

THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:) Chapter 11
)
BOWMAN DAIRY FARMS LLC,) Case No. 17-06475-JMC-11
)
Debtor.)

**DEBTOR'S MOTION TO SELL REAL ESTATE
LOCATED IN NEW CASTLE, INDIANA**

Bowman Dairy Farms LLC, the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (this "Chapter 11 Case"), by counsel, files this *Debtor's Motion to Sell Real Estate Located in New Castle, Indiana* (this "Sale Motion"), respectfully requesting that the Court enter an order authorizing the sale of real estate located at 659 S. Wilbur Wright Rd., in Liberty Township, Henry County, New Castle, Indiana 47362-8809 (the "Real Estate") pursuant to the terms and conditions of the Purchase Agreement (Improved Property) attached to this Sale Motion as **Exhibit A** (the "Purchase Agreement"). The Debtor states the following in support of this Motion:

JURISDICTION AND VENUE

1. On August 27, 2017 (the "Petition Date"), the Debtor filed with the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (this "Court"), its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code") commencing this Chapter 11 Case. The Debtor continues to operate its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed, and no committee has yet been appointed or designated.

3. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested are sections 105(a) and 363 of the Bankruptcy Code, Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules B-6004-1 and B-6004-2 of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana (the “Local Rules”).

COMPANY BACKGROUND AND EVENTS LEADING TO FILING

5. As more fully set forth in the *Affidavit Of Trent Bowman In Support Of First Day Motions* (“Bowman Affidavit”), the Debtor is a family-owned, member-managed Indiana limited liability company that operates a grain and dairy farm located at 2270 North County Road 900 East, Hagerstown, Indiana 47346. The member units in the Debtor are owned 50% by Trent Bowman and 50% by Bennie Bowman. The Debtor’s milk is sold to Dean Foods for processing and Dean Foods pays the Debtor twice monthly for milk purchases and for hauling services.

6. The Debtor owns approximately 1400 acres, two commercial dairying operations, and cash leases approximately 2,000 acres. Pursuant to an appraisal in early 2017 procured by the Debtor’s senior secured lender for lending purposes, the appraised value of the Debtor’s owned real property and improvements is \$14,100,000. The Debtor also owns and leases equipment and machinery for its operations. The owned equipment and machinery has an estimated value of \$3 million with an estimated \$1.3 million in purchase money loans against some of the owned equipment. The Debtor also has a small milk hauling operation that hauls the milk produced by the two commercial dairies. The Debtor has a small cattle feeding operation,

where it primarily feeds out some of the bull calves from the dairies. Most of the Debtor's cattle feeding operation was closed out in early 2017.

THE REAL ESTATE

7. Pursuant to section 541(a) of the Bankruptcy Code, the Debtor's estate includes all legal and equitable interests of the Debtor in property as of the commencement of this Chapter 11 Case, including real estate.

8. On the Petition Date, the Debtor was the sole owner of the Real Estate located in Henry County, Indiana, commonly known as 659 S. Wilbur Wright Rd., New Castle, Indiana 47362-8809, and more particularly described as follows:

PT E1/2 SE1/4 15-17-11 approx. 3.0400 acres

9. The Real Estate is encumbered by recorded mortgage (the "Mortgage") in favor of Beacon Credit Union dated December 23, 2014. The Mortgage was recorded on December 24, 2014, in the Office of the Recorder of Henry County, Indiana as Instrument No. 201407185.

10. The Real Estate is not necessary to the reorganization of the Debtor.

THE PURCHASE AGREEMENT AND PROPOSED SALE

11. On October 31, 2017, the Debtor entered into the Purchase Agreement for the sale of the Real Estate to Heather M. Ferguson (the "Purchaser"), subject to Court approval, via private sale for \$119,000.00 (the "Purchase Price"). A copy of the Purchase Agreement is attached to this Sale Motion as **Exhibit A**.

12. The Purchaser has already deposited the Purchase Price with the Debtor as a good faith deposit.

13. The Purchase Agreement provides for the sale of the Real Estate, free and clear of all liens, encumbrances, claims, and interests; provided however, the Real Estate is to be

sold subject to all easements, covenants, restrictions, declarations, or agreements of record as stated in the Purchase Agreement, in addition to those matters that would be disclosed upon a visual inspection of the Real Estate (the “Permitted Exceptions”). The Purchase Agreement also provides that real estate taxes that have accrued for 2017 and are due and payable in 2018 will be prorated as of the date immediately prior to the date of closing.

RELIEF REQUESTED

14. The Debtor requests the Court enter an order, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 6004, as follows:

(a) Authorizing the Debtor to sell the Real Estate to the Purchaser pursuant to the terms and conditions of the Purchase Agreement;

(b) Directing the sale of the Real Estate, free and clear of all liens, encumbrances, claims, and interests (including the Mortgage), with all such valid liens, encumbrances, claims, and interests attaching to the sale proceeds in the same order, priority, and validity that presently exists, subject to all claims of the Debtor; provided however, the Real Estate shall be sold subject to the Permitted Exceptions;

(c) Authorizing the Debtor to execute any documentation necessary to effectuate the sale of the Real Estate, including execution of the Purchase Agreement;

(d) Finding that the Purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code because (i) the Purchaser is not an insider of the Debtor, (ii) the proposed sale represents an arms-length transaction between the parties, made without fraud or collusion with any other person, and (iii) there has been no attempt to take any unfair advantage of the Debtor;

(e) Finding that section 363(f)(2) of the Bankruptcy Code has been satisfied as it relates to the Mortgage and any other encumbrances and that the proceeds

shall be held by the Debtor and distributed to the holders of valid liens according to their determined priority; and

(f) Authorizing the Debtor to disburse from the sale proceeds, first to pay the costs and expenses of the sale, including the commission owed to Lingle Real Estate, second to pay all real estate taxes and assessments outstanding and unpaid at the time of the sale, and third to pay the balance of the net sale proceeds to the lien holders to the determined extent, validity and priority as existed against the property.

BASIS FOR GRANTING RELIEF

A. The Sale is Authorized Under 11 U.S.C. § 363(b)

15. Pursuant to section 363(f) of the Bankruptcy Code, the debtor-in-possession may sell property pursuant to section 363(b) or (c) of the Bankruptcy Code, “free and clear of any interest in such property of an entity other than the estate” if any of the following conditions are satisfied:

(a) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (b) such entity consents; (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (d) such interest is in bona fide dispute; or (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

16. Section 363(b)(1) of the Bankruptcy Code provides that the debtor-in-possession “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not provide an express standard for determining whether a court should approve any particular proposed use, sale, or lease of estate property, case law consistently applies an “articulated business judgment” standard. *See In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (citing *In re Continental Air Lines*, 780 F.2d 1223, 1226 (5th Cir.

1986)), *In re Naron & Wagner, Chartered*, 88 B.R. 85, 88 (Bankr. D. Md. 1988)); *see also Colfin Bulls Funding A, LLC v. Paloian (In re Dvorkin Holdings, LLC)*, 2016 WL 1029387, at *12 (Bankr. N.D. Ill. Mar. 14, 2016) (“The Seventh Circuit has clarified that a trustee’s justification warrants judicial approval if it ‘makes good business sense’ (i.e., if ‘the creditors as a whole . . . benefit’).”) (citing *United Retired Pilots Ben. Prot. Ass’n v. United Airlines, Inc. (In re UAL Corp.)*, 443 F.3d 565, 571-72 (7th Cir. 2006)).

17. The Court’s power to authorize a sale under section 363(b) of the Bankruptcy Code is to be exercised at its discretion, utilizing a flexible, case-by-case approach. *See In re Baldwin United Corp.*, 43 B.R. 888, 905 (Bankr. S.D. Ohio 1984). The key consideration is the Court’s finding that a good business reason exists for the sale. *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 389 (6th Cir. 1986). However, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See e.g., In re Good Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re The Ohio Corrugating Co.*, 59 B.R. 11, 13 (Bankr. N.D. Ohio 1985); *In re Atlanta Packaging Prod., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988) (“It is a well-established principle of bankruptcy law that the objective of bankruptcy sales and the [debtor-in-possession’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”).

B. A Private Sale of the Purchased Assets is Appropriate.

18. Pursuant to Bankruptcy Rule 6004, “All sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). A bankruptcy court has discretion in determining whether a private sale of a debtor’s assets should be approved. *See In re Nicole Energy Servs.*, 385 B.R. 201, 230 (Bankr. S.D. Ohio 2008); *see*

also In re Embrace Sys. Corp., 178 B.R. 112, 123 (Bankr. W.D. Mich. 1995). Furthermore, evidence that a transaction involving estate property under section 363 of the Bankruptcy Code will be at fair market value permits the conclusions that the transaction is in the best interest of the estate. *See In re Planned Sys., Inc.*, 82 B.R. 919, 923 (Bankr. S.D. Ohio 1988) (finding sufficient evidence of fair market value and adequate exposure where property was listed with a broker since the prior year).

19. The Debtor, in the sound exercise of its business judgment, has determined that the sale of the Real Estate to the Purchaser represents the best and highest recovery for the estate.

20. The Debtor submits that, based on the advice of Lingle Real Estate, the Purchase Price reflects the fair market value of the Real Estate, and it therefore maximizes recovery.

21. The Debtor further submits that section 363(f)(2) of the Bankruptcy Code is satisfied as it relates to the Mortgage. The valid lien holders will receive the proceeds from the sale of the Real Estate, net of the commission and sale costs. Accordingly, pursuant to section 363(f)(2) of the Bankruptcy Code, the Debtor is permitted to sell the Real Estate free and clear of encumbrances.

22. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the sale, use or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Debtor requests the Court order that such an order be effective immediately upon entry to allow the Debtor to timely and expeditiously consummate the proposed transaction.

23. Based upon these factors and those discussed above, the Debtor has demonstrated a valid business justification and good business reason for the proposed transaction.

NOTICE

24. No trustee or examiner has been appointed in this Chapter 11 Case. Notice of this Motion, the objection deadline, and the hearing will be provided to: (i) the office of the United States Trustee for the Southern District of Indiana; (ii) the Internal Revenue Service; (iii) all secured and unsecured creditors; and (iv) any party who has filed an appearance and served same on the Debtor prior to service.

WHEREFORE, the Debtor respectfully requests that the Court authorize the above-described sale and grant the Debtor all other relief proper in the premises.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Elizabeth M. Little

Counsel for the Debtor and Debtor-in-Possession

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2017, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Wendy D. Brewer on behalf of Debtor Bowman Dairy Farms LLC
wbrewer@jensenbrewer.com, info@jeffersonbrewer.com

Bradley J. Buchheit on behalf of Creditor Irving Materials, Inc.
Bradley.J.Buchheit@msth.com, Elaina.M.Tindall@msth.com;cathy.a.evans@msth.com

Jamie Cassel on behalf of Creditor Furst-McNess Company
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Terry E. Hall on behalf of Debtor Bowman Dairy Farms LLC
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Elizabeth Marie Little on behalf of Debtor Bowman Dairy Farms LLC
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Karen L. Lobring on behalf of Creditor John Deere Financial f.s.b f/k/a FPC Financial f.s
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Jonathan Dale Madison on behalf of Creditor Harvest Land Co-Op, Inc.
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Harley K Means on behalf of Creditor DLL Finance LLC f/k/a Agricredit Acceptance LLC
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Mykolaj J Petruniw on behalf of Creditor Beacon Credit Union
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Harrison Edward Strauss on behalf of U.S. Trustee U.S. Trustee
harrison.strauss@usdoj.gov

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

I hereby certify that on November 9, 2017, a copy of the foregoing pleading was mailed via United States first class mail on the following:

Rabo AgriFinance LLC
Attn: Aaron Bixby
6919 Chancellor Dr
Cedar Falls, IA 50613

/s/ Elizabeth M. Little

Exhibit A

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Listing Broker (Co.) Lingle Real Estate () By Mike Earlywine ()
 office code individual code
 Selling Broker (Co.) ERA Integrity Real Estate () By Susan Falck-Neal ()
 office code individual code



PURCHASE AGREEMENT (IMPROVED PROPERTY)

1 Date: October 30, 2017

3 A. **BUYER:** Heather M. Ferguson ("Buyer")
 4 agrees to buy the following property from the owner ("Seller") for the consideration and subject to the following
 5 terms, provisions, and conditions:

7 B. **PROPERTY:** The property ("Property") is known as 659 S Wilbur Wright Rd
 8 in Liberty Township, Henry County, New Castle,
 9 Indiana, 47362-8809 (zip code) legally described as: PT E1/2 SE1/4 15-17-11
 10 approx. 3.0400 acres

12 together with any existing permanent improvements and fixtures attached (**unless leased or excluded**), including,
 13 but not limited to, electrical and/or gas fixtures, heating and central air-conditioning equipment and all attachments
 14 thereto, built-in kitchen equipment, sump pumps, water softener, water purifier, gas grills, fireplace inserts, gas logs
 15 and grates, central vacuum equipment, window shades/blinds, curtain rods, drapery poles and fixtures, ceiling fans
 16 and light fixtures, towel racks and bars, storm doors, windows, awnings, TV antennas, wall mounts, satellite dishes,
 17 storage barns, all landscaping, mailbox, garage door opener with controls AND THE FOLLOWING: refrigerator,
 18 water softener, dishwasher, washer, dryer, wood burning stove

21 **HOME HEATING FUEL:** Any remaining fuel stored in tank(s) ☒ to be included in the sale ☐ will be purchased by
 22 Buyer at current market price measured within five (5) days prior to closing.
 23 **EXCLUDES THE FOLLOWING:** NONE

25 **The terms of this Agreement will determine what items are included/excluded, not the Seller's Disclosure**
 26 **Form, multiple listing service or other promotional materials. All items sold shall be fully paid for by Seller**
 27 **at time of closing the transaction. Buyer should verify total square footage, land, room dimensions or**
 28 **community amenities if material.**

30 C. **PRICE:** Buyer will pay the total purchase price of (\$ 119,000.00) One Hundred Nineteen
 31 Thousand Dollars for the Property. If Buyer obtains an
 32 appraisal of the Property, this Agreement is contingent upon the Property appraising at no less than the agreed
 33 upon purchase price. If appraised value is less than the agreed upon purchase price, either party may terminate this
 34 Agreement or parties may mutually agree to amend the price.

36 D. **EARNEST MONEY:**

37 1. **Submission:** Buyer submits \$ 500.00 as earnest money which shall be applied to the
 38 purchase price at closing. **Earnest money shall be delivered within** 2 **of acceptance of**
 39 **offer to purchase.** Unless indicated otherwise in this Agreement, the listing broker shall act as Escrow Agent
 40 and shall deposit Earnest Money received into its escrow account within two (2) banking days of acceptance of
 41 this Agreement and hold it until time of closing the transaction or termination of this Agreement. Earnest money
 42 shall be returned promptly to Buyer in the event the offer is not accepted. If Buyer fails for any reason to timely
 43 submit Earnest Money in the contracted amount, Seller may terminate this Agreement upon notice to Buyer prior
 44 to Escrow Agent's receipt of the Earnest Money.

45 2. **Disbursement:** Upon notification that Buyer or Seller intends not to perform, and if Escrow Agent is the
 46 Broker, then Broker holding the Earnest Money may release the Earnest Money as provided in this Agreement.
 47 If no provision is made in this Agreement, Broker may send to Buyer and Seller notice of the disbursement by
 48 certified mail of the intended payee of the Earnest Money as permitted in 876 IAC 8-2-2. If neither Buyer nor
 49 Seller enters into a mutual release or initiates litigation within sixty (60) days of the mailing date of the certified
 50 letter, Broker may release the Earnest Money to the party identified in the certified letter. If the Escrow Agent is
 51 the Broker, Broker shall be absolved from any responsibility to make payment to Seller or Buyer unless the
 52 parties enter into a Mutual Release or a Court issues an Order for payment, except as permitted in 876 IAC 8-2-2
 53 (release of earnest money). Buyer and Seller agree to hold the Broker harmless from any liability, including
 54 attorney's fees and costs, for good faith disbursement of Earnest Money in accordance with this Agreement and
 55 licensing regulations

56 3. **Legal Remedies/Default:** If this offer is accepted and Buyer fails or refuses to close the transaction, without
 57 legal cause, the earnest money shall be retained by Seller for damages Seller has or will incur. Seller retains all
 58 rights to seek other legal and equitable remedies, which may include specific performance and additional
 59 monetary damages. All parties have the legal duty to use good faith and due diligence in completing the terms
 60 and conditions of this Agreement. A material failure to perform any obligation under this Agreement is a default

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(Property Address)

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which may subject the defaulting party to liability for damages and/or other legal remedies, which, as stated above, may include specific performance and monetary damages in addition to loss of Earnest Money.

E. METHOD OF PAYMENT: (Check appropriate paragraph number)

1. ☐ **CASH:** The entire purchase price shall be paid in cash and no financing is required. Buyer to provide proof of funds submitted ☐ with offer ☐ within _____ days of acceptance.
2. ☒ **NEW MORTGAGE:** Completion of this transaction shall be contingent upon the Buyer's ability to obtain a

☐ Conventional ☐ Insured Conventional ☐ FHA ☐ VA ☒ **Other: USDA** _____ first mortgage loan for 100.000 % of purchase price, payable in not less than 30 years, with an original rate of interest not to exceed 5.500 % per annum and not to exceed n/a points. Buyer shall pay all costs of obtaining financing, except Seller to pay \$4100.00 in buyer's closing costs, prepaids, inspections, escrows, any allowable lender fees and costs.

Any inspections and charges which are required to be made and charged to Buyer or Seller by the lender, FHA, VA, or mortgage insurer, shall be made and charged in accordance with their prevailing rules or regulations and shall supersede any provisions of this Agreement.

3. ☐ **ASSUMPTION: (Attach Financing Addendum)**
4. ☐ **CONDITIONAL SALES CONTRACT: (Attach Financing Addendum)**
5. ☐ **OTHER METHOD OF PAYMENT: (Attach Financing Addendum)**

F. TIME FOR OBTAINING FINANCING: Buyer agrees to make written application for any financing necessary, including an appraisal, to complete this transaction or for approval to assume the unpaid balance of the existing mortgage within 5 days after the acceptance of this Agreement and to make a diligent effort to meet the lender's requirements and to obtain financing in cooperation with the Broker and Seller. No more than 40 days after acceptance of the Agreement shall be allowed for obtaining loan approval or mortgage assumption approval. If an approval is not obtained within the time specified above, this Agreement may terminate unless an extension of time for this purpose is mutually agreed to in writing.

G. CLOSING:

1. **DATE:** The closing of the sale (the "Closing Date") shall be on or before December 7, 2017, or within 3 days after final loan approval, whichever is later or this Agreement shall terminate unless an extension of time is mutually agreed to in writing. Any closing date earlier than the latest date above must be by mutual written agreement of the parties.
If closing cannot occur by "Closing Date" (or any mutually agreed extension thereto) due to any government regulation, the date of closing shall be extended for the period necessary to satisfy these requirements, not to exceed 7 business days.
2. **FEE:** The settlement or closing fee incurred in conducting the settlement charged by the closing agent or company shall be paid by ☐ Buyer (included in allowance, if provided) ☐ Seller ☒ Shared equally.
3. **CONTINGENCY:** This Agreement: ☒ is not contingent upon the closing of another transaction; ☐ is contingent upon the closing of the pending transaction on the property located at _____ scheduled to close by _____.
4. **GOOD FUNDS:** Notwithstanding terms to the contrary, the Parties agree that as a condition to Closing, all funds delivered to the closing agent's escrow account be in such form that the closing agent shall be able to disburse in compliance with I.C. 27-07-3.7 et. seq. Therefore, all funds from a single source of \$10,000 or more shall be wired unconditionally to the closing agent's escrow account and all funds under \$10,000 from a single source shall be good funds as so defined by statute. Buyer is advised that the cost incurred to wire funds on behalf of the buyer to the closing agent's escrow account for the closing of this transaction shall become an expense to the buyer and the actual cost incurred shall appear on the closing statement.
5. **WIRE FRAUD.** If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information, EVEN IF THAT ELECTRONIC COMMUNICATION APPEARS TO BE FROM BROKER OR TITLE COMPANY, do not respond until you verify the authenticity by direct communication with Broker or Title Company. Such requests may be part of a scheme to steal funds or use your identity.

H. POSSESSION:

1. The possession of the Property shall be delivered to Buyer ☒ at closing ☐ within _____ days beginning the day after closing by _____ ☐ a.m. ☐ p.m. ☐ noon or ☐ on or before _____ if closed. For each day Seller is entitled to possession after closing, Seller shall pay to Buyer at closing \$ n/a per day. If Seller does not deliver possession by the date and time required in the first sentence of this paragraph, Seller shall pay Buyer \$ 150.00 per day as liquidated damages until possession is delivered to Buyer; and Buyer shall have all other legal and equitable remedies available against the Seller.
2. **Maintenance of Property:** Seller shall maintain the Property in its present condition until its possession is delivered to Buyer, subject to repairs in response to any inspection. Buyer may inspect the Property prior to

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- closing to determine whether Seller has complied with this paragraph. Seller shall remove all debris and personal property not included in the sale.
3. **Casualty Loss:** Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Seller, including any deductible(s). In the event any damage or destruction is not fully repaired prior to closing, Buyer, at Buyer's option, may either (a) **terminate this Agreement with prompt return of earnest money to buyer** or (b) **elect to close the transaction**, in which event Seller's right to all real property insurance proceeds resulting from such damage or destruction shall be assigned in writing by Seller to Buyer.
4. **Utilities/Municipal Services:** Seller shall pay for all municipal services and public utility charges through the day of possession.

- I. **SURVEY:** Buyer shall receive a (Check one) ☐ **SURVEYOR LOCATION REPORT**, which is a survey where corner markers are not set; ☐ **BOUNDARY SURVEY**, which is a survey where corner markers of the Property are set prior to closing; ☒ **WAIVED**, no survey unless required by lender; at (Check one) ☐ **Buyer's expense (included in allowance, if provided)** ☐ **Seller's expense** ☐ **Shared equally**. The survey shall (1) be received prior to closing and certified as of a current date, (2) be reasonably satisfactory to Buyer, (3) show the location of all improvements and easements, and (4) show the flood zone designation of the Property. If Buyer waives the right to conduct a survey, the Seller, the Listing and Selling Brokers, and all licensees associated with Brokers are released from any and all liability relating to any issues that could have been discovered by a survey. This release shall survive the closing.
- J. **FLOOD AREA/OTHER:** If the property is located in a flood plain, Buyer may be required to carry flood insurance at Buyer's expense. Revised flood maps and changes to Federal law may substantially increase future flood insurance premiums or require insurance for formerly exempt properties. Buyer should consult with one or more flood insurance agents regarding the need for flood insurance and possible premium increases. Buyer ☒ **may** ☐ **may not** terminate this Agreement if the Property requires flood insurance. Buyer ☒ **may** ☐ **may not** terminate this Agreement if the Property is subject to building or use limitations by reason of the location, which materially interfere with Buyer's intended use of the Property.

- K. **HOMEOWNER'S INSURANCE:** Completion of this transaction shall be contingent upon the Buyer's ability to obtain a favorable written commitment for homeowner's insurance within 7 days after acceptance of this Agreement.

- L. **ENVIRONMENTAL CONTAMINANTS ADVISORY/RELEASE:** Buyer and Seller acknowledge that Listing Broker, Selling Broker and all licensees associated with Brokers are NOT experts and have NO special training, knowledge or experience with regard to the evaluation or existence of possible lead-based paint, radon, mold and other biological contaminants ("Environmental Contaminants") which might exist and affect the Property. Environmental Contaminants at harmful levels may cause property damage and serious illness, including but not limited to, allergic and/or respiratory problems, particularly in persons with immune system problems, young children and/or the elderly.

Buyer is STRONGLY ADVISED to obtain inspections (see below) to fully determine the condition of the Property and its environmental status. The ONLY way to determine if Environmental Contaminants are present at the Property at harmful levels is through inspections.

Buyer and Seller agree to consult with appropriate experts and accept all risks for Environmental Contaminants and release and hold harmless all Brokers, their companies and licensees from any and all liability, including attorney's fees and costs, arising out of or related to any inspection, inspection result, repair, disclosed defect or deficiency affecting the Property, including Environmental Contaminants. This release shall survive the closing.

- M. **INSPECTIONS: (Check appropriate paragraph number)**

Buyer has been made aware that independent inspections disclosing the condition of the property are available and has been afforded the opportunity to require such inspections as a condition of this Agreement.

1. ☐ **BUYER WAIVES THE RIGHT TO HAVE INDEPENDENT INSPECTIONS**
Buyer **WAIVES** inspections and relies upon the condition of the Property based upon Buyer's own examination and releases the Seller, the Listing and Selling Brokers and all licensees associated with Brokers from any and all liability relating to any defect or deficiency affecting the Property, which release shall survive the closing. Required FHA/VA or lender inspections are not included in this waiver.
2. ☒ **BUYER RESERVES THE RIGHT TO HAVE INDEPENDENT INSPECTIONS (including Lead-Based Paint)**
Buyer reserves the right to have independent inspections in addition to any inspection required by FHA, VA, or Buyer's lender(s). All inspections are at Buyer's expense (unless noted otherwise or required by lender) by licensed independent inspectors or qualified independent contractors selected by Buyer within the following time periods. **Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's inspections. Seller must make all areas of the Property available and accessible for Buyer's inspection.**

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INSPECTION/RESPONSE PERIOD: Buyer shall order all independent inspections after acceptance of the Purchase Agreement. Buyer shall have 15 days beginning the day following the date of acceptance of the Purchase Agreement to respond to the inspection report(s) in writing to Seller (see "Buyer's Inspection Response").

Inspections may include but are not limited to the condition of the following systems and components: heating, cooling, electrical, plumbing, roof, walls, ceilings, floors, foundation, basement, crawl space, well/septic, water, wood destroying insects and organisms, lead-based paint (note: intact lead-based paint that is in good condition is not necessarily a hazard), radon, mold and other biological contaminants and/or the following: out buildings

If the **INITIAL** inspection report reveals the presence of lead-based paint, radon, mold and other biological contaminants, or any other condition that requires further examination or testing, then Buyer shall have 15 additional days to order, receive and respond in writing to any additional reports.

If the Buyer does not comply with any Inspection/Response Period or make a written objection to any problem revealed in a report within the applicable Inspection/Response Period, the Property shall be deemed to be acceptable. If one party fails to respond or request in writing an extension of time to respond to the other party's Independent Inspection Response, then that inspection response is accepted. A timely request for extension is not an acceptance of the inspection response, whether or not granted. A REASONABLE TIME PERIOD TO RESPOND IS REQUIRED TO PREVENT MISUSE OF THIS ACCEPTANCE PROVISION. Factors considered in determining reasonable time periods include, but are not limited to, availability of responding party to respond, type and expense of repairs requested and need of responding party to obtain additional opinions to formulate a response.

If Buyer reasonably believes that the Inspection Report reveals a **DEFECT** with the Property (under Indiana law, "Defect" means a condition that would have a significant adverse effect on the value of the Property, that would significantly impair the health or safety of future occupants of the Property, or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises), and after having given Seller the opportunity to remedy the defect Seller is unable or unwilling to remedy the defect to Buyer's reasonable satisfaction before closing (or at a time otherwise agreed to by the parties), then Buyer may terminate this Agreement or waive such defect and the transaction shall proceed toward closing. **BUYER AGREES THAT ANY PROPERTY DEFECT PREVIOUSLY DISCLOSED BY SELLER, OR ROUTINE MAINTENANCE AND MINOR REPAIR ITEMS MENTIONED IN ANY REPORT, SHALL NOT BE A BASIS FOR TERMINATION OF THIS AGREEMENT.**

N. LIMITED HOME WARRANTY PROGRAM:

Buyer acknowledges the availability of a LIMITED HOME WARRANTY PROGRAM with a deductible paid by Buyer which ☐ will ☒ will not be provided at a cost not to exceed \$ _____ charged to ☐ Buyer ☐ Seller and ordered by ☐ Buyer ☐ Seller. Buyer and Seller acknowledge this LIMITED HOME WARRANTY PROGRAM may not cover any pre-existing defects in the Property nor replace the need for an independent home inspection. Broker may receive a fee from the home warranty provider and/or a member benefit. The Limited Home Warranty Program is a contract between Buyer/Seller and the Home Warranty Provider. The Parties agree that Brokers and their companies shall be released and held harmless in the event of claims disputes with the Home Warranty Provider.

O. DISCLOSURES: (Check one)

1. Buyer ☒ has ☐ has not ☐ not applicable received and executed SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE.
2. Buyer ☒ has ☐ has not ☐ not applicable received and executed a LEAD-BASED PAINT CERTIFICATION AND ACKNOWLEDGMENT.

P. TITLE APPROVAL: Prior to closing, Buyer shall be furnished with ☒ a title insurance commitment for the most current and comprehensive ALTA Owner's Title Insurance Policy available in the amount of the purchase price or ☐ an abstract of title continued to date, showing marketable title to Property in Seller's name. Seller must convey title free and clear of any encumbrances and title defects, with the exception of any mortgage assumed by Buyer and any restrictions or easements of record not materially interfering with Buyer's intended use of the Property. A title company, at Buyer's request, can provide information about availability of various additional title insurance coverages and endorsements and the associated costs.

Owner's Title Insurance Premium and that portion of Title Service Fees incurred to prepare the Owner's Policy (including title search and examination and commitment preparation), to be paid by ☐ Buyer (included in allowance, if provided) ☒ Seller ☐ Shared equally.

Lender's Title Insurance Premium and that portion of Title Service Fees incurred to prepare the Lender's Policy (including title search and examination and commitment preparation), if applicable, to be paid by ☒ Buyer (included in allowance, if provided) ☐ Seller ☐ Shared equally ☐ Other _____

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The parties agree that ☒ **Seller** ☐ **Buyer** will select a title insurance company to issue a title insurance policy and will order the commitment ☒ **immediately** or ☐ **other**: _____

Pursuant to Federal and State law, Seller cannot make Seller's selection of a title insurance provider a condition of this Agreement.

Seller agrees to pay the cost of obtaining all other documents necessary to perfect title (including the cost of the deed and vendor's affidavit), so that marketable title can be conveyed.

Q. TAXES: (Check appropriate paragraph number)

☒ **1.** Buyer will assume and pay all taxes on the Property beginning with the taxes due and payable on Spring 2018, and all taxes due thereafter. At or before closing, Seller shall pay all taxes for the Property payable before that date.

☐ **2.** All taxes that have accrued for any **prior calendar year** that remain unpaid shall be paid by Seller either to the County Treasurer and/or the Buyer in the form of a credit at closing. All taxes that have accrued for the **current calendar year** shall be prorated on a calendar-year basis as of the day immediately prior to the Closing Date.

For purposes of paragraph 1 and 2: For the purpose of determining the credit amount for accrued but unpaid taxes, taxes shall be assumed to be the same as the most recent year when taxes were billed based upon *certified* tax rates. This shall be a final settlement.

☐ **3. FOR RECENT CONSTRUCTION OR OTHER TAX SITUATIONS.** Seller will give a tax credit of \$ _____ to Buyer at closing. This shall be a final settlement.

WARNING: THE SUCCEEDING YEAR TAX BILL FOR RECENTLY CONSTRUCTED HOMES OR FOLLOWING REASSESSMENT PERIODS MAY GREATLY EXCEED THE LAST TAX BILL AVAILABLE TO THE CLOSING AGENT.

Buyer acknowledges Seller's tax exemptions and/or credits may not be reflected on future tax bills.

Buyer may apply for current-year exemptions/credits at or after closing.

R. PRORATIONS AND SPECIAL ASSESSMENTS: Insurance, if assigned to Buyer, interest on any debt assumed or taken subject to, any rents, all other income and ordinary operating expenses of the Property, including but not limited to, public utility charges, shall be prorated as of the day immediately prior to the Closing Date. Seller shall pay any special assessments applicable to the Property for municipal improvements previously made to benefit the Property. Seller warrants that Seller has no knowledge of any planned improvements which may result in assessments and that no governmental or private agency has served notice requiring repairs, alterations or corrections of any existing conditions. Public or municipal improvements which are not completed as of the date above but which will result in a lien or charge shall be paid by Buyer. Buyer will assume and pay all special assessments for municipal improvements completed after the date of this Agreement.

S. TIME: Time is of the essence. Time periods specified in this Agreement and any subsequent Addenda to the Purchase Agreement are calendar days and shall expire at 11:59 PM of the date stated unless the parties agree in writing to a different date and/or time.

Note: Seller and Buyer have the right to withdraw any offer/counter offer prior to written acceptance and delivery of such offer/counter offer.

T. HOMEOWNERS ASSOCIATION/CONDOMINIUM ASSOCIATION ("Association"): Documents for a mandatory membership association shall be delivered by the Seller to Buyer within N/A days after acceptance of this Agreement, but not later than 10 days prior to closing pursuant to I.C. 32-21-5-8.5. Brokers are not responsible for obtaining or verifying this information. If the Buyer does not make a written response to the documents within N/A days after receipt, the documents shall be deemed acceptable. In the event the Buyer does not accept the provisions in the documents and such provisions cannot be waived, this Agreement may be terminated by the Buyer and the earnest money deposit shall be refunded to Buyer promptly. Any approval of sale required by the Association shall be obtained by the Seller, in writing, within N/A days after Buyer's approval of the documents. Fees charged by the "Association", or its management company, for purposes of verification of good standing and/or transfer of ownership shall be shared equally by Buyer and Seller. Start-up or one time reserve fees, if any, shall be paid by Buyer.

Buyer acknowledges that in every neighborhood there are conditions which others may find objectionable. Buyer shall therefore be responsible to become fully acquainted with neighborhood and other off-site conditions that could affect the Property.

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- 325 U. **ATTORNEY'S FEES:** Any party to this Agreement who is the prevailing party in any legal or equitable proceeding
 326 against any other party brought under or with relation to the Agreement or transaction shall be additionally entitled
 327 to recover court costs and reasonable attorney's fees from the non-prevailing party.
 328
- 329 V. **ADDITIONAL PROVISIONS:**
 330
- 331 1. Unless otherwise provided, any prorations for rent, taxes, insurance, damage deposits, association dues/
 332 assessments, or any other items shall be computed as of the day immediately prior to the Closing Date.
 333
 - 334 2. Underground mining has occurred in Indiana, and Buyers are advised of the availability of subsidence
 335 insurance.
 336
 - 337 3. The Indiana State Police has created a registry of known meth contaminated properties which can be found at
 338 www.in.gov/meth. Click on "Cland Lab Addresses." Broker is not responsible for providing or verifying this
 339 information.
 340
 - 341 4. The Indiana Sheriff's Sex Offender Registry (www.indianasheriffs.org) exists to inform the public about the
 342 identity, location and appearance of sex offenders residing within Indiana. Broker is not responsible for
 343 providing or verifying this information.
 344
 - 345 5. Conveyance of this Property shall be by general Warranty Deed, or by _____ ,
 346 subject to taxes, easements, restrictive covenants and encumbrances of record, unless otherwise agreed.
 347
 - 348 6. If it is determined Seller is a "foreign person" subject to the Foreign Investment in Real Property Tax Act, Seller
 349 will pay applicable tax obligation.
 350
 - 351 7. Any notice required or permitted to be delivered shall be deemed received when personally delivered,
 352 transmitted electronically or digitally or sent by express courier or United States mail, postage prepaid,
 353 certified and return receipt requested, addressed to Seller or Buyer or the designated agent of either party.
 354
 - 355 8. This Agreement shall be construed under and in accordance with the laws of the State of Indiana and is
 356 binding upon the parties' respective heirs, executors, administrators, legal representatives, successors, and
 357 assigns.
 358
 - 359 9. In case any provision contained in this Agreement is held invalid, illegal, or unenforceable in any respect, the
 360 invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
 361
 - 362 10. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior
 363 understandings or written or oral agreements between the parties' respecting the transaction and cannot be
 364 changed except by their written consent.
 365
 - 366 11. All rights, duties and obligations of the parties shall survive the passing of title to, or an interest in, the Property.
 367
 - 368 12. Broker(s) may refer Buyer or Seller to other professionals, service providers or product vendors, including
 369 lenders, loan brokers, title insurers, escrow companies, inspectors, pest control companies, contractors and
 370 home warranty companies. Broker(s) does not guarantee the performance of any service provider. Buyer and
 371 Seller are free to select providers other than those referred or recommended to them by Broker(s). The Parties
 372 agree that Brokers and their companies shall be released and held harmless in the event of claims disputes with
 373 any service provider.
 374
 - 375 13. By signing below, the parties to this transaction acknowledge: 1) receipt of a copy of this Agreement; and 2)
 376 information regarding this transaction may be published in a listing service, Internet or other advertising media.
 377
 - 378 14. Any amounts payable by one party to the other, or by one party on behalf of the other party, shall not be owed
 379 until this transaction is closed.
 380
 - 381 15. Buyer and Seller consent to receive communications from Broker(s) via telephone, U.S. mail, email and
 382 facsimile at the numbers/addresses provided to Broker(s) unless Buyer and Seller notify Broker(s) in writing
 383 to the contrary.
 384
 - 385 16. Buyer discloses to Seller that Buyer holds Indiana Real Estate License # ----- .
 386
 - 387 17. Where the word "Broker" appears, it shall mean "Licensee" as provided in I.C.25-34.1-10-6.8.

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388 W. **FURTHER CONDITIONS** (List and attach any addenda): Seller to use Indiana Title for title
 389 work and closing.
 390 Seller to provide existing survey of property for buyer's approval.

391 _____
 392 _____
 393 _____
 394 _____
 395 _____
 396 _____
 397 _____
 398 _____

399 X. **CONSULT YOUR ADVISORS:** Buyer and Seller acknowledge they have been advised that, prior to signing this
 400 document, they may seek the advice of an attorney for the legal or tax consequences of this document and the
 401 transaction to which it relates. In any real estate transaction, it is recommended that you consult with a
 402 professional, such as a civil engineer, environmental engineer, or other person, with experience in evaluating the
 403 condition of the Property.

404 Y. **ACKNOWLEDGEMENTS:** This ☐ is ☒ is not a limited agency transaction. Buyer and Seller acknowledge that
 405 each has received agency office policy disclosures, has had agency explained, and now confirms all agency
 406 relationships. Buyer and Seller further acknowledge that they understand and accept agency relationships involved
 407 in this transaction. By signature below, the parties verify that they understand and approve this Purchase Agreement
 408 and acknowledge receipt of a signed copy.

409 Z. **EXPIRATION OF OFFER:** Unless accepted by Seller and delivered to Buyer by 6:00 ☐ A.M. ☒ P.M.
 410 ☐ Noon, on October 31, 2017, this Purchase Agreement shall be null and void and all
 411 parties shall be relieved of any and all liability or obligations.

412 This Agreement/contract together with any and all subsequent forms, amendments and addenda may be executed
 413 simultaneously or in two or more counterparts, each of which shall be deemed an original but all of which together
 414 shall constitute one and the same instrument. The parties agree that this Agreement, together with any and all
 415 subsequent forms, amendments and addenda may be transmitted between them electronically or digitally. The
 416 parties intend that electronically or digitally transmitted signatures constitute original signatures and are binding on
 417 the parties. The original documents shall be promptly delivered, if requested.

418 DocuSigned by:
 419 Heather M. Ferguson 10/30/2017
 420 BUYER'S SIGNATURE DATE BUYER'S SIGNATURE DATE
 421 Heather M. Ferguson
 422 PRINTED PRINTED

423 AA. **SELLER'S RESPONSE:** (Check appropriate paragraph number):
 424 On 10-31-17, at 9:00 ☒ A.M. ☐ P.M. ☐ Noon
 425 ☒ 1. The above offer is Accepted. TMB
 426 ☐ 2. The above offer is Rejected.
 427 ☐ 3. The above offer is Countered. See Counter Offer. Seller should sign both the Purchase Agreement and
 428 the Counter Offer.

429 Heather Bowman (member) 10-31-17
 430 SELLER'S SIGNATURE DATE SELLER'S SIGNATURE DATE
 431 Bowman Dairy Farms, LLC
 432 PRINTED PRINTED



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Ferguson Wilbur

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re:) Chapter 11
)
BOWMAN DAIRY FARMS LLC,) Case No. 17-06475-JMC-11
)
Debtor.)

**ORDER GRANTING DEBTOR'S MOTION TO SELL
REAL ESTATE LOCATED IN NEW CASTLE, INDIANA**

This matter is before the Court on the *Debtor's Motion to Sell Real Estate Located in New Castle, Indiana* [Docket No. __] (the "Sale Motion") filed by Bowman Dairy Farms LLC, the debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), seeking entry of an order authorizing the sale of real estate located at 659 S. Wilbur Wright Rd., in Liberty Township, Henry County, New Castle, Indiana 47362-8809 (the "Real Estate") pursuant to the terms and conditions of the Purchase Agreement¹ attached to the Sale Motion as **Exhibit A**. A hearing was held by the Court on December 4, 2017 (the "Hearing") pursuant to

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to such terms in the Sale Motion.

notice. The Court, having considered the Sale Motion, any opposition to the Sale Motion, and the statements and arguments of counsel at the Hearing, and being duly advised in the premises, GRANTS the Sale Motion, it appearing to the Court that the Sale Motion is made for good cause.

IT IS THEREFORE ORDERED THAT:

1. The Debtor is authorized to sell the Real Estate to the Purchaser pursuant to the terms and conditions of the Purchase Agreement;
2. The Real Estate shall be sold free and clear of all liens, encumbrances, claims, and interests (including the Mortgage), with all such valid liens, encumbrances, claims, and interests attaching to the sale proceeds in the same order, priority, and validity that presently exists, subject to all claims of the Debtor; provided however, the Real Estate shall be sold subject to the Permitted Exceptions;
3. The Debtor is authorized to execute any documentation necessary to effectuate the sale of the Real Estate, including execution of the Purchase Agreement;
4. The Purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code because (i) the Purchaser is not an insider of the Debtor, (ii) the proposed sale represents an arms-length transaction between the parties, made without fraud or collusion with any other person, and (iii) there has been no attempt to take any unfair advantage of the Debtor;
5. Section 363(f)(2) of the Bankruptcy Code has been satisfied as it relates to the Mortgage and any other encumbrances and that the proceeds shall be held by the Debtor and distributed to the holders of valid liens according to their determined priority; and
6. The Debtor is authorized to disburse from the sale proceeds, first to pay the costs and expenses of the sale, including the commission owed to Lingle Real Estate, second

to pay all real estate taxes and assessments outstanding and unpaid at the time of the sale, and third to pay the balance of the net sale proceeds to the lien holders to the determined extent, validity and priority as existed against the property.

###