

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

In re:

ABEINSA HOLDING INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 16-10790 (KJC)

(Jointly Administered)

Hearing Date: November 29, 2016 at 1:00 p.m. (ET)

Obj. Deadline: November 14, 2016 at 4:00 p.m. (ET)

**MOTION OF ABENGOA BIOENERGY NEW TECHNOLOGIES, LLC
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTOR TO ENTER
INTO THE PURCHASE AGREEMENT FOR THE SALE OF THE PILOT
PLANT, (II) AUTHORIZING THE PRIVATE SALE OF THE PILOT PLANT
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS, AND (III) GRANTING RELATED RELIEF**

Abengoa Bioenergy New Technologies, LLC (the “Debtor” or “ABNT”) one of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby submits this motion (this “Motion”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to sections 105(a) and 363 title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of

¹ The debtors in these chapter 11 cases, together with the last four digits of each debtor’s federal tax identification number, are as follows: Abeinsa Holding Inc. (9489); Abeinsa EPC LLC (1176); Abencor USA, LLC (0184); Abener Construction Services, LLC (0495); Abener North America Construction, LP (5989); Abengoa Solar, LLC (6696); Inabensa USA, LLC (2747); Nicsa Industrial Supplies LLC (9076); Teyma Construction USA, LLC (0362); Abeinsa Abener Teyma General Partnership (2513); Abener Teyma Mojave General Partnership (2353); Abener Teyma Hugoton General Partnership (7769); Abener Teyma Inabensa Mount Signal Joint Venture (9634); Teyma USA & Abener Engineering and Construction Services General Partnership (6534); Abengoa US Holding, LLC (6871); Abengoa US, LLC (9573); Abengoa US Operations, LLC (1268); Abengoa Bioenergy Biomass of Kansas, LLC (1119); Abengoa Bioenergy Hybrid of Kansas, LLC (9711); Abengoa Bioenergy Technology Holding, LLC (7434); Abengoa Bioenergy New Technologies, LLC (8466); Abengoa Bioenergy Holdco, Inc. (8864); Abengoa Bioenergy Meramec Holding, Inc. (1803). The chapter 11 case of Abengoa Bioenergy Biomass of Kansas, LLC, Case No. 16-10876, pending before the United States Bankruptcy Court for the District of Delaware (the “Court”) is stayed pending further order of the Court.

Delaware (the “Local Rules”), (i) authorizing the Debtor to enter into a purchase agreement (the “Purchase Agreement”), attached as Exhibit 1 to the Proposed Order, by and between Debtor and Green Plains, Inc. (“GPRE” or “Purchaser”); (ii) authorizing the private sale of the second-generation pilot plant, warehouse, and any property, ancillary or otherwise, related to the foregoing and in support thereof (collectively, the “Pilot Plant”), located at 1414 Road O, York, Nebraska 68467, free and clear of all liens, claims, interests, encumbrances, and other interests substantially on the terms and conditions set forth in the Purchase Agreement; and (iii) granting related relief. In support of this Motion, the Debtor relies on the Declaration of Scott Chabina, (“Chabina Decl.”) attached hereto as Exhibit B, and the Declaration of Bruce Comer (“Comer Decl.”), attached hereto as Exhibit C, and respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Debtors, their estates, and this matter under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated February 29, 2012.

2. This is a core proceeding under 28 U.S.C. § 157(b), and the Debtors consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought in this Motion are sections 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1.

BACKGROUND

A. General Background

3. Abengoa Bioenergy New Technologies, LLC is one of the Debtors that filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on April 6, 2016 (the "Petition Date"). The chapter 11 cases of the Debtor and its affiliated Debtors are jointly administered for procedural purposes.

4. The Debtors continue to manage and operate their businesses as debtors in possession as permitted by sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the chapter 11 cases.

5. On April 13, 2016, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the "Committee"). A meeting of creditors as required by section 341 of the Bankruptcy Code was held on Friday, May 6, 2016. A continued meeting of creditors was held on Friday, July 29, 2016.

6. Since the Petition Date, the Debtors, along with their employees and advisors, have spent substantial efforts to stabilize the Debtors' businesses, ensure a smooth transition into and through the chapter 11 process and maximize the value of the Debtors' estates for the benefit of creditors.

B. The Pilot Plant

7. The Pilot Plant sits on a parcel of land located at 1414 Road O, York, Nebraska (the "York Property"). The York Property is also the location of a 56 million gallon nameplate ethanol production facility (the "York Plant" and together with the York Property, the "York Assets"). The Pilot Plant is not currently operating.

8. The Pilot Plant was built in two phases over a 10-year period in a cost-share collaboration with the US Department of Energy. In 2004, the Debtor first built a starch pilot

plant to optimize the first-generation starch process.² The objective was to convert non-food based biomass, (e.g., the residual starch and the corn fiber) by using new cellulosic enzymes and improved amylases and gluco-amylases. This work was done in collaboration with Novozymes and led to multiple patents and new enzyme systems for the industry.

9. In 2005, during the second phase of the Pilot Plant construction, the Debtor added biomass handling, pretreatment and saccharification capabilities. As a result, the Debtor developed and tested its second-generation cellulosic process and defined the design basis for the construction of a demonstration plant in Salamanca, Spain. Most recently, in 2014, the Debtor built a new laboratory adjacent to the Pilot Plant to add additional bench scale saccharification and fermentation capabilities to support the startup of the second-generation cellulosic ethanol plant in Hugoton, Kansas (the “Hugoton Plant”). The Hugoton Plant is one of the first large-scale, second-generation cellulosic ethanol plants in the United States. The Debtor does not own the Hugoton Plant.

C. The Sale Process

10. On February 1, 2016, certain creditors of Abengoa Bioenergy of Nebraska, LLC (“ABNE”) commenced an involuntary case under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nebraska (the “Nebraska Court”). On March 1, 2016, the Nebraska Court entered orders converting the chapter 7 case of ABNE to a case under chapter 11 of the Bankruptcy Code and an order transferring venue of the chapter 11 case of ABNE to United States Bankruptcy Court for the Eastern District of Missouri (the “Missouri Court”).

² First-generation or 1G bioethanol is produced from starches found in corn or other feedstocks. Second-generation or 2G bioethanol is produced from cellulose extracted from feedstock crop residues, such as corn stalks, leaves, cobs, and husks, or non-food crops, such as switchgrass.

11. On February 11, 2016, certain creditors of Abengoa Bioenergy Company, LLC (“ABC”) commenced an involuntary chapter 7 case against ABC in the United States Bankruptcy Court for the District of Kansas (the “Kansas Court”). On February 29, 2016, the Kansas Court entered orders converting ABC’s chapter 7 case of to a case under chapter 11 of the Bankruptcy Code; and, on March 1, 2016, the Kansas Court entered an order transferring venue of the chapter 11 case of ABC to the Missouri Court.

12. On February 24, 2016, in the wake of involuntary cases commenced in the Nebraska and Kansas Courts, ABC, ABNE, and a number of other Bioenergy entities (the “Original Bioenergy Debtors”) commenced their chapter 11 cases (the “Bioenergy Chapter 11 Cases”) in the Missouri Court.

13. On June 12, 2016, certain affiliates of the Original Bioenergy Debtors (collectively, the “Maple Debtors”, and together with the Original Bioenergy Debtors, the “Bioenergy Debtors”) commenced cases under chapter 11 of the Bankruptcy Code by filing voluntary petitions with the Missouri Court (the “Maple Cases” and collectively with the Bioenergy Chapter 11 Cases, the “Missouri Cases”). The Maple Debtors owned and operated two first-generation bioethanol production facilities located in Mt. Vernon, Indiana and Madison, Illinois (together, the “Maple Assets”), while the Original Bioenergy Debtors owned four other assets: the York Assets; a plant in Ravenna, Nebraska (the “Ravenna Assets”); the plant in Colwich, Kansas (the “Colwich Assets”) and the plant in Portales, New Mexico (the “Portales Assets”).

14. The Bioenergy Debtors determined early in the Missouri Cases, in the exercise of due diligence and following extensive consultation with their advisors, that maximizing the value

of the Bioenergy Debtors' estates would be best accomplished through the sale, free and clear of liabilities, of one or more of the Bioenergy Debtors' assets.

15. To that end, the Bioenergy Debtors retained Carl Marks Advisory Group LLC ("Carl Marks") as an investment banker effective March 10, 2016. In the end, after an extensive pre-marketing process that involved contacting over 200 potential buyers, Carl Marks received stalking horse bid packages, including a credit bid at certain assets, from seven different parties. (*See* Chabina Decl. ¶ 6). In consultation with the Bioenergy Debtors and their other professionals, Carl Marks analyzed and presented the bid packages, as well as negotiated extensively with the various parties to enter into three distinct stalking horse purchase agreements, all dated June 12, 2016: (i) between Abengoa Bioenergy of Illinois, LLC and Abengoa Bioenergy of Indiana, LLC, on the one hand, and Maize Acquisition Sub LLC, on the other hand, for the Maple Assets in an amount no less than \$200 million; (ii) between ABNE and KAAPA Ethanol Ravenna, LLC for the Ravenna Assets in an amount no less than \$115 million; and (iii) between ABC and BioUrja Trading, LLC for the York Assets in an amount no less than \$35 million.

16. On June 15, 2016, the Missouri Court entered an Order (the "Bidding Procedures Order") approving, among other things, the bidding procedures. Following entry of the Bid Procedures Order, Carl Marks led an exhaustive re-marketing process ahead of the final bid deadline of August 18, 2016. (*See* Chabina Decl. ¶ 7). The re-marketing process included contacting over 275 additional parties, which led to over thirty distinct site visits from potential bidders at the various production facilities. (*Id.*). Ultimately, six additional bid packages were submitted by the August 18, 2016 bid deadline, including credit bids. (*Id.*). Of these bid

packages, the Bioenergy Debtors determined that four were qualified bid packages³ and invited each party to attend the auction on August 22, 2016. (*Id.*). No qualified bids were received for the Maple Assets, and the qualified bidder for the Ravenna Assets withdrew its bid in advance of the auction. (*Id.*).

17. On August 22, 2016, at the close of the auction, the following parties were named the successful bidders:

With respect to the Maple Assets, GPRE was determined to be the successful bidder at \$200 million, plus certain working capital items;

With respect to the Ravenna Assets, KE Holdings, LLC was determined to be the successful bidder at \$115 million, plus certain working capital items;

With respect to the York Assets, GPRE was determined to be the successful bidder at \$37.375 million, plus certain working capital items; and

With respect to the Colwich Assets, ICM, Inc. was determined to be the successful bidder at \$3.15 million.

18. With regard to the York Assets, due to the envelopment of the Pilot Plant, GPRE agreed to an Access Agreement, a copy of which is attached hereto as Exhibit D. In summary, by the Access Agreement, GPRE is providing the Pilot Plant owner (a) access to utility services and (b) a perpetual, exclusive easement for the limited purpose of: (i) accessing and using the portion of the York Property upon which the Pilot Plant Property is constructed; and (ii) ingress and egress of pedestrian and vehicular travel over, upon, and across a limited portion of the York Property to access the Pilot Plant.

³ The Bioenergy Debtors did not receive qualified bids for either the Maple Assets or the Ravenna Assets. As such, the respective stalking horse purchasers were deemed the highest and best bids and these assets were not part of the auction.

19. While Carl Marks was not retained to market the Pilot Plant per se during the sale process involving the Bioenergy Debtors’ assets, because of the Pilot Plant’s location within the York Property, Carl Marks received interest from several parties that were looking to potentially acquire the York Assets. (*See* Chabina Decl. ¶ 9). Carl Marks directed all parties that expressed interest in the Pilot Plant or other 2G-related Debtor assets to Ocean Park Advisors (“OPA”), who had been engaged by the Bioenergy Debtors’ affiliate Abengoa Bioenergy Biomass of Kansas, LLC (“ABBK”) to manage a process either to find a strategic partner or to complete a sale of the Hugoton Plant, electricity cogeneration plant, and related assets in Hugoton, Kansas. (*Id.* ¶ 10; Comer Decl. ¶ 5). The technology and equipment developed at the Pilot Plant supported the startup of the Hugoton Plant, one of the first large-scale, second-generation cellulosic ethanol plants in the United States. (Comer Decl. ¶ 6). Since the Hugoton Plant has been built the Debtor no longer has any need for the Pilot Plant. Throughout this entire process, ABNT did not receive any firm written offers from any qualified bidders, and the only interest received by OPA for the Pilot Plant was an oral expression of interest from a liquidator for \$100,000. (*Id.* ¶ 7).

20. With the closing of the sale of the York Assets, owing to the location of the Pilot Plant, GPRE made a cash offer of \$1.25 million to acquire the Pilot Plant. Thus, after thorough consideration of all viable alternatives, the Debtor has exercised its business judgment, subject to this Court’s approval, to proceed with the sale of the Pilot Plant to GPRE for \$1.25 million.

SUMMARY OF PURCHASE TERMS

21. As required by Local Rule 6004-1, the key terms of the Purchase Agreement are highlighted below:

Seller	Abengoa Bioenergy New Technologies, LLC
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Purchaser	Green Plains Inc. (“GPPE”) or its affiliate Green Plains York, LLC, a Delaware limited liability company
Purchase Price	\$1,250,000
Escrow Deposit	None
Property to Be Sold	The second-generation pilot plant and warehouse, but excluding the any real estate upon which they are constructed, within the York Property legally described as: That part of the Northeast Quarter (NE 1/4) lying North of the Railroad Right of Way of Burlington Northern Railroad Company, in Section 28, Township 11 North, Range 2 West of the 6th P.M., in York County, Nebraska; EXCEPT a tract conveyed to the State of Nebraska for highway purposes, described as follows: Beginning at the Northeast corner of said Section 28, thence westerly on the North line of the NE1/4 of said Section 28 a distance of 2,641.8 feet to the Northwest corner of said NE1/4; thence Southerly on the West line of said NE1/4 a distance of 58.9 feet; thence Easterly a distance of 2,641.8 feet to a point on the East line of said NE1/4; thence Northerly on said East line a distance of 60.7 feet to the point of beginning; AND EXCEPT Irregular Tract No. 4 in Section 28, Township 11 North, Range 2 West of the 6th P.M., in York County, Nebraska.
Sale to Insider	Purchaser is not an insider as defined in section 101(31) of the Bankruptcy Code. The sale transaction is the product of arm’s-length negotiations.
Agreements with Management	There are no agreements between Purchaser and ABNT’s existing management.
Releases	The proposed Sale Order proposes a release of the Purchaser as follows: “The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of obligations, interests, Claims, Liabilities, or Encumbrances against or interests in the Debtors or any of the Purchased Assets. For the avoidance of doubt, nothing in this Order or the Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability

	to a governmental unit that any entity would be subject to as the owner or operator of property after the date of entry of this Order.”
Private Sale/No Competitive Bidding	No auction is contemplated.
Closing and Other Deadlines	None Debtor will receive the purchase price contemporaneously upon closing.
Indemnifications and Warranties	Debtor is the lawful owner of the Pilot Plant free from all encumbrances. Debtor has the right to sell the Pilot Plant and will defend such right against the claims and demands of all persons. Debtor sells the Pilot Plant to Purchaser in AS IS, WHERE IS condition.
Requested Findings as to Successor Liability	In the proposed form of order, finding X contains a finding that, among other findings, the Purchaser would not have entered into the Purchase Agreement absent provisions in the order that relieve the Purchaser for any successor liability, including those set forth in that finding.
Sale Free and Clear of Claims	Debtor seeks to sell the Pilot Plant free and clear of all liens, claims, encumbrances, and other interests.
Relief from Bankruptcy Rule 6004(h)	Debtor seeks entry of an order providing that the approval of execution of the Purchase Agreement is not subject to Bankruptcy Rule 6004(h).

RELIEF REQUESTED

22. The Debtor, in the exercise of its business judgment, requests entry of an order, pursuant to sections 105(a), 363, and 542(a) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1, (i) approving the Debtor’s entry into the Purchase Agreement; (ii) approving and authorizing the private sale of the Pilot Plant free and clear of any

and all liens, claims, encumbrances, and other interests; and (iii) waiving the stay provided under Bankruptcy Rule 6004(h).

BASIS FOR RELIEF REQUESTED

23. For the reasons explained in detail below, the Debtor believes that the approval of the sale of the Pilot Plant to GPRE pursuant to the terms and conditions of the Purchase Agreement is not only appropriate, but is also in the best interests of the Debtor, its estate, and its creditors.

A. The Court Should Approve the Sale Pursuant to Bankruptcy Code Section 363(b) and Bankruptcy Rule 6004.

24. Under Bankruptcy Code section 363(b)(1), “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Bankruptcy Rule 6004 provides, in pertinent part, that “all sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that “the notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property is sufficient if it generally describes the property.” FED. R. BANKR. P. 2002(c)(1).

25. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor’s assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 289, 295 (3d Cir. 1996); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 152-53 (D. Del. 1999); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788

F.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 D. Del. 1991); *see also Official Committee of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.)*.

26. Courts have applied four factors in determining whether a sale of a debtor's assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. *See In re Exaeris Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008); *Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Abbotts Dairies*, 788 F.2d at 145-47 (implicitly adopting the articulated business justification test and adding the "good faith" requirement); *Del & Hudson Ry.*, 124 B.R. at 176 ("Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.").

27. This analysis is the same if the proposed sale is private, rather than public. *See In re Ancor Exploration Co.*, 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) ("[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b)."). The bankruptcy court "has ample discretion to administer the estate, including authority to conduct public or private sales of estate property." *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), *vacated on other grounds*, 165 B.R. 1 (D.P.R. 1992); *accord In re Canyon P'ship*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). The Debtor has determined in its business judgment that the sale of the Pilot Plant will

enable them to obtain the highest and best offer for these assets (thereby maximizing the value of the estates) and is in the best interests of the Debtor's creditors.

1. The Sale of the Pilot Plant Is Authorized by Section 363 as a Sound Exercise of the Debtor's Business Judgment.

28. There is a sound business justification for the Debtor's decision to proceed with a private sale to GPRE rather than conduct a public sale of the Pilot Plant. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *Integrated Resources*, 147 B.R. at 659 ("It is a well established principle of bankruptcy law that the . . . [trustee's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (*quoting In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor's estate, court approval of a trustee's decision to sell should only be withheld if the trustee's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005); *In re WPRV TV, Inc.*, 143 B.R. 315, 319 (D. P.R. 1991) ("The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee's business judgment is subject to great judicial deference.").

29. After reviewing all available options, the Debtor, in its business judgment, determined that the private sale of the Pilot Plant would result in the best possible outcome for the Debtor's estate. The Debtor has no need to retain the Pilot Plant, and the proposed sale is the best avenue for the Debtor to sell the Pilot Plant and to avoid incurring costs associated with its

maintenance, surveillance and/or disposal. While no formal marketing process of the Pilot Plant was conducted, the information derived from the sale of the York Assets and the Debtor's independent business judgment confirm that, the Debtor, in an exercise of sound business judgment, determined that the sale to GPRE is the most cost-effective and efficient method to maximize the value of the Pilot Plant.

30. As a result of GPRE's interest in the Pilot Plant, and its willingness to provide fair and reasonable consideration based on that interest, the Debtor believes that its estate and creditors would benefit from the approval of the sale without the added time, energy, and expenses associated with a separate public auction. If the Debtor were to conduct a separate auction of the Pilot Plant, GPRE would not necessarily commit to purchasing the Pilot Plant at the same price as through the proposed sale. Furthermore, as the value of the Pilot Plant will only decline over time, the Debtor believes that the sale represents the best opportunity to extract value from the Pilot Plant, and a lengthy auction process would result in no additional net value to the estate.

2. The Purchase Price Is Fair and Reasonable.

31. The Debtor believes, based on its own business judgment and upon the advice of its legal professionals and financial advisors, as further memorialized in the Chabina Decl. and Comer Decl., that the Purchase Price is a fair and reasonable price. The Purchase Price under the Purchase Agreement was the result of arm's length negotiations. The Debtor has carefully considered GPRE's offer as set forth in the Purchase Agreement and has concluded that a sale of the Pilot Plant pursuant to the Purchase Agreement will result in obtaining the maximum value for the Pilot Plant and is in the best interests of the Debtor's estate and creditors. The private sale will be in exchange for fair and reasonable value as GPRE has agreed to pay \$1,250,000 for the Pilot Plant. In consideration of the foregoing, the Debtor believes that the Purchase Price

provides fair and reasonable value for the Pilot Plant. In addition, the Debtor will not be obligated to pay any transaction fee to an investment banker for the sale of the Pilot Plant.

3. The Sale Is Proposed in Good Faith.

32. The Debtor submits that the sale contemplated herein and in the Purchase Agreement has been proposed in good faith, as the agreement was the product of good faith, arm's length negotiations between the Debtor and GPRE, and was negotiated with the active involvement of the Debtor's officers and professionals. GPRE is a third party, not affiliated with the Debtors, their principals or otherwise related or affiliated to the Debtors.

4. Adequate and Reasonable Notice of Sale Will Be Provided.

33. The Debtor intends to provide adequate notice of the proposed sale pursuant to the Bankruptcy Rules and Local Rules. Bankruptcy Rule 2002(c)(1) provides, in pertinent part, that "the notice of a proposed use, sale or lease of property...shall include...the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property." Fed R. Bankr. P. 2002(c)(1); *see also Del. & Hudson Ry. Co.*, 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement).

B. The Sale of the Pilot Plant Should Be Free and Clear of Liens and Other Interests.

34. The Debtor further submits that it is appropriate to sell the Pilot Plant free and clear of liens pursuant to section 363(f) of the Bankruptcy Code, with any such liens attaching to the sale proceeds of the Pilot Plant to the extent applicable. Section 363(f) of the Bankruptcy

Code authorizes a trustee to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

35. Section 105(a) of the Bankruptcy Code provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

36. The Debtor submits that one or more of the requirements set forth in section 363(f) of the Bankruptcy Code are satisfied and, therefore, requests that the sale of the Pilot Plant be approved “free and clear” with any liens, claims, interests, and encumbrances to attach to proceeds of the sale. To the extent the Court determines that certain liens exist that would not be extinguished as described above, the Debtor submits that holders of any such liens should be deemed to have waived their rights if they fail to object to this Motion. *See, e.g., Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 259-65 (3d Cir. 2000).

C. GPRE Should Be Afforded All Protections Under Section 363(m) as a Good Faith Purchaser.

37. The terms of the sale were negotiated at arm’s-length, without collusion, and in good faith. Accordingly, the Debtor requests that the Court find that GPRE is entitled to the protections provided by section 363(m) of the Bankruptcy Code as a good faith purchaser. Section 363(m) of the Bankruptcy Code provides, in pertinent part, that “[t]he reversal or

modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.” 11 U.S.C. § 363(m). Thus, section 363(m) of the Bankruptcy Code protects the purchaser of assets who acts in good faith from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal.

38. Although the Bankruptcy Code does not define “good faith purchaser,” the Third Circuit, construing section 363(m), has stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *Abbotts Dairies*, 788 F.2d at 147. To constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to “fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.” *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)). Due to the absence of any bright line test for good faith, the determination is based on the facts of each case, concentrating on the “integrity of [an actor’s] conduct during the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus.*, 572 F.2d at 1198); *see also Marin v. Coated Sales, Inc. (In re Coated Sales, Inc.)*, No. 89-3704, 1990 WL 212899, at *2 (S.D.N.Y. Dec. 13, 1990) (holding that to show lack of good faith, a party must demonstrate fraud, collusion, or an attempt to take grossly unfair advantage).

39. No evidence exists to suggest that the terms and conditions of the Purchase Agreement are anything but the product of arm’s-length negotiations between the Debtor and GPRE. GPRE does not share common ownership with the Debtor, each being independently

controlled and operated, and is not otherwise affiliated with the Debtor or its officers, members, and managers. The sale transaction has been proposed in good faith as the Purchase Agreement is the product of good faith, arm's-length negotiations between the Debtor and GPRE. The Debtor believes and submits that the sale on the terms and conditions of the Purchase Agreement is not the product of collusion or bad faith. In light of these facts, the Debtor submits that GPRE should be afforded the protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser.

D. Relief Under Bankruptcy Rule 6004(h) is Appropriate

40. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” There is a sufficient basis for a waiver of the 14-day stay required under Bankruptcy Rule 6004(h) as waiving such stay will not prejudice the Debtor, its estate, or any party in interest. To the contrary, the Debtor will be able to receive the Purchase Price more quickly. Accordingly, as required by the Local 6004-1(b)(iv)(O), the Debtor hereby requests that the Court waive the 14-day stay provided for in Bankruptcy Rules 6004(h).

NOTICE

41. Notice of this Motion has been provided to: (i) the United States Trustee for the District of Delaware; (ii) counsel to the Official Committee of Unsecured Creditors; (iii) the United States Attorney for the District of Delaware; (iv) the Internal Revenue Service; (v) all parties that have requested notice pursuant to Bankruptcy Rule 2002; (vi) all parties that have expressed interest in purchasing the Pilot Plant; (vii) all parties that have asserted an interest in the Pilot Plant; and (viii) the Purchaser. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

NO PRIOR REQUEST

42. No previous request for the relief sought in this Motion has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of the Proposed Order, substantially in the form attached as Exhibit A: (i) authorizing the Debtor to enter into the Purchase Agreement; (ii) authorizing the sale of the Pilot Plant free and clear of all liens, claims, encumbrances, and other interests to the Purchaser; (iii) waiving the stay under Bankruptcy Rule 6004(h); and (iv) granting such other and further relief as the Court deems just and proper.

Dated: October 28, 2016
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ R. Craig Martin

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Counsel to Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

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

In re:

ABEINSA HOLDING INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10790 (KJC)

(Jointly Administered)

Re: D.I. ____

**ORDER (I) AUTHORIZING THE DEBTOR TO ENTER INTO THE
PURCHASE AGREEMENT FOR THE SALE OF THE PILOT PLANT,
(II) AUTHORIZING THE PRIVATE SALE OF THE PILOT PLANT FREE
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER
INTERESTS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Abengoa Bioenergy New Technologies, LLC (the “Debtor”), as one of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order, in accordance with sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) authorizing the Debtor to enter into the Purchase Agreement, by and between the Debtor and Green Plains Inc. (ii) authorizing the private sale of

¹ The debtors in these chapter 11 cases, together with the last four digits of each debtor’s federal tax identification number, are as follows: Abeinsa Holding Inc. (9489); Abeinsa EPC LLC (1176); Abencor USA, LLC (0184); Abener Construction Services, LLC (0495); Abener North America Construction, LP (5989); Abengoa Solar, LLC (6696); Inabensa USA, LLC (2747); Nicsa Industrial Supplies LLC (9076); Teyma Construction USA, LLC (0362); Abeinsa Abener Teyma General Partnership (2513); Abener Teyma Mojave General Partnership (2353); Abener Teyma Hugoton General Partnership (7769); Abener Teyma Inabensa Mount Signal Joint Venture (9634); Teyma USA & Abener Engineering and Construction Services General Partnership (6534); Abengoa US Holding, LLC (6871); Abengoa US, LLC (9573); Abengoa US Operations, LLC (1268); Abengoa Bioenergy Biomass of Kansas, LLC (1119); Abengoa Bioenergy Hybrid of Kansas, LLC (9711); Abengoa Bioenergy Technology Holding, LLC (7434); Abengoa Bioenergy New Technologies, LLC (8466); Abengoa Bioenergy Holdco, Inc. (8864); Abengoa Bioenergy Meramec Holding, Inc. (1803). The chapter 11 case of Abengoa Bioenergy Biomass of Kansas, LLC, Case No. 16-10876, pending before the United States Bankruptcy Court for the District of Delaware (the “Court”) is stayed pending further order of the Court.

² All capitalized terms used but not defined in this Order shall have the meaning given to them in the Motion or the Purchase Agreement, as applicable.

the Pilot Plant free and clear of all obligations, interests, Claims, Liabilities, and Encumbrances, substantially on the terms and conditions set forth in the Purchase Agreement; (iii) waiving the stay provided under Bankruptcy Rule 6004(h); and (iv) granting related relief; and it appearing that the Court (i) has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; (ii) this is a core proceeding under 28 U.S.C. § 157(b)(2); and (iii) venue of this proceeding and the Motion is proper under 28 U.S.C. §§ 1408 and 1409; and the Court having determined that due and proper notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion and provided for in this Order is in the best interest of the Debtor, its estate, creditors, and other parties-in-interest; and after due deliberation thereon,

THE COURT HEREBY FINDS AND DETERMINES THAT:

Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. The statutory predicates for the relief requested in the Motion are sections 105(a), 363(b), (f), and (m), and 365 of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2), 6004(a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9007 and 9014.

D. The findings of fact and conclusions of law set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

E. To the extent any of the following findings of fact constitute conclusions of law, they are hereby adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are hereby adopted as such. Any findings of fact or conclusions of law stated by the Court on the record at the Sale Hearing are hereby incorporated, to the extent they are not inconsistent herewith.

F. In the absence of a stay pending appeal, the Purchaser will be acting in good faith pursuant to section 363(m) of the Bankruptcy Code in closing the transaction contemplated by the Successful Bidder's Asset Purchase Agreement at any time on or after entry of this Order, and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

Notice of the Sale, Auction and the Cure Amounts

G. Actual written notice of the Sale Hearing, the Motion, the Sale, the assumption, assignment and sale of the Assigned Contracts and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested persons and entities, including, but not limited to the following parties (the "Notice Parties"): (i) the United States Trustee; (ii) counsel to the Creditors' Committee; (iii) counsel to the agents for the Debtor's postpetition secured lenders; (iv) counsel to the agents for the

Debtor's prepetition secured lenders; (v) the Securities and Exchange Commission; (vi) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (vii) the United States Department of Justice; (viii) all parties that have requested special notice pursuant to Bankruptcy Rule 2002; (ix) all persons or entities known to the Debtor that have or have asserted a lien on, or security interest in, all or any portion of the Purchased Assets; (x) all non-Debtor parties to each Executory Contract and unexpired lease that the Debtor proposes to assume and assign to the Purchaser (each a "Contract Counter Party" and collectively, the "Contract Counter Parties"); (xi) counsel to the Stalking Horse Purchaser; (xii) counsel to Green Plains Inc. (the "Purchaser"); (xiii) all potential bidders previously identified or otherwise known to the Debtor; and (xiv) and, to the extent not noticed pursuant to clauses (i) through (xiii) above, all parties listed on the Creditor Matrix in Debtor's and Abeinsa Holding Inc.'s bankruptcy cases.

H. The Debtor has served notice (the "Cure Notice") upon the Purchaser and the Contract Counter Parties: (i) that the Debtor seeks to assume and assign the Assigned Contracts on the Closing Date; and (ii) of the relevant cure amounts. Pursuant to Fed. R. Bankr. P. 6006(c), the court finds that the service of such Cure Notice was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of establishing a cure amount for the Assigned Contracts. Purchaser and the Contract Counter Parties have had an opportunity to object to the cure amounts set forth in the Cure Notice.

I. The Debtor has articulated good and sufficient reasons for the Court to grant the relief requested in the Motion regarding the sale process.

J. The Debtor provided all interested parties with timely and proper notice of the Sale and Sale Hearing.

K. The Cure Notice provided Purchaser and the Contract Counter Parties with proper notice of the potential assumption and assignment of the Assigned Contracts and any cure amount relating thereto, and the procedures set forth therein with regard to any such cure amount to satisfy the provisions of 11 U.S.C. § 365 and Fed. R. Bankr. P. 6006.

L. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, Sale Hearing, and Sale has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtor also has complied with all obligations to provide notice of the Sale Hearing, and Sale required by the Bidding Procedures Order. The notices described above were good, sufficient and appropriate under the circumstances, no other or further notice of the Motion, Auction, Sale Hearing, Sale, or assumption, assignment and sale of the Assigned Contracts is required, and due process has been satisfied.

M. The disclosures made by the Debtor concerning the Motion, Sale, and Sale Hearing were good, complete and adequate.

Good Faith of Purchaser

N. The Purchaser is not an “insider” of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code.

O. The Purchaser is purchasing the Purchased Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, *inter alia*: (a) the Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring the Purchased Assets; (b) the Purchaser in no way induced or caused the chapter 11 filing by the Debtor or any other Debtors;

(c) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (d) the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction; (e) no common identity of directors or controlling stockholders exists between the Purchaser and the Debtor; and (f) the negotiation and execution of the final purchase agreement (the “Purchase Agreement,” which is attached hereto as **Exhibit A**, and which is based upon the Purchase Agreement attached to the Motion) and any other agreements or instruments related thereto were at arm’s length and in good faith.

Highest or Best Offer

P. The Debtor solicited offers on the Purchased Assets as described in the Motion. All persons and entities were and afforded a full, fair and reasonable opportunity to make a higher or otherwise better offer to purchase the Purchased Assets. The Debtors determined, in consultation with the Committee, that Green Plains Inc. (referred to herein throughout as the “Purchaser”) had submitted the highest or best offer for the Purchased Assets.

Q. The Purchase Agreement constitutes the highest or best offer for the Purchased Assets, and will provide a greater recovery for the Debtor’s estate than would be provided by any other available alternative. The Debtor’s determination that the Purchase Agreement constitutes the highest or best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtor’s business judgment.

R. The Purchase Agreement represents a fair and reasonable offer to purchase the Purchased Assets under the circumstances of these chapter 11 cases. No other person or entity or group of entities has offered to purchase the Purchase Agreement for greater economic value to the Debtor’s estate than the Purchaser.

S. Approval of the Motion and the Purchase Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtor, its creditors, its estate, and other parties in interest.

T. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization.

No Fraudulent Transfer

U. The consideration provided by the Purchaser pursuant to the Purchase Agreement is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

Validity of Transfer

V. The Debtor has full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, and no further consents or approvals are required for the Debtor to consummate the transactions contemplated by the Purchase Agreement, except as otherwise set forth in the Purchase Agreement.

W. Subject to the terms of this Order, the transfer of the Purchased Assets to the Purchaser will be as of the Closing Date a legal, valid, and effective transfer of such assets, and vests or will vest the Purchaser with all right, title, and interest of the Debtor to the Purchased Assets free and clear of all obligations, interests, Claims, Liabilities, or Encumbrances, except Assumed Liabilities and Permitted Encumbrances.

Section 363(f) Is Satisfied

X. The Purchaser would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby (by paying the Purchase Price and assuming the Assumed Liabilities and Permitted Encumbrances) if the sale of the Purchased Assets to the Purchaser, and the assumption, assignment and sale of the Assigned Contracts to the Purchaser, were not free and clear of all obligations, interests, Claims, Liabilities, and Encumbrances of any kind or nature whatsoever, or if the Purchaser would, or in the future could (except for the Assumed Liabilities and Permitted Encumbrances), be liable for any of such obligations, interests, Claims, Liabilities, or Encumbrances, including, but not limited to, the following: (1) all mortgages, deeds of trust and security interests; (2) any claim by any person, including, but not limited to, current or former employees and their dependents or beneficiaries, relating to pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (3) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, or (l) any other state or federal benefits or claims relating to any employment with the Debtor or any of its predecessors; (4) any

claim by an employee of the Debtor relating to their termination by the Debtors as a consequence of the entry of this Order or the transactions contemplated by the Purchase Agreement; (5) any bulk sales or similar law; (6) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (7) any Environmental Law(s) (as defined in the Purchase Agreement), including, without limitation, any environmental obligations, interests, Claims, Liabilities, or Encumbrances; and (8) any theories of successor liability.

Y. Subject to the terms of this Order, the Debtor may sell the Purchased Assets free and clear of all obligations, interests, Claims, Liabilities, and Encumbrances against the Debtor, its estate or any of the Purchased Assets (except for Assumed Liabilities and Permitted Encumbrances) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of obligations, interests, Claims, Liabilities, or Encumbrances against the Debtor, its estate or any of the Purchased Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such obligations, interests, Claims, Liabilities, or Encumbrances who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their obligations, interests, Claims, Liabilities, and/or Encumbrances, if any, in each instance against the Debtor, its estate or any of the Purchased Assets, attach to the cash proceeds of the Sale in the same order of priority, with the same validity, force and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

Assigned Contracts

Z. The assumption and assignment of the Assigned Contracts pursuant to the terms of this Order is integral to the Purchase Agreement and is in the best interests of the Debtor and its estate, creditors, and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtor.

AA. The amounts set forth on **Exhibit B** annexed hereto are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all monetary defaults and pay all actual pecuniary losses under the Assigned Contracts (the “Cure Amounts”).

BB. Pursuant to the terms of the Purchase Agreement, Purchaser will: (i) cure and/or provide adequate assurance of cure of any monetary default existing prior to the Closing Date under any of the Assigned Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; (ii) provide compensation or adequate assurance of compensation to any party for actual pecuniary loss to such party resulting from a default prior to the Closing Date under any of the Assigned Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code; and (iii) provide adequate assurance of its future performance under the relevant Assigned Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

Compelling Circumstances for an Immediate Sale

CC. To enhance the Debtor’s level of liquidity, and to maximize the amount of funding available to provide for a timely exit from these chapter 11 cases, it is essential that the Sale of the Purchased Assets occur within the time constraints set forth in the Purchase Agreement. Time is of the essence in consummating the Sale.

DD. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the purchase price under the Purchase Agreement, the proposed Sale of the Purchased Assets to the Purchaser constitutes a reasonable and sound exercise of the Debtor's business judgment and should be approved.

EE. The consummation of the transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transaction.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Purchase Agreement is hereby approved.

3. Good and sufficient notice of the Motion and the relief sought in the Motion has been given and is consistent with the terms of the procedural rules, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion has been afforded to parties in interest.

4. All objections and responses to the Motion or the relief provided herein that have not been overruled, withdrawn, waived, settled, or resolved, and all reservations of rights, are hereby overruled and denied on the merits.

Approval of the Purchase Agreement

5. The Purchase Agreement and all other ancillary documents are hereby approved.

6. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale of each of the Purchased Assets to the Purchaser pursuant to and in accordance with the terms and conditions of the Purchase Agreement, (ii) close the Sale as contemplated in the Purchase

Agreement and this Order, and (iii) execute and deliver, perform under, consummate, implement and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such other ancillary documents.

7. This Order shall be binding in all respects upon the Debtor, including the Debtor, its estate, all holders of equity interests in the Debtor, all holders of any Claim(s) (whether known or unknown) against the Debtor, any holders of obligations, interests, Claims, Liabilities, or Encumbrances against or on all or any portion of the Purchased Assets, all Contract Counter Parties, the Purchaser and all successors and assigns of the Purchaser, the Purchased Assets and any trustees, if any, subsequently appointed in the Debtor's chapter 11 case or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtor's case. This Order and the Purchase Agreement shall inure to the benefit of the Debtor, its estate, its creditors, the Purchaser and their respective successors and assigns.

Transfer of the Purchased Assets

8. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Debtor is authorized to transfer the Purchased Assets on the Closing Date. Such Purchased Assets shall be transferred to the Purchaser upon and as of the Closing Date and such transfer shall constitute a legal, valid, binding and effective transfer of such Purchased Assets and, upon the Debtor's receipt of the Purchase Price (for distribution in accordance with the next paragraph), shall be free and clear of all obligations, interests, Claims, Liabilities, and Encumbrances, except Assumed Liabilities under the Purchase Agreement.

9. Subject to the terms of this Order, upon Closing, the Purchaser shall take title to and possession of the Purchased Assets subject only to the Assumed Liabilities and Permitted

Encumbrances. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Purchased Assets and the Assigned Contracts shall be free and clear of all obligations, interests, Claims, Liabilities, and Encumbrances, including, without limitation, any and all claims pursuant to any successor or successor-in-interest liability theory; provided, however, that the Purchaser shall not be relieved of liability with respect to the Assumed Liabilities and Permitted Encumbrances, including any obligations accruing under the Assigned Contracts from and after the Closing. All obligations, interests, Claims, Liabilities, and Encumbrances shall attach solely to the proceeds of the Sale with the same validity, priority, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

10. Except with respect to Assumed Liabilities and Permitted Encumbrances, all persons and entities holding obligations, interests, Claims, Liabilities, and Encumbrances in all or any portion of the Purchased Assets arising under or out of, in connection with, or in any way relating to the Debtor, the Purchased Assets, the operation of the Debtor's business prior to the Closing Date or the transfer of the Purchased Assets to the Purchaser, hereby are forever barred, estopped and permanently enjoined from asserting against the Purchaser or their successors or assigns, their property or the Purchased Assets, such persons' or entities' obligations, interests, Claims, Liabilities, and Encumbrances in and to the Purchased Assets. On the Closing Date, each creditor is authorized and directed to execute such documents and take all other actions as may be deemed by the Purchaser to be necessary or desirable to release obligations, interests, Claims, Liabilities, and Encumbrances on the Purchased Assets, if any, as provided for herein, as such obligations, interests, Claims, Liabilities, and Encumbrances may have been recorded or may otherwise exist.

11. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtor to sell and transfer the Purchased Assets to the Purchaser in accordance with the terms of the Purchase Agreement and this Order.

12. All persons and entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Purchaser or such Purchaser's assignee at the Closing.

13. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any of the obligations, interests, Claims, Liabilities, and Encumbrances of record.

14. Subject to the transfer of the Purchased Assets free and clear of liens in accordance with the terms of this Order, if any person or entity which has filed statements or other documents or agreements evidencing obligations, interests, Claims, Liabilities, and Encumbrances with regard to all or any portion of the Purchased Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Purchaser for the purpose of documenting the release of all obligations, interests, Claims, Liabilities, or Encumbrances, which the person or entity has or may assert with respect to all or any portion of the Purchased Assets, the Debtor is hereby authorized and directed, and the Purchaser is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Purchased Assets.

15. This Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

Assigned Contracts

16. Upon the Closing of the Sale, the Debtor is authorized and directed to assume and assign each of the Assigned Contracts to the Purchaser free and clear of all obligations, interests, Claims, Liabilities, and Encumbrances. The payment of the applicable Cure Amounts (if any) by the Purchaser shall (a) effect a cure of all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assigned Contracts by the Purchaser, constitute adequate assurance of future performance thereof. The Purchaser shall then have assumed the Assigned Contracts and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtor of such Assigned Contracts shall not be a default thereunder. After the payment of the relevant Cure Amounts by the Purchaser, neither the Debtor nor the Purchaser shall have any further liabilities to the Contract Counter Parties other than the Purchaser's obligations under the Assigned Contracts that accrue and become due and payable on or after the Closing Date.

17. Any provision in any Assumed Executory Contract that prohibits or conditions the assignment of such Assumed Executory Contract or allows the party to such Assumed Executory Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Executory Contract, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Purchaser of the Assigned Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Assigned Contracts.

18. Upon the Closing and the payment of the relevant Cure Amounts, if any, the Purchaser shall be deemed to be substituted for the Debtor as a party to the applicable Assumed Executory Contract and the Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assigned Contracts.

19. Upon the payment of the applicable Cure Amount, if any, the Assigned Contracts will remain in full force and effect, and no default shall exist under the Assigned Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

20. There shall be no rent accelerations, assignment fees, increases (including advertising rates) or any other fees charged to Purchaser or the Debtor as a result of the assumption and assignment of the Assigned Contracts.

21. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all Contract Counter Parties are forever barred and permanently enjoined from raising or asserting against

Purchaser any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assigned Contracts existing as of the Closing Date or arising by reason of the Closing.

Other Provisions

22. Effective upon the Closing, except as otherwise provided by stipulations filed with or announced to the Court with respect to a specific matter, all persons and entities are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, with respect to any (a) obligations, interests, Claims, Liabilities, or Encumbrances arising under, out of, in connection with or in any way relating to the Debtor, the Purchaser, the Purchased Assets, or the operation of the Purchased Assets prior to the Closing of the Sale, or (b) successor liability, including, without limitation, the following actions: (i) commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors or assigns, assets or properties; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Purchaser, its successors, assets or properties; (iii) creating, perfecting or enforcing any obligations, interests, Claims, Liabilities, or Encumbrances against the Purchaser, its successors or assigns, assets or properties; (iv) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser or its successors or assigns; (v) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (vi) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets. For purposes of this

paragraph, any employee terminated as of the Closing Date will be deemed to have been terminated before the Closing Date and any claims related to such termination, if any, are claims against the Debtors and their respective estates.

23. Effective upon the Closing, except for the Assumed Liabilities and Permitted Encumbrances or as otherwise expressly set forth in the Purchase Agreement, the Purchaser shall not have any liability or other obligation of the Debtor arising under or related to any of the Purchased Assets. Without limiting the generality of the foregoing, and except for the Assumed Liabilities and Permitted Encumbrances provided in the Purchase Agreement, the Purchaser shall not be liable for any obligations, interests, Claims, Liabilities, or Encumbrances, including, but not limited to, the following: (1) all mortgages, deeds of trust and security interests; (2) any claim by any person, including, but not limited, to current or former employees and their dependents or beneficiaries, relating to pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (3) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, or (l) any other state or federal benefits or claims relating to any employment with any of the

Debtors or any of their respective predecessors; (4) any bulk sales or similar law; (5) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (6) any Environmental Law(s) (as defined in the Purchase Agreement), including, without limitation, any environmental obligations, interests, Claims, Liabilities, or Encumbrances; and (7) any theories of successor or vicarious liability, all of the foregoing whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of any obligations, interests, Claims, Liabilities, or Encumbrances. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of obligations, interests, Claims, Liabilities, or Encumbrances against or interests in the Debtors or any of the Purchased Assets. For the avoidance of doubt, nothing in this Order or the Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the owner or operator of property after the date of entry of this Order.

24. To the greatest extent available under applicable law, Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and any other governmental authorization or approval of the Debtor with respect to the Purchased Assets and the Contracts, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are transferred to Purchaser as of the Closing Date. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may

revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to Purchaser on account of the filing or pendency of the chapter 11 cases. For the avoidance of doubt, nothing in this Order or the Purchase Agreement authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law.

25. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assigned Contracts), unless such authorization and such Sale are duly stayed pending such appeal. The Purchaser is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. Notwithstanding anything to the contrary in this Order (including without limitation the immediately preceding sentence of this paragraph) or in the Purchase Agreement or any documents in connection therewith, no claims (including without limitation in respect of accounts receivable, notes receivable or payment intangibles), defenses, offsets or causes of action of any nature of the Debtor or the Debtor's estate shall be transferred (including without limitation against third parties, Affiliates or any entities in which the Debtor has or had a direct or indirect interest), except for claims or causes of action (other than in respect of fraud of criminal activity) (i) against counterparties to Assigned Contracts, (ii) against those non-Affiliate vendors or suppliers relating to the Purchased Assets that the Purchaser elects to continue to engage, (iii) against any non-executive employees or non-Affiliate independent

contractors of the Seller employed or engaged by Purchaser, and (iv) pursuant to vendors' and manufacturers' warranties, indemnities and guaranties in respect of machinery and equipment purchased by Purchaser.

26. Pursuant to Bankruptcy Rules 7062, 9014, 6004(h) and 6006(d), this Order shall be effective immediately upon entry and the Debtor and Purchaser are authorized to close the Sale immediately upon entry of this Order.

27. As provided in the Purchase Agreement, this Order approves and provides for the transfer to Purchaser of all avoidance claims (whether under chapter 5 of the Bankruptcy Code or otherwise) of the Debtor's estate related to, or arising from, the Assigned Contracts and/or Assumed Liabilities.

28. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

29. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement be authorized and approved in their entirety.

30. The Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court with the consent of the Creditors' Committee, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

31. Nothing in this Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

32. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

33. To the extent that this Order is inconsistent with the Purchase Agreement or any related documents or any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

Dated: _____, 2016
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Purchase Agreement

ASSET PURCHASE AGREEMENT

Dated as of [•], 2016

By and Among

Green Plains Inc.

as Purchaser,

and

Abengoa Bioenergy New Technologies, LLC

as Seller

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SCHEDULE []

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of [____], 2016 (the “**Agreement Date**”), by and among Green Plains York, LLC, a Delaware limited liability company (“**Purchaser**”) and one or more other persons designated by the Purchaser (collectively, the “**Purchaser Designees**”), and Abengoa Bioenergy New Technologies, LLC, a Missouri limited liability company (the “**Company**” or “**Seller**”). Purchaser and the Seller are collectively referred to herein as the “**Parties**” and individually as a “**Party**”. For the purposes of this Agreement, capitalized terms used herein shall have the meanings set forth herein or in Article 9.

RECITALS

WHEREAS, on April 6, 2016, the Seller filed a voluntary petition (the “**Chapter 11 Petition**”) for relief under Chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) commencing a chapter 11 case (the “**Bankruptcy Case**”).

WHEREAS, the Seller continues to manage its properties and operate its business as “**debtor-in-possession**” under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code;

WHEREAS, the Seller wishes to sell the Business;

WHEREAS, Purchaser desires to purchase the Purchased Assets and assume the Assumed Liabilities from the Seller and the Seller desires to sell, convey, assign and transfer to Purchaser the Purchased Assets together with the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code;

WHEREAS, the Purchased Assets and Assumed Liabilities shall be purchased and assumed by Purchaser pursuant to the Sale Order approving such sale, free and clear of all obligations, interests, Claims, Liabilities and Encumbrances (other than Permitted Encumbrances), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, which order will include the authorization for the assumption by Seller and assignment to Purchaser of the Assigned Contracts and the assumed liabilities thereunder in accordance with Section 365 of the Bankruptcy Code, all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order and in accordance with other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court (together, the “**Bankruptcy Rules**”); and

WHEREAS, the board of directors (or similar governing body) of Seller has determined that it is advisable and in the best interests of Seller and its constituencies to enter into this Agreement and to consummate the transactions provided for herein, subject to entry of the Sale Order, and has approved the same.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Purchaser and Seller hereby agree as follows:

ARTICLE I.

PURCHASE AND SALE OF THE PURCHASED ASSETS;
ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Purchased Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions set forth herein, at the Closing Seller shall sell, transfer, assign, convey and deliver to Purchaser or any Purchaser Designee, free and clear of all Encumbrances other than Permitted Encumbrances and Purchaser shall purchase, acquire and accept from Seller all of Seller's right, title and interest in, to and under the business relating its second generation biofuel research and development production facility located at 1414 Road O, York, NE 68467, York County (the "**Business**"), including the following, but excluding the Excluded Assets, (the "**Purchased Assets**") as of the Closing:

(a) all of Seller's properties, rights, claims and assets (other than the Excluded Assets) of every kind and description, wherever situated or located, real, personal or mixed, tangible or intangible, contingent, owned, leased, or licensed, for use in or relating to the Business, whether or not reflected on the books and records of Seller, as the same shall exist on the Closing Date;

(b) subject to Section 1.6, to the extent assignable pursuant to Section 365 of the Bankruptcy Code, all rights under Contracts, agreements and purchase and sale orders that are not Rejected Contracts (as defined in Section 1.6(a)(i)), including all rights under any lease for Assumed Leased Real Property and any customer contracts and any contract renewal rights, but excluding obligations under the Excluded Contracts (the "**Assigned Contracts**"), each as listed on Schedule 1.1(b);

(c) all Documents relating to the Purchased Assets or Assumed Liabilities;

(d) the Owned Real Property listed on Schedule 1.1(d) (the "**Acquired Owned Real Property**") ;

(e) the Owned Buildings, subject to ground leases, listed on Schedule 1.1(g) (the "**Acquired Buildings**");

(f) the Leased Real Property listed on Schedule 1.1(f) (the "**Assumed Leased Real Property**"), including any security deposits or other deposits delivered in connection therewith;

(g) all tangible assets of Seller relating to the Business, other than the assets set forth on Schedule 1.1(i), including, without limitation, the tangible assets of Seller located at any Assumed Leased Real Property or at the Locations listed on Schedule 1.1(g);

(h) all personnel files for Transferred Employees except as required under Law; provided, however, that Seller has the right to retain copies at Seller's expense to the extent required by Law;

(i) any chattel paper owned or held by Seller relating to the Business or the Purchased Assets other than the Excluded Assets;

(j) any lock boxes to which account debtors of the Seller remit payment relating to the Business or the Purchased Assets other than the Excluded Assets;

(k) all Permits and all pending applications therefor;

(l) all express or implied guarantees, warranties, representations, covenants, indemnities, rights, claims, counterclaims, defenses, credits, causes of action or rights of set off against third parties relating to the Purchased Assets (including, for the avoidance of doubt, those arising under, or otherwise relating to the Assigned Contracts) or Assumed Liabilities, including rights under vendors' and manufacturers' warranties, indemnities, guaranties and avoidance claims and causes of action under the Bankruptcy Code or applicable Law that are possessed by the Seller;

(m) all goodwill, payment intangibles and general intangible assets and rights of Seller to the extent associated with the Business or the Purchased Assets other than the Excluded Assets;

(n) all Inventory, including raw materials, work in process, and finished goods, located at the Business and whether or not obsolete or carried on the Seller's books of account, in each case with any transferable warranty and service rights of the applicable Seller with respect to such Purchased Assets to the extent owned by Seller;

(o) to the extent owned by Seller, all fixed assets and other personal property and interests related to the Business or Purchased Assets, located at the Business, including all vehicles, tools, parts and supplies, fuel, machinery, equipment, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and communication equipment, trade fixtures and leasehold improvements, in each case with any freely transferable warranty and service rights of the applicable Seller with respect to such Purchased Assets;

(p) telephone and fax numbers;

(q) all other or additional assets, properties, privileges, rights and interests of Seller relating to the Business or the Purchased Assets other than the Excluded Assets of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement; and

(r) All parts, spare parts, subassemblies, whether or not obsolete or carried on the Seller's books of account, in each case with any transferable warranty and service rights of the applicable Seller with respect to such Purchased Assets to the extent owned by Seller

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign or convey, and Seller shall retain all right, title and interest to, in and under only the following assets, properties, interests and rights of Seller (collectively, the "**Excluded Assets**"):

(a) any asset of Seller that otherwise would constitute a Purchased Asset but for the fact that it is sold or otherwise disposed of in the Ordinary Course of Business of Seller and in conformity with the terms and conditions of this Agreement, during the time from the Agreement Date until the Closing Date, or Purchaser otherwise agrees to such disposition;

(b) copies of any and all information not relating to the Business that is stored on Seller's computer systems, data networks or servers;

(c) all agreements and contracts of Seller other than the Assigned Contracts;

(d) all Documents and all personnel records of Seller's employees that Seller is required by Law to retain and is prohibited by Law from providing a copy thereof to Purchaser;

(e) all shares of capital stock or other equity interests issued by Seller or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests;

(f) any avoidance claims or causes of action under the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance), and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable laws, solely relating to Excluded Assets;

(g) all Claims that Seller may have against any Person solely with respect to any Excluded Assets or any Excluded Liabilities;

(h) Seller's rights under this Agreement, the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered by Purchaser to Seller in connection with the transactions contemplated hereby, or any side agreement between Seller and Purchaser entered into on or after the Agreement Date;

(i) all current and prior director and officer insurance policies of the Seller and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(j) Seller's Organizational Documents and the Seller's financial accounting books and records, corporate charter, minute and stock record books, income tax returns, corporate seal, checkbooks and canceled checks that do not constitute Purchased Assets;

(k) the properties and assets set forth on Schedule 1.2(k);

(l) all Benefit Plans (including all assets, trusts, insurance policies and administration service contracts related thereto);

(m) all Pension Plans;

(n) except to the extent set forth on Schedule 1.2(n), any and all claims, deposits, prepayments, refunds, rebates, causes of action, rights of recovery, rights of set-off and rights of recoupment relating to or in respect of an Excluded Asset.

(o) to the extent related to the Business, all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Seller, but excluding any intercompany Indebtedness (the "**Accounts Receivable**");

(p) prepaid expenses and deposits;

(q) all of Seller's Cash and Cash Equivalents;

(r) the Intellectual Property;

(s) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Purchased Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to Seller, with respect to cancelled policies);

(t) all Tax assets net of any liability (including all state and federal Tax refunds (or the right to such state and federal refunds of Taxes, whether claimed or unclaimed) for all taxable periods (or portions thereof), whether ending on, prior to, or after the Closing Date (the “**Tax Refunds**”));

(u) licensed computer hardware and related documentation, stored data;

(v) all of Seller’s rights to receive refunds, payments or overpayments, clawbacks or other amounts (whether from a workers’ compensation administrator or otherwise) in respect of any and all workers’ compensation matters, claims, potential claims, purported claims and similar related items with respect to any Transferred Employee; and

(w) all avoidance claims or causes of action under the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance), and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable laws relating to the Purchased Assets and/or Assumed Liabilities, including all actions relating to vendors and service providers used in the Business that are counterparties to Assumed Contracts or relating to Assumed Liabilities (the “**Avoidance Actions**”).

1.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement and the Sale Order, effective as of the Closing, Purchaser shall assume from the Seller (and pay, perform, discharge or otherwise satisfy in accordance with their respective terms), and the Seller shall irrevocably convey, transfer and assign to Purchaser, the following Liabilities (and only the following Liabilities) (collectively, the “**Assumed Liabilities**”):

(a) all Liabilities of Seller arising from the ownership of the Purchased Assets, arising after the Closing Date;

(b) all Liabilities and obligations of Seller under the Purchased Assets and under the Assigned Contracts, including, without limitation, (i) all pre-petition cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (such pre-petition cure costs are, collectively, the “**Cure Costs**”), which Cure Costs shall not exceed \$10,000 (the “**Estimated Cure Costs**”) and (ii) any post-Closing liabilities;

(c) any Liabilities for trade and non-trade payables arising out of the conduct of the Business and incurred on or after the Closing Date;

(d) all open purchase orders set forth on Schedule 1.3(d) arising out of the conduct of the Business and Liabilities arising under drafts or checks outstanding at the Closing incurred in the Ordinary Course of Business; and

(e) all Liabilities, if any, set forth on Schedule 1.3(e).

The assumption by Purchaser of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

1.4 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Purchaser is assuming only the Assumed Liabilities and is not assuming, and shall not be deemed to have assumed, any other Liabilities of Seller of whatever nature (whether arising prior to, at the time of, or subsequent to Closing), whether absolute, accrued, contingent or otherwise, whether due or to become due and whether or not assets, and whether or not known or unknown or currently existing or hereafter arising or matured or unmatured, direct or indirect, and the Seller shall be solely and exclusively liable for any and all such Liabilities, including those relating to, arising out of or in connection with the operation of the Business or the Purchased Assets (including the use and ownership thereof) at any time prior to the Closing Date, and including, without limitation, those Liabilities set forth below (collectively, the “*Excluded Liabilities*”):

(a) all Liabilities of the Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(b) any and all Liabilities for Indebtedness with respect to borrowed money and any intercompany Indebtedness;

(c) all guarantees of third party obligations and reimbursement obligations to guarantors of Seller’s obligations or under letters of credit;

(d) any and all (i) Liabilities of the Seller for any Taxes (including any Taxes owed by Seller and arising in connection with the consummation of the transactions contemplated by this Agreement), (ii) any Taxes imposed on any Person that are the responsibility of the Seller pursuant to Section 10.1, (iii) Taxes attributable to the Purchased Assets or the operation of the Business for any Pre-Closing Tax Period; (iv) any Taxes arising from or in connection with an Excluded Asset; and (v) any Taxes attributable to the Straddle Period.

(e) any and all Liabilities of the Seller in respect of Contracts that are not Assigned Contracts;

(f) except for the obligations under any employment Contract that is an Assumed Contract, all Liabilities with respect to compensation, severance or benefits of any nature owed to any current or former employee, officer, director, member, partner or independent contractor of Seller or any ERISA Affiliate (or any beneficiary or dependent of any such individual), whether or not employed by Purchaser or any of its Affiliates after the Closing, that (A) arises out of or relates to the employment, service provider or other relationship between Seller or ERISA Affiliate and any such individual, including the termination of such relationship, (B) arises out of or relates to any Benefit Plan or (C) arises out of or relates to events or conditions occurring on or before the Closing Date;

(g) draft or checks outstanding at the Closing (except to the extent an Assumed Liability or relating to an Assumed Contract);

(h) all Liabilities for fees, costs and expenses that have been incurred or that are incurred or owed by Seller in connection with this Agreement or the administration of the Bankruptcy Case (including all fees and expenses of professionals engaged by Seller) and administrative expenses and priority claims accrued through the Closing Date and specified post-closing administrative wind-down expenses of the bankrupt estates pursuant to the Bankruptcy Code (which such amounts shall be paid by the Seller from the proceeds collected in connection with the Excluded Assets) and all costs and expenses incurred in connection with (i) the negotiation, execution and consummation of the transactions contemplated under this Agreement and each of the other documents delivered in

connection herewith, (ii) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any consent required to be obtained in connection with any of such transactions; and (iii) the consummation of the transactions contemplated by this Agreement, including any retention bonuses, "success" fees, change of control payments and any other payment obligations of Seller payable as a result of the consummation of the transactions contemplated by this Agreement and the documents delivered in connection herewith;

(i) all Liabilities related, to the extent applicable, with respect to Employees, and for any action resulting from Employees' separation of employment prior to or on the Closing Date;

(j) all Liabilities of Seller to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise, and any liability of Seller pursuant to any Affiliate Agreement;

(k) all Liabilities arising out of or relating to any business or property formerly owned or operated by Seller, any Affiliate or predecessor thereof, but not presently owned and operated by the Seller;

(l) all Liabilities relating to claims, actions, suits, arbitrations, litigation matters, proceedings or investigations (in each case whether involving private parties, Authorities, or otherwise) involving, against, or affecting any Purchased Asset, the Business, Seller, or any assets or properties of Seller, whether commenced, filed, initiated, or threatened before or after the Closing and whether relating to facts, events, or circumstances arising or occurring before or after the Closing;

(m) all obligations of the Seller arising and to be performed prior to the Closing Date arising from or related to the Business or the Purchased Assets;

(n) all Environmental Liabilities and Obligations set forth on Schedule 1.4(n);

(o) all Liabilities of Seller or its predecessors arising out of any contract, agreement, Permit, franchise or claim that is not transferred to Purchaser as part of the Purchased Assets or, is not transferred to Purchaser because of any failure to obtain any third-party or governmental consent required for such transfer;

(p) all Liabilities set forth on Schedule 1.4(p); and

(q) All mechanics' lien claims.

1.5 Post Closing Liabilities. Purchaser acknowledges that Purchaser shall be responsible for all Liabilities and obligations relating to Purchaser's ownership or use of, or right to use, the Purchased Assets and the Assumed Liabilities after the Closing Date, including without limitation all Taxes arising out of or related to the Purchased Assets or the operation of conduct of the Business acquired pursuant to this Agreement for all Tax periods beginning on or after the Closing Date.

1.6 Assumption/Rejection of Certain Contracts.

(a) Assignment and Assumption at Closing.

(i) Schedule 1.6(a) sets forth a list of all executory Contracts (including all leases with respect to Leased Real Property) to which, to the Seller's Knowledge, Seller is a party and which are to be included in the Assigned Contracts. From and after the date hereof until five (5) Business Days prior to the Closing Date, the Seller shall make such deletions to Schedule 1.6(a) as Purchaser shall, in its sole discretion, request in writing. Any such deleted Contract shall be deemed to no longer be an Assigned Contract. All Contracts of Seller that are not listed on Schedule 1.6(a) shall not be considered an Assigned Contract or Purchased Asset and shall be deemed "**Rejected Contracts.**" Notwithstanding the foregoing, the following contract shall be a Rejected Contract: Process Agreement and License Agreement between Abengoa Bioenergy New Technologies, Inc. and Abengoa Bioenergy Biomass of Kansas, LLC dated September 23, 2011.

(ii) Seller shall take all actions required to assume and assign the Assigned Contracts to Purchaser (other than payment of Cure Costs, if so required), including taking all actions required to facilitate any negotiations with the counterparties to such Assigned Contracts and to obtain an Order containing a finding that the proposed assumption and assignment of the Assigned Contracts to Purchaser satisfies all applicable requirements of Section 365 of the Bankruptcy Code.

(iii) At Closing, (x) Seller shall, pursuant to the Sale Order and the Assumption and Assignment Agreement or the Assumption and Assignment of Leases, as applicable, assume and assign to Purchaser (the consideration for which is included in the Purchase Price) each of the Assigned Contracts that is capable of being assumed and assigned, and (y) Purchaser shall pay promptly all Cure Costs (if any) in connection with such assumption and assignment (as agreed to among the various counterparties, Purchaser and Seller, or as determined by the Bankruptcy Court) and assume and perform and discharge the Assumed Liabilities (if any) under the Assigned Contracts, pursuant to the Assumption and Assignment Agreement or the Assumption and Assignment of Leases, as applicable.

(b) Previously Omitted Contracts.

(i) If prior to or following Closing, it is discovered that a Contract should have been listed on Schedule 1.6(a) but was not listed on Schedule 1.6(a), or if Purchaser desires in its sole discretion to acquire any Contract to which the Seller is party (including any Rejected Contract prior to the entry by the Bankruptcy Court of an order with respect thereto) (any such Contract, a "**Previously Omitted Contract**"), Seller shall, promptly following the discovery thereof or receipt of notice from Purchaser of its desire to acquire any such Contract (but in no event later than two (2) Business Days following the discovery thereof or receipt of such notice), notify Purchaser in writing of such Previously Omitted Contract and all Cure Costs (if any) for such Previously Omitted Contract. Purchaser shall thereafter deliver written notice to Seller, no later than five (5) Business Days following notification of such Previously Omitted Contract from Seller, designating such Previously Omitted Contract as "Assumed" or "Rejected" (a "**Previously Omitted Contract Designation**"). A Previously Omitted Contract designated in accordance with this Section 1.6(b)(i) as "Rejected," or with respect to which Purchaser fails to timely deliver a Previously Omitted Contract Designation, shall be a Rejected Contract.

(ii) If Purchaser designates a Previously Omitted Contract as “Assumed” in accordance with Section 1.6(b)(i), (i) Schedule 1.6(a) shall be amended to include such Previously Omitted Contract and (ii) Seller shall serve a notice (the “***Previously Omitted Contract Notice***”) on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Costs with respect to such Previously Omitted Contract and Seller’s intention to assume and assign such Previously Omitted Contract in accordance with this Section 1.6. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with fifteen (15) Business Days to object, in writing to the Seller and Purchaser, to the Cure Costs or the assumption of its Contract. If the counterparties, Seller and Purchaser are unable to reach a consensual resolution with respect to the objection, the Seller will seek an expedited hearing before Bankruptcy Court to determine the Cure Costs and approve the assumption. If no objection is timely served on the Seller and Purchaser, Seller shall obtain an order of the Bankruptcy Court fixing the Cure Costs and approving the assumption of the Previously Omitted Contract.

1.7 Disclaimer. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT, THE SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS. WITHOUT LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS.

ARTICLE II.

CONSIDERATION

2.1 Consideration.

(a) The aggregate consideration (collectively, the “***Purchase Price***”) to be paid for the purchase of the Purchased Assets shall be: (i) the assumption of Assumed Liabilities, and (ii) the Cash Consideration.

(b) Limitation on Purchaser Liability. For the avoidance of doubt, Purchaser shall have no liability with respect to any costs, fees or expenses of any nature incurred by the Seller following the Closing Date.

(c) “***Cash Consideration***” means One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) plus (i) the Inventory Final Amount and (ii) the dollar amount of real or personal property Taxes allocated to Seller pursuant to Section 10.1(b) to the extent such taxes for a pre-closing period are paid by Purchaser at Closing or Purchaser assumes and agrees to pay after Closing.

2.2 Payments on the Closing Date.

(a) Not later than three (3) Business Days prior to the Closing Date, Seller shall deliver to Purchaser a written statement, reasonably satisfactory to Purchaser and signed by an officer of Seller (the “**Closing Statement**”):

(i) setting forth the Inventory Estimated Amount, together with reasonable supporting documentation regarding the determination and calculation of such amount; and

(ii) setting forth the Cure Cost Adjustment, if any.

(b) Not later than three (3) Business Days prior to the Closing Date, Purchaser shall deliver to Seller a written statement, reasonably satisfactory to Seller (“**Purchaser Statement**”) setting forth the dollar amount of real and personal property Taxes allocated to Seller pursuant to Section 10.1(b).

(c) Should Purchaser object to any of the amounts or calculations in the Closing Statement, or should Seller object to any of the amounts or calculations in the Purchaser Statement, Purchaser and Seller shall cooperate in a diligent good faith manner to resolve such objections prior to the Closing, and the Closing Statement or Purchaser Statement, as applicable, shall be adjusted prior to the Closing to reflect any changes agreed to by the Purchaser and Seller prior to the Closing Date.

(d) At the Closing, Purchaser shall pay to Seller in cash by wire transfer of immediately available funds to the account of Seller set forth in the Closing Statement an amount equal to the Estimated Cash Consideration (such amount to be paid to Seller, the “**Closing Date Payment**”).

(e) “**Estimated Cash Consideration**” means \$1,250,000 plus (i) the Inventory Estimated Amount, and minus (ii)(A) the Cure Cost Adjustment, if any, and (B) the dollar amount of real and personal property Taxes allocated to Seller pursuant to Section 10.1(b) to the extent such taxes for a pre-closing period are paid by Purchaser at the Closing or Purchaser assumes and agrees to pay after the Closing.

(f) Definitions:

(i) “**Inventory Estimated Amount**” means Seller’s good faith estimate of the Inventory Closing Value (as defined in Section 2.4).

2.3 Inventory Adjustment; Inventory Final Amount.

(a) Seller shall, commencing on, about, or as soon as possible after the Closing Date, conduct a physical count of the Inventory as of the Closing and shall use commercially reasonable efforts to cause such physical count of the Inventory (including WIP; such Inventory referred to herein as “**Inventory**”) to be completed not later than as soon as possible after the first Business Day following the Closing Date. Purchaser shall have the right to have its representative present during such physical count of the Inventory. Any ethanol or feedstock deemed not to be saleable, usable or of satisfactory quality will be excluded from the Seller Inventory Statement. Within ten (10) Business Days after the date of completion of such physical count of the Inventory, Seller shall deliver to Purchaser a written statement (the “**Seller Inventory Statement**”) setting forth Seller’s determination, together with supporting data and calculations, of the Inventory closing value (which value shall utilize

the Oil Price Information Service for Ethanol, market prices for feedstock and supplier contract pricing for enzymes used in the Business, in each case as of the day prior to delivery of the Inventory Estimated Amount or the Closing Date, as applicable) (“**Inventory Closing Value**”). Purchaser shall afford Seller and its representatives such access to the properties, books and records of the Business as is reasonably necessary in connection with the physical count of the Inventory.

(b) Unless on or before the seventh (7th) Business Day after Purchaser’s receipt of the Seller Inventory Statement, Purchaser delivers to Seller notice disputing the Inventory Closing Value and the basis therefore (such notice, the “**Purchaser Objection Notice**”), the Inventory Final Amount shall be the Inventory Closing Value as set forth in the Seller Inventory Statement.

(c) If Purchaser timely delivers to Seller the Purchaser Objection Notice, Purchaser and Seller shall, during the next ten (10) Business Days (such period, the “**Initial Resolution Period**”) work in good faith to resolve any and all disputes with respect to the Inventory Closing Value; provided that items not disputed in the Purchase Objection Notice shall be deemed not to be in dispute at any time during the Initial Resolution Period or thereafter. If all disputes with respect to the Inventory Closing Value are resolved during the Initial Resolution Period, the Inventory Final Amount shall be the Inventory Closing Value as agreed upon by Purchaser and Seller during the Initial Resolution Period.

(d) If, immediately after the Initial Resolution period, any of the items comprising the Inventory Closing Value remain in dispute, Purchaser and Seller shall promptly engage an independent certified public accounting firm or independent certified appraisal firm (the “**Inventory Arbiter**”) mutually agreed upon by Purchaser and Seller to decide such items and shall instruct the Inventory Arbiter to render such decision no later than the tenth (10th) Business Day following the commencement of such engagement. The Inventory Arbiter shall act as an expert and not as an arbitrator to determine, based solely on the written submissions of Seller and Purchaser, and not by independent investigation, only the specific items under dispute by Seller, on the one hand, and Purchaser, on the other hand. The decision of the Inventory Arbiter shall include a statement of the Inventory Arbiter’s determination of each disputed item and statement of the Inventory Closing Value reflecting the Inventory Arbiter’s determination of all disputed items, shall be set forth in a written report delivered to Seller and Purchaser and shall, absent manifest error, be conclusive and binding on both parties. If the Inventory Final Amount is not established as provided in Section 2.4(b) or Section 2.4(c), the Inventory Final Amount shall be the Inventory Closing Value set forth in the decision of the Inventory Arbiter.

(e) The “**Purchaser Inventory Adjustment Amount**” and the “**Seller Inventory Adjustment Amount**” are to be determined and delivered as follows:

(i) If the Inventory Final Amount exceeds the Inventory Estimated Amount, the Purchaser Inventory Adjustment Amount shall be zero, and the Seller Inventory Adjustment Amount shall be the amount of such excess, and Purchaser shall deliver to Seller the Seller Inventory Adjustment Amount in cash by wire transfer of immediately available funds;

(ii) If the Inventory Estimated Amount exceeds the Inventory Final Amount, the Seller Inventory Adjustment Amount shall be zero, and the Purchaser Inventory Adjustment Amount shall be the amount by which the Inventory Estimated Amount exceeds the Inventory Final Amount and Seller shall deliver to Purchaser the Purchaser Inventory Adjustment Amount in cash by wire transfer of immediately available funds.

(iii) Such payment of funds by Seller or Purchaser, as the case may be, under this Section 2.4(e) shall be effected within ten (10) Business Days after the date on which the Inventory Final Amount is determined. All fees and costs of the Inventory Arbiter shall be borne by and allocated between Seller and Purchaser on a pro rata basis based on the relative size of (i) the difference between the Inventory Closing Value as determined by the Inventory Arbiter and the Inventory Closing Value implied by Seller's written submission to the Inventory Arbiter, on the one hand, and (ii) the difference between the Inventory Closing Value as determined by the Inventory Arbiter and the Inventory Closing Value implied by Purchaser's written submission to the Inventory Arbiter, on the other hand.

2.4 Cure Costs. If the actual Cure Costs (as determined by an order of the Bankruptcy Court) of the Assigned Contracts set forth in Section 1.6(a) as of the date of this Agreement exceed the Estimated Cure Costs (defined above) by more than [\$_____] in the aggregate, then the Purchase Price shall be reduced by the amount ("**Cure Cost Adjustment**") equal to the actual Cure Costs minus the Estimated Cure Costs minus [\$_____]. For the avoidance of doubt, despite as set forth in this section, Purchaser remains entitled to delete Contracts from Schedule 1.6(a) as provided in Section 1.6(a)(i).

ARTICLE III.

CLOSING AND TERMINATION

3.1 Closing. Subject to the satisfaction or waiver by the appropriate Party of the conditions set forth in Article 8, the closing of the purchase and sale of the Purchased Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "**Closing**") shall occur as soon as practicable following the satisfaction or waiver of all conditions set forth in this Agreement (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions). The Closing shall take place at the offices of Armstrong Teasdale LLP, 7700 Forsyth Blvd., Suite 1800, St. Louis, Missouri 63105 or at such other place as the Parties may agree. Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of the Seller in the Purchased Assets to be acquired by Purchaser hereunder shall be deemed to have passed to Purchaser and the assumption of all of the Assumed Liabilities shall be deemed to have occurred as of 12:01 a.m. Eastern Time on the Closing Date.

3.2 Closing Deliveries by Seller. At or prior to the Closing, the Seller shall deliver to Purchaser:

(a) bill of sale substantially in the form of Exhibit A (the "**Bill of Sale**") duly executed by the Seller;

(b) assignment and assumption agreement substantially in the form of Exhibit B (the "**Assignment and Assumption Agreement**") duly executed by the Seller;

(c) a certified copy of the Sale Order, including a certificate of service showing that the Sale Order has been served on: (i) all of the creditors listed on the creditor matrix in the bankruptcy cases of seller and Abeinsa Holding Inc. (Case No. 16-10790, Jointly Administered); and (ii) on all claimants asserting mechanic's, construction or any other liens on the Purchased Assets;

(d) copies of all instruments, certificates, documents and other filings (if applicable) necessary to release the Purchased Assets from all Encumbrances, including any applicable UCC termination statements and releases of mortgages, all in a form reasonably satisfactory to Purchaser;

(e) copies of the waivers, consents and approvals for those executory contracts on Schedule 1.1(b), where such waivers, consents and approvals are required to operate the Business in the ordinary course;

(f) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of the Seller certifying that the conditions set forth in Section 8.3 have been satisfied;

(g) a copy of the resolutions adopted by the Board of Directors of the Seller evidencing the authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by an authorized officer of Seller;

(h) instrument of assumption and assignment of the Assumed Leases substantially in the form of Exhibit C (the "*Assumption and Assignment of Leases*"), duly executed by the Seller, in form for recordation with the appropriate public land records, if necessary;

(i) possession of each Owned Real Property, together with duly executed deeds for each Owned Real Property conveying the Owned Real Property, existing surveys, legal descriptions and title policies that are in the possession of the Seller, subject only to Permitted Encumbrances;

(j) a trustee quit claim deed conveying all right, title, and interest of Seller in the Acquired Buildings and the Acquired Owned Real Property ("**Deed**");

(k) possession of the Purchased Assets and the Business;

(l) certificates executed by Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that Seller is not a foreign person within the meaning of Section 1445(0)(3) of the Code;

(m) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Purchaser, as Purchaser may reasonably request to vest in Purchaser all of Seller's right, title and interest of Seller in, to or under any or all the Purchased Assets, including all Owned Real Property;

(n) such ordinary and customary documents (including any factually accurate affidavits) as may be required by any title company or title insurance underwriter to enable Purchaser to acquire, at Purchaser's sole election and Purchaser's sole cost and expense, one or more owner policies of title insurance issued by such title company covering any or all of the Owned Real Property;

(o) a duly completed FIRPTA Certificate;

(p) all title information in Seller's possession to Purchaser (which Seller shall deliver within 14 days after the Agreement Date) and Seller will use commercially reasonable efforts to cooperate with Purchaser so Purchaser may negotiate with the Title Insurer to obtain title insurance policies with respect to the Plants (the "*Title Policies*") at Closing;

(q) within 14 days after the Agreement Date, all surveys relating to the Purchased Assets, that are in Seller's possession or under its control.

3.3 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) the Company:

- (a) the Assignment and Assumption Agreement duly executed by Purchaser;
- (b) satisfactory evidence of payment of the Cure Costs;
- (c) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 8.2(a) and 8.2(b) have been satisfied;
- (d) other agreements required by the terms of the Agreement; and
- (e) all other certificates, agreements and other documents required by this Agreement (or as the Seller may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement) to be delivered by Purchaser at or prior to the Closing in connection with the transactions contemplated by this Agreement.

3.4 Termination of Agreement. This Agreement may be terminated only in accordance with this Section 3.4. This Agreement may be terminated at any time prior to the Closing, as follows:

- (a) by the mutual written consent of the Seller and Purchaser;
- (b) by written notice of either the Seller or Purchaser to such other Party, if the Closing shall not have been consummated prior to December 31, 2016 (the "Outside Date"); provided, however, that the Outside Date may be extended by the mutual written consent of Seller and Purchaser, for a period up to seven (7) days to the extent that all conditions to Closing set forth in this Agreement are capable of being satisfied as of such time; provided further, however, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 3.4(b) if such Party is in material breach of this Agreement; provided, however, that if the Closing has not occurred by the Outside Date, but on such date all of the conditions set forth in Article 8 have been satisfied or waived (to the extent such conditions may be waived), then the Outside Date shall automatically be extended until thirty (30) days after such initial Outside Date (and such extended date shall be deemed to be the "Outside Date" for all purposes hereunder) unless two (2) Business Days prior to the end of the second month following the original Outside Date, Purchaser provides written notice to Seller that it is no longer extending the Outside Date pursuant to this Section 3.4(b);
- (c) by written notice from Purchaser to the Seller, if (i) Seller seeks to have the Bankruptcy Court enter an Order dismissing, or converting into a case under chapter 7 of the Bankruptcy Code, the Bankruptcy Case, or appointing a trustee in the Bankruptcy Case or appointing a responsible officer or an examiner with enlarged power relating to the operation of the Business (beyond those set forth in Section 1106(a)(3) or (4) of the Bankruptcy Code) under Bankruptcy Code Section 1106(b), or (ii) an order of dismissal, conversion or appointment is entered for any reason and is not reversed or vacated within fourteen (14) days after entry thereof;

(d) by written notice from Purchaser if (i) the Bankruptcy Court has not entered the Sale Order on or prior to 60 days after the date of this Agreement, or (ii) the Sale Order shall have been stayed (and such stay results in the Closing not being consummated prior to the Outside Date), vacated, modified or supplemented without Purchaser's prior written consent;

(e) by written notice from Purchaser, if (i) the Sale Order has not become a Final Order within fourteen (14) days after the entry thereof or (ii) following its entry, the Sale Order shall fail to be in full force and effect or shall have been stayed (and such stay results in the Closing not being consummated prior to the Outside Date), reversed, modified or amended in any respect without the prior written consent of Purchaser;

(f) by written notice from the Company to Purchaser, if Purchaser breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Article VIII, (ii) cannot be or has not been cured within thirty (30) days following delivery of notice to Purchaser of such breach or failure to perform and (iii) has not been waived by the Seller;

(g) by written notice from Purchaser to the Company, if Seller breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Article VIII, (ii) cannot be or has not been cured within thirty (30) days following delivery of notice to the Company of such breach or failure to perform and (iii) has not been waived by Purchaser;

(h) by written notice from Purchaser, if the Bankruptcy Court enters an order approving a sale or plan that contemplates the sale of any of the Purchased Assets of the Business to any Person that is not the Purchaser; or

(i) by written notice from Purchaser to the Seller upon the occurrence of a Material Adverse Effect.

Each condition set forth in this Section 3.4, pursuant to which this Agreement may be terminated shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in this Section 3.4 is applicable, the applicable Party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated. The Parties acknowledge and agree that no notice of termination or extension of the Outside Date provided pursuant to this Section 3.4 shall become effective until two (2) Business Days after the delivery of such notice to the other Parties, and only if such notice shall not have been withdrawn during such two (2) Business Day period.

3.5 Procedures Upon Termination. In the event of termination and abandonment by Purchaser or Seller, or both such Parties, pursuant to Section 3.4 hereof, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall be abandoned, without further action by Purchaser or Seller. If this Agreement is terminated as provided herein, each Party shall return if requested all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the Party furnishing the same.

3.6 Effect of Termination. In the event of termination of this Agreement pursuant to Section 3.4, this Agreement shall forthwith become null and void and there shall be no liability on the part of any Party or any of its partners, officers, directors or shareholders; provided, however, that this

Section 3.6, Section 3.5, and Article XII (Miscellaneous) shall survive any such termination. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law. Each Party acknowledges that the agreements contained in this Section 3.6 and in Section 3.5 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement, and that any amounts payable pursuant to this Section 3.6 and Section 3.5 do not constitute a penalty.

3.7 Notice of Default; Opportunity to Cure. Neither Seller nor Purchaser shall be deemed to be in default hereunder with respect to a curable default until and unless such party has been given written notice of its failure to comply with the terms hereof and thereafter does not cure such failure within five (5) Business Days after receipt of such notice; provided, however, that this Section 3.7 (i) shall not be applicable to a party's failure to make any deliveries required of such party on the Closing Date and, accordingly, (ii) shall not have the effect of extending the Closing Date.

3.8 Limitation of Claims. Notwithstanding anything contained herein to the contrary, any claim, demand or cause of action against Seller or Purchaser related to any alleged breach of this Agreement or a breach of a surviving representation, warranty or covenant hereunder must be brought, if at all, within one hundred twenty (120) days after the Closing Date, after which period all such claims, demands or causes of action shall be forever barred and are hereby prospectively waived and released.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF THE SELLER

Subject to the exceptions noted in the schedules delivered by the Seller concurrently herewith, the Seller represents and warrants to Purchaser as follows as of the date hereof and as of the Closing Date:

4.1 Organization and Qualification. Seller is a limited liability company duly incorporated or organized, existing and in good standing under the Laws of the jurisdiction of its organization. Seller has all requisite power and authority to own, lease and operate its properties and to carry on its business (including the Business) as it is now being conducted, subject to the provisions of the Bankruptcy Code. Seller has previously delivered to Purchaser complete and correct copies of its Organizational Documents, as amended and in effect on the Agreement Date. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, have a Material Adverse Effect.

4.2 Authorization of Agreement. Subject to the entry of the Sale Order, Seller has all requisite power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Documents to which it is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary company action on the part of Seller. This Agreement has been, and at or prior to the Closing, each of the Ancillary Documents to which it is a party will be, duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other Party, and the entry of the Sale Order) this Agreement constitutes, and each Ancillary Document to which it is a party when so executed and delivered (assuming the due authorization, execution and delivery by the other parties thereto) will constitute, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with its terms. Subject to entry of the Sale Order, except (a) for entry of the Sale Order, (b) for notices, filings and consents required in connection with the Bankruptcy

Case and (c) for the notices, filings and consents set forth on Schedule 4.2, Seller is not required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from, any Person (including any Governmental Body) in connection with the execution and delivery of this Agreement and each of the Ancillary Documents or the consummation or performance of any of the transactions contemplated hereby and thereby, other than such notices, registrations, declarations, filings, consents, waivers, or approvals, the failure of which to make or obtain would not have a Material Adverse Effect.

4.3 Conflicts; Consents; Compliance with Law. If any other section of Article IV deals expressly with respect to a specific Law, then that section shall contain the sole and exclusive representations and warranties relating to such Law.

(a) Except as set forth on Schedule 4.3(a), the execution, delivery and performance by Seller of this Agreement or any Ancillary Document to which it is a party, the compliance by Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby and the taking by Seller of any other action contemplated hereby or thereby, do not and will not contravene, violate or conflict with any term or provision of its Organizational Documents.

(b) Except (i) for the entry of the Sale Order, and (ii) as set forth on Schedule 4.3(b), no filing with, notice to or consent from any Person is required in connection with the compliance by Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, or the taking by Seller of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not have a Material Adverse Effect.

(c) Seller is in compliance, in all material respects with all applicable Laws. Except as set forth on Schedule 4.3(c), Seller has not received any written notice from any Governmental Body regarding any actual or possible material violation of, or failure to comply in any material respect with, any Law the subject of which remains outstanding or unresolved. Seller is not in default in any material respect of any order, writ, injunction, judgment or decree applicable to the Business or the Purchased Assets.

4.4 Brokers and Finders. Except as set forth on Schedule 4.4, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated by this Agreement and Purchaser is not or will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Seller.

4.5 Title to Purchased Assets. Other than the Leased Real Property and the personal property subject to the Personal Property Leases and except for Permitted Encumbrances, Seller has good title to the Purchased Assets and, at the Closing, Purchaser, pursuant to the Sale Order, shall acquire good and marketable title in, and under all of such Purchased Assets, in each case free and clear of all obligations, interests, Claims, Liabilities and Encumbrances to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. The Purchased Assets include all of the properties and assets required to operate, in all material respects, the Business in the Ordinary Course of Business. For the sake of clarity, the right to use any assets included in the Purchased Assets in which Seller has leasehold or non-ownership rights to use shall be assigned to Purchaser only through the assumption and assignment of the Assigned Contracts in accordance with and subject to this Agreement.

4.6 Real Property.

(a) Schedule 4.6(a) contains a list and brief description of all Leased Real Property held or used for, or necessary to the operation of the Business. Seller has made available true and complete copies of all leases with respect to such Leased Real Property (individually, a “**Lease**” and collectively, the “**Leases**”) to Purchaser. Schedule 4.6(a) also identifies each ground lease between Seller and the owner of the fee title to the demised premises (each, a “**Ground Lease**”). Other than as set forth on Schedule 4.6(a), Seller is not in breach of any material term or in “default” under any Lease and, to Seller’s Knowledge, no party to any Lease has given Seller written notice of or made a claim with respect to any breach or default thereunder. To Seller’s Knowledge, there are no conditions that currently exist or with the passage of time will (i) result in a default or breach of any material term by any party to a Lease or (ii) give rise to the right of the lessor to accelerate the obligations thereunder or modify the terms thereof. To Seller’s Knowledge, other than as noted on Schedule 4.6(a), none of the Leased Real Property is subject to any sublease or grant to any Person of any right to the use, occupancy or enjoyment of the Leased Real Property or any portion thereof that would materially impair the use of the Leased Real Property in the operation of the Business. To Seller’s Knowledge, the Leased Real Property is not subject to any Encumbrances (other than Permitted Encumbrances) that were placed on the Leased Real Property through the action or inaction of Seller and materially impact the Business use of the Leased Real Property. To Seller’s Knowledge, the Leased Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business. To Seller’s Knowledge, there are no pending or threatened condemnation or other proceedings or claims relating to any of the Leased Real Property. To Seller’s Knowledge, the Leases with respect to the Assumed Leased Real Property will continue to be legal, valid, binding, enforceable and in full force and effect on the same material terms immediately following the consummation of the transactions contemplated hereby.

(b) Schedule 4.6(b)(i) sets forth a true, correct and complete list of all Owned Real Property, specifying the street address, the current owner and the current use of each parcel of Owned Real Property in which Seller has any title interest and which is related to, used, useful or held for use in the conduct of the Business (the “**Owned Real Property**”). Except for Permitted Encumbrances, Seller has good and marketable title in the Owned Real Property set forth on Schedule 4.6(b). To Seller’s Knowledge, other than as noted on Schedule 4.6(b)(i), none of the Owned Real Property is subject to any lease or grant to any Person of any right to the use, purchase, occupancy or enjoyment of such Owned Real Property or any portion thereof required to conduct the Business. Except for Permitted Encumbrances, the Owned Real Property is not subject to any obligations, interests, Claims, Liabilities and Encumbrances or to any use restrictions, exceptions, reservations or limitations, which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business and in the same manner after the Closing as conducted by Seller prior to Closing. There are no pending or, to Seller’s Knowledge, threatened condemnation proceedings relating to any of the Owned Real Property. Schedule 4.6(b)(ii) sets forth a true, correct and complete list of buildings owned by Seller which are subject to a Ground Lease (the “**Owned Buildings**”), specifying the street address and applicable Ground Lease. Each of the Owned Buildings is subject to the applicable Ground Lease landlord’s automatic reversionary interest upon expiration or termination of the Ground Lease. Other than as noted in Schedule 4.6(b)(ii), none of the Owned Buildings are subject to any sublease or grant to any Person of any right to the use, purchase, occupancy or enjoyment of such Owned Buildings or any portion thereof required to conduct the Business. Except for Permitted Encumbrances, the Owned Buildings are not subject to any obligations, interests, Claims, Liabilities and Encumbrances or to any use restrictions, exceptions, reservations or limitations, which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business and in the same manner after the Closing as conducted by Seller prior to

Closing. Since January 1, 2016, the Seller have not received written notice from any governmental authority with respect to the Owned Real Property relating to: (i) violations of building, zoning, safety and fire ordinances or regulations which are not remedied or uncorrected; (ii) claims of any material defect or deficiency with respect to any of such properties which are not remedied or uncorrected; or (iii) requests for the performance of any repairs, alterations or other work reasonably expected to cost more than \$50,000 in any single instance or \$100,000 in the aggregate of all such instances to the such real property, other than any which the Seller has remedied or corrected. To Seller's Knowledge, the Owned Real Property is not subject to any material special assessment, assessment for improvements, municipal charge or other similar charge or assessment.

4.7 Tangible Personal Property. Schedule 4.7 sets forth all leases of personal property ("**Personal Property Leases**") relating to personal property used by Seller or to which Seller is a party or by which the properties or assets of Seller is bound, in each case relating to the Business. Seller has a valid and enforceable leasehold interest under each Personal Property Lease under which it is a lessee.

4.8 Litigation. Except as set forth on Schedule 4.8 and other than in connection with the Bankruptcy Case, there is no suit, action, litigation, arbitration proceeding or governmental proceeding or audit, including appeals and applications for review, in progress, pending or, to the best of Seller's Knowledge, threatened against or relating to Seller or any judgment, decree, injunction, deficiency, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of Seller to enter into this Agreement or to consummate the transactions contemplated hereby and Seller has no Knowledge of any existing ground on which any such action, suit or proceeding may be commenced with any reasonable likelihood of success.

4.9 Permits. Seller is in compliance with the material terms of all material Permits used by Seller in the Business, and all such Permits are valid and in full force and effect, and no proceeding is pending or, to the Knowledge of Seller, threatened, the object of which is to revoke, limit or otherwise affect any such Permit.

4.10 Inventory.

(a) To Seller's Knowledge, no Inventory is materially damaged in any significant way, including but not limited to damage caused by water, except for any such damage which would not have a Material Adverse Effect on the Inventory taken as a whole;

(b) To Seller's Knowledge, the Inventory is not part of a current or past recall;

(c) The Inventory is in working condition except for such failure to be in working condition which would not have a Material Adverse Effect on the Inventory taken as a whole.

(d) Except as set forth on Schedule 4.10(d), Seller do not hold any Inventory on consignment.

4.11 Contracts. The Assigned Contracts include all Contracts material to the ownership and/or operation of the Business. Except as set forth on Schedule 4.8, Seller has not, and, to Seller's Knowledge, no other party to any Assigned Contract has, commenced any action against any of the parties to any Assigned Contract or given or received any written notice of any default or violation under any Assigned Contract that has not been withdrawn or dismissed except to the extent such default or violation will be cured as a result of the payment of the applicable Cure Costs. Assuming payment of the Cure Costs, each Assigned Contract is, or will be upon the Closing, valid, binding and in full force and effect in accordance with its terms.

4.12 Tax Returns; Taxes. With respect to tax matters, this Section 4.12 contains the sole and exclusive representations and warranties relating to the same.

(a) The Tax Returns listed on Schedule 4.12(a) have been filed by the Seller and complete copies of such Tax Returns have been delivered to Purchaser (or its representatives) prior to the Agreement Date.

(b) Except as set forth on Schedule 4.12(b), to Seller's Knowledge, no material Tax Proceeding is being asserted in writing with respect to the Seller, nor to the Knowledge of the Seller has any claim with respect to Taxes been threatened or asserted.

(c) To Seller's Knowledge, Seller has never been subject to Tax in a jurisdiction in which it does not currently file Tax Returns or pay Taxes, and no claim has been made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to Tax by that jurisdiction. Seller does not have, and has never had, a permanent establishment in any country other than the United States.

For purposes of this Section 4.12, any reference to Seller shall be deemed to include any Person that merged, or was merged, with or was liquidated into Seller.

4.13 Environmental Matters. The representations and warranties contained in this Section 4.13 are the sole and exclusive representations and warranties of the Seller pertaining to or relating to any environmental matters, including any matter arising under any Environmental Laws. Except as set forth on Schedule 4.13 and except for facts, circumstances or conditions that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) with respect to the Purchased Assets, there is no Order with any Governmental Body nor has Seller received any verbal or written notice, complaint or inquiry from a Governmental Body respecting Environmental Laws, (b) with respect to the Purchased Assets, there is no investigation, action or proceeding pending, or, to the Knowledge of Seller, threatened that could reasonably be expected to result in Seller or Purchaser incurring any Environmental Liabilities or Obligations, (c) Seller is not aware of and has not caused or allowed the Release of Hazardous Materials at, on or under the Acquired Owned Real Property, the Assumed Leased Real Property, the Acquired Buildings, (d) Seller maintains, has obtained, and has complied in all material respects with all Permits, and all Permits remain effective as are required under or pursuant to Environmental Laws for the operation of the Purchased Assets, and (e) Seller is not in default in any material respect of any order, writ, injunction, judgment or decree applicable to the Seller's Business or the Purchased Assets. Seller has delivered or made available to Purchaser copies of all Permits, Permit applications, reports, assessments or tests with respect to compliance of the Purchased Assets with any Environmental Laws or the presence of Hazardous Material which are in the Seller's possession, custody or control or available to it from an Affiliate, including the following records: (i) reports concerning the removal of underground storage tanks from the Acquired Owned Real Property, the Acquired Buildings, and Assumed Leased Real Property and Remedial Actions (ii) correspondence from Governmental Bodies informing Seller that no further action is required to address Releases which have been the subject of Remedial Action conducted by or on behalf of Seller; (iii) the most recent final Phase I Environmental Site Assessment reports for the Acquired Owned Real Property, the Acquired Buildings, Assumed Leased Real Property; (iv) Permits, Permit applications, and Permit disapprovals; and (v) inventories of asbestos and asbestos-containing materials, if any, for the Purchased Assets.

4.14 Absence of Certain Changes.

(a) Since the Agreement Date there has not been a Material Adverse Effect.

(b) Except as set forth on Schedule 4.14(b) or as contemplated by this Agreement, since the Agreement Date, Seller has not:

(i) except for executory contracts and unexpired leases rejected by Seller pursuant to the Sale Order with the prior written consent of Purchaser, terminated, modified or amended any material Assigned Contract or taken any action which materially violates, materially conflicts with or resulted in a material breach of any provision of, or constitutes a default under, or give rise to the right of any counterparty to accelerate the obligations under or modify the terms of, any Assigned Contract;

(ii) purchased or otherwise acquired any material properties or assets (tangible or intangible) or sold, leased, transferred or otherwise disposed of any Purchased Assets, except for purchases of materials and sales of Inventory in the Ordinary Course of Business, (i) permitted, allowed or suffered any of the Purchased Assets to be subjected to any Encumbrance (other than Permitted Encumbrances), or (ii) removed any equipment or other material assets (other than Inventory) from the Owned Real Property or Leased Real Property other than in the Ordinary Course of Business;

(iii) waived or released any claim or rights included in or related to the Purchased Assets or the Business with a value individually or in the aggregate in excess of \$100,000 or revalued any of the Purchased Assets, except for adjustments to the value of Inventory in the Ordinary Course of Business;

(iv) entered into any material contractual relationship with any third party related to the Purchased Assets or the Business, other than in the Ordinary Course of Business;

(v) made any material commitments for capital expenditures;

(vi) other than in the Ordinary Course of Business, or as approved by the Bankruptcy Court, increased the benefits of or compensation (whether in the form of salary, bonus or otherwise) payable to any employee, contractor or consultant of Seller, or granted any bonus, benefit, payment (contingent or otherwise) or other direct or indirect compensation to any employee, contractor or consultant of Seller;

(vii) except as required by Law, adopted, amended or terminated Benefit Plan;

(viii) except for consequences relating to the filing of the Bankruptcy Case, introduced any material change with respect to the operations of the Business;

(ix) suffered any damage or destruction to or loss of any assets or properties relating to the Purchased Assets or the Business except for any such damage as would not have a Material Adverse Effect on the Business taken as a whole whether or not covered by insurance;

(x) incurred any Indebtedness or paid, discharged or satisfied any claims, liabilities or obligations, other than and the payment, discharge or satisfaction in the Ordinary Course of Business of Liabilities incurred in the Ordinary Course of Business;

(xi) allowed any Permit held by Seller to terminate, expire or lapse relating to the Purchased Assets or the Business except for any such damage as would not have a Material Adverse Effect on the Business taken as a whole; or

(xii) agreed or committed to do any of the foregoing.

4.15 No Other Representations or Warranties. Except for the representations, warranties and covenants of Seller expressly contained herein, neither Seller nor its representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Seller, including, without limitation, (a) the probable success or profitability of ownership, use or operation of the Purchased Assets by Purchaser after the Closing, (b) the probable success or results in connection with the Bankruptcy Court and the Sale Order, (c) the value, use or condition of the Purchased Assets, which are being conveyed hereby on an “As Is”, “Where Is” condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Subject to the exceptions noted in the schedules delivered by Purchaser concurrently herewith, Purchaser represents and warrants to the Seller as follows as of the date hereof and as of the Closing Date:

5.1 Organization and Qualification. Purchaser is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization. Purchaser has all requisite power and authority to own, lease and operate its properties and to carry on its business (including the Business) as it is now being conducted, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Purchaser’s ability to consummate the transactions contemplated hereby.

5.2 Authority. Purchaser has the requisite power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder, to consummate the transactions contemplated hereby and thereby and to assume and perform the Assumed Liabilities. The execution and delivery of this Agreement by Purchaser and each of the Ancillary Documents to which it is a party, the performance by Purchaser of its obligations hereunder and thereunder, the consummation of the transactions contemplated hereby and thereby and the assumption and performance of the Assumed Liabilities have been duly and validly authorized by all necessary actions on the part of Purchaser. This Agreement has been, and at or prior to the Closing, each of the Ancillary Documents to which it is a party will be, duly and validly executed and delivered by Purchaser. Assuming the due authorization, execution and delivery of this Agreement and the Ancillary Documents by the Seller and subject to the effectiveness of the Sale Order, this Agreement constitutes, and each Ancillary Document to which Purchaser is a party when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with its terms.

5.3 No Inconsistent Obligations. Neither the execution and delivery of this Agreement or any other documents contemplated hereby, nor the consummation of the transactions contemplated herein or therein in accordance with the Sale Order, will, to Purchaser’s knowledge, result in a violation or breach of, or constitute a default under, (a) the certificate of incorporation, as amended, the bylaws, or other organizational instruments of Purchaser, (b) any applicable ruling or order of any Governmental Authority, (c) any term or provision of any contract or agreement, (d) any writ, order, judgment, decree, law, rule, regulation or ordinance, (e) any other commitment or restriction to which Purchaser is a party, nor will such actions result in the creation of a Lien.

5.4 Conflicts; Consents.

(a) The execution, delivery and performance by Purchaser of this Agreement or any Ancillary Document to which it is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby and the taking by Purchaser of any other action contemplated hereby or thereby, do not and will not contravene, violate or conflict with any term or provision of its Organizational Documents.

(b) Except as set forth on Schedule 5.4(b), no consent, waiver, approval, order or authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by Purchaser of this Agreement or the Ancillary Documents to which it is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities or the taking by Purchaser of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Purchaser's ability to perform its obligations under this Agreement and the Ancillary Documents to which it is a party, to assume and perform the Assumed Liabilities or to consummate on a timely basis the transactions contemplated hereby or thereby.

5.5 Brokers. Except as set forth on Schedule 5.5, no Person has acted, directly or indirectly, as a broker, finder or advisor for Purchaser, and any Person listed on Schedule 5.5 shall have disclosed to Seller any actual or potential conflict of interest, in connection with the transactions contemplated by this Agreement. Seller is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchaser.

5.6 Adequate Assurances Regarding Assigned Contracts. As of the Closing, to Purchaser's Knowledge, Purchaser or Purchaser's Designee will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

5.7 No Litigation. To Purchaser's knowledge, there are no material actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Purchaser, threatened) instituted against Purchaser challenging the legality of the transactions contemplated in this Agreement (other than with respect to any objection which may be filed in connection with the Bankruptcy Case).

5.8 Due Diligence.

(a) AS-IS WHERE-IS SALE; DISCLAIMERS; RELEASE. EXCEPT AS OTHERWISE PROVIDED IN ARTICLE V, IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PURCHASED ASSETS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, PURCHASER ACKNOWLEDGES AND AGREES THAT, UPON THE CLOSING, SELLER SHALL SELL AND CONVEY TO PURCHASER, AND PURCHASER SHALL ACCEPT,

THE PURCHASED ASSETS “AS IS, WHERE IS, WITH ALL FAULTS.” PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PURCHASED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLER OR ITS REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. PURCHASER ALSO ACKNOWLEDGES THAT THE TOTAL PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PURCHASED ASSETS ARE BEING SOLD “AS IS, WHERE IS, WITH ALL FAULTS.”

(c) PURCHASER ACKNOWLEDGES TO SELLER THAT PURCHASER HAS HAD THE OPPORTUNITY TO CONDUCT AND DID CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PURCHASED ASSETS AS PURCHASER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE PURCHASED ASSETS AND ITS ACQUISITION THEREOF. PURCHASER HEREBY ASSUMES ALL RISKS THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, LATENT OR PATENT DEFECTS, ADVERSE PHYSICAL OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY PURCHASER’S REVIEW AND INSPECTIONS AND INVESTIGATIONS.

(d) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUBJECT TO OBTAINING THE SALE ORDER, PURCHASER WAIVES ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THE VALIDITY AND CONDITION OF THE PURCHASED ASSETS AS OF THE CLOSING.

5.9 First-Generation Ethanol Facility. Purchaser acknowledges and agrees that it is the owner of real property (the “*Land*”) with an address the same as the Business and certain other improvements thereon, namely a first-generation ethanol facility.

ARTICLE VI.

BANKRUPTCY COURT MATTERS

6.1 Sale Motion and Other Matters.

(a) As soon as possible, Seller shall file with the Bankruptcy Court an application or motion seeking approval of (i) the form of this Agreement (a true and complete copy of which shall be attached to such application or motion without schedules) and the Seller’s authority to enter into this Agreement (the “*Sale Motion*”); provided, that such application or motion and all exhibits thereto shall be in form and substance acceptable to Purchaser, in its sole discretion.

(b) The Seller shall promptly serve true and correct copies of the Sale Motion and all related pleadings in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the District of Delaware and any other applicable order of the Bankruptcy Court.

6.2 Sale Order. The Sale Order shall be entered by the Bankruptcy Court. The Sale Order shall, among other things, (i) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by Seller of this Agreement, (B) the sale of the Purchased Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (C) the performance by Seller of its obligations under this Agreement; (ii) authorize and empower Seller to

assume and assign to Purchaser the Assigned Contracts; and (iii) find that Purchaser is a “good faith” buyer within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to Seller and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code. Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (a) demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code, and (b) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code.

6.3 Contracts. Seller shall serve on all non-Seller counterparties to all of its Contracts a notice specifically stating that Seller is or may be seeking the assumption and assignment of such Contracts and shall notify such non-Seller counterparties of the deadline for objecting to the Cure Costs, if any, which deadline shall not be less than three (3) Business Days prior to the Sale Hearing.

6.4 Bankruptcy Filings. From and after the Agreement Date and until the Closing Date, Seller shall deliver to Purchaser drafts of any and all material pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement for Purchaser’s prior review and comment, including any Tax motions, and such filings shall be acceptable to Purchaser in its sole discretion to the extent they relate to the Purchased Assets, any Assumed Liabilities or any of Purchaser’s obligations hereunder. Seller agrees to diligently prosecute the entry of the Sale Order. In the event the entry of the Sale Order shall be appealed, Seller shall use its best efforts to defend such appeal. Seller shall comply with all notice requirements (i) of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or (ii) imposed by the Sale Order, in each case, in connection with any pleading, notice or motion to be filed in connection herewith.

6.5 Sale Free and Clear. Seller acknowledges and agrees, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, interests, Claims, Liabilities and Encumbrances of, against or created by Seller or its bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, shall be fully released from and with respect to the Purchased Assets. On the Closing Date, the Purchased Assets shall be transferred to Purchaser free and clear of all obligations, interests, Claims, Liabilities and Encumbrances, other than Permitted Encumbrances and the Assumed Liabilities to the fullest extent permitted by Section 363 of the Bankruptcy Code.

ARTICLE VII.

COVENANTS AND AGREEMENTS

7.1 Conduct of Business of Seller. During the Pre-Closing Period, Seller shall use commercially reasonable efforts, except as otherwise required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, to conduct the Business in the Ordinary Course of Business (among other things, Seller will not incur unreasonable liabilities, including, without limitation, inappropriate increases in Inventory or factoring of accounts receivable). Without limiting the generality of the foregoing, and except (i) as otherwise expressly provided in or contemplated by this Agreement, or (ii) required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, on or prior to the Closing Date, Seller may not, without the prior written consent of Purchaser, take any of the following actions with respect to the Business or the Purchased Assets:

(a) except as set forth in Schedule 7.1(c), remove or permit to be removed from any building, facility, or real property any asset or any Inventory (other than in connection with the sale of

Inventory in the Ordinary Course of Business and the sale of fixtures, equipment and related assets in connection with the closing of facilities);

(b) sell, lease or otherwise dispose of, mortgage, hypothecate or otherwise encumber any asset (other than sales of Inventory in the Ordinary Course of Business); and

(c) fail to maintain any insurance policy in effect on the date hereof or amend any such policy other than extensions in the Ordinary Course of Business.

7.2 Access to Information. Seller agrees that, between the Agreement Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 3.4, Purchaser shall be entitled, through its officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors (“**Representatives**”), to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, Employees, accountants, auditors, counsel and operations of Seller’s Business as Purchaser’s Representatives may reasonably request. Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances. Seller shall use commercially reasonable efforts to cause its Representatives to reasonably cooperate with Purchaser and Purchaser’s Representatives in connection with such investigations and examinations, and Purchaser shall, and use its commercially reasonable efforts to cause its Representatives to, reasonably cooperate with the Seller and its Representatives, and shall use its commercially reasonable efforts to minimize any disruption to the Business.

7.3 Assignability of Certain Contracts. To the extent that the assignment to Purchaser of any Assigned Contract pursuant to this Agreement is not permitted without the consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Contract or any right or interest therein unless and until such consent is obtained; provided, however, that the Parties will use their commercially reasonable efforts, before the Closing, to obtain all such consents; provided, further, that if any such consents are not obtained prior to the Closing Date, Seller and Purchaser will reasonably cooperate with each other in any lawful and feasible arrangement designed to provide Purchaser with the benefits and obligations of any such Contract and Purchaser shall be responsible for performing all obligations under such Contract required to be performed by Seller on or after the Closing Date to the extent set forth in this Agreement.

7.4 Rejected Contracts. Seller shall not reject any Assigned Contract in any bankruptcy proceeding following the Agreement Date without the prior written consent of Purchaser, which Purchaser may withhold, condition or delay, in its sole discretion.

7.5 Reasonable Efforts; Cooperation.

(a) Subject to the other provisions hereof, each Party shall use its commercially reasonable efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and shall cooperate in a commercially reasonable manner with each other Party and its Representatives in connection with any step required to be taken as a part of its obligations hereunder.

(b) In the event that any of the Parties to this Agreement discovers a Contract related to the Business, the Purchased Assets or the Assumed Liabilities during the period from and after the

Agreement Date, and such Contract (i) was unknown as of the Agreement Date, (ii) is a Contract that Purchaser wishes to assume the rights and obligations of and (iii) such Contract would not be deemed a Rejected Contract by Seller, Purchaser and Seller shall execute, acknowledge and deliver such other instruments and take such further actions as are reasonably practicable for Purchaser to assume the rights and obligations under such Contract.

(c) The obligations of Seller pursuant to this Section 7.5 shall be subject to any orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case), and Seller's obligations as a debtor-in-possession to comply with any order of the Bankruptcy Court (including the Sale Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Business as required by the Bankruptcy Code.

(d) Seller, on the one hand, and Purchaser, on the other hand, will provide each other with such cooperation and information as either of them may reasonably request of the other in connection with filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes (such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by Tax authorities). In addition, Purchaser shall make available to Seller, without charge to Seller, such office space and employee support reasonably necessary to assist Seller to wind up Seller's operations following the Closing, resolve the Bankruptcy Case, dissolve any or all of the Seller and prepare and file the Tax Returns; provided Seller follows Purchaser's reasonable instructions while using Purchaser's premises. Any information obtained under this Section 7.5(d) shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any audit or other proceeding.

(e) Seller, on the one hand, and Purchaser, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Body concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Body in response thereto. In addition, none of Parties shall agree to participate in any meeting with any Governmental Body in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Body, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to restrictions under any Law, each of Purchaser, on the one hand, and Seller, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Body or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or which refer to valuation of the Business) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Body in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval.

(f) All computers and office equipment currently on-site at Seller's Plant shall remain at Seller's Plant location following Closing other than as set forth on Schedule 7.5(f).

(g) Seller agrees to deliver to Purchaser all title and survey information and documents ("Title Information") in Seller's possession relating to the Owned Real Property within 14 days following the Agreement Date. Purchaser shall then have ten (10) days following receipt of the Title Information to obtain a written binding commitment, in form and substance acceptable to Purchaser, from a title company reasonably acceptable to Purchaser to deliver at a future date an ALTA Form owner's policy of title insurance showing Purchaser as sole owner of good, marketable and indefeasible fee title to the Acquired Owned Real Property upon Closing. In the event Purchaser is not able to acquire good, marketable and indefeasible fee title to the Acquired Owned Real Property other than Permitted Encumbrances, Purchaser may notify Seller of its intention to terminate this Agreement by providing written notice to Seller, along with supporting documentation of the basis for termination. Seller shall have 10 days to cure and if this provision is not satisfied at the end of 10 days, the termination shall become effective and such termination shall be without liability to the other Parties other than the obligation of Seller to return the Deposit to Purchaser no later than one Business Day following receipt of written notice of termination. Purchaser's right to terminate the Agreement under his Section 7.5(g) shall expire ten (10) days following receipt of the Title Information from Seller.

7.6 Further Assurances. Each Party shall execute and cause to be delivered to each other Party such instruments and other documents, and shall take such other actions, as such other Party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement. After the Closing, Seller shall promptly transfer or deliver to Purchaser cash, checks (which shall be properly endorsed) or other property that Seller may receive in respect of any deposit, prepaid expense, receivable or other item that constitutes part of the Purchased Assets or relates to the Assumed Liabilities. By executing this Agreement Seller hereby appoints Purchaser, with full power of substitution, as Seller's true and lawful representative and attorney-in-fact, to execute, endorse and deposit checks or other negotiable instruments in the Seller's name, place and stead, provided such checks or other negotiable instruments constitute Purchased Assets hereunder.

7.7 Notification of Certain Matters. Seller shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to Seller, of (i) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Seller or Purchaser or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

7.8 Confidentiality. Following the Agreement Date, Seller agrees to maintain, unless disclosure is required by applicable Law, the confidentiality of any confidential information regarding the Business which is in Seller's possession or of which Seller is aware. Seller hereby further agrees, unless disclosure is required by applicable Law, to take all appropriate steps, consistent with Seller's past practice, to safeguard such confidential information and to protect it against disclosure, misuse, loss and theft. In furtherance and not in limitation of the foregoing, Seller shall not, unless required by applicable Law, disclose to any Person (a) any confidential information regarding the Business, provided, that confidential information shall not include information that becomes generally available to the public other

than as a result of the breach of this Section 7.8 or information not otherwise known by the Seller that becomes available to Seller from a Person other than Purchaser, or (b) any of the discussions or negotiations conducted with Purchaser in connection with this Agreement, provided, that Seller shall be entitled to disclose (i) any information required to be disclosed by Seller to the Bankruptcy Court, the United States Trustee, parties in interest in the Bankruptcy Case, (ii) any information required to be disclosed by Seller pursuant to any applicable Law (including, without limitation, the Bankruptcy Code), legal proceeding or Governmental Authority, or (iii) any information to Seller's counsel and financial advisor; provided, that, in each case, such disclosure shall be limited to the information that is so required to be disclosed and the Person(s) to whom such disclosure is required. Notwithstanding anything in this Section 7.8 to the contrary, unless disclosure is required by applicable Law, the confidentiality of any trade secrets of the Business shall be maintained for so long as such trade secrets continue to be entitled to protection as trade secrets of the Business.

7.9 Preservation of Records. Seller (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) and Purchaser agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period of three (3) months from the Closing Date and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, any insurance claims by, legal proceedings or Tax audits against or governmental investigations of Seller or Purchaser or in order to enable Seller or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Seller, on the one hand, or Purchaser, on the other hand, wish to destroy such records during such three (3) month period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

7.10 Publicity. Neither Seller nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Purchaser or Seller, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser lists securities, provided that the party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

7.11 Material Adverse Effect. Seller shall promptly inform Purchaser in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect.

7.12 Casualty Loss. Notwithstanding any provision of this Agreement to the contrary, if, before the Closing, all or any portion of the Purchased Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Seller shall notify Purchaser promptly in writing of such fact, (i) in the case of condemnation or taking, Seller shall assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood or other casualty, Seller shall assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 7.12 shall not in any way modify Purchaser's other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect.

7.13 No Successor Liability. The Parties intend that, except where expressly prohibited under applicable Law, upon the Closing, Purchaser shall not be deemed to: (i) be the successor of Seller, (ii) have, *de facto*, or otherwise, merged with or into Seller, (iii) be a mere continuation or substantial continuation of Seller or the enterprise(s) of Seller, or (iv) be liable for any acts or omissions of Seller in the conduct of the Business or arising under or related to the Purchased Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the Parties intend that Purchaser shall not be liable for any obligations, interests, Claims, Liabilities or Encumbrances (other than Assumed Liabilities and Permitted Encumbrances) against Seller or any of Seller's predecessors or Affiliates, and Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Purchased Assets or any Liabilities of Seller arising prior to the Closing Date. The Parties agree that the provisions substantially in the form of this Section 7.13 shall be reflected in the Sale Order.

ARTICLE VIII.

CONDITIONS TO CLOSING

8.1 Conditions Precedent to the Obligations of Purchaser and Seller. The respective obligations of each Party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by each of the Seller and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) there shall not be in effect any order, writ, injunction, judgment or decree entered by a Governmental Body of competent jurisdiction, or any Law preventing, enjoining, restraining, making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or the Ancillary Documents; and

(b) the Bankruptcy Court shall have entered the Sale Order (as provided in Article 6) and such order shall be a Final Order and in form and substance satisfactory to Purchaser, in its sole discretion, which order shall not have been reversed, modified, amended or stayed.

8.2 Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived in writing by Seller in its sole discretion:

(a) the representations and warranties made by Purchaser in this Agreement or in any Ancillary Document shall be true and correct in all material respects (without giving effect to any materiality or similar qualification contained therein), in each case as of the Agreement Date and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Purchaser's ability to consummate the transactions contemplated hereby;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 3.3.

8.3 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived in writing by Purchaser in its sole discretion:

(a) Seller shall have delivered to Purchaser (i) a certified copy of the Sale Order, and (ii) copies of all affidavits of service of the Sale Motion and Sale Order filed by or on behalf of Seller;

(b) the representations and warranties made by Seller in this Agreement or in any Ancillary Document shall be true and correct in all material respects (provided that any such representation or warranty that is subject to any materiality, Material Adverse Effect or similar qualification shall be true and correct in all respects after giving effect to any such qualification), in each case as of the Agreement Date and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date);

(c) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by it on or prior to the Closing Date;

(d) Seller shall have delivered, or caused to be delivered, to Purchaser, all of the items set forth in Section 3.2; and

(e) There shall have been no Material Adverse Effect.

ARTICLE IX.

ADDITIONAL DEFINITIONS

9.1 Definitions. As used herein:

(a) “*Accounts Receivable*” shall have the meaning set forth in Section 1.1(c).

(b) “*Acquired Buildings*” shall have the meaning set forth in Section 1.1(g).

(c) “*Acquired Owned Real Property*” shall have the meaning set forth in Section 1.1(d).

(d) “*Action*” means any action, claim, complaint, grievance, summons, suit, litigation, arbitration, mediation, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation by or before any Governmental Body.

(e) “*Affiliate*” has the meaning set forth in Section 101(2) of the Bankruptcy Code.

(f) “*Affiliate Agreement*” means any agreement or contract between any director, officer, employee or greater than five percent (5%) Affiliate of Seller or Affiliate of any such Person, on one hand, and Seller, on the other hand, related to the Business, including any contract providing for the employment of, furnishing of services by, rental of real or personal property from or otherwise requiring payments to any such Person or firm, other than employment-at-will arrangements in the ordinary course of business.

(g) “*Agreement*” shall have the meaning set forth in the preamble.

(h) “*Agreement Date*” shall have the meaning set forth in the preamble.

(i) “*Allocation*” shall have the meaning set forth in Section 10.2.

(j) “*Ancillary Documents*” means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated this Agreement.

(k) “*Assigned Contracts*” shall have the meaning set forth in Section 1.1(b).

(l) “*Assignment and Assumption Agreement*” shall have the meaning set forth in Section 3.2(b).

(m) “*Assumed Leased Real Property*” shall have the meaning set forth in Section 1.1(f).

(n) “*Assumed Liabilities*” shall have the meaning set forth in Section 1.3.

(o) “*Assumption and Assignment of Leases*” shall have the meaning set forth in Section 3.2(h).

(p) “*Avoidance Actions*” shall have the meaning set forth in Section 1.2(v).

(q) “*Bankruptcy Case*” shall have the meaning set forth in the Recitals.

(r) “*Bankruptcy Code*” shall have the meaning set forth in the Recitals.

(s) “*Bankruptcy Court*” shall have the meaning set forth in the Recitals.

(t) “*Bankruptcy Rules*” shall have the meaning set forth in the Recitals.

(u) “*Benefit Plan*” means, to the extent related to the Business, (i) all “*employee benefit plans*” (including, without limitation, as defined in Section 3(3) of ERISA), including all employee benefit plans which are “*pension plans*” (including, without limitation, as defined in Section 3(2) of ERISA) and any other employee benefit arrangements or payroll practices (including severance pay, vacation pay, company awards, salary continuation for disability, sick leave, death benefit, hospitalization, welfare benefit, group or individual health, dental, medical, life, insurance, fringe benefit, deferred compensation, profit sharing, retirement, retiree medical, supplemental retirement, bonus or other incentive compensation, stock purchase, equity-based, stock option, stock appreciation rights, restricted stock and phantom stock arrangements or policies) and (ii) all other employment, termination, bonus, severance, change in control, collective bargaining or other

similar plans, programs, contracts, or arrangements (whether written or unwritten), in each case, maintained, contributed to, or required to be contributed to by Seller or any ERISA Affiliate for the benefit of any current or former employee, director, officer or independent contractor of Seller or under which Seller or any ERISA Affiliate has any liability

(v) “**Bill of Sale**” shall have the meaning set forth in Section 3.2(a).

(w) “**Business**” shall have the meaning set forth in the Section 1.1.

(x) “**Business Day**” means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(y) “**Cash and Cash Equivalents**” means all of Seller’s cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held (but specifically excluding any cash payable by Purchaser to Seller pursuant to this Agreement).

(z) “**Chapter 11 Petition**” shall have the meaning set forth in the Recitals.

(aa) “**Claim**” has the meaning given that term in Section 101(5) of the Bankruptcy Code and includes, *inter alia*, all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment right, obligations, and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

(bb) “**Closing**” shall have the meaning set forth in Section 3.1.

(cc) “**Closing Date**” means the date on which the Closing occurs.

(dd) “**Code**” means the United States Internal Revenue Code of 1986, as the same may be amended from time to time.

(ee) “**Company**” shall have the meaning set forth in the preamble.

(ff) “**Contract**” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment that is binding upon a Person or its property, whether express or implied.

(gg) “**Cure Costs**” shall have the meaning set forth in Section 1.3(b).

(hh) “**Disclosure Schedules**” has the meaning set forth in Article 4.

(ii) “**Documents**” means all of Seller’s written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental plans and reports, data, Permits and Permit applications, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings,

operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form relating to the Business.

(jj) “**Employee**” means an individual who, as of the applicable date, is employed by Seller in connection with the Business.

(kk) “**Encumbrance**” means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, Claim, Liability, interest (as that term is used in section 101(5) of the Bankruptcy Code), right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, restrictive covenants, encroachments, rights of first refusal, preemptive rights, judgments, conditional sale or other title retention agreements and other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever.

(ll) “**Environmental Law**” means all applicable federal, state and local laws, statutes, codes, ordinances, and any judicial and administrative rules, regulations, and orders, relating to (i) human health or safety, (ii) the protection of the environment, or (iii) emissions, discharges or releases of Hazardous Materials or otherwise relating to the treatment, storage, disposal, transport or handling of Hazardous Materials including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 321, et seq., the Oil Pollution Act, 33 U.S.C. § 2702, et seq., the Clean Water Act, 33 U.S.C. § 1251, et seq., and the Clean Air Act, 42 U.S.C. § 7401, et seq., and their state and local counterparts.

(mm) “**Environmental Liabilities and Obligations**” means all Liabilities arising from any actual or threatened impairment, impact or damage to the environment, health or safety, or any actual or threatened failure to comply with Environmental Law in connection with the prior or ongoing ownership or operation of the Business, the Purchased Assets, or the Assumed Leased Real Property or the Acquired Owned Real Property where the Business is currently located, including Liabilities related to: (i) the transportation, storage, use, arrangement for disposal or disposal of Hazardous Materials; (ii) the Release of Hazardous Materials, including migration onto or from the real property where the Business is located; (iii) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (iv) any other obligations imposed under Environmental Law including all applicable Permits; (v) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports; and (vi) all obligations with respect to personal injury, property damage, wrongful death and other damages and losses arising under applicable Law as a result of any of the matters identified in clauses (i)-(v) of this definition.

(nn) “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

(oo) “**ERISA Affiliate**” means any entity which is a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), (C) an affiliated service group (as defined under Section 414(m) of the Code) or (D) any group specified in Treasury Regulations promulgated under Section 414(o) of the Code, any of which includes or included Seller.

(pp) “**Escrow Agent**” means a third-party entity approved by the parties hereto, which entity will have fiduciary obligations with respect to the transfer of funds related to this Agreement and whose actions will be governed by an escrow agreement approved by the parties hereto.

(qq) “**Excluded Assets**” shall have the meaning set forth in Section 1.2.

(rr) “**Excluded Liabilities**” shall have the meaning set forth in Section 1.4.

(ss) “**Final Order**” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in Seller’s Bankruptcy Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of *certiorari* new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

(tt) “**FIRPTA Certificate**” shall have the meaning set forth in Section 10.4.

(uu) “**GAAP**” means United States generally accepted accounting principles as in effect from time to time.

(vv) “**Governmental Body**” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

(ww) “**Ground Lease**” shall have the meaning set forth in Section 4.6(a).

(xx) “**Hazardous Material**” means any substance, material or waste which is regulated by any Governmental Body, including petroleum and its by-products, asbestos, and any material or substance which is defined or identified as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “pollutant,” “toxic waste” or “toxic substance” or otherwise regulated under or the subject of any provision of Environmental Law.

(yy) “**Indebtedness**” of any Person means, without duplication, (i) the interest in respect of, principal of and premium (if any) in respect of (x) indebtedness of such Person for money borrowed and (y) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person with respect to any Contracts relating to the deferred and unpaid purchase price of property or services,

including any interest accrued thereon and prepayment or similar penalties and expenses; (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Encumbrance (other than Permitted Encumbrances), on any property or asset of such Person (whether or not such obligation is assumed by such Person).

(zz) **"Intellectual Property"** means all intellectual property and proprietary rights of any kind, including the following: (i) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a's or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (iii) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (iv) computer software, computer programs, and databases (whether in source code, object code or other form); and (v) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

(aaa) **"Inventory"** means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) related to the Business maintained or held by, stored by or on behalf of, or in transit to, any of the Seller.

(bbb) **"Knowledge"** or (**"Knowledge of Seller"** or **"Seller's Knowledge"**) means the actual knowledge of the Seller's President/CEO, the actual knowledge of the officers or management of the Seller, in each case, including facts of which any such individual should be aware in the reasonably prudent exercise of his or her duties.

(ccc) **"Land"** shall have the meaning set forth in Section 5.9.

(ddd) **"Law"** means any federal, state, local, municipal, foreign or international, multinational or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body, in each case as in effect as of the Closing Date.

(eee) **"Lease"** shall have the meaning set forth in Section 4.6(a).

(fff) **"Leased Real Property"** means all of the real property leased, subleased, used or occupied by any of the Seller, together with all buildings, structures, fixtures and improvements erected thereon, and any and all rights privileges, easements, licenses, hereditaments and other appurtenances relating thereto, and used, or held for use, in connection with the operation of the Business.

(ggg) “**Liability**” means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(hhh) “**Material Adverse Effect**” means any event, change, occurrence or state of facts that has had, or is reasonably likely to have, individually or in the aggregate, a material adverse effect on the assets, Liabilities, Business, operations, properties, financial condition or results of operations of the York Plant, provided, however, that in no event shall any of the following, alone or in combination, be deemed to constitute, or be taken into account, in determining whether there has been, or would be, a Material Adverse Effect: (a) changes in the U.S. economy or capital markets in general but that do not have a disproportionate effect on the Seller relative to other participants in the industry in which the Seller conducts the Business, (b) changes that affect generally the industry in which the Seller operates but that do not have a disproportionate effect on the Seller relative to other participants in the industry in which the Seller conduct the Business, (c) changes after the Agreement Date in any applicable Law or GAAP or other applicable accounting standards or interpretations thereof, (d) national or international political or social actions or conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof, and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, or (e) the commencement of the Bankruptcy Case.

(iii) “**Order**” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, mandate, precept, command, directive, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Body.

(jjj) “**Ordinary Course of Business**” means the ordinary and usual course of normal day to day operations of the Business consistent with past practice.

(kkk) “**Organizational Documents**” means, with respect to a particular entity Person, (i) if a corporation, the articles or certificate of incorporation and bylaws, (ii) if a general partnership, the partnership agreement and any statement of partnership, (iii) if a limited partnership, the limited partnership agreement and certificate of limited partnership, (iv) if a limited liability company, the articles or certificate of organization or formation and any limited liability company or operating agreement, (v) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (vi) all amendments or supplements to any of the foregoing.

(lll) “**Outside Date**” shall have the meaning set forth in Section 3.4(b).

(mmm) “**Owned Buildings**” shall have the meaning set forth in Section 4.6(b).

(nnn) “**Owned Real Property**” shall have the meaning set forth in Section 4.6(b).

(ooo) “**Party**” shall have the meaning set forth in the preamble.

(ppp) “**Permits**” means to the fullest extent permitted under applicable law, all notifications, licenses, permits (including environmental, construction and operation permits),

franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, variances, orders, tariffs, rate schedules and other similar documents and authorizations issued by any Governmental Body to any of the Seller and used, or held for use, in connection with the operation of the Business or applicable to ownership of the Purchased Assets or assumption of the Assumed Liabilities.

(qqq) **“Permitted Encumbrances”** means (i) Encumbrances for utilities and current Taxes not yet due and payable or being contested in good faith; (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Purchased Assets which do not, individually or in the aggregate, adversely affect the operation of the Business and, in the case of the Owned Real Property and Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Owned Real Property or Leased Real Property as it relates to the operation of the Business or materially detract from the value of the Owned Real Property or Leased Real Property, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law, (iv) materialmens’, mechanics’, artisans’, shippers’, warehousemens’ or other similar common law or statutory liens incurred in the Ordinary Course of Business, securing amounts, the payment of which is not delinquent and are listed as accounts payable in Seller’s balance sheet as disclosed to Purchaser in a schedule to be attached hereto and do not in the aggregate exceed \$25,000, (v) licenses granted on a non-exclusive basis, (vi) Encumbrances arising from the transfer of Intellectual Property pursuant to this Agreement relating to the past acts or prior commitments of Seller and all previous owners of such Intellectual Property and (vii) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion or which do not, individually or in the aggregate, materially and adversely affect the operation of the Business.

(rrr) **“Person”** means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(sss) **“Personal Property Leases”** shall have the meaning set forth in Section 4.7.

(ttt) **“Petition Date”** means the date on which the Seller commenced the Bankruptcy Case.

(uuu) **“Post-Closing Tax Period”** means any taxable period (or portion thereof) beginning after the Closing Date.

(vvv) **“Pre-Closing Period”** means the period commencing on the Agreement Date and ending on the earlier of the date upon which this Agreement is terminated pursuant to Section 3.4 or the Closing Date.

(www) **“Pre-Closing Tax Period”** means any taxable period (or portion thereof) ending on or before the Closing Date.

(xxx) **“Previously Omitted Contract”** shall have the meaning set forth in Section 1.6(b)(i).

(yyy) **“Previously Omitted Contract Designation”** shall have the meaning set forth in Section 1.6(b)(i).

(zzz) “**Previously Omitted Contract Notice**” shall have the meaning set forth in Section 1.6(b)(ii).

(aaaa) “**Purchase Price**” shall have the meaning set forth in Section 2.1(a).

(bbbb) “**Purchased Assets**” shall have the meaning set forth in Section 1.1.

(cccc) “**Purchaser**” shall have the meaning set forth in the preamble.

(dddd) “**Purchaser Designee**” shall have the meaning set forth in the preamble.

(eeee) “**Regulatory Approvals**” means any consents, waivers, approvals, orders Permits or authorizations of any Governmental Body required in connection with the execution, delivery and performance of this Agreement of any Ancillary Document and the consummation of the transactions contemplated hereby and thereby.

(ffff) “**Release**” means any actual or threatened release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal or leaching into the indoor or outdoor environment, or including migration to or from a property, including but not limited to any Owned Real Property or Leased Real Property.

(gggg) “**Remedial Action**” means all actions to (i) investigate, clean up, remove, treat or in any other way address any Hazardous Material; (ii) prevent the Release of any Hazardous Material; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Laws.

(hhhh) “**Rejected Contracts**” shall have the meaning set forth in Section 1.6(a)(i).

(iiii) “**Representatives**” shall have the meaning set forth in Section 7.2.

(jjjj) “**Sale Motion**” shall have the meaning set forth in Section 6.2(a).

(kkkk) “**Sale Hearing**” means the hearing to approve this Agreement and seeking entry of the Sale Order.

(llll) “**Sale Motion**” means the motion or motions of Seller, in form and substance reasonably acceptable to Seller and Purchaser, seeking approval and entry of the Sale Order.

(mmmm) “**Sale Order**” means an order substantially in the form attached hereto as Exhibit F and otherwise in form and substance reasonably satisfactory to Seller and Purchaser.

(nnnn) “**Seller**” shall have the meaning set forth in the preamble.

(oooo) “**Straddle Period**” shall have the meaning set forth in Section 10.1(b).

(pppp) “**Tax**” and “**Taxes**” mean (a) any and all taxes, including any federal, state, provincial, local, foreign or other income, gross receipts, sales, value added, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, capital, production,

recapture, net worth, surplus, customs, duties, levies, surtaxes or other taxes, fees, assessments, reassessments or charges of any kind whatsoever, together with any interest, additions, installments or penalties with respect thereto and any interest in respect of such additions or penalties, (b) any Liability for the payment of any items described in clause (a) above as a result of being (or ceasing to be) a member of an affiliated, consolidated, combined, unitary or aggregate group (or being included (or being required to be included)) in any Tax Return related to such group (including any Liability pursuant to Section 1.1502-6 of the Treasury Regulations, or any similar provision of state, local or non-U.S. law), and (c) any Liability for the payment of any amounts as a result of any express or implied obligation to indemnify any other Person, or any successor or transferee liability, by contract or otherwise in respect of any items described in clause (a) or (b) above.

(qqqq) “**Tax Proceeding**” means any action, suit, investigation, audit, Claim, investigation, or other action or proceeding with respect to Taxes.

(rrrr) “**Tax Refunds**” shall have the meaning set forth in Section 1.2(s).

(ssss) “**Tax Return**” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including amendments thereto.

(tttt) “**Treasury Regulations**” means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

ARTICLE X.

TAXES

10.1 Certain Taxes.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes which may be payable by reason of the sale of the Purchased Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby, and that are not exempt under Section 1146(a) of the Bankruptcy Code, shall be borne and timely paid by the Seller. The Seller shall, at its own expense, timely file any Tax Return or other document required to be filed with respect to such Taxes, and Purchaser shall join in the execution of any such Tax Return if required by Law.

(b) In the case of any taxable period that begins before, and ends after, the Closing Date (a “**Straddle Period**”), any real property, personal property, ad valorem and similar Taxes allocable to the portion of such Straddle Period ending with the end of the day on the Closing Date shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that is in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period, which amount shall be an Excluded Liability and shall be paid by Seller.

10.2 Allocation of Purchase Price. As soon as reasonably practicable after the Closing Date, the Purchaser shall determine the allocation of (a) the Purchase Price, plus (b) the Assumed Liabilities, plus (c) all other items required to be treated as consideration for federal income Tax purposes, among the Purchased Assets and the agreements provided for herein, for all purposes (including financial,

accounting and Tax) (the “*Allocation*”). The Purchaser and the Seller shall each report the federal, state and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation unless otherwise required under applicable Law. The Seller shall provide the Purchaser and the Purchaser shall provide Seller with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

10.3 Cooperation on Tax Matters. The Purchaser and the Seller agree to provide each other with such information and assistance as is reasonably necessary, including access to records, Tax Returns and personnel, for the preparation of any Tax Returns or for the defense of any Tax claim or assessment, whether in connection with a Tax Proceeding or otherwise.

10.4 FIRPTA Certificate. The Seller shall deliver to the Purchaser on the date hereof a properly executed affidavit of non-foreign status, reasonably satisfactory to Purchaser, that complies with Section 1445 of the Code and Section 1.1445-2(b)(2) of the Treasury Regulations (the “*FIRPTA Certificate*”). If the Purchaser does not so receive a properly executed FIRPTA Certificate from the Seller, then the Purchaser shall be permitted to withhold from any payment to be made (or deemed to be made) pursuant to this Agreement to the Seller any required withholding Tax under Section 1445 of the Code as determined by the Purchaser. Any amounts withheld shall be treated for all purposes of this Agreement as having been paid to the Seller in respect of which such withholding was made.

ARTICLE XI.

MISCELLANEOUS

11.1 Payment of Expenses. Except as otherwise provided in this Agreement (including, but not limited to Section 3.5) and whether or not the transactions contemplated hereby are consummated, Seller and the Purchaser shall bear their own expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

11.2 Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

11.3 Entire Agreement; Amendments and Waivers. This Agreement, together with the Confidentiality Agreement and the Ancillary Documents, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided, that the Schedules hereto may be amended in accordance with Section 1.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right,

power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

11.4 Assignment. Neither Seller nor Purchaser may assign or delegate any duties or obligations under this Agreement without the prior written consent of the other, which consent may be granted or withheld in the sole discretion of the party whose consent is so required, except that Purchaser may assign its rights and obligations under the Agreement with respect to any or all designated Plants to one or more wholly-owned Affiliates of Purchaser (“*Assignee*”) provided that such Assignee assumes in writing all of the duties and obligations of Purchaser hereunder with respect to such designated Plants; provided, however, any assignment by Purchaser of its obligations to the Assignee will not relieve Purchaser of its obligations hereunder, with Seller acknowledging and agreeing, however, that Purchaser shall have no post-closing obligation to them in connection with any Purchased Assets (including, without limitation, any Assumed Leased Real Property) that is assigned or transferred to and assumed by the Assignee.

11.5 Execution of Agreement; Counterparts; Electronic Signatures.

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

(b) The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“*.pdf*”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

11.6 Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF DELAWARE SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF (EXCEPT FOR ANY LAWS OF THAT STATE WHICH WOULD RENDER SUCH CHOICE OF LAWS INEFFECTIVE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

11.7 Jurisdiction, Waiver of Jury Trial.

(a) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF MISSOURI AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN MISSOURI WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY,

ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.

(b) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.8 Notices. Unless otherwise set forth herein, any notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), or (b) sent by facsimile or e-mail, in each case, if sent during the normal business hours of the recipient, with confirmation of transmission by the transmitting equipment confirmed with a copy delivered as provided in clause (a), in the case of each of clauses (a) and (b), to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a Party may designate by notice to the other Parties):

If to Seller, to:

Abengoa Bioenergy New Technologies, LLC
16150 Main Circle Drive
Suite 300
Chesterfield, Missouri 63017
Attention: General Counsel
E-mail address: Jeffrey.Bland@abengoa.com

With a copy (which shall not constitute effective notice) to:

DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601
Fax no.: (312) 236-7516
Attention: Richard Chesley and Ann Lawrence
E-mail address: Richard.Chesley@dlapiper.com; Ann.Lawrence@dlapiper.com

If to Purchaser, to:

Green Plains Inc.
450 Regency Parkway, Suite 400
Omaha, NE 68114
Attention: Todd Becker
E-mail address: Todd.Becker@gpreinc.com

With a copy (which shall not constitute effective notice) to:

Green Plains Inc.
450 Regency Parkway, Suite 400
Omaha, NE 68114
Attention: Michelle Mapes, EVP - General Counsel & Corporate Secretary
E-mail address: Michelle.Mapes@gpreinc.com

11.9 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to entry of the Sale Order, Seller, and inure to the benefit of the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by Seller or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without such required consents shall be void.

11.10 No Assumption of Liabilities. This Agreement constitutes a sale of certain assets of Seller only and is not a sale of any stock in any entity comprising Seller.

(a) Except as otherwise provided herein, by entering into this Agreement or performing any act or agreement hereunder, except as expressly set forth herein, Purchaser does not assume any obligations or liabilities of Seller and shall not be responsible for the payment of any liabilities of or obligations of Seller whatsoever, including, without limitation, the following:

(i) Claims by Seller's employees, former employees or others under any contract, agreement or the like or any state, Federal, local or other laws, statutes, executive order, regulations, ordinances, codes or the like including, but not limited to, claims in connection with employee wages, vacation pay, severance pay, holiday pay, sick leave pay, detrimental reliance claims, implied contract claims, WARN notice claims, worker's compensation claims, ERISA claims, COBRA claims, Civil Rights Laws claims, claims under the Fair Labor Standards Act or Labor Management Relations Act, Americans With Disabilities Act, Family Medical Leave Act, employment discrimination claims of all types, claims regarding health and welfare benefits or premiums, sexual harassment claims, disability claims, Family and Medical Leave Act claims, pension fund liability (whether for current or unfunded accrued liabilities), claims or other problems arising under OSHA, claims in connection with environmental problems, claims arising out of Seller's agreements with third parties or any other obligations of any kind or character arising out of Seller's acts, omissions or agreements;

(ii) Demands, causes of action, obligations or liabilities (including damages, costs and reasonable attorneys' fees) from any claim of any third party arising out of Seller's acts, omissions or agreements.

11.11 There is no agency relationship between Seller and Purchaser; Purchaser is not a successor or assign or alter ego to Seller. Seller and Purchaser are not involved in a joint venture, Purchaser is not required to continue operations at any of Seller's former facilities. If in its sole discretion, Purchaser hires former employees, managers or supervisors of Seller, these individuals shall be employed as new employees of Purchaser. All individuals considered for employment by Purchaser, if any, will be hired on the basis of qualifications, as determined by Purchaser. Purchaser does not assume and is not responsible for any liability Seller may have to retired persons or former employees. Seller represent to Purchaser that they have, or will before the Closing Date, satisfied their liabilities and/or obligations accruing prior to the Closing Date to all other persons who are affected by the closing of Seller's business operations; provided, however, if such obligations are of a nature such that they cannot be satisfied prior to the Closing Date, Seller shall diligently cause the satisfaction of such obligations as soon as practicable after the Closing Date.

11.12 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable

in any respect under any applicable Law in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction and in lieu of such invalid, illegal or unenforceable provision or portion of any provision, there will be added automatically as a part of this Agreement a valid legal and enforceable provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible.

11.13 Bulk Sales Laws. Each Party hereby waives compliance by the Parties with the “*bulk sales*,” “*bulk transfers*” or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement or any Ancillary Document.

11.14 Access and Right to Use. Purchaser shall, upon reasonable advance notice, afford to Seller’s officers, independent public accountants, attorneys, consultants and other representatives, reasonable access during normal business hours to the Purchased Assets and all records pertaining to the Purchased Assets on a royalty-free basis solely for the purpose of enabling the Seller to conduct an orderly wind-down of the Seller’s operations until such time as the wind-down is completed on or before the three month anniversary. Seller expressly acknowledge that nothing in this Section is intended to give rise to any contingency to Seller’s obligations to proceed with the transactions contemplated herein.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be duly executed and delivered as of the date first above written.

Green Plains York, LLC,
a Delaware limited liability company,

By: _____

Name:

Title:

ABENGOA BIOENERGY NEW TECHNOLOGIES,
LLC, A Missouri Limited Liability Company

By: _____

Name:

Title: