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7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF NEVADA**

9 In re

10 RED ROSE, INC.,

- 11 Affects Beachhead Roofing and Supply, Inc.
- Affects California Equipment Leasing
12 Association, Inc.
- Affects Fences 4 America, Inc.
- Affects James Petersen Industries, Inc.
- Affects PD Solar, Inc.
- Affects Petersen Roofing and Solar LLC
- Affects Petersen-Dean, Inc.
- Affects PetersenDean Hawaii LLC
- Affects PetersenDean Roofing and Solar
17 Systems, Inc.
- Affects PetersenDean Texas, Inc.
- Affects Red Rose, Inc.
- Affects Roofs 4 America, Inc.
- Affects Solar 4 America, Inc.
- Affects Sonoma Roofing Services, Inc.
- Affects TD Venture Fund, LLC
- Affects Tri-Valley Supply, Inc.
- Affects All Debtors

Case No. BK-S-20-12814-mkn

Jointly Administered with
 Case No. BK-S-20-12815-mkn
 Case No. BK-S-20-12816-mkn
 Case No. BK-S-20-12818-mkn
 Case No. BK-S-20-12819-mkn
 Case No. BK-S-20-12820-mkn
 Case No. BK-S-20-12821-mkn
 Case No. BK-S-20-12822-mkn
 Case No. BK-S-20-12823-mkn
 Case No. BK-S-20-12824-mkn
 Case No. BK-S-20-12825-mkn
 Case No. BK-S-20-12826-mkn
 Case No. BK-S-20-12827-mkn
 Case No. BK-S-20-12829-mkn
 Case No. BK-S-20-12831-mkn
 Case No. BK-S-20-12833-mkn

Chapter 11

**STIPULATION BETWEEN:
 (A) PETERSEN-DEAN, INC.,
 (B) JOHN MOURIER CONSTRUCTION,
 INC. AND (C) LSQ REGARDING
 ALLOWANCE AND PAYMENT OF
 CLAIM**

1 The parties (i) Petersen-Dean, Inc. (“PDI” or “Debtor”), a debtor and debtor-in-possession in
 2 the above-captioned jointly administered chapter 11 cases (the “Chapter 11 Cases”), by and through
 3 their counsel, the law firm of Fox Rothschild LLP, (ii) LSQ Funding Group, L.C. and LS DE LLC
 4 (together “LSQ”) by and through their counsel, Levinson Arshonsky & Kurtz, LLP, and (iii) John
 5 Mourier Construction, Inc. (“JMC”) by and through their counsel, the law firm of Green Infuso, LLP
 6 stipulate and agree as follows (the “Stipulation”):

7 RECITALS

8 A. WHEREAS, on June 11, 2020 (the “Petition Date”), Debtors filed their voluntary
 9 petitions under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the
 10 “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Nevada (the “Court”),
 11 commencing the Chapter 11 Cases.

12 B. WHEREAS, according to Debtors’ books and records, JMC allegedly owes Debtor
 13 Petersen-Dean, Inc. and/or its affiliates the total sum of \$337,774.06 for invoices related to the
 14 projects set forth on the attached **Exhibit A**, arising out of the respective Debtor’s work performed
 15 on jobs identified in the exhibit where the respective JMC entity was the general contractor.

16 C. WHEREAS, JMC has asserted certain charge-backs due to alleged incomplete and
 17 defective work of the Debtor.

18 D. WHEREAS, for purposes of this Stipulation only, reserving the right to withdraw its
 19 acknowledgement in the event JMC does not comply with this Stipulation, PDI acknowledges and
 20 agrees that certain charge-backs are valid.

21 E. WHEREAS, during the Chapter 11 Cases, LSQ extended a debtor-in-possession
 22 factoring facility to certain of Debtors in the Chapter 11 Cases including PDI pursuant to that certain
 23 *Interim Order (I) Authorizing Certain Debtors to (A) Obtain Post-Petition DIP Factoring Pursuant*
 24 *to 11 U.S.C. § 363 and 364; (2) Grant Priming Liens and Superpriority Claims Pursuant to 11 U.S.C.*
 25 *§ 364, and (C) Sell Accounts Free and Clear; (II) Modifying the Automatic Stay; (III) Approving*
 26 *Notice; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Chapter 11 Cases, ECF
 27 No. 600] and the Final Order that followed [Chapter 11 Cases, ECF No. 918] (together, the “DIP

1 Factoring Order”), pursuant to which LSQ purchased and received a duly perfected lien as to the
 2 accounts receivable arising from the subject invoices;

3 F. WHEREAS, during the Chapter 11 Cases, PDI and other debtors in the Chapter 11
 4 Cases sold substantially all of their commercial division assets in an Asset Purchase Agreement
 5 (“APA”), subject to LSQ’s liens under the DIP Factoring Order securing the Assumed Secured
 6 Obligations as defined in that certain, *Order: (A) Confirming Auction Results; (B) Approving the Sale*
 7 *of Substantially All of Debtors’ Commercial Division Assets to Solar Justice American, Inc., Including*
 8 *But Not Limited to the Pahrump Property, Free and Clear of Liens Claims, Encumbrances and Other*
 9 *Interests as Provided in the Asset Purchase Agreement; (C) Authorizing the Assumption and*
 10 *Assignment of Certain of the Debtors’ Executory Contracts and Unexpired Leases Related Thereto;*
 11 *and (D) Related Relief*[Chapter 11 Cases, ECF No. 1704] (the “Sale Order”);

12 G. WHEREAS, the Claim (as defined below) against JMC was excluded from the Assets
 13 (as defined in the Sale Order) transferred to the Purchaser (as defined in the Sale Order);

14 H. WHEREAS, the Sale Order approved a Factoring Assignment and Assumption
 15 Agreement (as defined in the Sale Order), by and between PDI and LSQ, among others, which
 16 provided terms for the estate’s use of the proceeds of the Claim.

17 NOW, THEREFORE, Debtor, JMC, and LSQ hereby stipulate and agree to the following:

18 IT IS STIPULATED AND AGREED that PDI has asserted a claim against JMC in the
 19 aggregate amount of \$337,774.06 for invoices related to the projects set forth on the attached **Exhibit**
 20 **A**, arising out of the respective Debtor’s work performed on jobs identified in the exhibit where the
 21 respective JMC entity was the general contractor (the “Claim”).

22 IT IS FURTHER STIPULATED AND AGREED that JMC has asserted charge-backs for
 23 alleged incomplete and defective work as set forth on the attached exhibits, for which JMC has
 24 provided certain documentation.

25 IT IS FURTHER STIPULATED AND AGREED that PDI has agreed to a reduction of its
 26 claim due to the alleged charge-backs, and that, to the extent necessary, the automatic stay shall be
 27 modified to allow the parties to effect a mutual set-off of accounts.

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1 IT IS FURTHER STIPULATED AND AGREED that JMC shall pay the sum of \$40,000.00
 2 to the account of PDI by way of payment in full of the account no later than seven (7) days after entry
 3 of the Court's order approving this Stipulation. Contemporaneously with the above-referenced
 4 payment, PDI shall provide JMC with all lien waivers required under the corresponding contracts.

5 IT IS FURTHER STIPULATED AND AGREED that LSQ consents to this settlement of the
 6 Claims and to the estate's use of the above-referenced payment consistent with the Factoring
 7 Assignment and Assumption Agreement (as defined in the Sale Order).

8 IT IS FURTHER STIPULATED AND AGREED that, except for breach of this Stipulation
 9 and, effective upon payment and clearance of the Settlement Payment, Debtors and JMC hereby
 10 release each other and each of their respective past, present and future representatives, parents,
 11 subsidiaries, affiliates, partners, officers, directors, lenders, sureties, employees, shareholders,
 12 members, managers, attorneys, predecessors, successors, and assigns, from any and all claims, causes
 13 of action, or liabilities of any type (including without limitation any claims for contract or tort
 14 damages, punitive damages, fraud, misrepresentation, malpractice, breach of fiduciary duty, violation
 15 of statute, whether legal, equitable or administrative, or for breach of statutory duties, and actions for
 16 declaratory relief), debts, duties, benefits, costs, expenses, judgments, settlements, actions, causes of
 17 action, demands, obligations, liabilities, promises, acts, agreements, rights, damages (including, but
 18 not limited to, compensatory, contractual, bad faith, punitive, exemplary, statutory or extra-
 19 contractual damages, or any other damages), losses, attorneys' fees, or other relief of any kind or
 20 character, whether at law or in equity, which Debtors and JMC have or may have, known or unknown,
 21 in connection with, based upon, arising out of, related to, or in any way involving the projects set
 22 forth on the attached Exhibit A.

23 IT IS FURTHER STIPULATED AND AGREED that, effective upon payment and clearance
 24 of the Settlement Payment, LSQ acknowledges that the Claim balance due from JMC is zero; and
 25 JMC acknowledges that LSQ and Purchaser (as defined in the Sale Order) are, in no manner, liable
 26 for the charge-backs or any other losses or damages of JMC involving alleged incomplete and
 27 defective work of the Debtors on the projects set forth on the attached Exhibit A.

1 IT IS FURTHER STIPULATED AND AGREED that the Bankruptcy Court shall retain
2 jurisdiction over this Stipulation and the order approving this Stipulation in order to resolve any
3 disputes in connection with the specified rights and duties of this Stipulation.

4 Dated this 6th day of January 2022.

5 **FOX ROTHSCHILD LLP**

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EXHIBIT A

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