

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

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In re:

PES HOLDINGS, LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 19-11626 (KG)  
)  
) (Jointly Administered)  
)

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**PLAN SUPPLEMENT FOR THE FIRST AMENDED JOINT  
CHAPTER 11 PLAN OF PES HOLDINGS, LLC AND ITS DEBTOR AFFILIATES**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this plan supplement (this “Plan Supplement”) in support of, and in accordance with, the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and Its Debtor Affiliates* [Docket No. 661] (as may be modified, amended, or supplemented from time to time, the “Plan”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan. The documents contained in this Plan Supplement are integral to, part of, and incorporated by reference into the Plan. These documents have not yet been approved by the Bankruptcy Court. If the Plan is confirmed by the Bankruptcy Court, the documents contained in this Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

## **CONTENTS**

This Plan Supplement contains the following documents, each as may be amended, modified, or supplemented from time to time by the Debtors in accordance with the Plan as set forth below:

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
A	Schedule of Assumed Executory Contracts and Unexpired Leases
B	Retained Causes of Action
C	Form of Management Incentive Plan
D	Notice of Sale Restructuring and Successful Bid
E	Purchase Agreement
F	Description of Successful Bid
G	Form of Liquidating Trust Agreement
H	1129(a)(5) Disclosures and Identity and Compensation of Plan Administrator
I	Projected Creditor Recoveries
J	Liquidation Analysis
K	Summary and Explanation of Plan Changes

**Certain documents, or portions thereof, contained or referenced in this Plan Supplement remain subject to continuing negotiations among the Debtors and parties in interest. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.**

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

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In re:

PES HOLDINGS, LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 19-11626 (KG)  
)  
) (Jointly Administered)  
)

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**NOTICE OF FILING OF PLAN SUPPLEMENT**

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**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby file the plan supplement (the “Plan Supplement”) in support of the *First Amended Joint Chapter 11 Plan of Reorganization of PES Holdings, LLC and Its Debtor Affiliates* [Docket No. 661] (as may be amended or modified from time to time and including all exhibits and supplements thereto, the “Plan”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that the Plan Supplement includes the following documents, as may be modified, amended, or supplemented from time to time:

**Exhibit A** – Schedule of Assumed Executory Contracts and Unexpired Leases

**Exhibit B** – Retained Causes of Action

**Exhibit C** – Form of Management Incentive Plan

**Exhibit D** – Notice of Sale Restructuring and Successful Bid

**Exhibit E** – Purchase Agreement

**Exhibit F** – Description of Successful Bid

**Exhibit G** – Form of Liquidating Trust Agreement

**Exhibit H** – 1129(a)(5) Disclosures and Identity and Compensation of Plan Administrator

**Exhibit I** – Projected Creditor Recoveries

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

**Exhibit J** – Liquidation Analysis**Exhibit K** – Summary and Explanation of Plan Changes

**PLEASE TAKE FURTHER NOTICE** that the Debtors reserve all rights, with the consent of any applicable counterparties to the extent required under the Plan, to amend, modify, or supplement the Plan Supplement, and any of the documents contained therein, in accordance with the terms of the Plan. To the extent material amendments or modifications are made to any of the Plan Supplement documents, the Debtors will file a blackline with the Bankruptcy Court prior to the Confirmation Hearing marked to reflect same.

**PLEASE TAKE FURTHER NOTICE** that the forms of the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. If the Plan is approved, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the order confirming the Plan.

**PLEASE TAKE FURTHER NOTICE** that the hearing (the “Confirmation Hearing”) will be held before the Honorable Kevin Gross in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 6th Floor, Courtroom Three, Wilmington, Delaware 19801, on **February 6, 2020, at 9:00 a.m.**, prevailing Eastern Time, to consider the adequacy of the Disclosure Statement, any objections to the Disclosure Statement, confirmation of the Plan, any objections thereto, and any other matter that may properly come before the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE THAT** the deadline for filing objections to the Plan is **February 3, 2020 at 4:00 p.m.** prevailing Eastern Time (the “Plan Objection Deadline”). Any objection to the Plan **must**: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** on or before **February 3, 2020 at 4:00 p.m.** prevailing Eastern Time:

Debtors	Counsel to the Debtors
PES Holdings, LLC 1735 Market Street Philadelphia, Pennsylvania 19103 Attn.: Anthony M. Lagreca	Pachulski Stang Ziehl & Jones LLP 919 N. Market Street, 17th Floor, P.O. Box 8705 Wilmington, Delaware 19899 Attn: Laura Davis Jones, James E. O’Neill, and Peter J. Keane  - and -  Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Edward O. Sassower, Steven N. Serajeddini, and Matthew C. Fagen

United States Trustee	Counsel to the Official Committee of Unsecured Creditors
<p>Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: David Buchbinder</p>	<p>Brown Rudnick LLP Seven Times Square New York, New York 10036 Attn.: Robert J. Stark and Max D. Schlan  - and -  Brown Rudnick LLP One Financial Center Boston, Massachusetts 02111 Attn.: Steven D. Pohl and Sharon I. Dwoskin  - and -  Elliott Greenleaf, P.C. 1105 North Market Street, Suite 1700 Wilmington, Delaware 19801 Attn.: Rafael X. Zahralddin-Aravena and Jonathan M. Stemerman</p>
Counsel to the DIP Lenders	
<p>Davis Polk &amp; Wardwell LLP 450 Lexington Avenue New York, New York 10017 Attn.: Damian S. Schaible and Aryeh E. Falk  - and -  Morris, Nichols, Arsht &amp; Tunnell LLP 1201 North Market Street, 16th Floor, P.O. Box 1347 Wilmington, Delaware 19899-1347 Attn.: Robert J. Dehney and Andrew R. Remming</p>	

**PLEASE TAKE FURTHER NOTICE** that the Confirmation Hearing may be adjourned or continued from time to time by the Bankruptcy Court without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on other parties entitled to notice.

**PLEASE TAKE FURTHER NOTICE THAT** if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Omni Management Group, the notice and claims agent retained by the Debtors in these chapter 11 cases (the “Notice and Claims Agent”), by: (a) calling the Debtors’ restructuring hotline at (866) 989-6147 (domestic toll-free) or (818)-906-8300 (international toll) (ask for Solicitation Group); (b) visiting the Debtors’ restructuring website at: <https://cases.omniagentsolutions.com/pesholdings2019/>; and/or (c) writing to PES Ballot Processing, c/o Omni Agent Solutions, 5955 De Soto Ave., Suite 100, Woodland Hills, CA

91367. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <http://www.deb.uscourts.gov>.

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN, OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE NOTICE AND CLAIMS AGENT.**

Dated: January 22, 2020  
Wilmington, Delaware

*/s/ Laura Davis Jones*

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Laura Davis Jones (DE Bar No. 2436)  
James E. O'Neill (DE Bar No. 4042)  
Peter J. Keane (DE Bar No. 5503)  
**PACHULSKI STANG ZIEHL & JONES LLP**  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, Delaware 19899-8705 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400  
Email: ljones@pszjlaw.com  
pkeane@pszjlaw.com  
joneill@pszjlaw.com

- and -

Edward O. Sassower, P.C.  
Steven N. Serajeddini (admitted *pro hac vice*)  
Matthew C. Fagen (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
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Email: edward.sassower@kirkland.com  
steven.serajeddini@kirkland.com  
matthew.fagen@kirkland.com

*Co-Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**Schedule of Assumed Executory Contracts and Unexpired Leases<sup>1</sup>**

The Debtors shall provide a list of Executory Contracts and Unexpired Leases to be assumed or assumed and assigned pursuant to the Plan in a supplemental Plan Supplement filing following ongoing discussions with the Purchaser.

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit A** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the “**Plan**”).



## **EXHIBIT B**

### **Retained Causes of Action<sup>1</sup>**

Certain documents, or portions thereof, contained or referenced in this **Exhibit B** and the Plan Supplement may remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

This **Exhibit B** contains the following schedules of Retained Causes of Action:

- **Exhibit B(i)**: Claims, Defenses, Cross-Claims, and Counter-Claims Related to Litigation and Possible Litigation;
- **Exhibit B(ii)**: Claims Related to Deposits, Adequate Assurance Postings, and Other Collateral Postings;
- **Exhibit B(iii)**: Claims Related to Accounts Receivable and Accounts Payable;
- **Exhibit B(iv)**: Claims Related to Tax Refunds; and
- **Exhibit B(v)**: Claims Related to Insurance Policies.

Article IV.F.10 of the Plan provides as follows:

Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall convey to the Plan Administrator on behalf of the Liquidating Trust all rights to commence, prosecute, or settle, as appropriate, any and all Causes of Action listed under the Retained Causes of Action List as retained by the Reorganized Debtors, whether arising before or after the Petition Date, which shall vest in the Reorganized Debtors pursuant to the terms of the Plan. The Plan Administrator may enforce all rights to commence, prosecute, or settle, as appropriate, any and all such Causes of Action, whether arising before or after the Petition Date, and the Plan Administrator's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Plan Administrator may, in its reasonable business judgment, pursue such Causes of Action

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit B** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the "**Plan**").

and may retain and compensate professionals in the analysis or pursuit of such Causes of Action to the extent the Plan Administrator deems appropriate, including on a contingency fee basis. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Acquired Entities or the Plan Administrator will not pursue any and all available Causes of Action against them. The Acquired Entities and the Plan Administrator expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Notwithstanding anything to the contrary in the Plan or the Confirmation Order, the specific identification of a retained or preserved Cause of Action in the Plan, the Disclosure Statement, or the Plan Supplement shall prevail over the general language of the releases set forth in Article X.E in the Plan. Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Plan Administrator and the Acquired Entities, as applicable, expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. The Plan Administrator and the Acquired Entities reserve and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. The Plan Administrator and the Acquired Entities, as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to, or action, order, or approval of, the Bankruptcy Court.

Further, notwithstanding and without limiting the generality of Article X of the Plan, the Debtors and Reorganized Debtors, as applicable, expressly reserve their rights with respect to all Causes of Action that are identified herein as being vested in the the Reorganized Debtors or the Liquidating Trust, as applicable, and not expressly released under the Plan, including matters set forth on **Exhibit B(i)** through **Exhibit B(v)** attached hereto.

In the event of any inconsistency between the releases of Entities pursuant to the Plan or a Final Order and the attached **Exhibit B(i)** through **Exhibit B(v)**, such releases granted pursuant to the Plan or Final Order shall govern.

THE DEBTORS MAY AMEND, MODIFY, OR SUPPLEMENT THIS **EXHIBIT B** AT ANY TIME BEFORE THE EFFECTIVE DATE OF THE PLAN, OR ANY SUCH OTHER DATE AS MAY BE PROVIDED FOR BY THE PLAN OR BY ORDER OF THE BANKRUPTCY COURT.

**EXHIBIT B(i)**

Claims, Defenses, Cross-Claims, and Counter-Claims  
Related to Litigation and Possible Litigation

Exhibit B(i) includes Entities that are party to or that the Debtors believe may become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and the Liquidating Trust, as applicable, expressly reserve all Causes of Action against or related to all Entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial, regardless of whether such Entity is included on Exhibit B(i).

In addition, Exhibit B(i) includes claims and Causes of Action the Reorganized Debtors and the Liquidating Trust, as applicable, expressly retain based in whole or in part upon any and all contracts and leases to which any Debtor or Reorganized Debtor is a party or pursuant to which any Debtor or Reorganized Debtor has any rights whatsoever. Notwithstanding the foregoing, the Reorganized Debtors and the Liquidating Trust, as applicable, retain all such claims and Causes of Action regardless of whether such contract or lease is included on Exhibit B(i). The claims and Causes of Actions reserved include, without limitation, Causes of Action against vendors, suppliers of goods or services, or any other parties: (a) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (b) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors; (c) for payments, deposits, holdbacks, reserves, or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor, or other party; (d) for any liens, including mechanic's, artisan's, materialmen's, possessory, or statutory liens held by any one or more of the Debtors; (e) arising out of environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies, or suppliers of environmental services or goods; (f) counter-claims and defenses related to any contractual obligations; (g) any turnover actions arising under section 542 or 543 of the Bankruptcy Code; and (h) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, or any business tort claims. Additionally, on or around September 6, 2019, each of the Debtors filed its Schedules, which included, among other things, claims and Causes of Action each of the Debtors had reflected as a liability on its books and records, and its *Statement of Financial Affairs*, which details certain information regarding each Debtor's property (collectively, the "SoFAs"). Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and the Liquidating Trust, as applicable expressly reserve all claims and Causes of Action against any Entity listed on (a) with respect to the Schedules, Schedule A/B, Schedule D, Schedule E, Schedule F, Schedule G, and Schedule H of each Debtor and (b) the SoFA of each Debtor, in each case to the extent such Entities owe or may in the future owe money to the Debtors or the Reorganized Debtors.

**PES HOLDINGS, LLC, et al.**Retained Causes of Action  
Exhibit B(i) Litigation

<b>Party</b>	<b>Address</b>	<b>Nature</b>
UNITED STEELWORKERS LOCAL 10-1	USW 10-1 P.O. BOX 1257 LINWOOD, PA 19061	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
UNITED STATES OF AMERICA / DEPARTMENT OF THE TREASURY	INTERNAL REVENUE SERVICE ATTN: EXCISE UNIT CINCINNATI, OH 45999-0009	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY	651 BOAS STREET HARRISBURG PA 17121-0750	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PHILADELPHIA WATER DEPARTMENT	1101 MARKET ST, 6TH FLOOR PHILADELPHIA PA	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY	REGION 3 1650 ARCH STREET PHILADELPHIA, PA 19103	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION	RACHEL CARSON STATE OFFICE BUILDING 400 MARKET STREET HARRISBURG PA 17101-2301	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
UNITED STATES COAST GUARD	1 WASHINGTON AVENUE PHILADELPHIA PA 19147-4395	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
CITY OF PHILADELPHIA FIRE DEPARTMENT	1401 JFK BLVD, 5 <sup>TH</sup> FLOOR PHILADELPHIA PA 19102	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
CITY OF PHILADELPHIA AIR MANAGEMENT SERVICES	321 S UNIVERSITY AVENUE #2 PHILADELPHIA PA 19104-4543	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
VARIOUS MANUFACTURERS	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
BRUCE HENSON	C/O MATTHEW B. COLE ALVAZOGLOU & MIKROPOULOS 1425 CHESTER PIKE EDDYSTONE, PA 19022	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

STEVEN AND LISA SNYDER	C/O RANDALL FLAGLER FLAGLER & ASSOCIATES 1210 NORTHBROOK DR. TREVOSE, PA 19053	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
GREG NECKONCHUK	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
JAMES JAMISON	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ADVANSIX, INC.	300 KIMBALL DR. PARSIPANNY, NJ 07054	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
JOHN MANNATO	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PATRICIA UHL	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PHILADELPHIA REFINERY OPERATIONS	EVERGREEN RESOURCES GROUP LLC SCOTT CULLINAN 2 RIGHER PARKWAY, STE 120 WILMINGTON, DE 19803	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
WESTCHESTER FIRE INSURANCE COMPANY	436 WALNUT STREET STE WA10A PHILADELPHIA, PA 19106	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ACE AMERICAN INSURANCE COMPANY	436 WALNUT STREET PHILADELPHIA PA 19106	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ACE PROPERTY AND CASUALTY INSURANCE COMPANY	436 WALNUT STREET PHILADELPHIA PA 19106	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
AIG PROPERTY CASUALTY, INC.	80 PINE STREET 13 <sup>TH</sup> FLOOR NEW YORK, NY 10005	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ALLIANZ GLOBAL RISKS US INS. CO.	225 WEST WASHINGTON STREET SUITE 1800 CHICAGO, IL 60606-3484	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ARCH INSURANCE COMPANY	300 PLAZA THREE 3 <sup>RD</sup> FLOOR JERSEY CITY, NJ 07311	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

ARCH SPECIALTY INSURANCE COMPANY	300 PLAZA THREE 3 <sup>RD</sup> FLOOR JERSEY CITY, NJ 07311	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ILLINOIS UNION INSURANCE COMPANY	CHUBB CREDIT MANAGEMENT 436 WALNUT STREET PHILADELPHIA, PA 19103	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PPC LUBRICANTS	PPC LUBRICANTS 305 MICRO DRIVE JONESTOWN, PA 17038	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
SHELL OIL PRODUCTS	SHELL OIL PRODUCTS 910 LOUISIANA STREET HOUSTON, TX 77002	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
RUBEN AUSTIN	C/O DANIEL KLEINER METZGER & KLEINER 1500 JOHN F. KENNEDY BLVD PHILADELPHIA PA 19102	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MISTRAS GROUP	C/O JIMMY PONCE GENERAL MANAGER 5 NEALY BOULEVARD TRAINER, PA 19061	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
QUANTA TECHNOLOGIES LLC	C/O AUGUSTO QUINONES 1335 REGENTS PARK DRIVE SUITE 250 HOUSTON, TX 77058	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ETC SUNOCO HOLDINGS LLC FKA SUNOCO, INC. AND THEIR AFFILIATES	1300 MAIN STREET HOUSTON, TX 77002-6803	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ARI LEASING, LLC	100 CLARK ST. ST. CHARLES, MO 63301	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
LAUREL PIPELINE COMPANY, L.P.	ANTHONY D. KANAGY POST & SCHELL PC 17 NORTH SECOND, 12 <sup>TH</sup> FLOOR HARRISBURG, PA 17101	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MELISSA BRADLEY	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ROBERT WOODWARD	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MORGAN TYSON	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

ALLISON D'ANGELO	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MICHAEL WARD	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ALEXANDER PETROSKE	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
AMBER FULLER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ANNAMARIA BERGER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
BORIS BOROVIKOV	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
BRIAN REES	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
CHALES LAMANTEER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
CHARLES E. LUDVIG	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
CHRISTOPHER LOPES	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
DANIEL BLOEMKER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
DARRYL W JENKINS	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
DAVID FLYNN	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION



DAVID MARKOWSKI	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
DOUGLAS DAVID KUNKEL	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
EILEEN RILEY	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
ERIC O'TOOLE	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
JACK HOVIS	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
JEFFREY L LAWRENCE	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
JOE KEENAN	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
KEITH HOLLY	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
KEVIN C. STAATS	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
KEVIN KOCSI	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
KYLE HURST	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
LEONARD T. GALLAGHER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MARISSA O'LEARY	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

MARK G. FLEET	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MARTIN HARPER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MATTHEW CUNNINGHAM	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MICHAEL J. DABKOWSKI	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MICHAEL T MULLEN	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
NATHAN J. RUTKOWSKI	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
NATHAN RUTKOWSKI AND MARTIN HARPER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
NEAL MORAN	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
NHAN PHANDINH	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
OLUKOREDE EFUNNUGA	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PATRICIA A. LATHAM	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PAUL GRASSI	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
PEDRAM FARHI	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

RICHARD FRANCIS	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
RICHARD T. LATHAM	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
RONALD BERTINO	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
SCOTT ALAN SEIGER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
SONIA G. JUNG	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
STEPHEN DAMANSKIS	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
THOMAS FINOCCHIO	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
TIFFANY FRICK	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
TYLER CARR MICHENER	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
WAYNE DARROW	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
WESLEY L. HENDRICKSON JR.	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
WILLIAM TOMPKINS	ADDRESS UNDER REVIEW	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA	175 WATER STREET NEW YORK, NY 10038	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

ASPEN SPECIALTY INSURANCE COMPANY	590 MADISON AVENUE, 7TH FL NEW YORK, NY 10022	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
XL INSURANCE AMERICA, INC.	1 WORLD FINANCIAL CENTER 200 LIBERTY STREET 21ST FLOOR NEW YORK, NY 10281	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA	ONE SEAPORT PLAZA 199 WATER STREET 21ST FLOOR NEW YORK, NY 10038	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
HDI GLOBAL INSURANCE COMPANY	161 NORTH CLARK STREET 48TH FLOOR CHICAGO, IL 60601	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
LIBERTY MUTUAL INSURANCE COMPANY	175 BERKELEY STREET BOSTON, MA 02116	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
WESTPORT INSURANCE CORP	PO BOX 74008043 CHICAGO, IL 60674-8043	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
LLOYD'S SYNDICATE 1183 (TAL TALBOT)	48 WALL STREET 17TH FLOOR NEW YORK, NY 10005	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
UNITED SPECIALTY INSURANCE COMPANY	5555 SAN FELIPE ST. SUITE 1500 HOUSTON, TX 77056	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
MAPFRE GLOBAL RISKS / PIONEER PNR 9094	122 LEADENHALL STREET LONDON UK EC3V 4AN	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
GREAT LAKES REINSURANCE (UK) SE (MUNICH RE) / ACT	30 FENCHURCH STREETK LONDON UK EC3M 3AJ	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
LLOYD'S SYNDICATES 1221 / 1897 (NAVIGATORS)	5151 SAN FELIPE SUITE 700 HOUSTON TX 77056	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
LLOYD'S SYNDICATES 2003 (XLC CATLIN) ET AL	122 LEADENHALL STREET LONDON UK EC3V 4AN	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
LLOYD'S SYNDICATES 1884 / 1458 (FREBERG)	122 LEADENHALL STREET LONDON UK EC3V 4AN	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

OIL CASUALTY INSURANCE LTD (OCIL)	PO BOX HM 1751 HAMILTON BERMUDA HM GX	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION
IRONSHORE INSURANCE LTD (BERMUDA)	30 WOODBOURNE AVENUE PEMBROKE HM 08, BERMUDA	CLAIMS, DEFENSES, CROSSCLAIMS, AND COUNTER-CLAIMS RELATED TO LITIGATION AND POSSIBLE LITIGATION

## **EXHIBIT B(ii)**

### Claims Related to Deposits, Adequate Assurance Postings, and Other Collateral Postings

Exhibit B(ii) includes Entities for which the Debtors have posted any security deposits, adequate assurance payment or any other type of deposit or collateral. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Debtors expressly reserve all Causes of Action based in whole or in part upon any and all postings of a security deposit, adequate assurance payment, or any other type of deposit or collateral, regardless of whether such Entity is listed on Exhibit B(ii).<sup>1</sup> Additionally, on or around September 6, 2019, each of the Debtors filed its Schedules, which included, among other things, claims and Causes of Action each of the Debtors had reflected as a liability on its books and records. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and the Liquidating Trust, as applicable, expressly reserve all claims and Causes of Action against any Entity listed on Schedule A/B, Schedule D, Schedule E, and Schedule F of each Debtor to the extent such Entities owe or may in the future owe money to the Debtors or the Reorganized Debtors. Furthermore, unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and the Liquidating Trust, as applicable, expressly reserve all Causes of Action against or related to all Entities who assert or may assert that the Debtors or the Reorganized Debtors owe money to them.

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<sup>1</sup> For the avoidance of doubt, the Debtors reserve all rights with respect to any deposit provided in accordance with the *Order (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto, (B) Renew, Amend, Supplement, Extend, or Purchase and Finance Insurance Policies, and (C) Continue and Renew Their Surety Bond Program and (II) Granting Related Relief* [Docket No. 83] or otherwise provided as “adequate assurance of payment” (as that term is used by section 366 of the Bankruptcy Code).

**PES HOLDINGS, LLC, et al.**

## Retained Causes of Action

## Exhibit B(ii) Deposits/Adequate Assurance/Other Collateral

<b>Party</b>	<b>Address</b>	<b>Nature</b>
CONSTELLATION NEW ENERGY INC	200 N UPPER WACKER DR SUITE 2100 2110B CHICAGO, IL 60601	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
PECO ENERGY	PECO ENERGY ATTN: GENERAL COUNSEL 2301 MARKET STREET PHILADELPHIA PA 19103	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
COLONIAL ENERGY, INC.	3975 FAIR RIDGE DRIVE FAIRFAX, VA 22033	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
PHILADELPHIA GAS WORKS	800 W MONTGOMERY AVE 3RD FLR PHILADELPHIA PA 19122	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
UGI ENERGY SERVICES, INC.	ONE MERIDIAN BOULEVARD SUITE 2C01 WYOMISSING, PA 19610	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
TEXAS EASTERN TRANSMISSION, LP	TEXAS EASTERN TRANSMISSION, LP C/O SPECTRA ENERGY PARTNERS, LP 5400 WESTHEIMER COURT HOUSTON, TX 77056-5310	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
WATER REVENUE BUREAU	1401 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19102	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
DELAWARE RIVER BASIN COMMISSION	25 STATE POLICE DR E WEST TRENTON, NJ 08628	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ENSONO	2 CHRISTIE HEIGHTS ST. LEONIA, NJ 07605	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
LEVEL (3)	LEVEL 3 COMMUNICATIONS 1025 ELDORADO BLVD BROOMFIELD, CO 80021	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
VEOLIA WATER NORTH AMERICA	4760 WORLD HOUSTON PKWY STE 100 HOUSTON, TX 77032	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS

ROSS ENVIRONMENTAL SERVICES	PO BOX 116 ELYRIA, OH 44036	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
MPW INDUSTRIAL SERVICES, INC.	150 SOUTH 29TH STREET NEWARK, OH 43055	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
VEOLIA NORTH AMERICA REGENERATION	4760 WORLD HOUSTON PKWY STE 100 HOUSTON, TX 77032	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
CLEANHARBORS ENVIRONMENTAL	42 LONGWATER DRIVE NORWELL, MA 02061-9149	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
REPUBLIC SERVICES, INC.	REPUBLIC SERVICES, INC. 18500 N. ALLIED WAY PHOENIX, AZ 85054	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
SUMTER TRANSPORT COMPANY	1880 LYNETTE DR. SUMTER, SC 29154	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ALLSTATE POWER VAC INC	928 EAST HAZELWOOD AVE. RAHWAY, NJ 07065	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
S J TRANSPORTATION CO INC	1176 US-40 WOODSTOWN, NJ 08098	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
MERICHEM COMPANY	5455 OLD SPANISH TRAIL HOUSTON, TX 77023	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
CLEAN VENTURE INC	1800 CARMEN STREET CAMDEN, NJ 08105	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
VERIZON WIRELESS / BUSINESS	500 TECHNOLOGY DRIVE SUITE 550 WELDON SPRING, MO 63304	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
WINDSTREAM	PO BOX 9001013 LOUISVILLE, KY 40290	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ARI LEASING, LLC	100 CLARK ST. ST. CHARLES, MO 63301	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS



ACE AMERICAN INSURANCE	ATTN: COLLATERAL MANAGEMENT 436 WALNUT STREET PHILADELPHIA, PA 19106	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
CHUBB SURETY	ATTN: COLLATERAL MANAGEMENT 436 WALNUT STREET PHILADELPHIA, PA 19106	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ST. LINDEN TERMINAL LLC	19003 IH-10 WEST SAN ANTONIO, TX 78257	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
MERRILL LYNCH COMMODITIES, INC.	20 E. GREENWAY PLAZA STE 700 HOUSTON, TX 77046	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
COLONIAL PIPELINE COMPANY	1185 SANCTUARY PARKWAY SUITE 100 ALPHARETTA, GA 30009	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ARI LEASING, LLC	100 CLARK ST. ST. CHARLES, MO 63301	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
INDEPENDENCE BLUE CROSS	1901 MARKET ST PHILADELPHIA, PA 19103	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
BAKER ENGINEERING	3330 OAKWELL CT, STE 100 SAN ANTONIO, TX 78218	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
NOOTER ENGINEERING	6 NESHAMINY INTERPLEX, STE 300 TREVSE, PA 19053	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
FLUOR ENTERPRISES INC.	6700 LAS COLINAS BLVD IRVING, TX 75039	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
HEALTH ADVOCATE	3043 WALTON RD PLYMOUTH MEETING, PA 19462	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
WILLIS TOWERS WATSON	1500 MARKET ST #22E PHILADELPHIA, PA 19102	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
PROCONEX	103 ENTERPRISE DR ROYERSFORD, PA 19468	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS

BANK OF AMERICA	CREDIT CARD DEPOSIT COLLATERAL 100 N TRYON ST CHARLOTTE, NC 28255	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
LOCKTON	PREPAID INSURANCE 5847 SAN FELIPE, STE 320 HOUSTON, TX 77057	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
AON	PREPAID INSURANCE 200 E RANDOLPH ST CHICAGO, IL 60601	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
FIRST FUNDING	PREPAID INSURANCE 450 SKOKIE BLVD, STE 1000 NORTHBROOK, IL 60062	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ESIS	PREPAID INSURANCE 436 WALNUT ST PHILADELPHIA, PA 19106	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
MICROSOFT	PREPAID LICENSES 1950 NORTH STEMMONS FREEWAY DALLAS, TX, 75207	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ORACLE	PREPAID LICENSES P.O. BOX 203448 DALLAS, TX 75320-3448	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
SKF LICENSING	PREPAID LICENSES P.O. BOX 7247 PHILADELPHIA, PA 19170-8092	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ASPEN ADVISORS	PREPAID LICENSES 20 CROSBY DR BEDFORD, MA 01730	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
MERRILL LYNCH COMMODITIES, INC.	20 E. GREENWAY PLAZA STE 700 HOUSTON, TX 77046	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ICBC STANDARD BANK PLC	20 GRESHAM STREET LONDON EC2V7JE ENGLAND	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ARCHER DANIELS MIDLAND COMPANY	4666 FARIES PKWY DECATUR, IL 62526	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
BNSF RAILWAY	FUEL SURCHARGE REFUND 920 SE QUINCY, 9TH FL TOPEKA, KS 66612-1116	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS

PHILADELPHIA DEPARTMENT OF REVENUE	PREPAID BIRT TAXES 1401 JFK BLVD. - ROOM 400 PHILADELPHIA, PA 19102	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
AETNA DENTAL	2000 MARKET ST #850 PHILADELPHIA, PA 19103	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
RELIANCE STANDARD LIFE INSURANCE	2001 MARKET ST #1500 PHILADELPHIA, PA 19103	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
ECO-ENERGY FUELING SOLUTIONS	725 COOL SPRINGS BLVD, STE 50 FRANKLIN, TN 37067	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS
PBF HOLDING COMPANY LLC PBF ENERGY	1 SYLVAN WAY 2ND FL PARSIPPANY, NJ 07054	CLAIMS RELATED TO DEPOSITS, ADEQUATE ASSURANCE POSTINGS, AND OTHER COLLATERAL POSTINGS

**EXHIBIT B(iii)**

Claims Related to Accounts Receivable and Accounts Payable

Exhibit B(iii) includes Entities that have recently or that currently owe money to the Debtors. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and the Liquidating Trust, as applicable, expressly reserve all Causes of Action against or related to all Entities that owe or that may in the future owe money to the Debtors or the Reorganized Debtors regardless of whether such Entity is included on Exhibit B(iii). Additionally, on or around September 6, 2019, each of the Debtors filed its Schedules, which included, among other things, claims and Causes of Action each of the Debtors had reflected as a liability on its books and records. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and the Liquidating Trust, as applicable, expressly reserve all claims and Causes of Action against any Entity listed on Schedule A/B, Schedule D, Schedule E, and Schedule F of each Debtor to the extent such Entities owe or may in the future owe money to the Debtors or the Reorganized Debtors. Furthermore, unless otherwise released under Article X of the Plan or the Purchase Agreement, the the Reorganized Debtors and the Liquidating Trust, as applicable, expressly reserve all Causes of Action against or related to all Entities who assert or may assert that the Debtors or the Reorganized Debtors owe money to them.

**PES HOLDINGS, LLC, et al.**Retained Causes of Action  
Exhibit B(iii) AR/AP

<b>Party</b>	<b>Address</b>	<b>Nature</b>
CITY OF PHILADELPHIA – WATER REVENUE BUREAU	1401 JOHN F KENNEDY BLVD PHILADELPHIA, PA 19102	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
RFG SURVEY ASSOCIATION	11350 RANDOMHILLS RD, STE 800 FAIRFAX, VA 22030	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
COLONIAL ENERGY, INC.	3975 FAIR RIDGE DRIVE FAIRFAX, VA 22033	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
CHEVRON	10001 SIX PINES DRIVE THE WOODLANDS, TX 77380	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
NORFOLK SOUTHERN RAILWAY	3 COMMERCIAL PL NORFOLK, VA, 23510-2108	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
INDEPENDENCE BLUE CROSS	1901 MARKET ST PHILADELPHIA, PA 19103	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
XL CATLIN / XL GROUP LTD.	1 BERMUDIANA ROAD PO BOX HM 2245 O'HARA HOUSE HAMILTON, HM 08 BERMUDA	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
INTERNATIONAL CHEMICAL COMPANY	1887 E 71ST ST TULSA, OK 74136-3984	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
ISS MARINE SERVICES	11 N WATER ST, STE 9290 MOBILE, AL 36602	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
GAC-RUR SHIPPING (USA) INC.	1 INTERNATIONAL PLAZA DR # 250 PHILADELPHIA, PA 19113	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
BOUCHARD TRANSPORTION CO., INC.	58 S SERVICE RD, STE 150 MELVILLE, NY 11747	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
MORAN TOWING CORP.	50 LOCUST AVE NEW CANNAN, CT 06840	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
NORTON LILLY AND COMPANY	ONE ST LOUIS CENTRE, STE 5000 MOBILE, AL 36602	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
MORAN SHIPPING	1950 OLD CUTHBERT RD SUITE L CHERRY HILL, NJ 08034	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
SUNOCO LLC	1735 MARKET ST, STE L PHILADELPHIA, PA 19103	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE

VICTORY RENEWABLES, LLC	930 S KIMBALL, STE 100 SOUTHLAKE, TX 76092	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
K3 MARTIME AGENCY, INC.	1358 HOOPER AVE #240 TOMS RIVER, NJ 08753	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE
MID-GULF SHIPPING CO INC	4760 PONTCHARTRAIN DR SLIDELL, LA 70458	CLAIMS RELATED TO ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE

**EXHIBIT B(iv)**

Claims Related to Tax Refunds

Exhibit B(iv) includes Entities that owe or that may in the future owe money related to tax refunds or tax credits to the Debtors or Reorganized Debtors or who assert or may assert that the Debtors or Reorganized Debtors owe taxes to them. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and Liquidating Trust, as applicable, expressly reserve all Causes of Action against or related to all Entities that owe or that may in the future owe money related to tax refunds or credits to the Debtors or the Reorganized Debtors, or who assert or may assert that the Debtors or Reorganized Debtors owe taxes to them regardless of whether such Entity is included on Exhibit B(iv). Additionally, on or around September 6, 2019, each of the Debtors filed its Schedules, which included, among other things, claims and Causes of Action each of the Debtors had reflected as a liability on its books and records. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and Liquidating Trust, as applicable, expressly reserve all claims and Causes of Action against any Entity listed on Schedule A/B, Schedule D, Schedule E, and Schedule F of each Debtor to the extent such Entities owe or may in the future owe money to the Debtors or the Reorganized Debtors. Furthermore, unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and Liquidating Trust, as applicable, expressly reserve all Causes of Action against or related to all Entities who assert or may assert that the Debtors or the Reorganized Debtors owe money to them.

**PES HOLDINGS, LLC, et al.**Retained Causes of Action  
Exhibit B(iv) Tax Refunds

<b>Party</b>	<b>Address</b>	<b>Nature</b>
ALABAMA DEPARTMENT OF REVENUE	PO BOX 327540 MONTGOMERY, AL 36132-7540	CLAIMS RELATED TO TAX REFUNDS
COLORADO DEPT OF REVENUE SERVICES	DENVER, CO 80261-0013	CLAIMS RELATED TO TAX REFUNDS
COMPTROLLER OF MARYLAND	REVENUE ADMINISTRATION DIVISION 110 CARROLL STREET ANNAPOLIS, MA 21411-0001	CLAIMS RELATED TO TAX REFUNDS
COMPTROLLER OF MARYLAND	REVENUE ADMINISTRATION DIVISION PO BOX 2191 ANNAPOLIS, MD 21404-2191	CLAIMS RELATED TO TAX REFUNDS
DELAWARE MOTOR FUEL TAX ADMINISTRATION	PO DRAWER E DOVER, DE 19903-1565	CLAIMS RELATED TO TAX REFUNDS
DELAWARE DIVISION OF REVENUE	CARVEL STATE OFFICE BUILDING 820 NORTH FRENCH STREET WILMINGTON, DE 19801, DE 19801	CLAIMS RELATED TO TAX REFUNDS
DEPARTMENT OF THE TREASURY	INTERNAL REVENUE SERVICE CINCINNATI, OH 45999-0009	CLAIMS RELATED TO TAX REFUNDS
DEPARTMENT OF THE TREASURY	INTERNAL REVENUE SERVICE ATTN: EXCISE UNIT CINCINNATI, OH 45999-0009	CLAIMS RELATED TO TAX REFUNDS
DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE	CINCINNATI, OH 45999-0012	CLAIMS RELATED TO TAX REFUNDS
GEORGIA DEPARTMENT OF REVENUE	MOTOR FUEL TAX UNIT PO BOX 105088 ATLANTA, GA 30348-5088	CLAIMS RELATED TO TAX REFUNDS
GEORGIA DEPARTMENT OF REVENUE	SALES AND USE TAX PO BOX 105408 ATLANTA, GA 30348-5408	CLAIMS RELATED TO TAX REFUNDS
LOUISIANA DEPARTMENT OF REVENUE	PO BOX 201 BATON ROUGE, LA 70821-0201	CLAIMS RELATED TO TAX REFUNDS
MARYLAND OIL FUND	PO BOX 1417 BALTIMORE, MD 21203-1417	CLAIMS RELATED TO TAX REFUNDS
MASSACHUSETTS DEPARTMENT OF REVENUE	UNDERGROUND STORAGE TANK PO BOX 9563 BOSTON, MA 02114-9563	CLAIMS RELATED TO TAX REFUNDS
MISSISSIPPI DEPARTMENT OF REVENUE	PO BOX 960 JACKSON, MS 39205-0960	CLAIMS RELATED TO TAX REFUNDS
NATIONAL OILHEAT RESEARCH ALLIANCE	PO BOX 826136 PHILADELPHIA, PA 19182-6136	CLAIMS RELATED TO TAX REFUNDS
NEW YORK CITY DEPARTMENT OF FINANCE	PO BOX 570 KINGSTON, NY 12402-5070	CLAIMS RELATED TO TAX REFUNDS



NEW YORK STATE FILING FEE	STATE PROCESSING CENTER PO BOX 15150 ALBANY, NY 12212-5150	CLAIMS RELATED TO TAX REFUNDS
NEW YORK STATE PARTNERSHIP RETURN	STATE PROCESSING CENTER PO BOX 4149 BINGHAMTON, NY 13902-4149	CLAIMS RELATED TO TAX REFUNDS
NORTH DAKOTA	OFFICE OF STATE TAX COMMISSIONER PO BOX 5623 BISMARCK, ND 58506-5623	CLAIMS RELATED TO TAX REFUNDS
NEW YORK STATE CORPORATION TAX	PO BOX 15181 ALBANY, NY 12212-5181	CLAIMS RELATED TO TAX REFUNDS
NEW YORK STATE TAX DEPARTMENT	PO BOX 1833 ALBANY, NY 12201-1833	CLAIMS RELATED TO TAX REFUNDS
OHIO DEPARTMENT OF TAXATION	PO BOX 530 COLUMBUS, OH 43216-0530	CLAIMS RELATED TO TAX REFUNDS
OKLAHOMA TAX COMMISSION	PO BOX 26850 OKLAHOMA CITY, OK 73126-0850	CLAIMS RELATED TO TAX REFUNDS
PENNSYLVANIA DEPARTMENT OF REVENUE	BUREAU OF INDIVIDUAL TAXES PO BOX 280502 HARRISBURG, PA 17128-0502	CLAIMS RELATED TO TAX REFUNDS
PHILADELPHIA DEPARTMENT OF REVENUE	ATTN: NOREEN SKIRKIE MUNICIPAL SERVICES BLDG. 1401 JFK BLVD. - ROOM 400 PHILADELPHIA, PA 19102	CLAIMS RELATED TO TAX REFUNDS
PROPANE EDUCATION AND RESEARCH COUNCIL	PO BOX 826112 PHILADELPHIA, PA 19182-6112	CLAIMS RELATED TO TAX REFUNDS
SOUTH CAROLINA DEPARTMENT OF REVENUE	MOTOR FUEL PO BOX 125 COLUMBIA, SC 29214-0139	CLAIMS RELATED TO TAX REFUNDS
STATE OF CONNECTICUT	DEPARTMENT OF REVENUE SERVICES PO BOX 5031 HARTFORD, CT 06102-5031	CLAIMS RELATED TO TAX REFUNDS
STATE OF FLORIDA	FLORIDA DEPARTMENT OF REVENUE 5050 W. TENNESSEE STREET TALLAHASSEE, FL 32399-0165	CLAIMS RELATED TO TAX REFUNDS
STATE OF NEW JERSEY	REVENUE PROCESSING CENTER PO BOX 243 TRENTON, NJ 08646-0243	CLAIMS RELATED TO TAX REFUNDS
STATE OF NEW JERSEY	DIVISION OF TAXATION – EXCISE TAX, REVENUE PROCESSING CENTER PO BOX 265 TRENTON, NJ 08646-0265	CLAIMS RELATED TO TAX REFUNDS
STATE OF NEW JERSEY	CBT PO BOX 666 TRENTON, NJ 08646-0666	CLAIMS RELATED TO TAX REFUNDS

STATE OF PENNSYLVANIA	BUREAU OF MOTOR AND ALTERNATIVE FUEL TAXES PO BOX 280646 HARRISBURG, PA 17128-0646	CLAIMS RELATED TO TAX REFUNDS
STATE OF TEXAS	COMPTROLLER OF PUBLIC ACCOUNTS P.O. BOX 149357 AUSTIN, TX 78714-9357	CLAIMS RELATED TO TAX REFUNDS
STATE OF VIRGINIA DEPARTMENT OF TAXATION	VIRGINIA TAX OFFICE OF CUSTOMER SERVICES P.O. BOX 1115 RICHMOND, VA 23218-1115	CLAIMS RELATED TO TAX REFUNDS
STATE OF WYOMING DEPARTMENT OF REVENUE	EXCISE TAX DIVISION ADMINISTRATIVE OFFICE 122 WEST 25TH STREET CHEYENNE, WY 8202-0110	CLAIMS RELATED TO TAX REFUNDS
TENNESSEE DEPARTMENT OF REVENUE	ANDREW JACKSON STATE OFFICE BUILDING 500 DEADERICK ST. NASHVILLE, TN 37242	CLAIMS RELATED TO TAX REFUNDS
TEXAS COMPTROLLER	COMPTROLLER OF PUBLIC ACCOUNTS PO BOX 149348 AUSTIN, TX 78714-9348	CLAIMS RELATED TO TAX REFUNDS
WEST VIRGINIA STATE TAX DEPARTMENT	PO BOX 11425 CHARLESTON, WV 25339	CLAIMS RELATED TO TAX REFUNDS

**EXHIBIT B(v)**

Claims Related to Insurance Proceeds

Exhibit B(v) includes insurance contracts and policies to which one or more Debtors are a party. Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and Liquidating Trust, as applicable, expressly reserve all Causes of Action based in whole or in part upon any and all insurance contracts, insurance policies, occurrence policies, and occurrence contracts to which any Debtor or Reorganized Debtor is a party or pursuant to which any Debtor or Reorganized Debtor has any rights whatsoever, regardless of whether such contract or policy is included on Exhibit B(v), including Causes of Action against insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or any other matters. Additionally, on or around September 6, 2019, each of the Debtors filed its *Schedules of Assets and Liabilities*, which included, among other things, claims and Causes of Action each of the Debtors had reflected as a liability on its books and records (collectively, the “Schedules”). Unless otherwise released under Article X of the Plan or the Purchase Agreement, the Reorganized Debtors and Liquidating Trust, as applicable, expressly reserve all claims and Causes of Action related to the insurance contracts and policies listed on Schedule A/B and Schedule G for each of the Debtors to the extent the Debtors or the Reorganized Debtors may have claims and Causes of Action against such insurance contracts and policies now or in the future.

**PES HOLDINGS, LLC, et al.**Retained Causes of Action  
Exhibit B(v) Insurance Policies

<b>Party</b>	<b>Address</b>	<b>Nature</b>
ACE AMERICAN INSURANCE COMPANY INC.	436 WALNUT STREET PHILADELPHIA PA 19106	CLAIMS RELATED TO INSURANCE POLICIES
ACE PROPERTY & CASUALTY COMPANY, INC.	436 WALNUT STREET PHILADELPHIA PA 19106	CLAIMS RELATED TO INSURANCE POLICIES
WESTCHESTER FIRE INSURANCE COMPANY	436 WALNUT STREET STE WA10A PHILADELPHIA, PA 19106	CLAIMS RELATED TO INSURANCE POLICIES
IRONSHORE SPECIALTY INSURANCE COMPANY	75 FEDERAL ST, 5TH FL BOSTON, MA 02110	CLAIMS RELATED TO INSURANCE POLICIES
AXIS SURPLUS INSURANCE COMPANY	111 SOUTH WACKER DR, STE 3500 CHICAGO, IL 60606	CLAIMS RELATED TO INSURANCE POLICIES
GENERAL SECURITY NATIONAL INS. COMPANY	ONE SEAPORT PLAZA 199 WATER STREET 21ST FLOOR NEW YORK, NY 10038	CLAIMS RELATED TO INSURANCE POLICIES
GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA	ONE SEAPORT PLAZA 199 WATER STREET 21ST FLOOR NEW YORK, NY 10038	CLAIMS RELATED TO INSURANCE POLICIES
HDI GLOBAL INSURANCE COMPANY	161 NORTH CLARK STREET 48TH FLOOR CHICAGO, IL 60601	CLAIMS RELATED TO INSURANCE POLICIES
LIBERTY MUTUAL INSURANCE COMPANY	175 BERKELEY STREET BOSTON, MA 02116	CLAIMS RELATED TO INSURANCE POLICIES
EVEREST NATIONAL INSURANCE COMPANY	477 MARTINSVILLE RD P.O. BOX 830 LIBERTY CORNER, NJ 07938-0830	CLAIMS RELATED TO INSURANCE POLICIES
STARR SURPLUS LINES INSURANCE COMPANY	399 PARK AVE, 8TH FL NEW YORK, NY 10022	CLAIMS RELATED TO INSURANCE POLICIES
INDIAN HARBOR INSURANCE COMPANY	14643 DALLAS PKWY, STE 770 DALLAS, TX 75254	CLAIMS RELATED TO INSURANCE POLICIES
ENDURANCE SPECIALTY INSURANCE LTD	48 PAR LA VILLE-RD, STE 784 HAMILTON, HM 11 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
OIL CASUALTY INSURANCE LTD (BERMUDA)	3 BERMUDIANA RD HAMILTON, HM 08 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
XL INSURANCE LTD (BERMUDA)	XL HOUSE ONE BERMUDIANA ROAD HAMILTON, HM JX BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
HAMILTON RE, LTD.	WELLESLEY HOUSE NORTH, 1ST FL 90 PITTS BAY RD PEMBROKE HM08 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES

MARKEL	4521 HIGHWOODS PKWY GLEN ALLEN, VA 23068	CLAIMS RELATED TO INSURANCE POLICIES
MARKEL BERMUDA LTD	MARKEL HOUSE 2 FRONT ST HAMILTON HM 11 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
IRONSTARR EXCESS	141 FRONT STREET, HAMILTON, HM 19 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
AIG EUROPE LIMITED	AIG BUILDING 58 FENCHURCH STREET LONDON, EC3M 4AB UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES
LOCKTON LONDON- HISCOX, APOLLO	THE ST BOTOLPH BUILDING 138 HOUNDSDITCH LONDON EC3A 7AG UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES
ARCH REINSURANCE LTD (BERMUDA)	WATERLOO HOUSE, 1ST FL 100 PITTS BAY RD PEMBROKE HM08 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
ARGO RE LTD	90 PITTS BAY ROAD PEMBROKE, HM 08 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
CHUBB BERMUDA INSURANCE LTD.	CHUBB BUILDING 17 WOODBOURNE AVE HAMILTON HM08 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
EVANSTON INSURANCE COMPANY	TEN PKWY N DEERFIELD, IL 60015	CLAIMS RELATED TO INSURANCE POLICIES
STEADFAST INSURANCE COMPANY	1400 AMERICAN LANE SCHAUMBURG, IL 60196-1056	CLAIMS RELATED TO INSURANCE POLICIES
NATIONAL UNION FIRE INS. CO. OF PITTSBURGH PA.	175 WATER ST, 18TH FL NEW YORK, NY 10038	CLAIMS RELATED TO INSURANCE POLICIES
NAVIGATORS INS CO	ONE PENN PLAZA, 32ND FL NEW YORK, NY 10119-0002	CLAIMS RELATED TO INSURANCE POLICIES
STONINGTON INS CO	5080 SPECTRUM DR, STE 900 EAST ADDISON, TX 75001	CLAIMS RELATED TO INSURANCE POLICIES
THE STANDARD CLUB	STANDARD HOUSE 12-13 ESSEX ST LONDON, WC2R 3AA UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES
ACE AMERICAN INSURANCE COMPANY (STARR-ACE)	436 WALNUT STREET PHILADELPHIA PA 19106	CLAIMS RELATED TO INSURANCE POLICIES
WESTPORT INSURANCE CORPORATION (SWISS RE)	PO BOX 74008043 CHICAGO, IL 60674-8043	CLAIMS RELATED TO INSURANCE POLICIES
QBE UK LIMITED, ETC.	LEVEL 27, 8 CHIFLEY SQUARE SYDNEY NSW 2000 AUSTRALIA	CLAIMS RELATED TO INSURANCE POLICIES

GREAT LAKES INSURANCE SE (MUNICH RE), ETC.	30 FENCHURCH STREETK LONDON UK EC3M 3AJ	CLAIMS RELATED TO INSURANCE POLICIES
ENDURANCE WORLDWIDE INS LTD (SOMPO) / 5151 ENH (SOMPO)	48 PAR LA VILLE-RD, STE 784 HAMILTON, HM 11 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
ALLIED WORLD ASSURANCE COMPANY LTD. (AWAC)	27 RICHMOND ROAD PEMBROKE, BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
HOUSTON SPECIALTY INSURANCE COMPANY	800 GESSNER RD 6TH FLOOR HOUSTON, TX 77024	CLAIMS RELATED TO INSURANCE POLICIES
LLOYD'S SYNDICATE NO. 3902 NOA	ONE LIME ST LONDON EC3M 7HA UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES
LLOYD'S SYNDICATE XLC 2003 P/O 9560 (SLIP LEADER)	20 GRACECHURCH ST LONDON, EC3V OBG UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES
LLOYD'S SYNDICATE NO. 1414 (SLIP LEADER)	20 FENCHURCH ST LONDON EC3M 3BY UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES
THE HARTFORD	P.O. BOX 101007 ATLANTA, GA 30392-1007	CLAIMS RELATED TO INSURANCE POLICIES
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. (AIG)	175 WATER ST NEW YORK, NY 10038-4969	CLAIMS RELATED TO INSURANCE POLICIES
U.S. SPECIALTY INSURANCE COMPANY (TOKIO MARINE HCC)	13403 NORTHWEST FWY HOUSTON, TX 77040-6006	CLAIMS RELATED TO INSURANCE POLICIES
ENDURANCE AMERICAN INSURANCE COMPANY (SOMPO INTERNATIONAL)	4 MANHATTANVILLE RD PURCHASE, NY 10577	CLAIMS RELATED TO INSURANCE POLICIES
BERKSHIRE HATHAWAY SPECIALTY INSURANCE	1314 DOUGLAS ST, STE 1400 OMAHA, NE 68102-1944	CLAIMS RELATED TO INSURANCE POLICIES
BEAZLEY INSURANCE COMPANY	30 BATTERSON PARK RD FARMINGTON, CT 06032	CLAIMS RELATED TO INSURANCE POLICIES
ACE AMERICAN INSURANCE COMPANY (CHUBB)	436 WALNUT STREET PHILADELPHIA PA 19106	CLAIMS RELATED TO INSURANCE POLICIES
QBE INSURANCE CORPORATION	LEVEL 27, 8 CHIFLEY SQUARE SYDNEY NSW 2000 AUSTRALIA	CLAIMS RELATED TO INSURANCE POLICIES
ZURICH AMERICAN INSURANCE COMPANY	1299 ZURICH WAY SCHAUMBURG, IL 60196	CLAIMS RELATED TO INSURANCE POLICIES
ARCH INSURANCE COMPANY	ONE LIBERTY PLAZA, 53RD FL NEW YORK, NY 10006	CLAIMS RELATED TO INSURANCE POLICIES
WESTCHESTER SURPLUS LINES INSURANCE COMPANY	436 WALNUT STREET PHILADELPHIA , PA 19106	CLAIMS RELATED TO INSURANCE POLICIES
RSUI INDEMNITY COMPANY	945 EAST PACES FERRY ROAD NE SUITE 1800 ATLANTA, GA 30326	CLAIMS RELATED TO INSURANCE POLICIES
ASCOT SPECIALTY INSURANCE COMPANY	55W W 46TH ST - 26TH FLOOR NEW YORK, NY 10036	CLAIMS RELATED TO INSURANCE POLICIES
STRATFORD INSURANCE COMPANY	300 KIMBALL DRIVE SUITE 500 PARSIPPANY, NJ 07054	CLAIMS RELATED TO INSURANCE POLICIES
LLOYD'S SYNDICATE 1183 (TAL TALBOT)	48 WALL STREET 17TH FLOOR NEW YORK, NY 10005	CLAIMS RELATED TO INSURANCE POLICIES

XL INSURANCE AMERICA, INC.	1 WORLD FINANCIAL CENTER 200 LIBERTY STREET 21ST FLOOR NEW YORK, NY 10281	CLAIMS RELATED TO INSURANCE POLICIES
LLOYD'S SYNDICATES 1221 / 1897 (NAVIGATORS)	5151 SAN FELIPE SUITE 700 HOUSTON TX 77056	CLAIMS RELATED TO INSURANCE POLICIES
ARIEL RE BDA LTD ON BEHALF OF ARIEL SYNDICATE 1910 (ARGO)	90 PITTS BAY ROAD PEMBROKE, HM 08 BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
OIL CASUALTY INSURANCE LTD (OCIL)	PO BOX HM 1751 HAMILTON HM GX BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
IRONSHORE INSURANCE LTD (BERMUDA)	30 WOODBOURNE AVENUE PEMBROKE HM 08, BERMUDA	CLAIMS RELATED TO INSURANCE POLICIES
MAPFRE GLOBAL RISKS / PIONEER PNR 9094	122 LEADENHALL STREET LONDON UK EC3V 4AN	CLAIMS RELATED TO INSURANCE POLICIES
GREAT LAKES REINSURANCE (UK) SE (MUNICH RE) / ACT	30 FENCHURCH STREETK LONDON UK EC3M 3AJ	CLAIMS RELATED TO INSURANCE POLICIES
AXA / HANNOVER / HELVETIA	1290 AVENUE OF THE AMERICAS NEW YORK, NY 10104	CLAIMS RELATED TO INSURANCE POLICIES
LANCASHIRE INSURANCE COMPANY (UK) LIMITED	LEVEL 29, 20 FENCHURCH STREET, LONDON, EC3M 3BY UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES
CHAUCER 1084 CSL / ARGO 1200 AMA / ACT	38 & 39 BAGGOT STREET LOWER DUBLIN D02 T938 IRELAND	CLAIMS RELATED TO INSURANCE POLICIES
LLOYD'S SYNDICATES 2003 (XLC CATLIN) ET AL	122 LEADENHALL STREET LONDON UK EC3V 4AN	CLAIMS RELATED TO INSURANCE POLICIES
LLOYD'S SYNDICATE 1955 BAR (BARBICAN)	33 GRACECHURCH STREET LONDON EC3V 0BT UNITED KINGDOM	CLAIMS RELATED TO INSURANCE POLICIES

**EXHIBIT C**

**Form Management Incentive Plan<sup>1</sup>**

Certain documents, or portions thereof, contained or referenced in this **Exhibit C** and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit C** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the “**Plan**”).



**PES HOLDINGS, LLC**

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**2020 KEY EMPLOYEE INCENTIVE PLAN**

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**ARTICLE I**

**PURPOSE OF THE PLAN**

PES Holdings, LLC (the “Company”), intending to be legally bound, hereby adopts the PES Holdings, LLC 2020 Key Employee Incentive Plan (the “Plan”), which plan shall be effective as of [REDACTED], 2020 (the “Effective Date”).<sup>1</sup> The purpose of the Plan is to enable the Company and its Subsidiaries and Affiliates and, following Emergence, the Remaining Entity (each as defined below) to better align the interests of participating employees and independent contractors by providing such participating employees and independent contractors with an opportunity to receive additional compensation as outlined below. The Plan shall be in effect from the Effective Date and shall continue until terminated by the Company Group (the “Term”) in accordance with Section 5.4. The expiration of the Term shall not in any event reduce or adversely affect any amounts due to any Participant hereunder.

**ARTICLE II**

**DEFINITIONS**

For purposes of the Plan, the following terms shall have the meanings set forth below:

2.1 “Affiliate” means with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the Person in question. As used herein, the term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

2.2 “Aggregate Bonus Pool” means, as of a Measurement Date, the sum of the Bonus Pools from all prior Measurement Periods.

2.3 “Aggregate Sales Proceeds” means the aggregate amount of Sales Proceeds received by the Company Group (or its equity owners) in connection with any Approved Sale.

2.4 “Approved Sale” means any sale of assets or equity interests of the Company Group to a third party, in each case, for which definitive documentation has been entered into during the Sales Process.

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<sup>1</sup> **NTD:** Effective Date to be the date of court approval.

2.5 “Board” means (a) prior to Emergence, the independent Restructuring Committee of the Board of Directors of PES Energy Inc. and (b) at and following Emergence, the board of directors, trustees or managers, or other similar ultimate governing body of the Remaining Entity.

2.6 “Bonus Amount” means, as of each Measurement Date, as applicable, the amount payable to a Participant under the Plan, which shall be equal to the product of (x) a Participant’s Bonus Award, and (y) the Bonus Pool.

2.7 “Bonus Award” means the percentage of the Bonus Pool a Participant is eligible to earn under this Plan as determined on each Measurement Date, as applicable, subject to the terms of this Plan, and as set forth on Exhibit A.

2.8 “Bonus Pool” means, as of a Measurement Date, (a) 2.5% of the Net Proceeds received by the Company Group in excess of the Initial Net Proceeds Hurdle, less (b) the Aggregate Bonus Pool.

2.9 “Cash Adjustment” means cash held by the Company Group as of the Effective Date and any cash received or disbursed by the Company Group from ICBC Standard Bank Plc pursuant to the Global Resolution Term Sheet or the HEEP Term Sheet following the Effective Date, plus any availability under the DIP Facility.

2.10 “Cause” means the Participant has (a) been convicted of, or pleaded no contest to, a felony, (b) engaged in illegal conduct which is materially and demonstrably injurious to the Company Group (including, without limitation, willful misuse of any funds or other property), (c) engaged in gross negligence or willful misconduct in the performance of Participant’s duties for the Company Group, or (d) willfully refused without proper legal reason to perform the Participant’s duties for the Company Group; provided that, other than with respect to clauses (a) and (b), the Company Group shall have given the Participant written notice describing the grounds constituting Cause and allow the Participant a reasonable opportunity to cure such circumstances of no less than thirty (30) days following the Participant’s receipt of such written notice from the Company Group. For purposes of this definition, no act or failure to act will be deemed “willful” unless effected by the Participant not in good faith and without a reasonable belief that the Participant’s action or failure to act was in or not opposed to the best interests of the Company Group.

2.11 “Code Section 409A” means Section 409A of the Internal Revenue Code of 1986, as amended, and the Treasury regulations and other official guidance promulgated thereunder.

2.12 “Company” shall have the meaning set forth in ARTICLE I hereof.

2.13 “Company Group” means, prior to Emergence, the Company and its Subsidiaries and Affiliates, and at and following Emergence, the Remaining Entity.

2.14 “Creditors” means holders of claims (as defined in 11 U.S.C. § 101) against PES Holdings, LLC or any of its jointly administered debtors that are entitled to received distributions pursuant to any chapter 11 plan.

2.15 “De Minimis Asset Sales” means the Company Group’s use (*e.g.*, to license), sale, or transfer of certain assets, collections of assets, or business lines, including any rights or interests therein, in any individual transaction or series of related transactions to a single buyer or group of related buyers, as set forth in the *Order to Approve Procedures for De Minimis Asset Transactions and Abandonment of De Minimis Assets* [Docket No. 641], including, without limitation, (a) the use, sale, or transfer of assets already covered by such order, and (b) any future use, sale, or transfer of assets pursuant to such order.

2.16 “De Minimis Asset Sales Proceeds” means the value of the proceeds received on or prior to a Measurement Date by the Company Group or its Creditors in connection with the consummation of any approved De Minimis Asset Sales.

2.17 “DIP Budget” [means the budget approved immediately preceding the Effective Date].

2.18 “DIP Facility” means the debtor-in-possession financing facility entered into by the Company Group and certain lenders pursuant to the Final DIP Order.

2.19 “Disability” means a Participant’s inability to perform his or her services for the Company Group for 90 consecutive days or 180 days in any 365-day period, in either case, due to the Participant’s mental or physical impairment; provided that with respect to any Bonus Amount payable under this Plan that constitutes “nonqualified deferred compensation” within the meaning of Code Section 409A, “Disability” shall have the meaning provided under Code Section 409A.

2.20 “Effective Date” shall have the meaning set forth in ARTICLE I hereof.

2.21 “Emergence” means the “Effective Date” as set forth in the Plan of Reorganization.

2.22 “Fair Market Value” means the fair market value of any property or securities as determined in good faith by the Board.

2.23 “Final DIP Order” means the *Final Order (I) Authorizing Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(B), 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) and 364(E) and (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(B)* [Docket No. 580].

2.24 “Global Resolution Term Sheet” means the global resolution term sheet attached as Exhibit C to the Final DIP Order.

2.25 “Good Reason” means any of following, in each case, without the Participant’s written consent: (a) a material breach by the Company Group of any material provision of any material written agreement between the Participant and the Company Group (including, without limitation, a Participant’s Participation Agreement), (b) any material diminution in Participant’s base salary, or following Emergence, to the extent the Company Group and Participant have mutually agreed to revised employment and/or consulting arrangements, Participant’s revised base salary and/or other agreed upon compensation, (c) prior to Emergence, any material diminution in the Participant’s authority, duties or responsibilities at the Company Group, or (d) the Company

Group requiring the Participant to relocate to a primary place of employment that is located more than fifty (50) miles outside of the Philadelphia, Pennsylvania metropolitan area (which primary place of employment is also located more than fifty (50) miles from the Participant's place of residence); provided, that any change in a Participant's employment terms or conditions or work location arising out of an Approved Sale shall not be deemed to give rise to Good Reason; provided further, that prior to a Participant's resignation for Good Reason, the Participant must give written notice to the Company Group of any Good Reason event within ten (10) days after the Participant's actual knowledge of the facts or circumstances giving rise thereto and such event must remain uncorrected for thirty (30) days following such written notice. Any termination for "Good Reason" following such thirty (30) day cure period must occur within thirty (30) days of the expiration of such cure period.

2.26 "HEEP Term Sheet" means the hydrocarbon extraction and evacuation plan term sheet attached to the Global Resolution Term Sheet.

2.27 "Initial Distribution Date" shall have the meaning set forth in Section 4.6(a) hereof.

2.28 "Initial Net Proceeds Threshold" means \$300,000,000.

2.29 "Insurance Proceeds" means the aggregate proceeds, including for the avoidance of doubt, any advance payments made by insurers, of any claim under the Company Group's insurance policies, whether for property damage, business interruption or otherwise, resulting, directly or indirectly, from the incident that occurred at the Girard Point refinery on June 21, 2019, including, without limitation, proceeds received from Policy No. 10F152096-2018-1 dated as of December 10, 2018 and issued by the General Security Indemnity Company of Arizona.

2.30 "Measurement Date" means the last day of each calendar quarter from and after the Effective Date.

2.31 "Measurement Period" means each of (a) the Effective Date through the last day of the first calendar quarter following the Effective Date (the "Initial Measurement Period") and (b) the period from each subsequent calendar quarter beginning after the Initial Measurement Period through the applicable Measurement Date related to such calendar quarter.

2.32 "Net Expenses" means, as of a Measurement Date, the sum of all the actual expenditures by the Company Group in administering the estates of the Company Group, including for all line items included in the DIP Budget, from the Effective Date, less the Cash Adjustment.

2.33 "Net Proceeds" means, as of a Measurement Date, (a) any and all proceeds, property, cash or other consideration that are received by the estates of the Company Group that are distributable to holders of claims and interests in the estates of the Company Group, including the Creditors (regardless of whether such proceeds are actually distributed), including any such proceeds, property, cash or other consideration received in respect of the monetization of the Company Group's assets, including but not limited to Insurance Proceeds, Sale Proceeds, De

Minimis Asset Sales Proceeds, and/or Tax Claim Proceeds and any amounts held in reserve for subsequent distribution, reduced by Net Expenses.<sup>2</sup>

2.34 “Net Proceeds Shortfall” shall have the meaning set forth in Section 4.3 hereof.

2.35 “Participant” means any employee of, independent contractor of, or other person affiliated with the Company Group who is listed on Exhibit A hereto.

2.36 “Participation Agreement” shall have the meaning set forth in Section 4.1 hereof.

2.37 “Petition Date” means July 21, 2019.

2.38 “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

2.39 “Plan” shall have the meaning set forth in ARTICLE I hereof.

2.40 “Plan of Reorganization” means the *Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* filed at Docket No. 462, as it may be amended or supplemented from time to time, including all exhibits, schedules, supplements, appendices, annexes, and attachments thereto.

2.41 “POR Confirmation Success Fee” means an aggregate of \$2,500,000, payable in accordance with Section 4.4 hereof.

2.42 “Post-Termination Bonus Amount” shall have the meaning set forth in Section 4.7(a) hereof.

2.43 “Qualifying Termination” shall have the meaning set forth in Section 4.7(a) hereof.

2.44 “Remaining Entity” means, following Emergence any company, partnership, trust, estate or other entity or entities that remain entitled or are established to become entitled to receive the economic benefit of the monetization of the Company Group’s assets, including but not limited to Insurance Proceeds, Sale Proceeds, De Minimis Asset Sale Proceeds, and/or Tax Claim Proceeds, for the benefit of the Creditors, which may include the bankruptcy estates of the Company and/or any of its Subsidiaries or Affiliates, the reorganized members of the Company Group after Emergence, a trust in which such assets are vested or any other person or entity.

2.45 “Sales Proceeds” means the value of the proceeds received on or prior to a Measurement Date by the Company Group or its Creditors in connection with the consummation of any Approved Sale. Sales Proceeds shall also include the assumption of funded debt and proceeds received in any form, with the value of any non-cash proceeds being equal to the Fair

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<sup>2</sup> NTD: Calculation of Net Proceeds and associated definitions to be discussed between the business parties.

Market Value of such proceeds; provided that the assumption of liabilities (other than funded debt) shall not constitute Sales Proceeds.

2.46 “Sales Process” means the process pursuant to which the Company Group is exploring potential sales of assets or equity interests, as set forth in the *Debtors’ Motion for Entry of (I) an Order (A) Establishing Bidding Procedures, (B) Approving the Form and Manner of Notice Related Thereto, (C) Approving Bid Protections, (D) Approving Assumption and Assignment Procedures, (E) Scheduling an Auction and a Sale Hearing, and (F) Granting Related Relief and (II) an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* Docket No. 514, including, without limitation, (a) the sale of assets or equity interests already covered by such motion, and (b) a sale of all or substantially all of, or any portion of, the assets or equity interests of the Company Group.

2.47 “Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity, a majority of the limited liability company, partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing director or general partner of such limited liability company, partnership, association or other business entity.

2.48 “Tax Claim Proceeds” means the value of the aggregate proceeds received by the Company Group on or prior to a Measurement Date by PES Holdings and Philadelphia Energy Solutions Refining and Marketing, LLC or its Creditors in connection with the Tax Refund Claims, including, but not limited to those proceeds received pursuant to any sale of participation rights in the Tax Refund Claims recoveries and recoveries on the Tax Refund Claims generally.

2.49 “Tax Refund Claims” means any and all claims for, and/or any other rights with respect to (including (without limitation) refunds of, or credits against or with respect to), tax credits arising due to the butane/gasoline mixture and/or the propane/butane mixture Federal excise taxes paid by PES Holdings and Philadelphia Energy Solutions Refining and Marketing, LLC or its subsidiaries, with respect to tax years 2014-2017 (whether paid on a quarterly or annual basis), and any accrued interest in respect thereof as allowed by law.



## ARTICLE III

### ADMINISTRATION

3.1 General. The Plan shall be administered by the Board. Subject to the provisions of the Plan, the Board shall be authorized to (a) select Participants, (b) determine the Bonus Award granted to Participants under the Plan, (c) interpret the Plan, and (d) establish such administrative measures, and make such other determinations, for carrying out the Plan as it may deem appropriate. Decisions of the Board on all matters relating to the Plan shall be in the Board's sole discretion and shall be conclusive and binding upon the Participants, the Company Group and all other Persons to whom rights to receive payments hereunder have been transferred in accordance with Section 5.1 hereof. The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with applicable federal and state laws and rules and regulations promulgated pursuant thereto. Determinations made by the Board under the Plan need not be uniform and may be made selectively among eligible individuals under the Plan, whether or not such individuals are similarly situated.

3.2 Plan Expenses. The expenses of the Plan shall be borne by the Company Group.

3.3 Unfunded Arrangement. Except as otherwise set forth herein, the Company shall not be required to establish any special or separate fund or make any other segregation of assets to assume the payment of any Bonus Amount or the POR Confirmation Success Fee under the Plan.

3.4 Delegation. The Board may, to the extent permissible by law, delegate any of its authority hereunder to such Persons as it deems appropriate.

## ARTICLE IV

### PARTICIPATION AND PAYMENT

4.1 Participation. Participation in the Plan shall be limited to those Participants set forth on Exhibit A or such other Participants selected by the Board from time to time. Each Participant will receive a participation letter substantially in the form attached hereto as Exhibit B (the "Participation Agreement") notifying the Participant of his or her Bonus Award under this Plan, and the Participation Agreements shall constitute contractual obligations of the Company Group.

4.2 Bonus Awards. The Participants and each Participant's Bonus Award are set forth on Exhibit A. A Participant's right to such Participant's Bonus Award will be forfeited by a Participant upon such Participant's termination of employment or other service by the Company Group for Cause or by the Participant without Good Reason; provided, that, for purposes of calculating any "Bonus Amount" for any other Participant, any forfeited Bonus Award shall continue to be included in the calculation of the Bonus Amounts payable under this Plan after any termination or resignation of such Participant's employment to the extent the Board has not reallocated such Participant's Bonus Award (in whole or in part) to other Participants. The Board may amend Exhibit A to reallocate any forfeited Bonus Award to additional Participants added by the Board or amongst the other existing Participants.

4.3 Determination of Bonus Pool. The amount of the Bonus Pool and each Participant's Bonus Amount shall be determined by the Board as soon as practicable following each applicable Measurement Date, but in any event not more than thirty (30) days following each applicable Measurement Date. For the avoidance of doubt, if incremental Net Proceeds or the Bonus Pool are negative for an applicable Measurement Period (a "Net Proceeds Shortfall"), the Bonus Pool for such Measurement Period shall be \$0 and any Net Proceeds Shortfall shall be carried forward to the next Measurement Date and subtracted from the Bonus Pool until any Net Proceeds Shortfall has been extinguished. Any unallocated portion of the Bonus Pool shall be forfeited to the Company Group for distribution to the Creditors.

4.4 Payment of POR Confirmation Success Fee. Subject to Section 4.5, a Participant's portion of the POR Confirmation Success Fee shall become earned and payable if (a) the confirmation of the Plan of Reorganization occurs within the fifteen (15) month period following the Petition Date and (b) Emergence occurs, and shall be paid within thirty (30) days following Emergence (the "POR Payment Date"). The portion of the POR Confirmation Success Fee payable to a Participant shall be determined by multiplying the POR Confirmation Success Fee by such Participant's Bonus Award as set forth on Exhibit A, provided that, for the avoidance of doubt, the payment of any portion of the POR Confirmation Success Fee shall not be contingent on Net Proceeds. Following the POR Payment Date, any unallocated portion of the POR Confirmation Success Fee shall be forfeited to the Company Group or for distribution to the Creditors. The POR Confirmation Success Fee shall be payable only one time, if at all.

4.5 Service Requirement. Subject to Section 4.7, payment of any Bonus Amount or the POR Confirmation Success Fee to a Participant under the Plan shall be conditioned upon such Participant's continued employment or service with a member of the Company Group through the date on which such amount is paid.

4.6 Payment Timing and Form of Bonus Amount.

(a) Payment of Bonus Amounts from the Bonus Pool. Subject to the provisions of Section 4.5 and 4.7 hereof, a Participant's first Bonus Amount will be paid within forty-five (45) days after the Measurement Date on which Net Proceeds received by the Company Group exceed the Initial Net Proceeds Hurdle (such date, the "Initial Distribution Date"), and each additional Bonus Amount, if any, will be paid within forty-five (45) days after each subsequent Measurement Date following the Initial Distribution Date.

(b) Participant Acknowledgement upon Payment of Bonus Amount. Upon acceptance of payment of any Bonus Amount payable to a Participant under the Plan, such Participant shall be deemed to have (i) accepted all aspects of the calculation of the applicable Bonus Pool and applicable Bonus Amount, and (ii) unconditionally released and discharged the Company and any and all of the Company's parent companies, partners, Subsidiaries, Affiliates, successors and assigns and any and all of its and their past and/or present officers, directors, partners, agents, employees and representatives from any and all claims in connection with, or in any manner related to or arising under, the Plan with respect to such Bonus Amount, including the determination of such Bonus Amount and any other matter associated therewith.



**4.7 Termination by Company without Cause, by the Participant for Good Reason or due to the Participant's death or Disability.**

(a) **Generally.** Upon termination of a Participant's employment or service with the Company Group by the Company Group without Cause or by the Participant for Good Reason (each, a "**Qualifying Termination**"), the Participant will, subject to his or her execution and non-revocation of a general release of claims substantially in the form attached hereto as **Exhibit C**, (i) receive any Bonus Amount that has not yet been paid to the Participant, which will be paid at the same time as Bonus Awards are paid to other Participants, (ii) continue to be eligible to earn Bonus Amounts in respect of any Net Proceeds generated following such Qualifying Termination, determined based on the Participant's Bonus Award (the payment(s) described in clause (ii) hereof, the "**Post-Termination Bonus Amounts**") and (iii) continue to be eligible to earn his or her applicable portion of the POR Confirmation Success Fee. For the avoidance of doubt, except as provided in **Section 4.7(b)** below, upon any termination of a Participant's employment or other service with the Company Group other than a Qualifying Termination, the Participant shall immediately forfeit for no consideration any and all rights to receive additional payments under this Plan, including without limitation, any right to any Bonus Amount or the POR Confirmation Success Fee.

(b) **Death or Disability.** If a Participant's employment (or other service) is terminated by reason of his or her death or Disability during the Term, the Participant (or his or her beneficiary or estate, as applicable) will be paid the Bonus Amount that would otherwise be payable to the Participant if the Participant remained employed through the date on which any Bonus Amount with respect to the next Measurement Date following his or her death or Disability shall become payable, which shall be paid within forty-five (45) days following such Measurement Date.

(c) **Payment Timing for Post-Termination Bonus Amounts and POR Confirmation Success Fee.** All Post-Termination Bonus Amounts, if any, will be paid to a Participant as follows: (i) any Post-Termination Bonus Amounts earned prior to the five (5)-year anniversary of the Qualifying Termination shall be paid to the applicable Participant on the five (5)-year anniversary of the Qualifying Termination, and (ii) any Post-Termination Bonus Amounts earned following the five (5)-year anniversary of the Qualifying Termination but prior to the ten (10)-year anniversary of the Qualifying Termination shall be paid to the applicable Participant on the ten (10)-year anniversary of the Qualifying Termination, or (iii) if earlier, upon a termination of this Plan in accordance with Code Section 409A, in each case, to the extent a Participant has earned any Post-Termination Bonus Amounts that are unpaid as of the date of such events. For any Participant who experiences a Qualifying Termination, the POR Confirmation Success Fee, if any, will be paid to such Participant when the POR Confirmation Success Fee would have otherwise been paid had such Participant's employment (or service) continued.

## **ARTICLE V**

### **MISCELLANEOUS**

**5.1 Nontransferability.** No rights to receive payment under the Plan may be transferred other than by will or the laws of descent and distribution. Any transfer or attempted transfer of a

right to receive payment under the Plan contrary to this Section 5.1 hereof shall be void. In case of an attempted transfer by a Participant of a right to receive payment pursuant to the Plan contrary to this Section 5.1 hereof, the Board may in its sole discretion disregard such transfer.

5.2 Rights of Participants. Nothing in the Plan shall interfere with or limit in any way any right of a member of the Company Group to terminate any Participant's employment or other service at any time and for any reason (or no reason), nor confer upon any Participant any right to continued service with the Company Group for any period of time or to continue such Participant's present (or any other) rate of compensation. No employee of the Company Group shall have a right to be selected as a Participant.

5.3 Payments; Withholding Taxes. Payment of amounts due under the Plan shall be provided to Participant in the same manner as Participant receives his or her regular paycheck or by mail at the last known address of Participant in the possession of the Company Group, at the discretion of the Board. The Company Group shall be entitled, if necessary or desirable, to withhold from any amount due and payable by the Company Group to any Participant (or secure payment from such Participant in lieu of withholding) the amount of any withholding or other tax due from the Company Group with respect to any amount payable to such Participant under the Plan.

5.4 Amendment and Termination of the Plan. The Board may suspend or terminate the Plan or any portion thereof at any time and may amend it from time to time in such respects as the Board may deem advisable; provided, however, that, unless otherwise required by law, the rights of a Participant with respect to Bonus Award or allocable portion of the POR Confirmation Success Fee granted prior to such amendment, suspension or termination, may not be impaired without the consent of such Participant.

5.5 Severability. Whenever possible, each provision of the Plan shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Plan is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Plan.

5.6 Titles and Headings. The headings and titles used in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

5.7 Indemnification. In addition to such other rights of indemnification as they may have as members of the Board, the members of the Board shall be indemnified by the Company Group, jointly and severally, against all costs and expenses reasonably incurred by them in connection with any action, suit or proceeding to which they or any of them may be party by reason of any action taken or failure to act under or in connection with the Plan or any rights granted thereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding; provided that any such Board member shall be entitled to the indemnification rights set forth in this Section 5.7 hereof only if such member has acted in good faith and in a manner that such member reasonably believed to be in or not opposed to the best interests of the Company Group and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such conduct was unlawful; and provided,

further, that upon the institution of any such action, suit or proceeding, a Board member shall give the Company written notice thereof and an opportunity, at its own expense, to handle and defend the same before such Board member undertakes to handle and defend it on such Board member's own behalf. Any officer or employee of the Company Group acting at the direction or on behalf of the Board or its delegate shall not be personally liable for any action or determination taken or made in good faith with respect to the Plan, and shall, to the extent permitted by law, be fully indemnified and protected by the Company Group, jointly and severally, with respect to any such action or determination.

5.8 Governing Law. The Plan shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law provisions that might otherwise refer construction or interpretation of the Plan to the substantive law of another jurisdiction. Any Persons who now are or shall subsequently become parties to the Plan shall be deemed to consent to this provision.

5.9 Code Section 409A. Although the Company makes no guarantee with respect to the tax treatment of payments hereunder and shall not be responsible in any event with regard to non-compliance with Code Section 409A, the Plan is intended to either comply with, or be exempt from, the requirements of Code Section 409A. To the extent that the Plan is not exempt from the requirements of Code Section 409A, the Plan is intended to comply with the requirements of Code Section 409A and shall be limited, construed and interpreted in accordance with such intent. Accordingly, the Company reserves the right to amend the provisions of the Plan at any time and in any manner without the consent of Participants solely to comply with the requirements of Code Section 409A and to avoid the imposition of the additional tax, interest or income inclusion under Code Section 409A on any payment to be made hereunder. For purposes of Code Section 409A, each Participant's right to receive any payments under this Plan shall be treated as a right to receive a series of separate and distinct payments. A termination of employment shall not be deemed to have occurred for purposes of any provision of this Plan providing for the payment of any amounts or benefits upon or following a termination of employment or service unless such termination is also a "separation from service" within the meaning of Code Section 409A and, for purposes of any such provision of this Plan, references to a "termination," "termination of employment" or like terms shall mean "separation from service." **Notwithstanding the foregoing, in no event whatsoever shall the Company Group be liable for any additional tax, interest, income inclusion or other penalty that may be imposed on a Participant by Code Section 409A or for damages for failing to comply with Code Section 409A. The Company makes no representation that the Plan complies with Code Section 409A and Participants should seek independent legal and tax advice as to the potential tax consequences, including under Code Section 409A, of participating in this Plan. Each Participant agrees to release and hold harmless the Company Group in respect of any issues or violations that may arise under Code Section 409A.**

5.10 Assignment of Plan to Remaining Entity. Upon Emergence, the Plan shall be automatically assigned by the Company to the Remaining Entity.

\* \* \*

**Exhibit A**  
**Participants and Bonus Awards**

<u>Bonus Award by Participant</u>							
Mark Smith	Mark Cox	Rachel Celiberti	Anthony Lagreca	John McShane	Stephanie Eggert	Dan Statile	Mark Brandon
27%	23%	18%	14%	6%	4%	4%	4%

**Exhibit B**  
**Participation Agreement**

TO: [NAME]

FROM: PES Holdings, LLC

DATE: [DATE], 2020

RE: Bonus Award under the PES Holdings, LLC 2020 Key Employee Incentive Plan

We are pleased to advise you that you will be eligible to receive a Bonus Award payment and payment of a portion of the POR Confirmation Success Fee pursuant to the PES Holdings, LLC (the “*Company*”) 2020 Key Employee Incentive Plan (the “*Plan*”). Your Bonus Award and allocated portion of the POR Confirmation Success Fee is set forth on Exhibit A of the Plan, as may be modified pursuant to Section 4.2 of the Plan, and will be earned (or not earned) as set forth in the Plan and subject to the terms and conditions of the Plan.

This Participation Agreement shall be, in all respects, subject to the terms and conditions of the Plan. A copy of the Plan as in effect of the date hereof has been furnished to you and you agree to be bound by the terms and conditions of the Plan and this Participation Agreement. In the event of any conflict between the terms and conditions of this Participation Agreement and the Plan, the terms and conditions of the Plan shall control.

We greatly appreciate your contributions to the Company and look forward to working together with you towards the Company’s future successes. If you have any questions regarding this Participation Agreement, please contact the undersigned.

**PES HOLDINGS, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit C**  
**Release Agreement**

I, \_\_\_\_\_, in consideration of and subject to the performance by [Remaining Entity] (together with its subsidiaries, the “Company”), of its obligations under the PES Holdings, LLC 2020 Key Employee Incentive Plan (the “Plan”), which plan shall be effective as of [\_\_\_\_], 2020, do hereby release and forever discharge as of the date hereof the Company and its respective affiliates and all present, former and future managers, directors, officers, employees, successors and assigns of the Company and its affiliates and direct or indirect owners (collectively, the “Released Parties”) to the extent provided below (this “General Release”). The Released Parties are intended to be third-party beneficiaries of this General Release, and this General Release may be enforced by each of them in accordance with the terms hereof in respect of the rights granted to such Released Parties hereunder. Terms used herein but not otherwise defined shall have the meanings given to them in the Plan.

My employment or service with the Company and its affiliates terminated as of [\_\_\_\_], 201[ ], and I hereby resign from any position as an officer, member of the board of managers or directors (as applicable) or fiduciary of the Company or its affiliates (or reaffirm any such resignation that may have already occurred). I understand that any payments or benefits paid or granted to me under Section 4.7 of the Plan represent, in part, consideration for signing this General Release and are not salary, wages or benefits to which I was already entitled. I understand and agree that I will not receive certain of the payments specified in Section 4.7 of the Plan unless I execute this General Release and do not revoke this General Release within the time period permitted hereafter. Such payments and benefits will not be considered compensation for purposes of any employee benefit plan, program, policy or arrangement maintained or hereafter established by the Company or its affiliates.

Except as provided in paragraphs 5 and 6 below, I knowingly and voluntarily (for myself, my heirs, executors, administrators and assigns) release and forever discharge the Company and the other Released Parties from any and all claims, suits, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys’ fees, or liabilities of any nature whatsoever in law and in equity, both past and present (through the date that this General Release becomes effective and enforceable) and whether known or unknown, suspected, or claimed against the Company or any of the Released Parties which I, my spouse, or any of my heirs, executors, administrators or assigns, may have, which arise out of or are connected with my employment with, service to, or my separation or termination from, the Company (including, but not limited to, any allegation, claim or violation, arising under: Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967, as amended (including the Older Workers Benefit Protection Act); the Equal Pay Act of 1963, as amended; the Americans with Disabilities Act of 1990; the Family and Medical Leave Act of 1993; the Worker Adjustment Retraining and Notification Act; the Executive Retirement Income Security Act of 1974; any applicable Executive Order Programs; the Fair Labor Standards Act; or their state or local counterparts; or under any other federal, state or local civil or human rights law, or under any other local, state, or federal law, regulation or ordinance; or under any public policy, contract or tort, or under common law; or arising under any policies, practices or procedures of the Company; or any claim for wrongful discharge, breach of contract, infliction of

emotional distress, defamation; or any claim for costs, fees, or other expenses, including attorneys' fees incurred in these matters) (all of the foregoing collectively referred to herein as the "Claims").

I represent that I have made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by paragraph 2 above.

I agree that this General Release does not waive or release any rights or claims that I may have under the Age Discrimination in Employment Act of 1967 which arise after the date I execute this General Release. I acknowledge and agree that my separation from employment with or service to the Company in compliance with the terms of the Plan shall not serve as the basis for any claim or action (including, without limitation, any claim under the Age Discrimination in Employment Act of 1967).

I agree that I hereby waive all rights to sue or obtain equitable, remedial or punitive relief from any or all Released Parties of any kind whatsoever in respect of any Claim, including, without limitation, reinstatement, back pay, front pay, and any form of injunctive relief. Notwithstanding the above, I further acknowledge that I am not waiving and am not being required to waive any right that cannot be waived under law, including the right to file an administrative charge or participate in an administrative investigation or proceeding; provided, however, that I disclaim and waive any right to share or participate in any monetary award resulting from the prosecution of such charge or investigation or proceeding. Additionally, I am not waiving (i) any right to any Bonus Amount, any allocable portion of the POR Confirmation Success Fee or any Post-Termination Bonus Amounts to which I am entitled under the Plan, (ii) any claim relating to directors' and officers' liability insurance coverage, employment practices liability insurance coverage, professional liability coverage or any right of indemnification or advancement of legal fees under the Company's organizational documents, written agreement or otherwise, (iii) any claim for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law, (iv) any claim for workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company, or (v) my rights as an equity or security holder in the Company or its affiliates.

In signing this General Release, I acknowledge and intend that it shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied. I expressly consent that this General Release shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected Claims (notwithstanding any state or local statute that expressly limits the effectiveness of a general release of unknown, unsuspected and unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. I acknowledge and agree that this waiver is an essential and material term of this General Release and that without such waiver the Company would not have agreed to the terms of the Plan. I further agree that in the event I should bring a Claim seeking damages against the Company, or in the event I should seek to recover against the Company in any Claim brought by a governmental agency on my behalf, this General Release shall serve as a complete defense to such Claims to the maximum extent permitted by law. I further agree that I am not aware of any pending claim of the type described in paragraph 2 above as of the execution of this General Release.

I agree that neither this General Release, nor the furnishing of the consideration for this General Release, shall be deemed or construed at any time to be an admission by the Company, any Released Party or myself of any improper or unlawful conduct.

I agree that if I violate this General Release by suing the Company or the other Released Parties, I will pay all costs and expenses of defending against the suit incurred by the Released Parties, including reasonable attorneys' fees.

I agree that this General Release is confidential and agree not to disclose any information regarding the terms of this General Release, except to my immediate family and any tax, legal or other counsel I have consulted regarding the meaning or effect hereof or as required by law, and I will instruct each of the foregoing not to disclose the same to anyone.

Notwithstanding anything in this General Release, this General Release does not prevent me from communicating directly with and providing information, including documents, not otherwise protected from disclosure by any applicable law or privilege to the Securities and Exchange Commission (the "SEC"), any other federal, state or local governmental agency or commission ("Government Agency") or self-regulatory organization regarding possible legal violations, without disclosure to the Company. The Company may not retaliate against me for any of these activities. Further, nothing in this General Release precludes me from filing a charge of discrimination with the Equal Employment Opportunity Commission or a like charge or complaint with a state or local fair employment practice agency. However, once this General Release becomes effective, I may not receive a monetary award or any other form of personal relief from the Company or any of the other Released Parties in connection with any such charge or complaint that I filed or is filed on my behalf.

I represent that I am not aware of any claim by me other than the claims that are released by this General Release.

Notwithstanding anything in this General Release to the contrary, this General Release shall not relinquish, diminish, or in any way affect any rights or claims arising out of any breach by the Company or by any Released Party of the Plan after the date hereof.

Whenever possible, each provision of this General Release shall be interpreted in, such manner as to be effective and valid under applicable law, but if any provision of this General Release is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this General Release shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

BY SIGNING THIS GENERAL RELEASE, I REPRESENT AND AGREE THAT:

- (i) I HAVE READ IT CAREFULLY;



- (ii) I UNDERSTAND ALL OF ITS TERMS AND KNOW THAT I AM GIVING UP IMPORTANT RIGHTS, INCLUDING BUT NOT LIMITED TO, RIGHTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; THE EQUAL PAY ACT OF 1963, THE AMERICANS WITH DISABILITIES ACT OF 1990; AND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED;
- (iii) I VOLUNTARILY CONSENT TO EVERYTHING IN IT;
- (iv) I HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY BEFORE EXECUTING IT AND I HAVE DONE SO OR, AFTER CAREFUL READING AND CONSIDERATION, I HAVE CHOSEN NOT TO DO SO OF MY OWN VOLITION;
- (v) I HAVE HAD AT LEAST [21][45] DAYS FROM THE DATE OF MY RECEIPT OF THIS RELEASE TO CONSIDER IT, AND THE CHANGES MADE SINCE MY RECEIPT OF THIS RELEASE ARE NOT MATERIAL OR WERE MADE AT MY REQUEST AND WILL NOT RESTART THE REQUIRED [21][45]-DAY PERIOD;
- (vi) I UNDERSTAND THAT I HAVE SEVEN (7) DAYS AFTER THE EXECUTION OF THIS RELEASE TO REVOKE IT AND THAT THIS RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THE REVOCATION PERIOD HAS EXPIRED;
- (vii) I HAVE SIGNED THIS GENERAL RELEASE KNOWINGLY AND VOLUNTARILY AND WITH THE ADVICE OF ANY COUNSEL RETAINED TO ADVISE ME WITH RESPECT TO IT; AND
- (viii) I AGREE THAT THE PROVISIONS OF THIS GENERAL RELEASE MAY NOT BE AMENDED, WAIVED, CHANGED OR MODIFIED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY AND BY ME.

SIGNED:\_\_\_\_\_

DATED:\_\_\_\_\_

**EXHIBIT D**

**Notice of Sale Restructuring and Successful Bid**

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

---

In re:	)	
	)	Chapter 11
	)	
PES HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-11626 (KG)
	)	
Debtors.	)	(Jointly Administered)
	)	

---

**NOTICE OF SALE RESTRUCTURING AND SUCCESSFUL BIDDER**

---

**PLEASE TAKE NOTICE** that, on July 21, 2019, each of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed a petition with this Court under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

**PLEASE TAKE FURTHER NOTICE** that, on November 14, 2019, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (A) Establishing Bidding Procedures, (B) Approving Bid Protections, and (C) Granting Related Relief* [Docket No. 583] (the “Bidding Procedures Order”), authorizing the Debtors, *inter alia*, to solicit and select the highest or otherwise best offer(s) for the sale (the “Sale”) of all of the equity interests in Debtor PES Holdings, LLC (the “Interests”) or some or all of the Debtors’ assets.<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on January 17, 2020, pursuant to the Bidding Procedures Order, the Debtors conducted the Auction with respect to the Interests at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022.

**PLEASE TAKE FURTHER NOTICE** that, upon the conclusion of the Auction, the Debtors, in the exercise of their reasonable, good-faith business judgement, and in consultation with the Consultation Parties, have selected (a) HRP Philadelphia Holdings, LLC as the Winning Bidder (the “Purchaser”), who shall be the “Purchaser” as defined in the Plan, and (b) Industrial Realty Group, LLC as the Back-Up Bidder.

**PLEASE TAKE FURTHER NOTICE** that, the Debtors PES Ultimate Holdings, LLC and PES Intermediate, LLC (collectively, the “Sellers”), HRP Philadelphia Holdings (as Purchaser), and PES Holdings, LLC, entered into that certain purchase and sale agreement

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order or the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the “Plan”), as applicable.

the “Purchase Agreement”) to effectuate the Sale in the terms set forth in the Purchase Agreement, which shall be the “Purchase Agreement” as defined in the Plan and filed contemporaneously herewith in accordance with the Plan.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Plan, and with the consent of the Required Term Loan Lenders and Required DIP Lenders, the Debtors have determined to effectuate Sale Restructuring and consummate the Sale in accordance with the Plan.

**PLEASE TAKE FURTHER NOTICE** that, the Sale will be consummated as part of the Plan. In accordance with the *Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 671] (the “Disclosure Statement Order”), the Confirmation Hearing to consider approval of the Plan will be held before the Honorable Kevin Gross, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801, on **February 6, 2020, at 9:00 a.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that the Debtors reserve the right to withdraw this Notice of Sale Restructuring and Successful Bidder at any time prior to confirmation of the Plan.

**PLEASE TAKE FURTHER NOTICE** that, this Notice of Sale Restructuring and Successful Bidder is subject to the terms and conditions of the Bidding Procedures Order, and the Debtors encourage parties in interest to review such documents in their entirety. Parties interested in receiving more information regarding the Sale may make a request to Omni Management Group, Inc., the Debtors’ notice and claims agent, by calling (866) 989-6147 (toll free) or emailing PES@omniagnt.com.

**PLEASE TAKE FURTHER NOTICE** that, copies of the Bidding Procedures Order, the Plan, this Notice of Sale Restructuring and Successful Bidder, and any other related documents can be obtained through the Court’s website at <https://ecf.deb.uscourts.gov>, referencing Case No. 19-11626 (KG), and on the restructuring website of the Debtors, at <http://omnimgt.com/PESHoldings2019>.

*[Remainder of page intentionally left blank]*

Dated: January 22, 2020  
Wilmington, Delaware

*/s/ Laura Davis Jones*

---

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*Co-Counsel to the Debtors and Debtors in Possession*

**EXHIBIT E**

**Purchase Agreement**

**PURCHASE AND SALE AGREEMENT**

**by and among**

**HRP PHILADELPHIA HOLDINGS, LLC,**

**as Purchaser,**

**PES ULTIMATE HOLDINGS, LLC,**

**and**

**PES INTERMEDIATE, LLC,**

**as Sellers,**

**and**

**PES HOLDINGS, LLC,**

**as the Company**

**Dated as of January 17, 2020**

This Auction Bid is expressly subject to, on or before January 18, 2020, Purchaser being designated as the Winning Bidder at the Auction. If such condition does not occur, (i) then this Purchase and Sale Agreement shall automatically terminate without further notice, (ii) Purchaser shall not be bound to the terms of this Purchase and Sale Agreement, at the Auction or otherwise and (iii) Sellers and the Company shall return Purchaser's escrow deposit to Purchaser by January 22, 2020. Further, Purchaser does not agree to becoming a Back-up Bidder at the Auction.

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## **PURCHASE AND SALE AGREEMENT**

This PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made as of January 17, 2020 (the “**Agreement Date**”) by and among HRP Philadelphia Holdings, LLC, a Delaware limited liability company (“**Purchaser**”), on the one hand, and PES Ultimate Holdings, LLC, a Delaware limited liability company (“**PES Ultimate Holdings**”), PES Intermediate, LLC, a Delaware limited liability company (“**PES Intermediate**”, and together with PES Ultimate Holdings, collectively, “**Sellers**”), and PES Holdings, LLC, a Delaware limited liability company (the “**Company**”), on the other hand. Each of Purchaser, Sellers and the Company are sometimes referred to herein collectively as the “**Parties**”, and each as a “**Party**”.

### WITNESSETH:

WHEREAS, on July 21, 2019, the Company, Sellers, North Yard GP, LLC, a Delaware limited liability company, North Yard Logistics, L.P., a Delaware limited partnership, PES Administrative Services, LLC, a Delaware limited liability company, PES Energy Inc., a Delaware corporation (“**PEI**”), and Philadelphia Energy Solutions Refining and Marketing LLC, a Delaware limited liability company (“**PESRM**”), filed voluntary petitions for relief (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

WHEREAS, PES Ultimate Holdings owns 100% of the membership interests of PES Intermediate;

WHEREAS, PES Ultimate Holdings owns 99.99% of the membership interests of the Company and PES Intermediate owns the remaining 0.01% of the membership interests of the Company (such 100% of the membership interests of the Company, including all beneficial, voting, management, economic and other interests in the Company, collectively, the “**Interests**”);

WHEREAS, the Company and the Acquired Subsidiaries conduct certain businesses, including a refining business which is comprised primarily of (i) the operation of two interconnected refineries located in Philadelphia, Pennsylvania, (ii) the operation of certain refined products terminals which are owned or leased by the Company, and (iii) the wholesale business where the Company and the Acquired Subsidiaries sell certain products, including products of its refining operations (collectively, such businesses as currently conducted, the “**Business**”);

WHEREAS, in connection with the Chapter 11 Cases, Sellers desire to sell, and Purchaser has conducted an independent investigation of the Interests and desires to purchase, the Interests, on the terms and subject to the conditions set forth in this Agreement and pursuant to the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and Its Debtor Affiliates* Case No. 19-11626 (KG); Docket No. 661, as filed in the Chapter 11 Cases (the “**Plan**”), all on the terms and subject to the conditions set forth in this Agreement, the Plan, and the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code (the “**Confirmation Order**”); and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Confirmation Order to be entered by the Bankruptcy Court and applicable provisions of the Bankruptcy Code.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

## ARTICLE 1 DEFINITIONS

SECTION 1.01 **Definitions.** As used in this Agreement, the following defined terms have the meanings indicated below:

**“Acquired Subsidiaries”** means the subsidiaries of the Company as of the Closing Date, as more particularly set forth on Section 4.05(a) of the Seller Disclosure Schedule.

**“Action or Proceeding”** means any ongoing action, litigation, suit, proceeding, arbitration or Governmental or Regulatory Authority investigation.

**“Affiliate”** means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by Contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person; *provided, however*, that none of PEI, Carlyle PES, L.L.C., a Delaware limited liability company, PES Equity Holdings, LLC, a Delaware limited liability company, Halcyon Loan Management LLC, a Delaware limited liability company, and Credit Suisse Asset Management LLC, a Delaware limited liability company, or any of their respective Affiliates, or any of PES Ultimate Holdings’ other equityholders or their respective Affiliates (in each case, other than Sellers, the Company and the Acquired Subsidiaries) or managed funds or accounts, or any of the Sellers’, the Company’s or any Acquired Subsidiary’s creditors shall be deemed to be Affiliates of Sellers, the Company or the Acquired Subsidiaries (such Persons in this proviso, the **“Excluded Affiliates”**).

**“Agreed Remaining Assets”** has the meaning ascribed thereto in Section 2.03(b).

**“Agreement”** has the meaning ascribed thereto in the preamble to this Agreement.

**“Allocation Methodology”** has the meaning ascribed thereto in Section 8.01(i).

**“Applicable Losses”** means the amount of any monetary Losses that Purchaser would incur after Closing as a result of a Non-Fundamental Representations Non-MAE Failure (or the facts or circumstances giving rise thereto).

**“Assets”** means, with respect to a Person, all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible and wherever situated), including the goodwill related thereto, operated, owned or leased by such Person, and in the case of the Company and the Acquired Subsidiaries only, each of the foregoing assets and properties other than the Excluded Assets.

**“Assumed Contracts”** has the meaning ascribed thereto in Section 4.06(b).

**“Bankruptcy Code”** has the meaning ascribed thereto in the recitals of this Agreement.

**“Bankruptcy Court”** has the meaning ascribed thereto in the recitals of this Agreement.

**“Base Purchase Price”** has the meaning ascribed thereto in Section 2.03(a).

**“Bidding Procedures”** means the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order Docket No. 583 entered in these Chapter 11 Cases by the Bankruptcy Court on November 14, 2019.

**“Buchanan”** has the meaning ascribed thereto in Section 12.18.

**“Business”** has the meaning ascribed thereto in the recitals of this Agreement.

**“Business Day”** means a day other than Saturday, Sunday or any day on which banks located in New York, New York are authorized or obligated to close or are otherwise unable to open.

**“CBA”** has the meaning ascribed thereto in Section 4.12(a).

**“Certificate of Formation”** means the certificate of formation of the Company filed with the Secretary of State of the State of Delaware on July 18, 2012.

**“Chapter 11 Cases”** has the meaning ascribed thereto in the recitals of this Agreement.

**“Closing”** has the meaning ascribed thereto in Section 2.04.

**“Closing Date”** means (a) the second Business Day or (b) such other date as Purchaser and Sellers may mutually agree in writing, in each case following the date on which the last of the conditions set forth in Article 9 and Article 10 are satisfied or waived by Purchaser or Sellers, as the case may be (except for such conditions that by their nature can only be satisfied at the Closing and subject to the satisfaction or waiver of such conditions as provided herein).

**“Closing Title Policy”** means an ALTA Owner’s 6-17-06 title insurance policy issued by First American Title Insurance Company pursuant to First American Title Insurance

Commitment File No NCS-992148-CHI2 including a customary non-imputation endorsement and containing no exceptions other than Permitted Liens.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and regulations promulgated thereunder.

“**Code**” means the Internal Revenue Code of 1986, as may be amended, modified, supplemented or replaced from time to time, and the rules and regulations promulgated thereunder.

“**Company**” has the meaning ascribed thereto in the recitals of this Agreement.

“**Company Employee Plan**” means each Employee Plan that is sponsored or maintained by the Company or any Acquired Subsidiary.

“**Company LLC Agreement**” means the Amended & Restated Limited Liability Company Agreement of the Company, dated as of August 7, 2018.

“**Company Material Adverse Effect**” means any circumstance or state of facts that, individually or in the aggregate, (a) has, or would reasonably be expected to have, a material and adverse effect upon the Owned Real Property, including the value or use thereof or Purchaser’s Intended Use, (b) results, or would reasonably be expected to result, in the Company or any Acquired Subsidiary having Liabilities (excluding (A) Liabilities set forth in Section 4.06(a) of the Seller Disclosure Schedule, (B) Liabilities pursuant to Assumed Contracts and (C) any liability accrual required under GAAP arising solely as a result of the shutdown of the refinery facilities and/or the cessation of refinery operations on the Owned Real Property, to the extent such liability is Purchaser’s responsibility under the Facility Turnover Requirements set forth on Exhibit D) in excess of 15% of the Base Purchase Price that will not be discharged in full at or prior to the Closing, (c) results, or would reasonably be expected to result, in there being any material Lien (other than any Transferring Lien) on the Interests, or on the limited liability company interests in any Acquired Subsidiary, that will not be discharged in full at or prior to the Closing, or (d) has, or would reasonably be expected to have, a material adverse effect upon the ability of Sellers to consummate the transactions contemplated hereby or would otherwise prevent the consummation of the transactions contemplated hereby (other than resulting from the action or inaction of Purchaser or any of its Affiliates or Representatives); *provided*, that a “Company Material Adverse Effect” shall not include circumstances or facts to the extent resulting from or arising out of (i) any change in the financial, banking or securities markets or any change in the general international, national or regional economic conditions, including as a result of terrorist activity, acts of war or acts of public enemies; (ii) the announcement or pendency of this Agreement or announcement or pendency of the transactions contemplated hereby, any actions expressly required to be taken pursuant to or in accordance with this Agreement or pursuant to an order of the Bankruptcy Court, the announcement or pendency of the Chapter 11 Cases or the identity of Purchaser or any of its Affiliates as the acquirer of the Interests; (iii) the direct consequences of actions taken with the consent of Purchaser or upon Purchaser’s request; (iv) changes in Law, GAAP or regulatory accounting requirements or changes in the official interpretation thereof; (v) earthquakes, hurricanes, floods

or other natural disasters; or (vi) physical damage to the Owned Real Property as a result of the June 21, 2019 explosion at the Girard Point refinery.

**“Company Organizational Documents”** means collectively the Certificate of Formation, the Company LLC Agreement and the Governance Documents of each of the Acquired Subsidiaries.

**“Company Transaction Documents”** has the meaning ascribed thereto in Section 4.01.

**“Confidential Information”** has the meaning ascribed thereto in Section 12.04(a).

**“Confidentiality Agreement”** means that certain Confidentiality Agreement, dated as of August 21, 2019, by and between PEI and Hilco Redevelopment, LLC, a Delaware limited liability company.

**“Confirmation Order”** has the meaning ascribed thereto in the recitals of this Agreement.

**“Contract”** means any written contract, agreement, lease or license (including any amendments thereto).

**“Data Room”** has the meaning ascribed thereto in Section 1.02.

**“Draft Purchase Price Allocation”** has the meaning ascribed thereto in Section 8.01(i).

**“Employee Plan”** means any “employee benefit plan,” as such term is defined in Section 3(3) of ERISA, whether or not subject to ERISA, and each change in control, retention, severance, bonus, incentive, profit-sharing, retirement, equity or equity-based, deferred compensation, paid time off, health, welfare, material fringe benefits or other material benefit or compensation plan, program, policy, agreement or arrangement, other than a “multiemployer plan” as defined in Section 3(37) of ERISA.

**“Enforceability Limitations”** means, any limitations on enforceability due to the application of (a) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

**“Environmental Claim”** means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, Orders, claims, Liens (excluding Permitted Liens), investigations, Actions or Proceedings or notices of noncompliance or violation by any third party (including any Governmental or Regulatory Authority) alleging liability (including liability for enforcement, investigatory costs, damages, Losses, contribution, indemnification, cost recovery, compensation, injunctive relief, cleanup costs, governmental resource costs, removal costs, remedial costs, natural resources damages, property damages, personal injuries or



penalties) arising out of, based on or resulting from: (a) any violation or alleged violation of, or liability under, any Environmental Law or Environmental Permit or (b) the presence, release or threatened release of, or exposure to, any Hazardous Substances at any location.

**“Environmental Laws”** means Laws relating to pollution or protection of the environment or human or occupational health or safety, including those relating to emissions, discharges or releases of Hazardous Substances into the environment (including ambient air, surface water, groundwater or land) and to the generation, handling, treatment, storage, disposal, or transportation of Hazardous Substances, as enacted prior to and in effect as of the date of this Agreement, including but not limited to common law theories of nuisance, trespass, and negligence.

**“Environmental Permit”** means any Permit required by or from a Governmental or Regulatory Authority under Environmental Law.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as may be amended, modified, supplemented or replaced from time to time.

**“ERISA Affiliate”** means, with respect to any corporation or trade or business, any other corporation or trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included the Company or any Acquired Subsidiary, or that is, or was at the relevant time, a member of the same “controlled group” as the Company or any Acquired Subsidiary pursuant to Section 4001(a)(14) of ERISA.

**“Escrow Account”** means the escrow account for Purchaser’s bid deposit established pursuant to the Bidding Procedures.

**“Escrow Agent”** has the meaning ascribed thereto in Section 2.02.

**“Escrow Amount”** has the meaning ascribed thereto in Section 2.02.

**“Excess Losses”** has the meaning ascribed thereto in Section 9.01(b).

**“Excluded Affiliates”** has the meaning ascribed thereto in the definition of “Affiliate”.

**“Excluded Assets”** means the assets listed on Schedule 1.1(a) of the Seller Disclosure Schedule that are not Agreed Remaining Assets.

**“Final Order”** means an Order (a) which has not been reversed, stayed, enjoined, set aside, annulled or suspended, (b) with respect to which any waiting period prescribed by Law before the transactions contemplated by this Agreement has expired, (c) as to which all conditions to the consummation of such transactions prescribed by Law have been satisfied, (d) as to which the applicable Governmental or Regulatory Authority does not have the Order under reconsideration on its own motion, and (e) as to which no appeal or request for stay of such Order is pending or in effect and the deadline for filing any such appeal or request has passed; *provided* that, for purposes of Section 11.01(b)(i)(B) only, a Confirmation Order may be

deemed a Final Order during the pendency of any appeals period, reconsideration or rehearing, application or request for review, or notice of appeal or other judicial petition for review if such proceedings are not reasonably likely to result in a reversal of such Confirmation Order.

**“Final Purchase Price Allocation”** has the mean ascribed thereto in Section 8.01(g).

**“Flow-Through Tax Return”** means any federal, state, local or non-U.S. Tax Returns that report income with respect to the Company and its Acquired Subsidiaries but with respect to which the direct or indirect beneficial owners of the Company and its Acquired Subsidiaries are required to pay the related Tax (including, for the avoidance of doubt, IRS Form 1065 and any similar state or local Tax form).

**“GAAP”** means generally accepted accounting principles in the United States, consistently applied throughout the specified period.

**“Good Industry Practice”** means any of the practices, methods, standards, procedures and acts engaged in or approved by a significant portion of the oil or natural gas refining, marketing, transmission, transportation, distribution or retail industry during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable business judgment in light of the applicable recommendations and facts known at the time the decision is made, would reasonably have been expected to accomplish the desired result in a manner consistent with good business practices, Law, reliability and safety. **“Good Industry Practice”** is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to include practices, methods or acts that meet the foregoing qualifications.

**“Governance Document”** means, with respect to any Person, (a) the articles of incorporation or organization, certificates of formation and by-laws, the limited partnership agreement, the partnership agreement or the limited liability company agreement, or such other organizational documents of such Person, including those that are required to be registered or kept in the place of incorporation, organization or formation of such Person and that establish the legal personality of such Person and (b) any voting trust, shareholder agreement, voting agreement, pledge agreement, buy-sell agreement, right of first refusal, preemptive right or proxy or other agreement, right, instrument or understanding with respect to any purchase, sale, issuance, transfer, repurchase, redemption or voting of such equity interests, or any other similar governing document with respect to such Person.

**“Governmental or Regulatory Approval”** means any authorization, consent, approval, ruling, tariff, rate, certification, waiver, exemption, filing, variance or Order of, or any notice to or registration by or with, any Governmental or Regulatory Authority or the expiration or termination of any applicable waiting periods.

**“Governmental or Regulatory Authority”** means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission, official, tribunal, court or arbitrator(s) of competent jurisdiction or other instrumentality of the

United States or any state, county, city or other political subdivision or similar governing entity thereof.

**“Hazardous Substance”** means any chemical, material, substance, pollutant, contaminant or waste that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, toxic, or a pollutant or a contaminant under or pursuant to any Environmental Law due to its hazardous or deleterious properties or characteristics, including petroleum or petroleum by-products, derivatives, or other hydrocarbons asbestos or asbestos-containing materials, radioactive materials, urea formaldehyde foam insulation, lead-based paint or polychlorinated biphenyls.

**“Indebtedness”** of any Person means, without duplication, all obligations of such Person (a) for borrowed money, (b) evidenced by notes, bonds, debentures or other debt security, (c) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (d) as lessee under capital leases or finance leases, (e) for any obligations, contingent or otherwise, under acceptance, letters of credit or similar facilities, (f) in connection with financial obligations only, to any equity holder of such Person, (g) under any Support Obligation relating to the obligations described in clauses (a) through (f) above, or (h) for unpaid interest, premiums, make-whole payments, yield maintenance fees, penalties and similar amounts (to the extent such amounts would become payable based on actions taken prior to and as of the Closing) relating to the obligations described in clauses (a) through (g) above.

**“Indemnification Obligations”** has the meaning ascribed thereto in Section 7.03.

**“Indemnified Persons”** has the meaning ascribed thereto in Section 7.03.

**“Indemnity Limit”** means an amount equal to 10% of the Base Purchase Price.

**“Independent Accountant”** means an impartial nationally-recognized firm of independent certified public accountants as mutually agreed in good faith by the Parties.

**“Intellectual Property”** has the meaning ascribed thereto in Section 4.10.

**“Intended Tax Treatment”** has the meaning ascribed thereto in Section 8.01(h).

**“Interests”** has the meaning ascribed thereto in the recitals of this Agreement.

**“IRS”** means the United States Internal Revenue Service.

**“Kirkland & Ellis”** has the meaning ascribed thereto in Section 12.18.

**“Knowledge of Purchaser”** means the actual conscious knowledge of Roberto Perez, Eric Kaup and Jeremy Grey (**“Purchaser Knowledge Individuals”**) and the actual conscious knowledge that such Persons should have had after reasonable investigation.

**“Knowledge of Sellers”** means the actual conscious knowledge of those Persons listed on Section 1.01(c) of the Seller Disclosure Schedule and the actual conscious knowledge that such Persons should have had after reasonable investigation.

**“Law”** or **“Laws”** means all laws, statutes, rules, regulations, ordinances, codes, Orders and other pronouncements having the effect of law of the United States or of any Governmental or Regulatory Authority.

**“Lease”** has the meaning ascribed thereto in Section 4.09(b).

**“Leased Real Property”** has the meaning ascribed thereto in Section 4.09(b).

**“Liabilities”** means, with respect to any Person, all Indebtedness, obligations and other liabilities of such Person (whether absolute, accrued, contingent, fixed, known, matured, un-matured, unknown or otherwise, or whether due or to become due).

**“Liens”** means, with respect to any specified asset, any and all liens, mortgages, charges, hypothecations, claims, encumbrances, options, pledges, preferences, priorities, licenses, easements, covenants, restrictions, preemptive rights, security interests and restrictions on use, voting or transfer thereon.

**“Liquidating Trust”** has the meaning ascribed thereto in the Plan.

**“Loss”** means any and all damages, fines, penalties, deficiencies, liabilities, losses and expenses (including interest, court costs, fees of attorneys, accountants and other experts).

**“Material Permits”** has the meaning ascribed thereto in Section 4.15.

**“McKool Smith”** has the meaning ascribed thereto in Section 12.18.

**“Montana Notice”** has the meaning ascribed thereto in Section 8.01(j).

**“Multiemployer Plan”** has the meaning ascribed thereto in Section 4.12(e).

**“New Holdings”** has the meaning ascribed thereto in the definition of Pre-Closing Restructuring.

**“New Labor Agreement”** has the meaning ascribed thereto in Section 8.02.

**“NGL Agreements”** means (a) the Temporary Access License Agreement dated as of May 7, 2014; (b) the Management Services Agreement on May 7, 2014 and (c) the Installment Sale and Purchase Agreement dated May 7, 2014 and any other agreements relating thereto.

**“Non-Fundamental Representations Non-MAE Failure”** has the meaning ascribed thereto in Section 9.01(a).

**“Non-Party Affiliates”** has the meaning ascribed thereto in Section 12.13(b).

**“Option”** with respect to any Person means any security, right, subscription, warrant, call, option, phantom stock right or other Contract that gives the right to (a) purchase or otherwise receive or be issued any shares of capital stock or other equity interests of such Person, any security of any kind convertible into or exchangeable or exercisable for any shares of capital stock or other equity interests of such Person or (b) receive or exercise any benefits or rights similar to any rights enjoyed by or accruing to the holder of shares of capital stock or other equity interests of such Person, including any rights to participate in the equity or income of such Person or to participate in or direct the election of any directors or officers of such Person or the manner in which any shares of capital stock or other equity interests of such Person are voted.

**“Order”** means any writ, judgment, decree, injunction or award issued, or otherwise put into effect by or under the authority of any court, administrative agency, or other Governmental or Regulatory Authority (in each such case whether preliminary or final).

**“Owned Real Property”** has the meaning ascribed thereto in Section 4.09(a).

**“PaDEP”** has the meaning ascribed thereto in Section 9.11.

**“Partnership Tax Audit Rules”** means Code Sections 6221 through 6241, together with any guidance issued thereunder or successor provisions and any similar provision of state or local tax laws.

**“PEI”** has the meaning ascribed thereto in the recitals of this Agreement.

**“Permits”** means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises, variances, exemptions and similar consents granted by any Governmental or Regulatory Authority.

**“Permitted Liens”** means (a) any Lien for Taxes owed by a Company or an Acquired Subsidiary not yet delinquent, (b) any statutory Lien with respect to a Liability of the Company or an Acquired Subsidiary that is not yet delinquent and is incurred in the ordinary course of business (including mechanics’, materialmen’s, warehousemen’s, repairmen’s, landlord’s, workmen’s, carrier’s and other similar liens), (c) in the case of Real Property, (i) any imperfection of title that individually or, in the aggregate with all other imperfections of title affecting the applicable Real Property in question, would not (x) reasonably be expected to materially detract from the value of the affected property or (y) materially interfere with, as applicable, the Company’s or Acquired Subsidiary’s ability to utilize the affected property for Purchaser’s Intended Use, and (ii) restrictive covenants, building restrictions and zoning restrictions, or other restrictions affecting title to or possession of any of the Real Property that exist generally with respect to properties of a similar character in the jurisdiction in which the Real Property is located and that do not materially detract from the value of the affected property or interfere with the applicable Company’s or Acquired Subsidiary’s ability to utilize the affected property for Purchaser’s Intended Use, (d) in the case of Leased Real Property, any Liens to which the underlying fee or any other interest in the leased premises (or the land on which or the building or structure in which the leased premises may be located) is subject, including rights of the landlord under the Lease and all superior, underlying and ground Leases and renewals, extensions, amendments, modifications or substitutions thereof, (e) Liens created

by Purchaser or its successors and assigns or Liens otherwise expressly consented to by Purchaser in writing after the date hereof, and (f) those Liens set forth on Section 1.01(d) of the Seller Disclosure Schedule.

“**Person**” means any individual, sole proprietorship, corporation, company, voluntary association, partnership, joint venture, trust, enterprise, unincorporated organization, limited liability company, other business or similar entity or Governmental or Regulatory Authority.

“**PESRM**” has the meaning ascribed thereto in the recitals of this Agreement.

“**Plan**” has the meaning ascribed thereto in the recitals of this Agreement.

“**Plan Administrator**” has the meaning ascribed thereto in the Plan.

“**Post-Closing Representation**” has the meaning ascribed thereto in Section 12.18.

“**Pre-Closing Restructuring**” means (i) the formation of a new limited liability company or limited partnership (“**New Holdings**”) by the Sellers, followed by (ii) the contribution of the Interests in the Company by the Sellers to New Holdings in exchange for interests in New Holdings.

“**Pre-Closing Tax Amount**” means an amount (which amount may, for the avoidance of doubt, be positive or negative) equal to (x) the Pre-Paid Tax Amount, *minus* (y) the unpaid Taxes of the Company or any Acquired Subsidiary as of the Closing Date for any taxable period ending on the Closing Date (or the portion of any Straddle Period ending on the Closing Date, calculated in accordance with Section 8.01(d)), solely for jurisdictions in which the Company or such Acquired Subsidiary have historically filed Tax Returns, calculated in accordance with the past practice (including reporting positions, elections and accounting methods) of the Company or such Acquired Subsidiary in preparing Tax Returns and, for purposes of calculating any such Taxes, (i) any Taxes attributable to transactions (other than any transactions contemplated in this Agreement, the Transaction Documents, the Plan, or the Confirmation Order) occurring outside of the ordinary course of business on the Closing Date and after the time of the Closing shall be excluded, (ii) any Taxes attributable to the manner in which the Purchaser finances the transactions contemplated by this Agreement shall be excluded, (iii) any liabilities for accruals or reserves established or required to be established under GAAP for contingent Taxes or with respect to uncertain Tax positions shall be excluded, and (iv) any deferred Tax liabilities and any Tax assets (whether current or deferred other than the Pre-Paid Tax Amount) shall be excluded.

“**Pre-Closing Tax Amount Dispute Notice**” has the meaning ascribed thereto in Section 2.05(c).

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period through the end of the Closing Date.

**“Pre-Paid Tax Amount”** means the amount of any Taxes actually paid by Sellers, the Company or any of the Acquired Subsidiaries prior to the Closing Date for any taxable period beginning after the Closing Date (or the portion of any Straddle Period beginning after the Closing Date, calculated in accordance with the principles set forth in Section 8.01(d)).

**“Proposed Remaining Assets”** has the meaning ascribed thereto in Section 2.03(b).

**“Purchase Price”** has the meaning ascribed thereto in Section 2.03(a).

**“Purchaser”** has the meaning ascribed thereto in the preamble to this Agreement.

**“Purchaser Fundamental Representations”** means the representations and warranties of Purchaser set forth in Section 5.01, Section 5.02, Section 5.03, Section 5.04 and Section 5.08.

**“Purchaser Knowledge Individuals”** has the meaning ascribed thereto in the definition of “Knowledge of Purchaser”.

**“Purchaser Pre-Closing Tax Amount”** has the meaning ascribed thereto in Section 2.03(c).

**“Purchaser Transaction Documents”** has the meaning ascribed thereto in Section 5.01.

**“Purchaser’s Intended Use”** means the redevelopment of the Owned Real Property as a tri-modal industrial park with ancillary commercial uses; *provided* that, for the purposes of this Agreement, “Purchaser’s Intended Use” shall be determined with a reasonable and objective standard.

**“R&W Policy”** has the meaning ascribed thereto in Section 8.09(a).

**“Real Property”** has the meaning ascribed thereto in Section 4.09(b).

**“Remaining Permits”** has the meaning ascribed thereto in Section 4.15.

**“Representatives”** means, as to any Person, its officers, directors, managers, employees, agents, partners, members, stockholders, counsel, accountants, auditors, financial advisors, engineers, consultants, advisors or other representatives.

**“Securities Act”** means the Securities Act of 1933 and the rules and regulations promulgated thereunder, as amended.

**“Seller Disclosure Schedule”** has the meaning ascribed thereto in the introduction to Article 3.

**“Seller Fundamental Representations”** means the representations and warranties of each Seller or the Company set forth in Section 3.01, Section 3.02, Section 3.05,

Section 3.07, Section 4.01, Section 4.02 and the first three sentences of Section 4.05(a) and Section 4.05(b)-(e).

**“Seller Transaction Documents”** has the meaning ascribed thereto in Section 3.01.

**“Sellers”** has the meaning ascribed thereto in the preamble to this Agreement.

**“Sellers Counsel”** has the meaning ascribed thereto in Section 12.18.

**“Sellers Pre-Closing Tax Amount”** has the meaning ascribed thereto in Section 2.03(c).

**“Significant Liabilities”** means Indebtedness of a material nature, obligations of a material nature pursuant to any Contract or Order, uninsured tort liability, Liens on Assets (other than Permitted Liens), Liabilities (other than compliance with Laws or with respect to any Assumed Contracts) that would impede the Purchaser’s Intended Use, and any other Liability that would be required, in accordance with GAAP, to be disclosed on a balance sheet, but excludes any liability accrual required under GAAP arising solely as a result of the shutdown of the refinery facilities and/or the cessation of refinery operations on the Owned Real Property, to the extent such liability is Purchaser’s responsibility under the Facility Turnover Requirements set forth on Exhibit D.

**“Skadden”** has the meaning ascribed thereto in Section 12.18.

**“Solvent”** means when used with respect to any Person or group of Persons on a combined basis, means that, as of any date of determination, (A) the amount of the fair saleable value of the assets of such Person (or group of Persons on a combined basis) will, as of such date, exceed (1) the value of all liabilities of such Person, including contingent and other liabilities, as of such date and (2) the amount that will be required to pay the probable liabilities of such Person (or group of Persons on a combined basis) on its existing debts (including contingent liabilities) as such debts become absolute and matured, (B) such Person (or group of Persons on a combined basis) will not have, as of such date, an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged following such date and (C) such Person (or group of Persons on a combined basis) will be able to timely pay and satisfy its liabilities and other obligations, including contingent and other liabilities, when and as they mature.

**“Specified Assets”** means, collectively, (a) the “Facility” as that term is defined under the NGL Agreements and (b) any property of the Company or of any Acquired Subsidiary subject to the SXL Lien.

**“Straddle Period”** has the meaning ascribed thereto in Section 8.01(d).

**“Support Obligation”** means any letter of credit, guarantee, surety, performance bond, escrow arrangement, cash collateral, security arrangement or other credit support.



**“SXL Lien”** means the secured lien securing certain assets of the Company relating to financing obtained by Sunoco Logistics Partners Operations L.P or any of its Affiliates, including a certain Promissory Note, a copy of which Sellers will deliver to Purchaser promptly after the date hereof for Purchaser’s review and reasonable approval.

**“Tax”** means any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, and similar governmental charges (including any interest, fines, assessments, penalties, deficiency assessments or additions to tax imposed in connection therewith or with respect thereto) including (a) taxes imposed on, or measured by, net income, gross income, franchise, profits or gross receipts, and (b) ad valorem, value added, capital gains, sales, goods and services, use, real or personal property (tangible and intangible), capital stock, license, branch, payroll, withholding, employment, social security (or similar), unemployment, disability, occupational, excise, compensation, utility, severance, production, excise, stamp, registration, occupation, premium, windfall profits, excess profits, fuel, gas import, environmental, transfer and gains, lease, service, service use, alternative or add on minimum, unclaimed property, escheat, and estimated taxes and customs duties, and including any obligation to pay Taxes of others, whether pursuant to Treasury Regulations Section 1.1502-6, as a transferee, successor, by contract, or otherwise.

**“Tax Contest”** has the meaning ascribed thereto in Section 8.01(e).

**“Tax Refund Claims”** means, collectively, those certain claims possessed by PESRM and the Company as of the date hereof for, or other rights with respect to, tax credits arising due to the butane/gasoline mixture or the propane/butane mixture, including refunds of, or credits against or with respect to, federal excise taxes paid by PESRM, with respect to the tax years from 2014 to 2017 (whether paid on a quarterly or annual basis), and any accrued interest as allowed by Law.

**“Tax Return”** means any return, report, information return, declaration, claim for refund, election, disclosure, estimate, or other document, together with all schedules, attachments, amendments and supplements thereto (including all related or supporting information), supplied to or required to be supplied to any Governmental or Regulatory Authority responsible for the administration of Taxes.

**“Taxing Authority”** shall mean any Governmental or Regulatory Authority having or purporting to exercise jurisdiction with respect to any Tax.

**“Termination Date”** has the meaning ascribed thereto in Section 11.01(b)(ii).

**“Threshold”** has the meaning ascribed thereto in Section 9.01(b).

**“Title Company”** means First American Title Insurance Company.

**“Transaction Documents”** means, collectively, this Agreement, the Confidentiality Agreement, the Company Transaction Documents and the Seller Transaction Documents.

“**Transaction Transfer Taxes**” has the meaning ascribed thereto in Section 8.01(a).

“**Transactions**” means the transactions contemplated by this Agreement and the Transaction Documents.

“**Transfer Taxes**” has the meaning ascribed thereto in Section 8.01(a).

“**Transferred Cash**” has the meaning ascribed to such term in Section 2.03(b).

“**Transferring Liens**” has the meaning ascribed thereto in Section 3.05(c).

“**U.S. Dollars**” means the lawful currency of the United States.

“**Union**” has the meaning ascribed thereto in Section 4.12(a).

“**Waiving Parties**” has the meaning ascribed thereto in Section 12.18.

**SECTION 1.02 Certain Principles of Interpretation.** In this Agreement, unless otherwise indicated, all words defined in the singular have the corresponding meaning in the plural and vice versa; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to “writing” include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words “including”, “includes” and “include” shall be deemed to be followed in each instance by the words “without limitation”; the words “shall” and “will” have the same meaning; references to articles, sections (or subdivisions of sections), the words “hereof,” “herein,” “hereby,” “hereto,” “hereunder” and derivative or similar words refer to this entire Agreement; the word “or” shall be disjunctive but not exclusive; the phrase “to the extent” means “the degree by which” and not “if”; exhibits, annexes or schedules are to articles, sections (or subdivisions of sections), exhibits, annexes or schedules of or to this Agreement; references to agreements and other contractual instruments shall be deemed to include all amendments, extensions and other modifications to such instruments prior to the date of this Agreement and any such amendments, extensions and other modifications to such instruments that are expressly permitted hereunder; references to Persons include their respective successors and permitted assigns and, in the case of Governmental or Regulatory Authorities, Persons succeeding to their respective functions and capacities; the phrase “ordinary course of business” refers to the business of the Sellers, the Company or the respective Acquired Subsidiary, as applicable, including as affected by and conducted during the pendency of the Chapter 11 Cases, unless otherwise indicated; all accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP; and “made available” with reference to any document provided by Sellers hereunder means made available to Purchaser or its Representatives in the “Philadelphia Energy Solutions” electronic data room established by PEI and hosted by Merrill Corp. in connection with the transactions contemplated under this Agreement (the “**Data Room**”), as updated as of 5:00 P.M. Eastern Time on January 16, 2020. Any deadline or the date of performance of any right or obligation set forth herein shall be calculated exclusive of the first date from which such time period commences and inclusive of the date on which such time period ends. To the extent that any deadline or date of performance of any right or obligation set forth herein shall fall on a

day other than a Business Day, then such deadline or date of performance shall automatically be extended to the next succeeding Business Day.

## ARTICLE 2 PURCHASE AND SALE OF INTERESTS; CLOSING

**SECTION 2.01 Purchase and Sale.** Subject to the terms and conditions set forth in this Agreement and subject to the approval of the Bankruptcy Court and pursuant to the Confirmation Order, each Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Sellers, the Interests (free and clear of all Liens other than Transferring Liens) at the Closing on the terms and subject to the conditions set forth in this Agreement.

**SECTION 2.02 Earnest Money Deposit.** Simultaneously with the execution of this Agreement, and as security for Purchaser's performance hereunder pursuant to the terms and conditions of Section 11.02, Purchaser will deliver an amount equal to \$30,000,000.00 (the "**Escrow Amount**") to Citi Private Bank, as escrow agent (the "**Escrow Agent**") under the Bidding Procedures, by wire transfer of immediately available funds in U.S. Dollars. The Escrow Amount shall be applied in reduction of the Purchase Price payable at the Closing.

### **SECTION 2.03 Purchase Price.**

(a) The aggregate cash purchase price payable (inclusive of the Escrow Amount deposited with the Escrow Agent pursuant to Section 2.02) at the Closing for the Interests shall be an amount equal to \$240,000,000.00 (the "**Base Purchase Price**"), *plus* (i) the Transferred Cash (if any) and (ii) (x) if the Sellers Pre-Closing Tax Amount is positive, *plus* the Sellers Pre-Closing Tax Amount or (y) if the Sellers Pre-Closing Tax Amount is negative, *minus* the absolute value of the Sellers Pre-Closing Tax Amount (the "**Purchase Price**").

(b) Sellers may, at least 30 days prior to the anticipated Closing Date, provide Purchaser a written statement setting forth any monetary Excluded Assets that Sellers propose remain with or for the benefit of the Company or any Acquired Subsidiary from and after Closing, including, by way of example, (i) any cash-collateralized surety bond(s), (ii) payments made after the date hereof by any Seller, the Company or any Acquired Subsidiary to obtain any Remaining Permits and (iii) payments contemplated by Section 6.03(h) or prepaid premiums with respect to existing insurance policies (which, for the avoidance of doubt, in each case may include prepaid premiums with respect to policies that will be acquired assets). If the Sellers timely provide such written statement, then Purchaser shall provide Sellers a written statement setting forth any such monetary Excluded Assets that Purchaser agrees will remain with and for the benefit of the Company or any Acquired Subsidiary (the "**Proposed Remaining Assets**"). Immediately thereafter, the Parties will negotiate in good faith for five days the value of the Proposed Remaining Assets. Any agreed upon value of any Proposed Remaining Assets after such negotiations is the "**Transferred Cash**", and the Proposed Remaining Assets with respect to the Transferred Cash are the "**Agreed Remaining Assets**". Any monetary Excluded Assets proposed by Sellers that are not deemed Agreed Remaining Assets shall be delivered to Sellers (or their designee) within 15 days following Closing.

(c) At least 15 days prior to the anticipated Closing Date, Sellers will provide Purchaser a written statement setting forth in reasonable detail Sellers' good faith calculation of the Pre-Closing Tax Amount ("**Sellers Pre-Closing Tax Amount**"), along with reasonable supporting materials and detail.

**SECTION 2.04 Closing.** The closing of the transactions described in Section 2.01 and Section 2.03 (the "**Closing**") shall take place at the offices of Kirkland & Ellis, at 601 Lexington Avenue, New York, New York 10022, or at such other place as Purchaser and Sellers shall mutually agree, at 10:00 A.M. Eastern Time, on the Closing Date; *provided* that the Closing shall be deemed effective for all purposes hereunder as of 12:01 A.M. Eastern Time on the Closing Date. At the Closing, (i) Purchaser shall pay an amount equal to (A) the Purchase Price, *minus* (B) the Escrow Amount, *minus* (C) the Excess Losses (if any), and *minus* (D) if applicable, an amount determined pursuant to Section 9.12(b), by wire transfer of immediately available funds in U.S. Dollars, to Sellers, to such account(s) and in such amount(s) designated at least two Business Days before the Closing Date by Sellers to Purchaser by written notice, (ii) Purchaser and Sellers shall issue joint written instructions to the Escrow Agent to release the Escrow Amount to Sellers on the Closing Date, (iii) Sellers shall assign and transfer to Purchaser the Interests, free and clear of all Liens other than Transferring Liens and (iv) if applicable, Purchaser shall deposit with the Bankruptcy Court an amount of funds determined pursuant to Section 9.12(b). At the Closing, Purchaser and Sellers shall cause to be delivered to the other the documents and instruments required to be delivered under Article 9 and Article 10.

**SECTION 2.05 Further Assurances; Post-Closing Cooperation.**

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, each of Purchaser and Sellers shall use its commercially reasonable efforts to execute, acknowledge and deliver such other documents and instruments, provide such materials and information, and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

(b) Subject in each case to applicable confidentiality obligations to third parties, following the Closing, Sellers and Purchaser shall, and Purchaser shall cause the Company and the Acquired Subsidiaries to, use commercially reasonable efforts to afford the other Party and its Representatives, during normal business hours, reasonable access to the books, records and other data, documents or reports relating to the business or financial or operating condition of the Company and the Acquired Subsidiaries in their possession with respect to periods prior to the Closing Date and the right to make copies and extracts therefrom, in each case solely to the extent that such access may reasonably be required by the requesting Party in connection with (i) compliance with the requirements of any Governmental or Regulatory Authority or (ii) in connection with any actual or threatened Action or Proceeding; *provided, however*, that Sellers and their respective Affiliates (other than the Company or the Acquired Subsidiaries) shall not be required to make available their income Tax Returns. Further, Purchaser shall not, and Purchaser shall cause the Company and the Acquired Subsidiaries to not, for a period extending seven years after the Closing Date, or such longer period as such books, records and other data remain relevant to open Tax years or to any pending investigation by a Governmental or Regulatory Authority or any pending litigation if such

investigation or litigation relates in any material respect to matters occurring prior to the Closing, destroy or otherwise dispose of any such books, records and other data without first offering to each Seller in writing the opportunity to take possession of such books, records and other data at such Seller's expense.

(c) Within 90 days following the Closing Date, Purchaser may deliver to Sellers a written statement setting forth in reasonable detail Purchaser's good faith calculation of the Pre-Closing Tax Amount ("**Purchaser Pre-Closing Tax Amount**"), along with reasonable supporting materials and detail. If Sellers (or their designee) do not provide written notice of any dispute (a "**Pre-Closing Tax Amount Dispute Notice**") to Purchaser within 30 days of receipt of the Purchaser Pre-Closing Tax Amount, which Pre-Closing Tax Amount Dispute Notice shall describe the nature of any such disagreement in reasonable detail and identify the specific items involved and the dollar amount of such disagreement, Purchaser and Sellers (or their designee) agree that the Purchaser Pre-Closing Tax Amount shall be final for all purposes hereunder. If Sellers (or their designee) deliver a Pre-Closing Tax Amount Dispute Notice to Purchaser within such 30 day period, Purchaser and Sellers (or their designee) shall endeavor in good faith to resolve any disputes set forth in the Pre-Closing Tax Amount Dispute Notice; *provided* that, if Purchaser and Sellers (or their designee) cannot resolve all disputes within 15 days after Purchaser's receipt of the Pre-Closing Tax Amount Dispute Notice from Sellers (or their designee), the unresolved disputes shall be resolved by the Independent Accountant and the Purchaser Pre-Closing Tax Amount, as resolved by the Independent Accountant, shall become final and binding on the parties hereto on the date the Independent Accountant delivers its final resolution in writing to Purchaser and Sellers (or their designee). The fees and expenses of the Independent Accountant shall be borne equally by Purchaser, on the one hand, and Sellers, on the other hand.

(d) If the Purchaser Pre-Closing Tax Amount, as finally determined pursuant to this Section 2.05, is less than the Sellers Pre-Closing Tax Amount, then Purchaser and Sellers (or their designee) shall promptly and jointly direct the Plan Administrator to pay to Purchaser from the assets of the Liquidating Trust formed under the Plan the difference between the Sellers Pre-Closing Tax Amount and the Purchaser Pre-Closing Tax Amount. If the Purchaser Pre-Closing Tax Amount, as finally determined pursuant to this Section 2.05, is greater than the Sellers Pre-Closing Tax Amount, then Purchaser shall promptly pay to Sellers (or their designee) the difference between the Purchaser Pre-Closing Tax Amount and the Sellers Pre-Closing Tax Amount.

**SECTION 2.06 Withholding.** If any amount is required by Law to be deducted or withheld on account of any Tax with respect to payments made under this Agreement to Seller(s), such Tax shall be deducted by Purchaser or the Escrow Agent, as applicable, from the amounts required to be paid under this Agreement and such Person shall promptly remit such deduction or withholding on account of any Tax (if any) to the relevant Governmental or Regulatory Authority and shall promptly provide the relevant Seller(s) with the appropriate receipts for such payments. All Tax amounts deducted or withheld from payments pursuant to the preceding sentence shall be treated as having been actually paid to the relevant Seller(s) for purposes of this Agreement. Notwithstanding the foregoing, if Purchaser intends to withhold under this Section 2.06 on any amounts payable pursuant to this Agreement, Purchaser shall use commercially reasonable efforts to give the person with respect to whom it intends to withhold at

least five days written notice of such intention and allow, in Purchaser's reasonable discretion, such person to reduce the potential withholding, including through accepting any relevant forms establishing an entitlement to reduced withholding.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the disclosure schedule delivered by Sellers to Purchaser concurrently with the execution and delivery of this Agreement (the "**Seller Disclosure Schedule**"), each Seller hereby represents and warrants to Purchaser as follows:

**SECTION 3.01 Legal Existence.** Each Seller is duly formed, validly existing and in good standing under the Laws of Delaware. Each Seller is qualified to conduct business and is in good standing in the states in which the conduct of its business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or to be in good standing would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Each Seller has all requisite organizational power and authority to execute and perform its obligations under this Agreement and the other agreements and instruments executed and delivered by it in connection with this Agreement (collectively, the "**Seller Transaction Documents**") and consummate the transactions contemplated hereby and thereby.

**SECTION 3.02 Authority.** The execution and delivery by each Seller of, and the performance by each Seller of its obligations under, this Agreement and the Seller Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate actions. This Agreement and each Seller Transaction Document has been duly and validly executed and delivered by each applicable Seller, and, assuming the due authorization, execution and delivery thereof by the other parties hereto and thereto, constitutes a legal, valid and binding obligation of each Seller party thereto enforceable against such Seller in accordance with its terms, subject to the Confirmation Order having been entered by the Bankruptcy Court and not having been reversed, vacated or stayed.

**SECTION 3.03 No Conflicts.** As of the Closing, except as may result from any facts or circumstances relating solely to the identity or the legal or regulatory status of Purchaser or any of its Affiliates and (A) assuming all filings, notices, consents, approvals, authorizations, and other actions described on Section 3.04 of the Seller Disclosure Schedule have been obtained and (B) taking into account the impacts of the Bankruptcy Code, the execution and delivery by each Seller of, and the performance of its obligations under, this Agreement, the Seller Transaction Documents to which such Seller is a party and the consummation of the transactions contemplated hereby and thereby do not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Governance Documents of such Seller;

(b) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to such Seller;

(c) (i) conflict with or result in a material violation or material breach of, (ii) constitute (with or without notice, lapse of time or both) a material default (or give rise to any right of termination, cancellation or acceleration) under, or (iii) result in or give to any Person (other than the Acquired Subsidiaries, such Seller or any of their respective Affiliates) any right of termination, consent, cancellation, acceleration or modification in or with respect to, any material Contract, Permit or Governmental or Regulatory Approval to which such Seller is a party or by which its assets and properties is bound; or

(d) result in the creation or imposition of any Lien on the Interests other than (i) restrictions on transfer imposed under the Company LLC Agreement, (ii) restrictions on transfer that may be imposed by applicable federal or state securities Laws, (iii) encumbrances that arise solely out of any actions taken by Purchaser or its Affiliates, or taken on Purchaser's behalf by Purchaser's Representatives or by any other Person at the request of Purchaser or its Affiliates and (iv) such other Liens as will be discharged in full prior to or at the Closing.

**SECTION 3.04 Governmental or Regulatory Approvals; Filings.** Except for such consents, approvals, actions, filings and notices set forth in Section 3.04 of the Seller Disclosure Schedule, the Bankruptcy Code or otherwise in connection with the Chapter 11 Cases and the Confirmation Order, no other Governmental or Regulatory Approval on the part of any Seller is required in connection with the execution and delivery by Seller of this Agreement, the Seller Transaction Documents or the consummation of the transactions contemplated hereby and thereby except (i) where the failure to obtain any such Governmental or Regulatory Approval would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect, (ii) those as would be required solely as a result of the identity or the legal or regulatory status of Purchaser or any of its Affiliates and (iii) those that are customarily obtained, given or made (as applicable) following the closing of transactions of this nature.

**SECTION 3.05 Capitalization of the Company**

(a) The Interests constitute all of the authorized, issued and outstanding equity and management interests of the Company. There are no equity interests of the Company held in the treasury of the Company and no equity interests of the Company currently are reserved for issuance for any purpose or upon the occurrence of any event or condition.

(b) The Company is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware and has the limited liability company power and authority, as applicable, to own and operate its Assets, except as would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. The Company is qualified or licensed to do business and is in good standing in the states in which the conduct of its business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or be in good standing would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. True and complete copies of the Company Organizational Documents of the Company, in each case as amended and in effect on the date of this Agreement, previously have been made available to Purchaser.

(c) The Interests of the Company are duly authorized, validly issued, fully paid and nonassessable and are owned by Sellers, beneficially and of record, free and clear of all Liens, other than (i) restrictions on transfer imposed under the Company Organizational Documents, (ii) restrictions on transfer that may be imposed by applicable federal or state securities Laws, (iii) encumbrances that arise solely out of any actions taken by Purchaser or its Affiliates or taken on Purchaser's behalf by Purchaser's Representatives or by any other Person at the request of Purchaser or its Affiliates, (iv) to the extent applicable, Permitted Liens (subsections (i) - (iv) collectively, the "**Transferring Liens**"), and (v) such other Liens as will be discharged in full prior to or at the Closing. At the Closing, assuming Purchaser has the requisite power and authority to be the lawful owner of the Interests, Sellers will transfer to Purchaser good and marketable title to the Interests, free and clear of all Liens other than the Transferring Liens.

(d) There are no outstanding Options with respect to the Interests, other than Purchaser's rights under this Agreement, and except for the Company Organizational Documents, the Interests are not subject to any other Governance Document. Neither the Company, the Interests nor, with respect to the Interests, any Seller is subject to any agreement, right, instrument or understanding described in clause (b) of the definition of Governance Document.

(e) The Company does not have any rights or ownership interest in any equity interests or other investments in any Person other than the Acquired Subsidiaries. The Company is not subject to any obligation (by Law, contract or otherwise) to make any investment or otherwise acquire capital stock or other equity interests in any other Person.

**SECTION 3.06 Legal Proceedings.** As of the Closing, there are no Actions or Proceedings pending or, to the Knowledge of Sellers, threatened in writing against any Seller or any Seller's assets or properties, and there are no Orders outstanding against any Seller, in either case that (a) disputes Sellers' ownership of the Interests, (b) requests, or would reasonably be expected to result in, the issuance of an Order restraining, enjoining or otherwise prohibiting, delaying or making illegal the sale of the Interests by any Seller under this Agreement or the performance by Seller of its obligations under this Agreement or the Seller Transaction Documents or (c) would, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect.

**SECTION 3.07 Brokers.** Except for PJT Partners LP, the fees and expenses of which will be paid by Sellers, no broker, finder or agent acting on behalf of Seller or its Affiliates is entitled to any fee or commission with respect to the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby that would be payable by Purchaser or its Affiliates (including, after the Closing, the Company or the Acquired Subsidiaries).

**SECTION 3.08 No Other Representations or Warranties.** Except for the representations and warranties contained in this Article 3 and in Article 4 and the representations and warranties set forth in the officer's certificates to be delivered by Sellers at Closing, Purchaser acknowledges that neither Sellers nor any other Person on behalf of Sellers has made, and Purchaser has not relied upon, any representation or warranty, whether express or implied,



with respect to the Business, Sellers, the Acquired Subsidiaries or their businesses, affairs, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or with respect to the accuracy or completeness of any other information provided or made available to Purchaser by or on behalf of Sellers (including in the Data Room).

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Seller Disclosure Schedule, Sellers and the Company hereby represent and warrant to Purchaser as follows:

**SECTION 4.01 Legal Existence.** The Company is duly formed, validly existing and in good standing under the Laws of the State of Delaware. The Company is qualified to conduct business and is in good standing in the states in which the conduct of its business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or to be in good standing would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. The Company has all requisite organizational power and authority to execute and perform its obligations under this Agreement and the other agreements and instruments executed and delivered by it in connection with this Agreement (collectively, the “**Company Transaction Documents**”) and consummate the transactions contemplated hereby and thereby.

**SECTION 4.02 Authority.** The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement and the Company Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary limited liability company actions. This Agreement and each Company Transaction Document has been duly and validly executed and delivered by the Company, and, assuming the due authorization, execution and delivery thereof by the other parties hereto and thereto, constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms subject to the Confirmation Order having been entered by the Bankruptcy Court and not having been reversed, vacated or stayed.

**SECTION 4.03 No Conflicts.** As of the Closing, except as may result from any facts or circumstances relating solely to the identity or the legal or regulatory status of Purchaser or any of its Affiliates and (A) assuming all filings, notices, consents, approvals, authorizations, and other actions described on Section 4.03 and Section 4.04 of the Seller Disclosure Schedule have been obtained and (B) taking into account the impacts of the Bankruptcy Code, the execution and delivery by the Company of, and the performance of its obligations under, this Agreement, the Company Transaction Documents and the consummation of the transactions contemplated hereby and thereby do not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of any of the Company Organizational Documents;

(b) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to the Company or any Acquired Subsidiary or any of their respective Assets;

(c) (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice, lapse of time or both) a default under, or (iii) result in or give to any Person (other than the Acquired Subsidiaries, Seller or any of their respective Affiliates) any right of termination or consent with respect to, any Assumed Contract, Permit or Governmental or Regulatory Approval to which any Acquired Subsidiary is a party or by which any of their respective Assets and properties is bound, except, in the case of this clause (c), as would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect; or

(d) result in the creation or imposition of any Lien on any equity interests of any Acquired Subsidiary other than (i) Liens imposed under any Company Organizational Document, (ii) restrictions on transfer that may be imposed by applicable federal or state securities Laws, (iii) encumbrances that arise solely out of any actions taken by Purchaser or its Affiliates, or taken on Purchaser's behalf by Purchaser's Representatives or by any other Person at the request of Purchaser or its Affiliates and (iv) such other Liens as will be discharged in full at or prior to the Closing.

**SECTION 4.04 Governmental or Regulatory Approvals; Filings.** Except for such consents, approvals, actions, filings and notices set forth in Section 3.04 of the Seller Disclosure Schedule, the Bankruptcy Code or otherwise in connection with the Chapter 11 Cases or the Confirmation Order, no other Governmental or Regulatory Approval on the part of the Company or any Acquired Subsidiary is required in connection with the execution and delivery by the Company of this Agreement, the Company Transaction Documents or the consummation of the transactions contemplated hereby and thereby except (i) where the failure to obtain any such Governmental or Regulatory Approval would not reasonably be expected to result in a Company Material Adverse Effect, (ii) those as would be required solely as a result of the identity or the legal or regulatory status of Purchaser or any of its Affiliates and (iii) those that are customarily obtained, given or made (as applicable) following the closing of transactions of this nature.

**SECTION 4.05 Capitalization of the Acquired Subsidiaries**

(a) Section 4.05(a) of the Seller Disclosure Schedule accurately sets forth the legal name of each of the Acquired Subsidiaries. For each of the Acquired Subsidiaries, Section 4.05(a) of the Seller Disclosure Schedule identifies the jurisdiction of formation and legal form of such Acquired Subsidiary, and each series or class of equity interests of such Acquired Subsidiary that is issued and outstanding and the holder(s) thereof. There are no equity interests of any Acquired Subsidiary held in the treasury of the any such Acquired Subsidiary and no equity interests of any Acquired Subsidiary currently are reserved for issuance for any purpose or upon the occurrence of any event or condition. Section 4.05(a) of the Seller Disclosure Schedule sets forth the directors, officers and managers of the Company and the Acquired Subsidiaries.

(b) Each Acquired Subsidiary is a corporation, limited liability company or a limited partnership, as identified on Section 4.05(a) of the Seller Disclosure Schedule, duly formed, validly existing and in good standing under the Laws of the jurisdiction of its formation and has the corporate, limited liability company or limited partnership power and authority, as applicable, to own and operate the Assets in all material respects, except as would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Each Acquired Subsidiary is qualified or licensed to do business and is in good standing in the states in which the conduct of its business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or be in good standing would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. True and complete copies of the Governance Documents of each Acquired Subsidiary, in each case as amended and in effect on the date of this Agreement, previously have been made available to Purchaser.

(c) The equity interests of each Acquired Subsidiary are duly authorized, validly issued (to the extent required by such Acquired Subsidiary's Governance Documents), fully paid and nonassessable and are owned by the holders identified on Section 4.05(a) of the Seller Disclosure Schedule, in each case, beneficially and of record, free and clear of all Liens, other than (i) the Transferring Liens and (ii) such other Liens as will be discharged in full prior to or at the Closing. At the Closing, the Company will have good and marketable title to all of the equity and other interests of the Acquired Subsidiaries (including all beneficial, voting, management, economic and other equity interests in the Acquired Subsidiaries), free and clear of all Liens other than the Transferring Liens.

(d) There are no outstanding Options with respect to any equity interests of any Acquired Subsidiary. Neither the Acquired Subsidiaries nor the equity interests of the Acquired Subsidiaries are subject to any agreement, right, instrument or understanding described in clause (b) of the definition of Governance Document.

(e) No Acquired Subsidiary has any rights or ownership interest in any equity interests or other investments in any Person other than another Acquired Subsidiary or as set forth on Section 4.05(a) of the Seller Disclosure Schedule. No Acquired Subsidiary is subject to any obligation (by Law, contract or otherwise) to make any investment or otherwise acquire capital stock or other equity interests in any other Person.

#### **SECTION 4.06 Condition of Business at Closing.**

(a) As of the consummation of the Closing, neither the Company nor any Acquired Subsidiary will have any Significant Liabilities of a material nature except Significant Liabilities set forth on Section 4.06(a) of the Seller Disclosure Schedule.

(b) As of the consummation of the Closing, neither the Company nor any Acquired Subsidiary will be party to or have any material Liability under any Contract, except with respect to the Contracts set forth on Section 4.06(b) of the Seller Disclosure Schedule and any other Contracts designated in writing as "Assumed Contracts" by Purchaser prior to the entry of the Confirmation Order (but excluding any Contracts designated in writing as "Excluded Contracts" by Purchaser prior to the entry of the Confirmation Order) (collectively, the

**“Assumed Contracts”**). The Assumed Contracts are legal, valid, binding and enforceable in accordance with their terms, in full force and effect and, to the Knowledge of Sellers, binding upon the other parties thereto. Except as set forth in Section 4.06(b) of the Seller Disclosure Schedule since January 1, 2017, there has not been any and there currently is no breach or default in any material respect by the Company, any Acquired Subsidiary or, to the Knowledge of Sellers, any other party in the performance, observance or fulfillment of any obligations, covenants, liabilities or conditions contained in any of the Assumed Contracts, and, to the Knowledge of Sellers, no event has occurred or condition exists that with or without notice, lapse of time or the happening or occurrence of any other event would constitute such a breach or default, or permit termination, modification or acceleration, by any party to, or bound by, the Assumed Contracts, except for any default to be cured under Section 365(b) of the Bankruptcy Code at the Closing by a payment, which shall be the sole responsibility of Purchaser, in an amount specified in the Confirmation Order or agreed to prior to the Closing in writing by the counterparty. Sellers have delivered to Purchaser complete and accurate copies of all Assumed Contracts. Except as set forth in Section 4.06(b) of the Seller Disclosure Schedule, to the Knowledge of Sellers, no party to any Assumed Contract has asserted any offset, defense or claim with respect to the performance of its obligations under such Assumed Contract.

(c) As of the Closing, all of the material tangible personal property of the Company and the Acquired Subsidiaries (other than the Excluded Assets) is located on the Owned Real Property and the Leased Real Property. As of Closing, the Company and the Acquired Subsidiaries have good and indefeasible title to all of their respective Assets (other than Real Property, which is addressed in Section 4.09), free and clear of all Liens other than Permitted Liens. Since the date of this Agreement, no material tangible personal property of the Company and the Acquired Subsidiaries has been removed from the Owned Real Property and the Leased Real Property other than those items set forth on Schedule 4.06(c) and other than the Excluded Assets.

(d) All of the tangible personal property or improvements on the Owned Real Property is owned by the Company or an Acquired Subsidiary, except (i) as set forth on Section 4.06(d) of the Seller Disclosure Schedule or (ii) any such tangible personal property and improvements the removal of which would not materially increase the cost of, or materially impede, the Purchaser’s Intended Use.

(e) No Company Material Adverse Effect has occurred since January 1, 2019. The Parties understand and agree that no representation or warranty is made by the Company in respect of any estimates or financial projections, plans or budgets of the Company.

**SECTION 4.07 Compliance with Laws.** The Company and each Acquired Subsidiary, to the knowledge of Sellers, is, and since January 1, 2017 has been, in compliance in all material respects with all Orders and Laws applicable to it, *provided, however*, that the Parties understand and agree that this Section 4.07 does not apply to (i) matters involving any employee benefit plan or Taxes, as those matters are governed by Section 4.12 and Section 4.11, respectively, (ii) matters involving Intellectual Property, as those matters are governed by Section 4.10, or (iii) environmental matters, as those matters are governed by Section 4.14.

**SECTION 4.08 Legal Proceedings.** Except for contested matters in the Chapter 11 Cases, there are no material Actions or Proceedings pending or, to the Knowledge of Sellers, threatened in writing against the Company or any Acquired Subsidiary or with respect to the Owned Real Property that will remain pending against the Company or any Acquired Subsidiaries from and after the Closing, after giving effect to the Confirmation Order, and there are no Orders outstanding by which the Company or any Acquired Subsidiary is bound that will be effective against the Company or any Acquired Subsidiaries from and after the Closing, after giving effect to the Confirmation Order.

**SECTION 4.09 Real Property.**

(a) Section 4.09(a) of the Seller Disclosure Schedule sets forth the legal description of all parcels of real property owned in fee by the Company or an Acquired Subsidiary (the “**Owned Real Property**”). Neither Sellers nor the Company nor any Acquired Subsidiary have received written notice of any pending assessments or condemnation proceedings affecting the Owned Real Property or pending proceedings to change the zoning of the Owned Real Property, nor to the Knowledge of Sellers are any such proceedings threatened.

(b) Section 4.09(b) of the Seller Disclosure Schedule sets forth, as of the date of this Agreement, any material Contract pursuant to which the Company or any Acquired Subsidiary (as lessee or occupant) leases, licenses, occupies or uses real property (each, a “**Lease**”; such real property being referred to as the “**Leased Real Property**” and, the Leased Real Property, taken together with the Owned Real Property, the “**Real Property**”). The Company or an Acquired Subsidiary will have, as of the Closing, a valid leasehold interest or license in the Leased Real Property, as applicable, free and clear of all Liens other than Permitted Liens.

(c) Section 4.09(c) of the Seller Disclosure Schedule sets forth any material Contract pursuant to which the Company or any Acquired Subsidiary has leased, subleased or otherwise granted any Person the right to use or occupy any Owned Real Property or Leased Real Property or any material portion thereof. Except as expressly stated in Schedule 4.09(c) of the Seller Disclosure Schedule, all such Contracts and any related right to occupancy will be terminated as of the Closing.

(d) Other than with respect to Permitted Liens, the present use of the Owned Real Property is, in all material respects, a legal, conforming use under applicable zoning codes, ordinances and regulations; other than with respect to Permitted Liens, all improvements located on the Owned Real Property comply in all material respects with all applicable building codes, ordinances and regulations and all applicable fire, occupational safety and health standards and similar standards established by applicable Law. To the Knowledge of Sellers, there is no proposed, pending or, threatened, change in any such code, ordinance, regulation or standard which would adversely affect the Owned Real Property.

(e) To the Knowledge of Sellers, there is no default by the Company or any Acquired Subsidiary under any of the Permitted Liens that would reasonably be expected to have a Company Material Adverse Effect.

**SECTION 4.10 Intellectual Property.** To the Knowledge of Sellers, the Company or the Acquired Subsidiaries, as the case may be, will own or possess, at the Closing, adequate licenses or other valid rights to use all existing software, trade secrets, technology, trademarks, trade names, service marks and materials subject to copyright Laws used in the Business (the “**Intellectual Property**”), except where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Neither the Company nor any Acquired Subsidiary has received any written notice that it is infringing any Intellectual Property of any other Person. To the Knowledge of Sellers, no Person is infringing upon any material Intellectual Property of the Company or any Acquired Subsidiary. The representations and warranties set forth in this Section 4.10 constitute the sole and exclusive representations and warranties of the Company with respect to Intellectual Property and Intellectual Property matters in connection with the transactions contemplated by this Agreement and the Company Transaction Documents, and no other provision of this Agreement shall be deemed to address or include such matters.

**SECTION 4.11 Taxes.**

(a) As applicable, the Company and each Acquired Subsidiary has timely (i) filed all income and other material Tax Returns required to be filed and (ii) paid all Taxes due and owing (whether or not shown on any Tax Return), except to the extent nonpayment thereof is permitted pursuant to applicable bankruptcy Law.

(b) There are no audits, claims, assessments, levies, administrative or judicial Action or Proceedings pending or, to the Knowledge of Sellers, proposed in writing against any the Company or any Acquired Subsidiary or with respect to its assets or activities by any Taxing Authority, and all deficiencies asserted and material assessments made as a result of any examination by any Governmental or Regulatory Authority have been fully paid. Neither the Company nor any Acquired Subsidiary, within the preceding three years, has been subject to any claim by any Taxing Authority in a jurisdiction in which the Company or such Acquired Subsidiary does not file Tax Returns, that the Company or such Acquired Subsidiary may be subject to Tax in that jurisdiction that would be covered by such Tax Return.

(c) There are no Liens for Taxes upon any of the Assets and properties of the Company or any Acquired Subsidiary (or any equity interest therein), other than Permitted Liens.

(d) Neither the Company nor any Acquired Subsidiary has participated in any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b) (and all predecessor regulations).

(e) Each of the Company and the Acquired Subsidiaries has deducted, withheld and timely paid to the appropriate Governmental or Regulatory Authority all material Taxes required to be deducted, withheld or paid in connection with income allocated to or amounts owing to any employee, independent contractor, creditor or interest holder and has complied in all material respects with all applicable Laws relating to the payment, withholding, reporting and recordkeeping requirements relating to any Taxes required to be collected or withheld.

(f) Neither the Company nor any Acquired Subsidiary has ever been a party to any Tax sharing, Tax indemnity, Tax allocation or similar agreement with respect to Taxes (other than an agreement entered into the ordinary course of business and the primary purpose of which is not Taxes), and does not have any Liability or potential Liability to another party under any such agreement.

(g) Neither the Company nor any Acquired Subsidiary (i) is or has ever been a member of an affiliated group filing a consolidated federal income Tax Return, (ii) is or has ever been a partner in a partnership or an owner of an interest in an entity treated as a partnership for Tax purposes or (iii) has any Liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state or local Law) as a transferee or successor, or by Contract (other than a Contract entered into in the ordinary course of business and the primary purpose of which is not Taxes) or otherwise.

(h) Neither the Company nor any Acquired Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period beginning after the Closing Date as a result of any (i) written agreement with a Governmental or Regulatory Authority executed on or prior to the Closing with regard to the Tax liability of the Company or the applicable Acquired Subsidiary or (ii) installment sale or open transaction disposition made prior to the Closing Date or prior to the Closing on the Closing Date.

(i) PES Administrative Services, LLC will not be required to include any item of income in or exclude any item of deduction from, taxable income for any period beginning after the Closing Date as a result of any (i) change in accounting method for any period ending on or prior to the Closing Date under Section 481 of the Code (or any analogous or comparable provision of U.S. state or local or non-U.S. Law), (ii) the use of an improper method of accounting for a taxable period ending on or before the Closing Date, or (iii) deferred revenue prepaid amount received on or prior to the Closing Date.

(j) Set forth on Section 4.11(j) of the Seller Disclosure Schedule is the current classification of the Company and each Acquired Subsidiary (and, to the extent any such classification has changed within the preceding five years, the prior classification and date of such change) for federal income Tax purposes.

(k) None of the assets of PES Administrative Services, LLC is “tax exempt use property” within the meaning of Section 168(h) of the Code.

#### **SECTION 4.12 Employee Matters.**

(a) Except as set forth in Section 4.12(a) of the Seller Disclosure Schedule, neither the Company nor any of the Acquired Subsidiaries is party to any collective bargaining agreement or other Contract (including each related memorandum of understanding, letter of agreement, and other ancillary agreement thereto) (together, the “CBA”), or any duty to bargain, with any labor union, works council or other labor organization (each, a “Union”). During the past three years, (i) no petition has been filed or proceedings instituted by any Union with any Governmental or Regulatory Authority seeking certification as the bargaining representative of

any employees of the Company or the Acquired Subsidiaries, (ii) no written demand for recognition of employees of the Company or the Acquired Subsidiaries has been made by, or on behalf of, any Union, and (iii) to the Knowledge of Sellers, there has been no effort by, or on behalf of, any Union or group of employees to organize any employees of the Company or the Acquired Subsidiaries. There is no strike, organized work stoppage or lockout against the Company or any of the Acquired Subsidiaries pending or, to the Knowledge of Sellers, threatened. For the avoidance of doubt, Sellers and Purchaser agree that the Work Agreement for Construction and/or Maintenance by and between the signatory unions and employers thereto, ratified December 2012 is not a CBA.

(b) Section 4.12(b) of the Seller Disclosure Schedule contains a complete and correct list, as of the date of this Agreement, of each material Company Employee Plan. Each Company Employee Plan that is intended to be qualified under Section 401(a) of the Code has either received a favorable determination letter from the IRS or may rely on a favorable opinion letter issued by the IRS. Each Company Employee Plan has been established, maintained, administered and funded in all material respects in compliance with its terms and with the requirements of applicable Law, including ERISA and the Code. No Actions or Proceedings (other than routine claims for benefits) are pending or, to the Knowledge of Sellers, threatened against or with respect to any Company Employee Plan, and there has been no non-exempt “prohibited transaction” (within the meaning of Section 406 of ERISA or Section 4975 of the Code) or any breach of fiduciary duty (as determined under ERISA) with respect to any Company Employee Plan, except as would not reasonably be expected to, individually or in the aggregate, result in material liability to the Company or any of the Acquired Subsidiaries.

(c) The consummation of the transactions contemplated by this Agreement will not (either alone or together with any other event) entitle any current or former director, officer, employee or other service provider of the Company or any Acquired Subsidiary to any benefit or compensation or accelerate the time of payment, funding or vesting, or increase the amount of compensation or benefits due, to any such current or former director, officer, employee or other service provider of the Company or any Acquired Subsidiary.

(d) As of the Closing, neither the Company nor any Acquired Subsidiary will have (i) any employees (except individuals identified by Purchaser, at least 20 days prior to the anticipated Closing Date, to remain as employees of the Company or an Acquired Subsidiary as of the Closing)(ii) any Liability to any former employee or any Union (iii) any Liability under the Worker Adjustment and Retraining Notification Act or similar state or local law or (iv) any Liability under any Employee Plan.

(e) Neither the Company nor any ERISA Affiliate has ever maintained, contributed to, participated in, sponsored or otherwise had any Liability with respect to a (i) multiemployer plan as defined in Section 3(37) of ERISA (a “**Multiemployer Plan**”), (ii) plan subject to Title IV or Section 302 of ERISA or Sections 412 or 4971 of the Code, or (iii) plan that provides life, health or other welfare benefits to former or retired employees of the Company or any Acquired Subsidiary (other than pursuant COBRA or similar state laws which require limited continuation of coverage for such benefits). Neither the Company nor any ERISA Affiliate has incurred any “withdrawal liability” (within the meaning of Title IV of ERISA) with respect to a Multiemployer Plan that has not been satisfied in full or has (or is reasonably



expected to have) any other current or contingent liability with respect to any Multiemployer Plan.

**SECTION 4.13 Insurance.** Section 4.13 of the Seller Disclosure Schedule sets forth a true and complete list of all material insurance policies in effect as of the date of this Agreement that insure the business, operations and assets and properties of the Company and the Acquired Subsidiaries that have been issued to or for the benefit of the Company or the Acquired Subsidiaries.

**SECTION 4.14 Environmental Matters.**

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect or as set forth on Section 4.14(a) of the Seller Disclosure Schedule:

(i) the Company and each Acquired Subsidiary are in compliance, and to the Knowledge of Sellers, have been in compliance since January 1, 2015, with all applicable Environmental Laws;

(ii) the Company and each Acquired Subsidiary has obtained and possesses, and to the Knowledge of Sellers, has possessed since January 1, 2015, all Environmental Permits required under applicable Environmental Laws for the conduct of their operations as conducted as of the Closing and has been in compliance since January 1, 2015, and is in compliance with, all terms and conditions of such Environmental Permits;

(iii) there are no Environmental Claims pending since January 1, 2015, or, to the Knowledge of Sellers, threatened against the Company or any Acquired Subsidiary since January 1, 2015;

(iv) to the Knowledge of Sellers, there is no real property to which Hazardous Substances generated by the Company or any Acquired Subsidiary have been transported or disposed that is the subject of any action under Environmental Laws or that would be reasonably expected to result in an Environmental Claim against the Company or any Acquired Subsidiary;

(v) to the Knowledge of Sellers, no Hazardous Substances have been disposed of or released by the Company or any Acquired Subsidiary on, at, from or under any Real Property that are currently required to be investigated or remediated by the Company or any Acquired Subsidiary under any Environmental Law or that would be reasonably expected to require investigation or remediation; and

(vi) neither the Company nor the Acquired Subsidiaries have agreed to indemnify any third person with respect to any liabilities of any such third Person pursuant to any Environmental Law, and no related claim pursuant to any indemnification agreement has been asserted against the Company or Acquired Subsidiaries other than to which Purchaser will not be bound from and after Closing.

(b) This Section 4.14, Section 4.15 (solely with respect to the list of material Environmental Permits and with respect to Remaining Permits) and Section 4.06(e) contain the sole and exclusive representations and warranties of Sellers or the Company with respect to all matters arising under or relating to any Environmental Laws, Hazardous Substances, Environmental Permits or Environmental Claims.

**SECTION 4.15 Permits and Regulatory Matters.** Section 4.15(a) of the Seller Disclosure Schedule sets forth a true and complete list of all material Permits owned or held by the Company and each Acquired Subsidiary, including all material Environmental Permits (collectively, the “**Material Permits**”). True and complete copies of all Material Permits have been made available to Purchaser prior to the date of this Agreement. The Material Permits listed on Section 4.15(b) of the Seller Disclosure Schedule and the Permits designated in writing as “Remaining Permits” by Purchaser at least 20 days before the anticipated Closing Date (but excluding the Permits designated in writing as “Excluded Permits” by Purchaser at least 20 days before the anticipated Closing Date) (collectively, the “**Remaining Permits**”), are and shall be maintained in full force and effect until Closing. The Company and each Acquired Subsidiary shall undertake all commercially reasonable efforts to terminate all Material Permits, excluding the Remaining Permits, prior to the Closing, to the extent termination of such Permits is permitted by Law and provide written notice to Purchaser as to the status of such termination efforts. The Company and each Acquired Subsidiary is in material compliance with all Material Permits held by it.

**SECTION 4.16 No Other Representations or Warranties.** Except for the representations and warranties contained in this Article 4 and in Article 3 and the representations set forth in the officer’s certificates to be delivered by Sellers at Closing, Purchaser acknowledges that neither the Company nor any other Person on behalf of the Company has made, and Purchaser has not relied upon, any representation or warranty, whether express or implied, with respect to the Business, the Company, the Acquired Subsidiaries or their businesses, affairs, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or with respect to the accuracy or completeness of any other information provided or made available to Purchaser by or on behalf of the Company (including in the Data Room).

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

**SECTION 5.01 Legal Existence.** Purchaser is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware. Purchaser is qualified to conduct business and is in good standing in the states that the conduct of its business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or to be in good standing would not, individually or in the aggregate, reasonably be expected to impair in any material respect the ability of Purchaser to perform its obligations under this Agreement or under any of the other agreements and instruments to be executed and delivered by Purchaser in connection with this Agreement (the

**“Purchaser Transaction Documents”**) or prevent or materially delay the consummation of the transactions contemplated hereunder. Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the Purchaser Transaction Documents, including to purchase the Interests pursuant hereto.

**SECTION 5.02 Authority.** The execution and delivery by Purchaser of, and the performance by Purchaser of its obligations under, this Agreement and the Purchaser Transaction Documents and the consummation by Purchaser of the transactions contemplated hereby and thereby have been duly and validly authorized by all required action on the part of Purchaser. This Agreement and each of the Purchaser Transaction Documents has been duly and validly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery thereof by the other parties hereto and thereto, constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except as the same may be limited by the Enforceability Limitations.

**SECTION 5.03 No Conflicts.** Assuming all filings, notices, consents, approvals, authorizations, and other actions described in Section 3.04 of the Seller Disclosure Schedule, and under the Bankruptcy Code or otherwise in connection with the Chapter 11 Cases and the Confirmation Order, have been obtained and taking into account the Bankruptcy Code, the execution and delivery by Purchaser of, and the performance of its obligations under, this Agreement, the Purchaser Transaction Documents and the consummation of the transactions contemplated hereby and thereby will not:

- (a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of any Governance Document of Purchaser;
- (b) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Purchaser or any of its assets and properties; or
- (c) (i) conflict with or result in a material violation or material breach of, (ii) constitute (with or without notice, lapse of time or both) a material default under, or (iii) require Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, any material Contract, Permit or Governmental or Regulatory Approval to which Purchaser is a party or by which any of its assets and properties is bound.

**SECTION 5.04 Governmental or Regulatory Approvals.** Except as required by the Bankruptcy Code or otherwise in connection with the Chapter 11 Cases, no Governmental or Regulatory Approval on the part of Purchaser is required in connection with the execution and delivery by Purchaser of this Agreement, the Purchaser Transaction Documents or the consummation of the transactions contemplated hereby and thereby.

**SECTION 5.05 Legal Proceedings.** There are no Actions or Proceedings pending or, to the Knowledge of Purchaser, threatened in writing against Purchaser or any of its assets or properties that would reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting, delaying or making illegal the purchase by Purchaser of the

Interests under this Agreement or the performance by Purchaser of its obligations under this Agreement or the Purchaser Transaction Documents.

**SECTION 5.06 Investment Representations.** Purchaser is a knowledgeable and sophisticated investor experienced (or owned or managed by Persons experienced) in evaluating investments and has the knowledge, experience and resources to enable it to evaluate and to bear the risks of the investment contemplated hereunder. Purchaser understands that (a) the purchase and sale of the Interests under this Agreement will not be registered or qualified under the Securities Act or any state securities or “blue sky” Laws, (b) there is no public market for the Interests and it is not anticipated that any such market will develop and (c) the Interests must be held until the Interests or the sale thereof, as applicable, are subsequently registered under the Securities Act and any applicable state or non-U.S. securities Laws or an exemption from registration is available. The Interests are being acquired by Purchaser for its own account for the purpose of investment and not with a view to distribution in violation of the Securities Act or any applicable state securities or “blue sky” Laws. Purchaser is able to bear the economic risk of holding the Interests for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment.

**SECTION 5.07 No Regulatory Impediment.** Except in connection with the Chapter 11 Cases, to the Knowledge of Purchaser, there is no fact relating to Purchaser or any of its Affiliates’ respective businesses, operations, financial condition or legal status, including any officer’s, director’s or current employee’s status, that would reasonably be expected to impair the ability of the Parties to this Agreement to obtain, on a timely basis, any authorization, consent, Order, declaration or approval of, or ability to contract with, any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement.

**SECTION 5.08 Brokers.** No broker, finder or agent acting on behalf of Purchaser or its Affiliates is entitled to any fee or commission with respect to the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby that would be payable by Sellers or their respective Affiliates.

**SECTION 5.09 Sufficiency of Funds; Financing.** Purchaser has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price on the Closing Date and to otherwise consummate the transactions contemplated by the Transaction Documents.

**SECTION 5.10 ERISA.** Purchaser is not an “employee benefit plan” as defined in ERISA, whether or not subject to ERISA, or a “plan” as defined in Section 4975 of the Code, and none of Purchaser’s assets constitutes (or is deemed to constitute for purposes of ERISA or Section 4975 of the Code, or any substantially similar federal, state or municipal Law) “plan assets” for purposes of 29 CFR Section 2510.3-101, as amended by Section 3(42) of ERISA, or otherwise for purposes of ERISA or Section 4975 of the Code.

**SECTION 5.11 Solvency.** Purchaser is not entering into the transactions contemplated by this Agreement with the actual intent to hinder, delay or defraud either present or future creditors of the Company or any of the Acquired Subsidiaries. Purchaser is Solvent as

of the date of this Agreement and Purchaser will, after giving effect to all of the transactions contemplated by this Agreement, including the payment of the Purchase Price and all other amounts required to be paid, borrowed or refinanced by Purchaser in connection with the consummation of the transactions contemplated by this Agreement and all related fees and expenses, be Solvent at and after the Closing Date.

**SECTION 5.12 Compliance with Environmental Obligations.** Purchaser will own and operate the Company and the Acquired Subsidiaries in conformance with all applicable federal, state and local Environmental Laws and regulations applicable to the Real Property purchased, and will assume the applicable obligations of the Company and the Acquired Subsidiaries set forth in: *In the Matter of Philadelphia Energy Solutions LLC and Philadelphia Energy Solutions Refining and Marketing LLC*, Docket No. CERCLA/RCRA-03-2012-0224DC and *United States, et al. v. Sunoco, Inc.*, No. 05-02866 (E.D. PA) entered March 21, 2006, and amended on June 3, 2009, August 30, 2011, September 1, 2011, and April 18, 2013, the Consent Order and Agreement entered into on August 14, 2012, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection, Sunoco, Inc. (R&M), and Philadelphia Energy Solutions Refining and Marketing LLC, commonly referred to as the Buyer-Seller Agreement, the Administrative Order and Consent Agreement entered into on February 15, 2019, by and among the City of Philadelphia and Philadelphia Energy Solutions Refining and Marketing, LLC, and any subsequent Consent Order and Agreement that the Commonwealth of Pennsylvania, Department of Environmental Protection may enter into with Philadelphia Energy Solutions Refining and Marketing LLC prior to Closing, in each case as such obligations are in effect as of or after the Closing Date. If Purchaser is preparing to operate the purchased assets as a refinery that produces gasoline or diesel fuel, it will do so in compliance with the Clean Air Act, Renewable Fuel Standards, 42 U.S.C. § 7545(o), and implementing regulations at 40 CFR Part 80, Subpart M.

## ARTICLE 6 COVENANTS RELATING TO SELLER AND THE COMPANY

The Parties agree for the benefit of Purchaser, except to the extent Purchaser may otherwise consent in writing (other than with respect to obligations of Purchaser), as follows:

### SECTION 6.01 Access to Information; Books and Records.

(a) Following the later of (x) the date of this Agreement and (y) the auction for the Interests (or substantially all assets of the Company and the Acquired Subsidiaries, if applicable) at which the Purchaser prevails until the earlier of (A) the Closing and (B) the date that this Agreement is terminated in accordance with its terms, Sellers and the Company shall, and shall cause the Acquired Subsidiaries to, provide Purchaser and its Representatives with reasonable access in accordance with the Bidding Procedures, upon reasonable prior notice and during normal business hours, to officers and employees of the Company and Acquired Subsidiaries and their respective Assets, properties, Real Property, books and records (including but not limited to environmental documents, as-built drawings, and property condition reports); *provided, however*, such access shall be granted only to the extent that such access (i) is conducted at Purchaser's sole expense, (ii) does not unreasonably interfere with the business and operations of the Company or any Acquired Subsidiary, (iii) is conducted under the supervision

of the Company's personnel, (iv) is conducted solely for the purposes of consummating the Transactions, and (v) is permitted in accordance with the Bidding Procedures and the Chapter 11 Cases. Notwithstanding the foregoing, Sellers and the Company shall not be required to, and shall not be required to cause the Company or any Acquired Subsidiary to, furnish any such information where the furnishing of such information would (a) violate any Law, Order, Permit or Governmental or Regulatory Approval applicable to Sellers, the Company or any Acquired Subsidiary or any of their respective Affiliates, assets and properties, (b) result in the loss of any legal privilege, including attorney-client privilege or work-product doctrine, with respect to such information, (c) result in a breach of a Contract to which any Seller, the Company or any Acquired Subsidiary or any of their respective Affiliates are a party, (d) result in the disclosure of any trade secret, proprietary or confidential information of third parties (including any bids received from others in connection with the transactions contemplated by this Agreement and the information and analysis (including financial analysis) relating to such bids) or otherwise cause or result in significant competitive harm to any Seller, the Company, any Acquired Subsidiary or any of their respective Affiliates or (e) pertain primarily to any Excluded Asset or would otherwise disrupt the future or pending discussion relating to, negotiation relating to or sale of any Excluded Asset (in each case, as determined by Sellers in their reasonable discretion). Each Seller shall have the right to have a representative present at all times during any such inspection, interview or examination by Purchaser or its Representatives conducted at or on the offices or other facilities or properties of the Company or Acquired Subsidiaries and to impose reasonable restrictions and requirements for liability and safety purposes. Nothing in this Section 6.01 shall entitle Purchaser to conduct any sampling, monitoring or subsurface or invasive investigation, assessment or analysis of soil, groundwater, building materials, ambient air, or other environmental media or emissions on any Real Property owned or leased by the Company or any Acquired Subsidiary. Purchaser's activities pursuant to this Section 6.01(a) shall be subject to Purchaser's obligations pursuant to Section 7.01.

(b) Notwithstanding anything herein to the contrary, including Section 6.01(a), neither Purchaser nor its Representatives shall be entitled to conduct any investigation, air monitoring or invasive surface or subsurface testing or sampling, including any soil borings, hand borings, geoprobes, test pits or monitoring wells, of any Real Property or other assets of the Company prior to the Closing. IN CONNECTION WITH ANY DILIGENCE ACTIVITIES PRIOR TO THE CLOSING, PURCHASER SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD EACH INDEMNIFIED PERSON HARMLESS FROM AND AGAINST ANY AND ALL LOSSES ARISING OUT OF OR RELATING TO ACTIVITIES CONDUCTED BY PURCHASER, PURCHASER'S AFFILIATES OR ANY PERSON ACTING ON PURCHASER'S OR ITS AFFILIATES' BEHALF, IN CONNECTION WITH ANY SITE VISITS, SITE OR ASSET INSPECTIONS, OR ANY OTHER DILIGENCE ACTIVITIES, PROVIDED THAT, PRIOR TO THE CLOSING, PURCHASER SHALL NOT BE SO LIABLE FOR THE MERE DISCOVERY BY PURCHASER REPRESENTATIVES OF ANY EXISTING CONDITION AT THE REAL PROPERTY AS OPPOSED TO CAUSING OR EXACERBATING THE CONDITION. Without limiting the foregoing, for purposes of this Section 6.01(b), "Losses" includes all elements of "Losses" brought or incurred by or asserted by the Company's customers and the owners of any affected Real Property. Purchaser shall, and shall cause its Representatives to, in connection with the conduct of the diligence activities conducted in connection with the Transactions, comply fully with all applicable Laws, including Environmental Laws, and rules, policies and instructions reasonably issued by any Seller or the

Company and provided to Purchaser regarding such diligence activities. Purchaser shall not, and shall cause its Representatives not to, unreasonably interfere with the conduct of the Company's business in conducting any diligence activities.

(c) No Seller, the Company or any of their respective Representatives makes any representation or warranty as to the accuracy of any information provided pursuant to this Section 6.01, and Purchaser may not rely on the accuracy of any such information, in each case other than as expressly set forth in the representations and warranties contained in Article 3, Article 4 or the officer's certificates to be delivered by the Sellers at Closing. Any information provided pursuant to this Section 6.01 shall be subject to the terms of the Confidentiality Agreement.

**SECTION 6.02 Conduct of Business.** Notwithstanding anything in this to the Agreement to the contrary, other than as expressly set forth in Section 6.03 or as expressly set forth in any other provision of this Agreement, nothing contained in this Agreement shall (i) give Purchaser, directly or indirectly, the right to control or direct in any manner the operations of the Company or the Acquired Subsidiaries prior to the Closing, (ii) prohibit or restrict the Company's ability to make withdrawals, borrow funds or make payments or pre-payments under any agreement related to Indebtedness that will be discharged in full at or prior to the Closing (including any revolving line of credit or similar facility), (iii) prohibit or restrict the Company or Acquired Subsidiaries from terminating, or waiving any counterparty obligations under, any non-compete agreement, non-solicitation agreement or other restrictive covenant agreements (provided, the Company and Acquired Subsidiaries shall not terminate or waive any provision of any non-disclosure agreement or similar confidentiality agreement with any bidder, other than with respect to non-solicitation or no-hire provisions contained therein), (iv) restrict the ability of the Company or Acquired Subsidiaries from declaring or paying any cash dividends or distributions or otherwise sweeping all cash and cash equivalents of the Company or Acquired Subsidiaries and the Excluded Assets prior to Closing (provided the Company and the Acquired Subsidiaries have no Liability with respect to any such declared dividend upon the Closing), or (v) prohibit or restrict the Company or Acquired Subsidiaries from assigning, transferring or selling (or engage in discussions or negotiations regarding any such assignment, transfer or sale) any Excluded Asset to a third Person.

**SECTION 6.03 Certain Restrictions.** From the date of this Agreement until the Closing, Sellers shall cause the Company and each Acquired Subsidiary to, and the Company shall, refrain from taking any of the following actions, except (a) with respect to those matters set forth on Section 6.03 of the Seller Disclosure Schedule, (b) as expressly permitted or required by this Agreement, (c) with Purchaser's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), (d) as required by Law, any Order of the Bankruptcy Court or as contemplated in the Chapter 11 Cases or the Plan (including the assumption or rejection of Contracts in accordance with implementation of the Plan), or the terms of any Permit, or (e) with regard to any Excluded Asset (in each case, as determined by Sellers in their reasonable discretion):

(a) authorizing, issuing, selling or otherwise disposing of any equity interests of, or any Option with respect to, the Company or any Acquired Subsidiary, or modifying or

amending any right of any holder of outstanding equity interests of, or Options with respect to, the Company or any Acquired Subsidiary;

(b) acquiring any assets or properties or disposing of any assets or properties of the Company or any Acquired Subsidiary, except for (1) Excluded Assets, (2) acquisitions of spare parts, assets or properties valued at less than \$1,000,000 individually or \$5,000,000 in the aggregate, or (3) (A) the purchase, sale or transportation of refinery products or of oil, natural gas, or ancillary services or (B) chemicals and other supplies relating to the operation and maintenance of the Business, in the case of each of clauses (A) and (B) in the ordinary course of business.

(c) incurring any material Liens or permitting any material Liens to be imposed on the Interests or any Assets and properties of Company or any Acquired Subsidiary (other than Permitted Liens, and in the case of the Interests, only (A) Liens imposed under the current Company Organizational Documents, (B) restrictions on transfer that may be imposed by applicable federal or state securities Laws, (C) encumbrances that arise out of any actions taken by Purchaser or its Affiliates, or taken on Purchaser's behalf by Purchaser's Representatives or by any other Person at the request of Purchaser or its Affiliates, and (D) such other Liens as will be discharged in full by Sellers prior to or at the Closing);

(d) except as may be required to meet the requirements of applicable Law or GAAP, changing any accounting method or practice in a manner that is inconsistent with past practices in a way that would materially and adversely affect the business of the Company or any Acquired Subsidiary;

(e) except with regard to any Excluded Assets, changing any material election with respect to Taxes, including any new material election with respect to Taxes that is inconsistent with past practices, changing any method of Tax accounting, changing a Tax accounting period, filing any amended Tax Return, entering into any closing agreement with respect to Taxes, settling any Tax claim or assessment, surrendering any right to claim a refund of Taxes, consenting to any extension or waiver of the limitation period applicable to any Tax claim or assessment, or failing to pay any Taxes as such Taxes become due and payable (unless such amounts are being contested in good faith or nonpayment thereof is permitted pursuant to applicable bankruptcy law);

(f) amending, modifying or terminating any Assumed Contracts;

(g) incurring any Significant Liabilities on behalf of the Company or any Acquired Subsidiary that are of a material nature and will not be discharged in full at or prior to the Closing;

(h) terminating or failing to renew any insurance policy under which the Company or an Acquired Subsidiary is an insured, provided Purchaser shall pay Sellers at the Closing, in addition to the Purchase Price (and any such amount shall be deemed "Transferred Cash" in accordance with Section 2.03), a pro rata share of the premium related to (i) any insurance policy that is renewed after the Agreement Date (excluding renewal of business interruption insurance), provided (A) Sellers shall notify Purchaser of a renewal deadline with



respect to such insurance within a commercially reasonable amount of time prior to the renewal deadline, (B) Purchaser shall promptly, but within a commercially reasonable amount of time prior to such deadline, identify to Sellers which of such insurance policies Purchaser desires to renew, (C) Seller shall effectuate any such renewals identified by Purchaser and (D) Purchaser's obligation to pay a pro rata share shall be limited to such renewed policies, and (ii) any new insurance policy otherwise obtained with Purchaser's prior written consent that occurs after the date of this Agreement; *provided*, (x) Purchaser shall have no payment obligation under this Section 6.03(h) with respect to any Excluded Assets and (y) Purchaser shall pay, as "Transferred Cash", a pro rata share of the renewal premium for the Site Pollution Environmental Coverage for PES Ultimate Holdings (which Purchaser acknowledges will benefit the Company and the Acquired Subsidiaries from and after Closing);

(i) taking any action that would prevent Sellers from completing the items on the "Prior to Closing" section of Exhibit D, in all material respects, at least two Business Days prior to the Termination Date; or

(j) agreeing or committing to do or engage in any of the foregoing.

Notwithstanding anything else contained in this Section 6.03, Sellers, the Company and any Acquired Subsidiary may take any actions consistent with Good Industry Practice with respect to emergency situations so long as Sellers shall, upon receipt of notice of any such actions, promptly inform Purchaser of any such actions taken outside the ordinary course of business consistent with past practices.

**SECTION 6.04 Pre-Closing Restructuring.** Notwithstanding anything herein to the contrary, Sellers and the Company and the Acquired Subsidiaries shall be entitled to, at the Sellers' option and with Purchaser's prior written consent (which consent, after Sellers provide Purchaser drafts of the documents to effectuate the Pre-Closing Restructuring, shall not be unreasonably withheld, condition or delayed), engage in the Pre-Closing Restructuring. If the Pre-Closing Restructuring is effectuated, (a) the Parties shall endeavor in good faith to agree as to the taxpayer identifying number to be used with respect to certain Tax Returns filed by New Holdings, the Company, and PESRM, and (b) "New Holdings" shall be deemed to be a "Seller" (and included in the definition of "Sellers") for all purposes.

**SECTION 6.05 Dividends and Distributions.** Notwithstanding anything herein to the contrary, Sellers and the Company shall be entitled to cause the Company or any Acquired Subsidiary to declare or pay a cash dividend, distribute or otherwise sweep any or all cash and cash equivalents or other Excluded Assets held by the Company or any Acquired Subsidiary to Sellers prior to the Closing, provided the Company and the Acquired Subsidiaries have no Liability with respect to any such declared dividend upon the Closing.

**SECTION 6.06 Supplemental Disclosure.** Sellers shall use commercially reasonable efforts to promptly notify Purchaser prior to the Closing of any matter first occurring or first existing after the date of this Agreement that if existing at the date of this Agreement would have been required to be set forth or described in the Seller Disclosure Schedule.

**SECTION 6.07 Release.** Effective immediately upon the Closing, each of the Company, individually and on behalf of each Acquired Subsidiary, and each Seller hereby irrevocably waives, releases and discharges, and covenants not, and to cause its respective Affiliates (including, in this case, the Excluded Affiliates) not to, to the fullest extent permitted by applicable Law, assert any claims, or take or bring any actions, against the Company, any director, officer, member or manager of the Company, any Acquired Subsidiary or any equityholder, creditor or Affiliate of the Company or any Acquired Subsidiary, in relation to any and all Losses and other obligations of whatever kind or nature, in law, equity or otherwise, arising from, connected or related to, caused by or based on any facts, conduct, activities, agreements, transactions, events or occurrences known or unknown, of any type that existed, occurred, happened, arose or transpired at any time prior to Closing. The Company, on its behalf and on behalf of each Acquired Subsidiary, effective as of the Closing, hereby releases each former director, officer and manager of the Company or any Acquired Subsidiary from the obligations and provisions contained in, and the Company and each Acquired Subsidiary shall waive its rights under, any non-compete agreement, non-solicitation agreement or any other restrictive covenant agreement (other than non-disclosure agreements or similar agreements with any bidder, other than with respect to non-solicitation or no-hire provisions contained therein).

**SECTION 6.08 Maintenance of Keystone Opportunity Zone.** At all times prior to the Closing, the Company shall continue to, and the Sellers shall cause the Company to continue to, use all commercially reasonable efforts required to maintain the Company's current Keystone Opportunity Zone benefits, including the timely filing of reports and applications. Without limiting the foregoing, the Company shall continue to, and the Sellers shall cause the Company to continue to, pay all Taxes and required payments when due with respect to the Company's (and/or any Acquired Subsidiary's) current Keystone Opportunity Zone benefits on or prior to the date when due.

## ARTICLE 7 COVENANTS

The Parties agree (1) where applicable, for the benefit of Sellers and the Company, except to the extent each Seller may otherwise consent in writing (other than with respect to obligations of Sellers or the Company), and (2) where applicable, for the benefit of Purchaser, except to the extent Purchaser may otherwise consent in writing (other than with respect to obligations of Purchaser), as follows:

**SECTION 7.01 Governmental Approvals; Third Party Consents.** From the date of this Agreement until the earlier of the Closing Date or the termination of this Agreement in accordance with Article 11, each Party shall keep the other Parties apprised on a reasonably current basis of the status of matters relating to completion of the Transactions, including (i) promptly furnishing the other Parties with copies of notices or other written communications from any Governmental or Regulatory Authority with respect to the Transactions and (ii) promptly notifying in writing the other Parties of any development or combination of developments that, individually or in the aggregate, would reasonably be expected to prevent, materially delay or materially impair such Party's ability to consummate the Transactions. Without limiting the foregoing, each Party shall give written notice to the other Parties promptly upon becoming aware of any fact, change, condition, event, occurrence or non-occurrence that, if

it occurred or was continuing as of the Closing Date, would result in a failure of a condition set forth in Article 9 or Article 10 the institution of, or the threat of institution of, any legal proceeding against any Party relating to this Agreement or the transactions contemplated by this Agreement or the Transaction Documents.

**SECTION 7.02 (Omitted).**

**SECTION 7.03 Managers and Officers.** Purchaser acknowledges that each person who prior to the Closing served as a director, officer, manager, employee, agent, trustee or fiduciary of the Company or any Acquired Subsidiary or who, at the request of the Company or any Acquired Subsidiary, served as a director, officer, manager, member, employee, agent, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise (collectively, with such person's heirs, executors or administrators, the "**Indemnified Persons**") is entitled to indemnification, expense reimbursement and exculpation to the extent provided in the Company Organizational Documents in effect as of the date of this Agreement (the "**Indemnification Obligations**"). Sellers shall cause, prior to the Closing, the Indemnification Obligations with respect to the Company and each Acquired Subsidiary to be the sole liability of the bankruptcy estates of the Sellers, which shall be administered pursuant to the Plan.

**SECTION 7.04 Investigation by Purchaser; No Other Representations; Non-Reliance of Purchaser.** Purchaser has substantial familiarity with the acquisition of real property and understands the risks inherent therewith. Furthermore, Purchaser (for itself and on behalf of its Affiliates, Representatives and financing sources), has conducted an independent investigation, verification, review and analysis of the assets and liabilities of the Company and the Acquired Subsidiaries and Purchaser, and its Affiliates and their advisors and Representatives have had access to the personnel, properties, premises and records of the Company and the Acquired Subsidiaries for such purpose. In entering into this Agreement, except for the specific representations and warranties expressly made by each Seller in Article 3, by each Seller and the Company in Article 4 (in each case, as modified by the Seller Disclosure Schedules) and in the officer's certificates to be delivered by Sellers at Closing, Purchaser (for itself and on behalf of its Affiliates, Representatives) acknowledges that: (a) none of Company, any Acquired Subsidiary, either Seller or any other Person is making and has not made any representation or warranty, expressed or implied, at law or in equity, in respect of either Seller, Company, or any Acquired Subsidiary or the Business, assets, liabilities, operations, prospects or condition (financial or otherwise) thereof, including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any liabilities, the prospects of the Business, the effectiveness or the success of any operations, or the veracity, accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Company or any Acquired Subsidiary furnished to Purchaser or its Affiliates or their advisors or Representatives or made available to Purchaser, its Affiliates or their advisors or Representatives in any data rooms, management presentations or in any other form in expectation of, or in connection with, the transactions contemplated hereby; (b) it is specifically disclaiming any such other representations or warranties that may have been made by any Person, and acknowledges that the Company, the Acquired Subsidiaries, Sellers and their respective equityholders, creditors and Affiliates hereby specifically disclaim any such other representation or warranty made by any Person; and (c) it is

specifically disclaiming any obligation or duty by the Company, any Acquired Subsidiary, either Seller or any of their respective Affiliates or any other Person to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties set forth in Article 3, Article 4 and the officer's certificates to be delivered by Sellers at Closing, except to the extent disclosure is required pursuant to this Agreement. Purchaser shall indemnify and hold harmless Company (prior to Closing) and the Acquired Subsidiaries (prior to the Closing) and Sellers and their respective Affiliates from and against any and all Losses suffered or incurred by such Company, Acquired Subsidiary, or Seller (and their respective Affiliates) directly caused, in whole or in part, by the access, investigation, verification, review and analysis of the Company and the Acquired Subsidiaries prior to Closing by Purchaser, its Affiliates, and Representatives, except any Losses relating to the mere discovery of any environmental condition.

**SECTION 7.05 No Wrong Pocket.** If, at any time following the date hereof, including from and after the Closing, any Party becomes aware that any asset (including any Excluded Asset), Contract or right held by it or its Affiliates that should have been retained by any other Party or any Affiliate of any other Party or sold, transferred or assigned to a third Person pursuant to the terms of any Transaction Agreement was not retained by such other Party or Affiliate of such other Party or sold to, transferred to, assigned to or otherwise assumed or received by such third Person as contemplated by any such Transaction Agreement, then (i) such Party shall promptly notify the other Party and shall promptly transfer or assign or cause its Affiliates to transfer or assign, as applicable, such asset (including any Excluded Asset), Contract, right, proceeds, monies, cash or cash equivalents, property, as applicable, to such other Party or such third Person or any of their respective Affiliates (as determined by the other Party in its sole discretion) and (ii) such other Party or third Person shall promptly assume or receive or cause their Affiliates to assume or receive such asset (including any Excluded Asset), Contract, right, proceeds, monies, cash or cash equivalents, property, as applicable, in each case for no consideration and at such third Person's expense. Further, if at any time following the Closing, a Party receives any notices or proceeds, monies, cash or cash equivalents or property attributable to another Party of their Representatives or Affiliates, it shall promptly deliver such notices or proceeds, monies, cash or cash equivalents or property to such other Party, Representative or Affiliate, as applicable. Each of the Parties hereto shall use its reasonable best efforts to execute, acknowledge and deliver such Contracts, provide such materials and information, including reasonable access to officers and Representatives of such Party, and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Section 7.05. In the event of any conflict or inconsistency between this Section 7.05 and the litigation control agreement contemplated by Section 8.08, such litigation control agreement shall control.

**SECTION 7.06 Release.** Effective as of the Closing, the Purchaser, individually and on behalf of each of its controlled Affiliates, hereby irrevocably waives, releases and discharges, and covenants not, and to cause its Affiliates not to, to the fullest extent permitted by applicable Law, assert any claims, or take or bring any actions, against any director, officer, member or manager of the Company, any Acquired Subsidiary or any equityholder, creditor or Affiliate of the Company or any Acquired Subsidiary, in relation to any and all Losses and other obligations of whatever kind or nature, in law, equity or otherwise, arising from, connected or related to, caused by or based on any facts, conduct, activities, agreements, transactions, events or occurrences known or unknown, of any type that existed, occurred, happened, arose or

transpired at any time prior to Closing. The Purchaser, on its behalf and on behalf of the Company and each Acquired Subsidiary, effective as of the Closing, hereby releases each former director, officer and manager of the Company or any Acquired Subsidiary from the obligations and provisions contained in, and Purchaser shall cause the Company and each Acquired Subsidiary to waive its rights under, any non-compete agreement, non-solicitation agreement or any other restrictive covenant agreement (other than non-disclosure agreements or similar agreements with any bidder, other than with respect to non-solicitation or no-hire provisions contained therein).

**SECTION 7.07 Notice of Breach.** Prior to the Closing, Purchaser shall use commercially reasonable efforts to promptly notify Sellers of, to the Knowledge of Purchaser, any breach of the representations and warranties of Sellers and the Company contained in this Agreement that would result in a condition to Closing to fail to be satisfied.

## ARTICLE 8 ADDITIONAL COVENANTS

### SECTION 8.01 Certain Tax Matters.

(a) **Transfer Taxes.** All transfer, documentary, sales, use, stamp, recording, registration, controlling interest transfer and other similar Taxes and fees (including any penalties and interest) (the “**Transfer Taxes**”) (if any such Transfer Taxes are incurred after accounting for applicable bankruptcy law) incurred in connection with this Agreement and the transactions contemplated hereby, if any, and any costs associated therewith (collectively, the “**Transaction Transfer Taxes**”), shall be borne 50% by Sellers and 50% by Purchaser. The party required by law shall remit, or cause to be remitted, the payment for all of the Transaction Transfer Taxes and file, or cause to be filed, all Tax Returns and other documentation required to be filed with respect to any such Transaction Transfer Taxes, and, if required by applicable Law, the other party shall, and shall cause its Affiliates to, join in the execution of any such Tax Returns and other documentation. The parties shall cooperate in good faith to take such commercially reasonable actions as will minimize or reduce the amount of such Transaction Transfer Taxes.

(b) **Tax Returns.** Purchaser shall prepare or cause to be prepared (at Sellers’ expense) and file or cause to be filed all Tax Returns for the Company and each Acquired Subsidiary for any Pre-Closing Tax Period the due date of which (including extensions) is after the Closing Date. All such Tax Returns shall be prepared and filed in a manner consistent with the past procedures and practices and accounting methods of the Company and the Acquired Subsidiaries except as required by applicable Law. Purchaser shall submit each such Tax Return that is a Flow-Through Tax Return to Sellers (or their designee) for their review, comment and consent (not to be unreasonably withheld, conditioned or delayed) at least 20 days prior to their filing. Sellers shall use commercially reasonable efforts to provide, and cause their Affiliates and Representatives to provide, Purchaser with such cooperation and information as Purchaser may reasonably request in preparing or filing any Tax Return or determining a liability for Taxes under this Section 8.01(b). Such cooperation and information shall include (i) providing copies of relevant Tax Returns, together with related work papers and documents relating to rulings or other determinations by Taxing Authorities, to the extent reasonably requested by the Purchaser,

and (ii) making Sellers (and their respective employees) reasonably available on a mutually convenient basis to provide explanations of any documents or information provided under this Section 8.01(b), at the reasonable request of the Purchaser.

(c) Partnership Tax Audit Rules. The Parties hereto agree that the Company and the Acquired Subsidiaries shall not elect, and the Purchaser shall not cause the Company and the Acquired Subsidiaries to elect, to apply the Partnership Tax Audit Rules with respect to any Flow-Through Tax Return any earlier than is required by applicable law.

(d) Straddle Periods. For the purposes of this Agreement, in the case of any taxable period that includes (but does not end on) the Closing Date (a “**Straddle Period**”), the amount of any Taxes based on or measured by income, receipts, or payroll of the Company and the Acquired Subsidiaries for the portion of the Straddle Period ending on the Closing Date shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and for such purpose, the taxable period of any partnership or other pass-through entity in which any of the Company and the Acquired Subsidiaries holds a beneficial interest shall be deemed to terminate at such time), and the amount of other Taxes, including the amount of any real estate Taxes on the Real Property, of the Company and the Acquired Subsidiaries for the portion of the Straddle Period ending on the Closing Date shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

(e) Tax Contests. Purchaser agrees to provide written notice to Sellers as soon as reasonably practicable (and in any event, at least 20 days) after its receipt of any written notice of an audit or examination by a taxing authority or a judicial or administrative proceeding for any period ending on or before the Closing Date that relates to any Flow-Through Tax Return (a “**Tax Contest**”); *provided, however*, that a failure by the Purchaser to provide such notice shall not relieve Sellers of any Liability hereunder except to the extent that such failure actually and materially prejudices the defense of such Tax Contest. Purchaser shall control, at Sellers’ sole cost and expense, any such Tax Contest; *provided* that Purchaser shall (i) keep Sellers or their designee(s) informed with respect to the status of such Tax Contest, including by giving Sellers or any such designees advance notice of and opportunity to attend any in-person or telephonic meetings, (ii) provide copies to Sellers or any such designees of any written correspondence or other submissions received from a taxing authority with respect to such Tax Contest, (iii) provide copies of any written correspondence to be provided to any taxing authority in connection with such Tax contest to Sellers or any such designees for Sellers’ or any such designees’ review and comment, with all reasonable comments of Sellers or any such designees to be reflected in such submission, and (iv) provide to Sellers or any such designees, at Sellers’ sole cost and expense, reasonable participation rights with respect to any such Tax Contest; *provided further* that Purchaser shall not enter into any settlement of, or otherwise compromise, any such Tax Contest without the prior written consent of Sellers (which consent shall not be unreasonably withheld, conditioned or delayed). Sellers shall use commercially reasonable efforts to, and cause their Affiliates and Representatives to, cooperate fully with Purchaser, including but not limited to furnishing or making available records, information, personnel (as reasonably requested), books of account, powers of attorney or other materials reasonably relevant or helpful for the conduct of any Tax Contest (to the extent reasonably requested). Notwithstanding anything to the

contrary in this Section 8.01(e), Purchaser shall be entitled to retain, at Sellers' sole reasonable cost and expense, any Representatives in connection with any Tax Contest.

(f) Post-Closing Actions. Without the prior written consent of Sellers (not to be unreasonably withheld, conditioned or delayed), the Purchaser shall not, and shall cause the Company and the Acquired Subsidiaries not to, (i) amend or re-file any Tax Return relating to a Pre-Closing Tax Period, (ii) agree to waive or extend the statute of limitations relating to any Taxes of the Company and the Acquired Subsidiaries for any Pre-Closing Tax Period, (iii) make, revoke or change any election with respect to, or that has retroactive effect to, any Pre-Closing Tax Period of the Company and the Acquired Subsidiaries, (iv) voluntarily approach any taxing authority with respect to Taxes of the Company or any Acquired Subsidiary for a Pre-Closing Tax Period, or (v) take any action on the Closing Date after the Closing (other than any action contemplated in this Agreement, the Transaction Documents, the Plan, or the Confirmation Order) that is outside of the ordinary course of business, in the case of each of (i) – (iv), (x) to the extent such action could reasonably be expected to materially adversely impact the income Tax reporting or income Tax liability of the Sellers or (y) prior to the finalization of the Purchaser Pre-Closing Tax Amount pursuant to Section 2.05.

(g) Cooperation. The Purchaser, the Company and the Acquired Subsidiaries, and Sellers shall cooperate with each other in connection with the preparation and filing of any Tax Returns and any audit, litigation or other proceeding with respect to Taxes. Purchaser, the Company and the Acquired Subsidiaries, and Sellers agree to retain all books and records with respect to Tax matters pertinent to the Company and the Acquired Subsidiaries relating to any Pre-Closing Tax Period until the expiration of the statute of limitations (and, to the extent notified by Purchaser or the Company, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority.

(h) Tax Treatment. For U.S. federal and applicable state and local income Tax purposes, the Parties intend (i) if the Pre-Closing Restructuring does not occur, for the transactions contemplated by this Agreement to be treated as a transaction governed by Rev. Rul. 99-6, Situation 2 and, pursuant thereto, (A) Sellers will be treated as selling all of their Interests to Purchaser in a taxable sale of partnership interests and (B), with respect to Purchaser, the Company shall be deemed to make a liquidating distribution of its assets to Sellers and Purchaser shall be deemed to acquire, by purchase, all such assets, other than the Excluded Assets, which shall be deemed transferred to the Liquidating Trust pursuant to the Plan and Confirmation Order simultaneously with the Closing, or (ii) if the Pre-Closing Restructuring occurs, (A) for New Holdings to be treated as a partnership continuation of the Company pursuant to Code Section 708 (and any corresponding provision of state or local Tax Law), and (B) for the transactions contemplated by this Agreement to be treated as a purchase by Purchaser and sale by New Holdings of the assets of the Company, other than the Excluded Assets, which shall be deemed transferred to the Liquidating Trust pursuant to the Plan and Confirmation Order simultaneously with the Closing by New Holdings (the "**Intended Tax Treatment**"). The Parties agree to treat the transactions contemplated by this Agreement consistent with the Intended Tax Treatment and shall not take any position, whether on a Tax Return or in a Tax Contest, inconsistent with the Intended Tax Treatment, except as otherwise required by applicable Law.

(i) Purchase Price Allocation. The Purchase Price, as finally determined, plus any assumed liabilities and any other items required to be taken into account under the Code shall be allocated among the assets of the Company for all Tax purposes in accordance with the principles of Section 1060 of the Code and the Treasury Regulations thereunder. Within 15 days after the date hereof, or such longer period as Sellers and Purchaser may agree to in writing, Sellers shall provide to Purchaser a methodology in writing, consistent with the principles of Section 1060 of the Code and the Treasury Regulations thereunder (the “**Allocation Methodology**”), along with reasonable supporting information, with respect to such allocation for Purchaser’s review and comment. Sellers and Purchaser shall endeavor in good faith to agree to the Allocation Methodology in writing prior to the Closing Date; *provided, however*, that such agreement shall not be a condition to the Closing. Within 120 days after the Closing Date, or such longer period as Sellers (or their designee) and Purchaser may agree to in writing, Purchaser shall provide a draft allocation, which shall be consistent with the Allocation Methodology solely to the extent that Purchaser and Sellers agreed to the Allocation Methodology in writing prior to the Closing Date, to Sellers (or their designee) (the “**Draft Purchase Price Allocation**”). Purchaser shall permit Sellers (or their designee) to review and comment upon in writing such Draft Purchase Price Allocation, with all comments agreed to by Purchaser and Sellers (or their designee) to be reflected in the final Purchase Price allocation (the “**Final Purchase Price Allocation**”). Purchaser and Sellers (or their designee) shall endeavor in good faith to agree upon the Final Purchase Price Allocation; *provided* that, if Purchaser and Sellers (or their designee) cannot resolve any dispute with respect to the Final Purchase Price Allocation within 30 days after Purchaser’s receipt of comments from Sellers (or their designee), the item in question shall be resolved by the Independent Accountant, which such resolution shall be consistent with the Allocation Methodology solely to the extent that Purchaser and Sellers agreed to the Allocation Methodology in writing prior to the Closing Date, and the Final Purchase Price Allocation, as resolved by the Independent Accountant, shall become final and binding on the parties hereto on the date the Independent Accountant delivers its final resolution in writing to Purchaser and Sellers (or their designee). The fees and expenses of the Independent Accountant shall be borne equally by Purchaser, on the one hand, and Sellers, on the other hand. Purchaser, the Company and the Acquired Subsidiaries, and each Seller shall file all Tax Returns (including amended returns and claims for refunds) and information reports, and otherwise act for Tax purposes, in a manner consistent with the Final Purchase Price Allocation, unless otherwise required by applicable Law. If the Purchase Price is adjusted pursuant to this Agreement, the Final Purchase Price Allocation shall be adjusted as appropriate and the Purchaser and Sellers shall cooperate in good faith in making any such adjustment.

(j) Montana Notice. Notwithstanding anything to the contrary in this Section 8.01 or Article 6, prior to the Closing, Sellers shall, and shall cause the Company and PESRM to, take all commercially reasonable actions to timely respond to and resolve any issues with respect to the notice from the Montana Department of Revenue set forth on Section 4.11(a)(2) of the Seller Disclosure Schedule (the “**Montana Notice**”). At least three Business Days prior to submitting any communications to, or filing any Tax Returns with, the Montana Department of Revenue with respect to the Montana Notice, Sellers shall provide copies of such communications or Tax Returns to Purchaser for its review and comment, and Sellers shall incorporate Purchaser’s reasonable comments thereto.



**SECTION 8.02 Collective Bargaining Agreement.** Purchaser agrees that, from and after the Agreement Date, to the extent Purchaser elects to continue to operate the Schuylkill River tank farm portion of the Owned Real Property as a tank farm, either directly or through a third party operator retained by Purchaser, Purchaser (or such third party operator) will negotiate in good faith to enter into a collective bargaining agreement or project labor agreement (a “**New Labor Agreement**”) in connection with the operation of the Schuylkill River tank farm portion of the Owned Real Property. Such New Labor Agreement will be with such Union(s) and on such terms as Purchaser or its third party operator determine, at their sole discretion.

**SECTION 8.03 Governmental Filings.** Each Party agrees to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to consummate and make effective the Transactions, including if applicable, filing, or causing to be filed with any Governmental or Regulatory Authority any applications, consents, approvals, notices, or actions that are necessary to consummate and make effective the Transactions.

**SECTION 8.04 Bankruptcy Actions.**

(a) The Parties shall promptly take all actions as are reasonably necessary or requested by the other to obtain the entry by the Bankruptcy Court of the Confirmation Order or any other order reasonably necessary in connection with the transactions contemplated by this Agreement as promptly as practicable, including furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court and responding to and resolving all objections thereto. If the Confirmation Order or any other Orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby are appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect thereto), Sellers shall use commercially reasonable efforts to prosecute or defend such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion such that the Confirmation Order or other order is not modified and remains in full force and effect. In the event that the entry of the Confirmation Order or any other order reasonably necessary in connection with the transactions contemplated by this Agreement is timely appealed, Purchaser shall use its commercially reasonable commercial efforts to cooperate with Sellers in the defense of such appeal.

(b) Within ten days after the execution of this Agreement, Sellers shall file and shall cause the Company and the Acquired Subsidiaries to file a second amended version of the Plan that accurately reflects the Transactions, including but not limited to amendments to Articles II, IV, V and VI of the Plan that accurately describe the rights and powers of, and vesting of various assets in, the Sellers, the Liquidating Trust, the Purchaser, the Company and the Acquired Subsidiaries, and relieves the Purchaser, the Company, and the Acquired Subsidiaries of any responsibility for making distributions under the Plan, indemnifying officers, directors and other representatives of, and lenders to, the Company or the Acquired Subsidiaries for acts or omissions occurring before the “Effective Date” of the Confirmation Order or paying fees owed pursuant to 28 U.S.C. § 1930. Subject to Sellers’ compliance with the terms and conditions of this Agreement, Purchaser shall (i) support entry of the Confirmation Order, (ii) not object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the transactions contemplated by, or other provisions of, the Confirmation

Order, and (iii) not file any motion, pleading, or other document (including any modifications or amendments thereof) with the Bankruptcy Court or any other court that, in whole or in part, is materially inconsistent with this Agreement or the Plan.

(c) The Parties shall reasonably consult with each other regarding pleadings that any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Confirmation Order.

**SECTION 8.05 Public Announcements.** From the date of this Agreement until, or as mutually agreed in connection with, the Closing, Sellers and Purchaser shall not issue or make any reports, statements or releases to the public or generally to the employees, customers, suppliers or other Persons to whom the Company or any Acquired Subsidiary sells goods or provides services or with whom the Company or any Acquired Subsidiary otherwise has significant business relationships with respect to this Agreement or the transactions contemplated hereby without the consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided* that for purposes of clarity, the foregoing shall not restrict such disclosures (a) that are necessary for the procurement of any required consents, approvals, payoff letters and similar documentation, or (b) that a Party determines in good faith, after consultation with legal counsel, is required by Law in order to discharge such Party's or its Affiliates' disclosure obligations; *provided, further*, that in the case of a disclosure pursuant to clause (b), the disclosing Party shall use commercially reasonable efforts to allow the other Parties reasonable time to comment on such disclosure in advance of making such disclosure and shall promptly furnish the other Parties with a copy thereof; *provided, further*, that the foregoing shall not restrict the Sellers or its Representatives from taking any action, or to refrain from taking any action, to the extent the Sellers determine in good faith that taking such action, or refraining from taking such action, as applicable, would be inconsistent with applicable Law or its fiduciary obligations under applicable the bankruptcy Law or in connection with the Chapter 11 Cases or the Plan. Sellers and Purchaser shall also obtain the other Party's prior approval of any press release to be issued immediately following the Closing announcing the consummation of the transactions contemplated by this Agreement.

**SECTION 8.06 Termination of Company Employee Plans.** Effective as of no later than one Business Day immediately prior to the Closing Date, the Company and any Acquired Subsidiary shall either cause each of the Company Employee Plans to be terminated or otherwise transferred to one or both of the Sellers such that the Company and the Acquired Subsidiaries have no material Liabilities under such Company Employee Plans as of the Closing. The Company shall provide Purchaser with evidence that such Company Employee Plans have been terminated or otherwise transferred effective no later than one Business Day immediately preceding the Closing Date in the form of resolutions of the Company's board of directors (or similar body of any applicable Acquired Subsidiary). The Company shall also take such other commercially reasonable actions in furtherance of terminating or otherwise transferring such Company Employee Plans as Purchaser may reasonably request prior to the Closing.

**SECTION 8.07 Facility Turnover Cooperation.** The Parties agree to use their respective commercially reasonable efforts to cooperate in the transition of the ownership, management and maintenance of the Owned Real Property constituting the PES refinery facilities and the Assets thereon from Sellers to Purchaser at Closing. A detailed list of those

actions that the Parties agree will be completed during the period from and after the date hereof and until the Closing Date and the Party or Parties responsible for such actions is attached as Exhibit D hereto.

**SECTION 8.08 Litigation Control Agreement.** At the Closing, Purchaser, the Company, PESRM, the Plan Administrator and Sellers shall enter into a litigation control agreement in the form attached as Exhibit E hereto.

**SECTION 8.09 R&W Coverage; Insurance Recovery.**

(a) From and after the Agreement Date, Purchaser agrees to use commercially reasonable efforts to obtain a representations and warranties insurance policy providing coverage to Purchaser for breaches of the representations and warranties set forth in Articles 3 and 4 hereof (the “**R&W Coverage**”). Sellers agree to use commercially reasonable efforts to cooperate with Purchaser in order to facilitate the underwriting and placement of the R&W Coverage, including providing such reasonable information and documentation in response to Purchaser’s due diligence requests as may be reasonably necessary or appropriate to the underwriting of coverage under the R&W Coverage. In addition, in connection with Purchaser’s binding of the R&W Coverage, Sellers shall provide a bring-down officer’s certificate as to the accuracy of the representations and warranties of Sellers and the Company set forth in Articles 3 and 4 hereof as of the date of Purchaser’s binding of the R&W Coverage in a form reasonably acceptable to Purchaser and to the underwriter of the R&W Coverage. Any policy obtained pursuant to this Section 8.09(a) shall be referred to as the “**R&W Policy**”.

(b) Prior to Purchaser binding any R&W Policy, the Parties shall use commercially reasonable efforts and negotiate in good faith to agree on a fair and equitable allocation of the proceeds of such R&W Policy.

(c) After the Closing, Purchaser agrees to use commercially reasonable efforts to recover from insurance policies the Excess Losses, and, to the extent Purchaser recovers Excess Losses from insurance policies in cash, Purchaser shall remit to Sellers the amount of such Excess Losses so recovered, less any applicable deductible, self-insured retention or similar amounts and less the costs of recovery (to the extent such costs are not insured under the insurance policy).

**ARTICLE 9**  
**CONDITIONS TO OBLIGATIONS OF PURCHASER**

The obligation of Purchaser to consummate the transactions described in Section 2.01, Section 2.03 and Section 2.04 are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Purchaser in its sole discretion):

**SECTION 9.01 Representations and Warranties.**

(a) (i) The Seller Fundamental Representations shall be true and correct in all respects (other than de minimis inaccuracies) as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such

representations and warranties expressly relate to an earlier date, on and as of such earlier date); and (ii) the representations and warranties of Sellers and the Company contained in this Agreement (other than the Seller Fundamental Representations) shall be true and correct as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date), except in the case of this clause (ii) where the failure of such representations and warranties to be true and correct (in each case, disregarding all qualifications and exceptions contained therein relating to materiality or Company Material Adverse Effect) would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect (any such failure, a “**Non-Fundamental Representations Non-MAE Failure**”).

(b) If there is a Non-Fundamental Representations Non-MAE Failure, then (1) such Non-Fundamental Representations Non-MAE Failure shall not relieve Purchaser of its obligation to effectuate the Closing, but (2) at Closing, the following shall apply (but only if the aggregate amount of Applicable Losses exceeds \$10,000,000 (the “**Threshold**”)): Purchaser shall receive a credit against the Purchase Price in the amount of any Applicable Losses in excess of the Threshold (“**Excess Losses**”); provided, however, that the aggregate amount of Excess Losses shall not exceed the Indemnity Limit.

(c) To the extent the Parties cannot agree on the amount of Applicable Losses, the Parties shall submit such dispute to the Bankruptcy Court pursuant to Section 12.15.

(d) Notwithstanding anything to the contrary contained in this Agreement or in any other Transaction Document, Purchaser shall not be entitled to (i) recover against Sellers under Article 3, Article 4 and Section 9.01(b) or otherwise against Sellers or their respective Affiliates with respect to any Losses arising from any breach of, or inaccuracy with respect to, any representation, warranty, covenant, agreement or other provision contained in this Agreement, if any of the Purchaser Knowledge Individuals was actually aware of such breach or inaccuracy on or prior to the Agreement Date or (ii) assert that Sellers have not satisfied their obligations under Section 7.01 or otherwise hold up Closing because of the existence of a breach of, or inaccuracy with respect to, any representation, warranty, covenant, agreement or other provision contained in this Agreement, if any of the Purchaser Knowledge Individuals was actually aware of such breach or inaccuracy on or prior to the Agreement Date. For the avoidance of doubt, this Section 9.01 shall in no way limit or affect the enforceability of Section 12.02 or Section 12.13.

**SECTION 9.02 Performance; Covenants and Agreements.** Sellers and the Company shall have performed and complied in all material respects with the material agreements, covenants and obligations required by this Agreement to be so performed or complied with by Sellers and the Company at or before the Closing.

**SECTION 9.03 Officer’s Certificates.** Each Seller shall have delivered to Purchaser an officer’s certificate, dated the Closing Date and executed by a corporate officer of Seller on behalf of such Seller, certifying that all of the conditions set forth in Section 9.01 and Section 9.02 have been satisfied.

**SECTION 9.04 Legal Prohibition.** No Action or Proceeding instituted by any Governmental or Regulatory Authority of competent jurisdiction shall be pending, no Law shall be in effect and no Order of any Governmental or Regulatory Authority of competent jurisdiction shall have been entered, in each case that restrains, enjoins or prohibits the performance of all or any part of this Agreement or the consummation of all or any part of the Transactions or declares unlawful the Transactions or would cause any of the Transactions to be rescinded.

**SECTION 9.05 Governmental or Regulatory Approvals.** All Governmental or Regulatory Approvals set forth on Section 9.05 of the Seller Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect or shall have occurred.

**SECTION 9.06 Closing Deliveries.** Sellers and the Company shall have executed and delivered, or have caused to be executed and delivered, all of the certificates, instruments and other documents specified hereunder to be delivered by it at the Closing, including an assignment and assumption agreement substantially in the form attached hereto as Exhibit A. Sellers shall have delivered, prior to the Closing, the tax refund agreement in the form attached hereto as Exhibit F, executed by Sellers, PESRM, the Company and the Plan Administrator.

**SECTION 9.07 FIRPTA Certificate.** Sellers shall have caused to be delivered a certificate, dated as of the Closing Date and substantially in the form and to the effect of Exhibit B, that satisfies the requirements set forth in Treasury Regulation Sections 1.1445-2 and Proposed Treasury Regulation Section 1.1446(f)-2(b)(2), attesting that such Seller is not a "foreign person" for U.S. federal income tax purposes.

**SECTION 9.08 Confirmation Order.** The Confirmation Order shall (i) have been entered by the Bankruptcy Court and shall be a Final Order, (ii) contain substantially the provisions set forth in Exhibit C with no deviations that are adverse to Purchaser, (iii) not have been reversed, vacated or stayed, and (iv) not have been modified or amended in any manner adverse to Purchaser.

**SECTION 9.09 Closing Title Policy.** The Title Company shall be prepared to issue the Closing Title Policy, subject only to Purchaser's payment of the premium therefor and satisfaction of any other conditions that are solely within Purchaser's control. Sellers shall have delivered to the Title Company, with respect to the Closing Title Policy, a customary owner's affidavit and non-imputation affidavit and indemnity from such Person and in such forms satisfactory to the Title Company.

**SECTION 9.10 Resignations.** Sellers shall have delivered to Purchaser a resignation, effective as of the Closing, from each active director, officer and manager of the Company and the Acquired Subsidiaries as of the Closing Date.

**SECTION 9.11 Acknowledgements from Regulators.** The Pennsylvania Department of Environmental Protection ("PaDEP") shall have approved, in writing, a commercially reasonable site-specific soil management plan to address such matters as the testing, handling, storage, transportation, disposal, and re-use of soil, as applicable, that permits and is consistent with Purchaser's Intended Use to redevelop the Owned Real Property into a tri-modal industrial park with ancillary commercial uses. Such site-specific soil management plan

shall allow for the relocation of impacted soils within the Owned Real Property in order to allow the “balancing” of the grading of the Owned Real Property and engineered barriers, as appropriate.

**SECTION 9.12 Specified Assets.** Either (a) PESRM shall be the owner of the Specified Assets and any and all Liens (other than Permitted Liens) with respect to the Specified Assets shall have been released, and, with respect to the “Facility” (as that term is defined under the NGL Agreements, the NGL Agreements shall be terminated (or otherwise amended) such that none of the Company, any Acquired Subsidiary or Purchaser shall have any further Liability thereunder as of the Closing or, (b) if the condition set forth in (a) has not been achieved as of the Closing despite the reasonable best efforts of Sellers, Purchaser shall receive a credit against the Purchase Price equal to the value of the Specified Assets to Purchaser based upon Purchaser’s Intended Use, which value shall be agreed to by Sellers and Purchaser, each working together in good faith or, in the event Sellers and Purchaser cannot agree on such value, as determined by the Bankruptcy Court pursuant to Section 12.15 (in which case the value proposed by Purchaser shall be deposited in escrow to be administered by the Bankruptcy Court and disbursed in conformance with the Bankruptcy Court’s determination of the value of the Facility). For the avoidance of doubt, this Section 9.12 may apply with respect to one or both of the Specified Assets.

**SECTION 9.13 Facility Turnover.** As of the Closing, all of the items set forth in the “Prior to Closing” section of Exhibit D will be complete in all material respects (as defined on Exhibit D) (unless, prior to the Closing, Purchaser notifies Sellers in writing that Purchaser will complete the ICBCS Plan after the Closing).

**SECTION 9.14 Excluded Subsidiaries.** Sellers shall have provided written evidence reasonably satisfactory to Purchaser’s counsel that neither the Company nor any Acquired Subsidiary will own, as of the Closing, any equity interests of (a) PES Inventory Company, LLC, a Delaware limited liability company, or (b) PES Administrative Services, LLC, a Delaware limited liability company.

**SECTION 9.15 CBA Termination.** Any CBAs and any contractual and statutory duty to bargain with the Union signatory to any such CBAs shall be terminated, rejected, expired or otherwise no longer operative such that (1) the Company and the Acquired Subsidiaries will have no Liability to, and no contractual duty to bargain with, any Union, and (2) in all cases other than a rejection of the CBA pursuant to Section 1113 of the Bankruptcy Code, such Union shall have also waived in writing any statutory duty of the Company and the Acquired Subsidiaries to bargain with such Union (for the avoidance of doubt, Purchaser agrees to use commercially reasonable efforts to cooperate with Sellers with respect to Sellers’ satisfaction of the conditions contained in this Section 9.15).

**SECTION 9.16 Frustration of Closing Conditions.** Purchaser may not rely on the failure of any condition set forth in this Article 9 to be satisfied if such failure was primarily caused by Purchaser’s failure to act in good faith or to use its commercially reasonable efforts to cause the Closing to occur.

ARTICLE 10  
**CONDITIONS TO OBLIGATIONS OF SELLERS**

The obligation of Sellers to consummate the transactions described in Section 2.01, Section 2.03 and Section 2.04 are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by the Company in its sole discretion):

**SECTION 10.01 Representations and Warranties.** (a) The Purchaser Fundamental Representations shall be true and correct in all respects (other than de minimis inaccuracies) as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date); and (b) the representations and warranties of Purchaser contained in this Agreement (other than the Purchaser Fundamental Representations) shall be true and correct as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date), except in the case of this clause (b) where the failure of such representations and warranties to be true and correct (in each case disregarding all qualifications and exceptions contained therein relating to materiality, material adverse effect or word of similar import) would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations hereunder.

**SECTION 10.02 Performance; Covenants and Agreements.** Purchaser shall have performed and complied in all material respects with the material agreements, covenants and obligations required by this Agreement to be performed or complied with by Purchaser at or before the Closing.

**SECTION 10.03 Officer's Certificate.** Purchaser shall have delivered to the Company an officer's certificate, dated the Closing Date and executed by a corporate officer of Purchaser on behalf of Purchaser, certifying that all of the conditions set forth in Section 10.01 and Section 10.02 have been satisfied.

**SECTION 10.04 Legal Prohibition.** No Action or Proceeding instituted by any Governmental or Regulatory Authority of competent jurisdiction shall be pending, no Law shall be in effect and no Order of any Governmental or Regulatory Authority of competent jurisdiction shall have been entered, in each case that restrains, enjoins or prohibits the performance of all or any part of this Agreement or the consummation of all or any part of the Transactions or declares unlawful the Transactions or would cause any of the Transactions to be rescinded.

**SECTION 10.05 Governmental or Regulatory Approvals.** All Governmental or Regulatory Approvals set forth on Section 10.05 of the Seller Disclosure Schedule shall have been obtained, made or given, shall be in full force and effect or shall have occurred.

**SECTION 10.06 Closing Deliveries.** Purchaser shall have executed and delivered all of the certificates, instruments and other documents specified hereunder to be delivered by it at the Closing, including the litigation control agreement attached hereto as Exhibit E.

**SECTION 10.07 Confirmation Order.** The Confirmation Order shall (i) have been entered by the Bankruptcy Court, (ii) contain substantially the provisions set forth in Exhibit C, (iii) not have been reversed, vacated or stayed, and (iv) not have been modified or amended in any manner materially adverse to Sellers.

**SECTION 10.08 Frustration of Closing Conditions.** Neither Seller may rely on the failure of any condition set forth in this Article 10 to be satisfied if such failure was primarily caused by either Seller's or the Company's failure to act in good faith or to use commercially reasonable efforts to cause the Closing to occur.

## ARTICLE 11 TERMINATION

**SECTION 11.01 Termination.** This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time by written notice from Sellers or Purchaser to the other (except for paragraph (a) below):

- (a) by mutual written consent of Purchaser and each Seller;
- (b) by either Purchaser or any Seller:

(i) (A) if the Bankruptcy Court has not entered a Confirmation Order consistent in all material respects with Section 9.08 on or before February 13, 2020, or (B) if the Confirmation Order has not become a Final Order on or before February 27, 2020, or (C) if the Bankruptcy Court denies confirmation of the Plan, or (D) if any of the Chapter 11 Cases is dismissed or is converted to Chapter 7 of the Bankruptcy Code;

(ii) if the Closing has not occurred on or before May 31, 2020 (the "**Termination Date**"); *provided* that the terminating Party is not in material breach under this Agreement (and for such purpose only, any such material breach by the Company or any Seller shall be deemed a material breach by both Sellers); *provided further*, that a Party may not terminate pursuant to this Section 11.01(b)(ii) if the Closing has not occurred due to the failure of such Party to satisfy a condition set forth in Article 9 and Article 10 (as applicable) that is within the reasonable control of such Party (and for such purpose only, the reasonable control of each Seller shall include the reasonable control of the other Seller and the Company); *provided*, however, that, notwithstanding anything to the contrary in this Agreement, the Termination Date:

(A) may be extended by any Party, by notice to the other Parties, for one additional three-month period if (x) one or more applicable Governmental or Regulatory Approvals have not been obtained by such date and (y) the lack of any such Governmental or Regulatory Approvals is the sole reason that the unwaived conditions set forth in Article 9 and Article 10 to consummate the Closing are unfulfilled; and

(B) will be extended automatically without further action by either Party until the earlier of (x) the expiration of each CBA in accordance with their terms, (y) rejection of each CBA pursuant to a Final Order under section 1113 of



the Bankruptcy Code or (z) a negotiated settlement or agreement with each Unions that would satisfy the conditions set forth in Section 9.15, in each case only if (I) the conditions set forth in Section 9.15 shall not have been waived by the Termination Date and (II) such failure to satisfy Section 9.15 is the sole reason that the conditions set forth in Article 9 and Article 10 to consummate the Closing are unfulfilled.

(iii) if any court of competent jurisdiction in the United States or other Governmental or Regulatory Authority shall have issued a Final Order or enacted any Law or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Order is or shall have become final and nonappealable.

(c) at any time before the Closing, by Purchaser if there has been a breach by any Seller or the Company of any covenant, agreement or obligation contained in this Agreement or if any representation or warranty of Sellers or the Company is or shall have become untrue, in either case such that the conditions set forth in Section 9.01 or Section 9.02 would not be satisfied, and such breach or inaccuracy is not curable, or, if curable, is not cured within the earlier of (A) 30 days after written notice of such breach is given to Sellers by Purchaser and (B) the Termination Date; *provided* that the right to terminate this Agreement pursuant to this Section 11.01(c) shall not be available to Purchaser at any time that Purchaser has violated, or is in breach of, any covenant, representation or warranty hereunder, if such violation or breach has prevented satisfaction of any of Sellers' conditions to Closing hereunder (and such condition(s) has not been waived by Sellers) or, if capable of being cured, has not been cured by Purchaser;

(d) at any time before the Closing, by either Seller if there has been a breach by Purchaser of any covenant, agreement or obligation contained in this Agreement or if any representation or warranty of Purchaser is or shall have become untrue, in either case such that the conditions set forth in Section 10.01 or Section 10.02 would not be satisfied, and such breach or inaccuracy is not curable, or, if curable, is not cured within the earlier of (A) 30 days after written notice of such breach is given to Purchaser by Sellers and (B) the Termination Date; *provided, however*, that no cure period shall apply to Purchaser's obligation to pay the Purchase Price at the Closing. The right to terminate this Agreement pursuant to this Section 11.01(d) shall not be available to Sellers at any time that either Seller or the Company have violated, or are in breach of, any covenant, representation or warranty hereunder, if such violation or breach has prevented satisfaction of any of Purchaser's conditions to Closing hereunder (and such condition(s) has not been waived by Purchaser) or, if capable of being cured, has not been cured by Sellers or the Company; or

(e) at any time before the Closing, by either Seller if Purchaser has failed to consummate the transactions contemplated hereby on the date that the Closing would have occurred, pursuant to and subject to the provisions of Section 2.04, if Purchaser had not failed to consummate the transactions contemplated hereby, and all of the conditions set forth in Article 9 would have been satisfied if the Closing were to have occurred on such date; *provided* that Sellers and the Company are not then in breach of this Agreement so as to cause the conditions set forth in Article 9 not to be satisfied.

**SECTION 11.02 Effect of Termination.**

(a) Except as provided in this Section 11.02, if this Agreement is validly terminated pursuant to Section 11.01, then this Agreement will forthwith become null and void and there will be no liability or obligation on the part of any Party or any other Person in respect of this Agreement other than for any material breach of this Agreement occurring prior to such termination and for willful misconduct or actual fraud; *provided*, that the agreements of the Parties in Article 1, Section 7.04, this Section 11.02, and Article 12 will continue to apply following any termination hereof.

(b) Notwithstanding this Section 11.02 or anything else in this Agreement to the contrary, Purchaser affirms that it is not a condition to the Closing or to any of its obligations under this Agreement that Purchaser (or the Company or any Acquired Subsidiary) obtain financing for or related to any of the transactions contemplated by this Agreement.

(c) If this Agreement is terminated in accordance with Section 11.01 the Escrow Amount shall be released in accordance with and subject to the following provisions:

(i) If either Seller terminates this Agreement pursuant to and in accordance with Section 11.01(d) or Section 11.01(e), the Escrow Amount shall be paid to Sellers, and Sellers and Purchaser shall promptly deliver to the Escrow Agent joint written instructions directing the Escrow Agent to release to Sellers from the Escrow Account the Escrow Amount. The Parties acknowledge and agree that (1) the Parties have expressly negotiated the provisions of this Section 11.02(c)(i), (2) in light of the circumstances existing at the time of the execution of this Agreement (including the inability of the Parties to quantify the damages that may be suffered by Sellers and their Affiliates) the provisions of this Section 11.02(c)(i) are reasonable, (3) the Escrow Amount represents a good faith, fair estimate of the damages that Sellers and their Affiliates would suffer and (4) the Escrow Amount shall be payable as liquidated damages (and not as a penalty) without requiring Sellers or any other Person to prove actual damages.

(ii) If either Seller or Purchaser terminates this Agreement pursuant to and in accordance with Section 11.01, other than a termination by a Seller pursuant to and in accordance with Section 11.01(d) or Section 11.01(e), the Escrow Amount shall be refunded to Purchaser, and Sellers and Purchaser shall promptly deliver to the Escrow Agent joint written instructions directing the Escrow Agent to release to Purchaser from the Escrow Account the Escrow Amount.

(iii) In the event that Purchaser shall fail to deliver its counterpart of such joint written instructions to the Escrow Agent pursuant to Section 11.02(c)(i) or either Seller shall fail to deliver its counterpart of such joint written instructions to the Escrow Agent pursuant to Section 11.02(c)(ii), Purchaser or any Seller, as applicable, shall reimburse the other for reasonable costs and expenses actually incurred or accrued by such Party and its Affiliates (including reasonable fees and expenses of counsel) in connection with collection under and enforcement in full of this Section 11.02(c).

## ARTICLE 12 MISCELLANEOUS

**SECTION 12.01 Entire Agreement.** This Agreement and the agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way. The Parties have voluntarily agreed to define their rights, liabilities and obligations with respect to the transactions contemplated hereby exclusively in contract pursuant to the express terms and provisions of this Agreement, and the Parties expressly disclaim that they are owed any duties or are entitled to any remedies not expressly set forth in this Agreement. Furthermore, this Agreement embodies the justifiable expectations of sophisticated parties derived from arm's-length negotiations and shall not be deemed to create a partnership between Sellers or any of their Affiliates, on the one hand, and Purchaser or any of its Affiliates, on the other hand, and no Person has any other special relationship with another Person that would justify any expectation beyond that of an ordinary buyer and an ordinary seller in an arm's-length transaction.

**SECTION 12.02 Survival.** Except as otherwise provided in this Agreement, none of the representations, warranties, agreements and covenants contained in this Agreement will survive the Closing or the termination of this Agreement if this Agreement is terminated prior to the Closing; *provided, however*, that if the Closing occurs, the agreements of the Parties in Article 1, Article 2, Section 6.07, Section 7.03, Section 7.04, Section 7.05, Section 7.06, Section 8.01 and this Article 12 will survive the Closing, and if this Agreement is terminated prior to the Closing, the agreements of the Parties in Article 1, Section 7.04, Section 11.02, and this Article 12 will survive such termination.

### **SECTION 12.03 Expenses; Payments.**

(a) Except as otherwise specified in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party shall pay its own costs and expenses, and, other than as provided in Section 12.03(b), Sellers (or the Company prior to Closing) shall pay the costs and expenses of the Company and the Acquired Subsidiaries incurred in connection with the negotiation and execution of this Agreement and the consummation of the transactions contemplated hereby.

(b) Purchaser shall pay all costs and expenses (other than the costs and expenses for each Seller's Representatives) associated with (i) obtaining all Governmental or Regulatory Approvals required to be obtained by Purchaser, (ii) the Closing Title Policy and (iii) as otherwise expressly set forth in this Agreement.

(c) Each Party agrees that, where not otherwise specified, all amounts required to be paid hereunder shall be paid in United States currency and, except as otherwise expressly set forth in this Agreement, without discount, rebate or reduction and subject to no counterclaim or offset, on the dates specified herein (with time being of the essence). In the event any Action or Proceeding is commenced or threatened by any Person to enforce its rights under this Agreement against any other Person, all fees, costs and expenses, including reasonable attorneys' fees and court costs, incurred by the prevailing party in connection with such Action

or Proceeding shall be reimbursed by the non-prevailing party in such Action or Proceeding; *provided* that if the prevailing party in such Action or Proceeding prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such Action or Proceeding shall award a reimbursement of the fees, costs and expenses incurred by such prevailing party on an equitable basis.

#### SECTION 12.04      **Confidentiality.**

(a) Each Party will, and will cause its Affiliates and Representatives to, hold, in strict confidence, all documents and information concerning another Party or any of its Affiliates furnished to it by another Party or such other Party's Affiliates or Representatives in connection with this Agreement or the transactions contemplated hereby (the "**Confidential Information**"), and treat all such Confidential Information as proprietary, secret and confidential; *provided, however*, from and after the Closing, (x) such confidentiality obligations of Purchaser and its Affiliates and Representatives shall terminate with respect to all Confidential Information other than with respect to any Confidential Information that relates exclusively to Sellers or their Affiliates (other than Company or any of the Acquired Subsidiaries) and (y) all Confidential Information relating to the Company or any of the Acquired Subsidiaries or their respective businesses or operations shall be deemed to be the Confidential Information of Purchaser. Except with respect to Purchaser to the extent Purchaser's confidentiality obligations are terminated from and after the Closing pursuant to the previous sentence, in no event shall either Party distribute to third parties any Confidential Information; *provided, however*, that nothing in this Section 12.04 shall limit the disclosure by any Party of any Confidential Information:

(i) to the extent required by Law or Order (*provided* that the disclosing Party agrees to give the non-disclosing Party prompt and reasonably sufficient written notice thereof so as to enable the non-disclosing Party to seek a protective order, oppose any action by the disclosing Party, or pursue any other appropriate remedy, if so desired by the non-disclosing Party). If such a protective order or other remedy is not obtained, or if the non-disclosing Party, in its sole discretion, waives in writing compliance with this Agreement, the disclosing Party (or such other Person required to disclose the Confidential Information) may disclose only that portion of the Confidential Information that it is legally required to disclose to avoid contempt or other penalty in the reasonable opinion of counsel to the disclosing Party (or such other Person required to disclose the Confidential Information), and shall exercise reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information so disclosed;

(ii) in an Action or Proceeding brought by a Party in pursuit of its rights or in the exercise of its remedies under this Agreement or the transactions contemplated hereby;

(iii) to the extent that such Confidential Information can be shown to have come within the public domain through no action or omission of the disclosing Party or its Affiliates or Representatives; and

(iv) later acquired by the receiving Party from another source if the receiving Party is not aware that such source is under an obligation to another Party hereto to keep such Confidential Information confidential.

(b) To the extent that any Confidential Information may include materials subject to the attorney-client privilege, Sellers are not waiving, and Sellers will not be deemed to have waived or diminished, its attorney work-product protections, attorney-client privileges or similar protections and privileges as a result of disclosing any Confidential Information (including Confidential Information related to pending or threatened litigation) to Purchaser, its Affiliates or their respective Representatives, regardless of whether Sellers have asserted or is or may be entitled to assert such privileges and protections. In furtherance of the foregoing, neither Purchaser nor its Affiliates shall claim or contend, in proceedings involving either Party, that Sellers waived its attorney work-product protections, attorney-client privileges or similar protections and privileges with respect to any information, documents or other material (whether or not disclosed to Purchaser or its Affiliates) due to Sellers' disclosure of Confidential Information (including Confidential Information related to pending or threatened litigation) to Purchaser, its Affiliates or their respective Representatives.

(c) In the event this Agreement is terminated in accordance with Section 11.01, upon the request of either Party, the other Party will, and will cause its Affiliates and Representatives to, promptly (and in no event later than five Business Days after such request) redeliver or destroy and certify in writing as destroyed, or cause to be redelivered or destroyed and certified in writing as destroyed (as requested by such Party), all copies of Confidential Information furnished by such other Party in connection with this Agreement or the transactions contemplated hereby and all notes, memoranda, summaries, analyses, compilations and other writings related to or based on such information or documents prepared by the Party furnished with such Confidential Information or its Affiliates or Representatives.

**SECTION 12.05 No Waiver.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any prior or future occasion.

**SECTION 12.06 Amendments.** Any provision of this Agreement may be modified, supplemented or waived only by an instrument in writing duly executed by Purchaser and Sellers. Any such modification, supplement or waiver shall be for such period and subject to such conditions as shall be specified in the instrument effecting the same and shall be binding upon each of Purchaser and Sellers, and any such waiver shall be effective only in the specific instance and for the purposes for which given. No course of dealing between or among any Persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Person under or by reason of this Agreement.

**SECTION 12.07 Addresses for Notices.** All notices and other communications required or permitted to be given or made under this Agreement shall be given or made in

writing, by physical (including by mail or courier) or electronic mail delivery to the address specified below or such other address as shall be designated in a notice in writing. Notices will be effective and deemed to have been given (a) when personally delivered, sent by fax or email (with hard copy to follow) or sent by reputable overnight express courier (charges prepaid), or (b) three calendar days following mailing by certified or registered mail, postage prepaid and return receipt requested.

If to Sellers and, prior to the Closing, Company or the Acquired Subsidiaries:

PES Holdings, LLC  
3144 Passyunk Avenue  
Philadelphia, Pennsylvania 19145  
Attn: Jeffrey Stein  
John B. McShane  
Anthony M. Lagreca  
Email: jstein@steinadvisorsllc.com  
john.mcshane@pes-companies.com  
anthony.lagreca@pes-companies.com

with copies (which shall not constitute notice) to:

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attn: Steven N. Serajeddini, P.C.  
Matthew C. Fagen  
Email: steven.serajeddini@kirkland.com  
matthew.fagen@kirkland.com

*and*

Kirkland & Ellis LLP  
1601 Elm Street  
Dallas, Texas 75201  
Attn: Michael Considine, P.C.  
Email: MPConsidine@kirkland.com

*and*

Kirkland & Ellis LLP  
609 Main Street, 47th Floor  
Houston, Texas 77002  
Attn: John D. Furlow  
Email: john.furlow@kirkland.com

If to Purchaser and, after the Closing, the Company and the Acquired Subsidiaries:

Hilco Redevelopment Partners  
111 S. Wacker Drive, Suite 3000  
Chicago, IL 60606  
Attn: Roberto E. Perez  
Email: RPerez@hilcoglobal.com

with a copy (which shall not constitute notice) to:

Hilco Global  
5 Revere Drive, Suite 206  
Northbrook, IL 60062  
Attn: Eric W. Kaup  
Email: ekaup@hilcoglobal.com

*and*

Bryan Cave Leighton Paisner LLP  
161 North Clark Street, Suite 4300  
Chicago, Illinois 60601-3315  
Attn: Eric S. Prezant  
Email: eric.prezant@bclplaw.com

**SECTION 12.08 Specific Performance.** Each Party acknowledges that the rights of each Party to consummate the transactions contemplated hereby are unique and recognize and affirm that in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached, money damages would be inadequate (and therefore the non-breaching Party would have no adequate remedy at law) and the non-breaching Party would be irreparably damaged. Accordingly, each Party agrees that, subject to Section 11.02, (a) each other Party shall be entitled to specific performance, an injunction or other equitable relief (without posting of bond or other security or needing to prove irreparable harm or damages) to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in accordance with Section 12.15, in addition to any other remedy to which such Person may be entitled, at law or in equity, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right as provided in this Section 12.08, none of the Parties would have entered into this Agreement. The Parties hereto agree not to assert that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the Parties otherwise have an adequate remedy at law. If, on or prior to the Termination Date, any Party brings any action, in each case in accordance with the terms hereof, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Termination Date shall automatically be extended (x) for the period during which such action is pending, plus 10 Business Days or (y) by such other time period established by the court presiding over such action, as the case may be. Notwithstanding anything herein to the contrary, (x) in no event shall this Section 12.08, be used, alone or together with any other provision of this Agreement, to require Sellers, the Company or the Acquired Subsidiaries to remedy any inaccuracy of any representation or

warranty made by either Seller herein and (y) Purchaser expressly acknowledges that nothing contained in this sentence shall restrict Sellers from enforcing specifically the obligations of Purchaser set forth in Article VII.

**SECTION 12.09 Captions.** The captions and section headings appearing in this Agreement are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

**SECTION 12.10 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application of any such provision to any Person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

**SECTION 12.11 Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; *provided* that, except as provided in the following proviso, neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by any Party (including by operation of law) without the prior written consent of the other Party; *provided further* that notwithstanding anything to the contrary herein, the Sellers shall be permitted to assign any of their respective rights, interests or obligations hereunder to (i) any Affiliate subject to Purchaser's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) or (ii) to New Holdings in connection with the Pre-Closing Restructuring.

**SECTION 12.12 No Third-Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of each Party hereto and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person other than with respect to the beneficiaries of the releases in Section 6.07 and Section 7.04, Section 7.06, and Section 12.13(a), the Indemnified Persons under Section 7.03, the Non-Party Affiliates identified in Section 12.13(b), Kirkland & Ellis under Section 12.18 and the proviso of Section 12.06, each of which provisions is intended to be for the benefit of the Persons covered thereby or to be paid thereunder and may be enforced by such Person.

**SECTION 12.13 Disclaimer; Non-Recourse.**

(a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN (OR AS EXPRESSLY PROVIDED IN ANY DOCUMENT OR INSTRUMENT DELIVERED AT CLOSING), THE INTERESTS ARE BEING TRANSFERRED "AS IS, WHERE IS, WITH ALL FAULTS," AND, WITHOUT LIMITING THE GENERALITY OF SECTION 7.04,



EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN (OR AS EXPRESSLY PROVIDED IN ANY DOCUMENT OR INSTRUMENT DELIVERED AT CLOSING), SELLER AND THE COMPANY EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITY OF THE INTERESTS OR THE PROSPECTS (FINANCIAL OR OTHERWISE), RISKS AND OTHER INCIDENTS OF THE COMPANY, THE ACQUIRED SUBSIDIARIES OR THE BUSINESS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN (OR AS EXPRESSLY PROVIDED IN ANY DOCUMENT OR INSTRUMENT DELIVERED AT CLOSING), PURCHASER WAIVES, RELEASES AND FOREVER DISCHARGES ALL CLAIMS AND RIGHTS OF ACTION, WHETHER AT LAW OR EQUITY, AGAINST SELLER, THE COMPANY, OR THE ACQUIRED SUBSIDIARIES OR ANY EQUITYHOLDER OR CREDITOR THEREOF ARISING WITH RESPECT TO THE BUSINESS OR RELATING TO THE TRANSACTIONS UNDER THIS AGREEMENT, INCLUDING ANY CLAIMS OR RIGHTS OF ACTION, INCLUDING COST RECOVERY AND CONTRIBUTION, UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OR ANY OTHER ENVIRONMENTAL LAWS. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUT WITHOUT LIMITING THE OBLIGATIONS AND LIABILITIES OF PURCHASER SET FORTH IN SECTION 11.02(C)(I), NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY (I) CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, SPECULATIVE, EXEMPLARY, TREBLE DAMAGES OR DAMAGES FOR ANY LOST PROFITS OR BUSINESS, LOST BUSINESS OPPORTUNITY, DIMINUTION IN VALUE OR LOSS OF USE, (II) DAMAGES OR LOSSES BASED ON OR USING CALCULATION OF LOSS OF FUTURE REVENUE, INCOME OR PROFITS OR DIMINUTION OF VALUE OR (III) DAMAGES BASED ON A MULTIPLE OF EARNINGS OR OTHER METRIC OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY FOR ANY REASON WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON STATUTE, CONTRACT, TORT, OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT, OTHER THAN TO THE EXTENT THAT ANY SUCH DAMAGES (INCLUDING, FOR THE AVOIDANCE OF DOUBT, LOST PROFITS) ARE THE REASONABLY FORESEEABLE RESULT OF A BREACH OF THIS AGREEMENT.

(b) All claims or causes of action (whether in contract or in tort or otherwise) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), may be made only against the Persons that are expressly identified as Parties. No Person who is not a named party to this Agreement, including any past, present or future direct or indirect director, officer, employee, incorporator, member, manager, partner, equityholder, Affiliate, agent, attorney or other Representative of any named party to this Agreement (such Persons, collectively, "**Non-Party Affiliates**"), shall have any liability (whether in contract or in tort or otherwise, or based upon any theory that seeks to impose liability of an entity party against its owners or Affiliates) for any obligations or liabilities arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of this Agreement or its negotiation or execution, and each Party waives and releases all such liabilities, claims and obligations against

any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third-party beneficiaries of this Section 12.13(b).

(c) Notwithstanding anything to the contrary contained herein or provided for under any applicable Law or Order, except with respect to any such damages sought by third parties against Purchaser or Sellers, no party hereto will, in any event, be liable to any other party hereto, either in contract or in tort, for any punitive damages or any damages or Losses resulting from the transactions contemplated hereby in excess of the Purchase Price.

**SECTION 12.14 Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties to this Agreement may execute this Agreement by signing any such counterpart. In the event that any signature is delivered by electronic mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such “.pdf” signature page were an original thereof. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by all of the other Parties.

**SECTION 12.15 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware applicable to contracts executed in and to be performed in that State without regard to any conflict or choice of law principles that would apply the substantive law of some other jurisdiction. All Actions and Proceedings arising out of or relating to this Agreement shall be heard and determined by the Delaware Chancery Court, and the Parties hereby irrevocably submit to the exclusive jurisdiction of such courts in any such Action or Proceeding and irrevocably waive and agree not to assert any defense of an inconvenient forum to the maintenance of any such Action or Proceeding. Notwithstanding the foregoing, during the pendency of the Chapter 11 Cases, the Bankruptcy Court shall have exclusive jurisdiction over all disputes arising under or in connection with this Agreement, the Confidentiality Agreement or any other Transaction Agreement, and each Party hereby irrevocably submits and consents to the exclusive jurisdiction of the Bankruptcy Court for such purposes.

**SECTION 12.16 Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTION OF THE COMPANY OR THE ACQUIRED SUBSIDIARIES OR PURCHASER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (II) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THE FOREGOING WAIVER; (III) SUCH PARTY MAKES THE FOREGOING WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 12.16.

**SECTION 12.17 Disclosure.** Any fact or item disclosed in any section of the Seller Disclosure Schedule shall be deemed disclosed in each other section of the Seller Disclosure Schedule to which such fact or item may apply so long as (a) such other section is referenced by applicable cross-reference or (b) it is reasonably apparent on the face of such disclosure that such disclosure is applicable such other section. The headings contained in the Seller Disclosure Schedule are for convenience of reference only and shall not be deemed to modify or influence the interpretation of the information contained in the Seller Disclosure Schedule or this Agreement. The Seller Disclosure Schedule is not intended to constitute, and shall not be construed as, an admission or indication that any such fact or item is required to be disclosed. Any fact or item disclosed in the Seller Disclosure Schedule shall not by reason only of such inclusion be deemed to be material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement and matters reflected in the Seller Disclosure Schedule are not necessarily limited to matters required by this Agreement to be reflected herein and may be included solely for information purposes. No disclosure in the Seller Disclosure Schedule relating to any possible breach or violation of any Contract, Law or order shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. The information contained in the Seller Disclosure Schedule shall be kept strictly confidential by the Parties and no third party may rely on any information disclosed or set forth therein.

**SECTION 12.18 Legal Representation.** Purchaser agrees and will cause each of the Company and each Acquired Subsidiary to agree, on their own behalf and on behalf of their directors, managers, members, partners, officers, employees and Affiliates and each of their successors and assigns (all such parties, the “**Waiving Parties**”), that Kirkland & Ellis LLP (“**Kirkland & Ellis**”) (or any successor thereto), Skadden, Arps, Slate, Meagher & Flom LLP (“**Skadden**”) (or any successor thereto), Buchanan Ingersoll & Rooney PC (“**Buchanan**”) (or any successor thereto) and McKool Smith (“**McKool Smith**”) (or any successor thereto) (collectively, Kirkland & Ellis, Skadden, Buchanan and McKool Smith, “**Sellers Counsel**”) may represent Sellers or any direct or indirect director, manager, member, partner, officer, employee, equityholder, Affiliate or other Representative of Sellers, in connection with any dispute, litigation, claim, proceeding or obligation arising out of or relating to this Agreement, any agreement entered into in connection herewith or the transactions contemplated hereby (any such representation, the “**Post-Closing Representation**”) notwithstanding its representation (or any continued representation) of the Company or any Acquired Subsidiary, and Purchaser consents thereto and will cause the Company and each Acquired Subsidiary to consent thereto on behalf of itself and the Waiving Parties, and Purchaser irrevocably waives (and will not assert) and will cause the Company and each Acquired Subsidiary to irrevocably waive (and not assert) any conflict of interest or any objection arising therefrom or relating thereto. Purchaser acknowledges and will cause the Company and each Acquired Subsidiary to acknowledge that the foregoing provision applies whether or not any of Sellers Counsel provides legal services to the Company or any Acquired Subsidiary after the Closing Date. Purchaser irrevocably acknowledges and agrees and will cause the Company and each Acquired Subsidiary to irrevocably acknowledge and agree, for itself and the Waiving Parties, that all communications among any of Sellers Counsel, the Company and any Acquired Subsidiary, Sellers or any director, officer, manager, member, employee or other Representative of any of the foregoing made in connection with the negotiation, preparation, execution, delivery and performance under, or any dispute or proceeding arising out of or relating to, this Agreement, any agreement

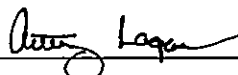
entered into in connection herewith, the transactions contemplated hereby or any matter relating to any of the foregoing, are privileged communications and the attorney-client privilege and the expectation of client confidence belongs to solely to Sellers and may be controlled by Sellers and shall not pass to or be claimed by Purchaser, the Company or any Acquired Subsidiary and from and after the Closing none of Purchaser, the Company or any Acquired Subsidiary or any Person purporting to act on behalf of or through Purchaser, the Company or any Acquired Subsidiary or any of the Waiving Parties, will seek to obtain the same by any process. From and after the Closing, Purchaser, on behalf of itself and the Waiving Parties, waives and will not assert and will cause the Company and each Acquired Subsidiary to waive and not assert any attorney-client privilege with respect to any communication among any of Sellers Counsel, the Company, any Acquired Subsidiary, Sellers or any director, officer, manager, member, employee or other Representative of any of the foregoing occurring prior to the Closing in connection with any Post-Closing Representation. Notwithstanding the foregoing, in the event that a dispute arises between Purchaser, the Company or any Acquired Subsidiary, on the one hand, and a third party other than Sellers, on the other hand, Purchaser, the Company and any Acquired Subsidiary may assert the attorney-client privilege to prevent disclosure of confidential communications to such third party; *provided, however*, that none of Purchaser, the Company or any Acquired Subsidiary may waive such privilege without the prior written consent of Sellers.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representative of each party hereto as of the date first above written.

**SELLERS:**

PES ULTIMATE HOLDINGS, LLC


By:   
Name:  
Title:

PES INTERMEDIATE, LLC

By:   
Name:  
Title:

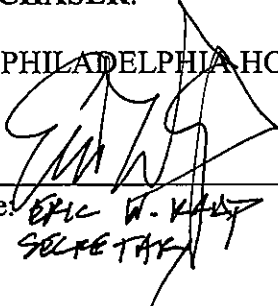
**COMPANY:**

PES HOLDINGS, LLC

By:   
Name:  
Title:

**PURCHASER:**

HRP PHILADELPHIA HOLDINGS, LLC

By:   
Name: ERIC W. KARP  
Title: SECRETARY

**EXHIBIT F**

**Description of Successful Bid<sup>1</sup>**

Following the Auction held on January 17, 2020, in consultation with the Consultation Parties, the Debtors selected HRP Philadelphia Holdings, LLC as the Winning Bidder. The consideration provided by the Winning Bidder includes a Base Purchase Price of \$240,000,000.00 and an Escrow Amount of \$30,000,000.00. Please refer to the Purchase Agreement for further details on the terms of the Successful Bid.

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit F** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the “Plan”) or in the Purchase Agreement (as defined herein), as applicable.

## **EXHIBIT G**

### **Form of Liquidating Trust Agreement<sup>1</sup>**

Certain documents, or portions thereof, contained or referenced in this **Exhibit G** and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

---

<sup>1</sup> Capitalized terms used but not defined in this **Exhibit G** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the "**Plan**").

## **LIQUIDATING TRUST AGREEMENT**

This liquidating trust agreement (this “Agreement”) is made this [•]th day of [•], 2020 by and among PES Holdings, LLC and its affiliated debtors (together, with its successors or assigns, the “Debtors”), and [•] as trustee (the “Trustee”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below).

### **RECITALS**

WHEREAS, on July 21, 2019, each of the Debtors filed a voluntary Chapter 11 petition with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, on [•], 2020, the Bankruptcy Court entered an order [Docket No. [•]] (the “Confirmation Order”) confirming the *First Amended Joint Chapter 11 Plan of Reorganization of PES Holdings, LLC and Its Debtor Affiliates* (the “Plan”);

WHEREAS, the Plan contemplates, on the Effective Date of the Plan, (a) the creation of a liquidating trust (the “Liquidating Trust”) and the creation of the beneficial interests in the Liquidating Trust of the Beneficiaries identified herein and in accordance with the Plan, and (b) that the Liquidating Trust will be vested with the Liquidating Trust Assets, to be liquidated and distributed to the Beneficiaries, as set forth herein and in accordance with the Plan and the Confirmation Order;

WHEREAS, the Plan contemplates that, pursuant to Treasury Regulation Section 301.7701-4(d), the Liquidating Trust shall be created for the primary purpose of liquidating the Liquidating Trust Assets in an expeditious but orderly manner for the benefit of the Beneficiaries, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the liquidating purpose of the Liquidating Trust; and

WHEREAS, the Liquidating Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Beneficiaries to be treated as the grantors of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets, and, consequently, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall be treated as a deemed transfer of those assets from the Debtors and the Estates to the Beneficiaries (to the extent of the value of their respective interests in such assets) followed by a deemed transfer by such Beneficiaries (to the extent of the value of their respective interests in such assets) to the Liquidating Trust for federal income tax purposes.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the mutual agreements of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:



## **ARTICLE I DECLARATION OF TRUST**

**1.1 Creation and Purpose of the Liquidating Trust.** The Debtors and the Trustee hereby create the Liquidating Trust for the primary purpose of collecting, holding, liquidating, and distributing the Liquidating Trust Assets to the Beneficiaries in accordance with their respective entitlements under the Plan, the Confirmation Order, and applicable tax statutes, rules, and regulations, and in an expeditious but orderly manner, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the liquidating purpose of the Liquidating Trust and the Plan. In particular, the Trustee shall (a) make continuing efforts to collect and reduce the Liquidating Trust Assets to Cash, and (b) make timely distributions, including by transferring proceeds of Liquidating Trust Assets to any Distribution Reserve Account in accordance with the Plan and the Confirmation Order, and not unduly prolong the duration of the Liquidating Trust. The Liquidating Trust shall also be entitled to exercise the rights of the Sellers pursuant to the Purchase Agreement, and any surviving obligations of the Purchaser or the Acquired Entities to the Sellers shall be deemed obligations to the Liquidating Trust.

**1.2 Declaration of Trust.** In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtors and the Trustee have executed this Agreement and, effective on the Effective Date of the Plan, the Debtors hereby absolutely and irrevocably transfer to the Liquidating Trust, all of the right, title, and interests of the Debtors in and to the Liquidating Trust Assets, to have and to hold unto the Liquidating Trust and its successors and assigns forever, under and subject to the terms of the Plan and the Confirmation Order, for the benefit of the Beneficiaries (to the extent of their respective legal entitlements) and their successors and assigns as provided for in this Agreement and in the Plan and Confirmation Order. The Debtors shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and will cooperate and take such other actions as the Trustee may deem reasonably necessary or desirable in order to more effectively transfer, convey and assign all rights, title and interests in and to the Liquidating Trust Assets to the Liquidating Trust

**1.3 Vesting of Liquidating Trust Assets.** On the Effective Date of the Plan, pursuant to the terms of the Plan, all assets of the Reorganized Debtors, all Claims and Causes of Action identified on the Retained Causes of Action List as being vested in the Liquidating Trust or the Reorganized Debtors, as applicable, and each of the Excluded Assets, including, for the avoidance of doubt, any proceeds under the Business Interruption and Property Damage Insurance Policies (collectively, the “Liquidating Trust Assets”), shall be vested in the Liquidating Trust, which also shall be authorized to obtain, liquidate, and collect all of the Liquidating Trust Assets not in its possession. Subject to the provisions of the Plan and the Confirmation Order, all Liquidating Trust Assets shall be delivered to the Liquidating Trust free and clear of Liens, Claims, and Interests of any kind. On the Effective Date, the Liquidating Trust shall stand in the shoes of the Debtors and Reorganized Debtors for all purposes with respect to the Liquidating Trust Assets and administration of the Causes of Action identified on the Retained Causes of Action List as being vested in the Liquidating Trust or the Reorganized Debtors, as applicable. To the extent any law or regulation prohibits the transfer of ownership of any of the Liquidating Trust Assets from the Debtors or Reorganized Debtors to the Liquidating Trust and such law is not superseded by the Bankruptcy Code, the Liquidating Trust’s interest shall be a lien upon and security interest in such

Liquidating Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in Section 1.1 hereto, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages

**1.4 Funding of the Trust.** The Liquidating Trust shall be funded, on the Effective Date of the Plan, with the Liquidating Trust Assets, as provided for in the Plan and in the Confirmation Order.

**1.5 Acceptance by Trustee.** The Trustee hereby accepts the trust imposed on it by this Agreement and created for the benefit of the Beneficiaries and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Liquidating Trust, the Trustee hereby accepts the transfer of the Liquidating Trust Assets. The Trustee also agrees to receive and disburse all monies actually received by him constituting part of the Liquidating Trust Assets pursuant to the terms of this Agreement, the Plan and the Confirmation Order.

**1.6 Name of the Liquidating Trust.** The Liquidating Trust established hereby shall be known as the “PES Liquidating Trust.”

## **ARTICLE II THE TRUSTEE**

**2.1 Appointment.** The Trustee has been selected pursuant to the provisions of the Plan and has been appointed as of the Effective Date of the Plan. The Trustee’s appointment shall continue until the earlier of (a) the termination of the Liquidating Trust or (b) the Trustee’s resignation, death, disability, dissolution, or removal. To effectuate an orderly and efficient transition of the administration of the Liquidating Trust Assets from the Debtors to the Trustee, the Trustee may perform certain services in connection with its duties and obligations under this Agreement prior to the Effective Date of the Plan.

**2.2 Power to Contract.** In furtherance of the purpose of the Liquidating Trust, and except as otherwise specifically restricted in the Plan, the Confirmation Order, or this Agreement, the Trustee shall have the right and power on behalf of the Liquidating Trust, and also may cause the Liquidating Trust, to enter into any covenants or agreements binding the Liquidating Trust, and to execute, acknowledge, and deliver any and all instruments that are necessary or deemed by the Trustee to be consistent with and advisable in furthering the purpose of the Liquidating Trust.

**2.3 General Powers.** The Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to, or vested in the Liquidating Trust under the Plan, the Confirmation Order, this Agreement, and any other agreement entered into pursuant to or in connection with the Plan; *provided*, that any agreements of the Liquidating Trust negotiated and filed as part of **Exhibit A** to the Liquidating Trust Agreement prior to the Effective Date will be effective with respect to the Liquidating Trust on and after the Effective Date. For the avoidance of doubt, the Trustee’s exercise of all of the powers, duties, obligations, rights and benefits of the Trustee vested herein shall be subject in all respects to (i) the availability of and reasonable likelihood of recovery of Liquidating Trust Assets;(ii) consideration of the extent of any reasonable benefit to be realized

by the Beneficiaries in light of the nature of the Liquidating Trust Assets and terms of the Plan; and (iii) the provisions of this Agreement, including without limitation Section 2.4 hereof. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Trustee may control and exercise authority over the Liquidating Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the business of the Liquidating Trust. No person dealing with the Liquidating Trust shall be obligated to inquire into the Trustee's authority in connection with the acquisition, management, or disposition of Liquidating Trust Assets. Without limiting the generality of the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the Trustee shall be expressly authorized to, with respect to the Liquidating Trust and the Liquidating Trust Assets:

(a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken with respect to the Liquidating Trust Assets, by any officer, director, shareholder, or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party.

(b) Open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, calculate and make distributions, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the Liquidating Trust.

(c) Receive, manage, invest, supervise, and protect the Liquidating Trust Assets, subject to the limitations provided herein.

(d) Hold legal title to any and all Liquidating Trust Assets, including, for the avoidance of doubt, any beneficial interest in the Retained Matters (as defined in the Confirmation Order).

(e) Subject to the applicable provisions of the Plan and the Confirmation Order, collect and liquidate all Liquidating Trust Assets and, as appropriate, dissolve any corporate entities.

(f) Transfer proceeds of Liquidating Trust Assets to any Distribution Reserve Account in accordance with the Plan and the Confirmation Order.

(g) Review and, where appropriate, object to claims, and, subject to the terms of the Plan, supervise and administer the resolution, settlement and payment of all Disputed Claims, and the distribution to the Beneficiaries and creditors of the Liquidating Trust, in accordance with this Agreement, the Plan, and the Confirmation Order; *provided*, that the Trustee shall not object to, administer, resolve, settle or pay General Unsecured Claims that are Disputed Claims until all [Term Loan Secured Claims and Intermediation Secured Claims] have been paid in full in accordance with the terms of the Plan and Confirmation Order.

(h) Investigate, analyze, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, any and all Causes of Action and claims in favor of or against the Debtors,

the Debtors' Estates, the Liquidating Trust Assets or the Liquidating Trust that have not been released under the Plan or otherwise as the Liquidating Trustee shall deem advisable, including, but not limited to, any claims under the Business Interruption and Property Damage Insurance Policies.

(i) Pursue, commence, prosecute, compromise, settle, dismiss, release, waive, withdraw, abandon, or resolve all Causes of Action identified on the Retained Causes of Action List as being vested in the Liquidating Trust or the Reorganized Debtors, as applicable, including, for the avoidance of doubt, any Causes of Actions or claims arising under the Business Interruption and Property Damage Insurance Policies.

(j) Protect and enforce the rights to the Liquidating Trust Assets (including any Causes of Action identified on the Retained Causes of Action List as being vested in the Liquidating Trust or the Reorganized Debtors, as applicable) vested in the Liquidating Trust and Reorganized Debtors by this Agreement and the Plan by any method the Trustee deem appropriate, including, without limitation, by judicial proceedings or otherwise.

(k) (i) Seek a determination of tax liability under Bankruptcy Code section 505; (ii) file, if necessary, any and all tax and information returns required with respect to the Liquidating Trust; (iii) make tax elections for and on behalf of the Liquidating Trust; and (iv) pay taxes, if any, payable for and on behalf of the Liquidating Trust.

(l) Pay all lawful, expenses, debts, charges, taxes, and liabilities of the Liquidating Trust, including, for the avoidance of doubt, all expenses due to the Term Loan Administrative Agent pursuant to the terms of the Term Loan Credit Agreement.

(m) Make distributions to the Beneficiaries, and to creditors of the Liquidating Trust as provided for, or contemplated by, the Plan, the Confirmation Order, and this Agreement.

(n) Withhold from the amount distributable to any person such amount as may be sufficient to pay any tax or other charge which the Trustee has determined, in its sole discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision of either.

(o) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order, or this Agreement and perform all obligations thereunder.

(p) If any of the Liquidating Trust Assets are situated in any state or other jurisdiction in which the Trustee is not qualified to act as trustee, subject to all other provisions of this Agreement (including, but not limited to, Section 2.4) nominate and appoint a person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Trustee in its discretion; confer on such trustee all the rights, powers, privileges, and duties of the Trustee hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Trustee for all monies, assets, and other

property that may be received in connection with the administration of all property; and, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal.

(q) Purchase and carry all insurance policies and pay all insurance premiums and costs from Liquidating Trust Assets it deems reasonably necessary or advisable.

(r) Employ, without further order of the Bankruptcy Court, attorneys, accountants, appraisers, expert witnesses, insurance adjusters, or other persons whose services may be reasonably necessary or advisable (including, in each case, those previously retained by the Debtors), to advise or assist in the administration, prosecution and distribution of the Liquidating Trust Assets, to be paid solely from the funds held in trust for the Beneficiary or Beneficiaries for which such costs, expenses, and obligations were incurred.

(s) Implement, enforce, or discharge all of the terms, conditions and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement relating to the Liquidating Trust, the Liquidating Trust Assets, or the Trustee.

(t) Invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the Internal Revenue Services (“IRS”) guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise.

(u) Take all other actions consistent with the provisions of the Plan that the Trustee deems reasonably necessary or desirable to administer the Liquidating Trust in accordance with the Plan, the Confirmation Order, and this Agreement.

**2.4 Limitations on the Trustee.** The Trustee shall be obligated to obtain the written approval of the Liquidating Trust Committee with respect to any matters that the Liquidating Trust Committee determines from time to time shall require such consent, and which shall initially include all matters affecting the Liquidating Trust Assets involving \$250,000 or more, as reasonably determined by the Trustee in good faith, including, but not limited to, Claims objections, litigation, contested matters, the sale, transfer or abandonment of other Liquidating Trust Assets or any other exercise of any power granted to the Liquidating Trust, *provided*, that (i) the Trustee shall be obligated to obtain the written approval of the Liquidating Trust Committee to compromise, settle, otherwise resolve any claim or dispute or otherwise taking binding action with respect to the Debtors’ rights under the Purchase Agreement, (ii) the Trustee shall be obligated to obtain the prior written approval of the Liquidating Trust Committee to delegate his or her authority under this Liquidating Trust to other persons, and (iii) the Trustee shall be obligated to obtain the prior written approval, not to be unreasonably withheld, of the Liquidating Trust Committee to retain attorneys, independent public accountants and other professionals and to set the terms of compensation thereof. In all other events, except as otherwise set forth herein, the Trustee is authorized to compromise or settle an action without any notice or consent if the Liquidating Trustee reasonably believes such settlement or compromise to be in the best interests

of the Liquidating Trust. Notwithstanding anything under applicable law, this Agreement, or the Plan to the contrary, the Trustee shall not do or undertake any of the following:

(a) Take any action that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes.

(b) Receive transfers of any listed stocks or securities, or any readily marketable securities, except as is absolutely necessary or required under the Plan and the Confirmation Order; *provided, however*, that in no event shall the Trustee receive any such investment that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes.

(c) Receive or retain cash or cash equivalents in excess of a reasonable amount necessary to make applicable distributions to Beneficiaries and satisfy any liabilities of the Liquidating Trust and to establish and maintain the reserves contemplated by the Plan.

(d) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or other temporary liquid investments, such as short-term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any IRS guidelines, whether set forth in IRS rulings, IRS revenue procedures, other IRS pronouncements, or otherwise.

(e) Receive or retain any operating assets of an ongoing business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets.

(f) Accept or take on, directly or indirectly, any obligation or other liability, monetary or otherwise, on behalf of the Liquidating Trust, including but not limited to the assumption or assignment of any Executory Contract or Unexpired Lease, as provided in the Plan unless such obligation or other liability would not jeopardize treatment of the Liquidating Trust as a “liquidating trust” for federal income tax purposes.

(g) Notwithstanding any of the foregoing, the Trustee shall not be prohibited from engaging in any trade or business on its own account, *provided* that such activity does not interfere with the Trustee’s administration of the Liquidating Trust.

## **2.5 Compensation of Trustee and Its Employees and Professionals.**

(a) The initial Trustee shall receive fair and reasonable compensation for his services in an amount or manner, or in accordance with a process for determination, to be disclosed in advance of the Confirmation Hearing. The reimbursement of reasonable out-of-pocket expenses shall be incurred and paid from the Liquidating Trust Assets. Any successor to the Trustee shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided herein.

(b) The Trustee shall be entitled to pay from the Liquidating Trust Assets reasonable compensation, plus the reimbursement of reasonable out-of-pocket expenses, to each

of the Liquidating Trust's employees on such terms and conditions as may be agreed to upon by the parties, including, for the avoidance of doubt, any amounts owed under the KERP Documents and KEIP Agreement.

(c) [The Trustee, subject to other provisions in this Agreement (including, but not limited, to Section 2.4 hereof, shall be entitled to pay from the Liquidating Trust Assets reasonable compensation, plus the reimbursement of reasonable out-of-pocket expenses, to each of its professionals on such terms and conditions as may be agreed to upon by the parties, but solely from the funds held in trust for the Beneficiary for which such costs, expenses and obligations were incurred. In the event that a dispute arises between the parties regarding payment of any such compensation or expense reimbursement, the professionals may seek payment of such fees and costs by filing a motion with the Bankruptcy Court and providing notice to the Trustee.]

**2.6 Wind-Down Reserve.** The Trustee shall establish, fund, and administer the Wind-Down Reserve, which shall initially be funded with Cash equal to the Wind-Down Reserve Amount, and which shall be used to satisfy its anticipated future operating expenses of the Trustee as determined in accordance with Section 6.3. From time to time, the amount required to be held in the Wind-Down Reserve may be increased or reduced in accordance with Section 6.3. Any excess funds held in the Wind-Down Reserve shall be transferred to the General Account for distribution to holders of Allowed Claims in accordance with Section 6.2. In no event shall the Wind-Down Reserve be used to pay Intermediation Secured Claims unless all Term Loan Secured Claims have been paid in full in Cash. In no event shall the Wind-Down Reserve be used to pay General Unsecured Claims unless all Intermediation Secured Claims and Term Loan Secured Claims have been paid in full in Cash.

**2.7 Accounts.** The Trustee shall establish the General Account and the Distribution Reserve Accounts in accordance with the Plan.

**2.8 Replacement of the Trustee.** The Trustee may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court, *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Trustee, unless (i) the Insurance Coverages (as defined below) terminate for any reason other than the Trustee's unreasonable refusal to renew such Insurance Coverages; or (ii) Trustee determines in his or her reasonable judgment that the Liquidating Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or this Agreement, in which case such resignation may become effective without appointment of a successor Trustee. The Trustee may be removed by the Bankruptcy Court upon motion and after notice and a hearing, which motion may be brought by any party in interest, or by the Liquidating Trust Committee, by majority of the members, for reasonable cause. In the event of the resignation, death, disability, dissolution, or removal of the Trustee, the Liquidating Trust Committee may appoint a replacement in accordance with Section 4.1 hereof. Upon its appointment, the successor Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Trustee relating to the Liquidating Trust shall be terminated; *provided, however*, that the original Trustee's right to indemnification shall survive termination and is subject to Sections 5.2 and 5.3 hereof. In the event the Trustee's appointment terminates by reason of termination without cause, death, or disability (meaning herein, incapacity resulting

in the inability to perform services for three consecutive months or in the aggregate of 180 days during any 12 month period), amounts owed (including on account of any incentive fee compensation) to the original Trustee (or its estate or representative) on the one hand and any successor Trustee on the other shall be allocated between them to reflect their respective periods of service; *provided, however*, that the original Trustee shall be compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced and shall be paid the portion of the incentive fee compensation that may be earned by, or which would be earned as a result of claims objections in progress at, the time of his termination. In the event of the removal or resignation of any Trustee with cause, such Trustee (or his estate or representatives) shall be immediately compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced.

**2.9 Liquidating Trust Continuance.** The death, dissolution, resignation, or removal of the Trustee shall not terminate the Liquidating Trust or revoke any existing agency created by the Trustee pursuant to this Agreement or invalidate any action theretofore taken by the Trustee, and the successor Trustee agrees that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all its successors or assigns.

### **ARTICLE III LIABILITY OF TRUSTEE**

**3.1 Standard of Care; Exculpation.** Neither the Trustee nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust shall be liable for losses, claims, damages, liabilities, or expenses in connection with the affairs or property of the Liquidating Trust to any Beneficiary of the Liquidating Trust, or any other person, for the acts or omissions of the Trustee or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust; *provided, however*, that the foregoing limitation shall not apply as to any losses, claims, damages, liabilities or expenses suffered or incurred by any Beneficiary that are found by a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, or willful misconduct of such person or entity. Every act done, power exercised or obligation assumed by the Liquidating Trust, the Trustee, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust pursuant to the provisions of this Agreement shall be held to be done, exercised, or assumed, as the case may be, by the Liquidating Trust, the Trustee, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust acting for and on behalf of the Liquidating Trust and not otherwise; *provided, however*, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities' or Persons' actions or inactions outside of the scope of the authority provided by the Liquidating Trust. Every Beneficiary, Person, firm, corporation or other Entity contracting or otherwise dealing with or having any relationship with the Liquidating Trust, the Trustee, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust shall have recourse only to the Liquidating Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the Liquidating Trust, the Trustee, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust shall not



be individually liable therefor. For the avoidance of doubt, the Trustee, in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors or the Reorganized Debtors. In no event shall the Liquidating Trust, the Trustee, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if such person or entity has been informed of the likelihood of such loss or damages and regardless of the form of action. The Trustee shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Liquidating Trust Assets and the Causes of Action administered by the Liquidating Trust. The Liquidating Trust, the Trustee, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust shall not be liable for any act or omission that has been approved by the Bankruptcy Court, and all such actions or omissions shall conclusively be deemed not to constitute fraud, gross negligence, or willful misconduct.

### **3.2 Indemnification.**

(a) Except as otherwise set forth in the Plan or Confirmation Order, the Trustee, members of the Liquidating Trust Committee, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust (collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Liquidating Trust against any and all losses, claims, damages, liabilities, penalties, obligations, and expenses, including the costs for counsel or others in investigating, preparing, or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based on, or arising out of (directly or indirectly) exercise and performance or nonperformance of any power, obligation, or duties of such person, or entity in accordance with this Agreement, the Plan, or the Confirmation Order; *provided, however*, such indemnity shall not apply to any such loss, claim, damage, liability, or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to be a liability for which recourse is not limited to the Liquidating Trust Assets pursuant to Section 3.1 herein. Satisfaction of any obligation of the Liquidating Trust arising pursuant to the terms of this Section shall be payable only from the Liquidating Trust Assets, may be advanced prior to the conclusion of such matter, and such right to payment shall be prior and superior to any other rights to receive a distribution of the Liquidating Trust Assets.

(b) Subject to the available Liquidating Trust Assets and outstanding liabilities and expenses of the Liquidating Trust, the Liquidating Trust shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding, or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in connection with the Agreement or the duties, acts, or omissions of such Entity or Person, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Liquidating Trust hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor under this Agreement.

**3.3 No Liability for Acts of Successor/Predecessor Trustees.** Upon the appointment of a successor Trustee and the delivery of the Liquidating Trust Assets to the successor Trustee, the predecessor Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Trustee shall have no further liability or responsibility with respect thereto. A successor Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Trustee shall be in any way liable for the acts or omissions of any predecessor Trustee, unless a successor Trustee expressly assumes such responsibility. A predecessor Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Trustee for any events or occurrences subsequent to the cessation of its role as Trustee.

**3.4 Reliance by Trustee on Documents or Advice of Counsel.** Except as otherwise provided in this Agreement, the Trustee, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust may rely, and shall be protected from liability for acting, on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by such Entity or Person to be genuine and to have been presented by an authorized party. The Trustee, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Trustee or the Liquidating Trust shall not be liable for any action taken or suffered by such Entity or Person in reasonable reliance upon the advice of counsel or other professionals engaged by the Trustee or the Liquidating Trust in accordance with this Agreement.

**3.5 No Liability for Good Faith Error of Judgement.** The Trustee shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a final judgment of a court of competent jurisdiction (not subject to further appeal or review) that the Trustee was grossly negligent or engaged in willful misconduct in ascertaining the pertinent facts.

**3.6 Insurance.** The Trustee may purchase, using the Liquidating Trust Assets, and carry all insurance policies and pay all insurance premiums and costs that the Trustee deems reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any losses it may incur, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud or willful misconduct, with respect to the implementation and administration of the Plan or this Liquidating Trust Agreement.

**3.7 Survival.** The provisions of this Article III shall be contractual rights and shall survive the termination of this Agreement and shall continue as to any Entity or Person who has ceased in such role to which such rights were conferred and shall inure to the benefit of such Entity's or Person's successors, heirs, executors and administrators. Any amendment, alteration or repeal of this Article III that adversely affects any right of any Entity or Person or their successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

**ARTICLE IV**  
**GENERAL PROVISIONS CONCERNING**  
**ADMINISTRATION OF THE LIQUIDATING TRUST**

**4.1 [Liquidating Trust Committee.]** An administrative trust committee (the “Liquidating Trust Committee”), consisting of no more than five (5) members, shall consult from time to time on various matters as set forth in this Liquidating Trust Agreement. The Liquidating Trust Committee shall initially consist of one (1) member to be designated by Credit Suisse Asset Management (“CSAM”); one (1) member to be designated by Bardin Hill Investment Partners, LP (“BHIP”); one (1) member to be designated by the Ad Hoc Committee of Term Loan Lenders (collectively with the CSAM and BHIP designees, the “Term Loan Designees”); one (1) member to be designated by the UCC (the “UCC Designee”); and one (1) member to be designated by ICBCS (the “ICBCS Designee”). Upon the distribution of the full amount of the Allowed Term Loan Secured Claims to the Holders of Term Loan Secured Claims, the Term Loan Designees shall resign from the Liquidating Trust Committee and the ICBCS Designee shall receive the governance rights of the Term Loan Designees. Upon the distribution of the full amount of the Intermediation Secured Claims to Holders of Intermediation Secured Claims, the ICBCS Designee shall resign from the Liquidating Trust Committee. Except as provided in Section 2.7 herein, the Liquidating Trust Committee may act either (i) by written consent of a simple majority of all members of the Liquidating Trust Committee or (ii) by the vote of a simple majority of all members of the Liquidating Trust Committee at any meeting where a simple majority of the members of the Liquidating Trust Committee are present.]

**4.2 Register of Beneficiaries.** The Liquidating Trust shall maintain at all times a register of the names, mailing addresses, amounts of Allowed Claims, and the Pro Rata interests in the Liquidating Trust of the Beneficiaries (the “Register”). The Register shall be limited to those Beneficiaries who are determined by the Trustee as of the Effective Date of the Plan to be entitled to at least a Minimum Distribution (as provided in Section 6.6 herein below) in the event that the total amount of the General Unsecured Claims is less than or equal to \$[500,000,000] (each a “Minimum Distributee”). The Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Trustee from time to time. The initial Register shall be delivered to the Trustee by the Debtors and shall be based on the list of holders of Claims maintained by Omni Management Group as of the Effective Date of the Plan and prepared in accordance with the provisions of the Plan and the Confirmation Order. All references in this Liquidating Trust Agreement to holders of beneficial interests in the Liquidating Trust shall be read to mean holders of record as set forth in the Register maintained by the Trustee and shall exclude any beneficial owner not recorded on such Register.

**4.3 Books and Records.** The Liquidating Trust also shall maintain in respect of the Liquidating Trust and the Beneficiaries books and records relating to the Liquidating Trust Assets and any income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating Trust in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Agreement is intended to require the Liquidating Trust to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating

Trust Assets. Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Trustee to inspect the Liquidating Trust's books and records, including the Register, provided such Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Trustee. Satisfaction of the foregoing condition notwithstanding, if (a) the Trustee determines in good faith that the inspection of the Liquidating Trust's books and records, including the Register, by any Beneficiary would be detrimental to the Liquidating Trust or (b) such Beneficiary is a defendant (or potential defendant) in a pending (or potential) action or contested matter brought by or against the Liquidating Trust, the Liquidating Trust may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Trustee under this Section 4.2.

**4.4 Filing of Interim Reports.** The Liquidating Trust shall file with the Bankruptcy Court quarterly reports regarding the liquidation or other administration of the Liquidating Trust Assets. The Trustee shall prepare and provide to the Liquidating Trust Committee quarterly budgets acceptable to the Liquidating Trust Committee, which set forth, among other things, fees and expenses of the Trustee (including fees and expenses of retained professionals) expected to be incurred over the budgeted period.

**4.5 Final Accounting of Trustee.** The Trustee (or any such successor Trustee) shall within ninety (90) days after the termination of the Liquidating Trust or the death, dissolution, resignation, or removal of the Trustee, render an accounting containing at least the following information:

- (a) A description of the Liquidating Trust Assets;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements, and other transactions in connection with the Liquidating Trust and the Liquidating Trust Assets during the Trustee's term of service, including their source and nature;
- (c) Separate entries for all receipts of principal and income;
- (d) The ending balance of all Liquidating Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept;
- (e) All known liabilities of the Liquidating Trust; and
- (f) All pending actions.

**4.6 Filing of Accounting.** The accounting described in Section 4.4 shall be filed with the Bankruptcy Court and all Beneficiaries shall thereby have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and, to the extent applicable, the discharge and release of the Trustee.

**4.7 Filing of Tax Returns.** The Liquidating Trust shall be responsible for filing all federal, state, local, and foreign tax returns for the Liquidating Trust (but not for the Debtors).

**ARTICLE V**  
**BENEFICIAL INTERESTS AND BENEFICIARIES**

**5.1 Trust Beneficial Interests.** The following Holders of Claims shall be entitled to distributions as beneficiaries of the Liquidating Trust (collectively, the “Beneficiaries”) as set forth below and in the Plan:

- (a) Holders of Allowed Other Secured Claims;
- (b) Holders of Allowed Other Priority Claims;
- (c) Holders of Allowed Term Loan Secured Claims;
- (d) Holders of Allowed Intermediation Secured Claims;
- (e) Holders of Allowed General Unsecured Claims; and
- (f) the Holder of the Subordinated Remaining Volume Claim.

**5.2 Interest Beneficial Only.** Ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

**5.3 Evidence of Beneficial Interest.** Ownership of a beneficial interest in the Liquidating Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Trustee, which may be the Register.

**5.4 Exemption from Registration.** The parties hereto intend that the rights of the holders of the beneficial interests arising under this Liquidating Trust Agreement shall not be “securities” under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

**5.5 Transfers of Beneficial Interests.** The Trustee, after consultation with his or her counsel, shall establish procedures to govern the registration and transfer of beneficial interests (such procedures, a “Permitted Transfer”), provided that such procedures shall be reasonably acceptable to the Liquidating Trust Committee. Once such procedures have been established, the Trustee shall notify all holders of Beneficial Interests of such procedures. Notwithstanding the foregoing, a transfer of a Beneficial Interest shall not be permitted by the Liquidating Trustee if such transfer would be contrary to maintaining the Liquidating Trust as a liquidating trust for federal income tax purposes in accordance with Treasury Regulation § 301.7701-4(d) and as one or more “grantor trusts” subject to the provisions of Chapter 1, Subchapter J, Part I, Subpart E of the IRC.

**5.6 Absolute Owners.** The Trustee may deem and treat the persons who are Beneficiaries (as determined in accordance with the Plan) as the absolute owners of the beneficial interests in the Liquidating Trust for the purpose of receiving distributions and payments thereof, or on account thereof, and for all other purposes whatsoever. Unless the Trustee receives actual written notice of a Permitted Transfer from the duly authorized transferee not less than thirty (30) days prior to a distribution made pursuant to the terms of this Agreement, and subject to the applicable provisions of Bankruptcy Rule 3001(e), the Trustee shall have no duty or obligation to make or direct any distributions or payments to such transferee of a Permitted Transfer.

**5.7 Change of Address.** A Beneficiary may, after the Effective Date of the Plan, select an alternative mailing address by notifying the Liquidating Trust in writing of such alternative Distribution Address. Absent such notice, the Trustee shall not recognize any such change of address. Such notification shall be effective only upon receipt by the Trustee.

**5.8 Effect of Death, Dissolution, Incapacity or Bankruptcy of Beneficiary.** The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, dissolved, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Liquidating Trust.

**5.9 Standing.** Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than against the Trustee to the extent provided in this Agreement) with respect to the Liquidating Trust Assets.

**5.10 Requirement of Undertaking.** The Trustee may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, that the filing party litigant in such suit pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; *provided, however*, that the provisions of this Section 5.10 shall not apply to any suit by the Trustee.

## **ARTICLE VI DISTRIBUTIONS**

**6.1 Distributions to Beneficiaries from Liquidating Trust Assets.** All payments to be made by the Liquidating Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and from the Liquidating Trust Assets, and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and proceeds realized from the Liquidating Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this Agreement.

### **6.2 Distribution Procedures.**

- (a) The Trustee shall make distributions to Holders of Allowed Other Secured

Claims and Holders of Allowed Other Priority Claims, to the extent such Claims were not previously satisfied pursuant to the Plan, in accordance with the Plan as soon as practicable after each such Claim becomes an Allowed Claim (or the date that such Claim becomes due and payable, to the extent applicable, if later).

(b) The Trustee shall make distributions to the Holders of Allowed Term Loan Secured Claims, as soon as practicable and until the Allowed Term Loan Secured Claims are paid in full, from the General Account and all other Liquidating Trust Assets other than from (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) prior to the repayment of the Allowed Intermediation Secured Claims in full, Disputed Priority June 21 Insurance Proceeds (as defined in the Final DIP Order); *provided*, that notwithstanding any dispute, the following may be distributed to Allowed Term Loan Secured Claims from June 21 Business Interruption Proceeds: \$25 million plus any surcharge pursuant to paragraph 14 of the Final DIP Order applied pursuant to the Final DIP Order.

(c) The Trustee shall make distributions to Holders of Allowed Intermediation Secured Claims as soon as practicable and until the Allowed Intermediation Secured Claims are paid in full, from all SOA Priority Collateral other than (i) \$25 million of June 21 Business Interruption Insurance Proceeds (as defined in the Final DIP Order) *plus* (ii) the amount of the Insurance Recovery Surcharge (as defined in the Final DIP Order), and after the repayment of the Allowed Term Loan Secured Claims in full, the General Account and other Liquidating Trust Assets other than from (i) amounts held in the Disputed Claims Reserve; (ii) amounts held in the GUC Distribution Reserve; or (ii) amounts required to be held in the Wind-Down Reserve; and (ii) an expense reserve to be established by the ICBCS Designees.

(d) The Trustee shall make distributions to Holders of General Unsecured Claims pursuant to the Plan from the GUC Distribution Reserve in accordance with the Plan other than any amounts that may be required, in the reasonable determination of the UCC Designee, to reconcile and, if necessary, dispute the allowance of any General Unsecured Claims and, after the repayment of all Allowed Term Loan Secured Claims and Allowed Intermediation Secured Claims in full, from all of the Liquidating Trust Assets other than (i) amounts held in the Disputed Claims Reserve, and (ii) amounts required to be held in the Wind-Down Reserve.

**6.3 Distributions; Withholding.** The Trustee shall make distributions to Holders of Allowed Claims in accordance with the Plan at such times and in such amounts as the Trustee may determine in its sole discretion; *provided* that the Trustee shall retain and supplement from time to time the Wind-Down Reserve in an amount determined with the consent of the Liquidating Trust Committee (such consent not to be unreasonably withheld) (a) as is reasonably necessary to meet contingent liabilities to maintain the value of the Liquidating Trust Assets during the term of the Liquidating Trust (provided that in no event shall funds be required to be reserved to maintain or pursue Intermediation Priority Collateral or Disputed Priority June 21 Insurance Proceeds without the consent of the Liquidating Trust Committee); (b) to pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs, fees, and expenses (including attorneys' fees and expenses, financial advisor fees and expenses, and disbursing agent fees and expenses) of the Trustee in connection with the performance of its duties in connection with this Liquidating Trust Agreement; and (c) to satisfy all other liabilities and claims of creditors of the Liquidating Trust incurred or assumed in respect

of the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order, and this Liquidating Trust Agreement. All such distributions shall be made as provided, and subject to any withholding or reserve, in this Agreement, the Plan, or the Confirmation Order. The Trustee may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Trustee's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement.

**6.4 No Distribution Pending Allowance.** No payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim, except for distributions into a Disputed Claims Reserve in accordance with the Plan, Confirmation Order, and this Agreement.

**6.5 Distributions After Allowance.** Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Holder of a Claim belongs.

**6.6 Undeliverable Distributions.** If any Distribution is returned as undeliverable, the Liquidating Trust may, in its sole discretion (but with no obligation to do so), make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Liquidating Trust deems appropriate, but no Distribution to any holder shall be made unless and until the Liquidating Trust has determined the then-current address of the holder, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Liquidating Trust shall be returned to, and held in trust by, the Liquidating Trust until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and the Plan at the expiration of six months from the date the distribution is made ("Unclaimed Property").

**6.7 Unclaimed Property.** In the event that any distribution to any Beneficiary becomes Unclaimed Property, such distributions will revert to the Liquidating Trust as an asset of the Liquidating Trust; *provided that*, pursuant to the Plan, the Trustee shall not be required to make distributions of less than \$100.00 (a "Minimum Distribution") and if after administering all Liquidating Trust Assets and collecting all amounts which may be payable to and for the benefit of Holders of General Unsecured Claims, the amount held by the Liquidating Trust for the benefit of Holders of General Unsecured Claims is less than \$10,000.00, the Trustee, in his sole discretion, may donate the remaining funds to a 501(c)(3) charitable institution. Neither available Cash nor any Claim or any unclaimed property attributable to such Claim, shall escheat to any federal, state, or local government or other entity.

**6.8 Time Bar to Cash Payments by Check.** Checks issued by the Liquidating Trust on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to the Plan and this Section 6.7 shall be made directly to the Trustee by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the Effective Date of the Plan or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the



proceeds of those checks shall revert in and become property of the Liquidating Trust as Unclaimed Property.

**6.9 Withholding Taxes.** Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder and to the extent of knowledge and records available to the Liquidating Trust. All Beneficiaries shall be required to provide the Trustee with any information necessary in connection with the withholding of such taxes. In addition, all distributions under the Plan shall be net of the actual and reasonable costs of making such distributions.

**6.10 Distributions on Non-Business Days.** Any distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

**6.11 No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary in the Plan, no Beneficiary shall receive in respect of such Claims held by the Beneficiary any distribution in excess of the Allowed amount of such Claim, plus postpetition interest thereon to the extent allowed by the Plan. Upon a Beneficiary's recovering the full amount of its Allowed Claim from another source, it thereafter shall no longer have any entitlement to receive distributions under the Plan.

**6.12 Setoff and Recoupment.** The Liquidating Trust may, but shall not be required to, setoff against, or recoup from, any Claim and the Distribution to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that the Debtor, the Estates or the Liquidating Trust may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Estates or the Liquidating Trust of any claim, defense, right of setoff, or recoupment that any of them may have against the holder of any Claim.

**6.13 Disputed Priority June 21 Business Interruption Insurance Proceeds.** Unless the Term Loan Secured Claims and/or the Intermediation Secured Claims have been paid in full in accordance with the Plan, upon the receipt of any Disputed Priority Business Interruption Insurance Proceeds, the Trustee shall segregate and hold such funds for the benefit of the holders of Term Loan Claims except as such funds may be distributed to holders of Term Loan Secured Claims in accordance with Section 6.2(b), until such time as the relative priority of Term Loan Secured Claims and Intermediation Secured Claims has been determined by Final Order or by agreement of the parties to Adv. Pro. No. 19-50282 (KG).

## ARTICLE VII TAXES

**7.1 Income Tax Status.** Consistent with Revenue Procedure 94-45, 1994-2 C. B. 684, the Liquidating Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust, except with respect to the Disputed Claims Reserves. Any items of income, deduction, credit, and

loss of the Liquidating Trust, except with respect to the Disputed Claims Reserves, shall be allocated for federal income tax purposes to the Beneficiaries.

**7.2 Tax Treatment of Transfer of Assets to the Liquidating Trust.** For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Trustee, and the Beneficiaries) shall treat the transfer of Liquidating Trust Assets to the Liquidating Trust, except with respect to the Disputed Claims Reserves, as set forth in Sections 1.2, 1.3 and 1.4 of this Agreement and in accordance with the Plan, as a transfer of such Liquidating Trust Assets (net of any applicable liabilities) to the Beneficiaries (to the extent of the value of their respective interests in such Liquidating Trust Assets) and a transfer of such Liquidating Trust Assets (net of any applicable liabilities) by the Beneficiaries (to the extent of the value of their respective interests in such Liquidating Trust Assets) to the Liquidating Trust.

**7.3 Tax Returns.** In accordance with Treasury Regulation Section 1.671-4(a), the Trustee shall file with the IRS annual tax returns for the Liquidating Trust as a grantor trust on IRS Form 1041. In addition, the Trustee shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. The Trustee shall send to each Holder of a beneficial interest appearing on the Register who is a Minimum Distributee during such year, a separate statement setting forth such Holder's share of items of income, gain, loss, deduction, or credit and each such Holder shall report such items on their federal income tax returns; *provided, however*, that no such statement need be sent to any Beneficiaries that are not expected to receive any distribution from the Liquidating Trust as a Minimum Distributee. The Trustee may provide each such Holder of a beneficial interest with a copy of the Form 1041 for the Liquidating Trust (without attaching any other Holder's Schedule K-1 or other applicable information form) along with such Holder's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement.

**7.4** The Liquidating Trust shall allocate the taxable income, gain, loss, deduction or credit of the Liquidating Trust with respect to each Holder of a beneficial interest to the extent required by applicable law.

**7.5 Withholding of Taxes and Reporting Related to Liquidating Trust Operations.** In connection with the Plan and all distributions thereunder, the Trustee shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all distributions thereunder shall be subject to any such withholding and reporting requirements. The Trustee is authorized by the Plan to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. The Trustee may require any Beneficiary to furnish to the Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Trustee may condition any distribution to any Beneficiary upon the receipt of such identification number. The Debtors shall provide a form W-9 and request other applicable withholding information and give notice (in form reasonably acceptable to Trustee) of this provision, its requirements and this Agreement to Beneficiaries, together with the notice of the Effective Date of the Plan.

**7.6 Valuations.** As soon as possible after the Effective Date, the Trustee, in consultation with any financial advisors it deems appropriate, shall make a good faith valuation of

the Liquidating Trust Assets, and such valuation shall be used consistently by all parties (including, without limitation, the Liquidating Trust and the Beneficiaries) for all federal income tax purposes; *provided, however*, that such valuation shall not be binding on the Trustee or any other party for any other purposes, including without limitation in regard to the liquidation of the Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit.

**7.7 Treatment of Disputed Claims Reserves.** The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserves and shall pay the federal, state, and local income taxes attributable to the Disputed Claims Reserves, based on the items of income, deduction, credit, or loss allocable thereto. All Beneficiaries shall report, for income tax purposes, consistent with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserves is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Plan Administrator as a result of the resolutions of such Disputed Claims.

**7.8 Expedited Determination of Taxes.** The Liquidating Trust may request an expedited determination of taxes of the Debtors and of the Liquidating Trust, including the Disputed Claims Reserves, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Debtors and the Liquidating Trust for all taxable periods through the termination of the Liquidating Trust.

## ARTICLE VIII TERMINATION OF LIQUIDATING TRUST

**8.1 Termination of Liquidating Trust.** The Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as: (A) (i) all of the Liquidating Trust Assets have been liquidated, (ii) all duties and obligations of the Trustee hereunder have been fulfilled, (iii) all distributions required to be made by the Trustee under the Plan and this Agreement have been made, and (iv) the Chapter 11 Cases of the Debtors have been closed; or (B) Trustee determines in his or her reasonable judgment that the Liquidating Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or this Agreement.

**8.2 Maximum Term.** The term of the Liquidating Trust shall end no later than the fifth (5th) anniversary of the Effective Date of the Plan (the “Initial Liquidating Trust Term”); *provided* that the Trustee may, subject to the further provisions of this Section 8.2, extend the term of the Liquidating Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Liquidating Trust Term, the Liquidating Trust may file a notice of intent to extend the term of the Liquidating Trust with the Bankruptcy Court and upon approval of the Bankruptcy Court of such extension, the term of the Liquidating Trust shall be so extended. The Liquidating Trust may file one or more such extension notices, each notice to be

filed within the six (6) month period prior to the termination of the extended term of the Liquidating Trust (all such extensions, collectively, the “Supplemental Liquidating Trust Term”). Notwithstanding anything to the contrary in this Section 8.2, however, the Supplemental Liquidation Term may not exceed three (3) years without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes. In addition, the provisions of this Section 8.2 shall be without prejudice to the right of any party in interest under Bankruptcy Code Section 1109 to petition the Bankruptcy Court, for cause shown, to shorten the Supplemental Liquidating Trust Term.

**8.3 Events Upon End of Term Termination.** At the conclusion of the term of the Liquidating Trust, the Trustee shall distribute the remaining Liquidating Trust Assets, if any, to the Beneficiaries (or charity), in accordance with the Plan, the Confirmation Order, and this Agreement.

**8.4 Winding Up and Discharge of the Trustee.** For the purposes of winding up the affairs of the Liquidating Trust at the conclusion of its term, the Trustee shall continue to act as Trustee until its duties under this Agreement have been fully discharged or its role as Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by the Trustee, the Bankruptcy Court may enter an order relieving the Trustee, its agents, and employees of any further duties, discharging the Trustee and releasing its bond, if any.

## ARTICLE IX MISCELLANEOUS PROVISIONS

### 9.1 Amendments.

(a) The Liquidating Trust Committee may direct the Trustee to execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Agreement, or amendments thereto, as specified in such vote or consent; *provided, however*, that no such supplement or amendment shall (i) require any Beneficiary to furnish or advance funds to the Trustee or shall entail any additional personal liability or the surrender of any individual right on the part of any Beneficiary except with the written consent of such Beneficiary; (ii) without the prior written consent of the holder of an Allowed Other Secured Claim, Allowed Other Priority Claim, Allowed Term Loan Secured Claim, Allowed Intermediation Secured Claim, Allowed General Unsecured Claim, or Subordinated Remaining Volume Claim, disproportionately affect, change or modify the right and obligations with respect to such Claim, including, without limitation, provisions for payment of such Claim; or (iii) without the prior written consent of the Trustee, change or modify the rights or obligations of such person under this Agreement. In no event shall this Agreement be amended so as to be inconsistent with the Plan or Confirmation Order.

(b) If, in the reasonable opinion of the Trustee, any document required to be executed pursuant to the terms of Section 9.1 hereof materially and adversely affects any immunity or indemnity in favor of the Trustee under this Agreement, the Trustee may in his or her discretion decline to execute such document.

(c) A copy of each amendment or supplement (or a fair summary thereof) shall be furnished to the Beneficiaries promptly after the execution thereof, except that with respect to any proposed amendment or supplement for which the consent of certain Beneficiaries is required pursuant to Section 9.1 hereof, the form of such proposed supplement or amendment (or a fair summary thereof) shall be furnished to the applicable Beneficiaries prior to the Trustee's seeking the approval thereof by vote or consent of such necessary parties.

(d) Upon the execution of any declaration of amendment or supplement, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the Trustee and the Beneficiaries shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Agreement for any and all purposes.

**9.2 Waiver.** No failure by the Liquidating Trust or the Trustee to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

**9.3 Cumulative Rights and Remedies.** The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights under law or in equity.

**9.4 No Bond Required.** Notwithstanding any state law to the contrary, the Trustee (including any successor Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

**9.5 Irrevocability.** This Agreement and the Liquidating Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

**9.6 Relationship to the Plan.** The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the Plan or the Confirmation Order, and consistent with Article IX.B. of the Plan, the Trustee shall have the right to review and, where appropriate, object to any and all Claims, and, subject to the terms of the Plan, supervise and administer the resolution, settlement and payment of Claims, and the distribution to the Beneficiaries and creditors of the Liquidating Trust, in accordance with this Agreement, the Plan, and the Confirmation Order.

**9.7 Division of Liquidating Trust.** Under no circumstances shall the Trustee have the right or power to divide the Liquidating Trust unless authorized to do so by the Bankruptcy Court.

**9.8 [Applicable Law.]** The Liquidating Trust is made in the State of Delaware, and the Liquidating Trust and this Agreement, and the rights and obligations of the Trustee is to be governed by and construed and administered according to the laws of the State of Delaware;

*provided, however, that, except as expressly provided in this Agreement, there shall not be applicable to the Liquidating Trust or this Agreement (a) the provisions of Section 3540 of Title 12 of the Delaware Code; or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges; (ii) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust; (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property; (iv) fees or other sums payable to trustees, officers, agents or employees of a trust; (v) the allocation of receipts and expenditures to income or principal; (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets; or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Trustee set forth or referenced in this Agreement.]*

**9.9 Retention of Jurisdiction.** Notwithstanding the Effective Date of the Plan, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Liquidating Trust after the Effective Date of the Plan, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Trustee or any professional retained by the Trustee. Each party to this Agreement and each beneficiary of the Liquidating Trust hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret, or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, *forum non conveniens*, or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Agreement.

**9.10 Severability.** In the event that any provision of this Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**9.11 Limitation of Benefits.** Except as otherwise specifically provided in this Agreement, the Plan, or the Confirmation Order, nothing herein is intended or shall be construed to confer on or to give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement.

**9.12 Notices.** All notices, requests, demands, consents, and other communication hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered

in person or if sent by overnight mail, registered mail, certified mail or regular mail, with postage prepaid, to the following addresses:

If to the Trustee:

[•]  
c/o [•]  
[•]  
Email: [•]

If to a Beneficiary:

To the name and mailing address set forth in the Register with respect to such Beneficiary.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

**9.13 Integration.** This Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by, and among the parties thereto, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Agreement, the Plan, or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement. To the extent there is an inconsistency between the Plan and this Agreement, the Plan shall control.

**9.14 Interpretation.** The enumeration and Section headings contained in this Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidating Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Liquidating Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Liquidating Trust Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise. Any reference to the "Trustee" shall be deemed to include a reference to the "Liquidating Trust" and any reference to the "Liquidating Trust" shall be deemed to include a reference to the "Trustee" except for the references in Sections 3.1 and 3.2, and such other provisions in which the context otherwise requires.

**9.15 Counterparts.** This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

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IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers or representatives, all as of the date first above written.

PES Holdings, LLC

By: \_\_\_\_\_

Name: [•]

Title: [•]

[•]

The Trustee

By: \_\_\_\_\_

Name: [•]

**EXHIBIT A**

**Material Contracts of the Liquidating Trust**

## **EXHIBIT H**

### **1129(a)(5) Disclosures and Identity and Compensation of Plan Administrator<sup>1</sup>**

Certain documents, or portions thereof, contained or referenced in this **Exhibit H** and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

#### **I. The Plan Administrator and Trustee of the Liquidating Trust**

[●] shall serve as the Plan Administrator and trustee of the Liquidating Trust. The compensation of the Plan Administrator/trustee of the Liquidating Trust will be disclosed in a supplemental Plan Supplement filing in advance of the Confirmation Hearing. The Debtors will disclose, in advance of the Confirmation Hearing, the identity and compensation (or the process for determining the foregoing), of any other Person proposed to serve as a director, officer, or trustee of the Liquidating Trust.

#### **II. The Liquidating Trust Committee**

Pursuant to the Liquidating Trust Agreement, an administrative trust committee, consisting of no more than five (5) members, shall be formed to consult from time to time on various matters pertaining to the Liquidating Trust. The Liquidating Trust Committee shall initially consist of one (1) member to be designated by Credit Suisse Asset Management ("CSAM"); one (1) member to be designated by Bardin Hill Investment Partners, LP ("BHIP"); one (1) member to be designated by the Ad Hoc Committee of Term Loan Lenders; one (1) member to be designated by the Creditors' Committee; and one (1) member to be designated by ICBCS.

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit H** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the "Plan").

**EXHIBIT I**

**Projected Creditor Recoveries<sup>1</sup>**

Certain documents, or portions thereof, contained or referenced in this **Exhibit I** and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit I** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the “Plan”) or in the Purchase Agreement (as defined in the Plan), as applicable.

### NOTES TO CHAPTER 11 RECOVERY ANALYSIS<sup>1</sup>

The Debtors have prepared this Recovery Analysis (the “Recovery Analysis”) based on currently known or best estimates of sources and uses of proceeds under the Plan. The determination of the sources and uses of funds is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by the Debtors, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtors, their management, and their advisors. Inevitably, some assumptions in this Recovery Analysis will not materialize and unanticipated events and circumstances could affect the ultimate recoveries pursuant to the actual chapter 11 Plan.

The Recovery Analysis is a hypothetical exercise that has been prepared for the purpose of generating a reasonable good-faith estimate of the proceeds that would be realized and distributed to claims classes as defined in the Plan under various scenarios and is for illustrative purposes only.

The underlying financial information in the Recovery Analysis was not compiled or examined by any independent accountants. Limited independent appraisals were available in preparing the Recovery Analysis. NEITHER THE DEBTORS NOR THEIR ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE RECOVERY ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

The Recovery Analysis should be read in conjunction with the following notes and assumptions:

#### **Notes to the Recovery Analysis**

1. *Dependence on assumptions.* The Recovery Analysis is based on a number of estimates and assumptions that, although developed and considered reasonable by management and the advisors of the Debtors at the time of preparation, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtors’ management and advisors. The Recovery Analysis is also based on the Debtors’ best judgment of how numerous decisions would be resolved. Accordingly, there can be no assurance that the values reflected in this Recovery Analysis are realized and actual results could vary materially and adversely from those contained herein.
2. *Emergence Date.* This Recovery Analysis assumes that emergence will occur on March 30, 2020.
3. *Completion of Sale Process.* The Recovery Analysis assumes that the ongoing sale process is completed, and a sale is consummated according to that certain Purchase and Sale Agreement by and among the Purchaser and the Debtors (the “PSA”). Sale proceeds are currently estimated to be \$240 million and are subject to revision based on purchase price adjustments at closing.
4. *Pursuit of Insurance Proceeds.* The Recovery Analysis assumes that property damage insurance and business interruption insurance proceeds are pursued subsequent to emergence from chapter 11, with maximum proceeds equaling the policy limit of \$1.25 billion less the \$65 million of insurance proceeds received to-date. Additionally, it is assumed that legal fees, supporting professional fees, and necessary software and service costs would be incurred during the pursuit of insurance recoveries. The timeline to recover insurance proceeds is subject to significant uncertainties and contingencies beyond the control of the Debtors or their management and advisors. As such, in the low case, recoveries have been presented without additional insurance proceeds beyond the \$65 million received to date.
5. *Other Sources of Funds.* Other sources of funds excluding the sale process and pursuit of insurance proceeds include cash, the return of cash collateral securing surety bonds, vendor prepayments, precious metals and catalyst, emission credits and vendor deposits (“Other Remaining Assets”). The analysis assumes the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings set forth in (a) the *Disclosure Statement for the First Amended Joint Chapter 11 Plan of PES Holdings, LLC and Its Debtor Affiliates* (as may be amended, modified, or supplemented from time to time and including all exhibits thereto, the “Disclosure Statement”) [Docket No. 662], or (b) the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, modified, or supplemented from time to time and including all exhibits thereto, the “Plan”), as applicable.

recovery and monetization of precious metals, net of costs, will occur over a period of six (6) to nine (9) months. This analysis also assumes the sale of emissions credits will occur over a period of 12 months.

6. *Monetization of Excise Tax Credits.* The Recovery Analysis does not contemplate the monetization of excise tax credits which could have a material impact on creditor class recoveries. The expected monetization cannot be estimated at this time.
7. *DIP Facility.* The Recovery Analysis assumes the full repayment of the DIP facility with estimated outstanding borrowings of \$100 million at the time of emergence.
8. *Administrative Claims.* The Recovery Analysis contemplates the payment of employee related expenses, including payroll and benefits, incurred and unpaid at the time of emergence along with post-petition accounts payable trade balances. The Recovery Analysis also assumes the full satisfaction of allowable administrative claims including mechanics liens, intermediation claims, 503(b)(9) claims, and miscellaneous administrative claims as defined in the Plan.
9. *Priority Tax Claims.* The Recovery Analysis assumes the payment of allowable Priority Tax Claims as defined in the Plan.
10. *Professional Fee Claims.* The Recovery Analysis assumes the payment of allowable Professional Fee Claims incurred during the period from Petition Date through the Confirmation Date remaining. Estimated incurred but unpaid Professional Fee Claims are net of retainers, where applicable.
11. *Estate Liquidation Costs.* Subsequent to the Confirmation Date, the Recovery Analysis assumes a liquidating trustee will wind down the estate and complete the hydrocarbon extraction while pursuing the insurance recovery and completing the monetization of the Other Remaining Assets. Included in the estimated costs to complete the various workstreams (as noted above) are necessary contractors, selling, general, administrative, and payroll costs for remaining employees. Additionally, three (3) months of professional fees (excluding the cost of pursuing the insurance claim) are assumed to be incurred for Debtors' counsel and advisors and Term Loan counsel and advisors. The wind down process and related time period could vary thereby affecting recoveries.
12. *Costs to Pursue Insurance Proceeds.* The Recovery Analysis estimates the cost of the pursuit of property damage and business interruption insurance proceeds to be \$40 - \$44 million, including approximately \$30 million of legal fees, and additional costs for supporting professionals, necessary software, and applicable data subscriptions. The timeline for the pursuit of insurance proceeds is subject to significant uncertainties and contingencies beyond the control of the Debtors or their management and advisors which may have a material impact on the total costs to pursue insurance proceeds.
13. *Renewable Identification Numbers ("RINs") Reserve.* Estimated RINs reserve of [\$28.8] million based on estimate as of December 31, 2019. The amount referenced is illustrative and shall not constitute an admission of priority or amount of RINs liabilities. The RINs reserve is assumed to be funded on or prior to the Effective Date with the final size of the RINs Reserve subject to variation and further discussion with the United States on behalf of the EPA. See Disclosure Statement, Art. VI.D.
14. *Environmental / Clean Up Costs.* Any environmental liabilities and clean-up costs are expected to be assumed by the Purchaser, pursuant to the PSA. As such, the Recovery Analysis does not assume any costs related to these items.
15. *Other.* Other costs included in the Recovery Analysis reflect miscellaneous expenses and the funding of a Key Employee Incentive Program (the "KEIP"). The final structure of the KEIP is subject to change.
16. *Other Secured Claims.* The Recovery Analysis assumes full payment of Other Secured Claims as defined in the Plan.

17. *Other Priority Claims.* The Recovery Analysis assumes full payment of Other Priority Claims as defined in the Plan.
18. *Term Loan Secured Claims.* Dependent on priority of business interruption insurance proceeds, with respect to the collateral of the Term Loan Secured Claims, the Recovery Analysis assumes three scenarios: (1) first priority to property damage and business interruption insurance proceeds, (2) first priority to property damage insurance proceeds and second priority to business interruption insurance proceeds, or (3) first priority to property damage proceeds with business interruption insurance proceeds unencumbered, resulting in a deficiency claim subject to similar treatment as General Unsecured Claims (“GUCs”). Further, the Recovery Analysis assumes priority to remaining cash proceeds after Other Secured Claims and Other Priority Claims are paid in full while excluding cash constituting Intermediation Priority Collateral or SOA Separate Assets and Collateral. The low case represents the lowest recovery of the three scenarios while the high case represents the highest estimate of the three scenarios.
19. *Intermediation Secured Claims.* Dependent on priority of business interruption insurance proceeds, with respect to the collateral of the Intermediation Secured Claims, the Recovery Analysis assumes three scenarios: (1) first priority to business interruption insurance proceeds, (2) second priority to business interruption insurance proceeds, or (3) a scenario where business interruption insurance proceeds are unencumbered, resulting in deficiency claim subject to similar treatment as GUCs. Further, the Recovery Analysis assumes first priority to remaining cash proceeds constituting Intermediation Priority Collateral or SOA Separate Assets and Collateral. The current claim amount included in the Recovery Analysis is based on management’s best estimate and is subject to material revision based on final costs of the Extraction, potential contract damage claims, and other related costs. The low case represents the lowest recovery of the three scenarios while the high case represents the highest estimate of the three scenarios.
20. *General Unsecured Claims.* Dependent on priority of business interruption insurance proceeds, with respect to distributable proceeds to the General Unsecured Claims, the Recovery Analysis assumes two scenarios: (1) encumbered property damage and business interruption insurance proceeds or (2) unencumbered business interruption insurance proceeds. The estimate for General Unsecured Claims includes (i) potential rejection damage claims, (ii) deficiency claims (dependent on scenario), and (iii) other general unsecured claims. Recoveries to general unsecured claims are subject to material revision based on the outcome of potential rejection claims, litigation claims, and other applicable claims. The low case represents the lowest recovery of the three scenarios while the high case represents the highest estimate of the three scenarios.

AS DESCRIBED IN GREATER DETAIL IN THE INTRODUCTION TO THIS RECOVERY ANALYSIS, THE RECOVERY ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE PURPOSE OF GENERATING A REASONABLE GOOD-FAITH ESTIMATE OF UNDER THE PLAN IN ACCORDANCE WITH CHAPTER 11 OF THE BANKRUPTCY CODE.

<b>PRELIMINARY ESTIMATED CLASS RECOVERIES</b>
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CLASS	CLAIMS AND INTERESTS	STATUS	CLAIMS RANGE		RECOVERY RANGES			
			\$		\$		%	
			LOW	HIGH	LOW	HIGH	LOW	HIGH
1	OTHER SECURED CLAIMS	UNIMPAIRED	\$26.7	\$26.7	\$26.7	\$26.7	100%	100%
2	OTHER PRIORITY CLAIMS	UNIMPAIRED	\$0.6	\$0.5	\$0.6	\$0.5	100%	100%
3	TERM LOAN SECURED CLAIMS	IMPAIRED	\$710.7	\$710.7	\$36.0 + [A]	\$710.7	5% + [A]	100%
4	INTERMEDIATION SECURED CLAIMS	IMPAIRED	\$255.3	\$258.5	\$0 + [B]	\$258.5	0% + [B]	100%
5	GENERAL UNSECURED CLAIMS	IMPAIRED	\$1,735.3	\$1,246.0	\$0 + [B]	\$1,000.0	0% + [B]	80%
6	SUBORDINATED REMAINING VOLUME CLAIMS	IMPAIRED	\$10.0	\$10.0	—	—	0%	0%
7	INTERCOMPANY CLAIMS	N/A	—	—	—	—	—	—
8	INTERCOMPANY INTERESTS	N/A	—	—	—	—	—	—
9	INTERESTS IN PES ENERGY AND PES ULTIMATE INTERESTS	IMPAIRED	\$57.9	\$57.9	—	—	0%	0%
10	SECTION 510(B) CLAIMS	IMPAIRED	—	—	—	—	—	—
					[A] PROPERTY AND BI INSURANCE PROCEEDS		[A] PROPERTY AND BI INSURANCE PROCEEDS	
					[B] BI INSURANCE PROCEEDS		[B] BI INSURANCE PROCEEDS	



**EXHIBIT J**

**Liquidation Analysis<sup>1</sup>**

Certain documents, or portions thereof, contained or referenced in this **Exhibit J** and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit J** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the “Plan”) or in the Purchase Agreement (as defined in the Plan), as applicable.

## CHAPTER 7 LIQUIDATION ANALYSIS<sup>1</sup>

The Debtors have prepared this Liquidation Analysis (the “Liquidation Analysis”) based on a hypothetical liquidation under chapter 7 of the Bankruptcy Code. It is assumed, among other things, that the hypothetical liquidation under chapter 7 would commence on January 24, 2020 (the “Conversion Date”), under the direction of a Court-appointed trustee (the “Trustee”) and would continue for a period of time, during which time the Debtors’ assets are expected to be sold, and Other Remaining Assets, net of liquidation-related costs, would be monetized. Net proceeds earned from these sales are expected to be distributed to creditors in accordance with relevant law.

Net recoveries associated with the pursuit of the Debtors’ property damage and business interruption insurance claim (the “Insurance Claim”) are difficult to estimate and, in a liquidation scenario, are expected to be materially less than those net recoveries from the pursuit of such claims under the Debtors’ chapter 11 plan. The ability of a Trustee to pursue such claims in a liquidation would be significantly limited by, among other things, (i) the loss of the management team who possess critical institutional knowledge, factual background, and experience that is necessary for the Debtors to articulate, advocate for, and ultimately litigate (if necessary) the Debtors’ insurance claim fully; and (ii) inadequate funding to cover legal costs, expert costs, and other costs of litigation out of pocket, which would likely result in lower net recoveries due to the need to finance litigation efforts directly or indirectly.

The determination of the costs of, and proceeds from, the hypothetical liquidation of the Debtors’ assets in a chapter 7 case is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by the Debtors, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtors, their management, and their advisors. Inevitably, some assumptions in the Liquidation Analysis would not materialize in an actual chapter 7 liquidation, and unanticipated events and circumstances could affect the ultimate results in an actual chapter 7 liquidation in ways that could make ultimate recoveries higher or lower than in the hypothetical liquidation described herein.

The Liquidation Analysis is a hypothetical illustrative analysis that has been prepared for the purpose of generating a reasonable good-faith estimate of the proceeds that would be generated by a Trustee and distributed to Holders of Claims in accordance with the recovery priorities of the Bankruptcy Code.

The Liquidation Analysis is a hypothetical exercise that has been prepared for the sole purpose of generating a reasonable good-faith estimate of the proceeds that would be realized if the Debtors were liquidated in accordance with chapter 7 of the Bankruptcy Code. The Liquidation Analysis is used to satisfy the “best interest of creditors” test set forth in section 1129(a)(7) of the Bankruptcy Code, because it indicates whether the members of an Impaired Class that vote to reject the Plan will receive at least as much under the Plan as they would in a liquidation under a hypothetical chapter 7 case.

THE LIQUIDATION ANALYSIS IS NOT INTENDED TO, AND SHOULD NOT BE, USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS’ ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED IN AN ACTUAL LIQUIDATION. THIS ANALYSIS ASSUMES “LIQUIDATION VALUES” BASED ON APPRAISALS, WHERE AVAILABLE, AND THE DEBTORS’ BUSINESS JUDGMENT, WHERE APPRAISALS ARE NOT AVAILABLE.

The underlying financial information in the Liquidation Analysis was not compiled or examined by any independent accountants. Limited independent appraisals were available in preparing the Liquidation Analysis. NEITHER THE DEBTORS NOR THEIR ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings set forth in (a) the *Disclosure Statement for the Debtors’ First Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, modified, or supplemented from time to time and including all exhibits thereto, the “Disclosure Statement”) [Docket No. 662], or (b) the *Debtors’ Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 462] (as may be amended, modified, or supplemented from time to time and including all exhibits thereto, the “Plan”), as applicable

Nothing contained in the Liquidation Analysis is intended to be, or constitutes, a concession, admission, or allowance of any claim by the Debtors. The actual amount or priority of Allowed Claims in the chapter 11 cases could materially differ from the estimated amounts set forth and used in the Liquidation Analysis. The Debtors reserve all rights to supplement, modify, or amend the analysis set forth herein.

The Liquidation Analysis should be read in conjunction with the following notes and assumptions:

**Notes on Liquidation Analysis**

The Debtors prepared the Liquidation Analysis assuming that the Debtors' current chapter 11 cases convert to chapter 7 cases on the Conversion Date, at which time the Bankruptcy Court would appoint a Trustee to conduct an orderly wind down and liquidation of substantially all of the Debtors' remaining assets and the distribution of available proceeds to holders of Allowed Claims during the period after the Conversion Date. There can be no assurance that the liquidation would be completed in a limited timeframe, nor is there any assurance that the recoveries assigned herein to the assets would in fact be realized. Under section 704 of the Bankruptcy Code, a trustee must, among other duties, collect and convert the property of the estate as expeditiously (generally at distressed prices) as is compatible with the best interests of parties in interest. 11 U.S.C. § 704.

1. *Dependence on assumptions.* The Liquidation Analysis is based on a number of estimates and assumptions that, although developed and considered reasonable by management and the advisors of the Debtors at the time of preparation, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtors' management and advisors. The Liquidation Analysis is also based on the Debtors' best judgment of how numerous decisions in the liquidation process would be resolved. Accordingly, there can be no assurance that the values reflected in this Liquidation Analysis would be realized if the Debtors were, in fact, to undergo such a liquidation, and actual results could vary materially and adversely from those contained herein.
2. *Completion of Sale Process.* Under the Purchase and Sale Agreement (the "PSA") the purchaser would have the right to terminate under the conversion to a chapter 7. In addition, the Trustee would find it difficult to meet the closing conditions under the PSA without the assistance and knowledge of the management team and would experience delays in the process, which could be significant. As such, the net proceeds from the sale, as contemplated under the PSA, could be materially less. To adjust for this uncertainty, in the high scenario, it is assumed that the sale is successfully consummated for \$220 million, and \$150 million in the low scenario.
3. *Other Sources of Funds.* Other sources of funds excluding the sale process and Insurance Claim include cash, the return of surety bonds, vendor prepayments, precious metals and catalyst, emission credits and vendor deposits ("Other Remaining Assets"). The analysis assumes the recovery and monetization of precious metals and catalyst, net of costs, will require up to 9 months. This analysis also assumes the sale of emissions credits will occur over a period of 12 months.
4. *Monetization of Excise Tax Credits.* The Liquidation Analysis does not contemplate the monetization of excise tax credits which could have a material impact on creditor class recoveries. The expected monetization cannot be estimated at this time and may be materially lower than under the Recovery Analysis due to the loss of institutional knowledge of the management team.
5. *DIP Facility.* The Liquidation Analysis assumes the full use of the DIP facility with estimated borrowings of \$100 million at the time of the Conversion Date.
6. *Administrative Claims.* Includes employee related expenses, including payroll and benefits, along with post-petition accounts payable trade balances. The Liquidation Analysis also includes allowable administrative claims including mechanics liens, intermediation claims, 503(b)(9) claims, and miscellaneous administrative claims as defined in the Plan.
7. *Priority Tax Claims.* Includes allowable Priority Tax Claims as defined in the Plan.

8. *Professional Fee Claims.* The Liquidation Analysis assumes the payment of allowable Professional Fee Claims incurred during the period from Petition Date through the Conversion Date and unpaid as of the Conversion Date. Estimated incurred but unpaid Professional Fee Claims are net of retainers, where applicable.
9. *Estate Liquidation Costs.* Subsequent to the Confirmation Date, the Liquidation Analysis assumes a Trustee will wind down the estate and complete the HEEP extraction while monetizing the Other Remaining Assets. Costs associated with these recovery efforts include necessary contractors, selling, general, administrative, and payroll costs for remaining employees. Additionally, [three (3)] months of professionals are assumed to be incurred for Debtor counsel and advisors. The trustee is estimated to receive fees equal to 3% of total proceeds generated by the estate.
10. *Renewable Identification Numbers ("RINs") Reserve.* Estimated RINs reserve of \$28.8 million based on estimate as of December 31, 2019. The amount referenced is illustrative and shall not constitute an admission of priority or amount of RINs-related potential exposure. To the extent possible, the RINs reserve is assumed to be funded on or prior to the Effective Date with the final size of the RINs Reserve subject to variation and further discussion with the United States on behalf of the EPA. See Disclosure Statement, Art. VI.D. Impact of insufficient funding currently undeterminable.
11. *Environmental / Clean Up Costs.* The environmental liabilities and clean-up costs are expected to be assumed by the new buyer. As such, the Liquidation Analysis does not assume any costs related to these items.
12. *Other.* The Liquidation Analysis does not include the funding of the Key Employee Incentive Program (the "KEIP") in a liquidation as management is assumed to be replaced by the Trustee.
13. *Other Secured Claims.* The Liquidation Analysis assumes full payment of Other Secured Claims as defined in the Plan if remaining proceeds available.
14. *Other Priority Claims.* The Liquidation Analysis assumes full payment of Other Priority Claims as defined in the Plan if remaining proceeds available.
15. *Term Loan Secured Claims.* Dependent on priority of business interruption insurance proceeds, with respect to the collateral of the Term Loan Secured Claims, the Recovery Analysis assumes three scenarios: (1) first priority to property damage and business interruption insurance proceeds, (2) first priority to property damage insurance proceeds and second priority to business interruption insurance proceeds, or (3) first priority to property damage proceeds with business interruption insurance proceeds unencumbered, resulting in a deficiency claim subject to similar treatment as General Unsecured Claims ("GUCs"). Further, the Recovery Analysis assumes priority to remaining cash proceeds after Other Secured Claims and Other Priority Claims paid in full while excluding cash constituting Intermediation Priority Collateral or SOA Separate Assets and Collateral. The low case represents the lowest recovery of the three scenarios while the high case represents the highest estimate of the three scenarios.
16. *Intermediation Secured Claims.* Dependent on priority of business interruption insurance proceeds, with respect to the collateral of the Intermediation Secured Claims, the Recovery Analysis assumes three scenarios: (1) first priority to business interruption insurance proceeds, (2) second priority to business interruption insurance proceeds, or (3) a scenario where business interruption insurance proceeds are unencumbered, resulting in deficiency claim subject to similar treatment as GUCs. Further, the Recovery Analysis assumes first priority to remaining cash proceeds constituting Intermediation Priority Collateral or SOA Separate Assets and Collateral. The current claim amount included in the Recovery Analysis is based on management's best estimate and is subject to material revision based on final costs of the Extraction, potential contract damage claims, and other related costs. The low case represents the lowest recovery of the three scenarios while the high case represents the highest estimate of the three scenarios.
17. *General Unsecured Claims.* Dependent on priority of business interruption insurance proceeds, with respect to distributable proceeds to the General Unsecured Claims, the Recovery Analysis assumes two scenarios:

(1) encumbered property damage and business interruption insurance proceeds or (2) unencumbered business interruption insurance proceeds. The estimate for General Unsecured Claims includes (i) potential rejection damage claims, (ii) deficiency claims (dependent on scenario), and (iii) other general unsecured claims. Recoveries to general unsecured claims are subject to material revision based on the outcome of potential rejection claims, litigation claims, and other applicable claims. The low case represents the lowest recovery of the three scenarios while the high case represents the highest estimate of the three scenarios.

18. *Additional unsecured claims.* The cessation of business in a liquidation will trigger certain claims that otherwise would not exist under the Plan absent a liquidation. Examples of these kinds of claims include executory contract and unexpired lease rejection damages. Some of these claims could be significant and might be entitled to priority in payment over general unsecured claims. To the extent proceeds remained after satisfying secured claims, any priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in respect of equity interests.

AS DESCRIBED IN GREATER DETAIL IN THE INTRODUCTION TO THIS LIQUIDATION ANALYSIS, THE LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF GENERATING A REASONABLE GOOD-FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE WHEN COMPARED TO RECOVERIES UNDER THE PLAN. THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS' ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED IN AN ACTUAL LIQUIDATION.

[A] PROPERTY AND BI INSURANCE PROCEEDS	[A] PROPERTY AND BI INSURANCE PROCEEDS
[B] BI INSURANCE PROCEEDS	[B] BI INSURANCE PROCEEDS

**EXHIBIT K**

**Summary and Explanation of Plan Changes<sup>1</sup>**

The Plan has been updated to conform to the Debtors' election to pursue a Sale Restructuring with HRP Philadelphia Holdings, LLC, the Successful Bidder, as Purchaser, and consistent with the terms of the Purchase Agreement. The Debtors will file an amended Plan to reflect these changes in advance of the Confirmation Hearing.

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<sup>1</sup> Capitalized terms used but not defined in this **Exhibit K** shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 661] (as may be amended, supplemented, or modified from time to time, the "**Plan**") or in the Purchase Agreement (as defined in the Plan), as applicable.