

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:)	
)	Chapter 11
US FIDELIS, INC.,)	
)	Case No. 10-41902-705
Debtor.)	
)	Hon. Charles E. Rendlen, III
)	
)	JOINT AMENDED MOTION FOR
)	ORDER AUTHORIZING SALE OF
)	PORTO CIMA HOUSE FREE AND
)	CLEAR OF ALL LIENS, CLAIMS, AND
)	ENCUMBRANCES, SUBJECT TO
)	HIGHER AND BETTER OFFERS
)	
)	Sale Hearing Date: January 5, 2011
)	Sale Hearing Time: 10:00 a.m.
)	
)	
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Comes now US Fidelis, Inc. (the “Debtor”) and the Official Unsecured Creditors’ Committee of US Fidelis, Inc. (the “Committee”) and submits this *Joint Amended Motion For Order Authorizing Sale of Porto Cima House Free and Clear of All Liens, Claims, and Encumbrances, Subject to Higher and Better Offers* (the “Sale Motion”),

BACKGROUND

1. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. §157(a), (b)(1), (b)(2)(A), E.D. Mo. L.R. 81-9.01(B)(1), and 11 U.S.C. § 363. This is a “core” proceeding under 28 U.S.C. §157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §1409.
3. On March 1, 2010 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”). Pursuant

to sections 1107(a) and 1108 of the Bankruptcy Code, Debtor is continuing to operate its businesses and manage its financial affairs as a debtor-in-possession. On March 11, 2010, the Office of the United States Trustee appointed the Committee.

4. On September 30, 2010, the Debtor and the Committee (sometimes hereafter jointly referred to as the “Movants”) filed a Joint Motion for Order Approving Settlements with Defendants Cory and Heather Atkinson and Defendants Darain and Mia Atkinson (the “Settlement Motion”). The Settlement Motion sought approval, *inter alia*, for a Settlement Agreement by and among Darain and Mia Atkinson, the Debtor and the Committee. Pursuant to the Settlement Agreement, Cory and Heather Atkinson agreed to surrender to the Debtor substantially all of their assets in exchange for the consideration spelled out in the Settlement Motion. On October 22, 2010, this Court entered its Order Approving Settlement (the “Settlement Order”).

5. Pursuant to the Settlement Order, Cory and Heather Atkinson surrendered to the Debtor the real estate, improvements and other personal property located at 45 Via Preminenta, Porto Cima, Missouri (the “Porto Cima Real Estate”).

6. The Movants have reached an agreement with Marlyn J. Moen and LuAnn B. Moen (the “Prospective Buyers”) to purchase the Porto Cima Real Estate pursuant to the terms of a Special Sale Contract which is subject to higher and better bids, all as is more particularly described in the Special Sale Contract which is attached hereto as **Exhibit A** and incorporated herein by reference (the “Purchase Agreement”).

7. By this Motion, the Movants seek entry of an Order (the “Sale Order”) following a final hearing to be scheduled by the Court (the “Sale Hearing”) authorizing Movants to sell the Porto Cima Real Estate to the Prospective Buyers pursuant to the Purchase Agreement free and

clear of all liens, claims and encumbrances or, alternatively, in the event that the Court approves a higher and better offer from a party not affiliated with the Prospective Buyers, approving the sale of the Porto Cima Real Estate to such other party.

BACKGROUND ON PURCHASE AGREEMENT

8. The offer submitted by Prospective Buyers for the Porto Cima Real Estate is the highest and best of the proposals received for the Porto Cima Real Estate.

9. The sale of the Porto Cima Real Estate to Prospective Buyers under the Purchase Agreement is the product of substantial negotiations between parties.

10. The proposed sale has been negotiated at arms-length and constitutes a good faith offer to purchase in accordance with Section 363(m) of the Bankruptcy Code. The Prospective Buyers have no prior business or personal relationship with the Debtor, the Committee, Cory Atkinson, or Heather Atkinson. The Prospective Buyers are not “insiders” within the meaning of Section 101(31).

11. The Closing of the proposed Sale is to occur only after the Bankruptcy Court approves the sale after notice and a hearing as required by Section 363 of the Bankruptcy Code and Bankruptcy Rule 2002(a).

SALE OF ASSETS UNDER SECTION 363 OF THE BANKRUPTCY CODE

12. The Movants request that the Court authorize the sale of the Porto Cima Real Estate pursuant to Section 363 of the Bankruptcy Code free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances to attach to the sale proceeds.

13. Section 363(b) of the Bankruptcy Code authorizes the sale of property of the estate other than in the ordinary course of business, after notice and a hearing. A sale of assets outside the ordinary course of business is a matter within the Court’s discretion. In re Channel

One Comm., Inc., 117 B.R. 493, 496 (E.D. Mo. 1990); In re Apex Oil Co., 92 B.R. 847, 866 (Bankr. E.D. Mo. 1988).

14. The Movants have determined that, in their respective business judgments, the Sale of the Porto Cima Real Estate to Prospective Buyers in accordance with the terms of the Purchase Agreement (or to another bidder making a higher and better offer for the Porto Cima Real Estate before the Sale Hearing) is in the best interest of Debtor's Chapter 11 estate and its creditors. The Proposed Sale of the Porto Cima Real Estate is for fair and reasonable consideration, is in good faith, does not unfairly benefit any insiders or creditors of the Debtor, and will maximize the value of the Debtor's estate.

SALE FREE AND CLEAR OF ALL LIENS

15. Section 363(f) of the Bankruptcy Code authorizes a debtor to use, sell or lease property of the estate outside of the ordinary course of business free and clear of any interest in such property. Under the Proposed Sale, the Porto Cima Real Estate are to be sold free and clear of all liens, claims and encumbrances with any such liens, claims and encumbrances to attach to the net sale proceeds with the same validity, priority, force and effect that such liens, claims and encumbrances had on such assets prior to the closing of the Proposed Sale. Alternatively, in the event that a Competitive Bidder makes a higher and better offer for the Porto Cima Real Estate, the Porto Cima Real Estate are to be sold to such party free and clear of all liens, claims and encumbrances with any such liens, claims and encumbrances to attach to the net sale proceeds with the same validity, priority, force and effect that such liens, claims and encumbrances had on such assets prior to the closing of the transaction.

16. No governmental unit has filed a lien on the Porto Cima Real Estate for the non-payment of any state, federal or local taxes or charges of any sort,. Nevertheless, the Movants wish to sell the Porto Cima Real Estate free and clear any unrecorded liens that may exist in

favor of any governmental unit receiving notice of this Motion, including liens arising under 26 U.S.C. §6231 (the “Unrecorded Governmental Unit Claims”).¹

17. The sale of the Porto Cima Real Estate may be ordered free and clear of the Unrecorded Governmental Unit Claims because such claims are in bona fide dispute. *See* 11 U.S.C. § 363(f)(1)

WHEREFORE the Debtor hereby respectfully requests entry of a Sale Order following the Sale Hearing authorizing the Debtor (i) to sell the Porto Cima Real Estate to Prospective Buyers pursuant to the Purchase Agreement or, alternatively, in the event that Prospective Buyers are not the prevailing party at the auction, approving the sale of the Porto Cima Real Estate to such prevailing party, and (ii) take each of those steps outlined in the Purchase Agreement, or in the event that Prospective Buyers are not the prevailing party, those steps outlined in the prevailing party’s form of purchase contract, to close on the sale of the Porto Cima Real Estate.

Dated: December 3, 2010

THOMPSON COBURN LLP

LATHROP & GAGE LLP

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Committee for US Fidelis, Inc.

Attorneys for the Debtor

¹ The sale of the Porto Cima Real Estate shall, however, be subject to any real estate taxes due and payable at the time of Closing.

Exhibit A

Purchase Agreement

This document has legal consequences.
If you do not understand it, consult your attorney.

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Form # 2043 3/10

SPECIAL SALE CONTRACT

DATE: 12/1/2010

Note: This form does not have many clauses protecting Buyers included in the Residential Sale Contract, Form #2090. It should normally be used only for the sale of property without provision for building, termite, environmental, gas, municipal, insurability, and other inspections. Regardless of whether Seller's Disclosure Form is to be provided, Seller is still obligated to comply with Federal and State laws which require disclosure of certain defects, hazardous conditions and adverse material facts.

1. PARTIES AND PROPERTY.

Marlyn J + LuAnn B Moen
Buyer(s), agrees to purchase from the undersigned Seller, the following real property located in the City
of Porta Cima Missouri (legal description on Seller's title to govern) being all the real property Seller owns at
said address: 45 Via Preminenta, Porto Cima, MO 65071

2. INCLUSIONS AND EXCLUSIONS.

The purchase price includes all existing improvements on the property (if any) and appurtenances, fixtures and equipment (which Seller guarantees to own free and clear) including:
(Note: To avoid misunderstanding, the parties are urged to list as "included" or "excluded" any items which may be subject to any questions).

In addition, the following items are included: Personal Property listed on Rider #2, All Appliances, Window Coverings, boat dock + hoist(s) as viewed!

The following items are excluded: _____

3. PURCHASE PRICE.

\$ 675,000⁰⁰ is the total purchase/sale price to be paid as follows:

\$ 15,000⁰⁰ earnest money received for delivery to/deposit by First Title, escrow agent. Selling broker to be

escrow agent if none specified above.

\$ N/A additional earnest money to be delivered to escrow agent within 10 days after the "Acceptance Deadline" date or _____

The balance, including adjustments set forth in Paragraphs 4 or 7, less, if applicable, any amount of Seller financing or of Seller's loan being assumed as stipulated in this contract, is to be paid at closing, by cashier's check, wire transfer or any form acceptable to closing agent.

4. METHOD OF FINANCING.

Conventional, FHA or VA Financing. Buyer agrees to do all things necessary, including, but not limited to the execution of a loan application and other instruments, the payment to the lender of the credit report, appraisal and any other required fees, and to otherwise cooperate fully in order to obtain the financing described below. If Buyer does not deliver written notice, provided by Buyer's lender, to Seller or listing Broker, of Buyer's inability to obtain a loan commitment on the terms described below on or before

_____ (the "Loan Commitment Date") then this condition shall be deemed waived and Buyer's performance under this contract shall thereafter not be conditioned upon Buyer's obtaining financing. If lender will not give Buyer such written notice then Buyer may directly notify Seller or listing broker (on or before the Loan Commitment Date) by providing a notarized affidavit that Buyer has complied with all of the terms of this paragraph and that despite request, Buyer was unable to obtain such written notice from lender. If Buyer has complied with the terms of this paragraph and has timely provided written notice to Seller or listing broker of Buyer's inability to obtain the loan commitment, then this contract shall be terminated with earnest money to be returned to Buyer, subject to paragraph 12.

Loan Terms: _____

Note: If Loan Commitment Date passes without a rejection as outlined above, Buyer remains obligated under this contract. Therefore, Buyer should be certain that he will have the funds to close. If Buyer's performance under this contract is to be independently conditioned upon the property appraising at a specified value, then Buyer should complete and attach to this contract an appropriate appraisal rider.

- Assumption by Buyer of Existing Note and Deed of Trust. (See rider #2105) or Seller to Take Back Note and Deed of Trust. (See rider #2097)
- Not Contingent Upon Financing. This contract is not contingent upon financing, however, Buyer reserves the right to finance any portion of the purchase price.

5. CLOSING AND POSSESSION

The "Closing" is the exchange of the Seller's deed for the total purchase/sale price. The Closing of this sale shall take place on within 10 days after court approval, or any other date that both parties agree in writing. Buyer will close at Title Company, the title company which provides title insurance. Regardless of who closes for Buyer, Seller may close at the title company of Seller's choice. Note: If the seller does not close at the same title company as the buyer, or the seller's choice of title company does not have a common underwriter with the buyer's title company, then the seller will be required to sign a Notice of Closing or Settlement Risk acknowledging that their settlement funds are not protected by the title insurance underwriter. Title will pass when the sale is closed. Possession of the property and keys to be delivered to Buyer no later than 5:00 p.m. (time) of after court approval (date) but in no event prior to Closing as defined above. All parties agree to sign closing documents at a time that facilitates this possession. (Note: If possession is to be delivered on a day other than Closing, as defined above, parties should complete the appropriate rider.) Deed as directed by Buyer. Except for tenants lawfully in possession, seller warrants that the property will be vacant at time of possession and delivered to Buyer in its same condition (together with any improvements or repairs required by this contract), ordinary wear and tear excepted, as it was on the date of this contract. Buyer and Seller authorize title company and/or closing agent to release to broker(s) signed copies of the closing statements.

6. TITLE AND SURVEY.

Seller shall transfer title to Buyer by general warranty deed (or fiduciary deed, where applicable), subject to the following: a) zoning regulations; b) leases and occupancy of tenants existing on the date contract is executed by Buyer and disclosed to Buyer in writing before execution of contract by Buyer; c) general taxes payable in the current year and thereafter; d) any lien or encumbrance created by or assumed by Buyer in writing or any easement accepted by Buyer in writing; e) subdivision, use and other restrictions, rights of way and utility easements, all of record, which do not adversely affect the use of the property as it exists for residential purposes at the time of the contract.

Check box (whether "Seller to Order, Provide and Purchase Title" or "Buyer to Order and Purchase Title").

- Seller To Order, Provide and Purchase Title.

Not later than _____ days (5 if none stated) after the "Acceptance Deadline" date, Seller will order a commitment for title insurance to be provided to the Buyer for both an Owner's policy of title insurance and for a Lender's policy of title insurance (if required by lender) in the latest ALTA form including mechanics lien coverage from the title company selected in paragraph 5. Seller and Buyer authorize and direct the title company to furnish this commitment to the selling and listing Broker. Seller shall pay for the title insurance (including title premium and title service charges), at closing, at a cost not to exceed _____. Buyer to pay title cost exceeding this amount.

- Buyer to Order and Purchase Title.

Buyer may, at Buyer's option and expense, order a title examination and a commitment to issue an owner's and/or lender's policy of title insurance in the latest ALTA form including mechanics lien coverage from the title company specified in paragraph 5. (Note: This should be ordered promptly after contract acceptance in order to allow sufficient time to obtain and review documents, and, if necessary, object to defects that may be discovered.)

Buyer may, at Buyer's option and expense, order a Boundary Survey and Improvement Location ("stake survey") or a Surveyor's Real Property Report ("spot survey") of the property to determine if there are any defects, encroachments, overlaps, boundary line or acreage discrepancies, or other matters that would be disclosed on a survey.

Note: A "stake survey" is generally required in order to obtain full survey coverage in an owner's policy of title insurance. A "spot survey" is the minimum report normally required by a lender and it may or may not disclose all of the defects involving such matters as encroachments, overlaps, boundary line or acreage discrepancies.

101 If any defects are discovered as a result of the title examination, title commitment or the
 102 survey and if Buyer chooses to act on this contingency, Buyer shall within _____ days
 103 (25 if none stated) after the "Acceptance Deadline" date, furnish a copy of the document
 104 evidencing the defect to Seller or listing broker stating, in writing, any title or survey defects
 105 that are 1) unacceptable to Buyer; 2) not listed above; and 3) adversely affect the use of
 106 the property as it exists for residential purposes at the time of the contract. Failure by Seller
 107 or listing broker to receive such objections to title or survey within such time will
 108 constitute a waiver by Buyer of any objections to the title so long as Buyer is able to obtain
 109 at closing, an Owner's title insurance policy in the latest ALTA form including mechanics lien
 110 coverage. If Buyer does timely object to any title or survey defects, Seller has five (5) days
 111 from receipt of Buyer's notice of objection by Seller or listing broker, to agree in writing to
 112 correct the defects prior to closing at Seller's expense; If Seller does not so agree, this
 113 contract is terminated unless Buyer, within two (2) additional days, agrees in writing to
 114 accept the title and survey "as is". If the contract is terminated in accordance with the
 115 provisions of this paragraph, Buyer's earnest money to be refunded, subject to paragraph
 116 12, and Seller agrees to reimburse Buyer's cost to pay for title, survey, inspection(s) and
 117 appraisal. Seller shall be responsible for clearing any defects that arise between the date of
 118 the contract acceptance and closing.

119 **Note:** Easements, subdivision indentures, and government regulations may affect Buyer's intended use
 120 of the property. Construction of improvements (for example: a room addition, fence or
 121 swimming pool), non-residential use of the property (for example: use of a room for a business), or the
 122 right to keep certain vehicles or animals on the property, all may be affected. Buyer is advised to review
 123 all easements, government regulations, and subdivision indentures before making an offer to
 124 purchase the property if he plans these or similar uses. If Buyer requires assistance in reviewing
 125 easements, surveys, indentures, or other matters affecting title or use of the property, he should
 126 consult an attorney.

127 7. ADJUSTMENTS AND CLOSING COSTS.

128 Buyer and Seller shall have prorated and adjusted between them on the basis of thirty (30)
 129 days to the month as of the date of closing (Seller to pay for last day); current rents (Seller
 130 to receive rent for day of closing); rents which are delinquent over thirty (30) days are to be
 131 collected by seller and not adjusted; general taxes (based on assessment and rate for
 132 current year, if both are available, otherwise, based on previous year); district improvement
 133 assessments for current year (buyer to pay thereafter); subdivision upkeep assessments and
 134 monthly condominium fees; interest (when Buyer assumes existing loan); flat rate utility
 135 charges including waste, sewer and trash. Seller to pay for special taxes and special
 136 assessments levied before closing. Buyer shall pay the Seller the fair market value of any
 137 heating oil or propane gas in tank(s) on the property at closing based on suppliers current
 138 charges. Seller and/or Buyer to pay real estate compensation to broker(s) per separate
 139 written agreement; Seller authorizes selling portion of commission to be paid directly to
 140 selling broker. Buyer and Seller to pay closing cost customarily charged.

141 8. LOSS.

142 Risk of loss to the improvements of the property shall be borne by the Seller until title is
 143 transferred. If any improvements covered by this contract are damaged or destroyed, Seller
 144 shall immediately notify Buyer or selling broker in writing of the damage or destruction, the
 145 amount of insurance proceeds payable, if any, and whether Seller intends prior to closing, to
 146 restore the property to its condition at the time of the contract. In the event Seller restores
 147 the property to its prior condition before scheduled closing, and provides Buyer with proof of
 148 the repairs, Buyer and Seller shall proceed with closing. In the event the
 149 property is not to be restored to its prior condition by the Seller before closing, Seller shall
 150 immediately provide Buyer or selling broker with a copy of any policies of insurance, the
 151 name and number of the agent for each of said policies, and written authorization (if
 152 needed) for Buyer to communicate with the insurer. Buyer may either a) proceed with
 153 closing and be entitled to the amount of insurance proceeds relating to real property
 154 improvements, if any, payable to Seller under all policies insuring the improvements plus
 155 receive a credit from the Seller at closing in an amount equal to the deductible not covered
 156 by insurance, or b) terminate the contract, thereby releasing all parties from liability
 157 hereunder. If all of the aforementioned insurance information is received by the Buyer or
 158 selling broker more than ten (10) days prior to the scheduled closing date, Buyer is to give
 159 written notification to Seller or listing broker as to his election of (a) or (b) above within ten
 160 (10) days after the Buyer or selling broker's receipt of such information; and if not received
 161 by Buyer or selling broker more than ten (10) days prior to the scheduled closing date, Buyer
 162 may, at Buyer's option and by written notice to Seller or listing broker, extend the closing
 163 date up to ten (10) days, during which time Buyer may make his election as to (a) or (b)
 164 above. Failure by Buyer to notify Seller shall constitute an election to terminate the
 165 contract. If the contract is terminated in accordance with the provisions of this paragraph,
 166 earnest money to be returned to Buyer, subject to paragraph 12, and Seller agrees to reimburse
 167 Buyer's cost to pay for title, survey, inspection(s) and appraisal.

168 9. ASSIGNABILITY OF CONTRACT.

169 This contract is assignable by Buyer, but not without the written consent of Seller if a) Seller
 170 is taking back a note and deed of trust as part of the purchase price, or b) Buyer is assuming
 171 the existing note. Assignment does not relieve the parties from their obligations under this contract.

172 **10. TIME IS OF THE ESSENCE.**

173 Time is of the essence in the performance of the obligations of the parties. All references to a
174 specified time shall mean Central Time.

175 **11. BINDING EFFECT.**

176 This contract shall be binding on and for the benefit of the parties and their respective heirs, personal
177 representatives, executors, administrators or assigns.

178 **12. EARNEST MONEY.**

179 Buyer and Seller agree that the earnest money received by the escrow agent in connection with
180 this contract shall be deposited within ten (10) banking days after the "Acceptance
181 Deadline" date. Additional earnest money, if applicable, is to be deposited by escrow
182 agent within ten (10) banking days after receipt. Any earnest money received within ten
183 (10) banking days prior to the scheduled closing date, shall be in the form of a cashier's check
184 or any other form acceptable to the escrow agent. If sale is closed, earnest money to apply to
185 the purchase. If any earnest money is being returned to Buyer, Buyer agrees
186 that any expenses for services requested by Buyer may be withheld by escrow agent and
187 paid to the applicable service provider(s).

188 In the event of a dispute over any earnest money held by the escrow agent, the escrow
189 agent shall continue to hold said deposit in its escrow account until: 1) escrow agent has a
190 written release from all parties consenting to its disposition; or 2) until a civil action is filed
191 to determine its disposition (at which time payment may be made into court, and in such
192 event, court costs and escrow agent's attorney fees will be paid from earnest money); or 3)
193 until a final court judgment mandates its disposition; or 4) as may be required by applicable
194 law. The parties specifically acknowledge and agree that whenever ownership of the earnest
195 money or any other escrowed funds, received by a Missouri licensed real estate broker, is in
196 dispute between the parties, said broker is required by Missouri Statute, Section 339.105.4
197 RSMo to report and deliver the monies to the State Treasurer within 365 days of the initial
198 projected closing date. Broker shall not report and deliver any such monies to the State
199 Treasurer until at least sixty (60) days after the initial projected closing date.

200 **Note:** An escrow agent who is not a licensed real estate broker is not bound by Missouri statutes and
201 regulations which apply to earnest money deposits. If the escrow agent is not a licensed broker, the
202 parties are urged to have the escrow agent agree in writing to be bound by the provisions of this
203 contract before being named as the escrow agent.

204 **13. REMEDIES.**

205 If either party defaults in the performance of any obligation of this contract, the party claiming
206 a default shall notify the other party in writing of the nature of the default and his election of remedy. The
207 notifying party may, but is not required to, provide the defaulting party with a deadline for
208 curing the default.

209 If the default is by Buyer, Seller may either accept the earnest money as liquidated damages and
210 release Buyer from the contract (in lieu of making any claim in court), or may pursue any
211 remedy at law or in equity.

212 If Seller accepts the earnest money, it shall be divided as follows: expenses of broker and seller in
213 this transaction will be reimbursed, and balance to go one-half to Seller, and one-half divided
214 equally between listing broker and selling broker (if working as subagent of Seller) in lieu of
215 commission on this contract. If the default is by Seller, Buyer may either release Seller from
216 liability upon Seller's release of the earnest money and reimbursement to Buyer for all direct costs
217 and expenses, as specified in Buyer's notice of default (in lieu of making any claim in court), or may
218 pursue any remedy at law and in equity, including enforcement of sale. Buyer's release of Seller
219 does not relieve Seller of his liability to brokers under the listing contract.

220 In the event of litigation between the parties, the prevailing party shall recover, in addition to damages or
221 equitable relief, the cost of litigation including reasonable attorney's fee. This provision shall survive
222 closing and delivery of Seller's deed to Buyer.

223 **14. GOVERNING LAW.**

224 This contract shall be considered a contract for the sale of real property and shall be construed
225 in accordance with the laws of the State of Missouri.

226 **15. ENTIRE AGREEMENT.**

227 This contract constitutes the entire agreement between the parties hereto and there are no other
228 understandings, written or oral, relating to the subject matter hereof. The contract may not be
229 changed, modified or amended, in whole or in part, except in writing signed by all parties.

230 **16. CONSTRUCTION.**

231 Words and phrases shall be construed as in the singular or plural number, and as masculine,
 232 feminine or neuter gender, according to the context. When the term "listing broker" is used, it refers
 233 to one of the following: a) a broker working for the Seller under a listing
 234 contract; or b) a broker assisting the Seller as a transaction broker, whichever is
 235 appropriate. When the term "selling broker" is used, it refers to one of the following: a) a
 236 broker working for the Buyer under a buyer's agency agreement; b) a broker assisting the
 237 Buyer as a subagent of the Seller; or c) a broker assisting the Buyer as a transaction
 238 broker, whichever is appropriate. The term "broker" shall include the broker's affiliated
 239 licensees (referred to as "salespeople"). With the exception of the term "banking days" as used
 240 in paragraph 12, a day is defined as a 24 hour calendar day, seven days per week.

241 **17. FLOOD PLAIN.**

242 Buyer may terminate this contract if any portion of the property is located in a designated 100
 243 year flood plain unless disclosed to Buyer in writing prior to contract. If so terminated, earnest
 244 money to be returned to Buyer subject to paragraph 12.

245 **18. ACCESS, FINAL WALK-THROUGH AND UTILITIES.**

246 Upon reasonable advance notice to Seller or listing broker, Seller agrees to provide access for
 247 appraiser(s) and other professionals as may be provided for in the contract or required by
 248 Buyer's lender or insurer. Buyer and selling broker may be present. Seller grants Buyer and
 249 selling broker the right to enter and walk-through the property and the right to have
 250 utilities turned on or transferred, at Buyer's expense, within four (4) days prior to closing. This
 251 right is for the Buyer to see that the property is in the same condition, ordinary wear and tear
 252 excepted, as it was on the date of this contract.

253 The closing does not relieve Seller of his obligation to complete improvements and repairs
 254 required by this contract.

255 **19. SPECIAL AGREEMENTS.**

256 Special agreements between Buyer and Seller forming a part of this contract:

257 See Rider #1 attached hereto
 258 _____
 259 _____
 260 _____
 261 _____
 262 _____
 263 _____
 264 _____

265 **20. SELLER'S DISCLOSURE STATEMENT. (Check one)**

266 Buyer confirms that before signing this offer to purchase, Buyer has read a copy of the
 267 Seller's Disclosure Statement for this property. The Seller's Disclosure Statement is not a
 268 substitute for any inspection that Buyer may wish to obtain. Buyer is advised to address any
 269 concerns Buyer may have about information in the statement by use of contingencies in the
 270 contract.

271 Seller agrees to provide Buyer with a Seller's Disclosure Statement within one (1) day after
 272 the "Acceptance Deadline" date. Buyer shall have three (3) days after the "Acceptance
 273 Deadline" date to review said statements and to declare in writing that the contract is
 274 terminated with earnest money to be returned to Buyer, subject to paragraph 12, otherwise,
 275 this contingency shall be deemed as waived by Buyer.

276 No Seller's Disclosure Statement will be provided by Seller.

277 By his signature, Seller confirms that the information in the Seller's Disclosure Statement is accurate as of
 278 the date of this contract. Seller will fully and promptly disclose in writing any new material information
 279 pertaining to the property that is discovered at any time prior to closing. Seller states that if Seller knows or should
 280 have known that the property was a lab, production or storage site for methamphetamine, or was the residence of a
 281 person convicted of crimes related to methamphetamine, Seller will attach a written explanation.

282 *Note: The Seller's Disclosure Statement is not in any way incorporated into the terms of this contract.*

283 21. RELATIONSHIP DISCLOSURE.

284 Buyer and Seller confirm that disclosure of the licensee's relationship was made no later than
285 the first showing of the property, upon first contact, or immediately upon the occurrence of a change
286 to the relationship.

287 Note: Under MREC Rules and Regulations, one box must be checked in each of the
288 following two sections by the Selling Licensee.

289 Licensee assisting Seller is a: (Check appropriate box)

- 290 Seller's Agent: Licensee is acting on behalf of the Seller.
- 291 Buyer's Agent: Licensee is acting on behalf of the Buyer.
- 292 Dual Agent: Licensee is acting on behalf of both Seller and Buyer.
- 293 Designated Agent: Licensee has been designated to act on behalf of the Seller.
- 294 Transaction Broker Assisting Seller: Licensee is not acting on behalf of either Seller or Buyer.

295 Licensee assisting Buyer is a: (Check appropriate box)

- 296 Buyer's Agent: Licensee is acting on behalf of the Buyer.
- 297 Seller's Agent: Licensee is acting on behalf of the Seller.
- 298 Dual Agent: Licensee is acting on behalf of both Buyer and Seller.
- 299 Designated Agent: Licensee has been designated to act on behalf of the Buyer.
- 300 Transaction Broker Assisting Buyer: Licensee is not acting on behalf of either Buyer or Seller.
- 301 Subagent of Seller: Licensee is acting on behalf of the Seller.

302 Seller Buyer is a real estate licensee and is acting as a principal party in this contract.

303 Sources of compensation to Broker(s), including commissions and/or other fees: Seller Buyer

304 Buyer and Seller acknowledge that they have received and read the Missouri Real Estate Commission
305 Broker Disclosure Form.

306 By signing below, the licensees confirm making disclosure of the brokerage relationship to the
307 appropriate parties.

308 All Parties agree that this transaction can be conducted by electronic/digital signatures, according to the
309 Uniform Electronic Transaction Act as adopted by Missouri.

310 Bobbi Bosh Realty Bobbi Bosh Realty
311 Selling Broker's Firm Listing Broker's Firm

312 By (Signature): [Signature] By (Signature): _____

313 Date: 12/1/10 Public ID _____ Date: 12/1/10 Public ID _____

314 OFFER to be accepted by Seller by: 5p m of December 10, 2010

315 [Signature] 12-1-10 [Signature] 12-1-10
316 BUYER DATE BUYER DATE

317 Seller's Printed Name Scott Eisenberg

318 SELLER ACCEPTS THE TERMS SET FORTH IN THIS CONTRACT.

319 [Signature] 12/2/10 2:20 P.M. Eastern
320 SELLER TIME and DATE SELLER TIME and DATE

321 OR

322 _____ (initials) WE REJECT THIS OFFER AND MAKE A COUNTEROFFER (use #2184
323 Sale Contract Counteroffer Form).

324 OR

325 _____ (initials) WE REJECT THIS OFFER.

326 Note: Unless otherwise agreed in writing, "Acceptance Deadline" is defined as the date for acceptance
327 which was provided to the last party whose signature resulted in a contract (even if that signature was
328 obtained before the deadline).

RIDER #1 TO SPECIAL SALE CONTRACT (45 Via Preminentea)

1. **Bankruptcy Court Provisions.**

1.1 The parties' obligations to close on the sale hereunder are subject to approval of the Bankruptcy Court in the case of *In re US Fidelis, Inc.*, Case No. 10-41902 (the "Bankruptcy Case") pending in the U.S. Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). Unless earlier terminated as set forth herein, within five days of the Acceptance Date, the Seller shall file with the Bankruptcy Court a Motion seeking approval of this agreement (the "Sale Motion") and the Seller shall request the Bankruptcy Court to schedule a hearing on the Sale Motion as soon as possible after expiration of the minimum notice period described in Bankruptcy Rule 2002(a)(2).

1.2 The Sale Motion shall provide that the sale of the Property (both real and personal) shall be free and clear of all liens, claims and encumbrances on the Property under Section 363(f) of the Bankruptcy Code to the fullest extent permitted by law.

1.3 The Buyer acknowledges that the Seller must consider competing bids ("Competing Bids") for the Property that will yield greater value to the Seller's bankruptcy estate. The Sale Motion shall provide that all Competing Bids for the Property must call for a purchase price of not less than \$ 690,000 in cash payable at closing and shall not be subject to any financing contingency ("Initial Competing Bid"). The Sale Motion shall further provide that, in lieu of any expense reimbursement, the Buyer shall receive at closing a fee equal to 1.5% of the purchase price hereunder, or \$ 10,250 ("Break Up Fee"), if the Buyer is not ultimately the successful bidder for the Property because a Competing Bidder is selected by the Bankruptcy Court. If a qualified Competing Bid is submitted, then the Buyer and any qualifying Competing Bidder(s) shall be entitled to improve their bids at an auction. Any Competing Bid (after the Initial Competing Bid) must net to the Seller at least \$10,000 more than the previous Bid. At any point in the bidding, the Buyer may agree to waive the Break Up Fee and shall be entitled to a dollar for dollar credit on the amount of Buyer's bid on account of such waiver. Buyer's earnest money deposit shall be promptly return in the event it is not the successful buyer for the Property.

2. **Personal Property.** The property to be sold by Seller to Buyer hereunder also includes the personal property listed on Rider #2.

3. **Proof of Financing.** Buyer shall provide proof of funds and ability to close, in writing, within two (2) business days after the Acceptance Date, which shall be acceptable to Seller in Seller's reasonable discretion. If (a) Buyer fails to deliver such proof by such date, or (b) Seller is not satisfied with such proof, in Seller's reasonable discretion, then either Seller may terminate this contract by giving Buyer written notice of such termination within three (3) business days after receipt of such proof of funds. Upon such termination, this contract shall be null and void and neither party shall have any further obligations hereunder and the Earnest Deposit shall be returned to the Buyer.

4. **Deed; Assignment.** Notwithstanding Paragraph 6 of the Special Sale Contract to the contrary, the Seller shall transfer title to Buyer by special warranty deed. Notwithstanding Paragraph 8 of the Special Sale Contract, this contract is assignable by Buyer with the prior written consent of the Seller which will not be unreasonably withheld, provided, however, that such assignment shall not relieve the Buyer of its obligations under the Special Sale Contract, this Rider, or any Bankruptcy Court order entered in connection with this transaction.

5. **As-Is Sale.**

5.1 BUYER ACKNOWLEDGES THAT SELLER HAS NOT OCCUPIED THE PROPERTY, AND BUYER ACKNOWLEDGES AND AGREES THAT BUYER IS RELYING SOLELY ON ITS INSPECTIONS OF THE PROPERTY IN MAKING ITS DECISION TO ACQUIRE

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THE PROPERTY. ADDITIONALLY, BUYER HAS BEEN URGED TO PERFORM COMPLETE AND COMPREHENSIVE TITLE, SURVEY, BUILDING, STRUCTURAL, ENVIRONMENTAL, GEOTECHNICAL AND OTHER DUE DILIGENCE WITH RESPECT TO THE PROPERTY. BUYER UNDERSTANDS AND AGREES THAT BUYER SHALL HAVE NO RECOURSE AGAINST SELLER IF AT ANY TIME NOW OR HEREAFTER, BUYER OR ANY SUBSEQUENT BUYER OF THE PROPERTY DISCOVERS ANY TITLE, SURVEY, BUILDING, STRUCTURAL, ENVIRONMENTAL, GEOTECHNICAL OR ANY OTHER DEFECT OR ISSUE IN CONNECTION WITH THE PROPERTY, UNLESS OTHERWISE SPECIFICALLY PROVIDED FOR IN THIS CONTRACT.

5.2 BUYER AGREES THAT SELLER IS NOT MAKING, AND HEREBY SPECIFICALLY DISCLAIMS MAKING, ANY WARRANTY, GUARANTY OR REPRESENTATION OF ANY KIND OR CHARACTER, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING BY OPERATION OF LAW, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (I) THE PHYSICAL NATURE, CONDITION AND REPAIR OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, CONDITION OF ANY IMPROVEMENTS (INCLUDING, WITHOUT LIMITATION, STRUCTURAL SUPPORT AND WATERTIGHTNESS), LAND, WATER, SOIL OR GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY ELECT TO CONDUCT THEREON, OR THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING, WITHOUT LIMITATION, ASBESTOS, LEAD-BASED PAINT, POLYCHLORINATED BIPHENYL A/K/A PCB, MOLD OR OTHER MICROBIAL MATTER, HYDROCARBONS OR HAZARDOUS OR TOXIC SUBSTANCES) OR THE COMPLIANCE OF THE PROPERTY WITH ANY AND ALL APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (II) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHER MATTER AFFECTING TITLE; (III) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, STATUTES, ORDINANCES, RULES, REQUIREMENTS OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY (INCLUDING, WITHOUT LIMITATION, LICENSING LAWS, BUILDING CODES AND ZONING REGULATIONS); (IV) THE VALUE, EXPENSE OF OPERATION, INCOME POTENTIAL, ECONOMIC VIABILITY OR MARKETABILITY OF THE PROPERTY; (V) TAX MATTERS PERTAINING TO THE TRANSACTION CONTEMPLATED HEREBY; (VI) THE ACCURACY OR COMPLETENESS OF ANY REPORTS OR OTHER INFORMATION FURNISHED BY SELLER TO BUYER WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ENGINEERING, FINANCIAL, ENVIRONMENTAL OR OTHER REPORTS, STUDIES OR INVESTIGATIONS, IF ANY; (VII) ZONING; (VIII) VALUATION; (IX) HABITABILITY; (X) MERCHANTABILITY; OR (XI) SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. **THE PROPERTY IS BEING SOLD IN ITS "AS IS" CONDITION WITH ALL FAULTS. SELLER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO THE PROPERTY. THERE ARE NO WARRANTIES BEYOND THE FACE OF THIS CONTRACT. THE PARTIES STIPULATE AND AGREE THAT THE CONSIDERATION FOR THE PURCHASE AND SALE OF THE PROPERTY HAS BEEN ADJUSTED TO COMPENSATE BUYER FOR THE RISKS ASSOCIATED WITH PURCHASING THE PROPERTY ON AN "AS IS" BASIS WITH ALL FAULTS. FURTHER, BUYER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE TRANSACTION CONTEMPLATED HEREBY WHICH HAVE BEEN MADE BY SELLER OR ANY THIRD PARTY.**

5.3 ANY FACTUAL INFORMATION SUCH AS PROPERTY TAXES, UTILITY INFORMATION, PROPERTY DIMENSIONS, SQUARE FOOTAGE, OR SKETCHES SHOWN TO BUYER ARE OR MAY BE APPROXIMATE. BUYER REPRESENTS AND WARRANTS TO SELLER THAT, EXCEPT AS EXPRESSLY SET FORTH OTHERWISE IN THIS CONTACT, BUYER HAS, OR SHALL HAVE, INSPECTED AND VERIFIED SUCH FACTS AND INFORMATION TO BUYER'S SATISFACTION, AND THAT NO LIABILITY FOR ANY INACCURACIES, ERRORS OR OMISSIONS WITH RESPECT THERETO IS ASSUMED BY SELLER OR OTHER AGENTS OR REPRESENTATIVES OF SELLER.

5.4 IF, AFTER CLOSING, ANY INVESTIGATION, REMOVAL, ABATEMENT, REMEDIATION, OR OTHER CORRECTIVE ACTION IS AT ANY TIME REQUIRED IN CONNECTION WITH THE PROPERTY OR ANY ADJACENT OR NEARBY PROPERTY AS A RESULT OF THE PRESENCE OF ANY ENVIRONMENTAL PROBLEMS, HAZARDOUS SUBSTANCES, HAZARDOUS MATERIALS, OR ENVIRONMENTAL CONTAMINATION (AS EACH SUCH TERM IS DEFINED IN ANY AND ALL APPLICABLE ENVIRONMENTAL LAWS) AT OR ON THE PROPERTY OR ANY ADJACENT OR NEARBY PROPERTY, INCLUDING, WITHOUT LIMITATION, ASBESTOS, LEAD-BASED PAINT, POLYCHLORINATED BIPHENYL A/K/A PCB, MOLD OR OTHER MICROBIAL MATTER, HYDROCARBONS AND BYPRODUCTS AND ANY CONSTITUENTS THEREOF, REGARDLESS OF WHEN SAME OCCURRED, BUYER AGREES THAT: (I) ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION SHALL BE PERFORMED BY BUYER AND AT BUYER'S SOLE COST AND EXPENSE; AND (II) THE SELLER HAS NO DUTY OR OBLIGATION TO PERFORM OR CAUSE TO BE PERFORMED ANY SUCH INVESTIGATION, REMOVAL, REMEDIATION, OR CORRECTIVE ACTION. BUYER AGREES THAT, EFFECTIVE UPON CLOSING, BUYER, FOR ITSELF, AND ITS SUCCESSORS AND ASSIGNS, HEREBY IRREVOCABLY AND UNCONDITIONALLY INDEMNIFIES, DEFENDS (BY COUNSEL REASONABLY ACCEPTABLE TO SELLER), HOLDS HARMLESS, WAIVES, RELEASES, AND RELINQUISHES SELLER (AND SELLER'S DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS) FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, WHETHER SUIT IS INSTITUTED OR NOT, AND ENVIRONMENTAL CONSULTANTS' FEES) WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR CONTINGENT (COLLECTIVELY "CLAIMS"), OR RIGHTS OF CONTRIBUTION (INCLUDING ANY RIGHT TO CONTRIBUTION UNDER 42 U.S.C. §9613(F)) WHICH BUYER OR ITS SUCCESSORS, LEGAL REPRESENTATIVES OR ASSIGNS NOW HAS OR MAY HAVE AGAINST THE SELLER, ITS DIRECTORS, OFFICERS, PRINCIPALS, AFFILIATES, AGENTS OR ANY OF ITS EMPLOYEES OR AGENTS, BY REASON OF THE PRESENCE OF ANY HAZARDOUS SUBSTANCE (INCLUDING, BUT NOT LIMITED TO, ASBESTOS, LEAD-BASED PAINT, POLYCHLORINATED BIPHENYL A/K/A PCB, MOLD OR OTHER MICROBIAL MATTER, HYDROCARBONS AND BYPRODUCTS AND ANY CONSTITUENTS THEREOF) OR ANY OTHER ADVERSE ENVIRONMENTAL CONDITION, DEFECT, OR PROBLEM WITH RESPECT TO THE PROPERTY (WHETHER SUCH CONDITION, DEFECT, OR CONDITION BE KNOWN OR UNKNOWN, LATENT OR PATENT, OR WHETHER OR NOT ANY INVESTIGATION, REMEDIATION, OR CORRECTIVE ACTION MAY BE REQUIRED OR DESIRABLE WITH RESPECT TO THE PROPERTY).

5.5 BUYER HEREBY AGREES TO INDEMNIFY, DEFEND (BY COUNSEL REASONABLY ACCEPTABLE TO SELLER) AND HOLD HARMLESS SELLER (AND SELLER'S DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS) FROM ANY AND ALL CLAIMS ARISING AFTER THE CLOSING OF THE PROPERTY RELATING TO ANY ALLEGED ACT OR OMISSION

ON THE PART OF SELLER OR ANY PRIOR OR SUBSEQUENT OWNER RELATING TO THE CONDITION OF THE PROPERTY OR ANY IMPROVEMENTS, STRUCTURES, STREETS, SEWERS, UTILITY OR OTHER RELATED INFRASTRUCTURE, INCLUDING, WITHOUT LIMITATION, CLAIMS BY NEIGHBORS, ANY HOMEOWNER'S ASSOCIATION, ST. CHARLES COUNTY, THE CITY OF LAKE ST. LOUIS, ANY UTILITY COMPANY OR ANY OTHER THIRD PARTY.

5.6 THE PROVISIONS SET FORTH IN THIS SECTION 5 SHALL SURVIVE THE CLOSING AND SHALL NOT MERGE THEREIN OR INTO ANY DOCUMENTS EXECUTED IN CONNECTION THEREWITH.

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MJM
WBM

Rider #2 TO SPECIAL SALE CONTRACT(45 Via Preminente)

Dining Room	Black Rectangle Dining Table and 6 Side Chairs
Main Living Area	Leather Sofa, Round Fabric Ottoman, Accent Chair, Accent Ottoman, Oval End Table, Sofa Table, Chaise Lounge, Painted Accent Chest, Black Accent Chest
Master Bedroom	Bassett King Poster Bed, Bassett Nightstand, Black Trunk, Accent Chair, Accent Ottoman, 2 round covered tables, King mattress set
Twin Bedroom	2 twin beds, 2 trundle units, 2 twin mattresses
Queen Bedroom #1	Bassett Queen Panel Bed, Bassett Nightstand, Bassett Dresser, Queen Mattress Set, Collezione Eurpoa Armoiore, 2 cube ottomans at side table
Queen Bedroom #2	Queen Storage Bed with Pier Unit, Queen Mattress Set
Lower Living Area	Bauhaus 4 piece Section, Leather Ottoman, Nesting Tables, Game Table and 4 castered chairs
Patio Areas	Lower Level: 2 cushioned wooden charis, ottomans and small table; Upper Outdoor level: 5 chairs, oval table & small side table Covered area: Wooden Pub table and 3 stools
Electronics	3 flat screen TV's, all wall mounted with home theater systems

MJM
UBM