

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) **January 11, 2013**

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))
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Item 1.01 Entry into a Material Definitive Agreement.

Financing Transaction

On January 11, 2013, under the terms of a Securities Purchase Agreement (the "Purchase Agreement") dated December 19, 2012 among the Company and 5 accredited investors (the "Investors"), the Company sold \$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, 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 entered 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.

A summary of the material terms of the Purchase Agreement, the Registration Rights Agreement and the Warrants was disclosed in a Current Report on Form 8-K filed with the Securities and Exchange Commission on December 19, 2012 (the "Original 8-K") and is incorporated herein by reference. A summary of the material terms of the Notes is amended and restated in its entirety below. The summary herein and the summary provided in the Original 8-K are qualified in their entirety by reference to the full text of the agreements, each of which is filed as an exhibit to or incorporated by reference an exhibit into 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.

Notes

The Notes were issued on January 11, 2013 and have an aggregate principal amount of \$22,192,490.64. The Notes 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 \$10,769,297.82 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 \$10,769,297.82. 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 Agreement, 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).

Acquisition of New PE Holdco Membership Interests

On January 11, 2013, the Company purchased 130.803 units of New PE Holdco under the terms of the Unit Purchase Agreements (defined below) for an aggregate purchase price of \$1,308,030 using \$653,895 of the gross proceeds of the Financing Transaction and \$654,135 of the Company's cash.

The 130.803 units purchased under the Unit Purchase Agreements represent approximately 13% of the total outstanding membership interests of New PE Holdco and the Company now owns approximately 80% of the outstanding membership interests of New PE Holdco.

The term "Unit Purchase Agreements" used in this Current Report on Form 8-K refers to the following agreements:

- an Agreement for Purchase and Sale of Units in New PE Holdco LLC (the "Candlewood Purchase Agreement"), dated December 19, 2012, between the Company and Candlewood Special Situations Fund, LP ("Candlewood") under which the Company purchased 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"), dated December 19, 2012, between the Company and CCVF PacEth LLC ("CCVF") under which the Company purchased 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"), dated December 19, 2012, between the Company and Candlewood Credit Value Fund II, LP ("Candlewood Credit Value") under which the Company purchased 5.410 units of New PE Holdco from Candlewood Credit Value for an aggregate purchase price of \$54,100 in cash.
- an Agreement for Purchase and Sale of Units in New PE Holdco LLC (the "CS Purchase Agreement"), dated January 11, 2013, between the Company and Credit Suisse Securities (USA) LLC ("Credit Suisse") under which the Company purchased 59.894 units of New PE Holdco from Credit Suisse for an aggregate purchase price of \$598,940 in cash.

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 incorporated by reference as an exhibit into 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

On January 11, 2013, the Company used \$21,538,595.64 of the gross proceeds of the Financing Transaction to purchase from certain of the Investors (the "A-2 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 the Second Lien Credit Agreement (defined below).

The term "Second Lien Credit Agreement" used in this Current Report on Form 8-K refers to 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.

Extension of Maturity of Plant Debt

On January 11, 2013, immediately prior to the closing of the Financing Transaction, the maturity date applicable to the Purchased Debt was extended from June 30, 2013 to June 30, 2016 pursuant to the terms of the Second Lien Credit Agreement Amendment (defined below).

On January 11, 2013, immediately prior to the closing of the Financing Transaction, the maturity date of the \$10.0 million revolving line of credit issued under the First Lien Credit Agreement (as defined below) was extended from June 25, 2013 to June 25, 2015 pursuant to the terms of the First Lien Credit Agreement Amendment (defined below).

The term "Second Lien Credit Agreement Amendment" used above refers to that certain First Amendment to Second Amended and Restated Credit Agreement, dated January 4, 2013, among the A-2 Investors, Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower and as agent for borrowers, 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, Wells Fargo Bank, N.A., as administrative agent and collateral agent and such other parties thereto as identified therein.

The term "First Lien Credit Agreement" used above refers to 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.

The term "First Lien Credit Agreement Amendment" used above refers to that certain First Amendment to Credit Agreement, dated January 4, 2013, 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, Investors holding sufficient debt to amend the First Lien Credit Agreement, Wells Fargo Bank, N.A., as administrative agent and collateral agent and such other parties thereto as identified therein.

Item 3.02. Unregistered Sales of Equity Securities.

On January 11, 2013, the Company issued the Notes and Warrants to 5 accredited investors in the Financing Transaction. 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.

The Notes and the Warrants were 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.

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 issued on January 11, 2013 *(#)
10.3	Form of Warrants issued on January 11, 2013 (**)(#)
10.4	Registration Rights Agreement *(#)
10.5	Form of Agreement for Purchase and Sale of Units in New PE Holdco LLC (**)

(#) 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.

(**) Filed as an exhibit to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 19, 2012.

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: January 15, 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>
10.2	Form of Notes issued on January 11, 2013 (#)
10.4	Registration Rights Agreement (#)

(#) 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.

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.

Senior Unsecured Note

Issuance Date: January 11, 2013

\$(●)

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 \$10,769,297.82.

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: /s/ Bryon T. McGregor

Name: Bryon T. McGregor

Title: Chief Financial Officer

AGREED AND ACCEPTED:
HOLDER:

[HOLDER]

REGISTRATION RIGHTS AGREEMENT

This **REGISTRATION RIGHTS AGREEMENT** (this "**Agreement**"), dated as of January 11, 2013, 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 (or as applicable, their affiliates), 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 (or as applicable, its affiliate) (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 (or as applicable, their affiliates) 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: /s/ Neil M. Koehler
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: /s/ David Koenig

Name: David Koenig

Title: Authorized Signatory

BUYER:

CANDLEWOOD SPECIAL SITUATIONS MASTER FUND,

LTD.

By: Credit Value Partners LP, as investment manager

By: /s/ David Koenig

Name: David Koenig

Title: Authorized Signatory

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 SECURITIES (USA) LLC

By: /s/ Robert Healey

Name: Robert Healey

Title: Authorized Signatory

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: /s/ Michael Wotanowski

Name: Michael Wotanowski

Title: Authorized Signatory

By: /s/ Robert Healey

Name: Robert Healey

Title: Authorized Signatory

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: /s/ Michael Geroux
Name: Michael Geroux
Title: Partner

BUYER:

CANDLEWOOD CREDIT VALUE FUND II, LP

By: Credit Value Partners LP, as investment manager

By: /s/ Michael Geroux
Name: Michael Geroux
Title: Partner

**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 “**Holders**”) 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.
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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.