UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

	Chapter 11
In re:	
ADENCOA DIOENEDCY US HOLDING LLC	Case No. 16- 41161-659
ABENGOA BIOENERGY US HOLDING, LLC, <i>et al.</i> ,	(Jointly Administered)
Debtors.	(Jointry Administered)
	Hearing Date and Time:
	September 28, 2016 at 10:00 a.m.
	(Prevailing Central Time)
	Objection Deadline:
	September 21, 2016
	1 ,

DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS

Hearing Location: Courtroom 7 North

The above-captioned debtors and debtors in possession (collectively, the "<u>Debtors</u>"), hereby move this Court (the "<u>Motion</u>") for entry of an order (the "<u>Proposed Order</u>")¹ pursuant to sections 105(a) and 363 of title 11 of the United States Code (the "<u>Bankruptcy Code</u>") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "<u>Bankruptcy Rules</u>") (i) authorizing entry into and performance under the Residential Real Estate Contract between Debtor Abengoa Bioenergy Engineering & Construction LLC (the "<u>Selling Debtor</u>") and Josh Jorde and Tracie Cullum (the "<u>Purchasers</u>"), attached hereto as <u>Exhibit A</u> (the "<u>Purchase</u> <u>Agreement</u>"); (ii) approving the sale and transfer of Selling Debtor's interest in the real property commonly known as 998 Road P, Hugoton, Kansas (the "<u>Property</u>") in accordance with the

A copy of the Proposed Order will be provided to the Notice Parties (as defined below) and made available on the Debtors' Case Information Website at *https://cases.primeclerk.com/abengoa*.

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Purchase Agreement (the "<u>Sale</u>"); and (iii) granting such other and further relief as is just and proper. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory bases for the relief requested herein are sections 105(a) and 363 title
 11 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

BACKGROUND

3. On February 24, 2016 (the "<u>Petition Date</u>"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On June 12, 2016 (the "<u>Maple Petition Date</u>"), certain additional Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. These cases are jointly administered pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

4. On March 11, 2016, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "<u>Committee</u>"). No trustee or examiner has been appointed in the chapter 11 cases.

5. Additional information about the Debtors' business operations, their capital and debt structures, and the events leading to the filing of these chapter 11 cases, is set forth in detail in the *Declaration of Sandra Porras Serrano in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 12] and the *Supplemental Declaration of Sandra Porras Serrano* [Docket No. 373], which are fully incorporated herein by reference.

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6. On June 22, 2016, the Debtors filed the *Debtors' Motion for Entry of an Order Approving the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests* (the "<u>Original Sale Motion</u>") [Docket No. 426]² and requested the Court's approval of the sale of Property to the original purchaser (the "<u>Original Sales Transaction</u>").

7. On July 14, 2016, after a hearing and no objections were filed, the Court granted the Original Sale Motion and entered the *Order Approving the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests* (the "<u>Original Sale Order</u>") [Docket No. 475], authorizing the sale of the Property to Robert A. Rich, the original purchaser (the "<u>Original</u> <u>Purchaser</u>").

8. After the Court's entry of the Original Sale Order, ultimately, the Original Purchaser backed out of the Original Sales Transaction, and the Original Sales Transaction, by no fault of the Selling Debtor, failed to consummate between the Original Purchaser and the Selling Debtor.

9. The Selling Debtor subsequently located new purchasers of the Property, the Purchasers, and now seeks the Court's approval of the Purchase Agreement.

RELIEF REQUESTED

10. The Debtors respectfully request that the Court enter an order, substantially in the form of the Proposed Order, approving the Purchase Agreement and approving the Sale and transfer of Selling Debtor's interest in the Property.

THE PURCHASE AGREEMENT AND SALE

11. The Property was developed in connection with the nearby Hugoton Plant owned by Debtors' affiliate Abengoa Bioenergy Biomass of Kansas, LLC ("<u>ABBK</u>"), which Plant and

² On June 24, 2016, the Debtors re-filed the Original Sale Motion with the corrected purchase agreement attached [Docket No. 430].

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related property is the subject of a sale process in ABBK's chapter 11 case pending before the United States Bankruptcy Court for the District of Kansas (Case No. 16-10446). Since the Petition Date, the Debtors have engaged local real estate agents to market the property, and have engaged in discussions and negotiations with multiple potential purchasers, ultimately executing the contract described herein with the Purchasers to sell the Property.

12. The Selling Debtor believes that the Sale would generate value for its estate by relieving the Selling Debtor of an asset that neither it nor its affiliates plan to use in the future, and that entry of the Proposed Order is essential in order to achieve these benefits. Moreover, the Selling Debtor believes that the Sale closing must move forward in order to preserve the terms of the Purchase Agreement. It is unlikely that other purchasers for the Property could be found in the near term on similarly favorable terms, given the current market environment and the proximity of the house to ABBK's Hugoton plant. The Selling Debtor has therefore concluded, in the exercise of its sound business judgment, that the Sale is fair and reasonable, and that the Sale is in the best interests of the Selling Debtor's estate and creditors.

13. The principal terms of the Purchase Agreement are summarized in the following chart: ³

SUMMARY DESCRIPTION				
Seller	Abengoa Bioenergy Engineering & Construction LLC			
Purchasers Josh Jorde and Tracie Cullum				
Sale/Purchase Price	\$190,000			
Earnest Money Deposit	\$5,000			

Capitalized terms used but not otherwise defined in the summary chart shall have the meaning ascribed to such terms in the Purchase Agreement. This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Purchase Agreement, the latter governs in all respects.

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Real Estate Commission	Purchasers will pay a real estate commission of 3% of the contract price to Faulkner Real Estate and all fees associated with the closing.
Closing and Possession	Closing shall be completed on or before October 5, 2016, and Selling Debtor shall deliver possession of the Property to Purchasers upon closing.
Conditions to Closing	Purchasers and the Selling Debtor agree that the Purchase Agreement and the Selling Debtor's obligation to close are subject to the Bankruptcy Court's approval. The Purchase Agreement is contingent on the Purchasers obtaining a new mortgage and notwithstanding any other terms and conditions of the Purchase Agreement, if the final appraised value of the property as determined by the Purchasers' appraiser is not equal to or greater than the purchase price under the Purchase Agreement, the Purchasers may send a written notice informing the Selling Debtor of the Purchasers' request to renegotiate the purchase price under the Purchase Agreement. This written notice shall contain a complete copy of the appraisal report prepared by the Purchasers' appraiser. Within five (5) business days after the Selling Debtor and the Purchasers may keep the Purchase Agreement in effect by agreeing to a purchase price that is agreeable to both the Purchasers and the Selling Debtor and signing an addendum to the Purchaser Agreement containing the agreed upon purchase price. If the Purchasers and the Selling Debtor cannot agree in writing to a purchase price within the time frame allowed under this section, the Purchase Agreement shall be cancelled, and the Purchasers' earnest money and any additional deposits shall be returned to the Purchasers.

BASIS FOR RELIEF

A. The Sale of the Property Is an Appropriate Exercise of the Debtors' Sound Business Judgment and Should Be Approved.

14. Pursuant to section 363(b)(1) of the Bankruptcy Code "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Moreover, section 105(a) of the Bankruptcy Code provides that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

15. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the
debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate."
11 U.S.C. § 363(b)(1). Although section 363 does not provide explicit guidance as to when a

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sale or disposition of property of the estate should be authorized, courts generally authorize debtors' decisions to use, sell or lease assets outside the ordinary course of business if such use, sale or lease is based upon a sound business purpose. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *see Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983) (requiring a "good business reason" to approve a sale pursuant to section 363(b)); *see also Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987), *appeal dismissed* 838 F.2d 59 (2d Cir. 1988) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *In re Trilogy Dev. Co., LLC*, 2010 Bankr. LEXIS 5636, at *3-4 (Bankr. W.D. Mo. 2010); *In re Channel One Comm., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is "a good business reason").

16. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied "as long as the proposed action *appears* to enhance the debtor's estate." *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)); *see also In re AbitibiBowater, Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is "not a difficult standard to satisfy"). Under the business judgment rule, "management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those

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decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985) and *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997) ("[w]here the [debtor's] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's estate" (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985))); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that "[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors' best economic interests, based on the Debtors' best business judgment in those circumstances" (citations omitted)).

17. Here, the Selling Debtor's decision to proceed with the Sale in accordance with the terms set out in the Purchase Agreement is based upon its sound business judgment. The Selling Debtor believes that the Sale would generate value for its estate by relieving the Selling Debtor of an asset that neither it nor its affiliates plan to use in the future, and that it is unlikely that other purchasers for the Property could be found in the near term on similarly favorable terms, given the current market environment.

18. Moreover, this Court previously approved the Original Sales Transaction and entered the Sale Order, which contained substantially similar terms and conditions as this Purchase Agreement and Sale. Although the purchase price of this Sale is marginally less than

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the purchase price of the Original Sales Transaction, after engaging in good-faith, arms'-length negotiations with the Purchasers, the Selling Debtor submits that the Purchase Agreement represents the highest or otherwise best offer for the Property and that the Sale will result in the maximum benefit to the Debtors' estates and creditors. The Selling Debtor has therefore concluded, in the exercise of its sound business judgment, that the Sale is fair and reasonable, and that the Sale is in the best interests of the Selling Debtor's estate and creditors.

19. Bankruptcy Rule 6004(f)(1) provides that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." By extension, a court should authorize a private sale, such as the Sale, as long as the decision to consummate such sale is made under sound business judgment. See, e.g., In re Condere Corp., 228 B.R. 615, 629 (Bankr. S.D. Miss. 1998) (approving the private sale of the debtor's tire company because the debtor showed sound business judgment). Courts frequently have allowed chapter 11 debtors to sell assets outside the ordinary course of business by private sale when the debtor demonstrates that the sale is permissible pursuant to section 363(b) of the Bankruptcy Code. See, e.g., In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y. Jul. 23, 2010) [ECF No. 3366]; In re Lehman Brothers Holdings, Inc., Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 20, 2008) [ECF No. 258]; In re Loral Space & Commc'ns Ltd., et al., Case No. 03-41710 (RDD) (Bankr. S.D.N.Y. Sept. 30, 2005) [ECF No. 2393]; In re International Wire Grp., Inc., et al., Case No. 04-11991 (BRL) (Bankr. S.D.N.Y. June 10, 2004) [ECF No. 176]; Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.), 233 B.R. 619 (D. P.R. 1999) (upholding bankruptcy court approval of private sale); In re Wieboldt Stores, Inc., 92 B.R. 309 (N.D. Ill. 1988) (affirming right of chapter 11 debtor to transfer assets by private sale).

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20. Ample business justification exists in this case to approve the sale of the Property. The Debtors believe, in the exercise of sound business judgment, that the benefit of receiving immediate payment for the Property outweighs the potential benefits of retaining the Property. The Property is *di minimus* in value to the amounts recovered in these chapter 11 cases, and the costs associated with marketing and selling the Property at a public auction far outweigh the potential benefit to be derived therefrom. The costs of preparing and seeking approval of bidding procedures and retaining a professional to market the Property would diminish the net recovery to the Debtors' estates. Moreover, after the Original Sales Transaction failed to consummate and re-marketing the Property. Accordingly, the Debtors submit that that the sale of the Property is appropriate and should be approved.

B. The Sale Should Be Approved Free and Clear Under Section 363(f) of the Bankruptcy Code.

21. The Debtors request that the Court authorize the sale of the Property free and clear of any and all liens, claims and encumbrances (the "<u>Encumbrances</u>"), in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (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 aggregate value of all liens on such property;
- (4) such interest is in *bona fide* dispute; or

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(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).

22. 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 Property "free and clear" of such Encumbrances. *See, e.g., In re James*, 203 B.R. 449, 453 (Bankr. W.D. Mo. 1997) ("The five conditions enumerated in section 363(f) are disjunctive and, as such, a sale thereunder can be authorized if the trustee can prove the existence of any one of the five conditions.").

23. Section 363(f) 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); *see In re Trans World Airlines, Inc.,* 2001 WL 1820325, at *3, 6 (Bankr. D. Del. March 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.),* 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of claims] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

24. The Debtors submit that section 363(f) permits the Sale of the Property free and clear of all Encumbrances. As described above, the Debtors do not believe there are any liens, claims or encumbrances on the Property. However, to the extent there are unknown liens, claims or encumbrances, the Debtors submit that the proposed sale satisfies the requirements of section 363(f) of the Bankruptcy Code. The Debtors believe that any party holding a lien on the Property could be compelled to accept a monetary satisfaction of such interest. Moreover, the Proposed Order, which is substantially similar to the Original Sale Order, provides that any lien, claim or encumbrance on the Property, if any, will attach to the net proceeds of the sale of the Property.

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25. Accordingly, the Debtors believe that the proposed sale of the Remnant Assets

will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code should be

approved free and clear of all liens, claims and encumbrances.

C. The Purchasers Should Be Afforded the "Good Faith" Purchaser Protections of Section 363(m) of the Bankruptcy Code.

26. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest

in property purchased from the debtor notwithstanding that authorization of the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m)

provides, in relevant part, as follows:

The reversal or modification on appeal of an authorization under [section 363(b)]... does not affect the validity of a sale... to an entity that purchased... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

27. Section 363(m) "reflects the . . . 'policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely." *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (quoting *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 55 (7th Cir. 1983)); *see also United States v. Salerno*, 932 F.2d 117, 123 (2d Cir. 1991) (noting that section 363(m) furthers the policy of finality in bankruptcy sales . . . [and] assists bankruptcy courts in maximizing the price for assets sold in such proceedings.").

28. While the Bankruptcy Code does not define "good faith," courts in the Eighth Circuit have held that "[1]ack of good faith is shown by misconduct surrounding the sale. Typically, the requisite misconduct necessary to establish a lack of good faith involves 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly

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unfair advantage of other bidders."" *In re Burgess*, 246 B.R. 352, 255–56 (B.A.P. 8th Cir. 2000) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor of section 363(m)). *See also In re Agriprocessors, Inc.*, 465 B.R. 822 (Bankr. N.D. Iowa 2012) (citing *In re Burgess*).

29. The Debtors submit that the Purchasers are "good faith purchasers" within the meaning of section 363(m) of the Bankruptcy Code. The Purchase Agreement is the product of good faith, arm's length negotiations between the Selling Debtor and the Purchasers. The consideration to be received by the Debtors is fair and reasonable. The Debtors are not aware of any fact that renders the Purchasers other than good faith purchasers. Accordingly, the Debtors request that the Court make a finding that, upon the closing of the Sale, the Purchasers will have purchased the Property in good faith within the meaning of section 363(m) of the Bankruptcy Code.

REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY

30. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Debtors desire to close the sale of the Property as soon as is practicable to allow the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors request that the Court waive the fourteen (14) day stay under Bankruptcy Rules 6004(h).

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NOTICE

31. Consistent with the Order Establishing Certain Notice, Case Management and Administrative Procedures on April 22, 2016 [Docket No. 255], notice of this Motion has been given to: (i) the Office of the United States Trustee for the Eastern District of Missouri, (ii) counsel to the Committee, (iii) counsel for the DIP Lender, (iv) the Internal Revenue Service, (v) the United States Attorney's Office for the Eastern District of Missouri, (vi) counsel for the Purchasers, and (vii) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). All parties who have requested electronic notice of filings in these cases through the Court's ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors' Case Information Website (located at *https://cases.primeclerk.com/abengoa*). A copy of the Proposed Order will be made available on the Debtors' Case Information Website. The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Order, an amended Proposed Order will be made available on the Debtors' Case Information Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

32. Except as otherwise noted herein, no prior request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court (i) authorize the Debtors to enter into and perform under the Purchase Agreement; (ii) approve the sale and transfer of the Property free and clear of all liens, claims, encumbrances and interests; and (iii) grant the Debtors such other and further relief as this Court deems just and proper.

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Dated: September 7, 2016 St. Louis, Missouri

Respectfully submitted,

ARMSTRONG TEASDALE LLP

<u>/s/ Richard W. Engel, Jr.</u> Richard W. Engel, Jr. #34641MO Susan K. Ehlers #49855MO Erin M. Edelman, #67374MO 7700 Forsyth Blvd., Suite 1800 St. Louis, Missouri 63105 Telephone: (314) 621-5070 Facsimile: (314) 621-5065 rengel@armstrongteasdale.com dgoing@armstrongteasdale.com sehlers@armstrongteasdale.com

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-and-

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Counsel to the Debtors and Debtors in Possession

EXHIBIT A

PURCHASE AGREEMENT

1	Case 16-	41161	Doc 638-1	Filed 09/07/16 Pg 2 of	Entered 09/07/1	6 18:32:46	Exhibit A
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			(See Section 9):				\$ 5,000.00
			See Section 10):	12			\$ 183,350.00
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D.	APPROXI	MATE BA	LANCE DUE FR	OM BUYER at the tir	ne of Closing, excludin	g adjustments	
<i></i>	and prorat	ione finar	ind as set forth	in the Contract or the	attached financing adde	endum, closing	
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E.	OTHER S	FI I FB P	AID COSTS IN A	DDITION TO COSTS	SPECIFIED ABOVE, SI	ELLER agrees	
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. CL	OSING ANI						
	Closing of	all bo com	inleted on or hefo	re October 5,	2016 (the "Closing	Date"), SELLE	R shall deliver possession
	of the Drou	north to the	BLIVER on or he	fore upon cl	osing (the "Po	ssession Date").	
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	calendar c	lavs. If clo	sing is delayed th	rough no fault of either	party, BUYER and SEL	LER agree that	the Closing Date shall be
	habnetvo	nr a reacr	nable period of ti	me not to exceed 30 ca	lendar days.		
:C.	IX BUYE	R 🗍 SEL		and SELLER equally s	hall pay any closing age	nt fees.	
		0.00					
i. ING	CLUSIONS	AND EXC	LUSIONS FROM	THE PROPERTY:	Cardword all outsting	improvemente (on the Property and any
Α.	This Cont	ract includ	des the real prop	berty described in this	duad pailed expense	d or otherwise r	on the Property and any ermanently affixed to the
	appurtena	nces, equ	ipment or fixtures	That are polled, build	This includes the follow	ing (if present c	n the Property): attic and
	real prope	rty or any	existing improver	nents on the Property.	uralary fire and smoke	detection syste	ms (if owned); central all
.a.	ceiling fan	s; bathroc	m mirrors (attacr	ied and unallached), c	dranen rode (it attached	I): tences: firepl	ace doors and screens (i
	conditionin	ig; central	vacuum anu alla	chinents; curtain anu s	napery rous in alloor	openers (and r	emote transmitters); gas
	attached);	TIOOF COV	enngs (i) attacht	a: booting and plum	ing equipment (and fix	lures): humidifie	rs (if attached); installed
	neaters, g	as logs a	hu niepiace grau keve te ell doore	v kitchon appliances	(built-in): lighting and light	aht fixtures; ma	ilboxes; other mirrors (il
	attachadle	pritoido o	ooking unite /if at	ached): owned butane	and propane tanks; rur	al water certifica	ties and meters, screens
	abaluaa li	attached	s abuttores coff w	ator conditioner (if ow	ned): storm doors, scree	ens and window	s, swimming poor and a
	pool equir	ment: tela	evision antennas	(if attached and exclude	ting satellite dishes); sp	irinkler systems	and controls; window al
	conditioni	no upité: a	nd window coveri	ngs and components.	28 X X		
INCO		1 110	2000	1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 - 1999 -			Copyright @ 2016
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B. The following items are also included in the sale and are considered to be a part of the Property under this Contract:

The following items are not included in the sale and are excluded from the Property under this Contract: C.

BUYER and SELLER agree that this Contract shall be the sole determinant of the property that is transferred pursuant to this D. Contract. BUYER and SELLER agree that the description of the Property in this Contract supersedes any descriptions of the Property found in the multiple listing service (MLS), Residential Property Disclosure Statement and any other promotional materials used to market the Property.

7. PERSONAL PROPERTY: Personal property is included in the sale of the Property. If personal property is included, please specify below:

CONTINGENCY FOR CLOSING OF BUYER'S PROPERTY: (Section must be checked if applicable) 8.

This Contract is contingent upon the closing of the BUYER'S property located at the following address: A.

If this section is checked, the Contingency for Closing of Buyer's Property Addendum must be completed and signed by both Β. parties as an addendum to this Contract.

EARNEST MONEY: 9.

- as Earnest Money in the form of 🗌 Cash 🕱 Personal Check A. BUYER agrees to deposit \$ 5,000.00 🗌 Money Order 🔲 Cashier's Check 🛄 Other (the name of the earnest money holder) Stevens County Title Inc with as a guarantee that the BUYER shall fulfill the terms and conditions of this Contract.
- B. BUYER acknowledges that the Earnest Money shall be deposited within five business days after this Contract is signed by all parties. BUYER agrees and acknowledges that these funds may be deposited into an interest-bearing account and that the Escrow Agent or Listing Broker has the right to retain all interest earned on the funds. BUYER agrees and acknowledges that BUYER is not entitled to any interest on the Earnest Money.
- In the event that the BUYER fails for any reason to fulfill any of the BUYER'S obligations under this Contract, SELLER may at C. the SELLER'S option cancel this Contract and, upon the cancellation of this Contract by the SELLER, the Earnest Money shall become the sole property of the SELLER. In the event that the Earnest Money is forfeited by the BUYER as stated in this subsection, all expenses of the sale incurred by the BUYER, SELLER and any real estate licensees involved in the transaction as of the date of cancellation or default, including but not limited to appraisals, credit reports, inspections, repairs, surveys and title insurance, shall be paid prior to any remaining funds from the forfeited Earnest Money being released to the SELLER.
- D. If either the BUYER or SELLER cancels this Contract as provided under one of the provisions concerning appraisals, financing, inspections, liens or title evidence contained in this Contract, BUYER'S Earnest Money shall be returned to the BUYER. In the event that the Earnest Money is returned to the BUYER under this subsection, all expenses of this transaction incurred by the BUYER, SELLER and any real estate licensees involved in the transaction as of the date of cancellation, including but not limited to appraisals, credit reports, inspections, repairs, surveys and title insurance, shall be deducted from the Earnest Money and paid prior to the release of the remaining funds to the BUYER.
- E. In the event that the SELLER is unable to provide merchantable title to the Property or otherwise defaults on the SELLER'S obligations under this Contract, the Earnest Money shall be returned in full to the BUYER.
- In the event that the Earnest Money is either forfeited to the SELLER or returned to the BUYER, BUYER and SELLER shall both have the option of seeking specific performance of this Contract or any other applicable legal or equitable relief.
- Notwithstanding any other terms or conditions of this Contract regarding the distribution of the Earnest Money deposit, the G. BUYER and SELLER understand that applicable Kansas law prohibits the Listing Broker or the Escrow Agent from distributing the Earnest Money deposit without the consent of all parties to this Contract. Pursuant to K.S.A. 58-3061(g), the Listing Broker can only disburse Earnest Money under the following conditions: (1) pursuant to a written authorization of both the BUYER and SELLER; (2) pursuant to a court order; or (3) upon the closing of the transaction according to the agreement of the parties.

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H. BUYER and SELLER agree that the failure to either (1) respond in writing to a certified letter from the Listing Broker within seven (7) calendar days of receiving the letter or (2) make written demand for return or forfeiture of any Earnest Money deposit within thirty (30) calendar days of notice of cancellation of this Contract shall constitute consent to the distribution of the Earnest Money deposit as suggested in any such certified letter or as demanded by the other party to this Contract. If a dispute arises over the disposition of funds or documents deposited with the Listing Broker or Escrow Agent, BUYER and SELLER agree that any attorneys' fees, court costs or any other legal expenses incurred by the Listing Broker or Escrow Agent in connection with such dispute shall be reimbursed from the Earnest Money or other funds deposited with the Listing Broker or Escrow Agent.

10. X NEW MORTGAGE FINANCING CONTINGENCY (Section must be checked if applicable):

- This Contract shall be contingent upon the BUYER obtaining mortgage financing to purchase the Property. BUYER will obtain A. plus financed mortgage insurance premiums (if any) a mortgage loan in the principal amount of \$ 183,350.00 at an initial rate not to exceed 3.750 % for a term of not more than 30 years.
- BUYER shall complete a written application for the mortgage loan and pay the fees required by the mortgage lender within B. calendar days (15 if left blank) after the Effective Date of this Contract.
- calendar BUYER agrees to make a good faith effort to obtain a commitment for the mortgage loan within C. days (45 if left blank) after the Effective Date of this Contract or by the Closing Date, whichever is earlier. In the event that the BUYER is unable to obtain a financing commitment within the time frame specified in this subsection, the BUYER shall notify the SELLER or the real estate licensee assisting the SELLER in writing and, if requested by the SELLER or the real estate licensee assisting the SELLER, provide satisfactory written evidence of rejection.
- D. Once the SELLER has received the required written notice that the BUYER has been unable to obtain a commitment for a mortgage loan and the SELLER cannot or elects not to assist the BUYER in obtaining the required mortgage financing, this Contract shall be cancelled and the Earnest Money and all refundable deposits paid by the BUYER pursuant to this Contract shall be refunded to the BUYER subject to the terms and conditions contained in this Contract.

11. APPRAISED VALUE CONTINGENCY (Section must be checked if applicable):

- When the purchase of the Property is not contingent upon the BUYER obtaining new mortgage financing under this Contract, A. the BUYER may obtain at BUYER'S sole expense an appraisal of the value of the Property by an independent licensed real N/A ____ calendar days (ten if left blank) after the Effective Date of this Contract. estate appraiser within
- Notwithstanding any other terms and conditions of this Contract, if the final appraised value of the Property as determined by Β. the BUYER'S appraiser is not equal to or greater than the Purchase Price, the BUYER may send a written notice informing SELLER of the BUYER'S request to renegotiate the Purchase Price under this Contract. This written notice shall contain a complete copy of the appraisal report prepared by the BUYER'S appraiser.
- Within five (5) business days after the SELLER'S receipt of the BUYER'S written request for the renegotiation of the Purchase C. Price under this Contract, BUYER and SELLER may keep the Contract in effect by agreeing to a Purchase Price that is agreeable to both the BUYER and SELLER and signing an addendum to the Contract containing the agreed upon Purchase Price.
- D. If BUYER and SELLER cannot agree in writing to a Purchase Price that is agreeable to both parties within the time frame allowed under this section, this Contract shall be cancelled and the BUYER'S Earnest Money and any additional deposits shall be returned to the BUYER subject to the provisions of this Contract.

12. CONDITION OF PROPERTY:

-150

- X This Contract shall be contingent upon the SELLER's completion of and the BUYER's signature on the Residential Property Disclosure Statement (the "Statement"). In the event that the BUYER fails to sign and accept the Property with the defects disclosed in the Statement, this Contract shall be cancelled and any Earnest Money shall be returned to the BUYER subject to the provisions of this Contract. SELLER affirms that the information contained in the Statement is correct as of the Effective Date of this Contract.
- This Contract shall not be contingent upon the SELLER'S completion of and the BUYER'S signature on the Residential Property Disclosure Statement. SELLER agrees and acknowledges that this does not relieve the SELLER of the obligation to disclose all material facts actually known about the condition of the Property to the BUYER.

13. INTERIM MAINTENANCE OF PROPERTY AND UTILITIES:

Unless otherwise agreed in writing, SELLER agrees to leave all utilities on until the Possession Date. SELLER shall advise A. utility companies to read meters on the Possession Date for final billing purposes and to leave all utilities on until the BUYER takes possession under this Contract.

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- B. SELLER shall maintain the Property in its present condition through the Possession Date with the exclusion of reasonable wear and tear to the Property. SELLER agrees to perform ordinary and necessary maintenance, repair and upkeep to the Property until the Possession Date.
- Unless otherwise agreed in writing, SELLER shall remove all of the SELLER'S possessions and all debris and trash from the C. Property and SELLER shall clean the Property prior to the delivery of possession of the Property to the BUYER.

14. CASUALTY LOSS:

- A. If the improvements on the Property are damaged or destroyed by fire or other casualty after the Effective Date of this Contract and prior to the Closing Date, SELLER shall notify the BUYER within _____ hours (24 if left blank) of such damage.
- If the Property has been damaged or destroyed, SELLER shall repair the damage done and restore the Property to its current B. condition prior to the Closing Date. If the repair or restoration cannot be completed prior to the Closing Date, BUYER and SELLER shall agree in writing to one of the following options to complete the repair or restoration of the Property:
 - (1) The Closing Date will be extended until the completion of the repair or restoration of the Property;
 - (2) BUYER shall agree to accept the Property "AS IS" in its damaged or destroyed condition and the SELLER shall assign and transfer all insurance deductibles and proceeds to the BUYER;
 - (3) With the consent of the BUYER'S mortgage lender (if applicable), the SELLER shall place 150% of the estimated repair or restoration costs into escrow until the repair or restoration is completed and any funds remaining after full payment for the repair or restoration shall be remitted to the SELLER following the completion of the repair or restoration; or
 - calendar days (4) If SELLER elects not to repair or replace the Property, the BUYER may cancel this Contract within (ten if left blank) of the BUYER'S receipt of written notification of the damage. In the event that the Earnest Money is returned to the BUYER under this subsection, all expenses of this transaction incurred by the BUYER, SELLER and any real estate licensees involved in the transaction as of the date of cancellation, including but not limited to appraisals, credit reports, inspections, repairs, surveys and title insurance, shall be deducted from the Earnest Money and paid prior to the release of the remaining funds to the BUYER.

15. INSURANCE COVERAGE ON THE PROPERTY:

- A. SELLER shall maintain current property insurance coverage on the Property until the Closing Date. If BUYER takes possession of the Property prior to the Closing Date, BUYER shall secure insurance coverage for the BUYER'S personal property that is effective on or before the Possession Date.
- B. At closing, the BUYER shall furnish the property insurance coverage necessary for the protection of the instrument holders and containing loss clauses in favor of the instrument holders as their interests may appear. If required and so specified, the property insurance coverage shall be held by the instrument holders or escrow agent until the lien is paid in full.
- C. If required by the mortgage lender, BUYER agrees to purchase a flood insurance policy to insure the Property against flood damage:

16. HOME WARRANTY PLAN (Section must be checked if applicable):

- A. 🔲 BUYER 🛄 SELLER 🛄 BUYER and SELLER equally agree to purchase a home warranty plan, with the cost of the plan. (vendor) N/A to be paid at closing, from with a per claim deductible of no more than \$ N/A
- at a cost not to exceed \$N/A A home warranty plan is a limited service contract covering the repair or restoration of the working components of the B Property for a specified period of time from the Closing Date, subject to the terms and conditions of the individual plan. Home warranty plans may not cover pre-existing conditions and are not a substitute for inspections.

17. PAYMENT OF HOMEOWNERS' ASSOCIATION CHARGES, SPECIAL ASSESSMENTS AND TAXES:

- A. SELLER represents and warrants that all of the homeowners' association charges, special assessments, real estate taxes and any other contractual obligations of the SELLER to be assumed by the BUYER that are currently due and payable for years prior to the current calendar year shall be paid by the SELLER prior to closing.
- BUYER and SELLER agree that all of the homeowners' association charges, special assessments, real estate taxes and any В. other contractual obligations of the SELLER to be assumed by the BUYER that become due and accrue during the calendar year in which the SELLER'S warranty deed is delivered shall be paid by 🗵 BUYER 🔲 SELLER 🛄 pro-rated between the BUYER and SELLER on the Closing Date.
- C. If the amount of any homeowners' association charges, special assessments, real estate taxes and any other contractual obligations of the SELLER to be assumed by the BUYER cannot be ascertained from the public record for the calendar year in which the SELLER'S warranty deed is delivered, BUYER and SELLER agree that the amount of the item for the preceding year shall be used to calculate the current calendar year's amount.

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- D. BUYER and SELLER agree that if the Property has been reappraised or reclassified within the preceding year and the actual real estate taxes based on the new value are not available, BUYER and SELLER will agree to a reasonable estimation of the current year's real estate taxes based on the information available on the Closing Date.
- E. BUYER acknowledges that the assessed valuation, classification, mill levy and real estate taxes may change from year to year during the BUYER'S ownership of the Property and that any periodic reappraisal required by law may result in a change (and a potential increase) of the real estate taxes due on the Property.
- F. SELLER warrants that the SELLER does not have any knowledge of any easements or sewer, street or other proposed special assessments except as accurately and completely disclosed on the Residential Property Disclosure Statement or the Special Assessment Disclosure Addendum. BUYER and SELLER agree to hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors, from and against any and all actions, claims, damages, demands, expenses, losses or suits (including reasonable attorneys' fees) resulting from the information the SELLER has given regarding any easements or sewer, street or other proposed special assessments on the Property.

18. HOMEOWNERS' ASSOCIATION OR COMMON INTEREST COMMUNITY:

- A. SELLER agrees to disclose, to the best of his or her knowledge, whether the Property is subject to a homeowners' association or other common interest community and whether the Property is subject to any assessments, charges, dues or fees.
- B. To the best of the SELLER'S knowledge:
 - X There is no active homeowners' association or common interest community in the area and the Property is not subject to any assessments, charges, dues or fees. SELLER has never been billed or paid any assessments, charges, dues or fees for the Property and, to the best of the SELLER'S knowledge, there are no such assessments, charges, dues or fees outstanding on the Property that might form the basis of a lien imposed upon the Property.
 - SELLER discloses and BUYER acknowledges that the Property is subject to a homeowners' association or other common interest community and that an assessment, charge, dues or fee shall be assessed against the Property in the amount of \$N/A per month quarter year and are subject to adjustment at the sole discretion of the homeowners' association or common interest community. SELLER agrees to provide a current copy of any bylaws, declarations, covenants and rules and regulations of the homeowners' association or community to the BUYER prior to the Closing Date.
- C. SELLER warrants that the SELLER has no knowledge of whether the Property is subject to a homeowners' association or other common interest community for which the Property shall be subject to any assessments, charges, dues or fees except as accurately and completely disclosed in this Contract or any addendums to this Contract. SELLER agrees to defend, indemnify and hold the BUYER harmless from and against any and all actions, claims, damages, demands, expenses, losses or suits (including reasonable attorneys' fees) resulting from an obligation for payment of any assessments, charges, dues or fees to any homeowners' association or common interest community that were due prior to the Closing Date.
- D. BUYER and SELLER agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, losses or suits (including reasonable attorneys' fees) resulting from the information the SELLER has provided to the BUYER regarding homeowners' associations or other common interest communities.

19. SURVEY OF THE PROPERTY:

- A. BUYER and SELLER agree that:
 - (1) A "staked" boundary survey of the Property shall be obtained at the BUYER'S expense SELLER'S expense divided equally between the BUYER'S and SELLER'S expense; or
 - (2) X No "staked" boundary survey will be performed as part of this Contract.
- B. BUYER understands that the lender may order a survey called a "Mortgagee Title Inspection" on the Property, which does not include the staking of property corners. BUYER is also aware that title insurance may not cover survey-related issues, even if a recent survey has been completed. The title policy furnished to the BUYER under this Contract will contain a survey exception under Schedule B unless the BUYER provides a boundary survey to the title company at the BUYER'S expense.
- C. BUYER and SELLER agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, losses or suits (including reasonable attorneys' fees) relating to any acreage matters, boundary line disputes, defects, encroachments, overlaps or other matters that would have been disclosed or discovered by a survey.
- D. SELLER represents and warrants that there is ingress and egress to the Property.

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20. LIENS ON THE PROPERTY:

- A. SELLER represents and warrants that there are no unpaid chattel mortgages, conditional sales contracts, financing statements or security agreements (whether recorded or not) affecting any fixture, portion of the Property or item of personal property included in the sale of the Property under this Contract.
- BUYER and SELLER agree that any existing liens on the Property that the SELLER is required to remove under this Contract Β. may be paid and discharged from the SELLER'S proceeds at closing.
- SELLER shall indemnify and hold BUYER harmless from any obligation for payment of any amounts by reason of any liens on C. the Property that accrued prior to the closing of this Contract.
- BUYER and SELLER agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and D. their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, losses or suits (including reasonable attorneys' fees) resulting from any unpaid liens, chattel mortgages, conditional sales contracts, financing statement or security agreements on the Property or any personal property included in the sale of the Property under this Contract.

21. INSPECTIONS OF THE PROPERTY:

- Subject to any inspections permitted by this Contract and the potential cancellation of the Contract due to the discovery of A. Unacceptable Conditions contained in this section, BUYER AGREES TO PURCHASE AND ACCEPT THE PROPERTY AS IS IN ITS CURRENT CONDITION ONLY, WITHOUT GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND BY THE SELLER OR ANY REAL ESTATE LICENSEES INVOLVED IN THIS TRANSACTION CONCERNING THE CONDITION OR VALUE OF THE PROPERTY. This shall not be deemed to be a waiver or modification of any implied warranties that may exist.
- B. BUYER is STRONGLY ADVISED to seek expert advice and conduct or obtain inspections to determine if damages, defects or hazards exist in and on the Property. If inspections are not performed on all or part of the Property, BUYER shall be bound by whatever information an inspection would have revealed and waives any cause of action, claim, or right relating to or arising from any condition of the Property that would have been apparent had inspections been performed.
- BUYER shall 🖾 carefully inspect the Property 🗌 waive the right to conduct due diligence and conduct or obtain inspections C. on the Property. BUYER agrees that the BUYER was given the right to conduct due diligence and conduct or obtain inspections on the Property and that any inspections not conducted or obtained were waived by the BUYER. BUYER and SELLER agree that all optional inspections below that are checked shall be included in the terms and conditions of this Contract and inspections that are not checked shall not be part of this Contract.

BUYER'S INITIALS

(BUYER(S) MUST INITIAL THESE BLANKS)

D. BUYER may conduct and obtain any inspections or re-inspections on the Property desired by the BUYER at BUYER'S sole expense. Unless otherwise specified in this Contract, a qualified professional shall complete all of the inspections desired by calendar days (ten if left blank) after the Effective Date of this Contract. the BUYER within 45

BUYER'S INITIALS

- SELLER agrees to provide BUYER and any qualified professionals engaged by the BUYER with reasonable access to the Ê, Property to conduct inspections, re-inspections, inspections of any corrective measures completed by the SELLER and final walk-throughs prior to closing. BUYER shall be responsible for and pay for any damage to the Property resulting from any inspections conducted or obtained by the BUYER.
- If an inspection conducted or obtained by the BUYER reveals Unacceptable Conditions, the BUYER shall provide a copy of F the written inspection report to the SELLER and the real estate licensee assisting the SELLER within (ten if left 50 blank) calendar days after the Effective Date of this Contract. An "Unacceptable Condition" means any condition identified in a written inspection report prepared by an independent qualified professional that is unacceptable to the BUYER. BUYER and SELLER agree to provide all written inspection reports to all real estate licensees involved in this transaction.
- Upon the receipt of the written inspection report identifying the Unacceptable Conditions, SELLER agrees to complete or pay G. for the remediation or repair of any Unacceptable Conditions identified by the BUYER, provided that the total cost for all remediation or repairs resulting from the Unacceptable Conditions does not exceed \$ -0-(zero if left blank).
- If the costs of the remediation or repair for Unacceptable Conditions exceed the amount specified above, BUYER and H. SELLER shall agree in writing whether the BUYER, SELLER or both parties shall pay and in what amounts for the excess costs for remediation or repair of the Unacceptable Conditions. If the BUYER and SELLER cannot agree on the payment of the excess costs to remediate or repair the Unacceptable Conditions identified by the BUYER, this Contract shall be cancelled and any Earnest Money shall be returned to the BUYER subject to the provisions of this Contract.

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- BUYER agrees and acknowledges that no important Property are being relied upon by the BUYER except as disclosed as follows: None
- d. BUYER and SELLER agree that any real estate licensees involved in this transaction are not experts regarding whether any unacceptable property conditions exist in and on the Property. BUYER and SELLER agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including reasonable attorneys' fees) arising out of the discovery of property defects or unacceptable property conditions in the Property, unless the real estate licensees had actual knowledge of the conditions prior to the closing of this Contract and failed to disclose this information to the parties.
- K. BUYER and SELLER jointly and severally agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including reasonable attorneys' fees and professional fees) incurred in connection with any preventative, remedial or other cleanup action necessary to comply with all applicable federal, state and local environmental laws, rules, regulations and ordinances. SELLER warrants that to the best of SELLER'S knowledge and belief after due inquiry, the Property complies with and that SELLER is not in violation of and has not violated any applicable federal, state and local environmental laws, rules, regulations or ordinances.
- L. LEAD-BASED PAINT INSPECTIONS: (Section must be checked if applicable)
 - (1) BUYER and SELLER agree that this Contract is contingent upon a risk assessment or inspection of the Property for the presence of lead-based paint hazards at the BUYER'S expense until 9:00 PM on the <u>N/A</u> calendar day after the Effective Date of this Contract. This contingency shall terminate at the above time unless the BUYER or the real estate licensee assisting the BUYER delivers a written contract addendum listing the specific existing deficiencies and corrections needed on the Property along with a copy of the inspection or risk assessment report to the SELLER or the real estate licensee assisting the SELLER. BUYER and SELLER acknowledge and agree that, as required by federal law for all properties constructed prior to 1978, the separate Lead-Based Paint Disclosure Form has been completed and signed by all the parties to this Contract.
 - (2) Within <u>N/A</u> calendar days (seven if left blank) after the receipt of the addendum, the SELLER may elect in writing whether to correct the conditions identified in the addendum. If the SELLER agrees to correct the conditions identified in the addendum. If the SELLER agrees to correct the conditions identified in the addendum. If the SELLER agrees to correct the conditions identified in the addendum. If the SELLER agrees to correct the conditions identified in the BUYER with a certification from a risk assessor or inspector demonstrating that the conditions have been remedied prior to the Closing Date. If the SELLER elects to not agree to repair all of the conditions identified in the BUYER'S addendum, BUYER shall have <u>N/A</u> calendar days (seven if left blank) to respond to this counter-offer by removing the contingency and taking possession of the Property in an "AS IS" condition with no correction of the conditions identified in the addendum.
 - (3) Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including hearing disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspection in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family from Lead in Your Home" for more information.
- M. X WOOD INFESTATION INSPECTIONS: (Section must be checked if applicable)
 - (1) X BUYER may at BUYER'S expense SELLER may at SELLER'S expense arrange for a certified pest control professional to inspect the Property (unless the SELLER is required to pay for the inspection pursuant to Department of Veterans Affairs regulations) to determine the potential presence of wood destroying insects in all improvements on the Property.
 - (2) If the written inspection report of the certified pest control professional reveals evidence of active infestation or if the certified pest control professional determines that the treatment of inactive infestation or removal of debris is necessary.
 [X] BUYER [] SELLER agrees to pay for all treatment of the Property by a certified pest control professional provided that the total cost of all treatment does not exceed \$ 1,500.00 [zero if left blank].

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Case 16-41161 Doc 638-1 Filed 09/07/16 Entered 09/07/16 18:32:46 Exhibit A Pg 9 of 15 (3) If the costs of the treatment exceed the amount specified above, BUYER and SELLER shall agree in writing whether the

- (3) If the costs of the treatment exceed the amount specified above, BUYER and SELLER shall agree in writing whether the BUYER, SELLER or both parties shall pay and in what amounts for the excess costs. If the BUYER and SELLER cannot agree on the payment of the excess costs, this Contract shall be cancelled and any Earnest Money shall be returned to the BUYER subject to the provisions of this Contract.
- (4) If treatment is required and conducted for BUYER at the SELLER'S expense, SELLER agrees to provide the BUYER with a certificate and BUYER agrees to accept the certificate verifying that treatment was completed by a certified pest control professional of BUYER'S SELLER'S choice.
- (5) Any inspection and treatment under this subsection shall be completed no earlier than <u>N/A</u> calendar days (30 if left blank) prior to the Closing Date. BUYER and SELLER agrees that any damages or repairs related to wood destroying insect infestations are Unacceptable Conditions and shall be subject to the provisions pertaining to the remediation and repair of Unacceptable Conditions.
- N. X SEPTIC INSPECTIONS: (Section must be checked if applicable)
 - (1) I BUYER may at BUYER'S expense □ SELLER may at SELLER'S expense arrange for an inspection of the private wastewater disposal, lagoon or septic system on the Property. If the written inspection report shows that the private wastewater disposal, lagoon or septic system has deficiencies, □ BUYER SELLER shall pay for all remediation and repairs necessary to correct the deficiencies identified in the written inspection report provided that the total cost for all remediation and repairs does not exceed \$ -0- [zero if left blank].
 - (2) If the costs of the remediation and repairs exceed the amount specified above, BUYER and SELLER shall agree in writing whether the BUYER, SELLER or both parties shall pay and in what amounts for the excess costs. If the BUYER and SELLER cannot agree on the payment of the excess costs, this Contract shall be cancelled and any Earnest Money shall be returned to the BUYER subject to the provisions of this Contract.

22. POTENTIAL PROXIMITY OF REGISTERED OFFENDERS TO PROPERTY:

- A. Kansas state law requires persons who are convicted of certain crimes, including certain sexually violent crimes, to register with the sheriff of the county in which they reside. If you as the BUYER desire information regarding those registrants, you may find information on the homepage of the Kansas Bureau of Investigation (KBI) at http://www.kansas.gov/kbi or by contacting the local sheriff's office.
- B. BUYER and SELLER agree that any real estate licensees involved in this transaction owe no duty or obligation to the BUYER to conduct an independent investigation as to the potential proximity of registered offenders to the Property. BUYER and SELLER agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including reasonable attorneys' fees) arising out of the discovery of registered offenders residing within relative proximity to the Property.

23. RADON GAS NOTICE:

- A. Every BUYER of residential real property is notified that the Property may present exposure to dangerous concentrations of indoor radon gas that may place occupants at risk of developing radon-induced lung cancer. Radon, a class-A human carcinogen, is the leading cause of lung cancer in non-smokers and the second leading cause overall. Kansas law requires SELLERS to disclose any information known to the SELLER that shows elevated concentrations of radon gas in residential real property. The Kansas Department of Health and Environment (KDHE) recommends that all home buyers have an indoor radon test performed prior to purchasing or taking occupancy of residential real property. All testing for radon should be conducted by a radon measurement technician. Elevated radon concentrations can easily be reduced by a radon mitigation technician. For additional information, go to http://www.kansasradonprogram.org/.
- B. BUYER understands that neither the SELLER nor any real estate licensees involved in this transaction have made any investigation to determine whether there is or will be radon gas in the Property. Neither the SELLER nor any real estate licensees involved in this transaction make any representations or warranties as to the presence or lack of radon gas in the Property or as to the effect of radon gas or any such condition on the Property on the occupants of the Property. BUYER may, at BUYER'S sole expense, conduct an inspection to determine whether radon gas is present in the Property.
- C. BUYER and SELLER agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including reasonable attorneys' fees) arising out of any radon gas in the Property.

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24. POTENTIAL PRESENCE OF PROPERTY IN FLOOD PLAIN:

- A. On a regular basis, the Federal Emergency Management Agency (FEMA) and the United States Corps of Engineers publish updates to flood maps and levee protection systems. As part of these updates, properties that have historically not been included in any special flood hazard areas may, due to changes in mapping or flood protection, become subject to federal flood insurance requirements. If you as the BUYER desire more information on whether the Property is included in a special flood hazard area or an area of flood risk, you may find and review information on this issue at <u>http://msc.fema.gov/, http://www.floodsmart.gov/</u> and other information may be available through local government planning and zoning offices.
- B. BUYER and SELLER agree that any real estate licensees involved in this transaction owe no duty or obligation to the BUYER to conduct an independent investigation as to the flood hazard status of the Property. BUYER and SELLER agree to defend, indemnify and hold harmless any real estate licensees involved in this transaction and their agents, sub-agents, employees and independent contractors from and against any and all actions, claims, damages, demands, expenses, liabilities, losses or suits (including reasonable attorneys' fees) arising out of the flood hazard status of the Property.

25. DELIVERY OF THE DEED:

- A. On or before the Closing Date, SELLER shall execute and deliver a warranty deed and all other documents and funds reasonably necessary to complete the closing of this Contract. The warranty deed shall convey a marketable fee simple title to the Property free and clear of all liens and encumbrances to the BUYER, except as provided otherwise in this Contract.
- B. BUYER agrees and acknowledges that the purchase of the Property is subject to any building setback requirements, covenants, declarations, easements, restrictions, rights-of-way, special assessments, taxes and assessments and zoning laws and any other items contained in this Contract or that are discoverable in a search of public records.
- C. On or before the Closing Date, BUYER and SELLER agree to deliver to the closing agent a cashier's check or other certified funds sufficient to satisfy their respective obligations under this Contract. SELLER acknowledges that the disbursement of the proceeds may be made after the warranty deed, instrument of conveyance, mortgage or deed of trust has been recorded.

26. TITLE EVIDENCE:

- A. At least three calendar days prior to the Closing Date, SELLER shall cause to be furnished to the BUYER a title insurance company's written commitment "title binder" to issue after closing a title insurance policy in an amount equal to the full Purchase Price naming the BUYER as the insured. A copy of the title binder shall be furnished to the mortgage lender and the BUYER'S attorney (if any) as promptly as possible. BUYER agrees and acknowledges that the SELLER may receive a BUILDER'S discount on the title insurance policy.
- B. The title binder shall show marketable title vested in the SELLER, subject to the following:
 - Easements, mineral rights and reservations of record, encroachments that would be disclosed by a survey, rights-of-way
 of record, trees, plantings and fences on the Property;
 - (2) Restrictions and protective covenants of record, provided that no forfeiture provisions are contained therein;
 - (3) Un-matured special assessments, zoning laws, ordinances and regulations;
 - (4) Rights of tenants in posession;
 - (5) Liens (if any) described herein; and
 - (6) Those exceptions that are standard in the title company's Form B as specified therein.
- C. X BUYER SELLER BUYER and SELLER equally shall pay for any lender's/mortgagee's/instrument holder's title insurance coverage. SELLER shall be responsible to use due diligence to resolve any title defects at the SELLER'S expense subject to the foregoing exceptions.
- D. X BUYER SELLER BUYER and SELLER equally shall pay for any owner's title insurance coverage. SELLER shall be responsible to use due diligence to resolve any title defects at the SELLER'S expense subject to the foregoing exceptions.
- E. In the event that the SELLER is unable to furnish marketable title subject to the foregoing exceptions and this Contract is cancelled due to this inability to furnish marketable title, the Earnest Money shall be refunded promptly to the BUYER subject to the provisions of this Contract and the SELLER shall reimburse to the BUYER the cost of the BUYER'S accrued loan costs, attorneys' fees for examining title and title insurance cancellation fees and all parties shall be released from any further liability under this Contract.

27. NOTICES:

- A. Any notice required under the terms and conditions of this Contract shall be delivered by electronic mail, facsimile, in-person, private delivery service or the United States Postal Service.
- B. The mailing address for the delivery of any notices under this Contract to any party shall be the mailing address referenced in this Contract, unless the party specifically requests in writing that a different mailing address be used to deliver notices under this Contract.

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C. The notice shall be deemed to be delivered upon the date of receipt. Delivery to a real estate licensee working with the party shall be treated as the same as delivery to the party.

28. DEFAULT AND REMEDIES:

- A. A party (either the BUYER or SELLER) to this Contract shall be in default under this Contract when the party fails to comply with any material condition, term or obligation of the Contract in the time period required by the Contract. Upon default, the parties shall have the remedies set forth below:
 - (1) Upon default by the SELLER, BUYER may seek to: (1) have the Contract specifically enforced and recover any damages caused by the SELLER'S delay in performing the Contract; or (2) terminate the Contract and, if the BUYER chooses, pursue any damages the BUYER incurred as a result of the SELLER'S breach of the Contract. If the contract is terminated, the Earnest Money will be distributed under the provisions of this Contract.
 - (2) Upon default by the BUYER, SELLER may seek to: (1) have the Contract specifically enforced and recover any damages caused by the BUYER'S delay in performing the Contract; or (2) terminate the Contract and, if the SELLER chooses, pursue any damages the SELLER incurred as a result of the BUYER'S breach of the Contract. If the contract is terminated, the Earnest Money will be distributed under the provisions of this Contract.
- B. If upon default either the BUYER or SELLER determines to pursue the BUYER'S or SELLER'S remedies and the non-defaulting party is successful in enforcing his or her remedy, unless otherwise provided by law, the defaulting party on the Contract will pay the non-defaulting party's attorneys' fees, costs and any other expenses incurred in enforcing the non-defaulting party's remedy against the defaulting party.

29. CONTRACT BINDING ON ASSIGNS AND HEIRS: This Contract shall be fully binding upon the parties and their administrators, assigns, executors, heirs and successors except as limited by this Contract.

30. AGREEMENT TO USE ELECTRONIC SIGNATURES AND AGREEMENTS: BUYER, SELLER and any real estate licensees involved in this transaction agree that this transaction may be conducted through electronic means according to the Kansas Uniform Electronic Transactions Act. However, any real estate licensees involved in this transaction have no authority to enter into electronic agreements with other parties on behalf of the BUYER or SELLER unless authorized to do so by a duly executed power of attorney.

31. BROKERAGE RELATIONSHIP DISCLOSURE:

- A. BUYER and SELLER acknowledge that the real estate licensees involved in this transaction may be functioning as agents of the BUYER, agents of the SELLER or transaction brokers.
- B. Real estate licensees functioning as an agent of the BUYER have a duty to represent the BUYER'S interests and will not be an agent of the SELLER. Information given by the SELLER to an agent for the BUYER will be disclosed to the BUYER.
- C. Real estate licensees functioning as an agent of the SELLER have a duty to represent the SELLER'S interests and will not be an agent of the BUYER. Information given by the BUYER to an agent for the SELLER will be disclosed to the SELLER.
- D. Real estate licensees functioning in the capacity of a transaction broker are not agents for either party and do not advocate for the interests of either party.
- E. BUYER and SELLER acknowledge that the Real Estate Brokerage Relationships Brochure has been furnished to them.
- F. Listing Licensee is functioning as a: (Check the applicable function)
 - Seller's Agent;
 - Designated Seller's Agent (Supervising Broker acts as a Transaction Broker);
 - X Transaction Broker; or
 - SELLER is unrepresented.
- G. Selling Licensee is functioning as a: (Check the applicable function)
 - Seller's Agent;
 - Buyer's Agent;
 - Designated Seller's Agent (Supervising Broker acts as a Transaction Broker);
 - Designated Buyer's Agent (Supervising Broker acts as a Transaction Broker);
 - X Transaction Broker; or
 - BUYER is unrepresented.

Karen Yoder Name of Real Estate Licensee Assisting BUYER		Karen Yoder Name of Real Estate Licensee Assisting SELLER		
Faulkner Real Estate		Faulkner Real		
Name of Brokgrage Firm Assisting BUYER		Name of Brokerage	Firm Assisting SELLER	
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32. SEVERABILITY: If any provision of this Contract, or any portion thereof, is rendered invalid by court order, judgment or operation of law, the remaining provisions or portions thereof shall remain valid and enforceable and be construed to remain in force.

33. GOVERNING PROVISIONS: The laws of Kansas shall govern this Contract and its validity, construction and performance.

34. ENTIRE AGREEMENT OF THE PARTIES: This Contract constitutes the entire agreement between the parties and supersedes any previous agreements, contracts and representations, whether oral or written, to buy or sell the Property. Any prior agreements, contracts or representations, whether oral or written, have been merged into this Contract. There shall be no modification of any terms of this Contract unless such modifications have been agreed to in writing and signed by both parties. Neither this Contract nor any interest herein shall be assigned or transferred by any party without the prior written consent of both parties. No assignment shall serve to release or relieve the party assigning the Contract from any obligations or responsibilities under this Contract.

35. MEDIATION REQUIRED (Section must be checked if applicable): BUYER and SELLER agree that any claim or dispute arising out of or relating to this Contract or the services provided by any real estate licensees involved in this transaction shall be submitted to mediation by completing and signing the Mediation Addendum and attaching it to this Contract. The Mediation Addendum must be completed, signed and attached to this Contract if the "agree" box is checked in this section.

36. ACKNOWLEDGEMENT OF RECEIPT OF THE CONTRACT: BUYER and SELLER acknowledge and certify that they have received, read and understood a copy of this Contract.

37. ACKNOWLEDGEMENT OF RECEIPT OF EXPENSE ITEMIZATIONS: BUYER and SELLER acknowledge the receipt of separate expense itemizations estimating the approximate costs to be incurred in buying or selling the Property.

38. FORM AGREEMENT AND RECOMMENDATIONS FOR INDEPENDENT LEGAL ADVICE: This Contract has been approved as a form contract by the legal counsel of the Kansas Association of REALTORS® for exclusive use by its REALTOR® members. This is a legally binding contract when the BUYER and SELLER sign the Contract. If not understood, the Kansas Association of REALTORS® and any real estate licensees involved in this transaction recommend that either party should seek the advice of an attorney before signing the completed agreement.

39. ACCEPTANCE OF THE CONTRACT: (Section Must be Checked if Applicable): This Contract must be executed by all parties before ______ (AM PM) on ______ (the "Offer Expiration Date") or it shall be null and void and any Earnest Money shall be returned to the BUYER.

40. DISCLOSURE OF LOAN ESTIMATES AND CLOSING DISCLOSURES TO REAL ESTATE LICENSEES: BUYER and SELLER agree that any mortgage lenders and settlement providers involved in this transaction are authorized to provide copies of any Loan Estimates or Closing Disclosures to any real estate licensees involved in this transaction.

41. SPECIAL CONDITIONS, PROVISIONS OR TERMS:

Buyer will pay real estate commission of 3% of the contract price to Faulkner Real Estate and all fees associated with the closing.

It is agreed between Buyer and Seller that this contract and Seller's obligation to close is subject to Bankruptcy Court approval which is expected to be received in sufficient

time to allow a closing of the sale on or before October 1, 2016 It is agreed between Buyer and Seller this contract is contingent on the Buyer obtaining a new mortgage and notwithstanding any other terms and conditions of this contract, if the final appraised value of the property as determined by the Buyer's appraiser is not equal to or greater than the purchase price under this contract, Buyer may send a written notice informing Seller of Buyers request to renegotiate the purchase price under this contract. This written notice shall contain a complete copy of the appraisal report prepared by Buyer's appraiser. Within five (5) business days after the Seller's receipt of Buyer's written request, Buyer and Seller may keep the contract in effect by agreeing to purchase price that is agreeable to both Buyer and Seller and signing an addendum to the contract containing the agreed upon purchase price. If Buyer and Seller cannot agree in writing to purchase price within the time frame allowed under this section, this contract shall be cancelled and the Buyers Earnest Money and any additional deposits shall be returned to the Buyer subject to the provisions of this contract.

BUYER'S INITIALS

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	16 Entered 09/07/16 18:32:46 Exhibit A
CAREFULLY READ THE TERMS OF THIS AGREEMENT BEF	3 of 15 DRE SIGNING, WHEN SIGNED BY ALL PARTIES, THIS DOCUMENT
BECOMES PART OF A LEGALLY BINDING CONTRACT. IF N	IOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING.
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KISIID.	Collar 1 the August 82
BUYERS SIGNATURE	SELLER'S SIGNATURE DATE
Josh Jorde	Abengoa Biochergy Engineering
lace Culter 85/14	JEPPREY D. BLAND, PORP. SECRETARY
BUYER'S SIGNATURE DATE	SELLER'S SIGNATURE DATE
Tracie Cullum	& Construction LLC
713 S Adams St	1043 Road P
BUYER'S MAILING ADDRESS	SELLER'S MAILING ADDRESS
Hugoton, KS 67951	Hugoton, KS 67951
BUYER'S CITY, STATE AND ZIP CODE	SELLER'S CITY, STATE AND ZIP CODE
and the second	(636) 284-0257
BUYER'S CONTACT TELEPHONE NUMBER	SELLER'S CONTACT TELEPHONE NUMBER
······································	danny.allison@bioenergy.abengoa.com
BUYER'S EMAIL ADDRESS	SELLER'S EMAIL ADDRESS
For identification purposes only: (Please print or type)	
KREC File #:	an
Agent Name: Karen Yoder	_ Agent Name: Karen Yoder
Agent License #: BR00052495	_ Agent License #: BR00052495
Firm Name: Faulkner Real Estate	Firm Name: Faulkner Real Estate
Broker License #: 421000015	Broker License #: 421000015

FORM CERTIFICATION: (to be completed by the agent preparing this Contract)

The undersigned agent assisted in completing the blanks in the foregoing form and confirms, to the best of his or her knowledge, that the printed form contains the language approved by the legal counsel for the Kansas Association of REALTORS®. The undersigned agent further confirms that no additions or deletions to the approved language have been made, except such changes as may appear in this form made by hand or typewriter and signed or initialed by the party submitting this offer. Agent's signature below is not an opinion as to the legal validity or meaning of any provisions contained in this form, but merely confirms that, to the best of the agent's knowledge, no changes have been made to the approved form.

a construction of the second	(Initial the applicable box)	Listing agent	Selling agent
Signature of the real estate licensee preparing this form		All and the second s	ana 1998-1972.
Karen Yoder			

BUYER'S INITIALS SELLER'S INITIALS

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Case 16-41161	Doc 638-1	Filed 09/07/16	Entered 09/07/16 18:32:46	Exhibit A
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BUYER: Josh Jorde, Tracie Cullum

SELLER: Abengoa Bioenergy Engineering, & Construction LLC

PROPERTY ADDRESS: 998 Road P, Hugoton, KS 67951

CONTRACT DATE:

1. ADDITIONAL TERMS AND CONDITIONS OF THE ADDENDUM:

Buyer and Seller agreed the following personal property is included in the sale. Gas cookstove, dishwasher, Weber gas grill, window treatments.

All other terms and conditions remain the same.

2. ACKNOWLEDGEMENT OF RECEIPT OF THE ADDENDUM: BUYER and SELLER hereby agree and acknowledge that they have received, read and understood a copy of this Addendum.

3. FORM AGREEMENT AND RECOMMENDATIONS FOR INDEPENDENT LEGAL ADVICE: This Addendum has been approved as a form contract by the legal counsel of the Kansas Association of REALTORS® for exclusive use by its REALTOR® members. This is a legally binding contract when the BUYER and SELLER sign the Addendum. If not understood, the Kansas Association of REALTORS® and the BROKER recommend that the BUYER and SELLER seek the advice of an attorney before signing the completed Addendum.

CAREFULLY READ THE TERMS OF THIS ADDENDUM BEFORE SIGNING. WHEN SIGNED BY ALL PARTIES, THIS DOCUMENT BECOMES PART OF A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, CONSULT AN ATTORNEY BEFORE SIGNING.

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BUYER Tracie Cu	111um	DATE	SELLER &	Construction LLC	DATE
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Addendum		Page 1 of	1	Kansas Associ	ation of REALTORS®
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Phone; 620-544-3730	Fax: 620-544-4119	Karen Yoder			Abengoa Bioenergy
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