

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

In re:

ABENGOA BIOENERGY BIOMASS OF
KANSAS, LLC,

Debtor.

Case No. 16-10446

Chapter 11

**MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) (A) APPROVING AND
AUTHORIZING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) APPROVING STALKING
HORSE PROTECTIONS, (C) APPROVING PROCEDURES RELATED TO THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, (D) APPROVING THE FORM AND MANNER OF NOTICE
THEREOF, AND (II) (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF
THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES RELATED THERETO,
AND (C) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession ("Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), by and through its counsel, DLA Piper LLP (US) and Armstrong Teasdale LLP, hereby submit this motion (the "Motion") for the entry of an order pursuant to sections 105(a), 363 and 365 title 11 of the United States Code (as amended, the "Bankruptcy Code") and Rules 2002, 6005, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order: (i)(a) approving procedures in connection with the sale of substantially all of the assets of the Debtor, (b) approving Stalking Horse Protections (as defined below), (c) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases, (d) approving the form and manner of notice thereof, and (ii)(a) authorizing the sale of substantially all of the Debtor's assets free and clear of all liens, claims, encumbrances and other interests, except as provided in the Stalking Horse Agreement (as defined below), (b) approving the assumption and assignment of

certain of the Debtor's executory contracts and unexpired leases related thereto, and (c) granting related relief. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105(a), 363 and 365 title 11 of the Bankruptcy Code and Bankruptcy Rules 2002, 6005, 6006, 9007 and 9014.

BACKGROUND

A. Procedural Background

2. On March 23, 2016, three subcontractors (the "Petitioning Creditors") asserting disputed state law lien claims against the Debtor filed an involuntary petition in this Court under chapter 7 of the Bankruptcy Code.

3. On April 8, 2016, this Court entered an order [Docket No. 33] converting the case to a case under chapter 11 of the Bankruptcy Code. On April 25, 2016, the Court entered an order [Docket No. 69] denying the Debtor's motion to transfer venue of this Chapter 11 Case to the United States Bankruptcy Court for the District of Delaware where several of the Debtor's affiliates' chapter 11 cases are pending.

4. On June 14, 2016, the United States Trustee appointed an official committee of unsecured creditors (the "Committee"). No trustee or examiner has been appointed in this Chapter 11 Case.

5. On June 24, 2016, the Court entered a *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 364, and 507, Bankruptcy Rules 2002, 4001, 6004, and 9014 (I) Authorizing Debtor Abengoa Bioenergy Biomass of Kansas, LLC to Obtain Financing, (II) Granting Liens and*

Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Lienholders and (IV) Granting Related Relief [Docket No. 217] (the “Final DIP Order”), approving a \$3.69 million debtor-in-possession financing package (the “DIP Financing”) from Reich Brothers Business Solutions, LLC (the “DIP Lender”) and pursuant to an approved debtor-in-possession budget (the “DIP Budget”).

B. The Debtor’s Restructuring Efforts

6. Since the Petition Date, the Debtor and its professionals have undertaken substantial efforts to accomplish two major tasks: (a) assuring smooth transition to operating as debtor in possession in the Chapter 11 Case; and (b) effectuating a marketing process for the Debtor’s assets. To that end, the Debtor worked diligently with its advisors to obtain the DIP Financing, and to develop a budget that would enable the Debtor to facilitate the marketing process in order to maximize the value of the Debtor’s assets.

C. The Potential Sale of the Debtor Assets

7. The Debtor has determined, after the exercise of due diligence and in consultation with its advisors that maximizing the value of the Debtor’s estate would best be accomplished through the sale of the Debtor’s assets (as described more fully herein, the “Purchased Assets”).

8. To that end, and following a comprehensive marketing process employed by the Debtor’s financial advisor and investment banker, Ocean Park Advisors, LLC (“Ocean Park”), the Debtor and Shell Oil Company, a Delaware corporation (“Shell” or the “Stalking Horse Purchaser”) entered into that certain asset purchase agreement (together with the schedules and related documents thereto, the “Stalking Horse Agreement”), for the sale by the Debtor of the Purchased Assets to the Stalking Horse Purchaser, free and clear of all liens, claims and

encumbrances (the “Sale”). The Sale, pursuant to the Stalking Horse Agreement, is subject to competitive bidding as set forth herein.

9. Under the Stalking Horse Agreement, the Stalking Horse Purchaser has agreed to purchase the Purchased Assets for the Purchase Price (as defined in the Stalking Horse Agreement). The Stalking Horse Purchaser, in making its offer, has relied upon the agreement by the Debtor to seek the Court’s approval of reimbursement of the Stalking Horse Purchaser’s reasonable fees, costs, disbursements and expenses incurred in connection with the transaction contemplated by the Stalking Horse Agreement through the date of termination, subject to a cap of \$100,000 (the “Expense Reimbursement”) and a break-up fee in an amount equal to 2.5% of the Purchase Price (the “Break-Up Fee,” and together with the Expense Reimbursement, the “Stalking Horse Protections”), and in reasonable expectation that this Court will enter an order providing such relief. The Debtor, in the exercise of its business judgment, believes that the Stalking Horse Protections are a mandatory component of the Stalking Horse Purchaser’s bid and therefore a necessary cost of preserving the value of the Debtor’s estate. Accordingly, the Stalking Horse Protections are necessary to establish a “floor” for the sale of the Purchased Assets and ultimately to encourage competitive bidding and realization of the highest value for the Purchased Assets.

10. The sale of the Purchased Assets pursuant to the procedures and on the timeline proposed herein presents the best opportunity to maximize the value of the Purchased Assets for all interested parties.

RELIEF REQUESTED

11. By this Motion, the Debtor requests entry of an order (the “Bidding Procedures Order”):

a) approving the bidding procedures described herein and attached hereto as

Exhibit B (the “Bidding Procedures”);

- b) approving the Stalking Horse Protections;
- c) scheduling a hearing to approve the sale of the Purchased Assets on or before November 22, 2016 (the “Sale Hearing”);
- d) approving procedures (the “Cure Procedures”), as set forth below, for the assumption and assignment of certain executory contracts (the “Contracts”) and unexpired leases (the “Leases”), and to resolve any objections thereto; and
- e) approving the form of notice (i) of an auction (an “Auction”) and Sale (the “Procedures Notice”), attached hereto as Exhibit C, to be served on the Procedures Notice Parties (as defined below), and (ii) to parties holding Contracts and Leases likely to be assumed and assigned in connection with the sale of Purchased Assets, in the form attached hereto as Exhibit D (the “Cure Notice”).

12. The Debtor also requests entry of an order (the “Sale Order”), pursuant to sections 105, 363, and 365 of the Bankruptcy Code: (a) approving the sale of the Purchased Assets to the Successful Bidder (defined herein), free and clear of all liens, claims, encumbrances and liabilities, except as expressly and only as is provided in the Stalking Horse Agreement, and (b) authorizing the Debtor to consummate the Sale and all documents, agreements and contracts executed in conjunction therewith.

Assets To Be Sold

13. As noted above, the Debtor seeks to complete a sale (the “Sale”) of the Purchased Assets. The Purchased Assets and Excluded Assets are specifically set forth in the Stalking Horse Agreement.¹

14. The Debtor will entertain cash bids for the Purchased Assets. Except as otherwise provided in the Stalking Horse Agreement, all of the Debtor’s rights, title and interest

¹ The Stalking Horse Agreement is attached hereto as Exhibit A. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Stalking Horse Agreement.

in the Purchased Assets shall be sold free and clear of any liens, security interests, claims, charges or encumbrances, in accordance with section 363 of the Bankruptcy Code.

15. The Debtor proposes that any such liens, security interests, claims, charges or encumbrances shall attach to the amounts payable to the Debtor's estate resulting from the Sale, net of any transaction fees (the "Sale Proceeds"), in the same order of priority and subject to the rights, claims, defenses, and objections, if any, of all parties with respect thereto, subject to any further order of the Court.

Summary of Proposed Bidding Procedures²

16. In order to ensure that the Debtor receives the maximum value for the Purchased Assets, the Stalking Horse Agreement is subject to higher or better offers, and, as such, the Stalking Horse Agreement will serve as the "stalking-horse" bid for the Purchased Assets.

17. The Debtor proposes the following deadlines in connection with the Bidding Procedures:

- a) Entry of Bidding Procedures Order: October 21, 2016
- b) Assumption/Assignment and Cure Objection Deadline: November 4, 2016
- c) Sale Objection Deadline: November 4, 2016
- d) Bid Deadline: November 18, 2016 at 4:00 p.m. Central Time (the "Bid Deadline")
- e) Auction: November 21, 2016 (the "Auction Date")
- f) Sale Hearing: November 22, 2016

² This summary of the bidding procedures is provided for reference only. A complete version of the proposed bidding procedures is attached hereto as Exhibit B.

i. Provisions Governing Qualifications of Bidders

18. In order to participate in the bidding process, prior to the Bid Deadline, each person other than the Stalking Horse Purchaser who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties (as defined below):

- a. a written disclosure of the identity of each person or entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid; and
- b. an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor, in substantially the same form as signed by the Stalking Horse Purchaser and which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

19. A Potential Bidder that delivers the documents and information described above and that the Debtor determines in its reasonable business judgment, after consultation with the Committee, is likely (based on availability of financing, experience and other considerations) to be able to consummate the sale, will be deemed a “Qualified Bidder.” The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, after consultation with the Committee, are not pursuing the transaction in good faith.

20. As promptly as practicable after a Potential Bidder delivers all of the materials required above, the Debtor will determine and notify the Potential Bidder if such Potential Bidder is a Qualified Bidder.

ii. Due Diligence

21. The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor deems appropriate, in its reasonable discretion, which must include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information. The

Debtor must promptly advise the Stalking Horse Purchaser in the event that any other Potential Bidder receives diligence the Stalking Horse Purchaser has not previously received and shall promptly be provided with access to such diligence materials. The due diligence period shall extend through and include the Bid Deadline. Additional due diligence will not be provided after the Bid Deadline.

iii. Provisions Governing Qualified Bids

22. A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with each of the following (a “Qualified Bid”):

- a. it states that the applicable Qualified Bidder offers to purchase, in cash, the Purchased Assets upon the terms and conditions that the Debtor, in consultation with the Committee, reasonably determines are, in the aggregate, no less favorable to the Debtor than those set forth in the Stalking Horse Agreement;
- b. it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder and/or the Back-Up Bidder (as defined below), its offer shall remain irrevocable until the earlier of (i) the closing of the sale to the Successful Bidder, or (ii) the Outside Date (as defined in the Stalking Horse Agreement); provided further that if such bidder is selected as the Back-Up Bidder its offer shall remain irrevocable until the earlier of (i) the closing of the sale to the Successful Bidder, (ii) the closing of the sale to such Qualified Bidder, as the Back-Up Bidder, or (iii) the Outside Back-Up Date (as defined in the Stalking Horse Agreement);
- c. confirmation that there are no conditions precedent to the Qualified Bidder’s ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- d. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Purchased Assets expressed in U.S. Dollars (the “Purchase Price”), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement (“Marked Agreement”), and, with respect to the Purchased Assets, the proposed order to approve the sale by the United States Bankruptcy Court for the District of Kansas (the “Bankruptcy Court”);

- e. it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Qualified Bidder's Marked Agreement;
- f. it provides for the repayment of all other costs, simultaneously with the closing of the transaction contemplated under the Qualified Bidder's Marked Agreement;
- g. it has a value to the Debtor with respect to the Purchased Assets, in the Debtor's exercise of its reasonable business judgment, after consultation with the Committee, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (A) the Stalking Horse Protections, plus (B) \$250,000 (the "Initial Overbid");
- h. it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume, and for the purchase of Purchased Assets, provides details of the Qualified Bidder's proposal for the treatment of related cure costs;
- i. it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Marked Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- j. it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Marked Agreement;
- k. it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to 10% of the Purchase Price (as defined in the Marked Agreement);
- l. it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;

- m. with respect to the purchase of Purchased Assets, it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- n. it contains such other information reasonably requested by the Debtor; and
- o. it is received prior to the Bid Deadline.

23. Notwithstanding the foregoing, Shell, in its capacity as the Stalking Horse Purchaser, will be deemed a Qualified Bidder, and the Stalking Horse Agreement will be deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

24. The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether any bids (other than the Stalking Horse Agreement) constitute Qualified Bids and identify any such bid(s) promptly after making such determination; provided, however, that such notification shall not be given later than one (1) business day following the expiration of the Bid Deadline.

iv. Bid Deadline

25. A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the Debtor: DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent P. Slusher (vince.slusher@dlapiper.com), and 203 N. LaSalle Street, Suite 1900, Chicago, IL 60601, Attn: David E. Avraham (david.avraham@dlapiper.com); (ii) counsel to the Debtor: Armstrong Teasdale LLP, 2345 Grand Blvd., Suite 1500, Kansas City, Missouri 64108, Attn: Christine L. Schlomann (cschlomann@armstrongteasdale.com) (iii) counsel to the Stalking Horse Purchaser: Norton Rose Fulbright US, LLP, 2200 Ross Avenue, Suite 3600, Dallas, TX 75201, Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com); (iv) counsel to the Committee: Baker &

Hostetler LLP, 127 Public Square, Suite 2000, Cleveland, OH 44114, Attn: Kelly S. Burgan (kburgan@bakerlaw.com); and (v) counsel to the DIP Lender: Katten Muchin Rosenman LLP, 525 W. Monroe Street, Chicago, IL 60661, Attn: Paige E. Barr (paige.barr@kattenlaw.com); so as to be received by the Notice Parties no later than the Bid Deadline. The Bid Deadline may be extended by Debtor in its sole discretion, after consultation with the Committee, upon written notice to the Notice Parties.

v. Evaluation of Competing Bids

26. A Qualified Bid will be valued based upon several factors including, without limitation, (a) the amount of such bid, (b) the risks and timing associated with consummating such bid, (c) any proposed revisions to the Stalking Horse Agreement, (d) the ability of the Potential Bidders to obtain appropriate regulatory approvals, (e) any conditions or cross-conditions to closing and (f) any other factors deemed relevant by the Debtor in its reasonable discretion after consultation with the Committee.

vi. No Qualified Bids

27. If the Debtor does not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtor will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder upon the expiration of the Bid Deadline.

vii. Auction Process

28. If the Debtor receives one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtor will conduct the Auction of the Purchased Assets, which shall take place at 10:00 a.m. (CT) on November 21, 2016 at the offices of Abengoa Bioenergy, 16150 Main Circle Drive, Suite 300, Chesterfield, MO 63017, or such other location as shall be timely communicated to all entities entitled to attend the Auction, and shall be transcribed. The Auction shall run in accordance with the following procedures:

- a. only the Debtor, the Stalking Horse Purchaser, the Committee, the DIP Lender, and the advisors to each of them, and any other Qualified Bidder that has timely submitted a Qualified Bid, shall attend the Auction in person, and only the Stalking Horse Purchaser and such other Qualified Bidders will be entitled to make any Subsequent Bids (as defined below) at the Auction;
- b. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- c. prior to the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Sellers whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. Prior to the Auction, the Debtor will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtor believes, in its reasonable discretion after consultation with the Committee, is the highest or otherwise best offer (each, a "Starting Bid") to the Stalking Horse Purchaser and all other Qualified Bidders;
- d. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;
- e. the Debtor, after consultation with the Committee and upon notice to the Stalking Horse Purchaser, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction;
- f. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a "Subsequent Bid") providing a net value to the Debtor's estate of at least \$250,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid (and the value of such bid) that it believes to be the highest or otherwise best bid (each, the "Leading Bid");
- g. a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

- h. except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtor will give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor; and
- i. the Auction shall conclude at such time as the Debtor has achieved the highest and otherwise best Purchase Price for the Purchased Assets. Once the Auction is closed, the Auction shall not be re-opened without order of the Bankruptcy Court.

viii. Selection of Successful Bid

29. Prior to the conclusion of the Auction, the Debtor, in consultation with the Committee, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders (including the Stalking Horse Purchaser) submitted at the Auction for the Purchased Assets (the “Successful Bid” and the bidder making such bid, the “Successful Bidder”), and communicate to the Stalking Horse Purchaser and the other Qualified Bidders the identity of the Successful Bidder and provide the details of the Successful Bid. The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

30. Within one (1) business day after conclusion of the Auction, the Debtor shall file a notice with the Bankruptcy Court identifying the Successful Bidder. Within two (2) business days after conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

ix. Return of Deposits

31. All good faith deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business

days following the conclusion of the Auction. The Successful Bidder will not receive its deposit if the Successful Bidder fails to close on the Sale of the Purchased Assets.

x. Back-Up Bidder

32. If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid with respect to the Purchased Assets, as determined by the Debtor in the exercise of its business judgment, shall be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep such bid open and irrevocable until the earliest of (a) the closing of the sale to the Successful Bidder, (b) the closing of the sale to the Back-Up Bidder, and (c) the Outside Back-Up Date. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder shall be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the sale with the Back-Up Bidder.

xi. The Stalking Horse Protections

33. In recognition of this expenditure of time, energy, and resources, the Debtor has agreed to pay the Stalking Horse Purchaser (a) the Break-Up Fee, and (b) the Expense Reimbursement. The Break-Up Fee and Expense Reimbursement shall be payable as provided for pursuant to the terms of the Stalking Horse Agreement.

34. The Debtor has further agreed that its obligation to pay the Break-Up Fee and Expense Reimbursement pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, and shall, to the extent owed by the Debtor, with respect to the Purchased Assets, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code and shall be payable from the proceeds of the Purchased Assets within two (2) days following the closing with the Successful Bidder under the terms and conditions of the

Stalking Horse Agreement and the Bidding Procedures Order, notwithstanding section 507(a) of the Bankruptcy Code.

xii. Sale Hearing

35. With regard to the Purchased Assets, the Debtor will seek entry of an order from the Bankruptcy Court at a hearing (the “Sale Hearing”) within one day following the conclusion of the Auction, to approve and authorize the sale transaction to the Successful Bidder, on terms and conditions determined in accordance with the Bidding Procedures and pursuant to a sale order which shall be acceptable to the Successful Bidder in its reasonable discretion.

xiii. Closing

36. The closing on the sale of the Purchased Assets shall be consummated as soon as practicable following the Sale Hearing, but no later than December 8, 2016.

Notice of Sale Hearing

37. As stated above, the Debtor requests that this Court schedule the Sale Hearing on November 22, 2016. The Debtor proposes that any objections to the Sale be filed by November 4, 2016.

38. The Debtor also requests that the Court approve the form of the Procedures Notice, substantially in the form of Exhibit C hereto. The Debtor will serve a copy of the Procedures Notice on the following parties: (a) the U.S. Trustee, (b) the Official Committee of Unsecured Creditors, (c) any parties requesting notices in this case pursuant to Bankruptcy Rule 2002, (d) all known creditors of the Debtor, (e) counsel to the Stalking Horse Purchaser, and (f) all known Potential Bidders (collectively with the parties specified in this paragraph, the “Procedures Notice Parties”).

39. The Debtor proposes to serve the Procedures Notice within three (3) business days following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the

Procedures Notice Parties. The Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to counsel to the Debtor.

40. The Debtor submits that the foregoing notice procedures comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, Auction and Sale, and Sale Hearing to the Debtor's creditors and other parties in interests as well as to those who have expressed an interest or are likely to express an interest in bidding on the Purchased Assets. Based on the foregoing, the Debtor respectfully requests that this Court approve these proposed notice procedures.

Sale Hearing

41. At the Sale Hearing, the Debtor will seek Court approval of the Sale to the Successful Bidder, free and clear of all liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, with all liens, claims and encumbrances to attach to the Sale Proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets prior to the Sale, including the assumption by the Debtor and assignment to the Successful Bidder of the assumed Contracts and Leases pursuant to section 365 of the Bankruptcy Code. The Debtor will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable and in the best interest of the Debtor's estate and all interested parties.

Procedures for the Assumption and Assignment of Assumed Contracts and Leases

42. As noted above, the Debtor will seek to assume and assign certain Contracts and Leases to be identified on schedules to the Stalking Horse Agreement other than those

agreements excluded by the Successful Bidder pursuant to such bidder's asset purchase agreement (the "Assumed Executory Contracts").

43. At least initially, the Assumed Executory Contracts will be those Contracts and Leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Purchased Assets. The Successful Bidder may choose to exclude (or to add) certain Contracts or Leases to the list of Assumed Executory Contracts, subject to further notice.

44. In the interim, the Debtor will serve, by first-class mail, postage prepaid, the Motion and the Cure Notice, substantially in the form of Exhibit D hereto, upon each counterparty to an Assumed Executory Contract by no later than seven (7) business days following entry of the Bidding Procedures Order. The Cure Notice will state the date, time and place of the Sale Hearing, as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts must be filed and served. The Cure Notice will also identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the "Cure Amounts").

45. If a Contract or Lease is assumed and assigned pursuant to Court Order, then unless the Assumed Executory Contract counterparty properly files and serves an objection to the Cure Amount contained in the Cure Notice, the Assumed Executory Contract counterparty will receive at the time of the Closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount as set forth in the Cure Notice, if any, with payment to be made pursuant to the terms of the Successful Bidder's asset purchase agreement.

46. If an objection is filed by a counterparty to an Assumed Executory Contract, the Debtor proposes that such objection must set forth a specific default in any executory contract

or unexpired lease and claim a specific monetary amount that differs from the amount, if any, specified by the Debtor in the Cure Notice. To the extent there is an additional Contract or Lease to be assumed pursuant to the Successful Bidder's Stalking Horse Agreement, this Motion constitutes a separate motion to assume and assign that contract to the Successful Bidder pursuant to section 365 of the Bankruptcy Code; each such contract will be listed on an exhibit to the Successful Bidder's Stalking Horse Agreement, and will be given a separate Cure Notice (each, a "Supplemental Cure Notice").

47. If any counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract (a "Cure Amount Objection"), the Debtor proposes that the counterparty must file the objection by no later than (i) November 4, 2016 or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the Supplemental Cure Notice if such contract is to be assumed and assigned after the Auction), provided, however, that any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of future performance under the Assumed Executory Contract. With respect to an Assumed Executory Contract listed in a Supplemental Cure Notice, the Debtor proposes that the deadline to file a Cure Amount Objection shall be fourteen (14) days after the service of such Supplemental Cure Notice on the contract counterparty.

48. After receipt of a Cure Amount Objection, the Debtor will attempt to reconcile any differences in the Cure Amount. In the event that the Debtor and the non-debtor counterparty cannot resolve the Cure Amount Objection, and the Court does not otherwise make a determination at the Sale Hearing, the Debtor may, in its discretion, segregate any disputed Cure Amounts pending the resolution of any such disputes by the Court or mutual agreement of

the parties. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or otherwise ordered by the Court.

49. The Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder's Stalking Horse Agreement. The Debtor proposes that the Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing.

50. Except to the extent otherwise provided in the Successful Bidder's Stalking Horse Agreement, the Debtor and the Debtor's estate shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to section 365(k) of the Bankruptcy Code.

APPLICABLE AUTHORITY

A. The Sale of the Purchased Assets is Authorized by Section 363 as a Sound Exercise of the Debtor's Business Judgment.

51. In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtor has determined that the Sale of the Purchased Assets by public auction will enable it to obtain the highest and best offer for these assets (thereby maximizing the value of the estate) and is in the best interests of the Debtor's creditors. In particular, the Stalking Horse Agreement is the result of comprehensive, arm's length negotiations for the Sale of the Purchased Assets, and the Sale

pursuant to the terms of the Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtor's creditors than would be provided by any other existing alternative.

52. Section 363 of the Bankruptcy Code provides that a 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). 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 389, 395 (3d Cir. 1996); In re Titusville Country Club, 128 B.R. 396, 399 (W.D. Pa. 1991); In re Delaware & Hudson Ry. Co., 124 BR. 169, 176 D. Del. 1991); see also Official Committee of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

53. 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) (finding that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); In re Integrated Resources, Inc., 147 B.R. 650, 659 (Bankr. S.D.N.Y. 1992) ("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) (internal citations omitted).

54. Applying section 363, the proposed Sale of the Purchased Assets should be approved. As set forth above, the Debtor has determined that the best method of maximizing the recovery for the Debtor's creditors would be through the Sale of the Purchased Assets. In order to ensure a fair auction process, the Debtor and its advisors have and will continue to solicit interest from numerous potential purchasers.

55. Further, the Debtor believes that the value the Debtor's estate – and, thus, the Debtor's creditors – will receive for the Sale of the Purchased Assets as a going concern exceeds any value the Debtor's estate could obtain for the Purchased Assets were the Debtor required to liquidate its assets piecemeal. The Debtor also believes that the value of the consideration likely to be received for the Purchased Assets under a Stalking Horse Agreement is fair and reasonable. As further assurance of value, however, bids will be tested through the Auction consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and pursuant to the Bidding Procedures approved by the Court. Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder ultimately will be demonstrated by adequate “market exposure” and an open and fair auction process — the best means, under the circumstances, for establishing whether a fair and reasonable price is being paid.

56. The Debtor and its advisors believe that the timeline for the marketing and sale of the Purchased Assets is adequate and is in the best interests of the Debtor's estate. For over

four months, Ocean Park has conducted an extensive marketing process for the Debtor's assets, contacting 179 prospective buyers and 28 intermediary parties, with almost forty executing non-disclosure agreements. Ocean Park continues to market these assets and is prepared to quickly contact potential interested parties and determine the level of interest in a potential acquisition and provide them access to a confidential business overview management presentation and access to a data room that has been assembled upon the execution of an appropriate confidentiality agreement.

B. The Bidding Procedures Are Appropriate and Will Maximize the Value Received for the Purchased Assets.

57. As noted above, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. See, e.g., In re Financial News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“Court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

58. The Debtor believes that the Bidding Procedures will establish the parameters under which the value of the Purchased Assets may be tested at an auction and through the ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtor's creditors will receive the greatest possible consideration for the assets because they will ensure a competitive and fair bidding process. They also allow the Debtor to undertake an auction in as expeditious and efficient manner as possible, which the Debtor believes is essential to maximizing the value of the Debtor's estate for its creditors.

59. The Debtor also believes that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the best and highest offer reasonably available for the Debtor's assets. In particular, the proposed Bidding Procedures will allow the Debtor to conduct an auction in a controlled, fair and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction.

60. In sum, the Debtor believes that the Bidding Procedures will encourage bidding for the Purchased Assets and are consistent with the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the proposed Bidding Procedures are reasonable, appropriate and within the Debtor's sound business judgment.

C. The Sale of the Purchased Assets Free and Clear of Liens and Other Interests is Authorized by Sections 363(f).

61. The Debtor further submits that it is appropriate to sell the Purchased Assets 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 Purchased Assets 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 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).

62. This provision is supplemented by section 105(a) of the Bankruptcy Code, which 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).

63. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets “free and clear” of liens and interests. In re Dundee Equity Corp., 1992 WL 53743, at *4 (Bankr. S.D.N.Y. March 6, 1992) (“[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); In re Bygaph, Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

64. The Debtor believes that one or more of the tests of section 363(f) are satisfied with respect to the transfer of the Purchased Assets pursuant to the Stalking Horse Agreement. In particular, the Debtor believes that the Debtor’s existing pre-petition lienholders will consent to the sale free and clear under section 363(f)(2). Where that may not be the case, a sale free and clear can proceed pursuant to section 363(f)(5) of the Bankruptcy Code because such liens will attach to the proceeds of the sale and the Debtor will establish at the Sale Hearing that such lienholders can be compelled to accept a monetary satisfaction of their claims. Accordingly, section 363(f) authorizes the transfer and conveyance of the Purchased Assets free and clear of any such claims, interests, liabilities or liens.

65. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes such assets free from successor liability resulting from pre-existing claims. See The Ninth Avenue Remedial Group v. Allis-Chalmers Corp., 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); In re New England Fish Co., 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor's employees); In re Hoffman, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); American Living Systems v. Bonapfel (In re All Am. Of Ashburn, Inc.), 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded on successor doctrine in a sale of assets free and clear); WBO Partnership v. Virginia Dept. of Medical Assistance Servs. (In re WBO Partnership), 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).³ The purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the purchaser arising from the debtor's pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the purchaser is

³ Some courts, concluding that section 363(f) of the Bankruptcy Code does not empower them to convey assets free and clear of claims, have nevertheless found that section 105(a) of the Bankruptcy Code provides such authority. See, e.g., Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such a sale, as such authority is implicit in the court's equitable powers when necessary to carry out the provisions of title 11).

entitled to know that the Debtor's assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the Sale should state that the Successful Bidder is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Purchased Assets.

D. The Proposed Notice of Bidding Procedures and Auction Is Appropriate.

66. The Debtor believes that it will obtain the maximum recovery for creditors of the Debtor's estate if the Purchased Assets are sold through a well-marketed sale and auction. As described in further detail above, the Debtor and its advisors have already taken significant steps to identify potential purchasers.

67. Under Bankruptcy Rules 2002(a) and (c), the Debtor is required to notify creditors of the proposed sale of the Debtor's assets, including a disclosure of the time and place of an auction, the terms and conditions of a sale, and the deadline for filing any objections. The Debtor submits that the notice procedures herein comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the sale by auction to the Debtor's creditors and other interested parties, as well as to those parties who have expressed an interest, or may express an interest, in bidding on the Purchased Assets. The proposed timeframe between the filing of this Motion, the commencement of the bidding process and the Auction should provide interested purchasers ample time to participate in the Auction.

E. The Stalking Horse Protections Are Appropriate Under the Circumstances.

68. As noted above, the Stalking Horse Purchasers proceeded in reliance upon the agreement by the Debtor to seek the Stalking Horse Protections and in reasonable expectation that this Court would enter an order providing such relief. The Debtor submits that the Stalking Horse Protections are a normal and oftentimes necessary component of sales outside the

ordinary course of business under section 363 of the Bankruptcy Code. In particular, such protections encourage a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. See, e.g., In re Hupp Indus., 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, “bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder’s . . . due diligence”); In re Marrose Corp., 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that “agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”).

69. Moreover, bid protections, similar to the Stalking Horse Protections sought to be approved by this Motion, have been approved in several other chapter 11 cases. See, e.g., In re Conex Holdings, LLC, Case No. 11-10501 (CSS) (Bankr. D. Del. Sept. 14, 2011) (approving break-up fee of 3% of final purchase price); In re Nortel Networks Inc., Case No. 09-10138 (KG) (Bankr. D. Del. Feb. 27, 2009) (approving \$650,000 break-up fee in connection with \$17.65 million sale, or 5.9% and \$400,000 expense reimbursement); In re Tallygenicom, L.P., Case No. 09-10266 (CSS) (Bankr. D. Del. Feb. 19, 2009) (approving \$2 million break-up fee in connection with \$36.6275 million sale, or 5.5% and \$1 million expense reimbursement); In re Fluid Routing Solutions Intermediate Holding Corp., Case No. 09-10384 (CSS) (Bankr. D. Del. Feb. 19, 2009) (court approved expense reimbursement of up to \$750,000 in connection with a \$11 million sale).

70. A proposed bidding incentive, such as the Break-Up Fee and Expense Reimbursement, should be approved when it is in the best interests of the estate. In re Hupp

Indus., Inc., 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding incentive provide some benefit to the debtor's estate. Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context). Specifically, the O'Brien Court identified two instances in which bidding incentives may provide benefit to the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the values of the estate if assurance of the incentives "promote[s] more competitive bidding, such as inducing a bid that otherwise would not have been made and without which bidding would have been limited." O'Brien, 181 F.3d at 537. Second, if the availability of break-up fees and expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. Id.

71. Here, the Debtor believes that approval of the Stalking Horse Protections will benefit the estate in creating a competitive bidding process. First, the Break-Up Fee induced the Stalking Horse Purchaser to submit a bid that will serve as a minimum floor bid upon which other bidders may rely. Therefore, the Stalking Horse Purchaser has provided a material benefit to the Debtor, its estate and its creditors by encouraging bidding and increasing the likelihood that the best possible price for the Purchased Assets will be received. See Integrated Resources, 147 B.R. at 659 (noting that termination payment is an "important tool to encourage bidding and to maximize the value of the debtor's assets").

72. Second, the Debtor believes that the Stalking Horse Protections are fair and reasonably compensate the Stalking Horse Purchaser for taking actions that will benefit the Debtor's estate. The Expense Reimbursement compensates the Stalking Horse Purchaser for diligence and professional fees incurred in negotiating the terms of the Stalking Horse Agreement on an expedited timeline.

73. Third, the proposed Stalking Horse Protections are the result of an arm's-length negotiated agreement between the Debtor and the Stalking Horse Purchaser, with significant give-and-take. The relationship between the Debtor and the Stalking Horse Purchaser has not been tainted in any way by self-dealing or manipulation.

74. Fourth, the Debtor does not believe that the Stalking Horse Protections will have a chilling effect on the sale process. Rather, the Stalking Horse Purchaser has increased the likelihood that the best possible price for the Purchased Assets will be obtained, by permitting other qualified bidders to rely on the diligence performed by the Stalking Horse Purchaser, and moreover, by allowing qualified bidders to utilize the Stalking Horse Agreement as a platform for negotiations and modifications in the context of a competitive bidding process.

75. Finally, the Stalking Horse Protections will be paid only if, among other things, the Debtor enters into a transaction with a bidder other than the Stalking Horse Purchaser. Accordingly, no Stalking Horse Protections will be paid unless a higher and better offer is achieved and consummated.

76. In sum, the Stalking Horse Protections are reasonable under the circumstances and will enable the Debtor to maximize the value for the Purchased Assets while limiting any chilling effect in the sale process. The Stalking Horse Protections not only compensate the Debtor for the risk that it assumes in foregoing a known, willing and able purchaser for a new

potential acquirer, but also ensure that there is an increase in the net proceeds received by its estate, after deducting the Stalking Horse Protections to be paid to the Stalking Horse Purchaser in the event of a prevailing overbid.

77. The Debtor believes that the proposed Stalking Horse Protections are fair and reasonably compensate the Stalking Horse Purchasers for taking actions that will benefit the Debtor's estate. As demonstrated above, the Break-Up Fee in the amount of 2.5% of the cash purchase price for the Purchased Assets is within the range of break-up fees that have been approved by several Courts under similar circumstances.

78. In sum, the Stalking Horse Protections are reasonable under the circumstances and will enable the Debtor to maximize the value for the Purchased Assets.

F. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases.

79. Section 365(a) of the Bankruptcy Code provides that, subject to the court's approval, a trustee "may assume or reject any executory contracts or unexpired leases of the debtor." 11 U.S.C. § 365(a). Upon finding that a trustee has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.), 78 F.3d 18, 25 (2d Cir. 1996); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993).

80. Pursuant to section 365(f)(2) of the Bankruptcy Code, a trustee may assign an executory contract or unexpired lease of nonresidential real property if:

- a. the trustee assumes such contract or lease in accordance with the provisions of this section; and
- b. adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

81. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989) (internal citations omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

82. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

83. The Debtor and the Successful Bidder will present evidence at the Sale Hearing to prove the financial credibility, willingness and ability of the Successful Bidder to perform under the Contracts or Leases, if any. The Court and other interested parties therefore will have the opportunity to evaluate the ability of any Successful Bidder to provide adequate assurance of future performance under the Contracts or Leases, as required by section 365(b)(1)(C) of the Bankruptcy Code.

84. In addition, the Cure Procedures are appropriate and consistent with section 365 of the Bankruptcy Code. To the extent that any defaults exist under any Assumed Executory

Contracts, any such defaults will be cured pursuant to the Successful Bidder's Stalking Horse Agreement. Any provision in the Assumed Executory Contracts that would restrict, condition, or prohibit an assignment of such contracts will be deemed unenforceable pursuant to section 365(f)(1) of the Bankruptcy Code.

85. Accordingly, the Debtor submits that the Cure Procedures for effectuating the assumption and assignment of the Assigned Contracts as set forth herein are appropriate and should be approved.

G. Relief from the Fourteen Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate.

86. 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." Similarly, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtor requests that the Order be effective immediately by providing that the fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d) is waived.

87. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen (14) day stay period, Collier suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." Collier on Bankruptcy P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, Collier provides

that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal.

Id.

88. The Debtor hereby requests that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal.

NOTICE

89. Notice of this Motion has been given to: (a) the Office of the United States Trustee for the District of Kansas, (b) counsel to the Committee, (c) counsel for the DIP Lender, (d) counsel to the Stalking Horse Purchaser, (e) the Internal Revenue Service, (f) the United States Attorney's Office for the District of Kansas, (g) any party that has requested notice pursuant to Bankruptcy Rule 2002, and (h) any known party that requires notice pursuant to Bankruptcy Rule 6004. The Debtor submits that no other or further notice need be given.

NO PRIOR REQUEST

90. No prior request for the relief sought herein has been made by the Debtor to this or any other court.

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WHEREFORE, the Debtor respectfully requests that the Court enter an order granting the relief requested herein and granting to the Debtor such other and further relief as the Court may deem proper.

Dated: October 12, 2016

Respectfully submitted,

ARMSTRONG TEASDALE LLP

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Co-Counsel for the Debtor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of October, 2016, a true and correct copy of the Motion Of The Debtor For Entry Of An Order (I) (A) Approving And Authorizing Bidding Procedures In Connection With The Sale Of Substantially All Of The Debtor's Assets, (B) Approving Stalking Horse Protections, (C) Approving Procedures Related To The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, (D) Approving The Form And Manner Of Notice Thereof, And (II) (A) Authorizing The Sale Of Substantially All Of The Debtor's Assets Free And Clear Of All Liens, (B) Approving The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases Related Thereto, And (C) Granting Related Relief was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF System, and was forwarded via Overnight UPS or express mail, postage paid, and properly addressed to the parties' and/or attorneys' address on the attached matrix who do not receive notice electronically via CM/ECF.

s/ Christine L. Schlomann

Label Matrix for local noticing
1083-6
Case 16-10446
District of Kansas
Wichita
Tue Oct 11 08:58:37 CDT 2016

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c/o Terry L. Malone
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Wichita, KS 67202-2205

Greenfield Specialty Alcohols Inc.
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Mid America Cattle Co
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Refiner Products Manufacturing, Inc.
P.O. Box 471335
Charlotte, NC 28247-1335

Sulzer Pump Services US Inc.
14522 S. Outer Forty Road
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TransGlobal Energy, Inc.
2450 Atlanta Highway, Suite 501
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Vista Energy, L.P.
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Abengo Bioenergy Engineering &
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c/Energia Solar, No 1 Palmas Altas
Seville 41014 Spain

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CRB Builders LLC
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Horn, Aylward & Bandy, LLC
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Abengoa Bioenergy Hybrid
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Abengoa Bioenergy New Technologies LLC
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Kansas Department of Labor
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(u)Decker Electric, Inc.

(u)Dustex Holdings LLC

(u)Elliott Electrical Supply, Inc.

(u)ICM

(u)Kramer Properties

(u)Ocean Park Advisors, LLC

(u)Stoppel Dirt, Inc.

(u)VFI KR SPE I, LLC

(u)VFI-SPV VIII Corp.

(u)Varilease Finance, Inc.

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13667 192ND ST.
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(d)Western Reserve Water Systems
4133 East 49th Street
Cleveland OH 44105-3267

End of Label Matrix	
Mailable recipients	223
Bypassed recipients	17
Total	240

ASSET PURCHASE AGREEMENT

Dated as of October 12, 2016

By and Between

Shell Oil Company

as Purchaser

and

Abengoa Bioenergy Biomass of Kansas, LLC,

as Seller

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “*Agreement*”), dated as of October 12, 2016 (the “*Agreement Date*”), by and among Shell Oil Company, a Delaware corporation (“*Purchaser*”), and Abengoa Bioenergy Biomass of Kansas, LLC, as debtor-in-possession under the United States Bankruptcy Code (“*Seller*”). Purchaser and 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 in Article IX or in the section herein cross-referenced in Article IX.

RECITALS

WHEREAS, on March 23, 2016 (the “*Petition Date*”), Brahma Group, Inc., CRB Builders LLC and Summit Fire Protection each filed involuntary chapter 7 petitions against Seller commencing an involuntary case under Section 303(a) of the United States Bankruptcy Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the District of Kansas (the “*Bankruptcy Court*”);

WHEREAS, on April 8, 2016, the chapter 7 case was converted to a chapter 11 case (the “*Bankruptcy Case*”);

WHEREAS, Seller owns (i) a 25 million gallon nameplate cellulosic ethanol production facility and a electricity cogeneration plant, which includes a waste water treatment plant, all of which are located at 1043 Road P, Hugoton, Kansas 67951, and (ii) approximately 400 acres of adjacent land located in or near Hugoton, Kansas (collectively, the “*Plant*”), which Plant is currently idled and not in operation;

WHEREAS, the Purchaser desires to purchase the Purchased Assets and assume the Assumed Liabilities from Seller and 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 final non-appealable Sale Order approving such sale, free and clear of all Claims 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 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 managers and the members of Seller have 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, and Purchaser shall purchase, acquire and accept from Seller, all of Seller's right, title, and interest in and to all of the properties, rights, claims and assets of Seller (other than the Excluded Assets) of every kind and description, wherever situated or located, real, personal, or mixed, tangible or intangible, owned, leased, licensed or whether used or useable, fixed or unfixed, choate or inchoate, contingent or otherwise, and whether or not reflected on the books and records of Seller (collectively, the "**Purchased Assets**"), including, but not limited to, all right, title and interest of Seller, in, to or under the following properties and assets of Seller, save and except any that is an Excluded Asset:

(a) all Furnishings and Equipment, including the personal property and equipment listed on Schedule 1.1(a);

(b) to the extent assignable pursuant to Section 365 of the Bankruptcy Code, all rights under the Contracts set forth on Schedule 1.6(a), which schedule may be updated to add or delete Contracts as Purchaser may determine in its sole discretion in accordance with Section 1.6 (collectively, the "**Assigned Contracts**");

(c) the Owned Real Property, including the real property described on Schedule 1.1(c);

(d) the Leased Real Property, if any, including any security deposits or other deposits delivered in connection therewith;

(e) all assets owned by Seller located at any Leased Real Property or at any third party locations;

(f) all Permits and all pending applications therefor to the extent transferrable;

(g) all Inventory, including raw materials, work in process, parts, subassemblies and finished goods, wherever located and whether or not obsolete or carried on Seller's books of account;

(h) all vehicles and rolling stock and related parts, supplies and fuel;

(i) all bales of wheatstraw and cornstover that are owned by Seller and stored on any Owned Real Property;

(j) all computer hardware, data networks, servers, communication equipment, software, discs and all stored data on any of the foregoing, provided that Purchaser shall pay for any data transfer costs of stored data that is not located on owned hardware in accordance with Section 7.5(f);

(k) all Documents located at the Plant; and

(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 the Assumed Liabilities, including rights under vendors' and manufacturers' warranties, service rights, indemnities, guaranties and causes of action under the Bankruptcy Code or applicable Law that are possessed by Seller (collectively, the "*Avoidance Actions*").

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) Cash and Cash Equivalents;
- (b) all trade accounts receivable and all other accounts or notes receivable;
- (c) any asset of Seller that otherwise would constitute a Purchased Asset but for the fact that it is sold or otherwise disposed of 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 in its sole discretion;
- (d) all Contracts of Seller that are not Assigned Contracts as of the Closing;
- (e) all Documents and all personnel records of Employees that Seller is required by Law to retain and is prohibited by Law from providing a copy thereof to Purchaser;
- (f) the Intellectual Property and proprietary rights contained in Abengoa Bioenergy New Technologies, LLC (including, without limitation, the Process Agreement and License Agreement between Abengoa Bioenergy New Technologies, Inc. and Abengoa Bioenergy Biomass of Kansas, LLC dated September 23, 2011 and the License Agreement between Abengoa Bioenergy Biomass of Kansas and Terranol A/S dated November 1, 2012), including but not limited to the know-how and trade secrets of Abengoa Bioenergy New Technologies;
- (g) all member interests or other equity interests issued by Seller or securities convertible into, exchangeable or exercisable for any member interests or other equity interests of Seller;
- (h) 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, other than the Avoidance Actions;
- (i) all Claims that Seller may have against any Person solely with respect to any Excluded Assets or any Excluded Liabilities;
- (j) 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 entered into on or after the Agreement Date;
- (k) all current and prior director and officer insurance policies of 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;

(l) Seller's Organizational Documents, corporate minute and ownership record books, income tax returns, and corporate seal;

(m) the Documents, properties and assets set forth on Schedule 1.2(m);

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

(o) all Pension Plans;

(p) 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; and

(q) all net operating losses of Seller and the Business as of or prior to the Closing Date; and

(r) all bales of wheatstraw and cornstover that are either (i) owned by Seller, but stored on real property sites that are not owned by Seller, or (ii) not owned by Seller, but stored on Owned Real Property.

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 Seller (and pay, perform, discharge or otherwise satisfy in accordance with their respective terms), and Seller shall irrevocably convey, transfer and assign to Purchaser, the following Liabilities (and only the following Liabilities) (collectively, the "**Assumed Liabilities**"):

(a) all Liabilities arising from the ownership of the Purchased Assets that arise after the Closing; and

(b) 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**."

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 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 Plant 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) Any and all Liabilities of 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, including under the DIP Financing Agreements;

(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 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 Seller pursuant to Section 10.1, (iii) Taxes attributable to the Purchased Assets or the operation of the Plant for any Pre-Closing Tax Period and (iv) any Taxes arising from or in connection with an Excluded Asset;

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

(f) 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), including all Liabilities that (i) arise out of or relate to the employment, service provider or other relationship between Seller or ERISA Affiliate and any such individual, including the termination of such relationship, (ii) arise out of or relates to any Benefit Plan or (iii) arise out of or relate to events or conditions occurring on or before the Closing Date;

(g) draft or checks outstanding at the Closing;

(h) all Liabilities under any futures contracts, options on futures, swap agreements or forward sale agreements;

(i) 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 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; (iii) the negotiation, execution and consummation of the DIP Financing Agreements, and (iv) 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;

(j) all Liabilities related to the WARN Act, 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;

(k) 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;

(l) 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 Seller;

(m) 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 Plant, 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;

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

(o) all Environmental Liabilities and Obligations;

(p) all Liabilities of Seller or its predecessors arising out of any Contract, 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; and

(q) all Liabilities related to, and all obligations arising out of, any financial assistance, loan guarantees or accommodation Seller received from the Department of Energy.

1.5 Post-Closing Liabilities; Excluded Assets. Purchaser acknowledges that Purchaser shall be responsible for all Liabilities and obligations relating solely 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 the Plant for all Tax periods beginning on or after the Closing Date. Seller acknowledges that Seller shall remain responsible for all Excluded Assets and Excluded Liabilities after the Closing Date, including, without limitation, all Taxes arising therefrom, insurance and maintenance thereon, any damage or destruction thereto and removal of the Excluded Assets from the Purchased Assets.

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 Seller's Knowledge, Seller is a party and which are to be included in the Assigned Contracts. From and after the Agreement Date until three (3) Business Days prior to the Auction, 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.**"

(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 Assignment and Assumption Agreement or the Assignment and Assumption of Leases, as applicable, 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 (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 Assignment and Assumption Agreement or the Assignment and Assumption 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 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 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, Seller will seek an expedited hearing before the Bankruptcy Court to determine the Cure Costs and approve the assumption. If no objection is timely served on 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 Rejection of Purchased Assets. At any time from the Agreement Date to three (3) Business Days prior to the Closing Date, Purchaser may, in its discretion by written notice to Seller, designate any of the Purchased Assets as additional Excluded Assets, which notice shall set forth in reasonable detail the Purchased Assets so designated. Purchaser acknowledges and agrees that there shall be no reduction in the Purchase Price if it elects to designate any Purchased Assets as an Excluded Assets. Notwithstanding any other provision hereof, the Liabilities of Seller under or related to any Purchased Asset excluded under this paragraph will constitute Liabilities retained by Seller and not Assumed Liabilities.

1.8 **Disclaimer.** PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS. WITHOUT LIMITING THE FOREGOING, EXCEPT AS PROVIDED IN THIS AGREEMENT, 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; provided, however, that Purchaser reserves the right to increase the Purchase Price in its sole discretion, subject to the Bidding Procedures Order and applicable Law.

(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 Seller following the Closing Date.

(c) “**Cash Consideration**” means an amount equal to (i) Twenty-Six Million Dollars (\$26,000,000.00) plus (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 Deposit. No later than three (3) Business Days following the entry of the Sale Order, Purchaser will make an earnest money deposit (the “**Deposit**”) in the amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) to the Escrow Agent to be held under and in accordance with the Escrow Agreement. The Deposit shall be applied against payment of the Purchase Price on the Closing Date. If this Agreement shall be terminated by a Party pursuant to Section 3.4 (other than Section 3.4(i)), or in the event that a party other than Purchaser or an Affiliate of Purchaser purchases all or a significant portion of the Purchased Assets, then the Deposit shall be returned to Purchaser within five (5) Business Days after such termination or the closing of such transaction. If this Agreement shall be terminated by Seller only pursuant to Section 3.4(i), then Seller shall retain the Deposit. The Parties agree that Seller’s right to retain the Deposit, as set forth herein, is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Seller for its efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision. Seller shall retain the Deposit as its sole and

exclusive remedy against Purchaser in all aspects for any claim against Purchaser arising under this Agreement or otherwise.

2.3 Payments on the Closing Date.

(a) 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).

(b) 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 Purchaser Statement shall be adjusted prior to the Closing to reflect any changes agreed to by Purchaser and Seller prior to the Closing Date.

(c) 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 Schedule 2.3(c) an amount equal to the difference of the Cash Consideration minus the Deposit.

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 VIII, 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 such 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 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, Seller shall deliver to Purchaser:

(a) a bill of sale in a form and substance mutually acceptable to the Parties (the "**Bill of Sale**") duly executed by Seller;

(b) an assignment and assumption agreement in a form and substance mutually acceptable to the Parties (the "**Assignment and Assumption Agreement**") duly executed by Seller;

(c) a certified copy of the Sale Order;

(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) all waivers, consents and approvals for the Assigned Contracts;

(f) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of 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 managers and members of 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) deeds, in form and substance reasonably acceptable to Purchaser, conveying all right, title and interest of Seller in the Owned Real Property;

(i) possession of the Purchased Assets and the Plant, including all keys, access cards, security passcodes and combinations; and

(j) 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 the Plant and any or all the Purchased Assets.

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

(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; and

(d) all other certificates, agreements and other documents required by this Agreement (or as 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 Seller and Purchaser;

(b) by written notice of either Seller or Purchaser to such other Party, if the Closing shall not have been consummated prior to December 8, 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 VIII 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 no less than two (2) Business Days prior to 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 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 and maintenance of the Plant (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 by the Bankruptcy Court and is not reversed or vacated within fourteen (14) days after entry thereof;

(d) by written notice from Purchaser if (i) the Bidding Procedures Order shall not have been approved by the Bankruptcy Court by the close of business on October 21, 2016, (ii) the Bankruptcy Court issues an order granting leave to any Person to commence an appeal of the Bidding Procedures Order or (iii) following its entry, the Bidding Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of Purchaser;

(e) by written notice from Purchaser if (i) the Sale Hearing has not taken place on or prior to November 23, 2016, (ii) the Bankruptcy Court has not entered the Sale Order on or prior to November 30, 2016, or (iii) 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;

(f) 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;

(g) by written notice of either Seller or Purchaser, if Seller has entered into an Alternative Transaction;

(h) automatically upon the consummation of an Alternative Transaction;

(i) by written notice from Seller 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 Seller;

(j) by written notice from Purchaser to Seller, 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 Seller of such breach or failure to perform and (iii) has not been waived by Purchaser;

(k) by written notice from Purchaser to Seller, if any event, change or occurrence in state of facts has had, or is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect; or

(l) by written notice from Purchaser to Seller if all or any portion of the Purchased Assets with a fair market value or replacement value, whichever is greater, in excess of \$5,000,000.00 individually, or in the aggregate, is (i) condemned or taken by eminent domain, or (ii) is damaged or destroyed by fire, flood or other casualty, in any case regardless of whether or not insured or Seller is otherwise entitled to receive compensation therefore.

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 pursuant to Section 3.4, written notice thereof shall forthwith be given to the other Party, 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.

(a) In the event of termination of this Agreement by either Party, except as otherwise provided in this Section 3.6, all rights and obligations of the Parties under this Agreement shall terminate without any liability of a Party to the other Party, except that nothing in this Agreement will relieve any Party from liability for any willful breach of any representation, warranty, covenant or agreement set forth in this Agreement prior to such termination. The provisions of Sections 2.2, 6.1, 11.5, 11.7 and this Section 3.6 shall expressly survive the expiration or termination of this Agreement.

(b) Notwithstanding Section 3.6(a), in the event of a termination pursuant to Section 3.4(i), pursuant to Section 2.2 Seller shall be entitled to retain the Deposit as liquidated damages as its sole and exclusive remedy against Purchaser in all respects for any claim against Purchaser arising under this Agreement or otherwise.

(c) Notwithstanding Section 3.6(a), if this Agreement is terminated pursuant to:

(i) Section 3.4(h), Seller shall pay to Purchaser the Break-Up Fee;

(ii) Any of Section 3.4(c), 3.4(g), 3.4(h) or 3.4(j), then Seller shall pay to Purchaser the Expense Reimbursement; and

(iii) The payment of the Break-Up Fee and the Expense Reimbursement, as applicable, shall be in full and complete satisfaction of all of Seller's obligations hereunder (except for repayment of the Deposit). The provision for payment of the Break-Up Fee and Expense Reimbursement is an integral part of this Agreement without which Purchaser would not have entered into this Agreement.

(d) Payment of the Break-Up Fee and the Expense Reimbursement, as applicable, shall be made by wire transfer of immediately available funds promptly (but in any event without two (2) Business Days) following the occurrence of the events set forth in Section 3.6(c) that cause such amount to be due and payable under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code.

(e) In the event of a termination of this Agreement pursuant to any provision of Section 3.4 (other than pursuant to Section 3.4(i)), Seller and Purchaser shall promptly (but in any event within five (5) Business Days after such termination) direct the Escrow Agent to return the Deposit to Purchaser in accordance with the Escrow Agreement.

3.7 Specific Performance. From and after the Closing, Purchaser shall be entitled to seek specific performance by Seller of its obligations to be performed after the Closing hereunder.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF SELLER

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

4.1 Organization. Prior to the Bankruptcy Case, Seller was a limited liability company duly formed, validly existing and good standing under the laws of the State of Kansas. During the Bankruptcy Case, Seller's articles of formation was forfeited by the Secretary of State of the State of Kansas, and Seller is entering into this Agreement as a debtor-in-possession under the Bankruptcy Code. In such capacity, Seller has the power and authority to own or lease the Plant and the Purchased Assets. Seller does not, directly or indirectly, own, of record or beneficially, any outstanding voting securities, membership interests or other equity interests in any Person.

4.2 Authorization of Agreement. Subject to the approval of the Bankruptcy Court and 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 action on the part of Seller, is in accordance with the Bankruptcy Code and, subject to the entry of the Sale Order, does not require any authorization or consent of any manager, member, director, officer or equity owner that has not been obtained. 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. 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

could not reasonably be material to the Purchased Assets, the operation of the Plant or Seller or Purchaser, either individually or in the aggregate.

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) 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 4.2, 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 could not reasonably be material to the Purchased Assets, the operation of the Plant or Seller or Purchaser, in each case either individually or in the aggregate.

(c) Set forth on Schedule 4.3(c) are all material Permits that, to the Knowledge of Seller, are required under or pursuant to applicable Laws for the operation of the Plant.

(d) Seller is in compliance, in all material respects with all applicable Laws. 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 Plant 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 Encumbrances to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. 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 and Assumption of Liabilities as applicable, in accordance with and subject to this Agreement.

4.6 Real Property.

(a) Seller has no Leased Real Property.

(b) Schedule 1.1(c) contains a list and brief description of all real property, together with all buildings, structures, fixtures and improvements thereon owned by Seller (the “***Owned Real Property***”), specifying the street address and the current use and Seller’s titled interest therein. Except for Permitted Encumbrances, Seller has good and marketable title in all of the Owned Real Property set forth on Schedule 1.1(c). To Seller’s Knowledge, other than as noted on Schedule 1.1(c), 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. Except for Permitted Encumbrances, the Owned Real Property is not subject to any Encumbrances or to any use restrictions, exceptions, reservations or limitations, which in any material respect interferes with or impairs the present and continued use thereof in the Ordinary Course of Business. There are no pending or, to Seller’s Knowledge, threatened condemnation proceedings relating to any of the Owned Real Property.

(c) The use and operation of the Owned Real Property by Seller materially conforms to all applicable building, zoning, safety, and other laws, statutes, ordinances, rules, regulations, codes, licenses, Permits, and all other restrictions and conditions. Seller has not received written notice from any Governmental Body 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, other than any which Seller has remedied or corrected. 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. Seller has a valid and enforceable leasehold interest under each Personal Property Lease under which it is a lessee.

4.8 Intellectual Property. Seller does not have title to any Intellectual Property. To the Knowledge of Seller, (i) no Person is engaging in any activity that infringes any Licensed Intellectual Property and (ii) no claim has been asserted to Seller that the use of any Licensed Intellectual Property in the operation of the Business infringes or violates the Intellectual Property of any third party.

4.9 Litigation. Except as set forth on Schedule 4.9 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.

4.10 Contracts. Schedule 4.10 lists all Contracts, to the Knowledge of Seller, that are material to the ownership and/or operation of the Plant. Schedule 1.6(a) sets forth the Assigned Contracts. Except as set forth on Schedule 1.6(a), Seller has not, and, to Seller’s Knowledge, no other party to any such Assigned Contract has, commenced any action against any of the parties to any such Assigned Contract or given or received any written notice of any default or violation under any such 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 be, valid, binding and in full force and effect in accordance with its terms.

4.11 Tax Returns; Taxes. With respect to tax matters, this Section 4.11 contains the sole and exclusive representations and warranties relating to the same.

(a) The Tax Returns listed on Schedule 4.11(a) have been filed by 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 4.11(b), to Seller's Knowledge, no material Tax Proceeding is being asserted in writing with respect to Seller, nor to the Knowledge of 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 4.11, any reference to Seller shall be deemed to include any Person that merged, or was merged, with or was liquidated into Seller.

4.12 Employees; Seller Benefit Plans. With respect to employee benefit matters, this Section contains the sole and exclusive representations and warranties relating to the same.

(a) Seller has provided Purchaser with a true, complete and correct list of the Employees as of the Agreement Date and all past Employees whose employment with Seller was terminated for any reason after the Petition Date, specifying their position, annual salary, date of hire and termination date, if applicable. Seller is in compliance in all material respects with all Laws relating to the employment or termination of employment of all of its Employees.

(b) Except as set forth on Schedule 4.12(b), there are no material Actions pending or, to the Knowledge of Seller, threatened, against Seller by any past or current Employee.

(c) Set forth on Schedule 4.12(c) is a true and complete list of each Benefit Plan. As applicable with respect to each Benefit Plan, Seller has delivered to Purchaser true and complete copies of (i) each Benefit Plan, including all amendments thereto, and in the case of an unwritten Benefit Plan, a written description thereof, (ii) all current trust documents, investment management contracts, custodial agreements and insurance contracts relating thereto, (iii) the current summary plan description and each summary of material modifications thereto, (iv) the most recently filed annual report (Form 5500 and all schedules thereto), (v) the most recent Internal Revenue Service ("*IRS*") determination or opinion letter and (vi) the most recent summary annual report, actuarial report, financial statement and trustee report.

(d) Each Benefit Plan has been maintained, operated and administered in compliance in all material respects with its terms and any related documents or agreements and the applicable provisions of ERISA, the Code and all other Laws.

(e) The Benefit Plans which are "employee pension benefit plans" within the meaning of Section 3(2) of ERISA and which are intended to meet the qualification requirements of Section 401(a) of the Code (each, a "*Pension Plan*") have received determination letters from the IRS to the effect that such plans are qualified and exempt from federal income taxes under Sections 401(a) and 501(a) of the Code, respectively, and nothing has occurred that would reasonably be expected to adversely affect the qualification of such Benefit Plan.

(f) No Benefit Plan is subject to Part 3, Subtitle B of Title I of ERISA or Title IV of ERISA nor has Seller or any ERISA Affiliate ever participated in any such plan. Neither Seller nor any ERISA Affiliate has ever contributed to, or been required to contribute to, any “multiemployer plan” (within the meaning of Section 3(37) of ERISA) and neither Seller nor any ERISA Affiliate has any liability (contingent or otherwise) relating to the withdrawal or partial withdrawal from such a multiemployer plan.

(g) There are no pending audits or investigations by any governmental agency involving any Benefit Plan, and no pending or, to the Knowledge of Seller, threatened claims (except for individual claims for benefits payable in the normal operation of the Benefit Plans), suits or proceedings involving any Benefit Plan, any fiduciary thereof or service provider thereto, nor to the Knowledge of Seller is there any reasonable basis for any such claim, suit or proceeding.

(h) No Benefit Plan provides benefits, including, without limitation, death or medical benefits, beyond termination of service or retirement other than (A) coverage mandated by law or (B) death or retirement benefits under a Benefit Plan qualified under Section 401(a) of the Code and neither Seller nor any ERISA Affiliate has made a written or oral representation promising the same.

(i) Seller’s execution of, and performance of the transactions contemplated by this Agreement will not either alone or in connection with any other event(s) (I) result in any payment or benefit, or increase in payments or benefits or acceleration in the timing of payments or benefits becoming due to any current or former employee, director, officer, or independent contractor of Seller, (II) limit the right to merge, amend or terminate any Benefit Plan or (III) result in the payment or provision of an “excess parachute payment” under Section 280G of the Code, whether under a Benefit Plan or otherwise.

(j) Purchaser will not become a participating company in any of the Benefit Plans provided by Seller by virtue of purchasing the Purchased Assets and operating the Plant and will have no liability for any of the benefits provided under any of the Seller’s Benefit Plans

(k) Each Benefit Plan that constitutes a “non-qualified deferred compensation plan” within the meaning of Section 409A of the Code, complies in both form and operation with the requirements of Section 409A of the Code so that no amounts paid pursuant to any such Benefit Plan is subject to Tax under Section 409A of the Code.

4.13 Labor Matters.

(a) Seller is not a party to any labor or collective bargaining agreement, and no current Employee of Seller is represented by any labor organization.

(b) There are no unfair labor practice charges, arbitrations, grievances or complaints pending or, to the Knowledge of Seller, threatened in writing against Seller relating to the employment or termination of employment of any individual by Seller.

(c) There are no complaints, charges, administrative proceedings or claims against Seller pending or, to the Knowledge of Seller, threatened in writing to be brought or filed with any Governmental Body based on or arising out of the employment by Seller of any Employee.

(d) Seller has not incurred any liability or obligation under the WARN Act or similar state Laws, which remains unpaid or unsatisfied.

(e) Except as set forth on Schedule 4.13(e), the employment of each current Employee of Seller is at-will.

4.14 WARN Act. Seller has not, within the ninety (90) days immediately prior to either the Agreement Date or the Closing Date, in whole or in part taken any action or actions which would, independently of the transaction contemplated hereby, result in a plant closing or mass layoff, temporary or otherwise, within the meaning of the WARN Act, or any similar Legal Requirement.

4.15 Environmental Matters. The representations and warranties contained in this Section 4.15 are the sole and exclusive representations and warranties of Seller pertaining to or relating to any environmental matters, including any matter arising under any Laws. Except as set forth on Schedule 4.15, (a) 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 Environmental Law the subject of which remains outstanding or unresolved, (b) 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 and Obligations, (c) Seller is not aware of and has not caused or allowed the Release of Hazardous Materials at, on or under the Owned Real Property or the Leased Real Property, and (d) Seller is not in default in any material respect of any order, writ, injunction, judgment or decree applicable to the Plant 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, including the following records: (i) reports concerning the removal of underground storage tanks from the Owned Real Property and 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 Owned Real Property and Leased Real Property; (v) Permits, Permit applications, and Permit disapprovals; and (iv) inventories of asbestos and asbestos-containing materials, if any, for the Purchased Assets.

4.16 Absence of Certain Changes.

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

(b) Except as set forth on Schedule 4.16(b) or as contemplated by this Agreement, from June 30, 2016 to 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, permitted, allowed or suffered any of the Purchased Assets to be subjected to any Encumbrance (other than Permitted Encumbrances);

(iii) waived or released any claim or rights included in or related to the Purchased Assets or the Plant 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 Plant, 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 Plant;

(ix) suffered any damage or destruction to or loss of any assets or properties relating to the Purchased Assets or the Plant, 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) changed in any way Seller's accounting methods, principles or practices other than required by changes in GAAP;

(xi) incurred any Indebtedness or paid, discharged or satisfied any claims, liabilities or obligations, other than the incurrence of Indebtedness under the DIP Financing Agreements and the payment, discharge or satisfaction in the Ordinary Course of Business of Liabilities incurred in the Ordinary Course of Business;

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

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

4.17 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 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 its incorporation. Purchaser has all requisite power and authority to own, lease and operate its properties and to carry on its business (including the operation of the Plant) 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 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 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. Purchaser has sufficient funds to pay the Purchase Price and preform its obligations under this Agreement.

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 actual 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) 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. No Person has acted, directly or indirectly, as a broker, finder or advisor for Purchaser. 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, Purchaser 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 actual knowledge, there are no material pending suits, asserted claims, hearings, or proceedings 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) EXCEPT AS OTHERWISE PROVIDED IN ARTICLE IV, IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY OTHER 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.

ARTICLE VI.

BANKRUPTCY COURT MATTERS

6.1 Break-Up Fee and Expense Reimbursement. In consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Seller, in the certain events specified in Section 3.4, Seller shall pay Purchaser (a) a break-up fee in an amount equal to two and one-half percent (2.50)% of the Cash Consideration (the "**Break-Up Fee**"), and (b) any third party costs and expenses actually incurred by Purchaser (including, but not limited to, reasonable attorneys' fees) up to One Hundred Thousand Dollars(\$100,000.00) (the "**Expense Reimbursement**"), as applicable. Seller shall file and seek approval by the Bankruptcy Court of the Break-Up Fee and Expense Reimbursement. The Seller's obligation to pay any amounts to Purchaser arising under the terms of this Agreement, including without limitation the Break-Up Fee and Expense Reimbursement, shall constitute an administrative expense claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code. In addition, Purchaser shall have such an administrative expense claim under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code against Seller in the Bankruptcy Case. Seller's obligation to pay the Break-Up Fee and Expenses Reimbursement to Purchaser shall survive the termination of this Agreement.

6.2 Competing Bid and Other Matters.

(a) This Agreement and the transactions contemplated hereby are subject to Seller's absolute right and ability to consider higher or better competing bids with respect to the Plant and a material portion of the Purchased Assets pursuant to the Bidding Procedures Order (each a "**Competing Bid**"). Following completion of the Auction, if Purchaser is the Prevailing Bidder, Seller shall not initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any sale or other disposition of the Purchased Assets. In addition, unless otherwise directed by the Bankruptcy Court, Seller shall not after completion of the Auction respond to or pursue any proposed Alternative Transaction or perform any other acts related thereto.

(b) If an Auction is conducted, and Purchaser is not the prevailing party at the conclusion of such Auction (such prevailing party, the "**Prevailing Bidder**"), Purchaser shall, if its bid is determined to be the next highest bid serve as a back-up bidder (the "**Back-up Bidder**") and keep Purchaser's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern time) on the date which is fourteen (14) days after the date of the Sale Hearing (the "**Outside Back-up Date**"); provided, however, that notwithstanding the foregoing, in no event shall the Outside Back-up Date be later than December 8, 2016 or (ii) the date of closing of an Alternative Transaction with the Prevailing Bidder. Following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Prevailing Bidder, the Back-up Bidder will be deemed to have the new prevailing bid, and Seller will be authorized, without further order of the Bankruptcy Court, to consummate the transactions contemplated

by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) with the Back-up Bidder.

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

6.3 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.

6.4 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.

6.5 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 Bidding Procedures Order and the Sale Order. In the event the entry of the Bidding Procedures Order or 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.

6.6 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, Liabilities and Encumbrances of, against or created by Seller or its bankruptcy estate, including any financial interest by the Department of Energy in the respective portion of the Plant that had been acquired under financial assistance from the Department of Energy, 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, Liabilities and Encumbrances, including any financial interest by the Department of Energy’s in the respective portion of the Plant that had been acquired under financial assistance from the Department of Energy, 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 Maintenance and Operation of Plant by 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 not incur unreasonable liabilities. Seller shall use commercially reasonable efforts, to (A) maintain the Purchased Assets (normal wear and tear excepted), (B) pay all of its post-petition obligations in the Ordinary Course of Business, and (C) comply in all material respects with all Laws applicable to the Plant, the Purchased Assets and Seller. 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 Plant or the Purchased Assets:

(a) other than as set forth in Schedule 7.1(a), (i) modify in any manner the compensation of any of the Employees or officers, or accelerate the payment of any such compensation (other than such that the liability associated with such modification is excluded from the Assumed Liabilities), (ii) grant any (a) bonuses, whether monetary or otherwise, (b) increase wages or salary or (c) increase other compensation or material benefits, in any case, in respect of any current or former employee, independent contractor, director or officer of the Seller;

(b) engage any new Employee other than in the Ordinary Course of Business, provided, however, that Seller shall not engage any new Employee whose annual base salary would exceed \$150,000;

(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 in an amount not to exceed \$200,000);

(d) 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 other than any liens permitted or provided for in the DIP Order);

(e) amend, terminate or renew any Contract other than (i) in the Ordinary Course of Business or (ii) outside of the Ordinary Course of Business, which does not result in an increase in the term of any such Contract by more than one (1) year and does not result in an obligation of Seller in excess of \$300,000;

(f) fail to use commercially reasonable efforts to maintain the validity of Seller's rights in the Licensed Intellectual Property;

(g) make any unusual or extraordinary efforts to collect any outstanding accounts receivable, liability or Indebtedness, give any discounts or concessions for early payment of such accounts receivable, liability or Indebtedness, other than the usual discounts given by the Business in the Ordinary Course of Business and make any sales of, or, other than liens provided for in the DIP Order, convey any interest in, any accounts receivable or intercompany obligation, liability or Indebtedness to any third party;

(h) other than transactions pursuant to agreements or arrangements in effect on the Petition Date as set forth on Schedule 7.1(h), engage in any transaction with any Affiliate, subsidiary, shareholder, officer or director of Seller (other than in the Ordinary Course of Business), incur or assume any long term or short term debt with or on behalf of any such Person or guarantee, endorse or otherwise be liable or responsible (whether directly, indirectly, contingently or otherwise) for the obligations of any such Person;

(i) 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;

(j) accelerate the payment of any obligation, Liability or Indebtedness of Seller;

(k) enter into, termination of, adoption of or amendment to any Benefit Plan (other than amendments required by law or to maintain the tax qualified status of any Benefit Plan under Section 401(a) of the Code), any change in control or severance agreement or any other Benefit Plan or collective bargaining agreement;

(l) loan to, or entry into any other transaction (other than in the Ordinary Course of Business) with, any employee, officer, director or independent contractor;

(m) settle or agree to settle any pending or threatened litigation, except to the extent that such settlement is either (i) pursuant to an insured claim or (ii) less than \$50,000; and

(n) agree, whether in writing or otherwise, to do any of the foregoing.

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 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 Seller and its Representatives.

7.3 Assignability of Certain Contracts and Permits. To the extent that the assignment to Purchaser of any Assigned Contract or Permit pursuant to this Agreement is not permitted without the consent of a third party or Governmental Body 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 Permit 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 or Permit and Purchaser shall be responsible for performing all obligations under such Contract or Permit 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) 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 Plant, 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 Bidding Procedures Order and the Sale Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Plant and the Purchased Assets 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 Seller and prepare and file the Tax Returns. 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 Plant) 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) Seller agrees to fully cooperate in the transfer of all records, documents, information, including records, documents and information in electronic form, owned by Seller, or relating to Seller's operations or financial condition, to Purchaser's computer systems promptly following the Closing if such information is located at any Affiliate location, or on the computer system of any Affiliate. Purchaser shall pay all out-of-pocket costs reasonably incurred by Seller in connection with such transfer. Such transfer of Company Information shall be in a format useable to Purchaser and Purchaser's computer systems.

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.

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.

(a) Purchaser acknowledges that the confidential information provided to it by or on behalf of Seller prior to the Agreement Date and during the Pre-Closing Period in connection with its consideration of purchasing the Purchased Assets and entering into this Agreement and consummating the transactions contemplated hereby, including information provided by Seller under Section 7.2, is subject to the terms and conditions of the Confidentiality Agreement.

(b) Following the completion of the Auction, Seller agrees to maintain, unless disclosure is required by applicable Law, the confidentiality of any confidential information regarding the Plant 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 Purchased Assets or the Plant, 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(b) or information not otherwise known by Seller that becomes available to Seller without an obligation of confidentiality 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, other Persons bidding on assets of Seller, (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 twelve (12) 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 twelve (12) 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 rights and 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 pursuant to Section 3.4 as a result of any condemnation, taking, damage or other destruction.

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 Plant 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 Encumbrance (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 Plant, 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.

7.14 Delivery of Disclosure Schedules; Update of Disclosure Schedules.

(a) From the Agreement Date to three (3) Business days prior to the Closing, Seller has the continuing obligation (i) to promptly supplement, modify or amend the information set forth on Seller's Disclosure Schedules with respect to any matter hereafter arising or discovered after the Agreement Date which, if existing or known at the Agreement Date, would have been required to have been set forth on such Disclosure Schedules, and (ii) if necessary or appropriate to correct any inaccuracy in a representation made by Seller resulting from any matter hereafter arising or discovered after the Agreement Date, to promptly add a schedule to Seller's Disclosure Schedules with a corresponding reference in this Agreement (such hereafter arising or discovered information and the supplemented, amended, modified or added schedules collectively, the "**Updating Information**"). Seller shall provide Purchaser written notice within two (2) Business days of becoming aware of the need for any Updating Information. Notwithstanding anything to the contrary set forth herein, any Updating Information shall not be deemed to cure any breach by Seller of any provision of this Agreement that would otherwise occur as a result of such matter being disclosed to Purchaser.

(b) To the extent Updating Information either (i) contains Liabilities, in which case all such Liabilities shall be Excluded Liabilities and Purchaser shall not assume nor be deemed to have assumed any such Liabilities, or (ii) discloses, in the opinion of Purchaser, an impediment to the ownership or operations of the Plant, Purchaser shall acquire the Plant and the Purchased Assets free of such impediment.

(c) In the event that any of the Updating Information discloses a Contract or Permit that would not be deemed to be a Rejected Contract, Excluded Asset or Excluded Liability hereunder, as the case may be, Purchaser and Seller shall execute, acknowledge and deliver such other documents, agreements and instruments and take such further actions as are reasonably required by Purchaser in order for Purchaser to assume the rights and obligations under such Contract or Permit. In the event that any of the Updating Information discloses a notice or consent that Seller is required to obtain, Purchaser and Seller shall execute, acknowledge and deliver such other documents, agreements and instruments and take such further actions as are reasonably required for Seller to deliver such required notice or obtain such consent.

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 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 Bidding Procedures Order and the Sale Order (as provided in Article VI) and each of such orders shall be a Final Order and in form and substance reasonably satisfactory to Seller and Purchaser, which orders 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 (which shall contain the terms described in Section 6.3) and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Seller (which service shall comply with Section 6.2(d));

(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;

(e) Seller shall have complied with the sale process deadlines set forth in the Bidding Procedures Order;

(f) Seller shall have delivered such other documents, agreements and instruments as may be required or reasonably requested by Purchaser as a result of any Updating Information.

ARTICLE IX.

ADDITIONAL DEFINITIONS

9.1 Definitions. As used herein:

(a) “**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.

(b) “**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise or (ii) an officer, director, or any Person that has the power, directly or indirectly, to vote 5% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person.

(c) “**Affiliate Agreement**” means any agreement or contract between any director, officer, employee or greater than five percent (5%) stockholder of Seller or Affiliate of any such Person, on one hand, and Seller, on the other hand, related to the Plant, 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.

- (d) “**Agreement**” shall have the meaning set forth in the preamble.
- (e) “**Agreement Date**” shall have the meaning set forth in the preamble.
- (f) “**Allocation**” shall have the meaning set forth in Section 10.2.
- (g) “**Alternative Transaction**” means (i) the approval by the Bankruptcy Court of a sale or sales of the Plant or a material portion of the Purchased Assets to a Person other than Purchaser, or (ii) the filing of a plan of reorganization in the Bankruptcy Case that does not contemplate the sale of the Purchased Assets to Purchaser in accordance with the terms hereof.
- (h) “**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.
- (i) “**Assigned Contracts**” shall have the meaning set forth in Section 1.1(b).
- (j) “**Assignment and Assumption Agreement**” shall have the meaning set forth in Section 3.2(b).
- (k) “**Assignment and Assumption of Leases**” shall have the meaning set forth in Section 3.2(h).
- (l) “**Assumed Liabilities**” shall have the meaning set forth in Section 1.3.
- (m) “**Auction**” has that meaning ascribed to such term by the Bidding Procedures Order.
- (n) “**Avoidance Actions**” shall have the meaning set forth in Section 1.1(m).
- (o) “**Back-up Bidder**” shall have the meaning set forth in Section 6.2(b).
- (p) “**Bankruptcy Case**” shall have the meaning set forth in the Recitals.
- (q) “**Bankruptcy Code**” shall have the meaning set forth in the Recitals.
- (r) “**Bankruptcy Court**” shall have the meaning set forth in the Recitals.
- (s) “**Bankruptcy Rules**” shall have the meaning set forth in the Recitals.
- (t) “**Benefit Plan**” means (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.

(u) “**Bidding Procedures Order**” means an order substantially in the form attached hereto as Exhibit D and otherwise in form and substance reasonably satisfactory to Seller and Purchaser.

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

(w) “**Business**” means the operation and maintenance of the Plant and the Purchased Assets by Seller.

(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) “**Competing Bid**” shall have the meaning set forth in Section 6.2(b).

(ff) “**Confidentiality Agreement**” means that certain Confidentiality and Non-Disclosure Agreement by and between Purchaser and Abengoa Bioenergy Technology Holding, LLC.

(gg) “**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.

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

(ii) “**Deposit**” shall have the meaning set forth in Section 2.2.

(jj) “**DIP Financing Agreements**” means the debtor-in-possession credit and security agreement.

(kk) “**DIP Order**” means an order or orders entered by the Bankruptcy Court which approve the DIP Financing Agreements on a final basis.

(ll) “**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.

(mm) “**Employee**” means an individual who is currently or was formerly employed by Seller.

(nn) “**Encumbrance**” means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined 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.

(oo) “**Environmental Law**” means any foreign, federal, state or local statute, regulation, ordinance rule of common law or agency guidance or policies relating to the protection of human health, safety, the environment, natural resources or consumer products.

(pp) “**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 Plant, the Purchased Assets, or the Leased 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.

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

(rr) “**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.

(ss) “**Escrow Agent**” means J.P. Morgan Chase Bank, N.A., which entity will have fiduciary obligations with respect to the transfer of the Deposit.

(tt) “**Escrow Agreement**” means an agreement between the Escrow Agent and the Parties that governs the release of the Deposit, in form and substance reasonably satisfactory to the Parties.

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

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

(ww) “**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.

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

(yy) “**Furnishings and Equipment**” means any and all machinery, equipment, furniture, furnishings, hardware, materials, fixtures, trade fixtures, shelving, storage units, tractors, and related tangible assets maintained or owned by Seller, including, without limitation, the biomass boiler, pretreatment system, biomass handling system, stillage evaporator, steam turbine, all generators and water treatment equipment.

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

(aaa) “**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.

(bbb) “**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.

(ccc) “**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).

(ddd) “**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); (v) inventions, discoveries and patents (including any registration and applications for any of the foregoing); and (vi) 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, but not including intellectual property or proprietary rights of any kind arising under licenses of Intellectual Property.

(eee) “**Licensed Intellectual Property**” mean all Intellectual Property licensed to Seller by an Affiliate or third party, including Intellectual Property owned by Abengoa Bioenergy New Technologies, LLC and licensed to Seller.

(fff) “**Inventory**” means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) maintained or held by, stored by or on behalf of, or in transit to, Seller.

(ggg) “**IRS**” shall have the meaning set forth in Section 4.12(c).

(hhh) “**Knowledge**” or (“**Knowledge of Seller**” or “**Seller’s Knowledge**”) means the actual knowledge of a natural person, or, with respect to a Person that is not a natural person, the actual knowledge of the officers or management of any person, in each case, including facts of which any such individual would be aware in the reasonably prudent exercise of his or her duties.

(iii) “**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.

(jjj) “**Leased Real Property**” means any real property leased, subleased, used or occupied by 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 Plant.

(kkk) “**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.

(lll) “**Material Adverse Effect**” means any event, change, occurrence or state of facts that, individually or in the aggregate, has had, or is reasonably likely to result in a material adverse effect on the condition of the Plant, the Purchased Assets taken as a whole or the Liabilities of Seller taken as a whole; 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 Seller relative to other participants in the industry in which Seller conducts the Business, (b) changes that affect generally the industry in which Seller operates but that do not have a disproportionate effect on Seller relative to other participants in the industry in which Seller conducts the Business, (c) changes after the Agreement Date in any applicable Law or GAAP or (d) the commencement of the Bankruptcy Case.

(mmm) “**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.

(nnn) “**Ordinary Course of Business**” means the ordinary and usual course of operations of the Plant by Seller consistent with a similarly situated non-operating cellulosic ethanol plant. The Parties acknowledge that the Plant is currently idled and not in operation.

(ooo) “**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.

(ppp) “**Outside Back-up Date**” shall have the meaning set forth in Section 6.2(c).

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

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

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

(ttt) “**Pension Plan**” shall have the meaning set forth in Section 4.12(e).

(uuu) “**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 Seller and used, or held for use, in connection with the operation of the Plant or applicable to ownership of the Purchased Assets or assumption of the Assumed Liabilities.

(vvv) “**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 Plant and, in the case of the Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Leased Real Property as it relates to the operation of the Plant or materially detract from the value of the Leased Real Property, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law, (iv) licenses granted on a non-exclusive basis, and (v) 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 Plant.

(www) “**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.

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

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

(zzz) “**Plant**” shall have the meaning set forth in the Recitals.

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

(bbbb) “**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.

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

(dddd) “**Prevailing Bidder**” shall have the meaning set forth in Section 6.2(c).

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

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

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

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

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

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

(kkkk) “**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.

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

(mmmm) “**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 Leased Real Property.

(nnnn) “**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.

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

(pppp) “**Sale and Bidding Procedures Motion**” means the motion or motions of Seller, in form and substance reasonably acceptable to Seller and Purchaser, seeking approval of (i) the Bidding Procedures Order and (ii) 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.

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

(rrrr) “**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 Bidding Procedures Order and Sale Order.

(ssss) “**Sale Order**” means an order in form and substance reasonably satisfactory to Seller and Purchaser.

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

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

(vvvv) “**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.

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

(xxxx) “**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.

(yyyy) “**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.

(zzzz) “**Updating Information**” shall have the meaning set forth in Section 7.15.

(aaaa) “**WARN Act**” means the United States Worker Adjustment and Retraining Notification Act, and the rules and regulations promulgated thereunder.

ARTICLE X.

TAXES

10.1 Certain Taxes.

(a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges 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 Seller. 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.

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) 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*”). Purchaser and 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. Seller shall provide Purchaser and 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. Purchaser and 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. Seller shall deliver to 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 Purchaser does not so receive a properly executed FIRPTA Certificate from 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 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 Seller in respect of which such withholding was made.

10.5 Tax Refunds. Seller agrees to cooperate with Purchaser in all respects, and take or cause to be taken any steps necessary, in order to apply for and obtain any Tax refunds with respect to Seller for any taxable year, provided that Purchaser pays all reasonable expenses incurred in connection therewith.

ARTICLE XI.

MISCELLANEOUS

11.1 Payment of Expenses. Except as otherwise provided in this Agreement, and whether or not the transactions contemplated hereby are consummated, Seller and 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 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.

11.5 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.

11.6 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 DELAWARE AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN DELAWARE 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.

11.7 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 of Biomass of Kansas, 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
Ann Lawrence
E-mail address: Richard.Chesley@dlapiper.com
Ann.Lawrence@dlapiper.com

If to Purchaser, to:

Equilon Enterprises LLC, dba Shell Oil Products US
P.O. Box 2463
Fax no.: (713) 241-5788
Attention: Susan Strelkow
E-mail address: susan.strelkow@shell.com

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

Norton Rose Fulbright US, LLP
2200 Ross Avenue, Suite 3600
Fax no.: (214) 855-8200
Attention: Ryan Manns
E-mail address: ryan.manns@nortonrosefulbright.com

11.8 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to entry of the Bidding Procedures Order (with respect to the matters covered thereby) and 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; provided, that, Purchaser may assign any or all of its rights hereunder, in whole or in part, to any Affiliate of Purchaser without the prior consent of Seller for so long as Purchaser remains responsible for the performance of its financial obligations hereunder.

11.9 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.

11.10 Access and Right to Use. Purchaser agrees that, after the Closing Date, upon reasonable advance notice, Purchaser shall 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 Seller to conduct an orderly wind-down of Seller's operations until such time as the wind-down is completed on or before the one-year anniversary of this Agreement. 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.

[Signature page follows. Remainder of page intentionally left blank]

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

PURCHASER:

SHELL OIL COMPANY

By: 
Name: Susan Strelkow
Title: Attorney-in-Fact

SELLER:

ABENGOA BIOENERGY BIOMASS OF
KANSAS, LLC

By: _____
Name:
Title:

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

PURCHASER:

SHELL OIL COMPANY

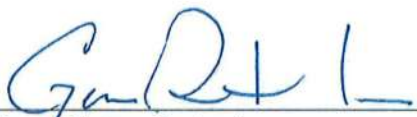
By: _____

Name:

Title:

SELLER:

ABENGOA BIOENERGY BIOMASS OF
KANSAS, LLC

By:  _____

Name: Gerson Santos Leon

Title: Executive Vice President

[Signature page to Asset Purchase Agreement]

WEST271639633.16

DISCLOSURE SCHEDULES
to
ASSET PURCHASE AGREEMENT

Dated as of October 12, 2016

By and Between

Shell Oil Company

as Purchaser

and

Abengoa Bioenergy Biomass of Kansas, LLC

as Seller

General Terms of the Disclosure Schedules

These Disclosure Schedules are being delivered pursuant to the Asset Purchase Agreement, dated as of October 12, 2016 (the “*Agreement*”), by and among Shell Oil Company, a Delaware corporation (“*Purchaser*”) and one or more other persons designated by the Purchaser (collectively, the “*Purchaser Designees*”), and Abengoa Bioenergy Biomass of Kansas, LLC, a Kansas limited liability company, (the “*Company*” or “*Seller*”). Capitalized terms used herein but not otherwise defined in these Disclosure Schedules shall have the meanings ascribed to such terms in the Agreement.

The following Disclosure Schedules are qualified in their entirety by reference to the specific provisions of the Agreement and are not intended to constitute, and shall not be construed as constituting, representations or warranties of the parties, except as and to the extent provided in the Agreement. Inclusion of information herein shall not be construed as indicating that such matter is required to be disclosed nor shall such disclosure be construed as an admission that such information is material to the Seller and the parties to the Agreement.

Headings and introductory language have been inserted on the Sections of the Disclosure Schedules for convenience of reference only and shall not have the effect of amending and shall not be used to construe the representations and warranties set forth in the Agreement.

The information in the following Disclosure Schedules is being provided as required under the Agreement. In disclosing this information, the Seller expressly does not waive any attorney-client privilege associated with any such information or any protection afforded by the “work product doctrine” with respect to any of the matters disclosed or discussed herein.

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Schedule 1.1(c)	Owned Real Property
Schedule 1.2(m)	Excluded Assets
Schedule 1.6(a)	Assigned Contracts
Schedule 2.3(c)	Seller's Bank Account
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Schedule 1.1(a)

Furnishings and Equipment

All Furnishings and Equipment listed on Attachment 1.1(a).

All manuals, paper documents, physical logs, and other documentation (including electronic documentation) currently at the Plant.

Seller's 19,626 tons of bales at Plant

Schedule 1.1(c)

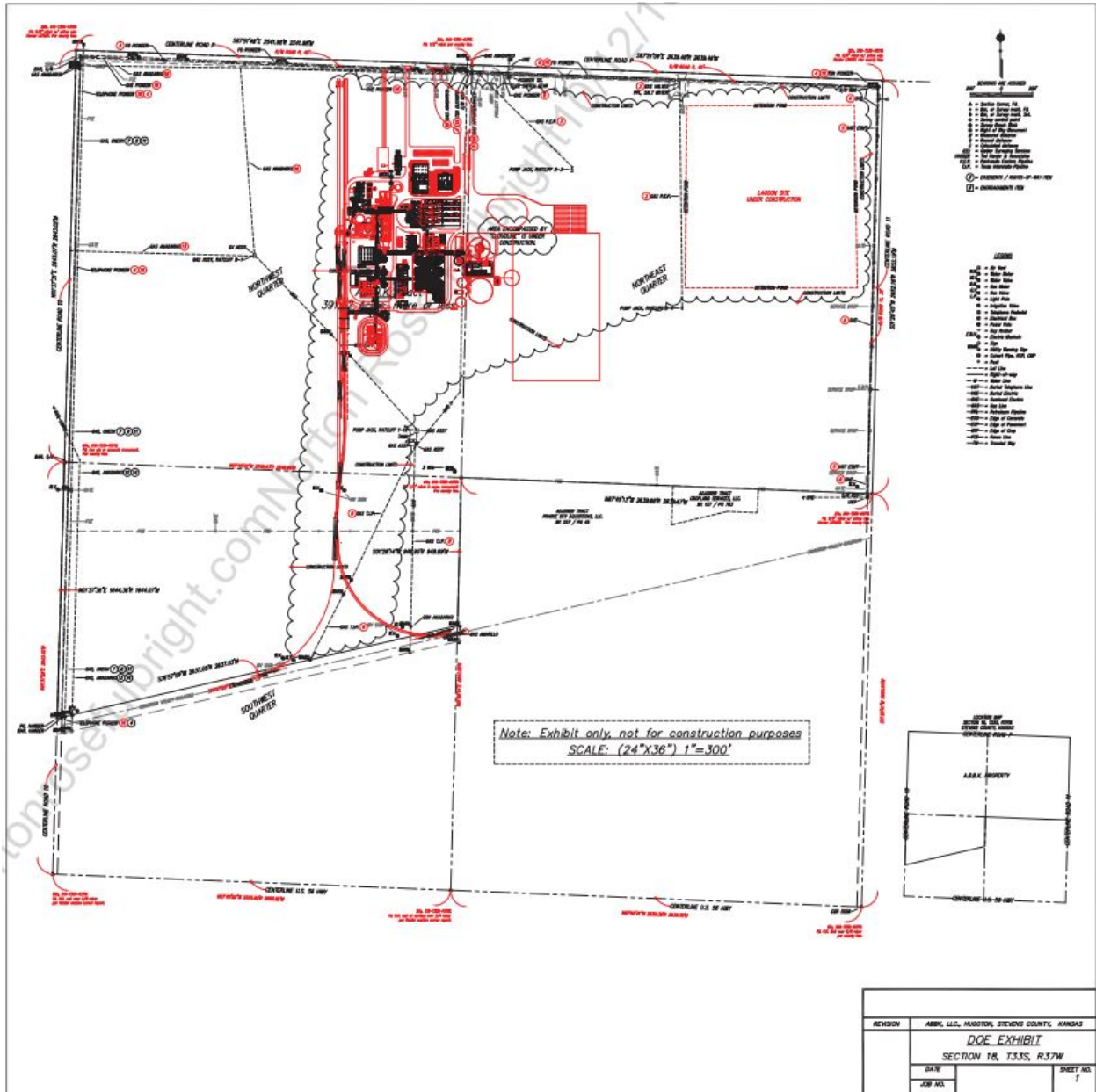
Owned Real Property

Real Property:

The Plant

Address: 1043 Road P, Hugoton, Kansas 67951

Brief Description: 25 million gallon nameplate cellulosic ethanol production facility, electricity cogeneration plant, and waste water treatment plant and approximately 400 acres of adjacent land located in or near Hugoton, Kansas



General Warranty Deed dated September 20, 2012 between Walkemeyer Investments, L.P. and Seller, as amended by Kansas Correction Deed dated November 21, 2012 between Walkemeyer Investments, L.P. and Seller

[Insert Plat Map]

General Warranty Deed dated October 12, 2010 between Richard L. McDonald and Reta June McDonald and Seller

[Insert Plat Map]

Special Warranty Deed dated November 30, 2010 between The Kansas University Endowment Association and Seller

[Insert Plat Map]

The above Real Property is subject to:

Water Rights:

Warranty Deed and Assignment of Water Rights dated February 9, 2012 between Kathryn E. Barber and Seller

Kansas Trustee's Deed and Assignment of Water Rights dated March 8, 2012 between Katrina Raylene West and Oleta Arlene Smeltzer, Trustees of the Ray A. Morgan Revocable Trust and Seller

Warranty Deed and Assignment of Water Rights dated July 11, 2012 between Steven R. Davis and Glenda L. Davis and Seller

Warranty Deed and Assignment of Water Rights dated December 14, 2011 between Gregory Morris and Sherryl Morris and Seller

Warranty Deed and Assignment of Water Rights dated September 20, 2012 among Roy L. Walkemeyer and Leta F. Walkemeyer, Co-Trustees of the Roy Walkemeyer Trust and Seller

Warranty Deed and Assignment of Water Rights dated September 20, 2012 between Walkemeyer Investments, L.P. and Seller

Anadarko Wells

Warranty Deed and Assignment of Water Rights dated March 8, 2012 among Kramer Properties, Kramer Farm Management L.L.C. and Kramer Seed Farms and Seller

Easements:

Easement Agreement dated March 2, 2015 between Greg and Sherry Morris and Seller

Easement Agreement dated September 21, 2012 between Grewell Land LLC and Seller

Easement Option Agreement dated December 13, 2011 between Grewell land LLC and Seller

Easement Agreement dated January 6, 2013 between Richard D. and Vickie S. Hull and Seller

Easement Agreement dated September 21, 2012 between Kramer Properties and Seller

Easement Agreement dated September 21, 2012 between Lanette G. Kitch and Seller

Easement Agreement dated September 21, 2012 between Marcella Bentley-Salmon and Seller

Easement Agreement dated March 8, 2012 between Katrina Raylene West and Oleta Arlene Smeltzer, Trustees of the Ray A. Morgan Revocable Trust, TKM-et al LLC, Kramer Properties, Kramer Farm Management L.L.C., Kramer Seed Farms and Seller

Easement Agreement dated October 31, 2012 between Pelago Properties LLP and Seller.

Easement Agreement dated September 21, 2012 between Stevens County and Seller.

Easement Agreement dated November 9, 2012 between Sherryl J. Morris and Seller.

Easement Agreement dated July, 2012 between Steven R. and Glenda L. Davis and Seller, as corrected on September 21, 2012.

Easement Agreement dated November 9, 2012 between Steven R. and Glenda L. Davis and Seller

Easement Agreement dated September 21, 2012 between TKM-et al, LLC and Seller.

Easement Option Agreement dated March 8, 2012 between TKM-et al, LLC and Seller.

Easement Agreement dated September 21, 2012 between Stevens County and Seller.

Pipeline Right-of-Way Grant dated July 6, 1977 between Delcie N. Ratliff, Rex C. Ratcliff, Dale E. Ratliff, Kay L. Schnittker, and Reta J. Ratcliff and Anadarko Production Company

Pipeline Right-of-Way Grant dated May 13, 1980 between Delcie N. Ratliff and Dale Eugene Ratcliff, co-executors of the estate of Charles M. Ratcliff and Anadarko Production Company (Northwest Quarter)

Pipeline Right-of-Way Grant dated May 13, 1980 between Delcie N. Ratliff and Dale Eugene Ratcliff, co-executors of the estate of Charles M. Ratcliff and Anadarko Production Company (Southwest and Northwest Quarters)

Easement for Gas Lines and Appurtenances dated November 16, 2012 between Black Hills/Kansas Gas Utility Company, LLC and Seller

Easement dated February 8, 1946 between Frank F. Allbritten, trustee for H.B. Ratcliff and Northern Natural Gas Company

Right of Way Grant dated March 15, 1994 between Reta June and Richard Lee McDonald and Anadarko Gathering Company

Pipeline Right-of-Way Grant dated November 20, 2000 between Pelajo Properties and Anadarko Gathering Company

Agreement for Right-of-Way dated March 24, 1932 between Clara P. Ratcliff, executrix of the Estate of J.M. Ratcliff, and Panhandle Eastern Pipe Line Company

Right-of-Way Granted dated July 12, 1971 between Charles Marshal Ratcliff and Delcie N. Ratcliff and Panhandle Eastern Pipe Line Company

Oil and Gas/Mining Lease dated October 16, 1936 between Clara P. Ratcliff and Westroy Corporation

Oil and Gas Lease dated September 19, 1938 between Elizabeth M. Watkins and Panhandle Eastern Pipe Line Company

Oil and Gas Lease dated October 14, 1938 between J.W. Stewart and Margaret B. Stewart and Republic Natural Gas Company

Pipeline Easement dated August 2, 1984 between Roy Walkemeyer and Northern Natural Gas Company

Memorandum of Easement Option Agreement dated March 6, 2012 between Kramer Properties and Seller.

KUEA Land Easement

Schedule 1.2(m)

Excluded Assets

All equipment leased pursuant to that certain Agreement dated December 23, 2013 between GreatAmerica Financial Services Corporation and Abengoa Bioenergy Trading US, LLC (Agreement No. 904476) .

All personal property pursuant to that certain Master Lease Agreement dated January 29, 2014 between Varilease Finance, Inc. and Seller, as amended on March 4, 2014.

The personal property lease for the GE Capital Equipment located in or near the Hugoton Plant.

All wheat straw and corn stove bales that are either (i) owned by Seller, but stored on real property sites that are not owned by Seller, or (ii) not owned by Seller, but stored on Owned Real Property

The assets owned by Simosa IT including:

- File server CPU
- Desk top phones
- Speaker phones
- Desktop office computers and monitors except for control room equipment.
- Laptop computers
- Server and Equipment Racks
- Cell Phones
- Monitors
- Routers / Switches
- Wireless Access Points
- Various networking equipment in ABBK server racks (i.e. Safepoints, Gateways & UPS')
- Control room has some SIT desktops in addition to the ABBK owned computers

The personal property lease with CalFirst Equipment, including without limitation:

- 2013 John Deere 624K Loader with Loadrite Scale, Rear View Camera, 5yd Roll out Bucket & 3-year maintenance package
- 2013 John Deere 624K Loader with Bale Squeeze, Bale Handler, Loadrite Scale, Rear View
- Camera, Angle Blade & 3-year maintenance package
- Advance SW8000 Rider Sweeper
- John Deere 332D Skid Steer Loader
- Roll Off Truck
- 20-YD Heavy Duty Specialty Roll-off Boxes
- Polaris Ranger 900 Diesel w/ Steel Cab, Winch, Snow-shovel & Salt Spreader

- Turfmaker 325 w/ 16HP Briggs Vangaurd Engine, Hose reel & Sidewinder Gun Assembly
- 2013 John Deere 624K Loader with Loadrite Scale, Rear View Camera, 5yd Roll out Bucket & 3-year maintenance package
- (2) 2014 ACTT42 Yard Truck w/ wet kit install
- 2013 JLG 2630ES Electric Scissor Lift
- (3) Caterpillar P5000-LE Forklift
- (7) Polaris Ranger 900 Diesel w/ Steel Cab

Schedule 1.6(a)

Assigned Contracts

[Warranty Deed and Assignment of Water Rights dated February 9, 2012 between Kathryn E. Barber and Seller]

[Kansas Trustee's Deed and Assignment of Water Rights dated March 8, 2012 between Katrina Raylene West and Oleta Arlene Smeltzer, Trustees of the Ray A. Morgan Revocable Trust and Seller]

[Warranty Deed and Assignment of Water Rights dated July 11, 2012 between Steven R. Davis and Glenda L. Davis and Seller]

[Warranty Deed and Assignment of Water Rights dated December 14, 2011 between Gregory Morris and Sherryl Morris and Seller]

[Water Discharge Agreement dated June 28, 2016 between Southwest Fresh Potato LLC and Seller]

[Energy Purchase Agreement dated December 12, 2013 between Mid-Kansas Electric Company, LLC and Abengoa Bioenergy Biomass of Kansas, LLC]

[Letter Agreement dated December 11, 2013 between Abengoa Bioenergy Biomass of Kansas, LLC, Mid-Kansas Electric Company, Sunflower Electric Power Corporation, and Pioneer Electric Cooperative, Inc.]

[Letter Agreement dated December 12, 2013 between Abengoa Bioenergy Biomass of Kansas, LLC and Mid-Kansas Electric Company]

[Natural Gas Distribution System Improvement and Extension Agreement dated September 1, 2012 between Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy and Abengoa Bioenergy Biomass of Kansas, LLC]

[Easement dated February 8, 1946 between Frank F. Allbritten, trustee for H.B. Ratcliff and Northern Natural Gas Company]

[Aerial Right-of-Way for Stevens County Airport]

Schedule 2.3(c)

Seller's Bank Account

[TBD]

Schedule 4.2

Notice, Filings, and Consents

To the extent required by the Permits and Licenses listed in Schedule 4.3(c).

Schedule 4.3(c)

Permits

Air Emission Source Construction Permit effective May 27, 2014 in favor of Abengoa Bioenergy Biomass of Kansas, LLC

Kansas Water Pollution Control Permit effective July 17, 2012 in favor of Abengoa Bioenergy Biomass of Kansas, LLC

ABBK Air Permit – Letter of Understanding

Air Emission Source Construction Permit effective September 16, 2011 in favor of Abengoa Bioenergy Biomass of Kansas, LLC

Air Emission Source Construction Permit effective January 22, 2013 in favor of Abengoa Bioenergy Biomass of Kansas, LLC

Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau Operating Permit No. OP-KS-15001 effective September 12, 2013 in favor of Abengoa Bioenergy Biomass of Kansas, LLC

Spill Prevention, Control, and Countermeasures Plan dated December 2013

Storm Water Pollution Prevention dated January 2014

[Solid Waste Permit (Beneficial reuse of roadbase)]

[Septic Permittor Class V injection well permit for the septic system]

[Water Well Permits]

[Kansas Water Pollution Control effective July 17, 2012 in favor of Abengoa Bioenergy Biomass of Kansas, LLC]

[Storage Tank Permits]

Amendment No. 1 to Radioactive Materials License dated February 26, 2015 in favor of Abengoa Bioenergy Biomass of Kansas LLC

Radio Station Authorization given by Federal Communications Commission in favor of Seller effective from November 8, 2013 to November 8, 2023 (FCC Registration No. – 0019054311; Call Sign – WQSS741; File No. – 0006002664; Frequency Coordination No. – PC20131930020)

Schedule 4.4

Brokers and Finders

Ocean Park Advisors, LLC (OPA) is acting as an investment banker for the Company in connection with the transactions contemplated by the Agreement and pursuant to that certain engagement letter, dated April 19, 2016, and the Bankruptcy Court's Order approving OPA's retention, dated July 12, 2016.

Schedule 4.7

Personal Property Leases

Personal Property Leases with: Varilease, CalFirst, GE Capital, and Great America Laboratory Equipment.

Schedule 4.9

Litigation

Third Amended Foreclosure Petition filed by Brahma Group, Inc., on February 18, 2016, Case No. 2015-CV-000031, seeking a money judgment against the Company and other named defendants in the principal amount of \$7,092,474.07, plus interest and costs and attorney's fees.

Mechanics Liens and Claims against the Company:

(2016-03-18 Abengoa mechanic liens & claim summary.xlsx (ABBK / 11 Legal))

<u>No.</u>	<u>Claimant</u>	<u>Amount</u>	<u>Date Filed</u>	<u>Case No.</u>
1.	Abener Teyma Hugoton General Partnership	\$31,616,127.46	2.12.16	16-SL-14
2.	Acid Piping Technology, Inc.	\$73,863.44	12.21.15	16-SL-13
3.	Air Techniques, Inc.	\$32,030.30	12.24.15	15-SL-15
4.	Bearing Headquarters Company	\$1,201,733.86	2.10.16	16-SL-12
5.	Black Diamond	\$1,210,324.60	12.7.15	15-SL-11
6.	Blake Shell			
7.	Brahma Group, Inc.	\$7,092,474.07	11.02.15	15-SL-4
8.	CF Service & Supply	\$2,859.89	1.19.16	16-SL-1
9.	Cogent, Inc.	\$486,724.33		16-SL-2
10.	CRB Builders, LLC	\$75,539.79	2.12.16	16-SL-3
11.	Decker Electric	\$575,226.37	2.8.16	16-SL-13
12.	Dustex LLC	\$858,468.38	12.28.15	16-SL10
13.	Elliott Electrical Supply, Inc.		12.8.15	16-SL-11
14.	FHI	\$387,337.02	2.16.16	15-SL-16
15.	ICM, Inc.	\$690,508.94	1.15.16	15-SL-17
16.	Maine Automation	\$287,235.40	1.28.16	15-SL-10
17.	Mead O'Brien, Inc.	\$114,129.40	12.4.15	16-SL-15
18.	Pumping Solutions, Inc.	\$28,230.47	12.30.15	16-SL-4
19.	Scheduler Enterprises	\$329,901.77	1.22.16	16-SL-7
20.	Stoppel Dirt	\$ 1,377,514.97	2.3.16	15-SL-7
21.	Sulzer	\$ 212,106.45	12.7.15	15-SL-19
22.	Summit Fire Protection Co.	\$181,417.18	12.7.15	15-SL-14
23.	Sunrise Staffing Services, LLC	\$114,755.00	12.8.15	16-SL-8
24.	TransGlobal	\$185,683.30	1.21.16	15-SL-9
25.	TUSA, Inc. d/b/a	\$264,352.85		15-SL-8
26.	4 State Supply	\$78,060.48	2.4.16	15-SL-12
27.	Vista Energy, L.P.	\$857,519.01	11.12.15	16-SL-6
28.	W-S Industrial Services, Inc.	\$491,551.92	12.30.15	16-SL-9

Schedule 4.10

Material Contracts

Master Lease Agreement dated January 29, 2014 between Varilease Finance, Inc. and Seller, as amended on March 4, 2014.

Master Lease Agreement dated January 29, 2014 between Varilease Finance, Inc. and Seller, as amended on March 4, 2014.

Kansas Trustee's Deed and Assignment of Water Rights dated March 8, 2012 between Katrina Raylene West and Oleta Arlene Smeltzer, Trustees of the Ray A. Morgan Revocable Trust and Seller

Warranty Deed and Assignment of Water Rights dated July 11, 2012 between Steven R. Davis and Glenda L. Davis and Seller

Warranty Deed and Assignment of Water Rights dated December 14, 2011 between Gregory Morris and Sherryl Morris and Seller

Warranty Deed and Assignment of Water Rights dated September 20, 2012 among Roy L. Walkemeyer and Leta F. Walkemeyer, Co-Trustees of the Roy Walkemeyer Trust and Seller

Warranty Deed and Assignment of Water Rights dated September 20, 2012 between Walkemeyer Investments, L.P. and Seller

[Water Rights for Anadarko Wells]

Warranty Deed and Assignment of Water Rights dated March 8, 2012 among Kramer Properties, Kramer Farm Management L.L.C. and Kramer Seed Farms and Seller

Farm Services Agreement dated November 1, 2012 between Abengoa Bioenergy Biomass of Kansas, LLC and Walter Beesley (expired)

Farm Services Agreement dated November 1, 2015 between Abengoa Bioenergy Biomass of Kansas, LLC and Walter Beesley

Water Discharge Agreement dated June 28, 2016 between Southwest Fresh Potato LLC and Seller

Purchase Order dated April 20, 2015 between Simplex Grinnell LP and Seller (Fire Alarm)

Purchase Order dated October 10, 2016 between Ingersoll Rand Industrial Technologies and Seller (Air Compressor Service)

Enzyme Supply Agreement dated September 23, 2011 between Abengoa Bioenergy New Technologies, Inc and Seller

Ethanol Offtake Agreement dated September 23, 2011 between Abengoa Bioenergy Trading US, LLC and Seller

License from Schneider Electric for Metso DCS System

License from OSIsoft for PI (DCS data integration)

License from General Electric for Cogen Control system

License from Veolia for WWTP Control system

License from FCC for Plant Radios

Biomass Purchase Contract dated January 8, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Hitch Enterprises

Biomass Purchase Contract dated January 8, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and McClain Partnership

Biomass Purchase Contract dated February 10, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Don Jr. & Tonya Knier Farms

Biomass Purchase Contract dated February 10, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Donald and Naomi Knier Living Trust

Biomass Purchase Contract dated February 21, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Robert King Farm Act

Biomass Purchase Contract dated March 3, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and McClure Farms

Biomass Purchase Contract dated January 28, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Hatcher Land & Cattle

Biomass Purchase Contract dated March 3, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Lloyd W. Moon

Biomass Purchase Contract dated March 3, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Metcalf Farms and JM Farms

Biomass Purchase Contract dated March 2, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Warren Willis

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Mark Witt, ANL Farms, and Neal Hofferber

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Clifford Sheck

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Roger Gillespie

Biomass Purchase Contract dated April 5, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Daryl and Stephanie May Farms

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Richard D. Hull

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Gerald Hull

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and JW Cullison Farms

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Vergil Johnson

Biomass Purchase Contract dated January 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Johnson Farms, LLC

Biomass Purchase Contract dated January 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Borthwick Farms, LLC

Biomass Purchase Contract dated January 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and David Johnson

Biomass Purchase Contract dated January 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and J.D. Golden Farms, LLC

Biomass Purchase Contract dated January 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Gerald Borthwick

Biomass Purchase Contract dated April 5, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and RA Farms

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Wayne Johnson Farms

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Gene Link

Biomass Purchase Contract dated April 21, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and John Ensz

Biomass Purchase Contract dated March 26, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Darren W. Buck

Biomass Purchase Contract dated April 21, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Jeremy Patterson-Patterson Joint Venture

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Dell Cullison

Biomass Purchase Contract dated June 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Layne & Billie JV

Biomass Purchase Contract dated June 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Rock Ormiston & Layne Angell

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Snyder Farms

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and A&A Farms, LLC

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Tom Lahey

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Marcus Howe

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and L and L Farms

Biomass Purchase Contract dated April 21, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and B& T Farms

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Jerome Beer

Biomass Purchase Contract dated February 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Gerald Beer

Biomass Purchase Contract dated February 20, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Rock Ormiston & Rock Ormiston II

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Brown Enterprises

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Henry Nightengale

Biomass Purchase Contract dated March 26, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Rome Farms

Biomass Purchase Contract dated March 16, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Shannon Crawford

Biomass Purchase Contract dated April 5, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Triple R Farms

Biomass Purchase Contract dated April 21, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and G&T Farms Partnership

Biomass Purchase Contract dated June 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and CRG Heger Family Partnership

Biomass Purchase Contract dated April 2, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Bill Koehn

Biomass Purchase Contract dated March 25, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Gaskill Bros Farms

Biomass Purchase Contract dated May 3, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Clint Thomason

Biomass Purchase Contract dated April 5, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Claassen Farms

Biomass Purchase Contract dated April 21, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Rooney Agri-Business

Biomass Purchase Contract dated May 3, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Stegman Farms Partnership

Biomass Purchase Contract dated May 3, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and MR Farms

Biomass Purchase Contract dated June 11, 2010 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Kramer Seed Farms

Biomass Purchase Contract dated March 2, 2011 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and R&R Partnership

Biomass Purchase Contract dated March 11, 2011 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Rick Shelton

Biomass Purchase Contract dated November 1, 2011 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and B&B Harper Farms

Biomass Purchase Contract dated December 15, 2011 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Cecil Ivie

Biomass Purchase Contract dated December 15, 2011 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Jim Gooch

Biomass Purchase Contract dated December 22, 2011 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Derek Heinen

Biomass Purchase Contract dated April 17, 2012 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and W. Gene Link

Biomass Purchase Contract dated May 2, 2012 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Cox Farms

Biomass Purchase Contract dated May 31, 2012 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and Benny J. McClure

Biomass Purchase Contract dated April 29, 2013 between Abengoa Bioenergy Biomass of Kansas, LLC and Johnson and 4-D Farms

Farm Services Agreement dated November 1, 2012 between Abengoa Bioenergy Biomass of Kansas, LLC and Walter Beesley

Farm Services Agreement dated November 1, 2015 between Abengoa Bioenergy Biomass of Kansas, LLC and Walter Beesley

Amended and Restated Biomass Supply Agreement dated September 18, 2013 between Abengoa Bioenergy Biomass of Kansas, LLC and Abengoa Bioenergy Trading US, LLC

Biomass Supply Agreement dated September 18, 2013 between Advanced Feedstocks of Kansas, LLC and Abengoa Bioenergy Trading US, LLC

Biomass Supply and Services Agreement dated November 19, 2013 between Pacific Ag, LLC and Advanced Feedstocks of Kansas, LLC

Settlement and AFK Dissolution Agreement dated November 23, 2015 between Abengoa Bioenergy Trading US, LLC, Advanced Feedstocks of Kansas, LLC and Pacific Ag, LLC

Assignment, Assumption, and Suspension Agreement dated December 1, 2015 between Advanced Feedstocks of Kansas, LLC and Abengoa Bioenergy Trading US, LLC

Confirmation of Agreement for the Sale and Purchase of Biomass dated November 3, 2015 between Advanced Feedstocks of Kansas, LLC and Pacific Ag, LLC

Supplemental Agreement to Natural Gas Distribution System Improvement and Extension Agreement dated March 26, 2014 between Black Hills/Kansas Gas Utility Company LLC d/b/a Black Hills Energy and Abengoa Bioenergy Biomass of Kansas, LLC

ABBK Mid-Kansas Energy Power Purchase Agreement

Service Agreement #2 dated December 17, 2015 between Pioneer Electric Cooperative, Inc., Sunflower Electric Power Corporation, and Abengoa Bioenergy Biomass of Kansas, LLC

Letter Agreement dated December 11, 2013 between Abengoa Bioenergy Biomass of Kansas, LLC, Mid-Kansas Electric Company, Sunflower Electric Power Corporation, and Pioneer Electric Cooperative, Inc.

Letter Agreement dated December 12, 2013 between Abengoa Bioenergy Biomass of Kansas, LLC and Mid-Kansas Electric Company

Energy Purchase Agreement dated December 12, 2013 between Mid-Kansas Electric Company, LLC and Abengoa Bioenergy Biomass of Kansas, LLC

Natural Gas Distribution System Improvement and Extension Agreement dated September 1, 2012 between Black Hills/Kansas Gas Utility Company, LLC d/b/a Black Hills Energy and Abengoa Bioenergy Biomass of Kansas, LLC

Landfill Services Agreement dated October 15, 2012 between Seward County Landfill and Abengoa Bioenergy Biomass of Kansas, LLC

Contract for Design, Manufacturing and Delivery of Biomass Handling System for Hugoton Biomass Ethanol and Cogeneration Plant Project in Hugoton, Kansas dated October 27, 2011 between Abener Teyma Hugoton General Partnership and West Salem Machinery Company, Inc.

Installation Certificate to Schedule No. 1 dated October 31, 2014 between Varilease Finance, Inc. and Abengoa Bioenergy Biomass of Kansas, LLC

Easement Agreement dated March 2, 2015 between Greg and Sherry Morris and Seller

Easement Agreement dated September 21, 2012 between Grewell Land LLC and Seller

Easement Option Agreement dated December 13, 2011 between Grewell land LLC and Seller

Easement Agreement dated January 6, 2013 between Richard D. and Vickie S. Hull and Seller

Easement Agreement dated September 21, 2012 between Kramer Properties and Seller

Easement Agreement dated September 21, 2012 between Lanette G. Kitch and Seller

Easement Agreement dated September 21, 2012 between Marcella Bentley-Salmon and Seller

Easement Agreement dated March 8, 2012 between Katrina Raylene West and Oleta Arlene Smeltzer, Turstees of the Ray A. Morgan Revocable Trust, TKM-et al LLC, Kramer Properties, Kramer Farm Management L.L.C., Kramer Seed Farms and Seller

Easement Agreement dated October 31, 2012 between Pelago Properties LLP and Seller.

Easement Agreement dated September 21, 2012 between Stevens County and Seller

Easement Agreement dated November 9, 2012 between Sherryl J. Morris and Seller

Easement Agreement dated July, 2012 between Steven R. and Glenda L. Davis and Seller, as corrected on September 21, 2012.

Easement Agreement dated November 9, 2012 between Steven R. and Glenda L. Davis and Seller

Easement Agreement dated September 21, 2012 between TKM-et al, LLC and Seller

Easement Option Agreement dated March 8, 2012 between TKM-et al, LLC and Seller

Easement Agreement dated September 21, 2012 between Stevens County and Seller

Pipeline Right-of-Way Grant dated July 6, 1977 between Delcie N. Ratliff, Rex C. Ratcliff, Dale E. Ratliff, Kay L. Schnittker, and Reta J. Ratcliff and Anadarko Production Company

Pipeline Right-of-Way Grant dated May 13, 1980 between Delcie N. Ratliff and Dale Eugene Ratcliff, co-executors of the estate of Charles M. Ratcliff and Anadarko Production Company (Northwest Quarter)

Pipeline Right-of-Way Grant dated May 13, 1980 between Delcie N. Ratliff and Dale Eugene Ratcliff, co-executors of the estate of Charles M. Ratcliff and Anadarko Production Company (Southwest and Northwest Quarters)

Easement for Gas Lines and Appurtenances dated November 16, 2012 between Black Hills/Kansas Gas Utility Company, LLC and Seller

Easement dated February 8, 1946 between Frank F. Allbritten, trustee for H.B. Ratcliff and Northern Natural Gas Company

Right of Way Grant dated March 15, 1994 between Reta June and Richard Lee McDonald and Anadarko Gathering Company

Pipeline Right-of-Way Grant dated November 20, 2000 between Pelajo Properties and Anadarko Gathering Company

Agreement for Right-of-Way dated March 24, 1932 between Clara P. Ratcliff, executrix of the Estate of J.M. Ratcliff, and Panhandle Eastern Pipe Line Company

Right-of-Way Granted dated July 12, 2971 between Charles Marshal Ratcliff and Delcie N. Ratcliff and Panhandle Eastern Pipe Line Company

Oil and Gas/Mining Lease dated October 16, 1936 between Clara P. Ratcliff and Westroy Corporation

Oil and Gas Lease dated September 19, 1938 between Elizabeth M. Watkins and Panhandle Eastern Pipe Line Company

Oil and Gas Lease dated October 14, 1938 between J.W. Stewart and Margaret B. Stewart and Republic Natural Gas Company

Pipeline Easement dated August 2, 1984 between Roy Walkemeyer and Northern Natural Gas Company

Memorandum of Easement Option Agreement dated March 6, 2012 between Kramer Properties and Seller

KUEA Land Easement

Process Development and License Agreement dated September 23, 2011 between Abengoa Bioenergy New Technologies, Inc. and Abengoa Bioenergy Biomass of Kansas, LLC

Amendment No. 1 to Radioactive Materials License dated February 26, 2015 in favor of Abengoa Bioenergy Biomass of Kansa LLC

Radio Station Authorization given by Federal Communications Commission in favor of Seller effective from November 8, 2013 to November 8, 2023 (FCC Registration No. – 0019054311; Call Sign – WQSS741; File No. – 0006002664; Frequency Coordination No. – PC20131930020)

Schedule 4.11(a)

Tax Returns

None. The Kansas State Court of Tax Appeals has approved the ABBK Project for exemption from Ad Valorem taxation pursuant to K.S.A. 2011 Supp. 79-213 (Docket # 2011-8748-TX).

Schedule 4.11(b)

Tax Proceedings

[TBD]

Schedule 4.12(b)

Employee Actions

[None]

Schedule 4.12(c)

Benefit Plans

Anthem/BlueCross BlueShield Employee Healthcare Plan.
Assurant Employee Benefits – Dental Plan
Assurant Employee Benefits – Vision Plan
Assurant Employee Benefits – Disability Benefits
Assurant Employee Benefits – EAP Benefits
Assurant Employee Benefits – Life and AD&D Plan
NueSynergy – Employee Flexible Spending Account
NueSynergy – Employee Health Savings Plan

Schedule 4.13(e)

Labor Matters

As a condition of the DOE Loan Guarantee, the project is required to comply with certain Davis Bacon Act (DBA) regulations. The project contractor (Abeinsa and their subcontractors) and ABBK have outstanding claims unresolved under the DBA.

Employment Contracts:

Gerson Santos (current)

Brent Inkelaar (current)

Martin Westerhuis (current)

Danny Allison (contract ended December 31, 2015).

Schedule 4.15

Environmental Matters

Consent Agreement and Final Order (Air Penalty) of the Secretary dated December 4, 2014 between Kansas Department of Health and Environment and Abengoa Bioenergy Biomass of Kansas, LLC (Case No. 14-E-7-A)

Potential Environmental Claim made by the Kansas Department of Health and Environment. This claim is regarding the performance payment required by the above ABBK Consent Agreement and Final Order. The financial performance listed in the ABBK Consent Agreement and Final Order provides as follows (page 2 and 3 of Consent agreement): \$76,800 of the claim has been paid to KDHE and \$19,200 for a Supplemental Environmental Project (SEP) associated with the Kansas Green Schools Program (KGSP) has not been paid.

Schedule 4.16(b)

Absence of Certain Changes

[TBD]

Schedule 7.1(a)

Compensation Matters

[None]

Schedule 7.1(h)

Affiliate Transactions

[None]

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the proposed sale of substantially all assets (the “Purchased Assets”) of the Debtor (in such capacity, the “Seller”), in connection with the Debtor’s chapter 11 case pending in the United States Bankruptcy Court for the District of Kansas (the “Bankruptcy Court”), lead case number 16-10446.

The Seller entered into that certain asset purchase agreement, dated October [], 2016 with Shell Oil Company (the “Stalking Horse Purchaser”), pursuant to which the Stalking Horse Purchaser will acquire the Purchased Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse Agreement”). The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

ASSETS TO BE SOLD

The Debtor seeks to consummate a sale of the Purchased Assets (the “Sale”), as described in the Stalking Horse Agreement. The sale of the Purchased Assets is on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Seller, its agents or estate, except to the extent set forth in the purchase agreement of the Successful Bidder (as defined herein) as approved by the Bankruptcy Court. Except as otherwise provided in such approved purchase agreement or the sale order entered by the Bankruptcy Court, all of the Seller’s right, title and interest in and to the Purchased Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (collectively, the “Encumbrances”), such Encumbrances to attach solely to the net proceeds of the Sale.

THE BID PROCEDURES

In order to ensure that the Debtor receives the maximum value for the Purchased Assets, the Stalking Horse Agreement is subject to higher or better offers, and, as such, the Stalking Horse Agreement will serve as the “stalking horse” bid for the Purchased Assets.

Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person other than the Stalking Horse Purchaser who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties (as defined below):

- (i) a written disclosure of the identity of each person or entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid; and
- (ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor, in substantially the same form as signed by the Stalking Horse Purchaser and which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A Potential Bidder that delivers the documents and information described above or that the Debtor determines is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale, will be deemed a “Qualified Bidder.”

As promptly as practicable after a Potential Bidder delivers all of the materials required above, the Debtor will determine and will notify the Potential Bidder if such Potential Bidder is a Qualified Bidder.

Due Diligence

The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor deems appropriate, in its reasonable discretion, which must include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information. The Debtor must promptly advise the Stalking Horse Purchaser in the event any other Potential Bidder receives diligence the Stalking Horse Purchaser has not previously received and shall promptly be provided with access to such diligence materials. The due diligence period shall extend through and include the Bid Deadline. Additional due diligence will not be provided after the Bid Deadline.

Provisions Governing Qualified Bids

A bid will be considered a "Qualified Bid" only if the bid is submitted by a Qualified Bidder and complies with all of the following:

- a. it states that the applicable Qualified Bidder offers to purchase, in cash, the Purchased Assets upon the terms and conditions that the Debtor, in consultation with the Committee, reasonably determines are, in the aggregate, no less favorable to the Debtor than those set forth in the Stalking Horse Agreement;
- b. it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder and/or the Back-Up Bidder (as defined below), its offer shall remain irrevocable until the earlier of (i) the closing of the sale to the Successful Bidder, or (ii) the Outside Date (as defined in the Stalking Horse Agreement); provided further that if such bidder is selected as the Back-Up Bidder its offer shall remain irrevocable until the earlier of (i) the closing of the sale to the Successful Bidder, (ii) the closing of the sale to such Qualified Bidder, as the Back-Up Bidder, or (iii) the Outside Back-Up Date (as defined in the Stalking Horse Agreement);
- c. confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- d. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Purchased Assets expressed in U.S. Dollars (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement ("Marked Agreement"), and, with respect to the Purchased Assets, the proposed order to approve the sale by the United States Bankruptcy Court for the District of Kansas (the "Bankruptcy Court");
- e. it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Qualified Bidder's Marked Agreement;

- f. it provides for the repayment of all other costs, simultaneously with the closing of the transaction contemplated under the Qualified Bidder's Marked Agreement;
- g. it has a value to the Debtor with respect to the Purchased Assets, in the Debtor's exercise of its reasonable business judgment, after consultation with the Committee, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (A) the Stalking Horse Protections, plus (B) \$250,000 (the "Initial Overbid");
- h. it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume, and for the purchase of Purchased Assets, provides details of the Qualified Bidder's proposal for the treatment of related cure costs;
- i. it includes an acknowledgement and representation that the Qualified Bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Marked Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- j. it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Marked Agreement;
- k. it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to 10% of the Purchase Price (as defined in the Marked Agreement);
- l. it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;
- m. with respect to the purchase of Purchased Assets, it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- n. it contains such other information reasonably requested by the Debtor; and
- o. it is received prior to the Bid Deadline.

Notwithstanding the foregoing, Shell, in its capacity as the Stalking Horse Purchaser, shall be deemed a Qualified Bidder, and the Stalking Horse Agreement will be deemed a Qualified Bid, for all purposes in

connection with the bidding process, the Auction, and the Sale without compliance with the above enumerated requirements.

The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether any bids (other than the Stalking Horse Agreement) constitute Qualified Bids and identify any such bid(s) promptly after making such determination; provided, however, that such notification shall not be given later than one (1) business day following the expiration of the Bid Deadline.

Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the Debtor: DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent P. Slusher (vince.slusher@dlapiper.com), and 203 N. LaSalle Street, Suite 1900, Chicago, IL 60601, Attn: David E. Avraham (david.avraham@dlapiper.com); (ii) counsel to the Stalking Horse Purchaser: Norton Rose Fulbright US, LLP, 2200 Ross Avenue, Suite 3600, Dallas, TX 75201, Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com); (iii) counsel to the Committee: Baker & Hostetler LLP, 127 Public Square, Suite 2000, Cleveland, OH 44114, Attn: Kelly S. Burgan (kburgan@bakerlaw.com); and (iv) counsel to the DIP Lender: Katten Muchin Rosenman LLP, 525 W. Monroe Street, Chicago, IL 60661, Attn: Paige E. Barr (paige.barr@kattenlaw.com); so as to be received by the Notice Parties no later than the Bid Deadline. The Bid Deadline may be extended by Debtor in its sole discretion, after consultation with the Committee, upon written notice to the Notice Parties.

Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation, (a) the amount of such bid, (b) the risks and timing associated with consummating such bid, (c) any proposed revisions to the Stalking Horse Agreement, (d) the ability of the Potential Bidders to obtain appropriate regulatory approvals, (e) any conditions or cross-conditions to closing and (f) any other factors deemed relevant by the Debtor in its reasonable discretion after consultation with the Committee.

No Qualified Bids

If the Debtor does not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtor will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder upon the expiration of the Bid Deadline.

Auction Process

If the Debtor receives one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtor will conduct the Auction of the Purchased Assets, which shall take place at 10:00 a.m. (CT) on November 21, 2016 at the offices of Abengoa Bioenergy, 16150 Main Circle Drive, Suite 300, Chesterfield, MO 63017, or such other location as shall be timely communicated to all entities entitled to attend the Auction, and shall be transcribed. The Auction shall run in accordance with the following procedures:

- a. only the Debtor, the Stalking Horse Purchaser, the Committee, the DIP Lender, and the advisors to each of the them, and any other Qualified Bidder that has timely submitted a Qualified Bid, shall attend the Auction in person, and only the Stalking Horse Purchaser and such other Qualified Bidders will be entitled to make any Subsequent Bids (as defined below) at the Auction;

- b. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- c. prior to the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Sellers whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. Prior to the Auction, the Debtor will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtor believes, in its reasonable discretion after consultation with the Committee, is the highest or otherwise best offer (each, a "Starting Bid") to the Stalking Horse Purchaser and all other Qualified Bidders;
- d. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;
- e. the Debtor, after consultation with the Committee and upon notice to the Stalking Horse Purchaser, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction;
- f. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a "Subsequent Bid") providing a net value to the Debtor's estate of at least \$250,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid (and the value of such bid) that it believes to be the highest or otherwise best bid (each, the "Leading Bid");
- g. a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;
- h. except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtor will give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor; and
- i. the Auction shall conclude at such time as the Debtor has achieved the highest and otherwise best Purchase Price for the Purchased Assets. Once the Auction is closed, the Auction shall not be re-opened without order of the Bankruptcy Court.

Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtor, in consultation with the Committee, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders (including the Stalking Horse Purchaser) submitted at the Auction for the Purchased Assets (the "Successful Bid" and the bidder making such bid, the "Successful Bidder"), and communicate to the Stalking Horse Purchaser and the other Qualified Bidders the identity of the Successful Bidder and provide the details of the Successful Bid. The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court. The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtor will be required to serve as a back-up bidder (the "Back-Up Bidder") and keep its bid open and irrevocable until the later to occur of twenty (20) days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized and directed to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

Within one (1) business day after conclusion of the Auction, the Debtor shall file a notice with the Bankruptcy Court identifying the Successful Bidder. Within two (2) business days after conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

The Debtor will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

Return of Deposits

All Good Faith Deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

THE STALKING HORSE PROTECTIONS

In recognition of its expenditure of time, energy, and resources, the Debtor has agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtor will pay the Stalking Horse Purchaser (i) a break-up fee equal to 2.5% of the Cash Consideration of the Purchase Price (the "Break-Up Fee"); and (ii) an amount in cash equal to the aggregate amount of the reasonable charges, costs, fees, payments, and expenses (including, without limitation, all reasonable fees, expenses and disbursements of any representatives of the Stalking Horse Purchaser) paid or incurred by or on behalf of Stalking Horse Purchaser relating to or in connection with its bid, to the extent not otherwise paid, which such amount shall be capped at \$100,000 (the "Expense Reimbursement," and together with the Break-Up Fee, the "Stalking Horse Protections"). The Stalking Horse Purchaser shall provide reasonable documentation of the expenses for which it seeks reimbursement to the Debtor. The Stalking Horse Protections shall be payable as provided for pursuant to the terms of the Stalking Horse Agreement.

The Debtor has agreed that its obligation to pay the Break-Up Fee and Expense Reimbursement pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, and shall, to the extent owed by the Debtor, with respect to the Purchased Assets, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code and shall be payable from the proceeds of the Purchased Assets within two (2) days following the closing with the Successful Bidder under the terms

and conditions of the Stalking Horse Agreement and the Bidding Procedures Order, notwithstanding section 507(a) of the Bankruptcy Code.

SALE HEARING

The Debtor will seek entry of an order from the Bankruptcy Court at a hearing (the “Sale Hearing”) to begin on or before November 22, 2016 at 9:00 a.m. (prevailing Central Time), subject to the availability of the Bankruptcy Court, to approve and authorize the Sale to the Successful Bidder on the terms and conditions memorialized in the Successful accordance with the Bid Procedures.

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

In re:

ABENGOA BIOENERGY BIOMASS OF
KANSAS, LLC,

Debtor.

Case No. 16-10446

Chapter 11

**NOTICE OF SALE PROCEDURES,
AUCTION DATE AND SALE HEARING**

PLEASE TAKE NOTICE that on October [], 2016, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Motion of the Debtor for Entry of an Order (A) Approving and Authorizing Bidding Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets; (B) Approving Stalking Horse Protections; (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of Notice Thereof; and (II)(A) Approving and Authorizing the Sale of Substantially all of the Debtor’s Assets Free and Clear of All Liens,; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief* (the “Motion”).¹ The Debtor seeks, among other things, to sell substantially all of its assets (the “Purchased Assets”) to the successful bidder (the “Successful Bidder”), at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to sections 363 and 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on October [], 2016, the Bankruptcy Court entered an order (the “Bidding Procedures Order”) approving the Motion and the bidding procedures (the “Bidding Procedures”), which set the key dates and times related to the Sale of the Purchased Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures. To the extent that there are any inconsistencies between the Bidding Procedures Order and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, an auction (the “Auction”) to sell the Purchased Assets will be conducted on November 21, 2016 starting at 10:00 a.m. (prevailing Central Time) (the “Auction Date”) at the offices of Abengoa Bioenergy, 16150 Main Circle Drive, Suite 300, Chesterfield, MO 63017, or such other location as shall be timely communicated to all entities entitled to attend the Auction.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Purchased Assets to the Successful Bidder (the “Sale Hearing”) before the Honorable Robert E. Nugent at the United States Bankruptcy Court for the District of Kansas, 401 N. Market

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Street, Wichita, KS 67292 on November 22, 2016 at 9:00 a.m. (prevailing Central Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing. Objections to the Sale shall be filed and served so as to be received no later than 4:00 p.m. (prevailing Central Time) on November 4, 2016 by: (i) counsel to the Debtor: DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent P. Slusher (vince.slusher@dlapiper.com), and 203 N. LaSalle Street, Suite 1900, Chicago, IL 60601, Attn: David E. Avraham (david.avraham@dlapiper.com); (ii) counsel to the Stalking Horse Purchaser: Norton Rose Fulbright US, LLP, 2200 Ross Avenue, Suite 3600, Dallas, TX 75201, Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com); (iii) counsel to the DIP Lender: Katten Muchin Rosenman LLP, 525 W. Monroe Street, Chicago, IL 60661, Attn: Paige E. Barr (paige.barr@kattenlaw.com); (iv) counsel to the Committee: Baker & Hostetler LLP, 127 Public Square, Suite 2000, Cleveland, OH 44114, Attn: Kelly S. Burgan (kburgan@bakerlaw.com); and (v) the Office of the United States Trustee, 215 Dean A. McGee, 4th Floor, Oklahoma City, OK 73102, Attn: Charles E. Snyder (charles.snyder@usdoj.gov).

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order and Bidding Procedures, which shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety.

[Remainder of Page Intentionally Left Blank]

Dated: _____, 2016

Respectfully submitted,

ARMSTRONG TEASDALE LLP

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Co-Counsel for the Debtor

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

In re:

ABENGOA BIOENERGY BIOMASS OF
KANSAS, LLC,

Debtor.

Case No. 16-10446

Chapter 11

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF THE SALE DEBTOR
THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on October [__], 2016, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Motion of the Debtor for Entry of an Order (A) Approving and Authorizing Bidding Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets; (B) Approving Stalking Horse Protections; (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of Notice Thereof; and (II)(A) Approving and Authorizing the Sale of Substantially all of the Debtor’s Assets Free and Clear of All Liens,; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief* (the “Motion”).¹ The Debtor seeks, among other things, to sell substantially all of its assets (the “Purchased Assets”) to the successful bidder (the “Successful Bidder”), at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to sections 363 and 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on October [__], 2016, the Court entered an Order (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs: (i) the bidding process for the sale of the Purchased Assets and (ii) procedures for the assumption and assignment of certain of the Debtor’s executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that the Motion also seeks Court approval of the sale (the “Sale”) of the Purchased Assets to the Successful Bidder, free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code, including the assumption by the Debtor and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code (the “Assumed Executory Contracts”).

PLEASE TAKE FURTHER NOTICE that an evidentiary hearing (the “Sale Hearing”) to approve the Sale and authorize the assumption and assignment of the Assumed Executory Contracts will be held on November 22, 2016 at 9:00 a.m. (prevailing Central Time) before the

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Honorable Robert E. Nugent at the United States Bankruptcy Court for the District of Kansas, 401 N. Market Street, Wichita, KS 67292 on November 22, 2016 at 9:00 a.m. (prevailing Central Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine.. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, consistent with the Bidding Procedures Order, the Debtor may seek to assume an executory contract or unexpired lease to which you may be a party. The Assumed Executory Contract is described on Exhibit 1 attached to this Notice. The amount shown on Exhibit 1 hereto as the “Cure Amount” is the amount, if any, based upon the Debtor’s books and records, which the Debtor asserts is owed to cure any defaults existing under the Assumed Executory Contract.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assumed Executory Contract(s) on Exhibit 1 to which you are a party, you must file in writing with the United States Bankruptcy Court for the District of Kansas, 401 N. Market Street, Wichita, KS 67292, an objection on or before November 4, 2016. Any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an objection to the Cure Amount contained in this Notice, you will receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set forth herein, if any, with payment made pursuant to the terms of the applicable purchase agreement and any order approving the Sale. **Any non-debtor party to an Assumed Executory Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached Exhibit 1.**

PLEASE TAKE FURTHER NOTICE that if you have any other objection to the Debtor’s assumption and assignment of the Assumed Executory Contract to which you may be a party (other than an objection to the Cure Amount, which Cure Amount objection must be filed as set forth above), including without limitation, with respect to the buyer’s ability to provide adequate assurance of future performance under the Assumed Executory Contract, you also must file that objection in writing no later than November 4, 2016.

PLEASE TAKE FURTHER NOTICE that any objection you may file must be served so as to be received by the following parties by the applicable objection deadline date and time: (i) counsel to the Debtor: DLA Piper LLP (US), 1717 Main Street, Suite 4600, Dallas, TX 75201, Attn: Vincent P. Slusher (vince.slusher@dlapiper.com), and 203 N. LaSalle Street, Suite 1900, Chicago, IL 60601, Attn: David E. Avraham (david.avraham@dlapiper.com); (ii) counsel to the Stalking Horse Purchaser: Norton Rose Fulbright US, LLP, 2200 Ross Avenue, Suite 3600, Dallas, TX 75201, Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com); (iii) counsel to the DIP Lender: Katten Muchin Rosenman LLP, 525 W. Monroe Street, Chicago, IL 60661, Attn: Paige E. Barr (paige.barr@kattenlaw.com); (iv) counsel to the Committee: Baker & Hostetler LLP, 127 Public Square, Suite 2000, Cleveland, OH 44114, Attn: Kelly S. Burgan (kburgan@bakerlaw.com); and (v) the Office of the United States Trustee, 215 Dean A. McGee, 4th Floor, Oklahoma City, OK 73102, Attn: Charles E. Snyder (charles.snyder@usdoj.gov).

PLEASE TAKE FURTHER NOTICE that the buyer shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under sections 365(b) and (f) of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in connection with the proposed assignment of any Assumed Executory Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, in the event that the Debtor and the non-debtor party cannot resolve any Cure Amount Objection, the Debtor shall segregate any disputed Cure Amounts (“Disputed Cure Amounts”) pending the resolution of any such disputes by the Court or mutual agreement of the parties. Cure Amount Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, except to the extent otherwise provided in the modified Purchase Agreement with the Successful Bidder, pursuant to section 365(k) of the Bankruptcy Code, the Debtor and the Debtor’s estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assumed Executory Contracts.

PLEASE TAKE FURTHER NOTICE that nothing contained herein shall obligate the Debtor to assume any Assumed Executory Contracts or to pay any Cure Amount.²

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

ANY NON-DEBTOR PARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

² “Assumed Executory Contracts” are those Contracts and Leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Purchased Assets; however, the Successful Bidder may choose to exclude certain of the Debtor’s Contracts or Leases from the list of Assumed Executory Contracts as part of their Qualifying Bid, causing such Contracts and Leases not to be assumed by the Debtor.

Dated: _____, 2016

Respectfully submitted,

ARMSTRONG TEASDALE LLP

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Co-Counsel for the Debtor

Exhibit 1

(Assumed Executory Contracts)