

**FINAL VERSION**

**LLC MEMBERSHIP  
PURCHASE AND SALE AGREEMENT**

**between the**

**ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY**

**as Buyer**

**and**

**HARRINGTON PARTNERS, L.P.**

**PENTEX ALASKA NATURAL GAS COMPANY and**

**DANIEL BRITTON**

**as Sellers**

\_\_\_\_\_, 2015

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**LLC MEMBERSHIP  
PURCHASE AND SALE AGREEMENT**

This **LLC MEMBERSHIP PURCHASE AND SALE AGREEMENT** (“Agreement”) is entered into effective as of \_\_\_\_\_, 2015 (the “Effective Date”), by and between:

(1) The **ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY**, a public corporation of the State of Alaska with a primary place of business in Anchorage, Alaska;

(2) **HARRINGTON PARTNERS, L.P.**, a Delaware limited partnership with a primary place of business in Minnetonka, Minnesota;

(3) **PENTEX ALASKA NATURAL GAS COMPANY**, a Texas corporation with a primary place of business in Addison, Texas; and

(4) **DANIEL BRITTON**, an individual who is a resident of Fairbanks, Alaska.

In consideration of the mutual covenants of this Agreement, the parties agree as follows:

**Article 1  
DEFINITIONS**

As used in this Agreement, the following terms have the meanings set forth in this Article 1. All Article, Section, Exhibit and Schedule numbers refer to Articles and Sections of this Agreement and to the attached Exhibits and Schedules.

**1.01 “Acquired Companies”** means Pentex Alaska Natural Gas Company, LLC, a Delaware limited liability company, and all of the Subsidiaries.

**1.02** **“AIDEA”** means the Alaska Industrial Development and Export Authority, a public corporation of the State of Alaska.

**1.03** **“Closing”** means the consummation of the purchase and sale of the LLC Membership Interests as contemplated by this Agreement.

**1.04** **“Closing Date”** means the date on which the Closing occurs.

**1.05** **“Contemplated Transactions”** means all of the transactions contemplated by this Agreement, including (a) Sellers’ sale of the LLC Membership Interests to AIDEA; (b) the execution, delivery, and performance of the Escrow Agreement and Sellers’ Release; (c) Sellers’ and AIDEA’s performance of their respective obligations under this Agreement; and (d) AIDEA’s acquisition and ownership of the LLC Membership Interests so as to be able to exercise control over the Acquired Companies.

**1.06** **“Damages”** means any and all monetary awards, penalties, fines, losses, liabilities, expenses or costs of every kind and description that are recoverable under governing law, including, without limitation, Litigation Expenses.

**1.07** **“Deposit”** means \$2,675,000, plus any interest earned on that amount while on deposit with the Escrow Agent up to the Closing Date.

**1.08** **“Disclosure Schedules”** means the Schedules to be delivered by Sellers pursuant to Article 3 of this Agreement.

**1.09** **“Employee Benefit Plans”** means those plans described in Section 3.17(a).

**1.10** **“Encumbrance”** means any mortgage; lien; pledge; charge; option; contract interest; security interest; community property interest; equitable interest;



restriction of any kind on use, voting, transfer, rights to income or other ownership rights; or any other encumbrance of any type or description.

**1.11 “Environmental Assessments”** means (a) the Phase I environmental assessments to be conducted prior to the Closing with respect to the real properties on which the Acquired Companies conduct the Operations, and (b) one or more Phase II environmental assessments that AIDEA elects to have conducted.

**1.12 “Environmental, Health, and Safety Laws”** means Title 46 of the Alaska Statutes, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act of 1976 (RCRA), the Toxic Substances Control Act (TSCA), the Clean Water Act, the Clean Air Act, and the Occupational Safety and Health Act of 1970 (OSHA), each as amended, together with all other laws (including rules, regulations, codes, applicable injunctions, judgments, orders, decrees, and rulings thereunder) of federal, state and local governments (and all agencies thereof) concerning pollution or protection of the environment, natural resources, public health and safety, or employee or third-party employee health and safety, including laws relating to emissions, discharges, releases, spills, or threatened releases of pollutants, contaminants, chemical, industrial, hazardous, radioactive or toxic materials or wastes, or fuels, into air, surface water, ground water, land, or subsurface or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants or contaminants, fuels, insecticides, solvents, ground cover control substances, or chemical, industrial, hazardous, or toxic materials or wastes so classified under any federal, state or local laws, regulations, codes, permits, orders and ordinances.

**1.13** **“Escrow Agent”** means U.S. Bank National Association.

**1.14** **“Escrow Agreement”** means the agreement between the parties and the Escrow Agent, in substantially the form of Exhibit 2.03(a).

**1.15** **“Excluded Liabilities”** means:

(a) all Liabilities of the Acquired Companies to any of the Sellers or to any of the Sellers’ Related Persons, specifically including without limitation:

(1) any Liability of the Acquired Companies to Seller Harrington Partners, L.P. for management fees or for compensation upon cancellation of any management contract;

(2) any Liability of the Acquired Companies to Seller Daniel Britton under any employment contract or deferred compensation plan or contract in effect as of or prior to the Closing Date, including any obligation to make any payment upon a change in control of any of the Acquired Companies, but excluding the amounts for which Fairbanks Natural Gas, LLC has on deposit in respect to its obligations to Seller Daniel Britton under the deferred compensation agreements dated December 11, 2013; and

(3) all Liabilities of the Acquired Companies to (i) Merced Capital L.P. (f/k/a EBF & Associates, L.P.); (ii) Lydiard Partners, L.P.; (iii) Merced Capital Partners, LLC; (iv) Series L1 of Merced Capital Partners, LLC; and (v) Tanglewood Capital Management, Inc.

(b) any Liability (which is not otherwise payable by insurance of the Acquired Companies) for any claim asserted by Patrick D. Kirby related to his employment by

Fairbanks Natural Gas, LLC or his assertions regarding the business practices of Fairbanks Natural Gas, LLC; and

(c) any Liability (which is not otherwise payable by insurance of the Acquired Companies) arising out of or related to the claim that is the subject of the proceedings in the Alaska State Commission for Human Rights under ASCHR No. J-14-318, whether the claim proceeds before the ASCHR or in any other forum, court or tribunal.

**1.16 “Financials”** means the financial statements of the Acquired Companies as described in Section 3.06.

**1.17 “GAAP”** means United States generally accepted accounting principles as in effect from time to time, consistently applied.

**1.18 “Harvest Alaska Contracts”** means those two agreements, each dated November 5, 2014, and amended February 4, 2015, that certain of the Acquired Companies have entered into with Harvest Alaska, LLC, as described in more detail in Section 5.07.

**1.19 “Holdback Amount”** means the amount described in Section 2.03(b), plus any interest earned on that amount after the Closing Date.

**1.20 “Intellectual Property”** means:

(a) all of the Acquired Companies’ trademarks, service marks, trade dress, logos, trade names, and corporate names (including but not limited to the name “Fairbanks Natural Gas”) together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith;

(b) all of the Acquired Companies' copyrightable works, copyrights, and applications, registrations, and renewals in connection therewith;

(c) all of the Acquired Companies' trade secrets and confidential business information, including ideas, research and development, know-how, formulas, compositions, processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals;

(d) all of the Acquired Companies' computer software, software licenses and software use agreements (including data and related documentations);

(e) all other proprietary rights of the Acquired Companies, and all of the Acquired Companies' contracts, licenses and permits to make use of the Intellectual Property of others; and

(f) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

**1.21 "Inventory"** means physically all of the Acquired Companies' goods and products for sale to clients and customers, work in process to create goods or products for sale to clients and customers, and raw materials used or consumed in the production of goods or products for sale to clients and customers.

**1.22 "Knowledge"** means:

(a) in the case of an individual, the individual is actually aware of or should be actually aware of a fact or matter, after reasonable investigation; and

(b) in the case of an entity, any individual who is serving as of the Effective Date or as of the Closing Date as a director, officer, general partner, member or manager of the entity (or in any similar capacity) has, or at any time had, Knowledge within the meaning of subsection (a) of this definition of a fact or matter.

**1.23 “Liability”** means any liability no matter how such liability may have arisen or the legal basis for such liability, and regardless of whether the liability is known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due.

**1.24 “Litigation Expenses”** means attorneys’ fees and other costs and expenses incident to proceedings or investigations respecting, or the prosecution or defense of, any claim.

**1.25 “LLC Membership Interests”** means 100% of the member interests in Pentex, as a limited liability company, inclusive of all rights in voting, management, profits and losses, capital accounts, and all other rights inherent or appurtenant to the ownership of Pentex.

**1.26 “Material Adverse Effect”** means any of the following: (a) any matter that has a material adverse effect upon the business, financial condition or results of Operations, when taken as a whole, of the Acquired Companies, or when considered separately for Pentex, Fairbanks Natural Gas, LLC, or Titan Alaska LNG, LLC, or solely with respect to Arctic Energy Transportation, LLC, any adverse effect where the dollar value of the adverse effect exceeds \$100,000; or (b) any matter that may reasonably be expected to cause or result in the loss of or substantial damage to the Acquired

Companies, when taken as a whole, or when considered separately for Pentex, Fairbanks Natural Gas, LLC, or Titan Alaska LNG, LLC, or solely with respect to Arctic Energy Transportation, LLC, an adverse effect where the dollar value of the adverse effect exceeds \$100,000; or (c) any material increase in cost or obligation of or material decrease in revenue of the Acquired Companies, when taken as a whole, or when considered separately for Pentex, Fairbanks Natural Gas, LLC, or Titan Alaska LNG, LLC, or solely with respect to Arctic Energy Transportation, LLC, an adverse effect where the dollar value of the adverse effect exceeds \$100,000; but excluding matters disclosed by Sellers in the Disclosure Schedules to this Agreement as of the Effective Date, excluding changes arising from actions taken pursuant to this Agreement, and excluding matters that Sellers can correct prior to Closing to AIDEA's satisfaction or that Sellers can commit to correcting prior to Closing by any means satisfactory to AIDEA, which may include a correction achieved by a contractual undertaking or the escrow of funds.

**1.27 “Material Contracts”** means any contract of any of the Acquired Companies that has a value of \$50,000 or more or that obligates any of the Acquired Companies to make expenditures of \$50,000 or more over the entire term of the contract.

**1.28 “Net Working Capital”** means the amount by which the current assets (as determined in accordance with GAAP) of the Acquired Companies exceed the current liabilities (as determined in accordance with GAAP, but excluding any accounts payable relating to any capital expenditures) of the Acquired Companies.

**1.29 “Operations”** means the businesses the Acquired Companies are conducting on the date hereof, including without limitation Fairbanks Natural Gas, LLC’s natural gas utility business, Titan Alaska LNG, LLC’s natural gas liquefaction plant, and Arctic Energy Transportation, LLC’s fueling facilities business.

**1.30 “Organizational Documents”** means (a) the articles of organization or charters of each of the Acquired Companies; (b) the certificates of organization of each of the Acquired Companies; (c) the operating agreements of each of the Acquired Companies; (d) membership certificates and membership registers for each of the Acquired Companies; (e) any manager contracts governing the management of any of the Acquired Companies; (f) any bylaws, resolutions, policies or procedures adopted by any of the Acquired Companies with respect to organizational matters, or member or manager decision-making; and (g) any amendment to any of the foregoing.

**1.31 “Pentex”** means Pentex Alaska Natural Gas Company, LLC, a Delaware limited liability company.

**1.32 “Permits and Licenses”** means any approval, consent, license, permit, waiver, exception, variance or other authorization issued, granted, given, or otherwise made available by or under the authority of a government or governmental agency or under any applicable law, regulation, rule or order.

**1.33 “Permitted Encumbrance”** means with respect to each parcel of real property: (a) real estate taxes, assessments and other governmental levies, fees, or charges imposed with respect to such real property that are (i) not due and payable as of the Closing Date or (ii) being contested in good faith and for which appropriate reserves

have been established in accordance with GAAP; (b) mechanics' liens and similar liens for labor, materials, or supplies provided prior to the Closing Date with respect to such real property, incurred in the ordinary course of business for amounts that are included in the accounting records of the affected entity as current liabilities as of the Closing Date, or for amounts that are payable from or eligible to be paid from the loan proceeds under the loan agreement between AIDEA and Fairbanks Natural Gas, LLC, dated May 19, 2014; (c) zoning, building codes, and other land use laws regulating the use or occupancy of such real property or the activities conducted thereon that are imposed by any federal, state or local governmental authority having jurisdiction over such real property and are not violated by the current use or occupancy of such real property or the operation of the business of Pentex and the Subsidiaries as currently conducted thereon; and (d) easements, covenants, conditions, restrictions, and other similar matters of record affecting title to such real property that do not or would not materially impair the use or occupancy of such real property in the operation of the business of Pentex and the Subsidiaries as currently conducted thereon.

**1.34 “Pre-Closing Environmental Liability”** means any Liability of any of the Acquired Companies or any of the Sellers that arises out of or relates to: (a) any violation of any Environmental, Health, and Safety Laws by any of the Acquired Companies prior to the Closing Date; (b) any environmental pollution or contamination on, in, under or from any real property owned, leased or occupied by any of the Acquired Companies that occurred prior to the Closing Date; and (c) any use, application, leak, spill, release, discharge or disposal of any substance regulated under, or defined as or



considered “hazardous” or “toxic” or “radioactive” or “contamination” or “pollution” under any Environmental, Health, and Safety Laws that occurred prior to the Closing Date or resulted from the Operations conducted prior to the Closing Date.

**1.35** **“Purchase Price”** means the amount stated or described in Section 2.02.

**1.36** **“Quarterly Reports”** means the financial reports of the Acquired Companies for the first and second quarters of calendar year 2015 as described in Section 3.06.

**1.37** **“Related Person”** means:

(a) with respect to an individual, (1) each other member of such individual’s family, (2) any person or entity that is directly or indirectly controlled by such individual or by a member of such individual’s family, and (3) any entity with respect to which such individual or a member of such individual’s family serves as a member, manager, director, officer, partner, executor or trustee (or in a similar capacity); and

(b) with respect to an entity, (1) any person or entity that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such entity, and (2) each person that serves as a member, manager, director, officer, partner, executor or trustee (or in a similar capacity) of or for the entity.

**1.38** **“Sellers”** means (a) Harrington Partners, L.P., a Delaware limited partnership; (b) Pentex Alaska Natural Gas Company, a Texas corporation; and (c) Daniel Britton, an individual who is a resident of Fairbanks, Alaska.

**1.39** **“Sellers’ Fundamental Representations”** means the representations and warranties Sellers’ are making in Sections 3.01, 3.02, 3.03, 3.04, 3.05 and 3.18.

**1.40** **“Sellers’ Release”** means the release of all claims against the Acquired Companies in the form of Exhibit 8.02(d), which Sellers are to deliver at Closing.

**1.41** **“Sellers’ Representative”** means Harrington Partners, L.P.

**1.42** **“Subsidiaries”** means (a) Fairbanks Natural Gas, LLC, an Alaska limited liability company; (b) Polar LNG, LLC, a Delaware limited liability company; (c) Arctic Energy Transportation, LLC, a Delaware limited liability company; (d) Titan Alaska LNG, LLC, a Delaware limited liability company; and (e) Cassini LNG Storage, LLC, a Delaware limited liability company.

**1.43** **“Tax”** means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

**1.44** **“Tax Return”** means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**1.45** **“Third Party Claims”** means any and all claims, demands, suits, actions or proceedings by any person, entity, government or governmental agency, other than AIDEA, the Acquired Companies, or Sellers.

**Article 2**  
**PURCHASE AND SALE OF**  
**LLC MEMBERSHIP INTERESTS**

**2.01 Purchase and Sale.** Upon the terms and subject to the conditions of this Agreement, at the Closing, Sellers shall sell and transfer to AIDEA all of Sellers' right, title and interest in and to the LLC Membership Interests, and AIDEA shall purchase and acquire from Sellers the LLC Membership Interests. The percentage of the LLC Membership Interests that each of the Sellers is to separately convey to AIDEA at the Closing is as follows:

Harrington Partners, L.P. -- 85%

Pentex Alaska Natural Gas Company -- 10%

Daniel Britton -- 5%.

**2.02 Consideration.** In consideration for the sale and purchase of the LLC Membership Interests, AIDEA shall pay to Sellers' Representative the total sum of \$52,500,000, plus the amount of the Net Working Capital the Acquired Companies have on the Closing Date, up to a maximum amount of \$1,500,000 in Net Working Capital. However, the amount AIDEA shall pay Sellers' Representative shall be subject to adjustment as provided for in Section 5.07(b) regarding the asset sale proceeds from the Harvest Alaska Contracts. The above-stated sum is the "Purchase Price."

**2.03 Payment.** The Purchase Price shall be paid as follows:

(a) Upon the execution of this Agreement, AIDEA will pay the Deposit to the Escrow Agent for the Escrow Agent to hold in accordance with the Escrow Agreement in

the form of Exhibit 2.03(a). The Deposit (including any interest earned thereon prior to the Closing) shall be credited against the Purchase Price due at Closing.

(b) If the Closing occurs, the Deposit will be converted into the Holdback Amount and shall continue to be held and administered by the Escrow Agent in accordance the Escrow Agreement. Subject to any claims against the Holdback Amount made in accordance with Section 9.01, AIDEA and Sellers shall jointly instruct the Escrow Agent to disburse the Holdback Amount to the Sellers' Representative on the first anniversary of the Closing Date. AIDEA shall have no responsibility for making any allocations between the Sellers with respect to disbursement of the Holdback Amount to Sellers' Representative.

(c) On the Closing Date, AIDEA shall transmit to Sellers' Representative by wire transfer to one or more accounts that Sellers' Representative designates the balance of the Purchase Price, reasonably estimating the Net Working Capital at the Closing Date, up to a maximum amount of \$1,500,000 in Net Working Capital. AIDEA shall have no responsibility for making any allocations between the Sellers, other than complying with the instructions for the Sellers' Representative as to an allocation.

**2.04 "True Up" of Net Working Capital.** As soon as reasonably possible but not later than 60 days after the Closing Date, AIDEA shall have the accountants regularly utilized to provide accounting services to the Acquired Companies complete an examination of the Acquired Companies' accounts to determine the actual amount of Net Working Capital on the Closing Date. Sellers and AIDEA shall be entitled to confer with the accountants regarding the examination. Based on the accountants' final

determination as to the Net Working Capital on the Closing Date, the parties shall “true up” the portion of the Purchase Price that AIDEA paid at the Closing based on the estimate of Net Working Capital. Within 10 days after the “true up” is completed, AIDEA shall pay to Sellers any shortfall in the Purchase Price that was determined to exist in the “true up” of Net Working Capital (so long as the maximum amount of \$1,500,000 is not exceeded), or Sellers shall remit to AIDEA any excess amount paid over the Purchase Price that was determined to exist in the “true up” of the Net Working Capital.

### **Article 3**

#### **SELLERS’ REPRESENTATIONS AND WARRANTIES**

Sellers represent and warrant to AIDEA that the statements contained in this Article 3 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then):

##### **3.01 LLC Membership Interests.**

(a) Sellers have good title to the LLC Membership Interests, free and clear of all Encumbrances. Sellers collectively own 100% of the LLC Membership Interests. Sellers’ transfers of the LLC Membership Interests to AIDEA are authorized.

(b) The LLC Membership Interests have been duly authorized and validly issued and are fully paid and non-assessable. The LLC Membership Interests are duly noted and recorded in the books and records of Pentex as being held by each of the Sellers in the percentages stated in Section 2.01. Pentex has no record or information that any of the LLC Membership Interests is subject to any Encumbrance. Pentex has not

issued any certificates to evidence the LLC Membership Interests, and no lost or destroyed certificates for the LLC Membership Interests exist or have ever existed. Other than this Agreement, no contract exists relating to transferring or issuing any additional membership interests in Pentex.

### **3.02 Organization.**

(a) Each of the Acquired Companies is a limited liability company duly organized, validly existing, and in good standing under the laws of the states in which it was organized with full power to carry on its business as currently conducted and to own, lease and operate all property and assets now owned, leased or operated by it. Each of the Acquired Companies is a member-managed limited liability company and has never been a manager-managed limited liability company; and Harrington Partners, L.P. is the managing-member of Pentex.

(b) Pentex is the sole member of, and owns 100% of the membership interests in, Fairbanks Natural Gas, LLC, Polar LNG, LLC, Arctic Energy Transportation, LLC, and Titan Alaska LNG, LLC. Fairbanks Natural Gas, LLC is the sole member of, and owns 100% of the membership interests in, Cassini LNG Storage, LLC. None of the Subsidiaries has any record or information that any of membership interests in them is subject to any Encumbrance. None of the Subsidiaries has issued any certificates to evidence the membership interests in them, and no lost or destroyed certificates for the membership interests in any of the Subsidiaries exist or have ever existed. No contract exists relating to transferring or issuing any additional membership interests in any of the Subsidiaries.

(c) Sellers have delivered to AIDEA copies of the Organizational Documents of each of the Acquired Companies, as currently in effect and as formerly in effect.

**3.03 Authorization.** The execution and delivery of this Agreement by Sellers, and the performance by Sellers of the Contemplated Transactions, have been duly and validly authorized by all necessary corporate, partnership or organizational action required on the part of Sellers. This Agreement has been duly executed and validly delivered by Sellers and is legally binding on Sellers, enforceable against Sellers in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by general principles of equity (regardless of whether considered in a proceeding in equity or one at law), and by public policy. Each of the agreements or other instruments to be executed by Sellers at the Closing, when executed, will be duly executed and delivered by Sellers and will be legally binding on Sellers, enforceable against Sellers in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by general principles of equity (regardless of whether considered in a proceeding in equity or one at law), and by public policy. No actions or proceedings to dissolve, declare bankrupt, or create a receivership for any of the Acquired Companies or any of Sellers are pending or, to the best Knowledge of Sellers and the Acquired Companies, threatened.

**3.04 No Conflict.** The execution and delivery of this Agreement by Sellers, and the consummation or performance of the Contemplated Transactions, will not:

(a) with respect to Pentex Alaska Natural Gas Co. conflict with its articles of incorporation or by-laws; or

(b) with respect to Harrington Partners, L.P. conflict with any partnership agreement or statement, charter or certificate of limited partnership; or

(c) result in any breach of any of the provisions of, or constitute a default under, in each case with or without the giving of notice or the passage of time or both, any judgment, order, decree, writ or agreement to which Sellers or the Acquired Companies, or any of them, are or is a party, or by which Sellers or the Acquired Companies, or any of them, are or is bound, which breach or default would (1) materially adversely affect the ability of Sellers, or any of them, to execute, deliver or perform their obligations under this Agreement, or (2) give rise to or result in a Material Adverse Effect; or

(d) cause AIDEA or any of the Acquired Companies to become subject to, or to become liable for the payment of, any Tax; or

(e) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by any of the Acquired Companies.

**3.05 No Consents.** Except as disclosed in Disclosure Schedule 3.05, none of the Sellers or any of the Acquired Companies is or will be required to give any notice to or obtain the consent from any person, entity, government or governmental agency in connection with the execution and delivery of this Agreement, or the consummation or performance of any of the Contemplated Transactions.



**3.06 Financial Statements.** Disclosure Schedule 3.06 consists of true and complete copies of the Acquired Companies' audited consolidated financial statements for the fiscal years ending December 31, 2013 and December 31, 2014 and the audited financial statements of Fairbanks Natural Gas, LLC for the fiscal year ending December 31, 2012 (the "Financials"), and true and complete copies of the Acquired Companies' internally generated quarterly financial reports for the months of January 2015 through March 2015 (which are part of the "Quarterly Reports"). The Financials have been prepared from the Acquired Companies' books and records in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods involved, and fairly present the Acquired Companies' financial position as of their respective dates and the results of Operations and cash flows for the periods shown. The Quarterly Reports for the first calendar quarter of 2015, and the Quarterly Reports to be prepared for the second calendar quarter of 2015, have been prepared or will be prepared by the Acquired Companies' personnel from the Acquired Companies' books and records, and fairly present the Acquired Companies' financial position as of the end of the period and the results of Operations and cash flows for the period. After December 31, 2014, there has been no change in the financial condition or business of any of the Acquired Companies that would constitute a Material Adverse Effect. No financial statements of any person or entity other than the Acquired Companies are required by generally accepted accounting principles to be included in the Financials or the Quarterly Reports.

**3.07 Books and Records.** The books of account, LLC membership ownership record and transfer books, membership meeting minutes, members resolutions, manager meeting minutes, manager resolutions, policies, procedures, and any other records of the Acquired Companies, all of which have been made available to AIDEA, are complete and correct and have been maintained in accordance with sound business practices. The records of the Acquired Companies with respect to any meetings held or actions taken or approved by the members or the managers, or any committees appointed by the members or the managers, are accurate and complete. On the Closing Date, all of the foregoing books and records will be in the possession of the Acquired Companies.

**3.08 Acquired Companies' Assets.**

(a) Disclosure Schedule 3.08(a) lists all real property, leaseholds, and other interests in real estate that the Acquired Companies have. Sellers have provided to AIDEA correct and complete copies of all deeds, conveyance documents, purchase contracts, written leases, subleases, title reports, title records or other documents in Sellers' possession pertaining to the real property interests listed on Disclosure Schedule 3.08(a), as well all documents amending or modifying the terms thereof.

(b) Disclosure Schedule 3.08(b) lists all items of equipment, materials, supplies, fixtures, tools, motor vehicles, and other personal property the Acquired Companies own or lease that separately cost \$50,000 or more. Sellers have provided, or made available, to AIDEA correct and complete copies of any bills of sale, leases, purchase agreements or other documents in Sellers' possession under which the personal property listed on Disclosure Schedule 3.08(b) were acquired. The Acquired Companies

have taken no action with respect to any item of personal property included on Disclosure Schedule 3.08(b) that would void any manufacturer's or dealer's warranty with respect to that item.

(c) Except as disclosed in Disclosure Schedule 3.08(c), the Acquired Companies have, or will have at the Closing, good title, free and clear of all Encumbrances (other than Permitted Encumbrances), to all the properties and assets (whether real, personal, or mixed, or whether tangible or intangible) that they purport to own, or that are listed on Disclosure Schedules 3.08(a) or 3.08(b), or that are reflected in the Financials.

**3.09 Condition of Acquired Companies' Assets.** Except as disclosed in Disclosure Schedule 3.09:

(a) the equipment, materials, supplies, fixtures, tools, motor vehicles, and other items of personal property owned or leased by the Acquired Companies are in good condition and repair, ordinary wear and tear excepted, and are sufficient in quantity and quality for conducting the Operations and for continuing the Operations after the Closing Date; and

(b) the real property the Acquired Companies own, lease or in which they have an interest, and all buildings, structures and improvements on the same, are in good condition and repair, ordinary wear and tear excepted, and adequate for conducting the Operations and for continuing the Operations after the Closing Date, and all such real property, buildings, structures and improvements are, to the best Knowledge of Sellers

and the Acquired Companies, in compliance in all material respects, with all federal, state and local laws, regulations, codes, permits, orders and ordinances.

**3.10 Inventory.** All items of the Inventory consist of a quality and quantity usable and saleable in the ordinary course of the Operations, except for obsolete items and items of below-standard quality, all of which have been written off or written down on the Financials and the Acquired Companies accounting records. The Acquired Companies are not in possession of any item of Inventory the Acquired Companies do not own, including goods already sold. Inventory is valued at the lower of cost or market value on a first in, first out basis. Inventory on hand was purchased or produced in the ordinary course of the Operations.

**3.11 Accounts Receivable.** All accounts receivable of the Acquired Companies reflected on the Financials or the Quarterly Reports, or on the accounting records of the Acquired Companies as of the Closing Date, represent or will represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business. Unless paid prior to the Closing, all such accounts receivable are or will be as of the Closing Date current and collectible net of the respective reserves shown in the Financials, the Quarterly Reports or on the accounting records of the Acquired Companies as of the Closing Date (which reserves are adequate and calculated consistent with past practice and, in the case of the reserves as of the Closing Date, will not represent a greater percentage of such accounts receivable as of the Closing Date than the reserve regularly utilized by the Acquired Companies). To the best Knowledge of Sellers and the Acquired Companies, except as set forth on Disclosure Schedule 3.11, no obligor

on any such accounts receivable is contesting the obligation to pay or the amount owed, or asserting any claim with respect to such accounts receivable, or asserting a right of set-off, which amounts individually or in the aggregate would exceed the reserves as of the Closing Date.

**3.12 Material Contracts.** Disclosure Schedule 3.12 lists all Material Contracts to which any of the Acquired Companies is a party. Sellers have already delivered to AIDEA copies of all written Material Contracts and written amendments to the Material Contracts which any of the Acquired Companies is a party. The written Material Contracts and any written amendments contain the complete terms of the agreements between the parties. There are no material oral modifications or amendments to any of Material Contracts. No material breach or default exists with respect to any of the Material Contracts and, to the best Knowledge of Sellers and the Acquired Companies, no event has occurred that, after notice or lapse of time or both, will or may result in any such breach or default. None of the Acquired Companies is in arrears in respect to the performance or satisfaction of the terms or conditions to be performed or satisfied by it under any of the Material Contracts, and none of the Acquired Companies has been notified of any claim that it is in arrears with respect to any of the Material Contracts. No waiver or indulgence has been granted by any party to any of the Material Contracts, including by any of the Acquired Companies. Sellers and the Acquired Companies know of no laws, regulations or decrees that adversely affect or could reasonably be expected to adversely affect the rights of any of the Acquired Companies under the Material Contracts. Except as disclosed in Disclosure Schedule 3.12, Sellers and the Acquired

Companies have received no notice or threat of termination, non-renewal or re-bid from any party to any of the Material Contracts, nor is any material dispute pending with respect to any of the Material Contracts, nor, to the best Knowledge of Sellers and the Acquired Companies, is there any basis for any such dispute. None of the Acquired Companies has received any prepayments under any of the Material Contracts that are applicable to goods or services to be provided after the Closing Date, except for deposits accurately shown on the Financials or the Quarterly Reports. No customer or client has asserted any claim for a credit with respect to goods or services provided under any of the Material Contracts.

**3.13 Legal Requirements; Permits and Licenses.**

(a) To the best Knowledge of Sellers and the Acquired Companies, and except as disclosed in Disclosure Schedule 3.13(b) or in Disclosure Schedules 3.16(b), (d) and (e), the Operations and all of the Acquired Companies' activities have been conducted in compliance, in all material respects, with all applicable statutes, regulations, codes, rules, injunctions, orders, judgments, and other legal requirements of any federal, state, local, or foreign government or governmental agency. Except as disclosed in Disclosure Schedule 3.13 or in Disclosure Schedules 3.16(b), (d) and (e), no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of the Acquired Companies alleging any failure so to comply.

(b) Disclosure Schedule 3.13(b) lists all Permits and Licenses granted or afforded to the Acquired Companies by any government or governmental agency, all of which are valid and remain in effect. Sellers have already delivered to AIDEA copies of

all Permits and Licenses of any of the Acquired Companies. Sellers and the Acquired Companies have received no notice that any of the Permits and Licenses is being or may potentially be revoked, suspended or modified. The Permits and Licenses listed on Disclosure Schedule 3.13(b) are all of the governmental authorizations necessary for the Acquired Companies to carry on the Operations prior to the Closing Date, or for the Acquired Companies to continue the Operations after the Closing Date as they were previously conducted.

**3.14 Legal Proceedings.** Except as disclosed on Disclosure Schedule 3.14, there are no pending or, to the best Knowledge of Sellers and the Acquired Companies, threatened, claims, actions, suits, proceedings or investigations involving any of the Sellers (as relates to the Acquired Companies or to Sellers' ability to perform their obligations under this Agreement) or any of the Acquired Companies or any other properties or assets of the any of the Acquired Companies.

**3.15 Undisclosed Liabilities.** The Acquired Companies have no Liability (and, to best Knowledge of Sellers and the Acquired Companies, there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of the Acquired Companies that would or might give rise to any Liability), except for (a) Liabilities set forth in the Financials, and (b) Liabilities which have arisen in the ordinary course of business after the date of the most recent of the Financials (none of which results from, relates to, or was caused by any breach of contract, breach of warranty, tort, strict liability, infringement, or violation of law).

**3.16 Environment, Health, and Safety.**

(a) To the best Knowledge of Sellers and the Acquired Companies, except as disclosed in Disclosure Schedules 3.16(b), (d) and (e), the Acquired Companies have complied with all Environmental, Health, and Safety Laws. No action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of the Acquired Companies alleging any failure to so comply. Without limiting the generality of the preceding sentence, the Acquired Companies, to the best Knowledge of Sellers and the Acquired Companies, have obtained and been in compliance with all of the terms and conditions of all permits, licenses, and other authorizations that are required under, and have complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables that are contained in, all Environmental, Health, and Safety Laws.

(b) Except as disclosed in Disclosure Schedule 3.16(b), none of the Acquired Companies, to the best of Knowledge of Sellers and the Acquired Companies, has any Liability under any Environmental, Health, and Safety Laws for contamination of, damage to, or polluting any site, location, property, natural resources, the air, or any body of water (surface or subsurface), or for any illness of, or personal injury to, or death of, any employee or other individual related to the foregoing.

(c) To the best Knowledge of Sellers and the Acquired Companies, all equipment and personal property owned, leased or used in the Operations are and have been free of hydrocarbon contamination, asbestos, PCBs, dioxins, and any other hazardous, toxic, radioactive or dangerous substances, except for the liquefied natural gas



and compressed natural gas the Acquired Companies produce, store and handle, and except for the fuel, lubricants, refrigerants and solvents that are used in the ordinary course of business in conducting the Operations. The liquefied natural gas and compressed natural gas of the Acquired Companies, and the fuel, lubricants, refrigerants, and solvents used in its Operations, have all been stored, handled, transported, used and disposed of in accordance with all Environmental, Health, and Safety Laws and consistent with all standard industry practices.

(d) Except as disclosed on Disclosure Schedule 3.16(d), all real property the Acquired Companies own are, to the best Knowledge of Sellers and the Acquired Companies, free from contamination by any substance regulated under, or defined as or considered “hazardous” or “toxic” or “radioactive” or “contamination” or “pollution” under, any Environmental, Health, and Safety Laws, including but not limited to hydrocarbons, asbestos, PCBs, and dioxins. Sellers have provided AIDEA with true and complete copies of all environmental assessments, studies and reports that (1) Sellers and the Acquired Companies are aware exist, and (2) reference the real property any of the Acquired Companies owns, leases or uses. Although neither Sellers nor the Acquired Companies has conducted any environmental assessments regarding the leased real property used by the Acquired Companies, neither Sellers nor the Acquired Companies are aware of any environmental contamination on or under the portions of any leased or used real property where any of the Operations have been conducted.

(e) Except as disclosed on Disclosure Schedule 3.16(e), no leak, spill, release, discharge or disposal of any substance regulated under, or defined as or considered

“hazardous” or “toxic” or “radioactive” or “contamination” or “pollution” under any Environmental, Health, and Safety Laws has ever occurred on, in or under the real property any of the Acquired Companies owns, leases or uses, or has ever owned, leased or used, in conducting the Operations that was reportable or should have been reported to any government or governmental agency, or that was or could have been subject to clean up or remediation, under any Environmental, Health, and Safety Laws.

(f) Except as disclosed on Disclosure Schedule 3.16(f), to Sellers’ Knowledge, there is no underground storage tank present on any real property any of the Acquired Companies owns.

**3.17 Employee Benefits and Compensation; Labor Relations.**

(a) Disclosure Schedule 3.17(a) lists all of the retirement, pension, profit-sharing, insurance, health, medical or other form of employee welfare or benefit plans (“Employee Benefit Plans”) any of the Acquired Companies are a party to or under which any of the Acquired Companies has ever been obligated. The Acquired Companies have paid all amounts due under any Employee Benefit Plans and have otherwise fulfilled all obligations they have under any Employee Benefit Plans. Except for regular payroll for the pay period during which the Closing occurs, the Acquired Companies have paid all compensation of every kind due any of their employees.

(b) None of the Acquired Companies is or has been within the preceding six years a party to any collective bargaining or other labor contract. Except as disclosed in Disclosure Schedule 3.17(b), with respect to the Acquired Companies, there has not been, there is not presently pending or existing, and there is not threatened, (1) any strike,

slowdown, picketing, work stoppage, or employee grievance process, (2) any proceeding against or affecting any of the Acquired Companies relating to an alleged violation of any legal requirement pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board, the Equal Employment Opportunity Commission, the Alaska Human Rights Commission, or any comparable federal, state or local governmental agency, (3) any organizational activity, or other labor or employment dispute against or affecting any of the Acquired Companies or their premises. No event has occurred and no circumstance exists that could provide the basis for any work stoppage or other labor dispute. There is no lockout of any of the Acquired Companies' employees and no such action is contemplated by any of the Acquired Companies.

### **3.18 Tax Matters.**

(a) The Acquired Companies have filed all Tax Returns that they are required to file. All of the Acquired Companies' Tax Returns were correct and complete in all respects. All Taxes owed by the Acquired Companies, or any of them, (whether or not shown on any Tax Return) have been paid. No claim has ever been made by any authority in a jurisdiction where the Acquired Companies do not file Tax Returns that the Acquired Companies, or any of them, is or may be subject to taxation by that jurisdiction. Each of the Acquired Companies is taxed as a partnership for income tax purposes. None of the Acquired Companies has elected to be taxed as a corporation or has ever been taxed as a corporation.

(b) The Acquired Companies have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any member, employee, officer, independent contractor, creditor or other third party.

(c) There are no Encumbrances on any of the assets of Sellers that arose in connection with any failure (or alleged failure) to pay any Tax. Each of the Sellers (or, in the case of Harrington Partners, L.P., the partners of such entity) will pay, when and if due, all Taxes owed by Sellers as a result of the sale of the LLC Membership Interests. None of the Acquired Companies will have any Liability for any Taxes as a result of the Contemplated Transactions.

**3.19 Interested Party Contracts.** Except as disclosed on Disclosure Schedule 3.19, none of the Sellers, nor any of the Sellers' Related Persons, nor any of the members, managers, officers, or employees of any of the Acquired Companies, has any interest in (a) any of the Material Contracts, either directly or indirectly or by reason of an interest in any entity that is a party to any of the Material Contracts, or (b) any other contract, undertaking or obligation that any of the Acquired Companies will be bound by after the Closing Date.

**3.20 Intellectual Property.** The Acquired Companies own or hold licenses for any items of Intellectual Property used in or necessary for the Operations. None of the Sellers or the Acquired Companies has received any notice of infringement or notice of conflict with the asserted rights of others in any item of Intellectual Property; nor are Sellers, or any of the Acquired Companies aware of any such infringement or conflict, or

of any infringement by, or conflict on the part of, others with respect to the Intellectual Property used in or necessary for the Operations.

**3.21 Insurance.**

(a) Disclosure Schedule 3.21(a) lists all of the insurance coverages the Acquired Companies have as of the date of this Agreement or had during the prior three years, with the effective coverage periods correctly noted. Sellers have already delivered to AIDEA copies of all insurance policies of any of the Acquired Companies currently in effect. Except as otherwise noted on Disclosure Schedule 3.21(a), all the policies listed on Disclosure Schedule 3.21(a) as currently in effect remain valid and enforceable and all premiums have been fully paid. Taken together, the insurance policies listed on Disclosure Schedule 3.21(a) as currently in effect provide adequate insurance for the Operations, including the continuation of the Operations after the Closing Date, and are sufficient to fulfill any legal or contractual obligations any of the Acquired Companies to have or provide insurance. Except as indicated on Disclosure Schedule 3.21(a), none of the insurance policies listed on Disclosure Schedule 3.21(a) is subject to any retrospective premium adjustment. None of the insurance policies listed on Disclosure Schedule 3.21(a) is subject to cancellation, exceptions or re-rating upon a change in the control of any of the Acquired Companies.

(b) Disclosure Schedule 3.21(b) lists all insurance claims of the Acquired Companies since January 1, 2010, summarizes the nature of each claim, and states the outcome of the claim, including disclosing any deductible or self-insured retention paid by any of the Acquired Companies.

**3.22 Absence of Changes.** Except as disclosed on Disclosure Schedule 3.22, since the date of the most recent of the Financials (December 31, 2014), the Acquired Companies have conducted the Operations only in the ordinary course of business and there has not been: (a) any change in the membership interests of any of the Acquired Companies or in any of the rights afforded by reason of the membership interests in any of the Acquired Companies; (b) any repurchase, redemption, retirement, or transfer of any membership interest in any of the Acquired Companies; (c) the declaration of, or payment of, any dividend, distribution or other payment related to the membership interests in any of the Acquired Companies, other than distributions to enable the members to pay Taxes that are consistent with the Acquired Companies' past practice and other than the distributions contemplated in Section 5.04, or which distributions do not result in the Net Working Capital being negative; (d) any amendment to any of the Organizational Documents; (e) any payment or increase by any of the Acquired Companies of any bonuses, salaries, or other compensation to any member, manager, officer, or employee, or any entry by any of the Acquired Companies into any employment, severance, bonus or similar contract with any member, manager, officer, or employee; (f) the adoption of, or increase in the payments to or benefits under, any Employee Benefit Plans by any of the Acquired Companies; (g) damage to or destruction of or loss of any asset or property of any of the Acquired Companies; (h) the sale, lease, or other disposition of any asset or property of any of the Acquired Companies (or than the sale of Inventory in the ordinary course of business), or the imposition of any Encumbrance on or against any asset or property of any of the Acquired Companies;

(i) any material change in the accounting methods used by any of the Acquired Companies; or (j) any agreement, whether oral or written, by any of the Acquired Companies to do any of the foregoing.

**3.23 Complete and Accurate Statements.** Sellers' representations and warranties in Article 3 of this Agreement, Sellers' disclosures in the Disclosure Schedules to this Agreement or in any supplement to the Disclosure Schedules, and any certificate or document delivered to AIDEA at the Closing by or on behalf of Sellers do not and will not contain any untrue statement of material fact or omit to state a material fact necessary in order to make any of them misleading. Sellers do not have Knowledge of any fact that has specific application to any of the Acquired Companies (other than general economic or industry conditions) that may have a Material Adverse Effect on the assets, businesses or financial conditions of Pentex, Fairbanks Natural Gas, LLC, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC that has not been set forth in this Agreement or in the Disclosure Schedules to this Agreement, or that will be set forth in a supplement to the Disclosure Schedules.

#### **Article 4**

#### **AIDEA'S REPRESENTATIONS AND WARRANTIES**

AIDEA represents and warrants to Sellers that the statements contained in this Article 4 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then):

**4.01 Existence.** AIDEA is a public corporation of the State of Alaska established by statute, AS 44.88.020. AIDEA is duly organized and validly existing

under the laws of the State of Alaska with full power: (a) to carry on its business as currently conducted and to own, lease and operate all property and assets now owned, leased or operated by it, and (b) to enter into this Agreement and to perform its obligations under this Agreement.

**4.02 Authorization.** The execution and delivery by AIDEA of this Agreement, and the performance by AIDEA of its obligations under this Agreement, have been duly and validly authorized by all necessary organizational action of AIDEA. This Agreement has been duly executed and validly delivered by AIDEA and is legally binding on AIDEA, enforceable against AIDEA in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by general principles of equity (regardless of whether considered in a proceeding in equity or one at law), and by public policy.

**4.03 No Conflict.** The execution and delivery of this Agreement by AIDEA, and the performance by AIDEA of its obligations under this Agreement, do not and will not (a) conflict with AIDEA's bylaws, or (b) result in the breach of any of the provisions of, or constitute a default under, any judgment, writ, order, decree or agreement to which AIDEA is a party or by which AIDEA is bound, which breach or default would reasonably be expected to materially adversely affect the Contemplated Transactions.

**4.04 Sufficient Funds.** On the date of this Agreement AIDEA has, and on the Closing Date AIDEA will have, sufficient funds to consummate the Contemplated Transactions. With the execution of this Agreement, AIDEA is delivering a certificate of its Chief Financial Officer in the form of Exhibit 4.04 attesting to the availability of funds



needed to consummate the Contemplated Transactions. AIDEA shall ensure that the funds needed to consummate the Contemplated Transactions remain available until the Closing or until the termination of this Agreement.

## **Article 5**

### **COVENANTS OF THE PARTIES**

**5.01 Access and Investigation.** Between the date of this Agreement and the Closing Date, Sellers will cause the Acquired Companies to: (a) afford AIDEA and its representatives reasonable access to the Acquired Companies' personnel, properties, facilities, contracts, books and records, and other documents and data; (b) furnish AIDEA and its representatives with copies of all contracts, books and records, and other existing documents required by this Agreement or that AIDEA may reasonably request; and (c) furnish AIDEA and its representatives any additional financial, operating, and other data and information as AIDEA may reasonably request. AIDEA acknowledges that it is not permitted to contact any of the personnel, vendors, or customers of the Acquired Companies regarding the Contemplated Transactions, except upon first obtaining prior approval from Seller Daniel Britton or Sellers' Representative.

**5.02 Notices and Approvals.** Sellers and AIDEA shall use their best efforts and cooperate in making all filings, giving all notices, and seeking the approvals of all government authorities and third parties that may reasonably be required to consummate the Contemplated Transactions, including without limitation the approval of the Regulatory Commission of Alaska.

**5.03 Conduct of Business Prior to Closing.** Except as AIDEA may otherwise consent, from the date of this Agreement until the Closing:

(a) Sellers shall cause the Acquired Companies to conduct the Operations in the ordinary course of business and consistent with prior practice, and subject to their existing contractual obligations, and subject to Sellers' right to replace Carlile Transportation Systems, Inc. as the trucking service provider for the Acquired Companies, on commercially reasonable terms, as may be required pursuant to the expiration or termination of existing agreements, so long as such action does not result in a Material Adverse Effect. Sellers shall cause the Acquired Companies to not alter Inventory levels in any material way from their usual and customary amounts. Sellers shall cause the Acquired Companies to not sell, lease (as lessor), transfer, license (as licensor), or voluntarily dispose of, any assets material to the Operations, other than Inventory sold in the ordinary course, and except as contemplated pursuant the Harvest Alaska Contracts. Sellers shall cause the Acquired Companies to not amend or voluntarily terminate any Material Contract. Sellers shall not allow any Encumbrance to be placed against any of the assets of any of the Acquired Companies after the date of this Agreement.

(b) Sellers shall cause the Acquired Companies to not enter into any agreement having a term of more than six months, or any agreement reasonably expected to require expenses or expenditures of more than \$50,000; provided, however, that with respect to agreements for the capital expenditures contemplated in the loan agreement between

AIDEA and Fairbanks Natural Gas, LLC dated May 19, 2014, Fairbanks Natural Gas, LLC may enter into such agreements without the prior approval of AIDEA.

(c) Sellers shall cause the Acquired Companies to use reasonable efforts to preserve their business organizations and relations with their customers, suppliers and employees. Sellers shall cause the Acquired Companies to not increase salaries, wages or benefits for any of the Acquired Companies' employees and to not pay or promise any bonuses to employees, except in the ordinary course of business and consistent with past practices so long as the cumulative effect of such increases or bonuses is not greater than \$50,000 per year.

(d) Sellers shall cause the Acquired Companies to confer with AIDEA on any material matters affecting the Operations and to report periodically to AIDEA concerning the status of their businesses and finances.

**5.04 Negative Covenant.** Between the date of this Agreement and the Closing Date, Sellers will not, and will cause each of the Acquired Companies not to, take any action or fail to take any action reasonably within their control as a result of which any of the changes or events listed in Section 3.22 is likely to occur, except to fulfill existing contractual obligations of the Acquired Companies, and Sellers may cause the Acquired Companies to make distributions to Sellers from the sales proceeds under the Harvest Alaska Contracts so long as the Purchase Price is adjusted as provided for in Section 5.07(b) and the Acquired Companies, at any time prior to Closing, may make other distributions to Sellers provided that such distributions do not result in the Net Working Capital being negative.

**5.05 Notification; Updates to Disclosure Schedules.**

(a) Between the date of this Agreement and the Closing Date, Sellers will promptly notify AIDEA in writing: (1) if Sellers or any of the Acquired Companies becomes aware of a fact or condition that causes or constitutes a breach of any of Sellers' representations and warranties of Article 3, or would have constituted a breach if the fact or condition had existed at the time this Agreement was made; and (2) if Sellers or any of the Acquired Companies learn of the occurrence of any event that may make the satisfaction of the conditions to Closing impossible or unlikely.

(b) Prior to the Closing Date, the Sellers shall supplement or amend the Disclosure Schedules required by this Agreement with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Disclosure Schedule. Each supplement or amendment to the Disclosure Schedules pursuant to this Section shall be subject to the approval in writing of AIDEA (which approval by AIDEA will not be unreasonably withheld), except as provided in Section 5.05(c). No supplement or amendment of the Disclosure Schedules made pursuant to this Section 5.05 shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the parties agree thereto in writing.

(c) As soon as reasonably possible after June 30, 2015, Sellers shall cause the Acquired Companies to prepare Quarterly Reports for the second calendar quarter of 2015 to present the Acquired Companies' financial position as of the end of the period and the results of Operations and cash flows for the period. Sellers shall provide the

same to AIDEA as soon as they are available. The Quarterly Reports for the second calendar quarter of 2015 shall constitute a supplement to Disclosure Schedule 3.06, but such supplement shall not be subject to AIDEA's review or approval so long as it does not show or indicate that a Material Adverse Effect has occurred after the Effective Date of this Agreement.

**5.06 Cancellation of Obligations.** On or before the Closing Date, Sellers will cause all indebtedness, contracts, claims and other obligations, including all of the Excluded Liabilities, that any of the Acquired Companies owe to any of the Sellers, or to any of the Sellers' Related Persons, to be canceled, terminated, and forever released without any payment being made by, or any other consideration being provided by, any of the Acquired Companies. The obligations to be canceled, terminated and release shall include obligations due Daniel Britton upon termination of his employment or upon a change in control of his employer (12 months' salary and COBRA insurance payments and \$30,000 relocation allowance). However, with respect to the deferred compensation agreement with Seller Daniel Britton dated December 11, 2013, the obligation to make additional contributions under that agreement after the Closing Date shall be terminated, but AIDEA accepts that the actual payment of Seller Daniel Britton's vested amount shall occur after the Closing in accordance with the terms of the agreement.

**5.07 Harvest Alaska Contracts.**

(a) AIDEA acknowledges that Pentex, Titan Alaska LNG, LLC and Arctic Energy Transportation, LLC have an existing contract, dated November 5, 2014, as amended February 4, 2015, to sell substantially all of the assets of Titan Alaska LNG,

LLC and Arctic Energy Transportation, LLC to Harvest Alaska, LLC, which contract will remain a binding obligation of Pentex, Titan Alaska LNG, LLC and Arctic Energy Transportation, LLC following the Closing, and which contract is subject to the satisfaction of the conditions precedent set out in the contract. AIDEA further acknowledges that Fairbanks Natural Gas, LLC has an existing contract, dated November 5, 2014, as amended February 4, 2015, to purchase LNG from Harvest Alaska, LLC, which contract will remain a binding obligation of Fairbanks Natural Gas, LLC following the Closing, and which contract is subject to the satisfaction of the conditions precedent set out in the contract. AIDEA covenants that its obligation to purchase the LLC Membership Interests is not affected by the Harvest Alaska Contracts, and AIDEA, as a corporation with its own separate existence, agrees that it will not take any action prior to the Closing Date to (i) challenge the validity of the Harvest Alaska Contracts in any regulatory proceeding, or (ii) otherwise delay or impede the approval of the Harvest Alaska Contracts in any regulatory proceeding. Notwithstanding the foregoing, AIDEA makes no covenant or agreement as to any actions that any other agency or department of the State of Alaska may take with respect to challenging the validity of or delaying or impeding the approval of the Harvest Alaska Contracts.

(b) If the Harvest Alaska Contracts receive the necessary regulatory approvals prior to the Closing of the Contemplated Transactions the net proceeds received by the Sellers from such sale of assets will automatically reduce, on a dollar-for-dollar basis, the amount of the Purchase Price owed to Sellers under this Agreement at Closing.

(c) Without the prior written consent of AIDEA, Sellers shall not, prior to the Closing, amend the Harvest Alaska Contracts or waive any of the rights any of the Acquired Companies have under the Harvest Alaska Contracts.

(d) Without derogating AIDEA's obligations under Section 5.07(a), between the Effective Date and the Closing, Sellers acknowledge that AIDEA may directly confer with Harvest Alaska, or any company affiliated with Harvest Alaska, about the Harvest Contracts and related matters, and Sellers acknowledge that AIDEA may propose amendments and reach agreement on amendments to the Harvest Alaska Contracts, or propose additional contracts and reach additional contracts with Harvest Alaska or its affiliates that would be effective only after the Closing Date and only so long as the Contemplated Transactions are consummated.

**5.08 Environmental Assessments.** AIDEA has engaged, or is in the process of engaging, one or more environmental consulting or engineering firms to conduct Phase I environmental assessments of the real properties on which the Operations are conducted. If AIDEA elects, Phase II environmental assessments will also be performed. The Phase I and Phase II environmental assessments shall at AIDEA's sole cost and expense. AIDEA will use all reasonable efforts to have the Environmental Assessments completed by no later than July 1, 2015. Sellers and the Acquired Companies will cooperate with AIDEA and the environmental consulting or engineering firms, provide any requested information on the real properties where the Operations are conducted, and allow full access to those real properties for purposes of completing the Environmental Assessments. Whether or not the Closing occurs, AIDEA shall provide to Sellers

complete copies of the reports on the Environmental Assessments once they have been completed.

**5.09 Tax Matters.**

(a) Sellers shall be responsible for filing all Tax Returns of or with respect to the Acquired Companies for all taxable periods ending on or prior to the Closing Date (each such period a “Sellers Tax Period”). AIDEA will have no liability for Taxes relating to the income derived from the operations and business of Acquired Companies for any Sellers Tax Period. AIDEA shall be responsible for filing all Tax Returns of or with respect to the Acquired Companies for all taxable periods ending after the Closing Date (each such period an “AIDEA Tax Period”), if any such Tax Returns are legally required. If any Taxes are due for an AIDEA Tax Period, AIDEA shall cause the Acquired Companies to pay such the same when due. Sellers or AIDEA, as the case may be, shall be entitled to any refund or credit relating to any such Taxes based upon or related to income or receipts for any taxable period (or portion thereof) during which Sellers or AIDEA, as the case may be, owned the Acquired Companies.

(b) Any Tax Return prepared pursuant to the provisions of Section 5.09 shall be prepared in a manner consistent with practices followed in prior years with respect to similar Tax Returns, except as otherwise required by law.

(c) AIDEA and Sellers shall provide the other with any records as may reasonably be requested by the other party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each shall retain and



provide the requesting party with any records or information which may be relevant to such return, audit, examination or proceedings.

**5.10 Regulatory Matters.** Subject to the terms and conditions of this Agreement, each party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under this Agreement and applicable laws to consummate the Contemplated Transactions as soon as practicable after the date hereof, including (a) preparing and filing, in consultation with the other parties and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions, filings, and other documents and to obtain as promptly as practicable all consents, clearances, waivers, licenses, orders, registrations, approvals, permits, and authorizations necessary to be obtained from any third party and/or any governmental authority to consummate the Contemplated Transactions, and (b) taking all reasonable steps as may be necessary to obtain all such material consents, clearances, waivers, licenses, registrations, permits, authorizations, orders and approvals, including the approval by the Regulatory Commission of Alaska to the change in ownership of Fairbanks Natural Gas, LLC. AIDEA agrees it will submit an application for approval by the Regulatory Commission of Alaska to the change in ownership of Fairbanks Natural Gas, LLC within ten working days after the Effective Date, and a motion for expedited consideration to allow for a decision by the Regulatory Commission of Alaska by July 31, 2015. Sellers shall cooperate with and assist AIDEA in making the necessary filings with the Regulatory Commission of Alaska.

**5.11 Control of Actions Involving Excluded Liabilities.** Effective as of the Closing, AIDEA appoints Sellers' Representative (or its designee) as the agent of the Acquired Companies for the limited purpose of investigating, defending, compromising, or settling any claim, demands, suits, actions or proceedings involving the matters described in clause (b) and clause (c) in the definition of Excluded Liabilities. This appointment includes the right of Sellers' Representative (or its designee) to interact with, and direct, the insurers of the Acquired Companies with respect to any insurance policy under which coverage may be available in respect to such matters. Sellers shall retain the exclusive right to investigate, defend, compromise, or settle such matters and the applicable Acquired Companies will be bound by any determination so defended or any compromise or settlement by Sellers. Sellers shall not admit any Liability with respect to, or settle, compromise or discharge, such matters without AIDEA's prior written consent (which consent shall not be unreasonably withheld or delayed) unless (a) there is no finding or admission of any violation of applicable law or any violation of the rights of any person, or (b) the sole relief provided is monetary damages that are paid in full by the insurers for the Acquired Companies or by Sellers and a full and complete release is provided to the applicable Acquired Company.

## **Article 6**

### **AIDEA'S CONDITIONS PRECEDENT**

AIDEA's obligation to consummate the Contemplated Transactions is subject to the satisfaction to the reasonable satisfaction of AIDEA, on or before the Closing Date, of

the following conditions (subject to AIDEA's right to waive satisfaction of any of these conditions):

**6.01 Accuracy of Representations and Warranties.** Each and every representation and warranty of Sellers made in this Agreement must be true and accurate as of the date when made and as of the Closing.

**6.02 Performance of Covenants and Agreements.** Sellers must have performed or complied with in all material respects all of the covenants and agreements required to be performed by or complied with by Sellers at or prior to the Closing in accordance with this Agreement.

**6.03 Permits, Consents, Agreements, Etc.**

(a) All consents, approvals or authorizations of, or filings with, any person, entity, government or governmental agency that are required in connection with the Contemplated Transactions must have been accomplished or obtained. The authorization of the Regulatory Commission of Alaska to a change in the ownership control of Fairbanks Natural Gas, LLC must have been obtained.

(b) To the extent that the approval of the other parties to any of the Material Contracts is needed, those approvals must have been obtained.

**6.04 Environmental Assessments.** By no later than July 1, 2015, the Environmental Assessments must be completed and AIDEA must be reasonably satisfied with the results.

**6.05 Litigation.** No action, suit, proceeding, or investigation, by any third person (including but not limited to any government or governmental agency) must be

instituted or threatened against Sellers or AIDEA that challenges, or reasonably may be expected to lead to subsequent challenging of, the validity or legality of this Agreement or the Contemplated Transactions.

**6.06 Change in Law.** The consummation of the Contemplated Transactions must not be prohibited by any statute, regulation, order or directive of any government or governmental agency that is binding upon AIDEA and enacted, issued or made after the date of this Agreement.

**6.07 No Material Adverse Effect.** No Material Adverse Effect must have occurred that, after notice of such Material Adverse Effect by AIDEA to Sellers, has not been remedied to AIDEA's satisfaction prior to the Closing; provided, however, that in no event shall the consummation by Sellers of the closing under the Harvest Alaska Contracts described in Section 5.07 constitute a Material Adverse Effect.

**6.08 Approval of Revised Disclosure Schedules.** AIDEA must have approved in writing all supplements or amendments Sellers have made to the Disclosure Schedules after the Effective Date (which approval by AIDEA will not be unreasonably withheld), other than as provided in Section 5.05(c).

**6.09 Sellers' Deliveries at the Closing.** Sellers must have delivered to AIDEA at the Closing, duly executed and in the proper form, all instruments, assignments, agreements, certificates and other documents required under Section 8.02.

## Article 7

### **SELLERS' CONDITIONS PRECEDENT**

All obligations of Sellers to consummate the Contemplated Transactions are subject to the satisfaction to the reasonable satisfaction of Sellers on or before the Closing Date, of the following conditions (subject to the rights of Sellers to waive satisfaction of any of these conditions):

**7.01 Accuracy of Representations and Warranties.** Each and every representation and warranty of AIDEA made in this Agreement must be true and accurate in all material respects as of the date when made and as of the Closing.

**7.02 Performance of Covenants and Agreements.** AIDEA must have performed or complied with in all material respects all of the covenants and agreements required to be performed by or complied with by AIDEA at or prior to the Closing in accordance with this Agreement.

**7.03 AIDEA's Actions at the Closing.** AIDEA must have paid to or for the benefit of Sellers at the Closing all amounts required under Section 8.03, and AIDEA must have delivered to Sellers at the Closing, duly executed and in the proper form, all instruments, assignments, agreements, certificates and other documents required under Section 8.03.

## Article 8

### **THE CLOSING**

**8.01 Closing Date.** The Closing shall take place as soon as reasonably possible after the satisfaction or waiver of all of the conditions precedent, but in no event later

than July 31, 2015, time being of the essence. The Closing will be held at AIDEA's offices in Anchorage, Alaska, or at such other place as the parties shall agree in writing.

**8.02 Sellers' Actions at the Closing.** At the Closing:

(a) Sellers shall deliver to AIDEA the wire transfer instructions and an allocation of the Purchase Price between the Sellers as contemplated by Section 2.03(c).

(b) Sellers shall deliver to AIDEA assignments of the LLC Membership Interests and any other instruments of sale, conveyance, transfer and assignment as AIDEA may reasonably request in order to vest in AIDEA all of Sellers' right, title and interest in and to the LLC Membership Interests.

(c) Sellers shall deliver to AIDEA copies of the resolutions of the board of directors, general partner, managers, or members, as the case may be, of each of the Sellers approving of this Agreement and the performance of this Agreement. In case of the Seller Pentex Alaska Natural Gas Co. resolutions of both the board of directors and the shareholders shall be provided and the resolutions shall be accompanied by a certificate of the secretary of the corporation verifying the authenticity of the resolutions and confirming that the resolutions remain in full force and effect.

(d) Seller shall deliver to AIDEA at the Closing duly executed Sellers' Release in the form of Exhibit 8.02(d).

(e) Sellers shall deliver to AIDEA at the Closing certificates of each of the Sellers, signed by the duly authorized representatives of Sellers, certifying that (1) each and every representation and warranty of Sellers under this Agreement was true and accurate in all material respects as of the date when made and is true and accurate in all

material respects as of the Closing; and (2) Sellers have performed, in all material respects at or prior to the Closing, all of the covenants and agreements required to be performed by Sellers at or prior to the Closing in accordance with this Agreement.

(f) Sellers shall deliver to AIDEA at the Closing the legal opinion(s) of their counsel substantially in the form of Exhibit 8.02(f).

**8.03 AIDEA's Actions at the Closing.** At the Closing:

(a) AIDEA shall deliver to Sellers, or to third parties for the benefit of Sellers, in immediately available funds, the amount of money that is due under this Agreement at the Closing.

(b) AIDEA shall deliver to Sellers a certificate signed by AIDEA's Executive Director certifying that (1) each and every representation and warranty of AIDEA under this Agreement was true and accurate in all material respects as of the date when made and is true in all material respects as of the Closing, and (2) AIDEA has performed in all material respects at or prior to the Closing all of the covenants and agreements required to be performed by AIDEA at or prior to the Closing in accordance with this Agreement.

**8.04 Effectiveness of Closing.** No action to be taken, and no delivery to be made, at the Closing shall be effective until all of the actions to be taken and all of the deliveries to be made at the Closing have been completed.

## Article 9

### **HOLDBACK CLAIMS; INDEMNIFICATION; DIRECT DAMAGES**

#### **9.01 Claims against Holdback Amount.**

(a) After the Closing but before the Holdback Amount held by the Escrow Agent under the Escrow Agreement is disbursed to Sellers' Representative, AIDEA shall be entitled to be paid from the Holdback Amount, on a dollar-for-dollar basis, to the extent that AIDEA or any of the Acquired Companies incurs any Damages during the one-year period in which the Holdback Amount is in the Escrow Account, which Damages are caused by or arising out of: (1) the failure of Sellers to perform and fulfill any agreement or covenant to be performed and fulfilled by Sellers under this Agreement; or (2) the breach of any representation or warranty set forth in Article 3; or (3) any Excluded Liabilities; or (4) any Pre-Closing Environmental Liability; or (5) any Liability of any of the Sellers for Taxes; or (6) any Liability of Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC to indemnify, defend and hold harmless Harvest Alaska, LLC, or its affiliates, under Section 7.1 of the Purchase and Sale Agreement between them dated November 5, 2014, as amended on February 4, 2015; provided that the provisions of this clause (6) shall apply only if (i) the closing under such Purchase and Sale Agreement shall have occurred, and (ii) the Liability of Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC to indemnify, defend and hold harmless is not attributable to a breach or default by Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC that corresponds to any act or omission of them occurring after the Closing Date.



(b) To obtain payment from the Holdback Amount under Section 9.01(a), AIDEA must give Sellers' Representative written notice of the amount AIDEA is claiming and explain the basis for the claim against the Holdback Amount. Sellers' Representative shall to respond to AIDEA's notice within 10 days. If Sellers concur in AIDEA's claim, then AIDEA and Sellers' Representative shall jointly instruct the Escrow Agent to disburse sufficient funds from the Holdback Amount to pay the amount of AIDEA's claim. If Sellers dispute AIDEA's claim, Sellers' Representative shall give AIDEA written notice of the basis for the dispute. The parties shall then confer with one another in good faith in attempt to resolve the dispute. Any dispute that remains unresolved by the parties for a period of 60 days after Sellers' dispute notice was given shall be submitted to non-binding mediation. The mediation shall be conducted in Anchorage, Alaska with a mediator the parties jointly select. AIDEA and Sellers shall equally share, on a 50/50 basis, the mediator's fees. If mediation is unsuccessful, then either party may initiate litigation to adjudicate the dispute. In any event, the amount in dispute shall be retained by the Escrow Agent under the Escrow Agreement until the dispute is resolved.

**9.02 Indemnification by Sellers for Third Party Claims.**

(a) Subject to any dollar amount limitation of Section 9.04, after the Closing and regardless of the disbursement of the Holdback Amount to Sellers or the termination of the Escrow Agreement, Sellers' Representative shall indemnify and defend AIDEA and its members, directors, officers, and employees, and the Acquired Companies, from and against any Damages attributable to Third Party Claims that are made during the

three-year period after the Closing Date and that are caused by or arise out of: (1) the failure of Sellers to perform and fulfill any agreement or covenant to be performed and fulfilled by Sellers under this Agreement; or (2) the breach of any representation or warranty set forth in Article 3, other one of Sellers' Fundamental Representations; or (3) any Excluded Liabilities; or (4) any Pre-Closing Environmental Liabilities, other than a Pre-Closing Environmental Liability for any fines or penalties imposed by any federal, state or local governmental authority.

(b) Subject to any dollar amount limitation of Section 9.04, after the Closing and regardless of the disbursement of the Holdback Amount to Sellers or the termination of the Escrow Agreement, Sellers' Representative shall indemnify and defend AIDEA and its members, directors, officers, and employees, and the Acquired Companies, from and against any Damages attributable to Third Party Claims that are made at any time after the Closing Date and that are caused by or arise out of: (1) any breach of one of Sellers' Fundamental Representations; or (2) any Pre-Closing Environmental Liability for any fines or penalties imposed by any federal, state or local governmental authority; or (3) any Liability of Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC to indemnify, defend and hold harmless Harvest Alaska, LLC, or its affiliates, under Section 7.1 of the Purchase and Sale Agreement between them dated November 5, 2014, as amended on February 4, 2015; provided that, the provisions of this clause (3) shall apply only if (i) the closing under such Purchase and Sale Agreement shall have occurred, and (ii) the Liability of Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC to indemnify, defend and hold harmless is not attributable to a

breach or default by Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC that corresponds to any act or omission of them occurring after the Closing Date.

**9.03 Compensation by Sellers for Direct Damages.**

(a) Subject to any dollar amount limitation of Section 9.04, after the Closing and regardless of the disbursement of the Holdback Amount to Sellers or the termination of the Escrow Agreement, Sellers' Representative shall pay AIDEA or any of the Acquired Companies, as the case may be, for any Damages that AIDEA or any of the Acquired Companies incurs or suffers during the three-year period after the Closing Date, which are not attributable to Third Party Claims, and which are caused by or arise out of: (1) the failure of Sellers to perform and fulfill any agreement or covenant to be performed and fulfilled by Sellers under this Agreement; or (2) the breach of any representation or warranty set forth in Article 3, other than one of Seller's Fundamental Representations; or (3) any Excluded Liabilities; or (4) any Pre-Closing Environmental Liability, other than a Pre-Closing Environmental Liability for any fines or penalties imposed by any federal, state or local governmental authority.

(b) Subject to any dollar amount limitation of Section 9.04, after the Closing and regardless of the disbursement of the Holdback Amount to Sellers or the termination of the Escrow Agreement, Sellers' Representative shall pay to AIDEA or any of the Acquired Companies, as the case may be, for any Damages that AIDEA or any of the Acquired Companies incurs or suffers at any time after the Closing Date, which are not attributable to Third Party Claims, and which are caused by or arise out of: (1) any breach of any of Sellers' Fundamental Representations; or (2) any Pre-Closing

Environmental Liability for any fines or penalties imposed by any federal, state or local governmental authority; or (3) any Liability of Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC to indemnify, defend and hold harmless Harvest Alaska, LLC, or its affiliates, under Section 7.1 of the Purchase and Sale Agreement between them dated November 5, 2014, as amended on February 4, 2015; provided that the provisions of this clause (3) shall apply only if (i) the closing under such Purchase and Sale Agreement shall have occurred, and (ii) the Liability of Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC to indemnify, defend and hold harmless is not attributable to a breach or default by Pentex, Titan Alaska LNG, LLC or Arctic Energy Transportation, LLC that corresponds to any act or omission of them occurring after the Closing Date.

**9.04 Dollar Limitation on Sellers' Obligations.** Notwithstanding any other provision of this Agreement, the aggregate maximum amount Sellers shall be obligated to pay or expend in meeting their obligations under Section 9.01, Section 9.02, and Section 9.03 shall not exceed \$12,000,000, except in the event of fraud or willful misconduct or the breach of one of Sellers' Fundamental Representations. For the avoidance of doubt, any disbursement from the Holdback Amount to AIDEA under Section 9.01 shall be counted against Sellers' maximum dollar limitation established under this Section.

**9.05 Indemnification by AIDEA.** Subject to a specific appropriation by the Alaska State Legislature for this purpose, and subject to any dollar limitation of Section 9.06, from and after the Closing, AIDEA will indemnify and defend Sellers and their respective affiliates, officers, directors, partners, and managers from and against any

Damages sustained by any of them during the three-year period after the Closing Date that are caused by or arise out of AIDEA's breach of any representation, warranty, or covenant in this Agreement or that arise from AIDEA's ownership of the Acquired Companies, including any Damages attributable to, or arising in connection with, a breach or default by any of the Acquired Companies under either of the Harvest Alaska Contracts occurring after the Closing Date, but not including any matter against which Sellers are obligated to indemnify and defend AIDEA. Sellers acknowledge that AIDEA has no appropriation currently available to it to indemnify and defend Sellers under this Section 9.05 and that enactment of an appropriation in the future to fund a payment under this Section 9.05 remains in the sole discretion of the Alaska State Legislature and its failure to make such an appropriation creates no further liability or obligation of AIDEA. Nevertheless, if Sellers and AIDEA agree on the amount of any indemnity obligation AIDEA owes to Sellers under this Section 9.05, or if Sellers obtain a final and non-appealable judgment against AIDEA that establishes AIDEA's Liability for indemnity under this Section 9.05, then AIDEA's Executive Director shall request the State of Alaska's Office of Management and Budget seek, and AIDEA shall use reasonable efforts to obtain, a legislative appropriation to pay the same.

**9.06 Dollar Limitation on AIDEA's Obligations.** Notwithstanding any other provision of this Agreement, the aggregate maximum amount AIDEA shall be obligated to pay or expend in meeting its obligations under Section 9.05 shall not exceed \$12,000,000, except in the event of fraud or willful misconduct, or except for AIDEA's

failure to pay the Purchase Price at Closing (in which case Sellers' exclusive remedy is the retention of the Deposit as provided for in Section 11.03(a)).

**9.07 Exclusivity.** From and after the Effective Date, and except in the case of fraud or willful misconduct, the provisions set forth in this Article 9 shall be the exclusive remedies of the parties for any misrepresentation or breach of warranty, covenant or other agreement hereunder and otherwise with respect to the Contemplated Transactions, and, in any event, the parties shall not be entitled to a rescission of this Agreement or to any further indemnification rights or claims of any nature whatsoever in respect thereof, all of which the Parties hereby waive, except in the event of fraud or willful misconduct.

**9.08 Indemnity Procedure.**

(a) As soon as reasonably possible after a party entitled to indemnity or a defense ("Indemnified Party") is notified of any Third Party Claims within the scope of the indemnity and defense obligations of the other party ("Payer Party"), the Indemnified Party shall notify the Payer Party of the same. However, the failure to timely notify the Payer Party of the Third Party Claim will not relieve the Payer Party from its indemnity and defense obligations, except to the extent the Payer Party can demonstrate that the defense of the Third Party Claim was prejudiced by the failure to give timely notice.

(b) The Payer Party shall engage counsel at the Payer Party's expense to defend the Indemnified Party against any Third Party Claims within the scope of the indemnity and defense obligations. The Payer Party may exclusively control the defense and settlement of the Third Party Claims, except that the Payer Party must obtain the Indemnified Party's consent to any settlement if the settlement involves any relief other

than the payment of money. In any case, the Indemnified Party may engage, at its own expense, its own separate counsel to participate in defending against the Third Party Claims and assist the defense counsel the Payer Party engages.

(c) In addition to any other limitations contained in this Article 9 hereof, the obligations of the parties hereto to indemnify each other, as applicable, are subject to, and limited by, the following:

The amount of any Damages sustained by an Indemnified Party and owed by a Payer Party shall be reduced by any amount received by such Indemnified Party with respect thereto under any insurance or reinsurance coverage, or any recovery from any judgment or settlement, or from any other party alleged to be responsible therefor, less any costs associated with such efforts. The Indemnified Party shall use commercially reasonable efforts to collect any amounts available under such insurance or reinsurance coverage and from such other party alleged to have responsibility. If the Indemnified Party receives an amount under insurance or reinsurance coverage or from such other party with respect to Damages sustained at any time subsequent to any indemnification actually paid pursuant to this Article 9, then, subject to the immediately preceding sentence, such Indemnified Party shall promptly reimburse the applicable Payer Party for any such indemnification payment made by such Paying Party up to the actual amount so received by the Indemnified Party.

**Article 10**  
**NOTICES**

**10.01 Procedure and Addresses.** All notices, requests, demands and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given upon actual receipt if given in writing and delivered personally, by facsimile transmission, overnight courier service or email to the following addresses:

If to Sellers' Representative:

Harrington Partners, L.P.  
601 Carlson Parkway, Suite 200  
Minnetonka, MN, 55305  
Attn: Tom Rock: General Counsel  
Fax: 952-276-7201  
Email: [tom.rock@mercedcapital.com](mailto:tom.rock@mercedcapital.com)

With a copy to:

Raymond W. Faricy III  
Lindquist & Vennum LLP  
4200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402  
Fax: (612) 371-3507  
Email: [rfaricy@lindquist.com](mailto:rfaricy@lindquist.com)

And to:

Daniel Britton  
Fairbanks Natural Gas, LLC  
3408 International Street  
Fairbanks, Alaska 99701  
Fax: (907) 457-8111  
Email: [dwbritton@fngas.com](mailto:dwbritton@fngas.com)



If to AIDEA:

Executive Director  
Alaska Industrial Development and Export Authority  
813 West Northern Lights Boulevard  
Anchorage, Alaska 99503  
Fax: (907) 771-3044  
Email: ssiverson@aidea.org

With a copy to:

Jerome H. Juday  
Assistant Attorney General  
1031 West 4<sup>th</sup> Avenue, Suite 200  
Anchorage, Alaska 99501  
Fax: (907) 375-8282  
Email: jerry.juday@alaska.gov

**10.02 Change of Notice Address.** Any party may change the address to which communications are to be directed by giving written notice of the new address to the other party in the manner provided in Section 10.01.

## **Article 11** **TERMINATION**

**11.01 Termination.** This Agreement may be terminated at any time prior to the Closing in the following manner:

- (a) by written agreement of the parties;
- (b) by AIDEA, if the conditions set forth in Article 6 have not been satisfied or waived on or before the Closing Date, and the termination shall be effective upon notice served on Sellers' Representative in accordance with Article 10;

(c) by Sellers, if the conditions set forth in Article 7 have not all been satisfied or waived on or before the Closing Date, and the termination shall be effective upon notice served on AIDEA in accordance with Article 10;

(d) by either Sellers or AIDEA, if the Closing shall not have been consummated on or before July 31, 2015, or any extension of that date the parties mutually agree upon, and the termination shall be effective upon receipt of notice served on the other party in accordance with Article 10; or

(e) by AIDEA, if prior to the Closing there is a Material Adverse Effect that, after notice of such Material Adverse Effect by AIDEA to Sellers, has not been remedied to AIDEA's satisfaction prior to the Closing, and the termination shall be effective upon notice served on Sellers' Representative in accordance with Article 10;

(f) by AIDEA, if prior to the Closing Sellers supplement or amend any of the Disclosure Schedules in accordance with Section 5.05(b) and AIDEA does not approve the supplement or amendment where AIDEA has the right to approve (which approval by AIDEA will not be unreasonably withheld), and the termination shall be effective upon notice served on Sellers' Representative in accordance with Article 10; and

(g) by AIDEA, if AIDEA is not reasonably satisfied with the Environmental Assessments, and the termination shall be effective upon notice served on Sellers' Representative in accordance with Article 10.

**11.02 Effect of Termination.** Notwithstanding anything to the contrary, any termination under Section 11.01(b), (c), (d), or (e) shall not relieve any party of any Liability for a breach of this Agreement or for any misrepresentation prior to the Closing,

and any such termination shall not be deemed to be a waiver of any available remedy for any breach or misrepresentation.

**11.03 Disposition of Deposit on Termination.**

(a) If Closing fails to occur because of (1) AIDEA's failure to perform and fulfill any agreement or covenant to be performed and fulfilled by AIDEA under this Agreement, or (2) AIDEA's breach of any representation or warranty set forth in Article 4, Sellers shall be entitled to retain the Deposit as liquidated damages. In that event, Sellers and AIDEA shall jointly instruct the Escrow Agent to disburse the Deposit to Sellers' Representative and close the escrow. The parties acknowledge that the Damages Sellers will suffer as a result of the Closing failing to occur because of any breaches within (1) or (2) of the first sentence of this Section 11.03(a) will be difficult or impossible to accurately ascertain. Payment of the Deposit to Sellers in those circumstances is estimated to be fair and reasonable compensation and not a penalty. Sellers' retention of the Deposit as liquidated damages shall constitute Sellers' sole and exclusive remedy in the circumstances described in this Section 11.03(a).

(b) If Closing fails to occur because of any reason other than (1) AIDEA's failure to perform and fulfill any agreement or covenant to be performed and fulfilled by AIDEA under this Agreement, or (2) AIDEA's breach of any representation or warranty set forth in Article 4, then Sellers' Representative and AIDEA shall jointly instruct the Escrow Agent to remit the Deposit to AIDEA and close the escrow.

(c) If the parties dispute whether the Deposit should be disbursed to Sellers' Representative or remitted to AIDEA, the parties shall confer with one another in good

faith in attempt to resolve the dispute. Any dispute that remains unresolved by the parties for a period of 60 days or more shall be submitted to non-binding mediation. The mediation shall be conducted in Anchorage, Alaska with a mediator the parties jointly select. AIDEA and Sellers shall equally share, on a 50/50 basis, the mediator's fees. If mediation is unsuccessful, then either party may initiate litigation to adjudicate the dispute. In any event, the Deposit shall be retained by the Escrow Agent under the Escrow Agreement until the dispute is resolved.

## **Article 12**

### **MISCELLANEOUS**

**12.01 Expenses.** Each party to this Agreement shall pay all expenses incurred by that party, or on that party's behalf, in connection with the preparation, authorization, execution and performance of this Agreement or the completion of the Closing, including, but not limited to, all fees and expenses of agents, representatives, counsel and accountants engaged by it. Each of AIDEA and Sellers' Representative will pay one-half of the fees charged by the Escrow Agent for establishing the escrow account.

**12.02 Further Assurances of Sellers.** At any time and from time to time from and after the Closing, Sellers shall, at the request of AIDEA, take all action AIDEA shall reasonably request in order to (a) fully and effectively vest in AIDEA all of Sellers' right, title and interest in and to the LLC Membership Interests, and (b) permit AIDEA full and effective control over the Acquired Companies and the Operations.

**12.03 Governing Law; Forum Selection.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Any lawsuit regarding

this Agreement, or the Contemplated Transactions, shall only be brought in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, and not elsewhere.

**12.04 WAIVER OF TRIAL BY JURY.** TO THE EXTENT EACH MAY LEGALLY DO SO, EACH PARTY HEREBY EXPRESSLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING BROUGHT BY OR AGAINST ANY PARTY HERETO (INCLUDING ANY OF ITS AFFILIATES) RELATING IN ANY WAY TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY INVOLVE COMPLEX TRANSACTIONS AND THAT DISPUTES HEREUNDER WILL BE MORE QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT DECISION MAKER. ACCORDINGLY, THE PARTIES AGREE THAT ANY DISPUTE HEREUNDER BE RESOLVED BY A STATE OF ALASKA JUDGE APPLYING APPLICABLE LAW.

**12.05 Litigation Expenses.** In the event of any litigation between the parties with respect to this Agreement or any of the Contemplated Transactions, the prevailing party shall be entitled to recover its full reasonable Litigation Expenses incurred in connection with the litigation in addition to any other relief the court grants.

**12.06 No Other Representations, Etc.** No representation, warranty, promise, inducement or statement of intention relating to the Contemplated Transactions has been made by or on behalf of any party that is not set forth in this Agreement or the Disclosure

Schedules or Exhibits to this Agreement or the documents delivered at Closing in furtherance of this Agreement.

**12.07 Counterparts; Electronic Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute a single agreement. The exchange of signature pages by email shall constitute effective execution and delivery of this Agreement.

**12.08 Binding Agreement; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, but this Agreement shall not be assignable by either party without the prior written consent of the other party.

**12.09 Amendment.** This Agreement may be amended only in a writing that is signed by the authorized representatives of the parties and that specifically states it amends this Agreement.

**12.10 No Waiver.** Failure of any party to insist upon strict observance of or compliance with any term of this Agreement in one or more instances shall not be deemed to be a waiver of the party's rights to insist upon such observances or compliance with the other terms hereof, or in the future.

**12.11 No Third Party Benefit.** Nothing in this Agreement is intended to or shall be construed as to create any third party beneficiary to this Agreement or otherwise confer any right in or upon any persons except the parties and the respective permitted assigns.

**12.12 Survival.** All promises, covenants, representations and warranties made in this Agreement shall survive the Closing, except only to the extent that they are fulfilled or fully performed in the Closing.

**12.13 Time of the Essence.** Time is of the essence under this Agreement.

**12.14 Entire Agreement.** This Agreement, the Disclosure Schedules and Exhibits hereto, and the other agreements, documents, and instruments to be delivered at the Closing set forth the entire agreement and understanding of the parties with respect to the Contemplated Transactions and supersede all prior agreements, arrangements and understandings relating to the subject matter hereof, whether written or oral.

**IN WITNESS WHEREOF,** the parties have executed this Agreement effective as of the date stated above.

**SELLERS:**

**HARRINGTON PARTNERS, L.P.**

By: LYDIARD PARTNERS, L.P.  
General Partner

By: SERIES L1 OF MERCED CAPITAL  
PARTNERS, LLC  
General Partner

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

**PENTEX ALASKA NATURAL GAS COMPANY**

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

**DANIEL BRITTON**

\_\_\_\_\_  
Daniel Britton  
As an individual



**AIDEA:**

ALASKA INDUSTRIAL DEVELOPMENT AND  
EXPORT AUTHORITY

By: \_\_\_\_\_  
John Springsteen  
Executive Director

**CONSENT OF SPOUSE**

Jamie K. Britton, spouse of Seller Daniel Britton, consents to Seller Daniel Britton's sale of his portion of the LLC Membership Interests in accordance with the terms of this Agreement. Jamie K. Britton acknowledges that she has no joint ownership, joint tenancy interest, community property interest, marital interest, or other interest of any kind in Seller Daniel Britton's portion of the LLC Membership Interests. Jamie K. Britton agrees that AIDEA has no obligation to pay any of the sale proceeds due under this Agreement to her or for her benefit.

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Jamie K. Britton

**LIST OF DISCLOSURE SCHEDULES AND EXHIBITS TO  
LLC MEMBERSHIP PURCHASE AND SALE AGREEMENT**

**Disclosure Schedules**

Disclosure Schedule 3.05 .....	Consents Required
Disclosure Schedule 3.06 .....	Financials and Quarterly Reports
Disclosure Schedule 3.08(a).....	Real Estate Interests
Disclosure Schedule 3.08(b).....	Personal Property
Disclosure Schedule 3.08(c).....	Clear Title Exceptions
Disclosure Schedule 3.09 .....	Good Condition Exceptions
Disclosure Schedule 3.11 .....	Contested Accounts Receivables
Disclosure Schedule 3.12 .....	Material Contracts
Disclosure Schedule 3.13(b).....	Permits and Licenses
Disclosure Schedule 3.14 .....	Legal Proceedings
Disclosure Schedule 3.16(b).....	Environmental Liabilities
Disclosure Schedule 3.16(d).....	Environmental Contamination
Disclosure Schedule 3.16(e).....	Hazardous Substance Discharges
Disclosure Schedule 3.16(f) .....	Underground Storage Tanks
Disclosure Schedule 3.17(a).....	Employee Benefit Plans
Disclosure Schedule 3.17(b).....	Proceedings Involving Employees
Disclosure Schedule 3.19 .....	Interested Party Contracts
Disclosure Schedule 3.21(a).....	Insurance Coverages

Disclosure Schedule 3.21(b).....Insurance Claims  
Disclosure Schedule 3.22 .....Absence of Changes

**Exhibits**

Exhibit 2.03(a).....Escrow Agreement  
Exhibit 4.04 .....AIDEA CFO Certificate  
Exhibit 8.02(d).....Sellers' Release  
Exhibit 8.02(f) .....Sellers' Legal Opinion(s)