is required or permitted to take some specific action as a lender under this Note, a lender under the Pacific Holding Credit Facilities and/or as holder of membership interests in New PE Holdco, (E) a statement that such information contains Non-Public Information, and (F) a statement seeking the consent of the Holder to receive such Non-Public Information. Within two (2) Business Days of the date of the notice contemplated in the preceding sentence, the Holder shall advise the Company and the Reporting Party (if the Company is not the Reporting Party) in writing whether it consents to the receipt of such Non-Public Information (any information for which such consent is provided, “**Consented Information**”).

14.3 In the case of Non-Public information that the Reporting Party is required to disclose to the Holder under the terms of the Pacific Holding Credit Facilities, the Reporting Party shall post it to the data site (the “**Electronic Data Site**”) established for such purposes as a non-public document and upon such posting, the Reporting Party shall be deemed to have discharged its obligation to provide such information to the Holder whether or not the Holder is then subscribed to receive such data site information (such information posted after the Issuance Date, “**Privately Posted Information**”).

14.4 In the event any Non-Public Information is provided to the Holder by any Reporting Party other than as Privately Posted Information, the Company shall promptly and in compliance with applicable law publicly disclose such Non-Public Information on a Current Report on Form 8-K or otherwise, within 4 Business Days of (or such other period of time as may be expressly agreed to in writing by the Investor and the Company in connection with such disclosure) the disclosure thereof to the Holder. If the Company fails to disclose any Non-Public Information in accordance with the immediately preceding sentence, the Holder may publicly disclose such information by issuing a press release containing such information, or otherwise, within one Business Day of providing Notice to the Company of such intended disclosure. For the avoidance of doubt, the Company shall not be required to so publicly disclose any Privately Posted Information except to the extent it has disclosed such information to the Holder other than by posting such information as a non-public document on the Electronic Data Site.

14.5 In no event shall any Reporting Party intentionally provide the Holder with any Non-Public Information without the prior written consent of the Holder, it being agreed that the posting of Non-Public Information to the Electronic Data Site shall not be deemed to violate the foregoing restriction. In the absence of any written notice that information provided by the Company contains Non-Public Information, the Holder may presume that such information (including the notice of such information) does not constitute Non-Public Information.

14.6 Nothing contained herein shall prevent or prohibit any Reporting Party from delivering any notices, documents and other information as and when required under the Pacific Holding Credit Facilities and/or the Operating Agreement to any person (other than the Holder) who is entitled to such information, including without limitation, the administrative agent, collateral agent and accounts bank under each of the Pacific Holding Credit Facilities.

14.7 It is hereby understood and agreed that each Reporting Party is an intended third party beneficiary of this Section 14.

15. CANCELLATION. After all Principal, accrued Interest and other amounts at any time owed on this Note have been paid in full (a) this Note shall automatically be deemed canceled without any action by or notice to Holder or Company and (b) Holder shall promptly mark this Note as cancelled, shall promptly surrender this Note to the Company and this Note shall not be reissued.

16. WAIVER OF NOTICE. Except for the notices specifically required by this Note or any other Transaction Document, to the extent permitted by applicable law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Purchase Agreement.

17. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. In the event that any provision of this Note is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any such provision which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision of this Note. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

18. **MAXIMUM PAYMENTS.** Nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

19. **CERTAIN DEFINITIONS.** For purposes of this Note, the following terms shall have the following meanings:

19.1 **“2013 Pacific Holding Debt”** means any issued and outstanding Indebtedness of any of the Company’s indirect subsidiaries under the Pacific Holding Restated Credit Facility for which the “Maturity Date” (as defined therein) occurs in the 2013 calendar year. For the avoidance of doubt, any issued and outstanding Indebtedness of any of the Company’s indirect subsidiaries under the Pacific Holding Restated Credit Facility that is (x) an “Extended Loan” or (y) held by an “Extending Lender” (as each such term is defined in the Amended and Restated Loan Agreement evidencing the Pacific Holding Restated Credit Facility) or under the Pacific Holding Priming Credit Facility shall be excluded from the definition of “2013 Pacific Holding Debt”.

19.2 **“Asset Sale”** means any sale, transfer, lease, conveyance or other disposition of any asset or property.

19.3 **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

19.4 **“Common Stock”** means (i) the Company’s shares of common stock, \$0.001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

19.5 **“Contingent Obligation”** means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

19.6 **“Convertible Securities”** means any capital stock or other security that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

19.7 **“Debt Issuance”** means the incurrence of Indebtedness of the type specified in clauses (A) or (D) of the definition of “Indebtedness” by the Company or any of its Subsidiaries.

19.8 **“Eligible Market”** means any of The New York Stock Exchange, The NYSE Amex LLC, the Principal Market, The NASDAQ Global Market or The NASDAQ Global Select Market.

19.9 **“Equity Conditions”** means each of the following conditions: (i) either (x) the applicable Registration Statement filed pursuant to the Registration Rights Agreement shall be effective and the prospectus contained therein shall be available for the resale by the Holder of all of the Interest Shares proposed to be issued and any Interest Shares previously issued in accordance with the terms of the Registration Rights Agreement and the Company shall have no knowledge of any fact that would reasonably be expected to cause the applicable Registration Statement required to be filed pursuant to the Registration Rights Agreement to not be effective or the prospectus contained therein to not be available for the resale of at least all of the Interest Shares proposed to be issued and any Interest Shares previously issued in accordance with the terms of the Registration Rights Agreement or (y) all Interest Shares proposed to be issued and any Interest Shares previously issued shall be eligible for resale by the Holder without restriction under Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) and without the need for registration under any applicable federal or state securities laws, and the Company shall have no knowledge of any fact that would cause all Interest Shares proposed to be issued and any Interest Shares previously issued not to be eligible for resale without restriction pursuant to Rule 144 and without the requirement to be in compliance with Rule 144(c)(1) (or Rule 144(i)(2), if applicable) promulgated under the Securities Act of 1933 and any applicable state securities laws; (ii) (A) the Common Stock is designated for quotation on the Principal Market or any other Eligible Market and shall not have been suspended from trading on such exchange or market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) and (B) no delisting or suspension by such exchange or market is pending or threatened in writing by such exchange or market (provided, however, that with respect to this clause (B), until June 3, 2013, the pending or threatened delisting of the Company as a result of the failure to maintain a \$1.00 minimum share price shall be disregarded); (iii) the Company shall have delivered shares of Common Stock constituting the payment of any Interest Shares to the holders on a timely basis as set forth in Section 2.3 hereof (and analogous provisions under the Other Notes); (iv) any applicable shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating the rules or regulations of the Principal Market or any other applicable Eligible Market; (v) the Company shall not have failed to timely make any payments within five (5) Business Days of when such payment is due pursuant to any Transaction Document; (vi) there shall not have occurred either (A) the public announcement of a pending, proposed or intended Fundamental Transaction which has not been abandoned, terminated or consummated, (B) an Event of Default or (C) an event that with the passage of time or giving of notice would constitute an Event of Default; (vii) the Company otherwise shall have been in compliance with and shall not have breached any provision, covenant, representation or warranty of any Transaction Document; (viii) the shares of Common Stock issued as Interest Shares shall be duly authorized; (ix) the Holder shall not have provided the Company with notice prior to the applicable date of determination (and the Company shall not otherwise have actual knowledge) that such Holder would become the “beneficial owner” of more than the Applicable Percentage of the Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the “**1934 Act**”)) if the applicable shares of Common Stock to be issued in connection with the event requiring determination were issued in full to such Holder; (x) the sum of (a) the aggregate number of Interest Shares contemplated to be issued as Interest Shares under this Note and all Other Notes, (b) any Interest Shares previously issued pursuant to the terms of this Note and the Other Notes, and (c) the aggregate number of Warrant Shares (as defined in the Purchase Agreement) that may be issued pursuant to the exercise of all Warrants (as defined in the Purchase Agreement) purchased pursuant to the Purchase Agreement is less than 19.99% of the total number of shares of Common Stock outstanding on the Issuance Date unless the Company has obtained either (A) stockholder approval for the issuance of more than such number of shares of Common Stock pursuant to NASDAQ Listing Rule 5635(d) or (B) a waiver from NASDAQ of compliance with Rule 5635(d) and (xi) no Holder shall be in possession of any Non-Public Information (other than Consented Information and Privately Posted Information obtained by the Holder as a result of its subscription to the Electronic Datasite) received from the Company, any Subsidiary, any Excluded Subsidiary or their respective agents or affiliates. “**Applicable Percentage**” as used in this definition means 4.99% unless the Holder shall have provided notice in writing to the Company indicating that it elects to have the Applicable Percentage increased to an amount not to exceed 9.99%.

19.10 “**Equity Conditions Failure**” means that on any day during the period commencing five (5) Trading Days prior to the applicable date of determination through the applicable date of determination, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

19.11 “**Equity Issuance**” means the issuance or sale by the Company of any stock or other equity interests of the Company to any Person.

19.12 “**Equity Linked Issuance**” means any Equity Issuance or any issuance or sale by the Company to any Person of any options, warrants or other securities or rights to subscribe to or exercisable for the purchase of stock or other equity interest, or any Convertible Securities, of the Company or any notes or other evidence of Indebtedness with respect to which payment (with respect to principal, interest or other consideration) is calculated by reference to the capital stock of the Company or any other securities which give another Person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights accruing to the holders of shares of capital stock of the Company.

19.13 “**Excluded Events**” means (i) changes in the national or world economy or financial markets as a whole, (ii) changes in general economic conditions taken as a whole that affect the industries in which the Company and its Subsidiaries conduct their business, (iii) acts of terrorism or war, including the engagement by the United States of America or any other country in hostilities, and whether or not pursuant to the declaration of a national emergency or war, or any earthquakes, hurricanes or other natural disasters, (iv) any financial statement impact of the transactions contemplated by the Transaction Documents.

19.14 “**Excluded Subsidiaries**” means New PE Holdco LLC, a Delaware limited liability company, Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton, LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company.

19.15 “**Fundamental Transaction**” means that (A) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) another Person or Persons, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its Subsidiaries to another Person, or (iii) allow another Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (iv) consummate a securities purchase or business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than the 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such securities purchase agreement or other business combination), or (v) reorganize, recapitalize or reclassify the Voting Stock of the Company or (B) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of 50% of the aggregate Voting Stock of the Company.

19.16 “**GAAP**” means United States generally accepted accounting principles, consistently applied.

19.17 “**Indebtedness**” of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, “capital leases” in accordance with generally accepted accounting principles) (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, claim, lien, tax, right of first refusal, encumbrance, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above.

19.18 “**Interest Notice Due Date**” means the third (3rd) Trading Day prior to the applicable Interest Date.

19.19 “**Interest Rate**” means five percent (5%) per annum, provided, that commencing on January 15, 2014, if the Threshold Balance Reduction has not occurred, the “Interest Rate” shall be automatically increased by one percent (1%) per annum on each calendar January 15, April 15, July 15 and October 15 until the Threshold Balance Reduction occurs (by way of example, assuming the Threshold Balance Reduction has not occurred and no other adjustments of the Interest Rate hereunder are applicable, the Interest Rate on July 16, 2014, would be eight percent (8%) per annum). The “Interest Rate” shall in all cases be subject to adjustment as set forth in Section 2.

19.20 “**Kinergy Credit Facility**” means that certain credit facility as evidenced by, among other loan documents, that certain Amended and Restated Loan and Security Agreement, dated as of May 4, 2012, by and between Kinergy Marketing, LLC and Pacific AG. Products, LLC as borrowers thereunder and Wells Fargo Capital Finance, LLC as Agent, and Wells Fargo Capital Finance, LLC as Sole Lead Arranger, Manager and Bookrunner, as such credit facility is in effect on the date hereof.

19.21 “**Material Adverse Change**” shall mean any set of circumstances or events which occur, arise or otherwise take place from and after the Issuance Date which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Note or any other Transaction Document, (b) is or could reasonably be expected to be material and adverse to the business properties, assets, financial condition, results of operations or prospects of the Company or the Company and any of Subsidiaries on a collective basis, (c) impairs materially or could reasonably be expected to impair materially the ability of the Company to duly and punctually pay or perform any its obligations under this Note or any other Transaction Document, or (d) materially impairs or could reasonably be expected to materially impair the ability of Holder, to the extent permitted, to enforce its legal rights and remedies pursuant to this Note or any other Transaction Document.

19.22 “**Maturity Date**” shall mean March 30, 2016.

19.23 “**Net Cash Proceeds**” means, as applicable, (a) with respect to any Asset Sale by the Company or any Subsidiary, the gross cash proceeds received by the Company or any of its Subsidiaries therefrom less the sum of (i) all income taxes and other taxes paid to, or reasonably expected to be paid to, a governmental authority as a result of such sale and any other fees and expenses incurred in connection with such sale, (ii) the principal amount of, premium, if any, and interest on any Indebtedness secured by a Lien on the asset (or a portion thereof) sold and (iii) the reasonable, ordinary and customary costs of such Asset Sale, including without limitation, any third party fees, commissions, charges and expenses, including without limitation, any legal fees and costs, sales commissions and escrow fees, costs and charges, (b) with respect to any Equity Issuance, Equity Linked Issuance or Debt Issuance, the gross cash proceeds received by the Company therefrom less the sum of all legal, underwriting and other fees and expenses incurred in connection therewith, and (c) with respect to any Property Loss Event, the gross cash proceeds received by the Company or any of its Subsidiaries therefrom less the sum of (i) all fees and expenses in connection therewith, (ii) the principal amount of, premium, if any, and interest on any Indebtedness secured by a Lien on the asset (or portion thereof) subject to such Property Loss Event, which Indebtedness is required to be repaid in connection therewith and incremental income taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing agreements), and (iii) that portion thereof used to repair or otherwise replace, or pay or reimburse any losses or expenses related to, the property which is the subject of such Property Loss Event.

19.24 “**Non-Public Information**” means material, non-public information relating to the Company.

19.25 “**Pacific Holding Credit Facilities**” means the Pacific Holding Priming Credit Facility and Pacific Holding Restated Credit Facility.

19.26 “**Pacific Holding Priming Credit Facility**” means that certain credit facility as evidenced by, among other loan documents, that certain Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein, as such credit facility may have been or may be amended, restated or otherwise modified from time to time.

19.27 “**Pacific Holding Restated Credit Facility**” means that certain credit facility as evidenced by, among other loan documents, that certain Second Amended and Restated Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein, as such credit facility may have been or may be amended, restated or otherwise modified from time to time.

19.28 “**Permitted Distributions**” means (a) dividends by Subsidiaries of the Company to the Company or other Subsidiaries of the Company, and (b) current quarterly dividends required to be paid by Company with respect to the Company’s Series B Cumulative Convertible Preferred Stock pursuant to the organizational documents of the Company as in effect as of the Issuance Date on the Company. For the avoidance of doubt, to the extent that payment thereof is in the form of Common Stock, payment of previously accrued and unpaid dividends with respect to the Company’s Series B Cumulative Convertible Preferred Stock outstanding as of the Issuance Date shall be deemed to be “Permitted Distributions”.

19.29 “**Permitted Indebtedness**” means (i) Indebtedness evidenced by this Note and the Other Notes; (ii) Permitted Subsidiary Indebtedness, (iii) any Indebtedness secured by a Permitted Lien (other than any Indebtedness referred to in clause (iv) of the definition of “Permitted Lien”), (iv) Indebtedness incurred by the Company that is made expressly subordinate in right of payment to the Indebtedness evidenced by this Note, as reflected in a written agreement acceptable to the Holder and approved by the Holder in writing, and which Indebtedness does not provide at any time for (1) the payment, prepayment, repayment, repurchase or defeasance, directly or indirectly, of any principal or premium, if any, thereon until ninety-one (91) days after the Maturity Date or later and (2) total interest and fees at a rate in excess of ten percent (10%) per annum (collectively, the “**Subordinated Indebtedness**”), (v) Indebtedness existing on the Issuance Date; provided, that the principal amount of such Indebtedness is not increased by more than five percent (5%) in the aggregate, the terms of such Indebtedness are not modified to impose more burdensome terms upon the Company or any of its Subsidiaries and the terms of such Indebtedness are not materially changed in any manner that adversely affects the Holder or any of the Buyers, (vi) any Contingent Obligation with respect to the Kinergy Credit Facility or otherwise required to be incurred by the Company in order for any of its Subsidiaries to obtain any bonds or letters of credit required in connection with the continued operation of such Subsidiary’s business; provided that such Contingent Obligation shall not exceed \$750,000 in the aggregate at any time and (vii) such other trade and operating Indebtedness incurred in the ordinary course of business by the Company, including without limitation, unsecured trade debt, financing with respect to the acquisition or lease of equipment and financing of insurance premiums; provided that in the aggregate, such Indebtedness does not exceed the greater of \$2,000,000 or three-quarters of one percent (0.75%) of total assets as reported in the Company’s most recent publicly filed Form 10-K or 10-Q reports.

19.30 **“Permitted Investments”** means (i) purchases of the Specified A-2 Debt in accordance with the Purchase Agreement, (ii) purchase of equity interests in New PE Holdco LLC and (iii) any transfer of funds from any Subsidiary to any Excluded Subsidiary by way of a loan, advance, guarantee, capital contribution or otherwise, provided that any such transfers and in an amount necessary and are promptly used: (A) for general working capital purposes and/or (B) to service interest payments due and payable on the “Revolving Loans” as defined in the Pacific Holdings Restated Credit Facility.

19.31 **“Permitted Liens”** means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen’s liens, mechanics’ liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens securing financing obtained in the ordinary course of the Company’s operations, including financing with respect to the acquisition or lease of equipment and financing of insurance premiums; provided, that (A) such Liens are solely upon and confined solely to the equipment, unearned insurance premiums or other asset or assets being acquired by such financing and (B) in the aggregate, the Indebtedness secured by such liens does not exceed the greater of \$2,000,000 or three-quarters of one percent (0.75%) of total assets as reported in the Company’s most recent publicly filed Form 10-K or 10-Q reports, (v) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, and (vi) any Lien on the assets or properties of Kinergy Marketing LLC and Pacific AG. Products, LLC securing Permitted Subsidiary Indebtedness.

19.32 **“Permitted Payments”** means any payments, distributions or transfers with respect to (i) any Permitted Indebtedness (in the case of Subordinated Indebtedness, to the extent permitted by the relevant subordination or intercreditor agreement) and (ii) any Permitted Distributions.

19.33 **“Permitted Subsidiary Indebtedness”** means (i) any Indebtedness incurred by Kinergy Marketing LLC and Pacific AG. Products, LLC under the Kinergy Credit Facility Agreement and any existing guarantee of such Indebtedness by the Company, and (ii) any other Indebtedness incurred by Kinergy Marketing LLC and Pacific AG. Products, LLC that is permitted under the Kinergy Credit Facility. For purposes of this definition, the term “Indebtedness shall include, but not be limited to, the principal of (and premium, if any), interest on, and all fees and other amounts (including, without limitation, any reasonable out-of-pocket costs, enforcement expenses (including reasonable out-of-pocket legal fees and disbursements), collateral protection expenses and other reimbursement or indemnity obligations relating thereto).

19.34 **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

19.35 **“Principal Market”** means The NASDAQ Capital Market.

19.36 “**Property Loss Event**” means (a) any loss of or damage to property of the Company or its Subsidiaries that results in the receipt by such Person of proceeds of insurance or (b) any taking of property of the Company or any of its Subsidiaries that results in the receipt by such Person of a compensation payment in respect thereof.

19.37 “**Purchase Agreement**” means the Securities Purchase Agreement, dated as of December 19, 2012, by and among the Company, the Holder, and each other “Investor” (as defined therein) as amended, restated or otherwise modified from time to time.

19.38 “**Required Holders**” means the holders of Notes representing at least 66 2/3% of the aggregate principal amount of the Notes then outstanding (excluding any Notes held by the Company or any of its Subsidiaries).

19.39 “**Specified A-2 Debt**” shall mean the Tranche A-2 Term Loans (as defined in the Pacific Holdings Restated Credit Facility) acquired by the Company on the Issuance Date with the proceeds of the issuance of the Note and the Other Notes.

19.40 “**Subsidiary**” means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person; provided that, for purposes of this Note, the term “Subsidiary” shall expressly exclude the Excluded Subsidiaries.

19.41 “**Threshold Balance Reduction**” means, the aggregate outstanding principal balance of the Note and all Other Notes shall be less than \$11,096,245.32.

19.42 “**Trading Day**” means (a) any day on which the Common Stock is listed or quoted and traded on any Eligible Market, (b) if the Common Stock is not then listed or quoted and traded on any Eligible Market, then a day on which trading occurs on the Principal Market (or any successor thereto), or (c) if trading ceases to occur on the Principal Market (or any successor thereto), any Business Day.

19.43 “**Transaction Documents**” means this Note, the Other Notes and each Purchase Agreement, together with any amendments, restatements, extensions or other modification thereto.

19.44 “**Voting Stock**” of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

19.45 “**Warrants**” means the warrants issued pursuant to the Purchase Agreement.

19.46 “**Weighted Average Price**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York Time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as the Principal Market publicly announces is the official close of trading) as reported by Bloomberg through its “Volume at Price” functions, or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York Time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York Time (or such other time as such market publicly announces is the official close of trading) as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the OTC Link or “pink sheets” by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved by an independent, reputable investment bank selected by the Required Holders and approved by the Company, such approval not to be unreasonably withheld or delayed. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction during the applicable calculation period.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT ON THE ISSUANCE DATE OF THIS NOTE. THE COMPANY AGREES TO PROVIDE PROMPTLY TO EACH HOLDER OF THIS NOTE, UPON WRITTEN REQUEST (1) THE ISSUE PRICE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT AND (3) THE YIELD TO MATURITY OF THIS NOTE. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT THE FOLLOWING ADDRESS: 400 CAPITOL MALL, SUITE 2060, SACRAMENTO, CA 95814, ATTN: BRYON T. MCGREGOR, CFO.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the first date set forth above.

PACIFIC ETHANOL, INC.

By: _____
Name: Bryon T. McGregor
Title: Chief Financial Officer

AGREED AND ACCEPTED:
HOLDER:

[HOLDER]

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

PACIFIC ETHANOL, INC.

[FORM OF]

Warrant To Purchase Common Stock

Warrant No.: D12- _____

Number of Shares of Common Stock: _____¹

Date of Issuance: [●], 201__ (“**Issuance Date**”)

Pacific Ethanol, Inc. a Delaware corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [INVESTOR], the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon exercise of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the “**Warrant**”), at any time or times on or after the date hereof (the “**Issuance Date**”), but not after 11:59 p.m. New York time, on the Expiration Date (as defined below), _____ (_____) fully paid nonassessable shares of Common Stock (as defined below) (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in Section 16. This Warrant is one of several Warrants to Purchase Common Stock (the “**Warrants**”) issued pursuant to Section 2.1 of that certain Securities Purchase Agreement (the “**Securities Purchase Agreement**”), dated as of December 19, 2012, by and among the Company, the Holder and certain other investors.

¹Total of all warrants to be 25,630,286.

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof, this Warrant may be exercised by the Holder on any day on or after the Issuance Date, but before 11:59 p.m. New York time, on the Expiration Date, in whole or in part, by delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder's election to exercise this Warrant. Within two (2) days following the Exercise Notice, the Holder shall make payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash or by wire transfer of immediately available funds, or provided the conditions for cashless exercise set forth in Section 1(d) are satisfied, by notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. On or before the first (1st) Business Day following the date on which the Company has received the Exercise Notice, the Company shall transmit by facsimile or electronic mail an acknowledgment of confirmation of receipt of the Exercise Notice to the Holder and the Company's transfer agent (the “**Transfer Agent**”). On or before the third (3rd) Trading Day following the date on which the Company has received the Exercise Notice (the “**Share Delivery Date**”), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program, upon the request of the Holder, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any. Upon delivery of the Exercise Notice, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three Business Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. Notwithstanding anything to the contrary herein, except in the case where an exercise of this Warrant is validly made pursuant to a Cashless Exercise (as defined in Section 1(d), the Company's failure to deliver Warrant Shares to the Holder shall not be deemed to be a breach of this Warrant if the Company has not received the Aggregate Exercise Price pursuant to the requirements of this Section 1(a).

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$0.52 subject to adjustment as provided herein.

(c) Company's Failure to Timely Deliver Securities. If the Company shall fail for any reason or for no reason to issue to the Holder on or before the Share Delivery Date in compliance with the terms of this Section 1, a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or to credit the Holder's balance account with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of this Warrant, and if on or after the Share Delivery Date the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of shares of Common Stock issuable upon such exercise that the Holder anticipated receiving from the Company (a “**Buy-In**”), then the Company shall, within three (3) Business Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the “**Buy-In Price**”), at which point the Company's obligation to deliver such certificate or credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) (and to issue such Warrant Shares) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Sale Price on the Trading Day immediately preceding the date of the Exercise Notice.

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary, (i) if a registration statement covering the resale by the Holder of the Warrant Shares that are the subject of the Exercise Notice (the “**Unavailable Warrant Shares**”) is not available for the resale of such Unavailable Warrant Shares, or (ii) at any time after March 30, 2016, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise, the Holder can elect instead to receive upon such exercise the “Net Number” of shares of Common Stock determined according to the following formula (a “Cashless Exercise”):

$$\text{Net Number} = \frac{(A \times B) - (A \times C)}{D}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= the arithmetic average of the Closing Sale Prices of the shares of Common Stock for the five (5) consecutive Trading Days ending on the date immediately preceding the date of the Exercise Notice.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

D= the Closing Sale Price on the date of the Exercise Notice.

(e) Rule 144. For purposes of Rule 144(d) promulgated under the Securities Act of 1933, as amended, as in effect on the date hereof, it is intended that the Warrant Shares issued in a Cashless Exercise shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the Issuance Date.

(f) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 13.

(g) Beneficial Ownership Limitation. Notwithstanding anything to the contrary contained herein, the Company shall not effect the exercise of this Warrant, and the Holder shall not have the right to exercise this Warrant, to the extent that after giving effect to such exercise, such Person (together with such Person's affiliates) would beneficially own in excess of 4.99% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by such Person and its affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (i) exercise of the remaining, unexercised portion of this Warrant beneficially owned by such Person and its affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by such Person and its affiliates (including, without limitation, any convertible notes or convertible preferred stock or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**1934 Act**"). For purposes of this Warrant, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Form 10-K, Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Warrants, by the Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. By written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided that (i) any such increase will not be effective until the sixty-first (61st) day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder and not to any other holder of Warrants issued pursuant to the Securities Purchase Agreement. For the avoidance of doubt, to the extent the limitation set forth in this Section 1(g) applies, the determination (i) of whether the exercise of this Warrant may be effected (vis-à-vis other Options or Convertible Securities owned by the Holder or any of its Affiliates) and (ii) of which such Options or Convertible Securities shall be convertible, exercisable or exchangeable (as the case may be, as among all such securities owned by the Holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). The provisions of this paragraph shall be construed and implemented in a manner other than in strict conformity with the terms of this Section 1(g) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(h) Insufficient Authorized Shares. If at any time from and after the ninetieth (90th) day following the Issuance Date and while any of the Warrants remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of the Warrants at least 100% of the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of the Warrants then outstanding (without regard to any limitations on exercise) (the "**Required Reserve Amount**") (an "**Authorized Share Failure**"), then the Company shall immediately deliver a notice to the Holder specifying the number of shares unavailable to satisfy its obligations under this Warrant and shall take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Warrants then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than ninety (90) days after the occurrence of such Authorized Share Failure (the "**Authorized Share Failure Deadline**"), and assuming such Authorized Share Failure still exists, the Company shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its reasonable best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal. In the event that upon any exercise of this Warrant at any time from and after the Authorized Share Failure Deadline, the Company does not have sufficient authorized shares to deliver in satisfaction of such exercise, then unless the Holder elects to void such exercise, the Company shall pay to the Holder within three (3) Trading Days of the applicable exercise, cash in an amount equal to the product of (i) the number of Warrant Shares that the Company is unable to deliver pursuant hereto and (ii) the Black Scholes Value.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Stock Dividends and Splits. Without limiting any provision of Section 2(b) or Section 4, if the Company, at any time on or after the Issuance Date, (i) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (iii) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of Common Stock into a smaller number of shares (a “**Stock Combination Event**”), then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this paragraph occurs during the period that an Exercise Price is calculated hereunder, then the calculation of such Exercise Price shall be adjusted appropriately to reflect such event. Simultaneously with any adjustment to the Exercise Price pursuant to this paragraph, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment (without regard to any limitations on exercise contained herein).

(b) Adjustment of Exercise Price Upon Issuance of Shares of Common Stock. If and whenever on or after the Issuance Date, the Company issues or sells, or in accordance with this Section 2 is deemed to have issued or sold, any shares of Common Stock (including the issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities issued or sold or deemed to have been issued or sold) for a consideration per share (the “**New Issuance Price**”) less than a price equal to the Exercise Price in effect immediately prior to such issue or sale or deemed issuance or sale (such Exercise Price then in effect is referred to as the “**Applicable Price**”) (the foregoing a “**Dilutive Issuance**”), then immediately after such Dilutive Issuance, the Exercise Price then in effect shall be reduced to an amount equal to the product of (A) the Exercise Price in effect immediately prior to such Dilutive Issuance and (B) the quotient determined by dividing (1) the sum of (I) the product derived by multiplying the Exercise Price in effect immediately prior to such Dilutive Issuance and the number of shares of Common Stock Deemed Outstanding immediately prior to such Dilutive Issuance plus (II) the consideration, if any, received by the Company upon such Dilutive Issuance, by (2) the product derived by multiplying (I) the Exercise Price in effect immediately prior to such Dilutive Issuance by (II) the number of shares of Common Stock Deemed Outstanding immediately after such Dilutive Issuance. For purposes of determining the adjusted Exercise Price under this Section 2(b), the following shall be applicable:

(i) Issuance of Options. If the Company in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting or sale of such Option for such price per share. For purposes of this Section 2(b)(i), the “lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) upon the granting or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such shares of Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 2(b)(ii), the “lowest price per share for which one share of Common Stock is issuable upon the conversion, exercise or exchange thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable upon conversion, exercise or exchange thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) upon the issuance or sale of such Convertible Security plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of this Warrant has been or is to be made pursuant to other provisions of this Section 2(b), except as contemplated below, no further adjustment of the Exercise Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time, the Exercise Price in effect at the time of such increase or decrease shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 2(b)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Issuance Date are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 2(b) shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

(iv) Calculation of Consideration Received. If any Option or Convertible Security or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company, together comprising one integrated transaction, all securities issued in the integrated transaction shall be deemed to have been issued for consideration equal to the aggregate consideration received or receivable by the Company. If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the "Weighted Average Price" (as defined in the Securities Purchase Agreement) of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "**Valuation Event**"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(v) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(c) Other Events. In the event that the Company (or any Subsidiary) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's board of directors shall in good faith determine and implement an appropriate adjustment in the Exercise Price and the number of Warrant Shares (if applicable) so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 2(c) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company's board of directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding and whose fees and expenses shall be borne by the Company.

(d) Calculations. All calculations under this Section 2 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or securities (other than stock or securities in which an adjustment is being made pursuant to Section 2(a)), property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distributions would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (or the beneficial ownership of any such shares of Common Stock as a result of such Distribution to such extent) and such Distribution to such extent shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time the Holder shall be granted such right to the same extent as if there had been no such limitation).

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder’s right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time the Holder shall be granted such right to the same extent as if there had been no such limitation).

(b) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless the Successor Entity assumes in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 4(b), including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction. Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to the applicable Fundamental Transaction, such shares of publicly traded common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. Notwithstanding the foregoing, and without limiting Section 1(g) hereof, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 4(b) to permit the Fundamental Transaction without the assumption of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “**Corporate Event**”), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). Provision made pursuant to the preceding sentence shall be in a form and substance reasonably satisfactory to the Holder. Notwithstanding the foregoing, in the event of a Fundamental Transaction, at the request of the Holder (which may be required by the Company if the Successor Entity is not publicly traded) delivered before the 90th day after such Fundamental Transaction, the Company (or the Successor Entity) shall purchase this Warrant from the Holder by paying to the Holder, within five Business Days after such request (or, if later, on the effective date of the Fundamental Transaction), cash in an amount equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of such Fundamental Transaction.

(c) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of capital stock registered under the 1934 Act, and thereafter receivable upon exercise of this Warrant (or any such other warrant)).

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (iii) shall, so long as this Warrant is outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of this Warrant, 100% of the number of shares of Common Stock issuable upon exercise of this Warrant then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no Warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of (a) the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified in this Section prior to 6:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile or email at the facsimile number or email address specified in this Section on a day that is not a Trading Day or later than 6:30 p.m. (New York City time) on any Trading Day, (c) the Trading Day following the date of deposit with a nationally recognized overnight courier service, or (d) upon actual receipt by the party to whom such notice is required to be given. The addresses, facsimile numbers and email addresses for such notices and communications are those as may be designated by the Holder and the Company prior to the Issuance Date, and in writing hereafter, in the same manner, by any such Person. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon each adjustment of the Exercise Price and the number of Warrant Shares, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s) and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder and (iii) at least ten (10) Trading Days prior to the consummation of any Fundamental Transaction. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its Subsidiaries, the Company shall simultaneously file such notice with the Securities and Exchange Commission pursuant to a Current Report on Form 8-K. It is expressly understood and agreed that the time of execution specified by the Holder in each Exercise Notice shall be definitive and may not be disputed or challenged by the Company.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. SEVERABILITY. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

13. **DISPUTE RESOLUTION.** In the case of a dispute as to the determination of the Exercise Price, the Closing Sale Price, the Closing Bid Price or fair market value or the arithmetic calculation of the Warrant Shares (as the case may be), the Company or the Holder (as the case may be) shall submit the disputed determinations or arithmetic calculations (as the case may be) via facsimile (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after the Holder learned of the circumstances giving rise to such dispute (including, without limitation, as to whether any issuance or sale or deemed issuance or sale was an issuance or sale or deemed issuance or sale of Excluded Securities). If the Holder and the Company are unable to agree upon such determination or calculation (as the case may be) of the Exercise Price, the Closing Sale Price, the Closing Bid Price or fair market value or the number of Warrant Shares (as the case may be) within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Company or the Holder (as the case may be), then the Company shall, within two (2) Business Days submit via facsimile (a) the disputed determination of the Exercise Price, the Closing Sale Price, the Closing Bid Price or fair market value (as the case may be) to an independent, reputable investment bank selected by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant (as the case may be) to perform the determinations or calculations (as the case may be) and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives such disputed determinations or calculations (as the case may be). Such investment bank's or accountant's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error.

14. **REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF.** The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. TRANSFER. This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company.

16. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) **“Adjustment Right”** means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 2) of shares of Common Stock (other than rights of the type described in Section 3 and 4 hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(b) **“Black Scholes Value”** means the value of the unexercised portion of this Warrant remaining on the date of the Holder’s request, which value is calculated using the Black Scholes Option Pricing Model obtained from the “OV” function on Bloomberg utilizing (i) an underlying price per share equal to, in the event of an Authorized Share Failure, the VWAP on the exercise date, or, in the event of a Fundamental Transaction, the VWAP on the Trading Day immediately preceding the consummation of the applicable Fundamental Transaction, (ii) a strike price equal to the Exercise Price in effect on the date of the Holder’s request, (iii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the greater of (1) the remaining term of this Warrant as of the date of the Holder’s request and (2) the remaining term of this Warrant as of the date of consummation of the applicable Fundamental Transaction or as of the date of the Holder’s request pursuant to Section 4(c), if such request is prior to the date of the consummation of the applicable Fundamental Transaction, (iv) an expected volatility equal to the greater of 90% and the 30-day volatility obtained from the HVT function on Bloomberg (determined utilizing a 365-day annualization factor) as of the Trading Day immediately following the earlier to occur of the public disclosure or consummation of the applicable Fundamental Transaction and (v) a 0% cost of borrow.

(c) **“Bloomberg”** means Bloomberg, L.P.

(d) **“Business Day”** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(e) **“Closing Bid Price”** and **“Closing Sale Price”** means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(f) **“Common Stock”** means (i) the Company’s shares of common stock, \$0.001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(g) **“Common Stock Deemed Outstanding”** means, at any given time, the number of shares of Common Stock actually outstanding at such time.

(h) **“Convertible Securities”** means any capital stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(i) **“Eligible Market”** means The New York Stock Exchange, The NYSE Amex, The NASDAQ Global Market, The NASDAQ Global Select Market or the Principal Market.

(j) **“Excluded Securities”** means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company in their capacity as such pursuant to any stock or option plan or employment agreement duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of securities issued pursuant to the Transaction Documents and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the Issuance Date, provided that such securities have not been amended since the Issuance Date to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (c) Interest Shares and (d) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

(k) **“Expiration Date”** means the date that is the five (5) year anniversary of the Issuance Date, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a **“Holiday”**), the next date that is not a Holiday.

(l) **“Fundamental Transaction”** means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (5) reorganize, recapitalize or reclassify the Common Stock, or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(m) **“Interest Shares”** shall have the meaning set forth in Section 2.2 of the Form of Senior Unsecured Note attached as Exhibit B to the Securities Purchase Agreement.

(n) **“Options”** means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(o) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(p) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(q) **“Principal Market”** means The NASDAQ Capital Market.

(r) **“Subsidiary”** means any direct or indirect wholly-owned subsidiary of the Company.

(s) **“Successor Entity”** means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(t) **“Trading Day”** means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder.

(u) **“Transaction Documents”** has the meaning given to such term in the Securities Purchase Agreement.

(v) **“Voting Stock”** of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

PACIFIC ETHANOL, INC.

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

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK

PACIFIC ETHANOL, INC.

The undersigned holder hereby exercises the right to purchase _____ of the shares of Common Stock (“**Warrant Shares**”) of **PACIFIC ETHANOL, INC.**, a Delaware corporation (the “**Company**”), evidenced by the attached Warrant to Purchase Common Stock (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a “Cash Exercise” with respect to _____ Warrant Shares; and/or
_____ a “Cashless Exercise” with respect to _____ Warrant Shares.

2. Payment of Exercise Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the Aggregate Exercise Price in the sum of \$_____ to the Company in accordance with the terms of the Warrant.

3. Representations and Warranties. By its delivery of this Exercise Notice, the undersigned represents and warrants to the Company that in giving effect to the exercise evidenced hereby the Holder will not beneficially own in excess of the number of shares of Common Stock permitted to be owned under Section 1(f) of this Warrant to which this notice relates.

4. Delivery of Warrant Shares. The Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant. Delivery shall be made to the Holder, or for its benefit, to the following address:

Date: _____, _____

Name of Registered Holder

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs American Stock Transfer & Trust Co., LLC to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 201__ from the Company and acknowledged and agreed to by American Stock Transfer & Trust Co. LLC.

PACIFIC ETHANOL, INC.

By: _____
Name _____
Title _____

FORM OF REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this "**Agreement**"), dated as of _____, 20__, is by and among Pacific Ethanol, Inc., a Delaware corporation with offices located at 400 Capitol Mall, Suite 2060, Sacramento, CA 95814 (the "**Company**"), and the undersigned buyers (each, a "**Buyer**," and collectively, the "**Buyers**").

RECITALS

A. In connection with the Securities Purchase Agreement by and among the parties hereto, dated as of December 19, 2012 (the "**Securities Purchase Agreement**"), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to each Buyer (i) senior unsecured notes of the Company (the "**Notes**"), and (ii) the Warrants (as defined in the Securities Purchase Agreement) which will be exercisable to purchase Warrant Shares (as defined in the Securities Purchase Agreement) in accordance with the terms of the Warrants.

B. The Notes are entitled to interest, which, at the option of the Company and subject to certain conditions, may be paid in shares of the Company's common stock, \$0.0001 par value per share (the "**Common Stock**") that have been registered for resale (the "**Interest Shares**") or in cash.

C. To induce the Buyers to consummate the transactions contemplated by the Securities Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and each of the Buyers hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Business Day**" means any day other than Saturday, Sunday or any other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

(b) "**Closing Date**" shall have the meaning set forth in the Securities Purchase Agreement.

(c) “**Effective Date**” means the date that the applicable Registration Statement has been declared effective by the SEC.

(d) “**Filing Deadline**” means (i) with respect to the initial Registration Statement required to be filed pursuant to Section 2(a), the 30th calendar day after the Closing Date and (ii) with respect to any additional Registration Statements that may be required to be filed by the Company pursuant to this Agreement, the date on which the Company was required to file such additional Registration Statement pursuant to the terms of this Agreement.

(e) “**Investor**” means a Buyer or any transferee or assignee of any Registrable Securities, Notes or Warrants, as applicable, to whom a Buyer assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee of any Registrable Securities, Notes or Warrants, as applicable, assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(f) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or a government or any department or agency thereof.

(g) “**register**,” “**registered**,” and “**registration**” refer to a registration effected by preparing and filing one or more Registration Statements in compliance with the 1933 Act and pursuant to Rule 415 and the declaration of effectiveness of such Registration Statement(s) by the SEC.

(h) “**Registrable Securities**” means (i) any Interest Shares issued or issuable pursuant to the terms of the Notes, (ii) the Warrant Shares and (iii) any capital stock of the Company issued or issuable with respect to the Interest Shares, the Warrant Shares the Notes or the Warrants, including, without limitation, (1) as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise and (2) shares of capital stock of the Company into which the shares of Common Stock are converted or exchanged and shares of capital stock of a Successor Entity (as defined in the Warrants) into which the shares of Common Stock are converted or exchanged, in each case, without regard to any limitations on issuance of Common Stock pursuant to the terms of the Notes or exercise of the Warrants.

(i) “**Registration Statement**” means a registration statement or registration statements of the Company filed under the 1933 Act covering Registrable Securities.

(j) “**Required Holders**” means the holders of at least a majority of the Registrable Securities (excluding any Registrable Securities held by the Company or any of its Subsidiaries).

(k) “**Required Registration Amount**” means (i) 7,369,714 Interest Shares issued and issuable pursuant to the terms of the Notes and (ii) 25,630,286 Warrant Shares issued and issuable upon exercise of the Warrants, all subject to adjustment as provided in Section 2(c).

(l) “**Rule 144**” means Rule 144 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration.

(m) “**Rule 415**” means Rule 415 promulgated by the SEC under the 1933 Act, as such rule may be amended from time to time, or any other similar or successor rule or regulation of the SEC providing for offering securities on a continuous or delayed basis.

(n) “**SEC**” means the United States Securities and Exchange Commission or any successor thereto.

2. Registration.

(a) Mandatory Registration. The Company shall prepare and, as soon as practicable, but in no event later than the Filing Deadline, file with the SEC an initial Registration Statement on Form S-3 covering the resale of all of the Registrable Securities, provided that such initial Registration Statement shall register for resale at least the number of shares of Common Stock equal to the Required Registration Amount as of the date such Registration Statement is initially filed with the SEC, provided further that if Form S-3 is unavailable for such a registration, the Company shall use such other form as is required by Section 2(b). Such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, shall contain (except if otherwise directed by the Required Holders) the “Selling Security holders” and “Plan of Distribution” sections in substantially the form attached hereto as Exhibit B. The Company shall use its commercially reasonable best efforts to have such initial Registration Statement, and each other Registration Statement required to be filed pursuant to the terms of this Agreement, declared effective by the SEC as soon as practicable and, with respect to the initial Registration Statement, within ninety (90) days after filing.

(b) Ineligibility to Use Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the resale of the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of all Registration Statements then in effect until such time as a Registration Statement on Form S-3 covering the resale of all the Registrable Securities has been declared effective by the SEC.

(c) Sufficient Number of Shares Registered. In the event the number of shares available under any Registration Statement is insufficient to cover all of the Registrable Securities required to be covered by such Registration Statement or an Investor’s allocated portion of the Registrable Securities pursuant to Section 2(f), the Company shall amend such Registration Statement (if permissible), or file with the SEC a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) days after the necessity therefor arises (but taking account of any Staff position with respect to the date on which the Staff will permit such amendment to the Registration Statement and/or such new Registration Statement (as the case may be) to be filed with the SEC). The Company shall use its commercially reasonable best efforts to cause such amendment to such Registration Statement and/or such new Registration Statement (as the case may be) to become effective as soon as practicable following the filing thereof with the SEC.

(d) **Offering.** Notwithstanding anything to the contrary contained in this Agreement, in the event the staff of the SEC (the “**Staff**”) or the SEC seeks to characterize any offering pursuant to a Registration Statement filed pursuant to this Agreement as constituting an offering of securities by, or on behalf of, the Company, or in any other manner, such that the Staff or the SEC do not permit such Registration Statement to become effective and used for resales in a manner that does not constitute such an offering and that permits the continuous resale at the market by the Investors participating therein (or as otherwise may be acceptable to each Investor) without being named therein as an “underwriter,” then the Company shall remove from the Registration Statement such portion of the Registrable Securities (the “**Cut Back Shares**”) to be included in such Registration Statement by all Investors until such time as the Staff and the SEC shall so permit such Registration Statement to become effective as aforesaid. In making such reduction, the Company shall remove from the Registration Statement the number of Registrable Securities to be included by all Investors on a pro rata basis (based upon the number of Registrable Securities otherwise required to be included for each Investor) with such reduction being applied first with respect to the Interest Shares (unless any Investor determines otherwise with respect to its pro rata share of Registrable Securities) unless the inclusion of the Registrable Securities by a particular Investor or a particular set of Investors are resulting in the Staff or the SEC’s “by or on behalf of the Company” offering position, in which event the Registrable Securities held by such Investor or set of Investors shall be the only Registrable Securities subject to reduction (and if by a set of Investors on a pro rata basis by such Investors or on such other basis as would result in the exclusion of the least number of Registrable Securities by all such Investors). In addition, in the event that the Staff or the SEC requires any Investor seeking to sell securities under a Registration Statement filed pursuant to this Agreement to be specifically identified as an “underwriter” in order to permit such Registration Statement to become effective, and such Investor does not consent to being so named as an underwriter in such Registration Statement, then, in each such case, the Company shall reduce the total number of Registrable Securities to be registered on behalf of such Investor, until such time as the Staff or the SEC does not require such identification or until such Investor accepts such identification and the manner thereof. Any reduction pursuant to this paragraph will first reduce all Registrable Securities other than those issued pursuant to the Securities Purchase Agreement. In the event of any reduction in Registrable Securities pursuant to this paragraph, an affected Investor shall have the right to require, upon delivery of a written request to the Company signed by such Investor, the Company to file a registration statement within thirty (30) days of such request (subject to any restrictions imposed by Rule 415 or required by the Staff or the SEC) for resale by such Investor in a manner acceptable to such Investor, and the Company shall following such request cause to be and keep effective such registration statement in the same manner as otherwise contemplated in this Agreement for registration statements hereunder, in each case until such time as: (i) all Registrable Securities held by such Investor have been registered and sold pursuant to an effective Registration Statement in a manner acceptable to such Investor or (ii) all Registrable Securities may be resold by such Investor without restriction (including, without limitation, volume limitations) pursuant to Rule 144 (taking account of any Staff position with respect to “affiliate” status) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or (iii) such Investor agrees to be named as an underwriter in any such Registration Statement in a manner acceptable to such Investor as to all Registrable Securities held by such Investor and that have not theretofore been included in a Registration Statement under this Agreement (it being understood that the special demand right under this sentence may be exercised by an Investor multiple times and with respect to limited amounts of Registrable Securities in order to permit the resale thereof by such Investor as contemplated above).

(e) Piggyback Registrations. Without limiting any obligation of the Company hereunder or under the Securities Purchase Agreement, if there is not an effective Registration Statement covering all of the Registrable Securities or the prospectus contained therein is not available for use and the Company shall determine to prepare and file with the SEC a registration statement relating to an offering for its own account or the account of others under the 1933 Act of any of its equity securities (other than on Form S-4 or Form S-8 (each as promulgated under the 1933 Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans), then the Company shall deliver to each Investor a written notice of such determination and, if within fifteen (15) days after the date of the delivery of such notice, any such Investor shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Investor requests to be registered; provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 2(e) that are eligible for resale pursuant to Rule 144 without restriction (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable) or that are the subject of a then-effective Registration Statement.

(f) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time such Registration Statement covering such initial number of Registrable Securities or increase thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee or assignee (as the case may be) that becomes an Investor shall be allocated a pro rata portion of the then-remaining number of Registrable Securities included in such Registration Statement for such transferor or assignee (as the case may be). Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement.

(g) No Inclusion of Other Securities. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement without the prior written consent of the Required Holders.

3. Related Obligations.

The Company shall use its commercially reasonable best efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof, and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to all the Registrable Securities (but in no event later than the applicable Filing Deadline) and use its commercially reasonable best efforts to cause such Registration Statement to become effective as soon as practicable after such filing. The Company shall use its commercially reasonable best efforts to keep each Registration Statement effective (and the prospectus contained therein available for use) pursuant to Rule 415 for resales by the Investors on a delayed or continuous basis at then-prevailing market prices (and not fixed prices) at all times until the earlier of (i) the date as of which all of the Investors may sell all of the Registrable Securities required to be covered by such Registration Statement (disregarding any reduction pursuant to Section 2(e)) without restriction pursuant to Rule 144 (including, without limitation, volume restrictions) and without the need for current public information required by Rule 144(c)(1) (or Rule 144(i)(2), if applicable), (ii) the date on which the Investors shall have sold all of the Registrable Securities covered by such Registration Statement, or (iii) the date on which all Warrants have expired or been exercised in accordance with the terms of the Warrants (the “**Registration Period**”). Notwithstanding anything to the contrary contained in this Agreement, the Company shall ensure that, when filed and at all times while effective, each Registration Statement (including, without limitation, all amendments and supplements thereto) and the prospectus (including, without limitation, all amendments and supplements thereto) used in connection with such Registration Statement (1) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading and (2) will disclose (whether directly or through incorporation by reference to other SEC filings to the extent permitted) all material information regarding the Company and its securities required to be disclosed under the 1933 Act or the 1934 Act (as defined below). The Company shall submit to the SEC, within one (1) Business Day after the date that the Company learns that no review of a particular Registration Statement will be made by the Staff or that the Staff has no further comments on a particular Registration Statement (as the case may be), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than twenty-four (24) hours after the submission of such request.

(b) The Company shall prepare and file with the SEC such amendments (including, without limitation, post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep each such Registration Statement effective at all times during the Registration Period for such Registration Statement, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company required to be covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement; provided, however, by 8:30 a.m. (New York time) on the Business Day immediately following each Effective Date, the Company shall file with the SEC in accordance with Rule 424(b) under the 1933 Act the final prospectus to be used in connection with sales pursuant to the applicable Registration Statement (whether or not such a prospectus is technically required by such rule). In the case of amendments and supplements to any Registration Statement which are required to be filed pursuant to this Agreement (including, without limitation, pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-Q or Form 10-K or any analogous report under the Securities Exchange Act of 1934, as amended (the “**1934 Act**”), the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit legal counsel for each Investor to review and comment upon (i) each Registration Statement at least five (5) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to each Registration Statement (including, without limitation, the prospectus contained therein) (except for Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, and (B) not file any Registration Statement or amendment or supplement thereto in a form to which any legal counsel for any Investor reasonably objects. The Company shall promptly furnish to legal counsel for each Investor, without charge, (i) copies of any correspondence from the SEC or the Staff to the Company or its representatives relating to each Registration Statement, provided that such correspondence shall not contain any material, non-public information regarding the Company or any of its Subsidiaries (as defined in the Securities Purchase Agreement), (ii) after the same is prepared and filed with the SEC, one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, and all exhibits and (iii) upon the effectiveness of each Registration Statement, one (1) copy of the prospectus included in such Registration Statement and all amendments and supplements thereto. The Company shall reasonably cooperate with legal counsel for each Investor in performing the Company's obligations pursuant to this Section 3.

(d) The Company shall promptly furnish to each Investor whose Registrable Securities are included in any Registration Statement, without charge, (i) after the same is prepared and filed with the SEC, at least one (1) copy of each Registration Statement and any amendment(s) and supplement(s) thereto, including, without limitation, financial statements and schedules, all documents incorporated therein by reference, if requested by an Investor, all exhibits and each preliminary prospectus, (ii) upon the effectiveness of each Registration Statement, ten (10) copies of the prospectus included in such Registration Statement and all amendments and supplements thereto (or such other number of copies as such Investor may reasonably request from time to time) and (iii) such other documents, including, without limitation, copies of any preliminary or final prospectus, as such Investor may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities owned by such Investor.

(e) The Company shall use its commercially reasonable best efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or “blue sky” laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions, such amendments (including, without limitation, post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify legal counsel for each Investor and each Investor who holds Registrable Securities of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or “blue sky” laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify legal counsel for each Investor and each Investor in writing of the happening of any event, as promptly as practicable after becoming aware of such event, as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, non-public information regarding the Company or any of its Subsidiaries), and promptly prepare a supplement or amendment to such Registration Statement and such prospectus contained therein to correct such untrue statement or omission and deliver ten (10) copies of such supplement or amendment to legal counsel for each Investor and each Investor (or such other number of copies as legal counsel for each Investor or such Investor may reasonably request). The Company shall also promptly notify legal counsel for each Investor and each Investor in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to legal counsel for each Investor and each Investor by facsimile or e-mail on the same day of such effectiveness and by overnight mail), and when the Company receives written notice from the SEC that a Registration Statement or any post-effective amendment will be reviewed by the SEC, (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, (iii) of the Company’s reasonable determination that a post-effective amendment to a Registration Statement would be appropriate; and (iv) of the receipt of any request by the SEC or any other federal or state governmental authority for any additional information relating to the Registration Statement or any amendment or supplement thereto or any related prospectus. The Company shall respond as promptly as practicable to any comments received from the SEC with respect to each Registration Statement or any amendment thereto.

(g) The Company shall (i) use its commercially reasonable best efforts to prevent the issuance of any stop order or other suspension of effectiveness of each Registration Statement or the use of any prospectus contained therein, or the suspension of the qualification, or the loss of an exemption from qualification, of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and (ii) notify legal counsel for each Investor and each Investor who holds Registrable Securities of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, at the request of any Investor, the Company shall furnish to such Investor, on the date of the effectiveness of such Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(i) If any Investor may be required under applicable securities law to be described in any Registration Statement as an underwriter and such Investor consents to so being named an underwriter, upon the written request of such Investor, the Company shall make available for inspection by (i) such Investor, (ii) legal counsel for such Investor and (iii) one (1) firm of accountants or other agents retained by such Investor (collectively, the "**Inspectors**"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree in writing to hold in strict confidence and not to make any disclosure (except to such Investor) or use of any Record or other information which the Company's board of directors determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (1) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (2) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (3) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document (as defined in the Securities Purchase Agreement). Such Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and such Investor, if any) shall be deemed to limit any Investor's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required to be disclosed in such Registration Statement pursuant to the 1933 Act, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other Transaction Document. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor, at such Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(k) Without limiting any obligation of the Company under the Securities Purchase Agreement, the Company shall use its commercially reasonable best efforts either to (i) cause all of the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, (ii) secure designation and quotation of all of the Registrable Securities covered by each Registration Statement on an Eligible Market (as defined in the Securities Purchase Agreement), or (iii) if, despite the Company's best efforts to satisfy the preceding clauses (i) or (ii) the Company is unsuccessful in satisfying the preceding clauses (i) or (ii), without limiting the generality of the foregoing, to use its commercially reasonable best efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority ("**FINRA**") as such with respect to such Registrable Securities. In addition, the Company shall cooperate with each Investor and any broker or dealer through which any such Investor proposes to sell its Registrable Securities in effecting a filing with FINRA pursuant to FINRA Rule 5110 as requested by such Investor. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 3(k).

(l) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts (as the case may be) as the Investors may reasonably request from time to time and registered in such names as the Investors may request.

(m) If requested by an Investor, the Company shall as soon as practicable after receipt of notice from such Investor and (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement or prospectus contained therein if reasonably requested by an Investor holding any Registrable Securities.

(n) The Company shall use its commercially reasonable best efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(o) The Company shall make generally available to its security holders as soon as practical, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with, and in the manner provided by, the provisions of Rule 158 under the 1933 Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the applicable Effective Date of each Registration Statement.

(p) The Company shall otherwise use its commercially reasonable best efforts to comply with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(q) Within one (1) Business Day after a Registration Statement which covers Registrable Securities is declared effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as **Exhibit A**.

(r) The Company shall use its commercially reasonable best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of all the Registrable Securities (provided that Form S-3 may be used for any such resales).

(s) The Company shall take all other commercially reasonable actions necessary to expedite and facilitate disposition by each Investor of its Registrable Securities pursuant to each Registration Statement.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated filing date of each Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor with respect to such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required to effect and maintain the effectiveness of the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of each Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(g) or the first sentence of Section 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary in this Section 4(c), the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which such Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of Section 3(f) and for which such Investor has not yet settled.

(d) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it in connection with sales of Registrable Securities pursuant to a Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, FINRA filing fees (if any) and fees and disbursements of counsel for the Company shall be paid by the Company.

6. Indemnification.

(a) In the event any Registrable Securities are included in any Registration Statement under this Agreement, to the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor and each of its directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) and each Person, if any, who controls such Investor within the meaning of the 1933 Act or the 1934 Act and each of the directors, officers, shareholders, members, partners, employees, agents, advisors, representatives (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding the lack of such title or any other title) of such controlling Persons (each, an "**Indemnified Person**"), against any losses, obligations, claims, damages, liabilities, contingencies, judgments, fines, penalties, charges, costs (including, without limitation, court costs, reasonable attorneys' fees and costs of defense and investigation), amounts paid in settlement or expenses, joint or several, (collectively, "**Claims**") incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading or (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement (the matters in the foregoing clauses (i) through (iii) being, collectively, "**Violations**"). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (x) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto, (y) shall not be available to a particular Investor to the extent such Claim is based on a failure of such Investor to deliver or to cause to be delivered the prospectus made available by the Company (to the extent applicable), including, without limitation, a corrected prospectus, if such prospectus or corrected prospectus was timely made available by the Company pursuant to Section 3(d) and then only if, and to the extent that, following the receipt of the corrected prospectus no grounds for such Claim would have existed, and (z) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an “**Indemnified Party**”), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case, to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with such Registration Statement; and, subject to Section 6(c) and the below provisos in this Section 6(b), such Investor will reimburse an Indemnified Party any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed, provided further that such Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the applicable sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of any of the Registrable Securities by any of the Investors pursuant to Section 9.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party (as the case may be) under this Section 6 of notice of the commencement of any action or proceeding (including, without limitation, any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party (as the case may be) shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party (as the case may be); provided, however, that an Indemnified Person or Indemnified Party (as the case may be) shall have the right to retain its own counsel with the fees and expenses of such counsel to be paid by the indemnifying party if: (i) the indemnifying party has agreed in writing to pay such fees and expenses; (ii) the indemnifying party shall have failed promptly to assume the defense of such Claim and to employ counsel reasonably satisfactory to such Indemnified Person or Indemnified Party (as the case may be) in any such Claim; or (iii) the named parties to any such Claim (including, without limitation, any impleaded parties) include both such Indemnified Person or Indemnified Party (as the case may be) and the indemnifying party, and such Indemnified Person or such Indemnified Party (as the case may be) shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Person or such Indemnified Party and the indemnifying party (in which case, if such Indemnified Person or such Indemnified Party (as the case may be) notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, then the indemnifying party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party, provided further, that in the case of clause (iii) above the indemnifying party shall not be responsible for the reasonable fees and expenses of more than one (1) separate legal counsel for such Indemnified Person or Indemnified Party (as the case may be). The Indemnified Party or Indemnified Person (as the case may be) shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person (as the case may be) which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person (as the case may be) reasonably apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person (as the case may be), consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person (as the case may be) of a release from all liability in respect to such Claim or litigation, and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person (as the case may be) with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party (as the case may be) under this Section 6, except to the extent that the indemnifying party is materially and adversely prejudiced in its ability to defend such action.

(d) No Person involved in the sale of Registrable Securities who is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to indemnification from any Person involved in such sale of Registrable Securities who is not guilty of fraudulent misrepresentation.

(e) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(f) The indemnity and contribution agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 6, (ii) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (iii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the applicable sale of such Registrable Securities pursuant to such Registration Statement. Notwithstanding the provisions of this Section 7, no Investor shall be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Investor from the applicable sale of the Registrable Securities subject to the Claim exceeds the amount of any damages that such Investor has otherwise been required to pay, or would otherwise be required to pay under Section 6(b), by reason of such untrue or alleged untrue statement or omission or alleged omission.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements (it being understood and agreed that nothing herein shall limit any obligations of the Company under the Securities Purchase Agreement) and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, (i) a written statement by the Company, if true, that it has complied with the reporting, submission and posting requirements of Rule 144 and the 1934 Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company with the SEC if such reports are not publicly available via EDGAR, and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

9. Assignment of Registration Rights.

All or any portion of the rights under this Agreement shall be automatically assignable by each Investor to any transferee or assignee (as the case may be) of all or any portion of such Investor's Registrable Securities, Notes or Warrants if: (i) such Investor agrees in writing with such transferee or assignee (as the case may be) to assign all or any portion of such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such transfer or assignment (as the case may be); (ii) the Company is, within a reasonable time after such transfer or assignment (as the case may be), furnished with written notice of (a) the name and address of such transferee or assignee (as the case may be), and (b) the securities with respect to which such registration rights are being transferred or assigned (as the case may be); (iii) immediately following such transfer or assignment (as the case may be) the further disposition of such securities by such transferee or assignee (as the case may be) is restricted under the 1933 Act or applicable state securities laws if so required; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence such transferee or assignee (as the case may be) agrees in writing with the Company to be bound by all of the provisions contained herein; (v) such transfer or assignment (as the case may be) shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement, the Notes and the Warrants (as the case may be); and (vi) such transfer or assignment (as the case may be) shall have been conducted in accordance with all applicable federal and state securities laws.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended only with the written consent of the Company and the Required Holders. Any amendment effected in accordance with this Section 10 shall be binding upon each Investor and the Company, provided that no such amendment shall be effective to the extent that it (1) applies to less than all of the holders of the holders of Registrable Securities, (2) imposes any obligation or liability on any Investor without such Investor's prior written consent (which may be granted or withheld in such Investor's sole discretion) or (3) applies retroactively. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) Solely for purposes of this Agreement, a Person is deemed to be a holder of Registrable Securities whenever such Person owns, or is deemed to own, of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); (iii) with respect to Section 3(c), by electronic mail (provided confirmation of transmission is electronically generated and kept on file by the sending party); or (iv) one (1) Business Day after deposit with a nationally recognized overnight delivery service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Pacific Ethanol, Inc.
400 Capitol Mall
Suite 2060
Sacramento, CA 95814
Telephone: (916) 403-2130
Facsimile: (916) 403-3936
Attention: General Counsel

With a copy (for informational purposes only) to:

Troutman Sanders LLP
5 Park Plaza, 14th Floor
Irvine, CA 92614
Telephone: (949) 622-2710
Facsimile: (949) 622-2739
Attention: Larry A. Cerutti, Esq.

If to the Transfer Agent:

American Stock Transfer & Trust Company
6201 15th Avenue, 2nd Floor
Brooklyn, NY 11219
Telephone: (718) 921-8360
Facsimile: (718) 921-8310
Attention: Marianela Patterson

If to an Investor, to its address and facsimile number set forth on the Schedule of Investors attached to the Securities Purchase Agreement, with copies to such Investor's representatives as set forth on the Schedule of Investors, or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine or electronic mail transmission containing the time, date, recipient facsimile number or electronic mail address and an image of the first page of such transmission or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof. The Company and each Investor acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party hereto shall be entitled to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement by any other party hereto and to enforce specifically the terms and provisions hereof (without the necessity of showing economic loss and without any bond or other security being required), this being in addition to any other remedy to which any party may be entitled by law or equity.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(e) This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein constitute the entire agreement among the parties hereto and thereto solely with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents, the schedules and exhibits attached hereto and thereto and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto solely with respect to the subject matter hereof and thereof; provided, however, that nothing contained in this Agreement or any other Transaction Document shall (or shall be deemed to) (i) have any effect on any agreements any Investor has entered into with the Company or any of its Subsidiaries prior to the date hereof with respect to any prior investment made by such Investor in the Company, (ii) waive, alter, modify or amend in any respect any obligations of the Company or any of its Subsidiaries or any rights of or benefits to any Investor or any other Person in any agreement entered into prior to the date hereof between or among the Company and/or any of its Subsidiaries and any Investor and all such agreements shall continue in full force and effect or (iii) limit any obligations of the Company under any of the other Transaction Documents.

(f) Subject to compliance with Section 9 (if applicable), this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto. This Agreement is not for the benefit of, nor may any provision hereof be enforced by, any Person, other than the parties hereto, their respective permitted successors and assigns and the Persons referred to in Sections 6 and 7 hereof.

(g) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found.

(h) This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

(i) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(j) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party. Notwithstanding anything to the contrary set forth in Section 10, terms used in this Agreement but defined in the other Transaction Documents shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by each Investor.

(k) All consents and other determinations required to be made by the Investors pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Required Holders.

(l) The obligations of each Investor under this Agreement and the other Transaction Documents are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under this Agreement or any other Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Investor pursuant hereto or thereto, shall be deemed to constitute the Investors as, and the Company acknowledges that the Investors do not so constitute, a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Investors are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by the Transaction Documents or any matters, and the Company acknowledges that the Investors are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or the transactions contemplated by this Agreement or any of the other the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained herein was solely in the control of the Company, not the action or decision of any Investor, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Investor. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and an Investor, solely, and not between the Company and the Investors collectively and not between and among Investors.

[signature pages follow]

IN WITNESS WHEREOF, Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

COMPANY:

PACIFIC ETHANOL, INC.

By: _____
Neil M. Koehler, President and CEO

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYER:

CWD OC 522 MASTER FUND, LTD.

By: Candlewood Investment Group, as investment manager

By: _____

Name:

Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYER:

CREDIT SUISSE LOAN FUNDING LLC

By: _____

Name:

Title:

By: _____

Name:

Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYER:

CCVF PACETH LLC

By: Credit Value Partners LP, as investment manager

By: _____

Name:

Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYER:

CANDLEWOOF CREDIT VALUE FUND II, LP

By: Credit Value Partners LP, as investment manager

By: _____

Name:

Title:

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Registration Rights Agreement to be duly executed as of the date first written above.

BUYER:

CANDLEWOOD SPECIAL SITUATIONS MASTER FUND,

LTD.

By: Credit Value Partners LP, as investment manager

By: _____

Name:

Title:

**FORM OF NOTICE OF EFFECTIVENESS
OF REGISTRATION STATEMENT**

Attention: _____

Re: Pacific Ethanol, Inc.

Ladies and Gentlemen:

[We are][I am] counsel to Pacific Ethanol, Inc., a Delaware corporation (the “**Company**”), and have represented the Company in connection with that certain Securities Purchase Agreement (the “**Securities Purchase Agreement**”) entered into by and among the Company and the buyers named therein (collectively, the “**Holder**s”) pursuant to which the Company issued to the Holders certain senior unsecured notes (the “**Notes**”) and warrants (the “**Warrants**”) exercisable for shares of the Company’s common stock, \$0.001 par value per share (the “**Common Stock**”). Pursuant to the Securities Purchase Agreement, the Company also has entered into a Registration Rights Agreement with the Holders (the “**Registration Rights Agreement**”) pursuant to which the Company agreed, among other things, to register the Registrable Securities (as defined in the Registration Rights Agreement), including the shares of Common Stock issuable pursuant to the terms of the Notes and exercise of the Warrants, under the Securities Act of 1933, as amended (the “**1933 Act**”). In connection with the Company’s obligations under the Registration Rights Agreement, on _____, 20____, the Company filed a Registration Statement on Form [S-3] (File No. 333-_____) (the “**Registration Statement**”) with the Securities and Exchange Commission (the “**SEC**”) relating to the Registrable Securities which names each of the Holders as a selling security holder thereunder.

In connection with the foregoing, [we][I] advise you that a member of the SEC’s staff has advised [us][me] by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS] and [we][I] have no knowledge, after telephonic inquiry of a member of the SEC’s staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC and the Registrable Securities are available for resale under the 1933 Act pursuant to the Registration Statement.

This letter shall serve as our standing opinion to you that the shares of Common Stock underlying the Warrants and any shares of Common Stock issued as Interest Shares pursuant to the Notes are freely transferable by the Holders pursuant to the Registration Statement. You need not require further letters from us to effect any future legend-free issuance or reissuance of such shares of Common Stock to the Holders as contemplated by the Company’s Irrevocable Transfer Agent Instructions dated _____, 20____.

Very truly yours,

[ISSUER’S COUNSEL]

By: _____

CC:

**CANDLEWOOD SPECIAL SITUATIONS FUND, LP
CREDIT SUISSE LOAN FUNDING LLC
CANDLEWOOD CREDIT VALUE MASTER FUND II, LP**

SELLING SECURITY HOLDERS

This prospectus covers the sale by the selling security holders of up to an aggregate of [_____] shares of common stock, including an aggregate of [_____] shares of our common stock issuable pursuant to the terms of the Notes and an aggregate of 25,630,286 shares of our common stock underlying Warrants. We are registering the shares of common stock in order to permit the selling security holders to offer the shares for resale from time to time. Except for the ownership of the Notes and the Warrants described below, the selling security holders have not had any material relationship with us within the past three years except as disclosed under the heading “Our Relationships with the Selling Security Holders” below.

The table below lists the selling security holders and other information regarding the beneficial ownership of the shares of common stock held by each of the selling security holders. The second column lists the number of shares of common stock beneficially owned by the selling security holders, based on their respective ownership of shares of common stock and Warrants, as of _____, 20__, assuming exercise of the Warrants held by each selling security holder on that date and does not take into account of any limitations on conversion and issuance of common stock and exercise contained in the Warrants. The number of shares of common stock issuable upon exercise of the Warrants held by each selling security holder on _____, 20__ is the maximum number of shares of common stock issuable upon exercise of the Warrants on _____, 20__.

The third column lists the shares of common stock being offered by this prospectus by the selling security holders and does not take into account any limitations on issuance of common stock pursuant to the terms of the Notes contained in the Notes or the limitations on issuance of common stock upon exercise of the Warrants contained in the Warrants.

The fourth column assumes the sale of all of the shares offered by the selling security holders under this prospectus and does not take into account any limitations on issuance of common stock pursuant to the terms of the notes contained in the notes or the limitations on issuance of common stock upon exercise of the Warrants contained in the Warrants.

Under the terms of the Warrants, a selling security holder may not exercise the Warrants to the extent (but only to the extent) the selling security holder or any of its affiliates would beneficially own a number of shares of our common stock which would exceed 4.99% of our outstanding shares of common stock, or Blocker. The Blocker may be raised or lowered to any other percentage not in excess of 9.99%, except that any increase will only be effective upon 61-days’ prior notice to us. The number of shares in the second column and the fourth column does not reflect these limitations. The number of shares beneficially owned by each selling security holder taking into account these limitations, if such number is less than the number of shares set forth in the table, is set forth in the footnotes to the table below. The selling security holders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

PLAN OF DISTRIBUTION

We are registering the shares of common stock issuable pursuant to the terms of the Notes and exercise of the Warrants to permit the resale of these shares of common stock by the holders of the Notes and Warrants from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling security holders of the shares of common stock. We will bear all fees and expenses incident to our obligation to register the shares of common stock.

The selling security holders may sell all or a portion of the shares of common stock held by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of common stock are sold through underwriters or broker-dealers, the selling security holders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions, pursuant to one or more of the following methods:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
 - in the over-the-counter market;
 - in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
 - through the writing or settlement of options, whether such options are listed on an options exchange or otherwise;
 - ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
 - block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
 - purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
 - an exchange distribution in accordance with the rules of the applicable exchange;
 - privately negotiated transactions;
 - short sales made after the date the Registration Statement is declared effective by the SEC;
 - broker-dealers may agree with the selling securityholders to sell a specified number of such shares at a stipulated price per share;
 - a combination of any such methods of sale; and
 - any other method permitted pursuant to applicable law.
-

The selling security holders may also sell shares of common stock under Rule 144 promulgated under the Securities Act of 1933, as amended, if available, rather than under this prospectus. In addition, the selling security holders may transfer the shares of common stock by other means not described in this prospectus. If the selling security holders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling security holders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of common stock or otherwise, the selling security holders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of common stock in the course of hedging in positions they assume. The selling security holders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling security holders may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares.

The selling security holders may pledge or grant a security interest in some or all of the notes, warrants or shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending, if necessary, the list of selling security holders to include the pledgee, transferee or other successors in interest as selling security holders under this prospectus. The selling security holders also may transfer and donate the shares of common stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

To the extent required by the Securities Act and the rules and regulations thereunder, the selling security holders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be "underwriters" within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed, which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling security holders and any discounts, commissions or concessions allowed or re-allowed or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling security holder will sell any or all of the shares of common stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling security holders and any other person participating in such distribution will be subject to applicable provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, including, without limitation, to the extent applicable, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling security holders and any other participating person. To the extent applicable, Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock. All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be \$[] in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or “blue sky” laws; provided, however, that a selling security holder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling security holders against liabilities, including some liabilities under the Securities Act in accordance with the registration rights agreements or the selling security holders will be entitled to contribution. We may be indemnified by the selling security holders against civil liabilities, including liabilities under the Securities Act that may arise from any written information furnished to us by the selling security holder specifically for use in this prospectus, in accordance with the related registration rights agreements or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

**FORM OF AGREEMENT FOR PURCHASE AND SALE OF
UNITS IN NEW PE HOLDCO LLC**

THIS AGREEMENT FOR PURCHASE AND SALE OF UNITS IN NEW PE HOLDCO LLC, (“**Agreement**”) dated as of December 19, 2012, is made by and among [INVESTOR], a [_____] (“**Seller**”) and **Pacific Ethanol, Inc.**, a Delaware corporation (“**Buyer**”). Unless otherwise defined in this Agreement, capitalized terms used in this Agreement are defined in Exhibit A.

WITNESSETH

WHEREAS, Seller, as a member of New PE Holdco LLC, a Delaware limited liability company (the “**Company**”), owns certain limited liability company interests denominated as “**Units**” pursuant to the Limited Liability Company Agreement of New PE Holdco LLC dated June 29, 2010 (the “**LLC Agreement**”);

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, [_____()] Units (the “**Seller Units**”).

NOW, THEREFORE, in consideration of the agreements and mutual covenants and based upon the representations and warranties set forth herein, the parties agree as follows:

1. Purchase and Sale of Seller Units.

(a) Subject to the terms and conditions of this Agreement, Buyer agrees to purchase, and Seller agrees to sell, convey, assign, transfer and deliver to Buyer, the Seller Units, free and clear of all Encumbrances, on the Closing Date.

(b) As consideration for the sale of the Seller Units to Buyer at the Closing, Buyer shall pay to Seller, in cash, a total of \$[_____] (the “**Cash Consideration**”) by wire transfer to the account designed by Seller.

(c) The closing of the sale of the Seller Units to Buyer (the “**Closing**”) shall take place at the offices of Buyer in Sacramento, California at 10:00 a.m. PST on the “**Closing Date**” as defined in the Securities Purchase Agreement, dated as of December 19, 2012, among the Buyer and the investors party thereto (such agreement, the “**Securities Purchase Agreement**”; such date, the “**Closing Date**”).

2. Condition Precedent to Obligation to Close.

Buyer's obligation to purchase and Seller's obligation to sell the Seller Units is subject to the substantially concurrent occurrence of the "Closing Date" as defined in the Securities Purchase Agreement. If the Closing Date has not occurred by 5 p.m. EST on the twentieth "Business Day" (as defined in the Securities Purchase Agreement) following the date hereof, then this Agreement shall terminate and shall be of no further force or effect.

3. Seller Representations. Seller represents and warrants to Buyer as follows:

(a) **Organization.** Seller is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____].

(b) **Due Authorization; Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by Seller. Assuming the due authorization, execution and delivery of the same by Buyer, this Agreement and all other agreements and instruments entered into pursuant hereto (collectively, the "**Transaction Documents**") constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with their respective terms (except as may be limited by bankruptcy, insolvency, reorganization and other similar laws and equitable principles relating to or limiting creditors' rights generally).

(c) **Non-Contravention; Consents.** Seller need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the purchase and sale of the Seller Units (the "**Transaction**"). Neither the execution and delivery of this Agreement and the other Transaction Documents, nor the consummation of the Transaction, will directly or indirectly (with or without notice or lapse of time): (i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Charter Documents of Seller; (ii) conflict with or violate any statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Seller is subject; (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which Seller is a party or by which either is bound; or (iv) result in the imposition or creation of an Encumbrance upon the Seller Units.

(d) **Ownership of Seller Units.** Seller is the unconditional and sole legal, beneficial, record and equitable owner of the Seller Units and Seller has full power and authority to sell and transfer the Seller Units, free and clear of any restrictions on transfer or any other Encumbrances. Seller has not ever sold, assigned transferred or otherwise disposed of all or any portion of Seller Units. Seller is not a party to any option, warrant, purchase right, or other contract or commitment (other than this Agreement) that could require Seller to sell, transfer, or otherwise dispose of any Seller Units, or any voting or economic right therein, of the Company. Seller is not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any Seller Units.

(e) **Distributions.** Seller has no current outstanding obligation to return to the Company all or any portion of any distribution previously received from the Company in respect of the Seller Units.

(f) **LLC Agreement.** Assuming the due authorization, execution and delivery of the same by each other Member of the Company, the LLC Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (except as may be limited by bankruptcy, insolvency, reorganization and other similar laws and equitable principles relating to or limiting creditors' rights generally).

(g) **Brokers.** Seller has not agreed or become obligated to pay, or has taken any action that might result in any person, entity or governmental body claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with the Transaction.

(h) **Taxes, etc.** Seller has no knowledge of any sales taxes, use taxes, transfer taxes, documentary charges, recording fees or similar taxes, charges, fees or expenses that will become due and payable as a result of the consummation of the Transaction.

4. Buyer Representations. Buyer represents and warrants to Seller as follows:

(a) **Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) **Due Authorization; Enforceability.** The execution, delivery and performance of this Agreement have been duly and validly authorized by Buyer. Assuming the due authorization, execution and delivery of the same by Seller, this Agreement and the other Transaction Documents hereto constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms (except as may be limited by bankruptcy, insolvency, reorganization and other similar laws and equitable principles relating to or limiting creditors' rights generally).

(c) **Non-Contravention; Consents.** Buyer need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the Transaction. Neither the execution and delivery of this Agreement and the other Transaction Documents, nor the consummation of the Transaction, will directly or indirectly (with or without notice or lapse of time): (i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Charter Documents of Seller or, to the knowledge of Buyer, conflict with or result in a violation or breach of Section 9 of the LLC Agreement; (ii) conflict with or violate any statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which Buyer is subject; or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which Buyer is a party or by which it is bound.

(d) **Investment Intent.** Buyer is acquiring the Seller Units for its own account for investment purposes only and not with a view to the distribution or resale thereof, in whole or in part.

(e) **Permitted Transfer.** Buyer is a Permitted Transferee as such term is defined in the LLC Agreement.

5. **Closing Deliverables by Seller.** At the Closing, Seller shall deliver the “New PE Holdco LLC Unit Assignment” attached as Exhibit B hereto.

6. **Closing Deliverables by Buyer.** At the Closing, Buyer shall deliver the Cash Consideration to Seller.

7. **Survival of Representations and Covenants.** The covenants and agreements of each Party shall survive the Closing for the periods specified in such covenants and agreements, or if no period is specified, until the first anniversary of the Closing. The representations and warranties of each Party shall survive until the first anniversary of the Closing.

8. **Indemnification by Seller.** Seller shall hold harmless and indemnify each of the Indemnified Parties from and against, and shall compensate and reimburse each of the Indemnified Parties for, any Losses that are directly or indirectly suffered or incurred by any of the Indemnified Parties or to which any of the Indemnified Parties may otherwise become subject at any time (regardless of whether or not such Losses relate to any third-party claim) and that arise directly or indirectly from or as a direct or indirect result of, or are directly or indirectly connected with (except to the extent incurred as a result of any breach by Buyer of any representation, warranty or covenant contained in this Agreement or any other Transaction Document):

(a) any breach by Seller or of any representation or warranty of Seller contained in this Agreement, any other Transaction Document or in any certificate delivered by pursuant to any provision of this Agreement or any other Transaction Document; or

(b) any breach of any covenant or agreement of Seller contained in this Agreement or any other Transaction Document.

This Section 8 shall not apply to, and Seller shall not indemnify any Indemnified Party from, any special, indirect, consequential or punitive damages (whether or not the claim therefore is based on contract, tort, duty imposed by law or otherwise) that may arise directly or indirectly or as a direct or indirect result of, or are directly or indirectly connected with the foregoing. Any amounts paid to the Indemnified Parties in the aggregate hereunder shall be limited in all circumstances to the Cash Consideration.

9. Additional Agreements.

(a) **Further Assurances.** Each Party agrees to execute and deliver such further documents and instruments and to take such further actions after the Closing as may be necessary or desirable and reasonably requested by the other Party to give effect to the Transaction.

(b) **Expenses; Attorneys' Fees.** Each Party shall bear and pay all fees, costs and expenses that have been incurred or that are in the future incurred by, on behalf of, such Party in connection with the negotiation, preparation and review of this Agreement, the other Transaction Documents and all certificates and other instruments and documents delivered or to be delivered in connection with the Transaction, and the consummation and performance of the Transaction. If a Party shall bring any action, suit, counterclaim, appeal, arbitration, or mediation for any relief against the other Party, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (referred to herein as an "Action"), the non-prevailing party in such Action shall pay to the prevailing party in such Action a reasonable sum for the prevailing party's attorneys' fees and expenses.

10. Miscellaneous.

(a) **Notices.** All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when personally delivered, when mailed by certified mail, return receipt requested, when sent by facsimile with confirmation of receipt received, or when delivered by overnight courier with executed receipt. Notices, demands and communications to Seller or Buyer shall, unless another address is specified in writing in accordance herewith, be sent to the address indicated below:

Notices to Seller: [_____

_____] _____

Notices to Buyer: Pacific Ethanol, Inc.
400 Capitol Mall
Suite 2060
Sacramento, CA 95814
Attn: General Counsel
Tel: (916) 403-2123
Fax: (916) 403-2785

(b) **Amendment.** No change in or modification of this Agreement shall be valid unless the same shall be in writing and signed by Seller and Buyer.

(c) **Waiver.** No failure or delay on the part of the parties or any of them in exercising any right, power or privilege hereunder, nor any course of dealing between the parties or any of them shall operate as a waiver of any such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude the simultaneous or later exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and are not exclusive of any rights or remedies which the parties or any of them would otherwise have.

(d) **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or electronic transmission (including a PDF file), shall be treated in all manner and respects as an original Agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of a facsimile machine or electronic transmission to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

(e) **GOVERNING LAW.** THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS, AND THE INTERPRETATION OF THE RIGHTS AND DUTIES ARISING HEREUNDER, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PROVISIONS.

(f) **Submission to Jurisdiction; Waiver of Jury Trial and Venue.**

(1) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(2) WAIVER OF JURY TRIAL AND VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (i) ANY AND ALL RIGHTS SUCH PARTY MAY HAVE TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR AND (ii) ANY OBJECTION THAT SUCH PARTY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO ABOVE. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(3) Service of Process. Each party hereto agrees that service of process may be effectuated by mailing a copy of the summons and complaint, or other pleading, by certified mail, return receipt requested, in accordance with Section 10(a).

(g) **Benefit and Binding Effect**. Except as otherwise provided in this Agreement, no right under this Agreement shall be assignable and any attempted assignment in violation of this provision shall be void. Every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators, heirs, successors, transferees, and assigns. It is understood and agreed among the parties that this Agreement and the covenants made herein are made expressly and solely for the benefit of the parties hereto, and that no other Person, other than as expressly set forth in this, shall be entitled or be deemed to be entitled to any benefits or rights hereunder, nor be authorized or entitled to enforce any rights, claims or remedies hereunder or by reason hereof.

(h) **Severability**. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction. The parties hereto agree to negotiate in good faith to replace any illegal, invalid or unenforceable provision of this Agreement with a legal, valid and enforceable provision that, to the extent possible, will preserve the economic bargain of this Agreement. If any time period set forth herein is held by a court of competent jurisdiction to be unenforceable, a different time period that is determined by the court to be more reasonable shall replace the unenforceable time period.

(i) **Headings; Construction**. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party. Every schedule and other addendum attached to this Agreement and referred to herein is incorporated in this Agreement by reference unless this Agreement expressly otherwise provides. All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons may require.

(j) **Entire Agreement**. This Agreement contains the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and all contemporaneous oral agreements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase And Sale of Units in New PE Holdco LLC as of the day and year first above written.

Buyer

Pacific Ethanol, Inc.

By: _____
Name: _____
Title: _____

Seller

[SELLER]

By: _____
Name: _____
Title: _____

Exhibit A

Definitions

“**Action**” is defined in Section 9(b).

“**Affiliate**” means an individual or entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified individual or entity. For purposes of this definition, “control” shall include, without limitation, the exertion of significant influence over an individual or entity and shall be conclusively presumed as to any fifty percent (50%) or greater equity interest.

“**Buyer**” is defined in the preamble hereof.

“**Cash Consideration**” is defined in Section 1(b).

“**Charter Documents**” shall mean, as applicable, the specified entity’s (i) certificate of incorporation or formation or other charter or organizational documents, and (ii) bylaws or operating agreement, each as from time to time in effect.

“**Closing**” is defined in Section 1(c).

“**Closing Date**” is defined in Section 1(c).

“**Company**” is defined in the recitals hereto.

“**Encumbrance**” means any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, equity, trust, equitable interest, claim, preference, right of possession, lease, tenancy, license, encroachment, covenant, infringement, interference, Order, proxy, option, right of first refusal, preemptive right, community property interest, legend, defect, impediment, exception, reservation, limitation, impairment, imperfection of title, condition or restriction of any nature (including any restriction on the transfer of an asset, any restriction on the receipt of any income derived from an asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of an asset).

“**Indemnified Party**” means (a) Buyer, (b) Buyer’s current and future Affiliates; (c) the respective Representatives of the persons referred to in clauses (a), and (b); and the respective successors and assigns of the persons referred to in clauses (a), (b), and (c) above.

“**LLC Agreement**” is defined in the recitals hereto.

“**Loss**” shall include any loss, damage, injury, decline in value, liability, claim, demand, settlement, judgment, award, fine, penalty, tax, fee (including any legal fee, expert fee, accounting fee or advisory fee), charge, cost (including court costs and any cost of investigation) or expense of any nature.

“**Member**” has the meaning ascribed to such term in the LLC Agreement.

“**Party**” or “**Parties**” means any of Seller and Buyer.

“**Person**” means any individual, person, limited liability company, partnership, trust, unincorporated organization, corporation, association, joint stock company, business, group, government, government agency or authority or other entity.

“**Representatives**” shall mean officers, directors, employees, agents, attorneys, accountants, advisors and representatives.

“**Seller**” is defined in the preamble hereof.

“**Seller Units**” is defined in the preamble hereof.

“**Transaction**” is defined in 3(c).

“**Transaction Documents**” is defined in Section 3(b).

“**Unit**” is defined in the recitals hereto.

Exhibit B

New PE Holdco LLC
Unit Assignment

[Attached hereto.]

NEW PE HOLDCO LLC

UNIT ASSIGNMENT

FOR VALUE RECEIVED, _____ (“Transferor”) hereby sells, assigns and transfers unto _____ (“Transferee”), _____ units (the “Transferred Units”) of limited liability company membership interests in New PE Holdco LLC (the “Company”), and hereby appoints _____, as attorney to transfer said Transferred Units on the books of the Company with full power of substitution in the premises.

The Transferee represents that its EIN is: _____

The Transferor and Transferee hereby agree and acknowledge that, in accordance with the Limited Liability Company Agreement of New PE Holdco LLC, dated June 29, 2010, as amended to date (the “LLC Agreement”), the transfer contemplated by this Unit Assignment is effective upon the Company acknowledging such transfer, by its signature below.

Transferee hereby further agrees that if the Company, directly or through its counsel, makes a reasonable request for (i) information for the Company to determine the Transferee’s tax basis in the Transferred Units or (ii) any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns, Transferee shall promptly provide such information to the Company and/or its counsel. Except to the extent required for legitimate corporate purposes with respect to the operation and management of the Company, including, without limitation, the filing of tax reports and forms, the Company shall keep confidential any such information provided to it and to exercise the same degree of care to maintain the confidentiality of such information as it would accord its own confidential information; provided further, that, if requested by the Transferee, the Company hereby agrees to execute an additional confidentiality agreement consistent with the foregoing upon request by Transferee.

The full legal name, address, and primary contact information for the Transferee is as follows:

[Insert Transferee Name]
[Insert Transferee Address]
Attention: _____
Phone: _____
Fax: _____
Email: _____
Dated: _____, 201_

TRANSFEROR

[Insert Transferor Name]

By: _____
Name: _____
Title: _____

Affix Medallion Signature Guarantee by a financial institution enrolled in an approved Medallion Program.

TRANSFeree

[Insert Transferee Name]

By: _____
Name: _____
Title: _____

Affix Medallion Signature Guarantee by a financial institution enrolled in an approved Medallion Program.

Acknowledged and Accepted:

NEW PE HOLDCO LLC

By: _____

Name: _____

Title: _____

Dated: _____, 20____



Pacific Ethanol, Inc.

Company IR Contact:

Pacific Ethanol, Inc.
916-403-2755
866-508-4969
Investorrelations@pacificethanol.net

IR Agency Contact:

Becky Herrick
LHA
415-433-3777

Media Contact:

Paul Koehler
Pacific Ethanol, Inc.
503-235-8241
paulk@pacificethanol.net

PACIFIC ETHANOL TO EXTEND MATURITY ON \$32 MILLION OF NEAR-TERM DEBT AND INCREASE PLANT OWNERSHIP TO 80%

- *Enters into agreements to purchase an additional 13% interest in the plants, increasing its ownership interest to 80%*
- *Agrees to purchase \$21.54 million in plant debt to be extended to 2016*
- *Secures maturity extension of revolving credit line for plants to 2015*
- *Enters into agreement to issue \$22.2 million in senior unsecured notes to finance purchases*

Sacramento, CA, December 19, 2012 – Pacific Ethanol, Inc. (NASDAQ: PEIX), the leading marketer and producer of low-carbon renewable fuels in the Western United States, has entered into agreements to increase its ownership interest in the plants and improve their debt position.

Pacific Ethanol has entered into an agreement to purchase \$21.54 million of Pacific Ethanol plant secured term debt and to extend the maturity date of the purchased term debt from June 2013 to June 2016. The agreement also provides for the extension of the maturity of the \$10.0 million secured revolving debt facility for the plants from June 2013 to June 2015. Further, at closing, the company will purchase an additional 13% ownership interest in New PE Holdco, LLC for \$1.3 million, increasing the company's equity ownership to 80%. To fund these transactions, the company entered into an agreement with certain institutional investors to issue \$22.2 million of senior unsecured notes, and five-year warrants to purchase up to 25.6 million shares of the company's common stock. The senior unsecured notes will accrue interest at the rate of 5.0% per annum, subject to adjustment, with interest payments commencing March 30, 2013. Interest on the notes is payable in cash or shares of the company's common stock, at the election of the company, provided certain conditions are met. The notes will mature on March 30, 2016. The warrants will have an exercise price of \$0.52 per share, equal to a 58% premium to the per share closing price of the company's common stock on the date immediately preceding the signing of the Securities Purchase Agreement.

Neil Koehler, the company's president and CEO, stated: "The consummation of these transactions will provide significant improvements to our balance sheet and operations by reducing our financing costs, extending debt maturities and increasing our ownership share of the Pacific Ethanol plants to 80%. Upon the closing of these transactions, we will reduce plant debt due in 2013 to \$6.7 million and reduce our combined purchase price of ownership interests in New PE Holdco to \$0.34 per gallon on a weighted average basis, thereby securing a competitive and low cost ownership basis for our stockholders."

The various debt and purchase agreements to purchase additional equity in New PE Holdco, extend debt and raise capital through the issuance of senior unsecured notes and warrants to purchase common stock are subject to the satisfaction of numerous customary closing conditions and are expected to close within the next 20 business days. Lazard Capital Markets LLC served as the sole placement agent in the current transaction. Further details are available in the company's Form 8-K filed today with the Securities and Exchange Commission.

About Pacific Ethanol, Inc.

Pacific Ethanol, Inc. (NASDAQ: PEIX) is the leading marketer and producer of low-carbon renewable fuels in the Western United States. Pacific Ethanol also sells co-products, including wet distillers grain (“WDG”), a nutritional animal feed. Serving integrated oil companies and gasoline marketers who blend ethanol into gasoline, Pacific Ethanol provides transportation, storage and delivery of ethanol through third-party service providers in the Western United States, primarily in California, Arizona, Nevada, Utah, Oregon, Colorado, Idaho and Washington. Pacific Ethanol has a 67% ownership interest in New PE Holdco LLC, the owner of four ethanol production facilities. Pacific Ethanol operates and manages the four ethanol production facilities, which have a combined annual production capacity of 200 million gallons. The facilities in operation are located in Boardman, Oregon, Burley, Idaho and Stockton, California, and one idled facility is located in Madera, California. The facilities are near their respective fuel and feed customers, offering significant timing, transportation cost and logistical advantages. Pacific Ethanol’s subsidiary, Kinergy Marketing LLC, markets ethanol from Pacific Ethanol’s managed plants and from other third-party production facilities, and another subsidiary, Pacific Ag. Products, LLC, markets WDG. For more information please visit www.pacificethanol.net.

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 including, without limitation, the ability of Pacific Ethanol to continue as the leading marketer and producer of low-carbon renewable fuels in the Western United States; that the consummation of the transactions described in this press release will provide significant improvements to Pacific Ethanol’s balance sheet and operations; and the projected reductions in short-term plant debt are forward-looking statements and considerations 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, Pacific Ethanol’s ability to successfully close on the agreements to purchase additional equity in New PE Holdco, extend debt and raise capital through the issuance of senior unsecured notes and warrants to purchase common stock, all of which are subject to numerous customary closing conditions, including the approval by The NASDAQ Stock Market of Pacific Ethanol’s listing of additional shares application covering the shares of common stock that may be issued in payment of interest on the senior unsecured notes and shares of common stock underlying the warrants; adverse economic and market conditions; changes in governmental regulations and policies; and other events, factors and risks previously and from time to time disclosed in Pacific Ethanol’s filings with the Securities and Exchange Commission including, specifically, those factors set forth in the “Risk Factors” section contained in Pacific Ethanol’s Form 10-K filed with the Securities and Exchange Commission on March 8, 2012 and Form 10-Q filed with the Securities and Exchange Commission on November 14, 2012.