

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS

<p>In re:</p> <p>BOEGEL FARMS, LLC; THREE BO'S, INC.; WARREN L. BOEGEL AND THE WARREN L. BOEGEL TRUST UTA 2-07-07 (REVOCABLE TRUST), WARREN L. BOEGEL, TRUSTEE</p> <p style="text-align: center;">DEBTORS.</p>	<p><b>CASE NO.: 17-10222-11</b> CHAPTER 11 <b>Joint Administration</b> (With Case Nos. 17-10221-11 &amp; 17-10224-11)</p>
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**FIFTH MOTION FOR ORDER AUTHORIZING DEBTORS TO SELL  
PROPERTY FREE AND CLEAR OF LIENS AND EMPLOY AUCTIONEER**

Debtors: Warren L. Boegel and the Warren L. Boegel Trust UTA 2-07-07 (Revocable Trust), Warren Boegel, Trustee; Boegel Farms, LLC; and Three Bo's, Inc.; by and through their undersigned counsel, submit this Motion, pursuant to which the Debtors seek Court approval and ratification of Debtors' sale of certain real property. In support hereof the Debtors state as follows:

1. On or about February 23, 2017 ("the Petition Date"), Debtors filed their Voluntary Petitions for Relief under Chapter 11 of the Bankruptcy Code. Debtors continue in possession of their property and operate and manage their business as debtors-in-possession pursuant to the provisions of 11U.S.C. §§ 1107 and 1108.

2. Debtors believe that it is in the best interest of their bankruptcy estate and their creditors to sell their real property located in Kearny County, Kansas, consisting of the two remaining quarters pledged to Security State Bank ("SSB"), free and clear of liens and encumbrances. Pursuant to 11 U.S.C. § 506(c), the proceeds from the auction shall first be applied to auctioneer fees, ordinary costs of sale, closing costs, recording costs, unpaid and pro rata real property taxes, and U.S. Trustee fees (on account of any sales in 2018). Any remaining funds shall be paid directly to SSB. Description of said real property to be auctioned is the East

Half of S13-T23-R38, Kearny County, Kansas (320 acres). This property is owned by Warren L. Boegel Trust UTA 2-07-07 (Revocable Trust), Warren Boegel, Trustee.

3. In addition, Debtors believe that it is in the best interest of their bankruptcy estate and their creditors to sell their real property located in Greeley and Wichita Counties, Kansas currently pledged to RABO AgriFinance LLC (“Rabo”), consisting of approximately 7,200 acres, free and clear of all liens and encumbrances. Pursuant to 11 U.S.C. § 506(c), the proceeds from the auction shall first be applied to auctioneer fees, ordinary costs of sale, closing costs, recording costs, unpaid and pro rata real property taxes, and U.S. Trustee fees (on account of any sales in 2018). Any remaining funds shall be paid directly to Rabo. Description of said real property to be auctioned is as follows:

**Tract 1**

- a. All of S30-T18-R38, Wichita County, Kansas (640 acres)
- b. North Half of S31-T18-R38, Wichita County, Kansas (320 acres)

**Tract 2**

- a. South Half of S29-T18-R38, Wichita County, Kansas (320 acres)
- b. All of S32-T18-R38, Wichita County, Kansas (640 acres)
- c. North Half of S5-T19-R38, Wichita County, Kansas (320 acres)

**Tract 3**

- a. All of S28-18-38, Wichita County, Kansas (640 acres)
- b. Northwest Quarter of S33-T18-R38, Wichita County, Kansas (160 acres)
- c. South Half of S33-T18-R38, Wichita County, Kansas (320 acres)

**Tract 4**

- a. Southwest Quarter of S6-T19-R38, Wichita County, Kansas (160 acres)

**Tract 5**

- a. Northeast Quarter of S18-T19-R38, Wichita County, Kansas (160 acres)

**Tract 6**

- a. North Half of S23-T19-R38, Wichita County, Kansas (320 acres)

**Tract 7**

- a. Northeast Quarter of S20-T19-R38, Wichita County, Kansas (160 acres)

**Tract 8**

- a. Northwest Quarter of S30-T19-R38, Wichita County, Kansas (160 acres)
- b. Southeast Quarter of S30-T19-R38, Wichita County, Kansas (160 acres)

**Tract 9**

- a. All of S33-T20-R38, Wichita County, Kansas (640 acres)

**Tract 10**

- a. Northeast Quarter of S11-T19-R39, Greeley County, Kansas (160 acres)

**Tract 11**

- a. South Half of S34-T19-R39, Greeley County, Kansas (320 acres)
- b. All of S3-T20-R39, Greeley County, Kansas (640 acres)

**Tract 12**

- a. All of S2-T20-R39, Greeley County, Kansas (640 acres)
- b. South Half of S35-T19-R39, Greeley County, Kansas (320 acres)

The property described in this paragraph is owned by Boegel Farms, LLC. The real property listed in Paragraphs 2 and 3 is collectively referred to hereinafter as “the Property”. There are no currently producing mineral rights on the Property. Mineral rights, if any, shall not be sold with the Property; such rights shall remain with the applicable Debtor.

4. The net proceeds from the portion of the Property identified in Paragraph 3 shall be delivered to Rabo only up to the amount remaining due on Rabo’s allowed secured claim, with the excess, if any, being delivered to the bankruptcy estate.

- a. In determining the amount remaining due on Rabo’s allowed secured claim, such claim shall consist of the amounts owed on Claim Nos. 2 and 3 filed in Case No. 17-10222 as of the Petition Date in the aggregate amount of \$14,321,675.48 (\$1,517,122.97 on Claim No. 2 plus \$12,804,552.51 on Claim No. 3), plus interest on the unpaid principal balance of Claim Nos. 2 and 3 and attorney’s fees accruing thereafter from the Petition Date until the date sales proceeds are delivered to Rabo from the sale of the Property, less payments made to Rabo since the Petition Date.

- b. With respect to the calculation of post-petition interest on Claim Nos. 2 and 3, the parties stipulate and agree that conditioned upon full compliance by the Debtors with their obligations under this Motion and any Order Granting this Motion, interest shall accrue on Rabo's allowed secured claim from the Petition Date through January 5, 2018 on the unpaid principal balance of Claim Nos. 2 and 3 at the applicable contract interest rates of interest related to those claims, plus one-half of the additional interest rate allowed as "default rate" interest under the contract. From and after January 6, 2018, interest shall accrue on the unpaid principal balance of Claim Nos. 2 and 3 at the contract rate of interest without any default interest accruals. Attorney's fees for Rabo to be paid by the Debtors through the sale of their real estate assets also shall not be greater than \$100,000.00 through March 31, 2018, also conditioned on the Debtors being in full compliance with the terms of this Motion and any Order granting this Motion. Counsel for Rabo shall provide itemized billing statements supporting such fees to Debtors' counsel not later than April 15, 2018, subject to appropriate redactions as are necessary to protection attorney-client privilege.
- c. After the completion of the sale, and unless Rabo's allowed secured claims is paid in full from the proceeds of sale, Rabo shall continue to retain its lien on and security interest in its remaining collateral, including but not limited to its lien on the \$400,000 hold back currently on deposit in Hinkle Law's trust account and its lien on the South Half of S14-T27-R38, Grant County, Kansas (287 acres). In the event that Rabo's allowed secured claim is not paid in full from the sale of the 7200 acres identified in paragraph 3 above, Rabo shall also be granted as additional collateral in addition to its existing collateral a second priority security interest in the Debtors' machinery, equipment, crops, and other farm products, and all proceeds therefrom, currently encumbered by the lien of SSB. Any such



deficiency will continue to accrue interest at the contract rate. The remaining deficiency balance shall be paid as set forth below. In the event that the proceeds from the sale of the Property identified in Paragraph 3 exceed the amount necessary to pay Rabo's allowed secured claim in full, any remaining proceeds shall be paid to Boegel Farms, LLC, to be utilized as set forth in more detail below.

5. Debtors seek Court approval to hold a public auction in order to sell the Property. The proposed auction will be conducted by Hutcheson Real Estate & Auction Co., Inc. ("Hutcheson"). Hutcheson has been employed on other occasions by the Court in this case. As such, a separate employment application will not be filed. An auction contract is attached hereto as Exhibit 1, and Debtors seek approval of this contract through this Motion. The proposed auction will be conducted not later than March 31, 2018, with closing to occur not later than April 30, 2018. Hutcheson will receive a commission of 2.5% of the auction price, which will be deducted from the sales proceeds. Pro rata taxes and recording fees associated with filing copies of bankruptcy filings shall be paid by the Debtors out of the sale proceeds. All title insurance, title examination, escrow or settlement, and any other recording fees shall be paid by the successful bidder at auction. The auction will have no reserve, although SSB and Rabo will retain their credit bid rights against all or any portion of their collateral and, if either party exercises those rights and is the successful bidder for their collateral, they shall be required to pay at closing the commissions owed to Hutcheson and pro rata taxes and recording fees that the Debtors would otherwise pay at closing. The Property shall be sold subject to the Debtors' rights to continue growing and harvesting the crops currently in the ground, which will all be harvested not later than July 31, 2018.

6. In the event that the Debtors obtain either a) an offer to purchase the Property on terms that are mutually acceptable to the Debtors, SSB, and Rabo, or b) an unconditional and irrevocable loan commitment from a bona fide lender that is acceptable to the Debtors, SSB and

Rabo and that is in an amount sufficient to pay Rabo and SSB in full by no later than April 30, 2018, the auction may be cancelled. Such a purchase offer or loan commitment must be received not later than March 10, 2018 in order to provide Hutcheson with sufficient opportunity to advertise the cancellation of the auction.

7. The deadlines set forth herein for the date of the auction and the closing of the sale may be extended by mutual agreement of the Debtors, SSB, and Rabo without further order of the Court.

8. Upon the closing of the sale of the Property, SSB shall withdraw its Motion to Appoint Trustee (Doc. No. 161).

9. In the event that the net proceeds from the sale of the Property identified in Paragraph 3 exceed the amount necessary to pay Rabo's allowed secured claim in full, Debtors shall first pay any administrative expenses then outstanding in the case herein, including but not limited to fees of the United States Trustee that may be owed on account of the distribution of proceeds from the sales of assets in 2018. Thereafter, Debtors shall distribute any remaining net proceeds to SSB and Smith Crop Consulting (the only unsecured or under-secured creditor in this case) in a prorated amount vis a vis their respective claims herein, up to the full remaining amount of their claims.

10. The 7200 acres of real property serving as Rabo's collateral shall be auctioned in twelve separate tracks in the order set forth in paragraph 3 above, which has been targeted to generate the maximum possible revenue to the estate in the discretion and professional judgment of Hutcheson. If the auction has generated sufficient proceeds to pay the claims of Rabo, SSB, and Smith Crop Consulting in full, the auction of the remaining tracts not yet sold, if any, may be cancelled.

11. To the extent that the proceeds from the sale of the Property are insufficient to repay the claims of SSB or Rabo in full, Debtors also shall sell the South Half of S14-T27-R38, Grant County, Kansas (287 acres) by auction no later than April 30, 2018, with the auction to

close no later than May 31, 2018. Such auction shall be approved by an order granting this Motion on the same terms and conditions set forth herein for the sale of the Property, with the exception of the date of the auction and the date of closing. Any remaining balance of the claims of SSB or Rabo shall be paid in full not later than August 31, 2018 through liquidation of all remaining collateral pledged to SSB and Rabo and through the liquidation of any other non-exempt assets of the Debtors not currently pledged to SSB or Rabo as will be necessary to pay the claims of SSB and Rabo in full. Such payment shall be made using funds on hand, proceeds from the sale of crops, proceeds from the sale of machinery and equipment, loan proceeds, or any combination thereof as may be available to the Debtors. Any auction of machinery or equipment or other tangible assets shall be conducted by no later than July 31, 2018, with closing and funding to occur by no later than August 31, 2018. Further, the Debtors' use of cash collateral shall continue to be in conformance with all applicable orders of the Court, including the Court's orders regarding the use of cash collateral as set forth in the Agreed Order Extending Use of Cash Collateral and Exclusivity, dated September 27, 2017 [Dkt. 136, Case No. 17-10222], and with the requirements of paragraph 15 of this Motion. Upon confirmation of a Chapter 11 plan, the Debtors' use of cash collateral and other assets shall comply in all respects with the terms of the confirmed Chapter 11 plan.

12. Notwithstanding the foregoing August 31, 2018 deadline to satisfy the remainder of SSB's and Rabo's claims, the Debtors and Rabo acknowledge that issues related to Warren Boegel's homestead, including whether and when that homestead will be sold and the terms of any restructuring of Rabo's claims against that asset, may be modified by subsequent motion and order or a confirmed Chapter 11 plan, and all parties reserve their rights concerning the homestead (except that that Debtors' stipulate and agree that Rabo has an unavoidable first priority lien on the \$400,000 holdback and its lien against those funds shall also attach to any homestead purchased with the same validity and priority). In the event that any deficiency remains owing to either Rabo or SSB after the sale of the Property and the liquidation of their

other collateral and the liquidation of all remaining non-exempt assets of the Debtors<sup>1</sup>, both Rabo and SSB agree to release the Debtors, Jack Boegel, Janice Boegel, and the Jack and Janice Boegel Irrevocable Trust from any such remaining deficiency.

13. There are no other liens against the Property other than those held by Rabo and SSB as set forth above. There also are no liens against the South Half of S14-T27-R38, Grant County, Kansas (287 acres) other than the consensual lien in favor of Rabo and statutory tax liens.

14. Pursuant to 11 U.S.C. §363(b)(1), a debtor-in-possession may, after notice and hearing, sell property of the estate outside the ordinary course of business. Such sale may be free and clear of liens pursuant to 11 U.S.C. §363(f), with liens to attach to the proceeds of the sale.

15. Debtors believe it is in the best interests of the bankruptcy estate and their creditors to sell the Property (as well as the South Half of S14-T27-R38, Grant County, if necessary) free and clear of all liens and encumbrances pursuant to the auction listed above. Debtors anticipate that the sale proposed hereunder will generate in excess of \$13,000,000.00. The remaining balances of the claims of Rabo, SSB, and Smith Crop Consulting are less than \$10,500,000.00. As such, it is very likely that the sale will retire all claims in these cases, with the exception of certain equipment loans that are separately collateralized.

16. Notwithstanding the approval of this Motion, the Debtors shall continue to be obligated by all existing orders of the Court, including the Court's orders regarding the use of cash collateral as set forth in the Agreed Order Extending Use of Cash Collateral and Exclusivity, dated September 27, 2017. [Dkt. 136, Case No. 17-10222] Further, the Debtors stipulate and agree that until the allowed claims of SSB and Rabo are paid in full, they shall not

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<sup>1</sup> Liquidation of Rabo's collateral may include the restructure of Warren Boegel's homestead debt, if applicable. No agreement has been reached by the parties concerning the disposition of Warren Boegel's homestead, and an order granting this motion shall not be construed to bind either the Debtors or Rabo regarding issues related to the homestead or the funds set aside to purchase the homestead, except that Rabo shall continue to have a first priority security interest in such funds or homestead.

use cash collateral for the planting of any additional crops, and the Debtors' use of cash collateral for crop related activities shall be limited to (a) the use of cash collateral to liquidate all currently harvested crops of the Debtor, and (b) the use of cash collateral to maintain, harvest and thereafter liquidate the Debtors' growing wheat crops. By no later than February 28, 2018, the Debtors shall either obtain SSB's and Rabo's written consent to, or shall file a motion for approval of an order of the Bankruptcy Court approving, an updated 2018 crop budget which lists the authorized expenses related to both the currently harvested crops and the Debtors' growing wheat crops.

17. Upon confirmation of a Chapter 11 plan, the Debtors shall be obligated by the terms of the confirmed Chapter 11 plan. The Debtors shall not propose a Chapter 11 plan in this case which is inconsistent with the terms set forth herein regarding the treatment and payment of the allowed claims of SSB and Rabo.

WHEREFORE, Debtors request entry of this Court's Order authorizing the sale by Auction described herein free and clear of all liens and encumbrances, authorizing the employment of Hutcheson, and approving all other terms set forth above.

**Respectfully Submitted:**

ERON LAW, P.A.  
*Attorneys for Debtors  
Boegel Farms, LLC and  
Three Bo's, Inc.*

/s/ David Prella Eron

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**Approved as to Form and Content:**

WONER, REEDER & GIRARD, P.A.  
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/s/ Bruce J. Woner

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/s/ Michael Johnson

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**Accepted and Agreed:**

By: Signature to follow

THREE BO'S, INC.  
Warren Boegel, President

/s/ Signature to follow

WARREN L. BOEGEL

By: /s/ Signature to follow

BOEGEL FARMS, LLC  
Jack Boegel, President

/s/ Signature to follow

RABO AGRIFINANCE LLC  
Senior Special Assets Manager

/s/ Signature to follow

THE WARREN L. BOEGEL TRUST UTA  
2/07/07 (REVOCABLE TRUST),  
WARREN L. BOEGEL, TRUSTEE

/s/ Signature to follow

SECURITY STATE BANK  
Joshua Young, Vice President

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2018, a true and correct copy of the foregoing 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.

/s/ Margaret R. Spangler

MARGARET R. SPANGLER  
Assistant to David Prella Eron





# AGRICULTURAL LAND EXCLUSIVE RIGHT TO SELL AT AUCTION LISTING AGREEMENT

Document updated:  
August 2014

1. **PARTIES:** The parties to this agreement (the "Agreement") are:

**SELLER:** Boegel Farms, LLC, Warren Boegel Trust  
**BROKER:** Hutcheson Real Estate & Auction Company

2. **PROPERTY:** SELLER appoints BROKER as the SELLER's sole and exclusive representative to sell the real property, all improvements on the Property, the fixtures described below and any personal property described in Section 4 (the "Property"):

**PROPERTY ADDRESS:** See Addendum A  
**CITY:** \_\_\_\_\_ **COUNTY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP CODE:** \_\_\_\_\_  
**LEGAL DESCRIPTION:** See Addendum A

3. **SELLER'S TERMS:** SELLER instructs BROKER to market the Property for sale on the following terms agreeable to the SELLER:

This will be an Absolute Auction held on or before March 29, 2018.

4. **PERSONAL PROPERTY:** SELLER instructs BROKER to market the Property with the following items of personal property included: There is no personal included in this sale.

5. **TERM OF THE AGREEMENT:** This agreement shall begin at 12:01 AM on January 31, 2018 (the "Beginning Date") and shall end at 11:59 PM on May 31, 2018 (the "Ending Date").

6. **AUCTION DATE AND PRE-AUCTION OFFERS TO PURCHASE PROPERTY:** BROKER shall conduct an auction of the Property on or before March 29, 2018 (the "Auction Date"). Prior to the Auction Date, BROKER shall submit any offers to purchase the Property received by the BROKER to the SELLER for SELLER'S consideration at SELLER'S sole discretion. If the SELLER accepts an offer to purchase the Property prior to the Auction Date, the BROKER shall be entitled to the same compensation as if the Property had been sold on the Auction Date under this Agreement.

7. **AUCTION REQUIREMENTS AND SPECIFICATIONS:**

A. SELLER authorizes the BROKER to sell the Property at auction (unless the Property is otherwise sold prior to the Auction Date under this Agreement) subject to the requirements and specifications contained in this Agreement.

B. Unless otherwise mutually agreed by the SELLER and BROKER in writing, SELLER agrees to sell the Property at auction:

With Reserve: Unless otherwise mutually agreed by the SELLER and BROKER in writing, the Property shall be sold at auction subject to acceptance by the SELLER as the SELLER shall determine at SELLER'S sole discretion. Notwithstanding the foregoing language, SELLER agrees that in the event that the Property receives a highest bid at auction equal to or greater than \$ \_\_\_\_\_ (the "Reserve Price"), SELLER shall accept such offer to purchase the Property and sign a contract with the highest bidder or any other bidder whose bid on the Property is equal to or greater than the Reserve Price.

Without Reserve: SELLER agrees that the Property shall be offered for auction "absolute and without reserve" and that SELLER shall accept an offer to purchase the Property and sign a contract with the highest bidder or any other bidder whose bid on the Property is equal to or greater than the highest bidder's bid on the Property.

C. Unless otherwise mutually agreed by the SELLER and BROKER in writing, SELLER agrees that the BROKER may auction the Property through the following means:

Live Auction: The Property shall be sold at a Live Auction in which the BROKER, any affiliated real estate licensees working the auction and prospective buyers are present at a physical location.

Online Auction: The Property shall be offered for sale through an Online Auction in which the BROKER, any affiliated real estate licensees working the auction and prospective buyers communicate and submit bids to purchase the Property through electronic means.



Live/Online Hybrid Auction: The Property shall be offered for sale through a Live/Online Hybrid Auction in which the BROKER, any affiliated licensees working the auction and prospective buyers are either present at a physical location or communicate and submit bids to purchase the Property through electronic means.

**8. BROKER'S COMPENSATION:**

- A. SELLER agrees to pay the BROKER compensation consisting of \$ N/A (flat fee amount) plus 2.500 % (percentage-based fee) of the selling price of the Property if the BROKER or anyone else produces a purchaser ready, willing and able to purchase the Property subject to the terms of this Agreement or if a sale or exchange of the Property is made by the SELLER or any other person during the term of this Agreement. If the total BROKER'S compensation under this section does not exceed \$ N/A (the "Minimum Broker's Compensation"), the SELLER agrees to pay the BROKER the amount required so that the BROKER'S compensation is equal to the Minimum Broker's Compensation specified in this section.
- B. SELLER authorizes the deduction of the BROKER'S compensation from the SELLER'S proceeds at closing. SELLER agrees to divide any deposit made on a contract and forfeited by a buyer equally with BROKER, but the amount of the deposit paid to the BROKER shall not exceed the amount to which the BROKER would be entitled as compensation under this Agreement.
- C. **PROTECTION PERIOD:** "Protection Period" means that time beginning on the day after this Agreement expires or terminates and continuing for 90 calendar days (90 if left blank).
- (1) No later than 10 calendar days (ten if left blank) following the expiration or termination of this Agreement, BROKER shall send the SELLER a written notice specifying the names of any persons or entities whose attention was called to the Property during the term of this Agreement.
- (2) SELLER agrees that the BROKER shall be entitled to receive the BROKER'S compensation specified in this Agreement if the SELLER enters into any agreement to sell or transfer the Property upon any terms to any person or entity identified by the BROKER in the written notice provided under this section during the Protection Period. An "agreement to sell or transfer the Property" shall mean any agreement to transfer all or a substantial part of SELLER'S interest in the Property, including contracts for deed, contracts for sale or lease-option contracts.
- (3) SELLER and BROKER agree and acknowledge that this section shall survive and continue to bind the SELLER and BROKER after the expiration or termination of this Agreement. SELLER shall not be obligated to pay said BROKER'S compensation if a valid exclusive right to sell agreement is entered into with another licensed real estate broker and the Property is sold or transferred during the Protection Period.

9.  **BUYERS' PREMIUM (Section must be checked if applicable):**

- A. SELLER agrees that BROKER shall collect a 0.000 % commission (the "Buyers' Premium") as additional compensation from the buyer of the Property at closing. If the Buyers' Premium is less than \$ \_\_\_\_\_ (the "Minimum Buyers' Premium"), then the SELLER agrees to pay the BROKER the amount required so that the Buyers' Premium is equal to the Minimum Buyers' Premium specified in this section.
- B. If the SELLER enters into any agreement to sell or transfer the Property to any person or entity prior to the Auction Date or within \_\_\_\_\_ calendar days (15 if left blank) following the Auction Date, SELLER agrees that BROKER shall be entitled to collect the Buyers' Premium under this section from the buyer of the Property at closing.
- C. If SELLER enters into any agreement to sell or transfer the Property to any person or entity procured as a result of the auction after the Auction Date, SELLER agrees that the BROKER shall be entitled to collect the Buyers' Premium under this section from the buyer of the Property at closing.
- D. If the buyer is not represented by another real estate licensee in the purchase of the Property, SELLER agrees that the BROKER shall be entitled to retain the entire portion of the Buyers' Premium. If the buyer is represented by another real estate licensee in the purchase of the Property, BROKER agrees to provide a 0.000 % cooperating commission to the real estate licensee representing the buyer in the purchase of the Property.

**10. MARKETING FEE:**

- A. SELLER agrees to pay a non refundable marketing fee in the amount of \$ \_\_\_\_\_ (the "Marketing Fee") to cover the estimated costs that will be incurred by the BROKER to advertise, market and prepare the Property for sale immediately upon the execution of this Agreement. SELLER agrees to pay any and all expenses that will be incurred by the BROKER to advertise, market and prepare the Property for sale.
- B. At closing, BROKER shall provide an itemized list of the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale. In the event that that the amount of the Marketing Fee paid by the SELLER to the BROKER upon the execution of this Agreement exceeds the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale, BROKER shall refund the excess amount from the Marketing Fee to the SELLER at closing.



- ~~C. In the event that the amount of the actual costs incurred by the BROKER to advertise, market and prepare the Property for sale exceed the amount of the Marketing Fee paid by the SELLER to the BROKER upon the execution of this Agreement, SELLER shall pay the additional amount of funds required to offset the BROKER'S actual costs to advertise, market and prepare the Property for sale at closing.~~
- ~~D. In the event that the sale of the Property does not close due to a default of the buyer or SELLER under the terms and conditions of the sales contract between the parties, SELLER agrees that any additional funds required to offset the BROKER'S actual costs to advertise, market and prepare the Property for sale shall be paid by the SELLER to the BROKER as if the sale of the Property had closed.~~

**11. BROKER'S OBLIGATIONS, DISCLAIMERS AND INDEMNIFICATION:**

- A. BROKER does not guarantee, represent or warrant that the BROKER'S services outlined in this Agreement will result in the sale of the Property or the amount of the final sales price on the Property.
- B. SELLER agrees that the BROKER has the absolute discretion to establish all bidding increments and procedures in conducting an auction of the Property.
- C. Upon receipt of the highest bid on the Auction Date, BROKER shall present a Real Estate Contract (the "Contract") to the highest bidder after the close of the auction of the Property and SELLER agrees to sign the Contract. If the highest bidder fails or refuses to sign the Contract, BROKER shall be permitted to contact other bidders at the auction to offer the Property for sale and SELLER agrees to sign a Contract with any bidder whose offer to purchase the Property is equal to or greater than the highest bidder's bid on the Auction Date.
- D. SELLER agrees that the BROKER shall not under any circumstances be held liable to either the SELLER or the prospective buyer of the Property for either party's failure or refusal to complete the purchase and sale of the Property. SELLER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors, from and against any and all claims, demands, suits, damages, losses or expenses (including any reasonable attorneys' fees) arising out of the SELLER'S or prospective buyers' failure or refusal to complete the purchase and sale of the Property. The provisions of this section shall survive the termination of this Agreement.

**12. BROKER'S OBLIGATIONS TO SELLER:** BROKER agrees to and SELLER acknowledges that BROKER will:

- A. Market the Property at the BROKER'S cost and expense;
- B. Perform the terms of this written Agreement;
- C. Promote the interests of the SELLER with the utmost good faith, loyalty and fidelity;
- D. Present in a timely manner all offers to and from the SELLER;
- E. Disclose to the SELLER all adverse material facts actually known by the BROKER about the buyer;
- F. Advise the SELLER to obtain expert advice as to material matters known by the BROKER, but the specifics of which are beyond the BROKER'S expertise. When the SELLER has been so advised by the BROKER, no cause of action for any person shall arise against the BROKER pertaining to such material matters;
- G. Account in a timely manner for all money and property received by the BROKER;
- H. Comply with all requirements of the Brokerage Relationships in Real Estate Transactions Act of Kansas (BRRETA) and comply with any applicable federal, state and local laws, rules, regulations and ordinances, including fair housing and civil rights statutes and rules and regulations;
- I. Keep all confidential information about the SELLER confidential unless the disclosure of such information is required by statute, rule or regulation, or unless the BROKER reasonably believes that the failure to disclose such information would constitute fraudulent misrepresentation. When the disclosure of confidential information is required, no cause of action for any person shall arise against the BROKER for making the permitted or required disclosure;
- J. Disclose to any customers and prospective buyers all adverse material facts actually known by the BROKER, including but not limited to:
- (1) Any environmental hazards affecting the Property that are required by law to be disclosed;
  - (2) The physical condition of the Property;
  - (3) Any material defects in the Property;
  - (4) Any material defects in the title to the Property; or
  - (5) Any material limitation on the SELLER'S ability to perform under the terms of the contract.
- K. Regarding the required disclosures in Section 12(J) of this Agreement, BROKER owes no duty to conduct an independent inspection of the Property for the benefit of any customers or prospective buyers and owes no duty to independently verify the accuracy or completeness of any statement made by the SELLER or any qualified third party; and
- L. Assist with the closing of the sale of the Property.



**13. SELLER'S OBLIGATIONS TO BROKER:** SELLER agrees to and BROKER acknowledges that SELLER will:

- A. Represent and warrant that this is the one and only Exclusive Right to Sell Listing Agreement in effect on the Property and that the SELLER has the capacity to convey merchantable title to the Property upon closing;
- B. Refer any and all offers or inquiries regarding the Property that are received by the SELLER during the term of this Agreement to the BROKER;
- C. Permit the BROKER to place a "For Sale" sign on the Property and to remove all other signs appearing on the Property during the term of this Agreement;
- D. Obtain information on any mortgages on the Property or any other liens shown against the Property, including but not limited to the following:
  - (1) Mortgage Loan #1  
Account Number: \_\_\_\_\_  
Serviced By: \_\_\_\_\_  
Phone Number: \_\_\_\_\_
- E. Allow the BROKER to accept an Earnest Money deposit to be applied against the Purchase Price of the Property and to place that deposit into an escrow or trust account maintained by the BROKER or escrow agent until the closing of the sale of the Property. SELLER agrees and acknowledges that these funds may be deposited into an interest-bearing account and that the BROKER has the right to retain all interest accruing in this account to compensate for the cost and burden of maintaining such account;
- F. Allow the BROKER to enter the Property at all reasonable times for the purpose of inspecting, previewing or showing the Property to prospective buyers or other real estate licensees;
- G. If there are improvements on the Property, furnish the BROKER with a key to access the improvements, authorize the use of a "lock box" device to permit access to the Property during the term of this Agreement and to hold the BROKER, his or her agents, employees, cooperating brokers, their agents and employees, the multiple listing service (MLS) and any REALTOR® non-profit trade association free and harmless from any loss or damage that might result from the use of such key or "lock box" device, including any vandalism, theft or damage of any nature to the Property, personal property and personal effects of the SELLER;
- H. Leave all utilities on at the Property during the term of this Agreement or until possession of the Property by a buyer, whichever is later, unless provided for otherwise in this Agreement or a contract to sell the Property; and
- I. Not discriminate against any prospective buyer on the basis of color, race, gender, religion, national origin, age, disability or familial status, and to hold harmless and indemnify the BROKER for and against any violations of federal, state and local laws related to discriminatory conduct.

**14. SELLER'S AUTHORIZATIONS TO BROKER:** SELLER authorizes BROKER to:

- A. Obtain any and all records and information concerning the SELLER'S Property from the appropriate governmental agencies and other entities; and
- B. Cooperate and share the percentage-based fee payable to the BROKER under this Agreement with other licensed real estate brokers who have been employed as buyers' agents, designated agents sub-agents or transaction brokers, subject where applicable to authorization as otherwise provided in this Agreement. SELLER agrees that BROKER shall:
  - (1) Offer cooperation to buyers' agents:  YES  NO
  - (2) Offer compensation to buyers' agents:  YES  NO
  - (3) Offer cooperation to designated agents:  YES  NO
  - (4) Offer compensation to designated agents:  YES  NO
  - (5) Offer cooperation to sub-agents:  YES  NO
  - (6) Offer compensation to sub-agents:  YES  NO
  - (7) Offer cooperation to transaction brokers:  YES  NO
  - (8) Offer compensation to transaction brokers:  YES  NO

**15. INCLUSION OF PROPERTY IN THE MULTIPLE LISTING SERVICE:**

- A. BROKER  shall  shall not submit this Listing for inclusion in any multiple listing service (the "MLS") within the time required for the submittal of listings under the applicable MLS rules and regulations. If the Listing is submitted for inclusion in the MLS, the SELLER:
  - (1) Authorizes the BROKER to submit pertinent information, including virtual tours and images when applicable, concerning the Property to any MLS;



- (2) Authorizes the BROKER to disseminate data about the Property and other information relating to the Property supplied by or on behalf of the SELLER, including creative works depicting the Property, such as virtual tours, images, videos and any textual descriptions of the Property (collectively referred to as "Content"), to MLS participants, subscribers and other licensees or users of the MLS database compilation, any other MLS in which BROKER participates or any other website, in the BROKER'S sole discretion, and to further disseminate or permit the MLS or other MLS participants to disseminate such Content to potential buyers through websites on the internet that are owned, operated or controlled by the MLS, other MLS participants or such other entities with whom MLS may enter into license agreements authorizing the dissemination or use of such Content;
- (3) Grants to the BROKER an irrevocable, perpetual, non-exclusive and fully sub-licensable and assignable right (through multiple tiers) to use, reproduce, modify, adapt, publish, create derivative works from, distribute, perform and display any photographs, aerial photographs, floor plans, architectural drawings, video images, sounds or other copyrightable material related to the Property (hereinafter referred to as "Works") and to incorporate any such Works (in whole or in part) into other Works in any form, media or technology now known or later developed;
- (4) Agrees that this non-exclusive license shall survive the termination of this agreement for any reason whatsoever. SELLER represents and warrants to BROKER that the license granted to BROKER for this Content does not violate or infringe upon the rights, including any copyright rights, of any person or entity. SELLER acknowledges and agrees that all listing content is owned exclusively by the BROKER and that SELLER has no right, title or interest in Content;
- (5) Agrees that BROKER may provide to MLS for dissemination to others, including the county appraiser if required by law, timely notice of status changes affecting the Property, sales information about the Property, including the price at which the Property is sold and other information concerning the Property for the use of the members of such services, to compile reliable statistics and to establish market value for other properties; and
- (6) Agrees that the BROKER shall insert in the comments section of the MLS that "THIS PROPERTY IS BEING OFFERED FOR AUCTION ON 03/29/2018 (insert the Auction Date). BROKER/AGENT PARTICIPATION IS RECOGNIZED AND A 0.500 % (insert cooperating commission amount) REFERRAL COMMISSION IS BEING OFFERED TO THE BUYERS' BROKER/AGENT PRE-REGISTERING THE SUCCESSFUL BUYER. CONTACT THE LISTING BROKER FOR PRE-REGISTRATION MATERIALS."

**16. SELLER'S OBLIGATION TO DISCLOSE ADVERSE MATERIAL FACTS REGARDING THE PROPERTY:**

- A. SELLER understands that SELLER has a legal obligation and affirmative duty to be honest by making accurate and complete disclosures of any adverse material facts regarding the Property to prospective buyers and that the failure to do so may result in civil liability for damages.

**(SELLER'S INITIALS REQUIRED)**

- B. Upon the signing of this Agreement, the SELLER  shall  shall not complete a SELLER'S Agricultural Land Property Disclosure Statement (the "Statement") to be provided to prospective buyers and to update the Statement upon the request of the BROKER or in the event of any material change in the condition of the Property or the discovery of any additional material facts regarding the Property that were not disclosed in prior versions of the Statement.
- C. SELLER agrees to provide any and all inspection reports regarding the Property that are in existence at the time of this Agreement or any inspection reports generated during the term of this Agreement to the BROKER and authorizes the BROKER to disclose such inspection reports to prospective buyers and other real estate licensees.
- D. SELLER warrants that there are no known material defects in the Property except as will accurately and completely be disclosed on the Statement or in other written disclosures provided to any prospective buyers of the Property. SELLER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors, from and against any and all claims, demands, suits, damages, losses or expenses (including any reasonable attorneys fees) arising out of any misrepresentation, non-disclosure or concealment by SELLER in connection with the sale of the Property including, without limitation, inaccuracy of information provided by the SELLER for the preparation of listing data, the Statement or otherwise provided or omitted in connection with the sale of the Property.
- E. SELLER agrees to thoroughly review the listing information prepared by the BROKER and advise the BROKER immediately of any errors or omissions. SELLER further stipulates that the dimensions and size of the Property are accurate to the best of his or her knowledge. SELLER agrees to personally assume all responsibility for any claims made by a buyer with respect to any errors or omissions contained in the information provided to BROKER, any prospective buyers and other real estate licensees and that the BROKER shall not be responsible in any manner for any errors or omissions.



F. SELLER warrants that the SELLER does not have knowledge of any easements, sewer assessments, street assessments or other proposed special assessments except as accurately and completely disclosed on the Statement or the SELLER'S Special Assessment Disclosure Addendum. SELLER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors, from and against any and all claims, demands, suits, damages, losses or expenses (including any reasonable attorneys' fees) resulting from the information that the SELLER has given regarding any easements, sewer assessments, street assessments or other proposal special assessments on the Property.

17.  **MINERAL RIGHTS** (Section must be checked if applicable): Mineral rights shall  pass with the land to the BUYER  remain with the SELLER. Provided that the SELLER owns less than all of the mineral rights in the Property, SELLER shall list any reductions in ownership of the mineral rights as follows:

18.  **CROPS:** (Section must be checked if applicable)

A.  **SHARE OF CROPS** (Subsection must be checked if applicable): SELLER'S share of crops planted at the time of the sale and any current year government crop payments shall:

Pass with the land to the BUYER (BUYER will reimburse the SELLER for the SELLER'S share of expenses for growing the crops);

Remain with the SELLER; or

Other (please specify):

Seller shall retain current wheat crop and be permitted , following closing, to enter upon the land for purpose of tending and harvesting the crop currently in the ground. All such work shall be completed not later than July 31, 2018. See Special Terms 18A Continued.

B.  **CASH RENT** (Subsection must be checked if applicable): Cash rent from leases currently in effect on the Property shall:

Pass with the land to the BUYER;

Remain with the SELLER; or

Other (please specify):

There is no Cash Rent.

C.  **CONSERVATION RESERVE PROGRAM (CRP)** (Subsection must be checked if applicable): BUYER shall assume full responsibility for the CRP contract at closing and shall have the CRP contract transferred into the BUYER'S name within 30 calendar days after closing. The current year CRP payment shall:

Pass with the land to the BUYER;

Remain with the SELLER; or

Other (please specify):

There is not any land associated with this farm that is currently enrolled into the CRP Program.

19.  **WATER RIGHTS** (Section must be checked if applicable): Water rights shall  pass with the land to the BUYER  remain with the SELLER. Provided that the SELLER owns less than all of the water rights in the Property, SELLER shall list any reductions in ownership of the mineral rights as follows:



20.  **LEASEHOLD INTERESTS OR TENANTS' RIGHTS** (Section must be checked if applicable): SELLER represents and warrants that there are no leasehold interests or tenants' rights in the Property except as disclosed by the SELLER as follows:

There is not a current lease on this property.

21.  **ZONING** (Section must be checked if applicable): SELLER represents that Property is currently zoned as:

Agriculture Use

22.  **AUCTION OF PERSONAL PROPERTY ITEMS** (Section must be checked if applicable): In addition to the marketing and auction of the Property under this Agreement, ~~BROKER and SELLER agree that BROKER shall assist the SELLER with the marketing and auction of personal property owned by the SELLER. If the BROKER will be assisting the SELLER with the marketing and auction of personal property, the BROKER and SELLER agree to complete and sign a separate written agreement governing the marketing and auction of personal property items.~~

**23. BROKER RECOMMENDS SELLER SEEK LEGAL AND PROFESSIONAL ADVICE:**

- A. BROKER recommends that the SELLER seek legal, tax or other professional advice regarding the real estate transaction. BROKER makes no representation or warranty regarding the advisability of any real estate transaction. BROKER is not an expert in matters relating to law, tax, financing, surveying, structural or mechanical condition, hazardous material, engineering or other specialized topics and the SELLER is strongly encouraged to seek expert advice in such areas.
- B. BROKER will cooperate with the experts engaged by the SELLER, but the BROKER shall have no liability to the SELLER pertaining to such matters.

**24. LIABILITIES FOR INSPECTIONS:**

- A. SELLER agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors from and against any and all claims, demands, suits, damages, losses or expenses (including any reasonable attorneys' fees) resulting from any liability for vandalism, theft or damage of any nature to the Property or for personal injury to any persons of the Property.
- B. In consideration of BROKER'S arranging for any inspections at SELLER'S request, SELLER hereby agrees to defend, indemnify and hold harmless BROKER and its agents, sub-agents, employees and independent contractors from and against any and all claims, demands, suits, damages, losses or expenses (including any reasonable attorneys' fees) resulting from or in connection with such inspections.

**25. BROKERAGE RELATIONSHIP DISCLOSURE:**

- A. SELLER acknowledges receiving the "Real Estate Brokerage Relationships" Brochure. SELLER understands that the BROKER may show alternative properties not owned by the SELLER to prospective buyers and may list competing properties for sale without breaching any duty or obligation to the SELLER.
- B. Pursuant to Section 26 of this Agreement, SELLER  consents  does not consent to a designated agent relationship. If applicable, the BROKER, or the BROKER'S authorized representative, hereby designates Shaun Hutcheson to act as the designated agent on the SELLER'S behalf.

**26. SELLER'S ACKNOWLEDGEMENT OF POSSIBLE DESIGNATED AGENT RELATIONSHIP:**

- A. A designated agent is a real estate licensee affiliated with a BROKER who has been designated by the BROKER, or the BROKER'S duly authorized representative, to act as the agent of the BROKER'S buyer or seller client to the exclusion of all other affiliated licensees. If a designated agent is appointed to represent the SELLER, SELLER understands that:
  - (1) The designated agent will perform all of the duties of a SELLER'S agent and will be the SELLER'S legal agent to the exclusion of all other real estate licensees in the BROKER'S firm;
  - (2) another real estate licensee in the BROKER'S firm may act as a designated agent for the buyer in the sale of the SELLER'S Property;



- (3) the supervising broker (or branch broker if applicable) will act as a transaction broker and will not advocate for the interests of either party and will not, without the prior consent of both parties, disclose any information or personal confidences about either party that might place the other party at an advantage in the transaction;
- (4) if the designated agent for the SELLER is also the designated agent of a buyer who is interested in purchasing the SELLER'S Property, the designated agent cannot represent both the SELLER and the buyer; and
- (5) if a buyer client of a designated agent wants to see a property that was personally listed by the supervising broker, the supervising broker, with the written consent of the SELLER, shall specifically designate an affiliated licensee who will act as a designated agent for the SELLER.

**27. TITLE EVIDENCE:** SELLER has been informed of the SELLER'S responsibility to provide the BUYER of the Property with evidence of clear title to the Property as required by the purchase contract. SELLER authorizes the BROKER to order title evidence for the Property through Frazee Abstract (name of the title insurance vendor). Title to the Property is vested in the name of See Exhibit A.

**28. NOTICE TO SELLERS WHO ARE FOREIGN PERSONS:** A SELLER who is a foreign person should consult an attorney or accountant who is familiar with the Foreign Investment in Real Property Act before entering into negotiations for the sale of the Property.

**29. NON-ASSIGNMENT OF AGREEMENT:** SELLER and BROKER understand and agree that the relationship created by this Agreement is a personal one and that neither the SELLER nor the BROKER shall have the right to assign this Agreement to third parties. Any attempted assignment shall be void and have no legal effect.

**30. ATTORNEYS' FEES:** In the event of litigation concerning the rights of the SELLER or BROKER pursuant to this Agreement, the SELLER and BROKER agree that the court shall award reasonable attorneys' fees and court costs to whichever party shall prevail in such action, to the extent allowed by law.

**31. LACK OF EXCLUSIVITY FOR BROKER:** SELLER acknowledges and agrees that BROKER may now or in the future represent other sellers and buyers of similar properties.

**32. ELECTRONIC SIGNATURES AND TRANSACTIONS:** SELLER and BROKER agree that this transaction may be conducted through electronic means according to the Kansas Uniform Electronic Transactions Act. However, the BROKER has no authority to enter into electronic agreements with other parties on behalf of the SELLER unless authorized to do so by a duly executed power of attorney.

**33. ACKNOWLEDGEMENT OF RECEIPT OF THE AGREEMENT:** SELLER hereby acknowledges and certifies that he or she has received, read and understood a copy of this Agreement.

**34. ENTIRE AGREEMENT OF THE PARTIES:** This Agreement constitutes the entire agreement between the parties. Any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. There shall be no modification of any terms of this Agreement unless such modification has been agreed to in writing and signed by both parties.

**35. FORM AGREEMENT AND RECOMMENDATIONS FOR INDEPENDENT LEGAL ADVICE:** This Agreement 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 BROKER and SELLER sign the Agreement. If not understood, the Kansas Association of REALTORS® and the BROKER recommend that the SELLER seek the advice of an attorney before signing the completed Agreement.

**35. SPECIAL CONDITIONS, PROVISIONS OR TERMS:**

The prorated real estate taxes and recording fees associated with filing copies of bankruptcy filings shall be paid by the Debtors out of the sale proceeds. All title insurance, title examination, escrow or settlement, and any other recording fees shall be paid by the successful bidder at the auction.

18A Continued

Buyer shall get immediate possession of all open ground at closing.

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

SELLER \_\_\_\_\_ DATE \_\_\_\_\_  
Boegel Farms, LLC

BROKER \_\_\_\_\_  
Hutcheson Real Estate & Auction Co.

SELLER \_\_\_\_\_ DATE \_\_\_\_\_  
Warren Boegel Trust

BROKER'S AFFILIATED LICENSEE OR REPRESENTATIVE \_\_\_\_\_ DATE \_\_\_\_\_  
Shaun Hutcheson

1598 Road 90 \_\_\_\_\_  
SELLER'S MAILING ADDRESS

400 East Santa Fe Trail \_\_\_\_\_  
BROKER'S MAILING ADDRESS

Lakin, KS 67860-6209 \_\_\_\_\_  
SELLER'S CITY, STATE AND ZIP CODE

Lakin, KS 67860 \_\_\_\_\_  
BROKER'S CITY, STATE AND ZIP CODE

(620) 355-9412 \_\_\_\_\_  
SELLER'S CONTACT TELEPHONE NUMBER

(620) 355-7991 \_\_\_\_\_  
BROKER'S CONTACT TELEPHONE NUMBER

SELLER'S FAX NUMBER \_\_\_\_\_

(620) 355-7994 \_\_\_\_\_  
BROKER'S FAX NUMBER

corn@pld.com \_\_\_\_\_  
SELLER'S EMAIL ADDRESS

shaunhutcheson@hotmail.com \_\_\_\_\_  
BROKER'S EMAIL ADDRESS



## Addendum A (Legal Descriptions)

Land Owned by Boegel Farms, LLC

All of 28-18-38, Wichita County, Kansas

South Half & Northwest Quarter 33-18-38, Wichita County, Kansas

South Half of 29-18-38, Wichita County, Kansas

All of 30-18-38, Wichita County, Kansas

North Half of 31-18-38, Wichita County, Kansas

All of 32-18-38, Wichita County, Kansas

North Half of 5-19-38, Wichita County, Kansas

Southwest Quarter of 6-19-38, Wichita County, Kansas

Northeast Quarter of 18-19-38, Wichita County, Kansas

North Half of 23-19-38, Wichita County, Kansas

Northeast Quarter 20-19-38, Wichita County, Kansas

Northwest Quarter and Southeast Quarter of 30-19-38, Wichita County, Kansas

All of 33-20-38, Wichita County, Kansas

Northeast Quarter of 11-19-39, Greeley County, Kansas

South Half 35-19-39, Greeley County, Kansas

South Half of 34-19-39, Greeley County, Kansas

All of 2-20-39, Greeley County, Kansas

All of 3-20-39, Greeley County, Kansas

Land Owned by Warren L. Boegel Trust UTA 2-07-07 (Revocable Trust), Warren Boegel Trustee.

East Half of 13-23-38, Kearny County, Kansas

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Seller

Boegel Farms, LLC

Date