

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

In re:

Circle 9 Cattle Company, LLC,

Debtor.

Chapter 11

Case No. 18-10569

MOTION FOR ORDER AUTHORIZING: (i) SALE OF DEBTOR'S PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; (ii) PAYMENT OF COMMISSION TO DEBTOR'S REAL ESTATE BROKER; (iii) RETENTION OF AND PAYMENT TO LOCAL COUNSEL IN MONTANA; (iv) DISTRIBUTION OF SALE PROCEEDS AT CLOSING; (v) TRANSFER OF DEBTOR'S REMAINING POST-CLOSING PROCEEDS TO TERRANCE MCCLINCH; AND (vi) CONTINGENT DISMISSAL OF THE DEBTOR'S CASE

Circle 9 Cattle Company, LLC, the debtor and debtor-in-possession in the above-captioned chapter 11 bankruptcy case (the "Debtor"), hereby moves (the "Motion") this Court for entry of an order authorizing the following relief: (i) the sale of substantially all of the Debtor's property free and clear of all liens, claims, and encumbrances to David Schuett ("Buyer") in accordance with the Offer and Agreement for Sale and Purchase (the "Agreement"), a copy of which is attached hereto as **Exhibit A**; (ii) payment of a commission to the Debtor's real estate broker upon the closing of the sale; (iii) retention of and payment to local counsel in Montana to assist the Debtor with closing the sale; (iv) distribution of the proceeds from the sale at closing in the manner specifically set forth herein, including in full and final satisfaction of the claims of certain secured creditors; (v) transfer of the remaining proceeds held by the Debtor after closing and payment of allowed claims to the chapter 11 estate of Terrance McClinch ("McClinch"); and (vi) dismissal of the Debtor's bankruptcy case contingent upon the closing of

the sale and resolution and payment of allowed claims (as are more fully described below). In support of the Motion, the Debtor states the following:

JURISDICTION AND VENUE

1. The United States District Court for the District of Maine (the “District Court”) has original, but not exclusive, jurisdiction over the Debtor’s chapter 11 case pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157 and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this proceeding to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court has constitutional authority to enter final judgment in this proceeding.

3. Venue over the chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

BACKGROUND

4. On September 27, 2018, the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor’s chapter 11 case, and no official committee has been appointed or designated. McClinch is the sole member of the Debtor.

5. The Debtor’s primary assets are a ranch property located at 502 Waterloo Road and 38 Loomont Lane, Whitehall, Montana, and certain personal property used in connection with that ranch (collectively, as are more specifically described in **Exhibit A** and **Exhibit B** to the Agreement, the “Property”).

A. The Debtor’s Debt Structure

6. Prior to the Petition Date, the Debtor and related entities, including McClinch, entered into various loan agreements with various lenders, as well modifications and settlement agreements regarding such loans. In order to secure the indebtedness owed to the various lenders

under the loan agreements, the Debtor granted such lenders security interests in some or all of the Property. Specifically, the following lenders may assert an interest in some or all of the Property (the lenders are presented below in order of highest priority lien rights to lowest priority lien rights):

- A. On or around December 23, 2013, Cross Land and Cattle, LLC executed a promissory note with First Interstate Bank (“First Interstate”) in the original principal sum of **\$1,900,000.00** (the “First Interstate Note”). To secure the obligations related to the First Interstate Note, the Debtor executed and delivered to First Interstate a mortgage on the Debtor’s real property.
- B. On or around November 22, 2016, Candlelight Farms Aviation, LLC executed a promissory note with Coastal Realty Capital, LLC (“Coastal”) in the original principal sum of **\$650,000.00** (later increased to **\$750,000.00**) (the “Coastal Note”). To secure the indebtedness on the Coastal Note, the Debtor executed and delivered to Coastal a mortgage on the Debtor’s real property.
- C. On or around August 30, 2017, Boothbay Harbor Shipyard, LLC executed a promissory note with TPL Financial (“TPL”) in the original principal sum of **\$715,000.00** (the “TPL Note”). To secure the indebtedness on the TPL Note, the Debtor executed and delivered to TPL a mortgage on its real property.
- D. On or around September 8, 2017, the Debtor executed an unlimited personal guaranty related to a commercial promissory note in the original principal amount of **\$600,000.00** executed by 120 Commercial Street Realty, LLC and Boothbay Harbor Shipyard, LLC, and payable to CNB (the “CNB Note”). To secure the obligations related to the CNB Note, the Debtor executed and delivered to CNB a mortgage on the Debtor’s real property.

B. The Agreement

7. On November 30, 2018, the Debtor (defined in the Agreement as “Seller”) and Buyer entered into the Agreement. The terms of the Agreement are summarized below and are more fully set forth in the Agreement.¹

A. Purchase Price: The total purchase price to be paid by Buyer for Seller’s right, title, and interest in the Property is \$5,129,000.00 (the “Purchase Price”). The Purchase Price will be paid as follows:

- i. The sum of \$25,000.00 as refundable earnest money (“Earnest Money”) shall be paid by Buyer within five business days of Seller’s execution of the Agreement provided that all contingencies required of Seller prior to that date are satisfied in full;
- ii. The sum of \$200,000.00 will be applied at closing (the “Credit”) to reduce the Purchase Price as a credit for the sum owed to Buyer by Seller under the Lease;² and
- iii. The balance of the Purchase Price, less the Earnest Money and the Credit, which remaining balance is the amount of \$4,904,000.00, shall be paid at closing contingent upon satisfaction of all terms, contingencies, warranties, conditions and matters in the Agreement.

B. Financing Contingency: It is a contingency for closing that Buyer can secure financing on terms solely satisfactory to Buyer from its chosen lender for the purpose of completing the purchase of the Property under the terms of the Agreement. Attendant to this contingency is the satisfaction of all contingencies under the Agreement and to satisfaction of a contingency that an appraisal of the Property obtained by Buyer’s lender will show a value which exceeds or is equal to the Purchase Price for the Property.

¹ The description of the Agreement set forth in this Motion is qualified in its entirety by the Agreement, which should be consulted for a full recitation of its terms and conditions. To the extent that there are any inconsistencies between this Motion and the Agreement, the Agreement shall control.

² As set forth in the Agreement, Buyer is currently the lessee of certain interests in the Property under a ten (10) year lease, wherein Buyer makes the payments due on an obligation owed to AgDirect for an irrigation pivot system installed on the Property by Buyer, together with Buyer’s prior payment of other pivot and irrigation related costs, in exchange for the lease of certain interests in the Property from the Debtor by Buyer for such ten year period (the “Lease”). The sum of \$200,000.00 represents a payoff amount (reduced by agreement between Buyer and the Debtor) remaining under the Lease.

C. **Closing and Approval:**

- i. **Section 363 Sale.** The terms of the Agreement are subject to approval by the Court under 11 U.S.C. §363, and, absent such approval and entry of the Order by the Court, Buyer will have no obligation to close the transaction or pay the Purchase Price, including the giving of the Credit, and that, upon a failure of Seller to promptly obtain the Order on or before December 21, 2018, or such additional time as may be agreed by Buyer in writing, then the Agreement will be deemed to be terminated without notice and Buyer will be entitled to, and will receive, immediate return of the Earnest Money, together with any other sum or payment made to Seller or the closing agent herein, and Buyer will be entitled to the “Expense Reimbursement Sum” described below in the event that the failure to obtain the Order in favor of Buyer is the result of the sale of the Property to a third party, conversion of the case to a Chapter 7 or the appointment of a Chapter 11 trustee who fails to promptly and timely obtain the Order to permit the transaction contemplated herein to be timely closed.
- ii. **Expense Reimbursement Sum.** In the event that the Seller fails to obtain the Order on or before December 21, 2018, or such additional time as agreed by Buyer in writing, which failure is the result of a sale of the Property to a third party, conversion of the case to a Chapter 7 or the appointment of a Chapter 11 trustee who fails to promptly and timely obtain the Order to permit the transaction contemplated herein to be timely closed, then Buyer will be entitled to an administrative priority claim against the bankruptcy estate of the Seller, for the reimbursement of all fees, costs and payments incurred by Buyer to create and effectuate the Agreement, including Buyer’s reasonable attorney fees and costs, and to obtain financing for payment of the Purchase Price, in a collective amount not to exceed the sum of **\$25,000.00** (the “Expense Reimbursement Sum”).
- iii. **Contingency.** Seller’s failure to obtain Court approval of the Expense Reimbursement Sum on or before December 14, 2018, or Seller’s failure to obtain the Order in the form and manner stated in the Agreement on or before December 21, 2018, will entitle Buyer to reserve its rights existing prior to the Agreement and to terminate the Agreement immediately without liability, damage, fee, penalty, payment or cost from Buyer to Seller and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money, and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the Expense Reimbursement Sum if the same is approved but Seller fails to obtain the Order in the manner and form as required herein.

- D. Closing.** Closing will occur only if all contingencies set forth in the Agreement are satisfied (including, but not limited to, those described herein) and only upon the entry of the Order in the form and manner stated herein. The closing date for the purchase of the Property will be on or before January 18, 2019, unless such date is required to be extended by reason of the finalization of a lender appraisal for the Property or because it is required by the closing agent or title insurer or because additional time is required to ensure that the Order is not subject to appeal or unless extended by mutual agreement of the parties in writing.

RELIEF REQUESTED

8. The Debtor requests the entry of an order authorizing the following: (i) the sale of the Property free and clear of all liens, claims, and encumbrances to Buyer in accordance with the Agreement; (ii) payment of a commission to the Debtor's real estate broker upon the closing of the sale to Buyer; (iii) retention of and payment to local counsel in Montana to assist the Debtor in closing the sale; (iv) distribution of the proceeds from the sale at closing in the manner specifically set forth herein, including in full and final satisfaction of the claims of certain secured creditors; (v) transfer of the remaining proceeds held by the Debtor after closing of the sale and payment of allowed claims to the chapter 11 estate of McClinch; and (vi) dismissal of the Debtor's bankruptcy case contingent upon the closing of the sale and payment of allowed claims (as are more fully described below).

GROUND FOR RELIEF

A. The Debtor Requests that this Court Approve The Sale of the Property Free and Clear of All Liens, Claims, and Interests Pursuant to § 363 of the Bankruptcy Code.

9. Section 363(b) of the Bankruptcy Code provides that a debtor-in-possession may sell property of the estate "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). A debtor's sale of property outside the ordinary course of business should be approved if the debtor demonstrates a sound business justification for the proposed transaction. See In re SW Boston Hotel Venture, LLC, No. 10-14535-JNF, 2010 WL 3396863, at *3 (Bankr. D. Mass. Aug. 27, 2010) ("Courts approve a Chapter 11 debtor in

possession's use, sale or lease of property of the estate where the debtor has used reasonable business judgment and articulated a business justification for such use."); Comm. of Equity Sec. Holders v. Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983); In re United Healthcare Sys., Inc., Civ. No. 9701159, 1997 WL 176574, at *4, n.2 (D.N.J. Mar. 26, 1997).

10. Here, there is a "sound business purpose" for selling the Property under the terms set forth in the Agreement. The Debtor has been actively marketing the Property for sale, and the Debtor submits that the sale of the Property under the terms of the Agreement is in the best interests of the estate and creditors because, upon closing, the proceeds will be sufficient to pay all of the Debtor's secured and unsecured debts (with certain claim amounts being set by agreement of the Debtor and the applicable creditor). In addition, the Debtor continues to incur significant carrying costs relating to the Property, and the Debtor has taken those costs into consideration when agreeing to enter into the Agreement at this time.

11. Courts approving a § 363 sale also have required that the sale price be fair and reasonable, and that the sale be the result of good faith negotiations with the buyer. See e.g., In re Abbotts Dairies of Pa., 788 F.2d 143, 147-50 (3d Cir. 1986). The Debtor submits that the negotiation of the Agreement has been, and continues to be, conducted in a fair manner between the Debtor and Buyer, and their respective counsel. Further, the Debtor has made continued efforts prior to and after the Petition Date to secure offers for the purchase of the Property. Based on prior offers received by the Debtor, the Debtor submits that the Purchase Price set forth in the Agreement is fair and reasonable under the circumstances, the consideration of which includes the avoidance of additional carrying costs to the Debtor if the Property were not sold until a later date.

12. Section 363(f) of the Bankruptcy Code provides that a trustee or debtor-in-possession may sell property “free and clear of any interest in such property of an entity other than the estate” if at least one of the several conditions enumerated in section 363(f) is satisfied. 11 U.S.C. § 363(f)(1)-(5). Here, the Debtor satisfies § 363(f)(3), which provides that “[t]he trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if . . . 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.” 11 U.S.C. § 363(f)(3). As set forth herein, the Purchase Price is sufficient to pay the claims of all creditors in full (with certain claim amounts being set by agreement of the Debtor and the applicable creditor, including amounts held in escrow pending a final determination), and the price of the Property, therefore, exceeds the aggregate value of all liens on the Property. The Debtor also satisfies § 363(f)(5), as any party asserting an interest in the Property could be compelled to accept a money satisfaction of their respective interests. See 11 U.S.C. § 363(f)(5); In re EnvisioNet Computer Servs., Inc., 275 B.R. 664, 669 (D. Me. 2002) (“Even if a lien creditor is not fully satisfied from the proceeds of a sale, and even if the creditor objects to the sale, a court may still authorize the sale if the creditor ‘could be compelled, in a legal or equitable proceeding, to accept a money satisfaction’ of its claim.”) (citation omitted). Premised on the sale of the Property satisfying this section, the Debtor submits that the sale of the Property should be authorized free and clear of all liens, claims, and interests.

13. Further, the Agreement is being entered into without fraud or collusion, with both the Debtor and Buyer represented by counsel. The Debtor, therefore, requests that this Court expressly find that Buyer is a good faith purchaser for value, that Buyer is released of any and all

liability, if any, owed to any creditor of the estate, and that Buyer is entitled to the protections afforded under § 363(m) of the Bankruptcy Code. See 11 U.S.C. § 363(m).

14. Finally, neither the Debtor and Buyer, nor any of their representatives, have entered into any agreement to control the price of the purchase of the Property or engaged in any conduct that would cause or permit the Agreement to be avoided under § 363(n) of the Bankruptcy Code, or cause or permit any amounts, costs, attorneys' fees, expenses, or punitive damages to be recovered under § 363(n) of the Bankruptcy Code. The Debtor, therefore, requests that the Court expressly find that the Agreement, and the transactions contemplated thereby, are not subject to avoidance under § 363(n) of the Bankruptcy Code, or to any recovery of costs, attorneys' fees, expenses, or punitive damages under § 363(n).

B. The Debtor Requests that the Court Authorize the Debtor to Pay a Commission to its Real Estate Broker Through a Distribution of the Sale Proceeds at Closing.

15. On October 14, 2017, the Debtor executed an exclusive listing agreement with Hall & Hall, a Montana real estate brokerage firm, for the marketing and sale of the Property. Through this Motion, the Debtor seeks Court approval to pay a commission to Hall & Hall for its services on behalf of the Debtor as part of the distribution of the proceeds upon closing of the sale.

16. Specifically, Hall & Hall has agreed to accept in full satisfaction of its commission the amount of \$169,257.00, which constitutes 55% of 6% of the Purchase Price. Hall & Hall has spent more than one year marketing the Property and providing advice to the Debtor on the sale process. The requested commission represents a significant discount on the commission to which Hall & Hall may otherwise be entitled under the listing agreement (which commission is 6% under the listing agreement). In addition, the commission will be paid from sale proceeds after full payment to the Debtor's creditors (with certain claim amounts being set

by agreement of the Debtor and the creditor), and the Debtor, therefore, submits that payment of the commission is fair and reasonable under the circumstances.

C. The Debtor Requests that the Court Authorize the Debtor to Retain and Pay from the Sale Proceeds Local Counsel In Montana To Assist the Debtor with Closing.

17. Undersigned counsel is not admitted to practice in Montana, and the Debtor, therefore, seeks authority through this Motion to retain and pay local counsel in Montana to assist the Debtor with closing the sale. Buyer is represented by counsel in Montana, and the Debtor believes it is in the best interests of the estate and creditors for the Debtor to be represented in the sale transaction by an attorney in Montana who is familiar with such transactions and Montana laws. The Debtor, therefore, requests authority to retain and pay such local counsel through proceeds of the sale at closing based on counsel’s market rate, in an amount not more than **\$5,000.00**.

D. The Debtor Requests that the Court Authorize the Distribution of Proceeds from the Sale upon the Closing of the Sale.

18. Premised on the foregoing, the Debtor requests that the Court authorize the Debtor to distribute the proceeds from the sale of the Property upon the closing of the sale as follows (certain amounts may change premised on actual attorneys’ fees and costs of parties entitled to collect such amounts from the Debtor and premised on interest charges and the date of closing (based on per diem adjustments)):

Total Sale Proceeds	\$5,129,000.00
Distribution of Proceeds at Closing	
Lease Credit	\$200,000.00
Broker Commission	\$169,257.00
U.S. Trustee Fees	\$51,290.00
Title Costs	\$9,611.00

First Interstate	\$1,931,103.01 ³
Coastal	\$1,210,753.54
Coastal – Default Fee	\$108,394.40 ⁴
TPL	\$775,899.19 ⁵
CNB	\$516,211.25 ⁶
Estimated Administrative expenses	\$40,000.00 ⁷
Local Montana Counsel	\$5,000.00
Total Distribution:	\$5,017,519.39
Remaining Proceeds Held by the Debtor	\$111,480.61

E. The Debtor Requests that the Court Authorize the Transfer of the Remaining Proceeds from the Sale to McClinch.

19. Following the closing, the Debtor will no longer own a material amount of property or have any ongoing operations. In addition, the distribution of the proceeds as set forth above will result in satisfaction of the Debtor’s creditors, either immediately upon closing or through amounts reserved in escrow pending further determinations of amounts owed. The Debtor, therefore, requests Court approval to distribute the remaining proceeds from the sale to McClinch, as the sole member and equity holder of the Debtor, with such proceeds to be administered as part of McClinch’s bankruptcy case.

³ Upon payment, this amount shall constitute the full and final satisfaction of all debt obligations owed to First Interstate as provided for by the Order approving this Motion (the “Order”).

⁴ The Coastal default fee shall be held in escrow at closing because the Debtor disputes Coastal’s right to such amounts claimed. Upon a final determination of that disputed amount, such payment, along with the undisputed payment of **\$1,210,753.54** at closing, shall, together, constitute the full and final satisfaction of all debt obligations owed to Coastal as provided for by the Order.

⁵ This amount shall be held in escrow at closing because the Debtor disputes TPL’s right to the full amounts claimed. Upon a determination of the disputed amount, such payment, once made, shall constitute the full and final satisfaction of all debt obligations owed to TPL as provided for by the Order.

⁶ Upon payment, this amount shall constitute the full and final satisfaction of all debt obligations owed to CNB as provided for by the Order.

⁷ This amount shall be held in escrow at the time of closing and then distributed to pay any administrative expenses of the Debtor, including fees of BSSN and unpaid tax obligations (if any), subject to separate order from the Court (if necessary).

F. The Debtor Requests that the Court Authorize the Dismissal of the Debtor’s Case Contingent upon Closing the Sale and Resolving the Remaining Disputes Regarding Amounts Owed to Creditors.

20. The Debtor requests that this Court authorize the dismissal of the Debtor’s bankruptcy case, contingent upon: (i) the closing of the sale in accordance with the Agreement, including the passage of the time for appeal after entry of the final Order approving the sale of the Property to Buyer; and (ii) resolving the remaining disputes regarding the amounts owed to creditors.

21. Section 1112(b)(1) provides the following grounds for dismissing a chapter 11 case:

Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). Section 1112(b)(1) does not define cause, and § 1112(b)(4)(A)-(P) provides a non-exhaustive list of examples of “cause” for dismissal. See also In re Efron, 529 B.R. 396, 411 (B.A.P. 1st Cir. 2015) (“Section 1112(b)(4) provides a non-exhaustive list of examples that may constitute cause for dismissal of a chapter 11 case[.]”).

22. The Debtor submits that cause to dismiss the case exists under the circumstances because, following final distribution of the sale proceeds and resolution of the disputed payoff amounts, dismissal of this case will avoid unnecessary administrative expenses associated with maintaining the chapter 11 case when the Debtor no longer has any creditors or assets. Moreover, dismissal of the chapter 11 case will maximize the value of the Debtor’s estate (including equity) because the alternative—conversion to a chapter 7 liquidation or appointment

of a trustee—is unnecessary and would impose significant additional administrative costs upon the Debtor’s estate.

23. Alternatively, § 305(a) provides that the “court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—(1) the interests of creditors and the debtor would be better served by such dismissal or suspension[.]” 11 U.S.C. § 305(a)(1); see also In re Efron, 529 B.R. at 405 (under § 305(a)(1), “dismissal is appropriate where the court finds both creditors and the debtor would be better served by dismissal than they would by the continuation of the case”). As described above, dismissal is in the best interests of the estate, creditors, and the Debtor. Specifically, following the sale of the Property, the Debtor submits that dismissal will avoid the continued occurrence of fees and costs related to the chapter 11 case. Dismissal of the chapter 11 case, therefore, provides the most efficient, cost-effective method of effectuating the wind down of the Debtor’s estate.

NOTICE

24. Notice of this Motion and the related notice of hearing and proposed order was served on the following parties on the date and in the manner set forth in the certificate of service: (a) all creditors, or if applicable, to counsel representing such creditors; (b) the U.S. Trustee; (c) applicable local, state, and federal taxing authorities; (d) counsel to Buyer; and (e) all parties having filed requests for notices in this case.

CONCLUSION

25. WHEREFORE, the Debtor respectfully requests that the Court enter an order: (i) granting the relief requested herein in the form of an order substantially similar to the proposed order filed herewith; and (ii) granting any other relief that the Court deems fair and reasonable.

Dated: December 10, 2018

CIRCLE 9 CATTLE COMPANY, LLC,

By its attorneys:

/s/ Sam Anderson

Sam Anderson, Esq.

Adam Prescott, Esq.

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OFFER AND AGREEMENT FOR SALE AND PURCHASE

This Offer and Agreement for Sale and Purchase (the "Agreement") entered into on the date stated by the parties' signatures below, by and between **David Schuett** and assigns, of 1025 Selway Dr., Dillon, MT 59725 ("Buyer") and **Circle 9 Cattle Company, LLC**, a Montana Limited Liability Company, of P.O. Box 1291, Dillon, MT 59725 ("Seller").

RECITALS

A. Seller is a debtor in possession in a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the District of Maine (the "Court"), Case No. 18-10569 (the "Case"). Buyer is currently the lessee of certain interests in the Property (defined below) under a ten (10) year lease, wherein Buyer makes the payments due on an obligation owed to AgDirect for an irrigation pivot system installed on the Property by Buyer, together with Buyer's prior payment of other pivot and irrigation related costs, in exchange for the lease of certain interests in the Property from Seller by Buyer for such ten year period (the "Lease"). Such irrigation pivot system is titled in the name of Buyer and was intended to remain in Buyer's name until Seller's final provision of the value of the Lease to Buyer through the final year thereof or payment to Buyer of the remaining value due under the Lease prior to its final date. As of the date of Buyer's execution of this Agreement, Buyer is owed \$210,000.00 in remaining lease value under the Lease.

B. Seller is the holder of a fee title to certain agricultural real estate located in Madison County, consisting of real property of approximately 715 acres, more or less, together with all buildings, corrals, wells and well equipment, irrigation pumps, irrigation systems, pipes and equipment, grain bins, fencing, storage tanks, improvements and fixtures located thereon, insurable rights of access, wind rights, solar rights, mineral interests, and royalties related thereto, and water rights, springs, water ponds and water holding facilities, reservoirs, dams, claims for water, ditch rights and shares and all other rights to water of every nature whatsoever appurtenant to and/or used in conjunction therewith, all of such real property being described by the legal description attached hereto as **Exhibit "A"**. In addition, Seller is the holder of title to certain personal property used in connection with the real property, all of such personal property to be included in this sale being described on the attached **Exhibit "B"**. All of the real and personal property title, interests and rights conveyed herein are referred to collectively as the "Property".

C. Based upon Seller's representations regarding the description of the Property to be sold, Buyer makes its offer to purchase to Seller herein, contingent upon: (a) Seller's acceptance of the terms, conditions and warranties set forth below which, when accepted by Seller and approved by the Court by an order, in form acceptable to Buyer, for an 11 U.S.C. §363 sale of the Property, not subject to appeal (the "Order"), authorizing the same under the terms and conditions hereof, will become a binding Agreement between the parties; and (b) satisfaction of the contingencies stated herein.

D. Seller's acceptance of Buyer's offer herein through its execution of this Agreement, and upon entry of the Order, will bind Seller and Buyer to close the sale transaction contemplated herein subject to the terms, warranties and conditions of this Agreement, together

with other matters affecting title and conveyance as may be reasonably necessary to effectuate the sale transaction contemplated herein.

NOW, THEREFORE, in consideration of the mutual covenants of the parties expressed herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed between the parties as follows:

1.0 **Form of Purchase.**

1.1 **Time of Offer.** The offer made by Buyer hereunder is contingent upon Seller's acceptance and execution of this Agreement without change on or before 5:00 p.m. Mountain Time, December 3, 2018, and the obtaining of the Order within the time frame stated below.

1.2 **Sale Description.** This is an asset purchase only; no liabilities of Seller are or will be assumed by Buyer. Buyer offers to buy, and Seller agrees to sell to Buyer, under the terms set forth below, Seller's fee interest in the Property free and clear of all liens, encumbrances, lis pendens, claims, leases, judgments, rights of possession and redemption, writs, charges and defects, and with insurable access to all portions of the Property acceptable to Buyer. The legal descriptions for the Property will be based upon a preliminary commitment of title in form and substance acceptable to Buyer and provided to Buyer within seven (7) business days of Seller's execution of this Agreement. Seller and Buyer recognize and agree that the acreage and legal description stated herein is tentative and will be modified by the property description information contained within the preliminary commitment, but only as approved by Buyer in writing as described in 1.3 below, provided, further, that Buyer must be satisfied as to the condition of title as a contingency up to, and for, Closing.

1.3 **Sufficiency of Legal Description and Agreement Upon Acreage.** The parties hereto recognize that Buyer's offer to purchase, and the agreement contained herein, is contingent upon Seller providing to Buyer, in form and substance satisfactory to Buyer, a legal description for the Property based upon the commitment described in paragraph 5.0 below within five (5) business days from the Seller's execution of this Agreement and further contingent upon Buyer's satisfaction of the legal description for, and sufficiency of, the Property and the total number of acres to be sold and purchased hereunder, and Buyer will have a period of ten (10) business days from Buyer's receipt of the preliminary commitment and legal description provided by Seller to review and approve of the same ("Legal Description Approval"). Said approved Property description and acreage description, when in form and substance satisfactory to Buyer, will become **Exhibit C** to this Agreement. In addition, the legal description for the warranty deed conveying the Property from Seller to Buyer as referenced below must be acceptable to Buyer and must conform to that stated within the Legal Description Approval. In the event that Seller fails to provide a Property and acreage description deemed sufficient by Buyer within five (5) business days of Seller's execution of this Agreement, unless that time is extended in writing by the parties, then this Agreement may be immediately terminated at Buyer's option and Seller and/or the Closing Agent (defined below) will return all money paid by Buyer to Buyer under paragraph 2.0, including the Earnest Money (defined below), immediately upon demand.

1.4 **Contingency.** In the event that any contingency set forth in this paragraph 1.0 is

not timely satisfied, then Buyer may terminate the Agreement without liability, damage, fee, penalty, payment or cost to Seller by Buyer and Buyer will receive immediate return of the payments made to Seller, including the Earnest Money and Seller will have no right to claim or offset or damages by reason of such termination.

2.0 Purchase Price.

2.1 Method of Payment. The total purchase price to be paid by Buyer for Seller's right, title and interest in the Property will be in the amount of **\$5,129,000.00** ("Purchase Price"). The Purchase Price will be paid as follows:

- a. The sum of **\$25,000.00** as refundable earnest money ("Earnest Money") subject to the terms hereof and to be held by **First American Title Company of Madison County**, 122 State St., P.O. Box 899, Ennis, MT 59729 ("Closing Agent") until Closing and applied as a credit against the Purchase Price at Closing or refunded to Buyer as set forth herein. The Earnest Money will be paid by Buyer within five business days of Seller's execution of this Agreement provided that all contingencies required of Seller prior to that date are satisfied in full;
- b. The sum of **\$200,000.00** will be applied at Closing ("Credit ") to reduce the Purchase Price as a credit for the sum owed to Buyer by Seller under the Lease. Such \$200,000.00 is acknowledged to be a compromise of the total value due to Buyer by Seller for the remaining period of the Lease and, provided that the transaction contemplated herein for the purchase of the Property is fully consummated in all respects as provided herein, including with entry of the Order, then Buyer, as lessee, will deem the Lease obligation owed by Seller as paid in full; and
- c. The **balance of the Purchase Price**, less the Earnest Money and the Credits which will be credited against the Purchase Price to be paid at Closing, provided that the transaction contemplated herein for the purchase of the Property is fully consummated in all respects as provided herein, including with entry of the Order, will be paid in cash, which remaining balance is in the amount of **\$4,904,000.00**, at Closing contingent upon satisfaction of all terms, contingencies, warranties, conditions and matters herein.

3.0 Water, Mineral and Other Rights.

3.1 Water Rights. Prior to December 14, 2018, Seller will disclose and make available to Buyer all information deemed relevant by Buyer regarding the water rights for the Property, including without limit, a DNRC printout and all other pertinent information regarding all recorded water rights, points of diversion, wells, ditch rights, springs, dams, reservoirs, water ponds and rights to use of water whatsoever, and a listing of all unperfected and/or unrecorded water rights, held, used or owned by Seller (collectively "Water Rights"). Buyer must be satisfied as to the description, terms and sufficiency of all Water Rights, together with all the documents of assignment and/or conveyance pertaining thereto, as a contingent condition for Closing. Seller warrants and represents that it knows of no pending legal action, claim or

challenge to the Water Rights which would prevent Buyer from becoming the transferee in good standing under the same at Closing. This warranty and representation will survive the Closing and Seller will indemnify Buyer as provided below.

3.2 Mineral Rights. Seller will convey to Buyer all mineral rights that it holds to the Property at Closing. Seller will make all information known to Seller regarding the state of mineral rights for the Property to Buyer prior to December 14, 2018; provided, however, that Seller will not be responsible for providing or paying for a mineral title report to the Property.

3.3 Wind, Solar Rights. Seller will convey to Buyer all wind and solar that it holds to the Property at Closing. Seller will make all information known to Seller regarding the state of wind and solar rights for the Property to Buyer prior to December 14, 2018; provided, however, that Seller will not warrant the same.

3.4 Contingency. In the event that any contingency set forth in this paragraph 3.0 cannot be satisfied prior to Closing, then Buyer will be entitled to reserve its rights existing prior to the Agreement and to terminate the Agreement without liability, damage, fee, penalty, cost or payment to Seller by Buyer and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money, and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum" as described below.

4.0 **Agricultural Grazing Leases and Permits; Outfitting and/or Hunting Leases.**

4.1 Leases and Permits. Seller warrants and represents to Buyer that there are no existing verbal or written leases affecting the Property, including agricultural grazing leases and permits or leases with the State of Montana, Bureau of Land Management, or any other entity or individual appurtenant to the Property, other than the Lease between Buyer and Seller. This warranty and representation will survive the Closing and Seller will indemnify Buyer as provided below.

4.2 Outfitting Leases and/or Hunting Leases. Prior to December 14, 2018, Seller will disclose and make available to Buyer all information deemed relevant by Buyer regarding any existing lease(s) or permit(s) for outfitting, hunting or fishing on the Property, if any. Seller will terminate all leases and permits that it holds for outfitting, hunting or fishing on the Property prior to Closing, and will reimburse the party to the lease(s) or permits(s) for claims such party may have as a result of Seller's termination of the lease(s) or permit(s). Seller will be deemed to warrant and represent at Closing that no leases or permits for outfitting, hunting or fishing on the Property exist at Closing or that any payment, fee, damage or cost remains for the same, and such warranty and representation will survive the Closing and Seller will indemnify Buyer as provided below.

4.3 Contingency. In the event that any contingency set forth in this paragraph 4.0 cannot be satisfied prior to Closing, then Buyer will be entitled to reserve its rights existing prior to the Agreement and to terminate the Agreement without liability, damage, fee, penalty, cost or payment to Seller by Buyer and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money and Seller will have no right to claim or offset or damages

by reason of such termination; provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum" as described below.

5.0 **Title, Conveyance.**

5.1 **Warranty Deed.**

At Closing, Seller will convey to Buyer and/or his assigns, by recordable warranty deed for the real property with the covenants expressed in Section 30-11-110, MCA, and bill of sale for the personal property, with such conveyances providing complete, good, insurable and marketable title to the Property free and clear of all liens, encumbrances, lis pendens, claims, leases, judgments, rights of possession and redemption, writs, charges and defects, and with insurable access to all portions of the Property acceptable to Buyer, and subject only to:

- a. Real estate taxes not yet due or payable at the time of Closing.
- b. Recorded easements for public utilities.
- c. Recorded easements for roads and rights of way.
- d. Reservation of mineral rights by the federal government and as severed and held by private parties pursuant to prior instruments of record.

To the extent that any matter of record is not satisfactory to Buyer upon a review of a title commitment to be provided by Seller as set forth in 5.2 below, and any update thereto, then the provisions of paragraph 5.3 below will apply with respect to such matters of record, including, but not limited to, defects, encumbrances, liens or exceptions to title. In addition, at Closing, Seller will assign, convey and transfer to Buyer, all of Seller's mineral rights, wind rights, solar rights, water rights and ditch rights, now or hereafter appurtenant to or used on such Property. Seller warrants and agrees that it will take no step or engage in any omission which would permit any lien, encumbrance, judgment, lis pendens, defect, writ or exception to title to be placed of record.

5.2 **Title Commitment.** Within seven (7) business days from the parties' execution of this Agreement, Seller at its cost will deliver to Buyer a current preliminary title commitment for an owner's title insurance policy issued by **First American Title Company of Madison County**, in the amount of the Purchase Price for the Property. The title commitment will be evidence of good title as therein shown as to all matters insured by the policy, subject only to the exceptions stated above for the warranty deed and for the lien created by any mortgage instrument disclosed by such preliminary commitment but which will be removed at Closing, as verified by the Closing Agent in writing at least ten (10) business days prior to the Closing. It is a contingency for Closing that Seller will take no step or omit to take any step which would cause a lien, encumbrance or cloud on title to accrue or come of record subsequent to the issuance of the title commitment. At the time of the Closing, Seller at its cost will provide a date down endorsement to Closing showing no change in title beyond the permitted exceptions described above. At Closing, Seller, at its cost, will provide an owner's title policy in the name of Buyer in the coverage form described above, subject only to the matters set forth under the

warranty deed in paragraph 5.1, insured in the Purchase Price, together with insurable access to all portions of the Property. The parties agree that the reference to a ten (10) business day time period for Buyer to review and approve matters pertaining to a preliminary title commitment referenced at paragraph 1.3 above refers only to Buyer's review and approval of the legal description for the Property and not to matters pertaining to title or exceptions to title, which will remain as a right of review for, and approval by, Buyer of and for all matters pertaining to title (other than the legal description) and will remain as a contingency for Closing that must be satisfactory to Buyer until receipt and approval by Buyer of Seller's date down endorsement on the date of Closing. The costs of the preliminary and owner's title commitment and endorsements thereto, DNRC disclosure and any other title insurance reports will be paid by Seller as a part of the closing costs.

5.3 Title Clearance. If the title commitment discloses defects, liens, encumbrances or exceptions to title not permitted by this Agreement, Seller will have twenty (20) days from the date of the commitment to have the defects, liens, encumbrances or exceptions waived or removed or insured over by the title insurer with respect to the title commitment. If Seller fails to either furnish such documentation or to have these matters removed or cured within this time, Buyer, at his sole election may:

- a. Terminate the Agreement without liability, damage, fee, penalty, damage, liability, cost or payment by Buyer to Seller whereupon Buyer will receive immediate payment of any payment made to Seller, including the Earnest Money, provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum" as described below; or
- b. Waive such defect, encumbrance or exception.

5.4 Contingency. In the event that any contingency set forth in this paragraph 5.0 is not timely satisfied, then Buyer will be entitled to reserve its rights existing prior to the Agreement and to terminate the Agreement without liability, damage, fee, penalty, payment or cost from Buyer to Seller and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum" as described below.

6.0 Financing.

6.1 Loan for Buyer. It is a contingency for Closing that Buyer can secure financing on terms solely satisfactory to Buyer from its chosen lender for the purpose of completing the purchase of the Property under the terms hereof. Attendant to this contingency is the satisfaction of all contingencies herein and to satisfaction of a contingency that an appraisal of the Property obtained by Buyer's lender will show a value which exceeds or is equal to the Purchase Price for the Property.

6.2 Contingency. In the event that any contingency set forth in this paragraph 6.0 is not timely satisfied, then Buyer will be entitled to reserve its rights existing prior to the Agreement and to terminate the Agreement without liability, damage, fee, penalty, payment or

cost from Buyer to Seller and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum" as described below.

7.0 Court and Creditor Approval.

7.1 Section 363 Sale. The parties acknowledge and agree that the terms of this Agreement are subject to approval by the Court under 11 U.S.C. §363 through entry of the Order for the same in form satisfactory to Buyer and in a form such as will permit the title company issuing the owner's final title insurance policy to show the title to the Property to be free and clear of all liens, judgments, lis pendens, rights of possession and redemption, encumbrances, claims, rights, title and interests of any and all third parties, except as permitted herein ("363 Sale"), and, absent such approval and entry of the Order by the Court, Buyer will have no obligation to close the transaction or pay the Purchase Price, including the giving of the Credit, and that, upon a failure of Seller to promptly obtain the Order on or before December 21, 2018, or such additional time as may be agreed by Buyer in writing, then the Agreement will be deemed to be terminated without notice and Buyer will be entitled to, and will receive, immediate return of the Earnest Money, together with any other sum or payment made to Seller or the Closing Agent herein, and Buyer will be entitled to the "Expense Reimbursement Sum" described below in the event that the failure to obtain the Order in favor of Buyer is the result of the sale of the Property to a third party, conversion of the Case to a Chapter 7 or the appointment of a Chapter 11 trustee who fails to promptly and timely obtain the Order to permit the transaction contemplated herein to be timely Closed. The 363 Sale and the Order will be on the basis that the Property will be sold to Buyer free and clear of all liens, judgments, lis pendens, rights of possession and redemption, encumbrances other than those permitted herein, claims, rights, title and interests of the Seller and all creditors and any trustee of Seller, including those asserting rights or liens against the Property. Seller will move the Court for the Order permitting the 363 Sale of the Property to Buyer within seven (7) business days of the Seller's execution of this Agreement and Seller will request expedited notice for a hearing on the motion for the 363 Sale at such time. The 363 Sale will be treated as a Bankruptcy Rule 6004(f)(1) private sale, and will be properly noticed as a 363 sale under Rules 6004(c) and 9014, with a hearing thereon as required. The 363 Sale Order must state that it is deemed to be a final order for the purpose of appeal and the requirement of Buyer to Close the transaction under the Agreement will not be binding upon the Buyer, including the obligation to pay the Purchase Price or to give Credits 1 and 2, until the Order is final and no longer appealable.

7.2 Expense Reimbursement Sum. In the event that the Seller fails to obtain the Order on or before December 21, 2018, or such additional time as agreed by Buyer in writing, which failure is the result of a sale of the Property to a third party, conversion of the Case to a Chapter 7 or the appointment of a Chapter 11 trustee who fails to promptly and timely obtain the Order to permit the transaction contemplated herein to be timely Closed, then Buyer will be entitled to an administrative priority claim against the bankruptcy estate of the Seller, for the reimbursement of all fees, costs and payments incurred by Buyer to create and effectuate the Agreement herein, including Buyer's reasonable attorney fees and costs, and to obtain financing for payment of the Purchase Price, in a collective amount not to exceed the sum of \$25,000.00, it being recognized by Seller that Buyer will have to incur costs and fees to proceed forward to

meet its requirements under the Agreement before entry of the Order (“Expense Reimbursement Sum

7.3 Contingency. Seller will promptly move the Court for immediate approval of the Expense Reimbursement Sum upon its execution of this Agreement. Seller’s failure to obtain Court approval of the Expense Reimbursement on or before December 14, 2018, or Seller’s failure to obtain the Order in the form and manner stated herein on or before December 21, 2018, will entitle Buyer to reserve its rights existing prior to the Agreement and to terminate the Agreement immediately without liability, damage, fee, penalty, payment or cost from Buyer to Seller and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money, and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the Expense Reimbursement Sum if the same is approved but Seller fails to obtain the Order in the manner and form as required herein.

8.0 Closing.

8.1 Date of Closing/ Possession/Condition of Property. Closing will occur only if all contingencies set forth herein are satisfied and only upon the entry of the Order in the form and manner stated herein. The Closing Date for the purchase of the Property will be on or before January 18, 2019, unless such date is required to be extended by reason of the finalization of a lender appraisal for the Property or because it is required by the Closing Agent or title insurer or because additional time is required to ensure that the Order is not subject to appeal or unless extended by mutual agreement of the parties in writing.

8.2 Closing Costs. Seller and Buyer will each pay one half of all Closing costs assessed by the Closing Agent to close the transaction, except for the costs of title insurance, including the owner’s title insurance in the amount of the Purchase Price for Buyer, which will be the sole responsibility of Seller; provided, however, that the parties will be responsible for the payment of their own attorney fees and costs associated with the transaction herein, except as to Buyer in the case of a Expense Reimbursement Sum.

8.3 Closing. A closing will be arranged by the Closing Agent upon the timely satisfaction of the contingencies herein, wherein the Buyer will provide for payment of the Purchase Price and Seller will provide for the delivery and recordation of the instruments of conveyance for the Property from Seller to Buyer (“Closing”).

9.0 Environmental Matters.

9.1 Environmental Inspection. Buyer may inspect all of the Property for environmental matters at its cost. Seller will provide all environmental information in its file to Buyer for inspection and Buyer may contact all persons or entities of his choosing to determine and verify the extent of any environmental issue for the Property and Seller will hold Buyer harmless for the same. In the event that Buyer is not satisfied with the status of environmental matters on the Property on or before the Closing Date, then Buyer will be entitled to reserve its rights existing prior to the Agreement and to terminate the Agreement without liability, damage,

fee, penalty, payment or cost from Buyer to Seller and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum".

10.0 Taxes and Lease.

10.1 Taxes. Seller agrees to pay all taxes and assessments upon the Property prorated through the date of Closing.

10.2 Lease. Upon the completion of the Closing in accordance with the terms hereof, the Lease between the parties will be terminated without payment, fee or costs for either party, except for the Credit 1 referenced and applied as described herein.

11.0 Warranties and Representations of Seller/Indemnification.

11.1 Warranties and Representations of Seller. Seller makes the following warranties and representations to Buyer, in addition to those otherwise stated herein: (a) Seller is the holder of fee title to the Property disclosed within the Exhibit A attached hereto; (b) the Property is not subject to defects, liens, leases, encumbrances or exceptions to title not permitted by this Agreement, except such liens as will be released in full under the 363 Sale and related Order and as confirmed at Closing by the Closing Agent in the updated title commitment endorsement and final owner's policy of title insurance in the amount of the Purchase Price; (c) no person, agency, instrumentality or entity who is not a direct party to this Agreement holds a claim to, or right, title or interest in, any or all of the Property, except such lienholders whose interests and liens will be released in full under the 363 Sale and related Order and as confirmed at Closing by the Closing Agent in the updated title commitment endorsement and final owner's policy of title insurance in the amount of the Purchase Price; (d) there is no pending claim, challenge, quiet title or related action, lis pendens, suit, judgment, fine, penalty or demand, that has been made, or could be asserted, against any or all for the Property by any person, agency, instrumentality or entity who is not a direct party to this Agreement, except by such lienholders whose interests and liens will be released in full under the 363 Sale and related Order and as confirmed at Closing by the Closing Agent in the updated title commitment endorsement and final owner's policy of title insurance in the amount of the Purchase Price; and (e) Seller will not take any action, or omit to take any action, that will cause damage or waste to the Property prior to Closing, except for reasonable wear and tear, or subject the Property to any additional lien, claim, encumbrance, suit, fine, judgment, penalty or challenge after the date of this Agreement and prior to Closing. These warranties and representations, including any other stated herein, will be deemed to be continuing and will survive the Closing for a period of one year from the date of the same and Seller will indemnify Buyer for the same as provided below.

11.2 Indemnification. In the event that Seller becomes in breach of any warranty or representation made herein, then Seller will indemnify and hold Buyer harmless from any and all damages, obligations, claims, suits, causes of action, penalties, losses, fines, fees, costs, sums, amounts, payments, actions, and matters or effects relating to the Property of each and every kind whatsoever, whether at law or in equity. This obligation of Seller for indemnification of Buyer will survive Closing for a period of one year from the date of the same and will be

accorded administrative expense priority to the extent that the Case remains open. s

12.0 Failure of Contingency or to Close.

12.1 Failure of Buyer to Close Transaction. In the event Buyer fails to close the transaction, unless the same be by reason of a failure to satisfy a contingency prior to Closing as contemplated herein, Seller's remedy will be limited to termination of the Agreement and retention of the Earnest Money as fully liquidated damages. It is expressly understood and agreed that Buyer will not have any obligation to close under this Agreement unless all contingencies have been satisfied and Buyer elects to proceed forward at Closing as a result thereof. If any contingency is not satisfied as provided hereunder, then Buyer will be entitled to reserve its rights existing prior to the Agreement and to terminate the Agreement without liability, damage, fee, penalty, payment or cost from Buyer to Seller and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum".

12.2 Failure of Seller to Close Transaction. In the event Seller fails to perform or to comply with any of the warranties, representations, conditions, terms and/or provisions of this Agreement which Seller is obligated to perform, fulfill or comply with, or in the event of a failure to satisfy any contingency, term condition or requirement of this Agreement, then Buyer will be entitled to reserve its rights existing prior to the Agreement and to terminate the Agreement without liability, damage, fee, penalty, payment or cost from Buyer to Seller and Buyer will receive immediate repayment of any payment made to Seller, including the Earnest Money and Seller will have no right to claim or offset or damages by reason of such termination; provided, however, that Seller may be liable to Buyer for the "Expense Reimbursement Sum".

13.0 Notices.

13.1 Service of Notice. All notices or other communications required by this Agreement will be in writing and will be served upon the parties (and their respective counsel) either personally or by mail addressed to the parties at the addresses set forth above and by electronic mail. If service is by mail, the mailing of a notice by registered or certified mail, addressed to a party at its address indicated above (or any subsequent address which has been furnished in writing to the other party), return receipt requested, will be deemed sufficient service and will be deemed duly made and delivered as of three (3) days after the deposit of said notice or other communication in the U.S. Mail. Unless subsequently changed by notice, the addresses of the parties are those set forth above.

14.0 Required Disclosures.

14.1 Required Disclosures. Seller will sign the disclosures attached hereto as **Exhibit D**, which will include, disclosures as to Megan's Law, Radon, Noxious Weeds, and property condition.

15.0 Miscellaneous.

15.1 Binding on Successors. This Agreement will inure to the benefit of, and will be

binding upon, the parties hereto and their respective heirs, devisees, trustees, personal representatives, successor and assigns.

15.2 Assignment. Buyer may assign its rights under this Agreement, or to any portion thereof including, without limit, title in part, to any other person, trust, corporation, partnership, company or other entity in which any Buyer holds an interest without the necessity of obtaining the consent of Seller.

15.3 Entire Agreement. The parties hereto agree that this Agreement, with exhibits and contemplated exhibits and the Order, constitute their entire Agreement, and that there are no other writings or agreements or understandings, oral or written, between the parties hereto, except as recited and/or contemplated herein.

15.4 Amendment. No amendment of this Agreement will be valid unless in writing and signed by the parties hereto.

15.5 Captions. Captions or headings in this Agreement are for convenience only and will not be deemed to limit, construe, affect or alter the meaning, scope or intent of the provisions thereof.

15.6 Time of Essence. Time is of the essence of this Agreement.

15.7 Recitals. The Recitals set forth in the preamble hereto, and all exhibits attached hereto, are a material part hereof and are hereby incorporated herein.

15.8 Severability and Waiver. If any term or provision of this Agreement or the application thereof to any person or circumstance will to any extent be held invalid or unenforceable by any court of competent jurisdiction, and such invalidity will not affect other provisions of this Agreement or the applications thereof which can be given effect without the invalid provision or application, and subject to Buyer's sole satisfaction with any such severability, the parties hereto agree that the provisions of this Agreement are and will be severable. Waiver of any breach or default by any party will not constitute a continuing waiver.

15.9 Place and Jurisdiction. This is a Montana contract enforceable under the laws of that state.

15.10 Attorney Fees. In the event any party hereto is required to bring suit against the other party arising out of any aspect of this Agreement or to enforce or determine any rights hereunder, the prevailing party will be entitled to recover from the opposing non-prevailing party its reasonable costs, attorney fees and expenses incurred in connection therewith.

15.11 Purchase Price Allocation. Buyer will be entitled to allocate the value of the Property as Buyer's tax professionals may reasonably require, including assigning any portion of this Agreement to one or more assignees. Allocation of value and assignment of this Agreement will be as determined by Buyer prior to Closing.

15.12 Realtor and Broker Fees. Seller agrees that it will pay all realtor and broker fees resulting from this transaction at Closing. Buyer represents to Seller that he has not engaged a

Buyer broker or agent for this transaction.

15.13 Counterparts. This Agreement may be executed in counterparts, including facsimile and scanned PDF counterparts, by the parties hereto and upon execution will constitute one Agreement.

15.14 Negative Effect. In the event that this Agreement accords time to Buyer to review, approve or give notice of any matter herein, and Buyer should fail to give notice of its acceptance or rejection within such time frame, then it will be presumed that Buyer has not given acceptance or approval for such matter.

15.15 Authority. Seller represents and warrants to Buyer that it has performed all required acts, and executed and adopted all required resolutions, to approve this Agreement herein and to authorize Terrance McClinch to execute the same on its behalf.

15.16 General Matters. Each party hereto is represented by counsel of its choosing or has been given the opportunity to obtain counsel. This Agreement will be interpreted against the parties equally. Each party represents that it has read this Agreement carefully and in consultation with its advisors regarding all ramifications of the same, including for legal and tax purposes. Each party represents that each signs this Agreement of their own free will and accord. This Agreement will be binding upon the parties and their respective heirs, successors, insurers, personal representatives, trustees and assigns. The Recitals stated herein are incorporated into the parties' agreement.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed effective the day and year first above written.

SELLER:

CIRCLE 9 CATTLE COMPANY, LLC

By: Terrance McClinch / DGA

Its: Sole member

BUYER:

DAVID SCHUETT

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Buyer broker or agent for this transaction.

15.13 Counterparts. This Agreement may be executed in counterparts, including facsimile and scanned PDF counterparts, by the parties hereto and upon execution will constitute one Agreement.

15.14 Negative Effect. In the event that this Agreement accords time to Buyer to review, approve or give notice of any matter herein, and Buyer should fail to give notice of its acceptance or rejection within such time frame, then it will be presumed that Buyer has not given acceptance or approval for such matter.

15.15 Authority. Seller represents and warrants to Buyer that it has performed all required acts, and executed and adopted all required resolutions, to approve this Agreement herein and to authorize Terrance McClinch to execute the same on its behalf.

15.16 General Matters. Each party hereto is represented by counsel of its choosing or has been given the opportunity to obtain counsel. This Agreement will be interpreted against the parties equally. Each party represents that it has read this Agreement carefully and in consultation with its advisors regarding all ramifications of the same, including for legal and tax purposes. Each party represents that each signs this Agreement of their own free will and accord. This Agreement will be binding upon the parties and their respective heirs, successors, insurers, personal representatives, trustees and assigns. The Recitals stated herein are incorporated into the parties' agreement.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed effective the day and year first above written.

SELLER:

CIRCLE 9 CATTLE COMPANY, LLC

By: _____

Its: _____

BUYER:



DAVID SCHUETT

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Exhibit "A"

TOWNSHIP 1 SOUTH, RANGE 5 WEST, P.M.M, Madison County, Montana:

Section 14: All those portions of the SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 14, lying East of the Waterloo graveled road and located within the boundaries of Madison County, EXCLUDING however, a parcel of land located in the SW $\frac{1}{4}$ of Section 14, Township 1 South, Range 5 West, P.M.M., according to Certificate of Survey filed in Book 7 of Surveys, page 1640-BA, records of Madison County, Montana, (Deed Reference: Book 221, page 54)

TOWNSHIP 1 SOUTH, RANGE 5 WEST, P.M.M., Madison County, Montana:

Section 22: All that portion of the E $\frac{1}{2}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ lying Easterly of the county road.

Section 23: W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and all that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ lying Easterly of the county road. Also all of the S $\frac{1}{2}$ lying Westerly of the Burlington Northern Railroad right-of-way.

Section 27: All of the N $\frac{1}{2}$ NE $\frac{1}{4}$ lying Easterly of the county road.
(Deed Reference: Book 297, page 496)

TOWNSHIP 1 SOUTH, RANGE 5 WEST, P.M.M., Madison County, Montana:

Section 23: S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ and all of that part of the NE $\frac{1}{4}$ lying Westerly of the right of way line of the Ruby Valley Branch of the Northern Pacific Railroad Company (now Burlington Northern, Inc.) EXCLUDING however, the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ (Deed Reference: 298, page 339)

A tract of land situated in the NW $\frac{1}{4}$ of Section 26, Township 1 South, Range 5 West, P.M.M., more particularly shown and described as Tract "B2" on Certificate of Survey filed in Book 7 of Surveys, page 1605-BA, records of Madison County, Montana.

Commonly known as: Sec 14,22,23,26,27 T1S R5W, MT

EXHIBIT B – PERSONAL PROPERTY DESCRIPTION

Thorson squeeze chute
Portable livestock panels (40 panels)
Hanging metal corral and pasture gates (35 gates)
Shop equipment
John Deere 2040 tractor and post pounder

EXHIBIT C – LEGAL DESCRIPTION APPROVAL

Legal description and acreage description to be provided by Seller to Buyer within seven (7) business days of Seller's execution of this Agreement, which, when so provided in writing, such writing will be deemed to be incorporated as Exhibit B hereto by reference, whereupon Buyer will have ten (10) business days from Buyer's receipt of the same to approve the same, whereupon its written approval, if given will be deemed to also be incorporated as Exhibit B hereto by reference.

EXHIBIT D
Required Disclosures

Lead-Based Paint. Seller represents that it has not conducted an inspection or examination concerning the Premises, but has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the buildings or improvements on the Premises. Buyer hereby waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. The parties acknowledge that, to the best of their knowledge, the information provided by each party in this subsection (b) is true and accurate.

Radon Disclosure. Pursuant to the Montana Radon Control Act, MCA §75-3-606, Seller hereby provides to Buyer the following disclosure: RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal guidelines have been found in buildings in Montana. Additional information regarding radon and radon testing may be obtained from your county or state public health unit. This property has not been tested for radon and radon mitigation treatment has not been done on this property.

Megan's Law Disclosure. Seller hereby provides to Buyer the following additional disclosure: Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code Annotated, certain individuals are required to register their addresses with the local law enforcement agencies as part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement agencies will make the information concerning registered offenders available to the public. Seller represents that it has no reports, records or knowledge regarding registered offenders in the vicinity of the Premises and has made no inquiry of local law enforcement agencies regarding the same. Buyer acknowledges being so advised, and acknowledges being advised that, should Buyer desire further information regarding such registered offenders, Buyer should contact the local County Sheriff's office, the Montana Department of Justice in

Helena, Montana, and/or the probation officers assigned to Yellowstone County, Montana.

Mold Disclosure. Buyer acknowledges that: There are many types of mold. Inhabitable properties are not and cannot be constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. Information concerning mold growth may be available from the Yellowstone County Extension Agent or Health Department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain strains of mold cause infections, particularly in individuals with suppressed immune systems. Some experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, experts do not agree about the nature and extent of the health problems caused by mold or about the level of mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying the link between mold and serious health conditions. Seller cannot and does not represent or warrant the presence or absence of mold. It is the Buyer's obligation to determine whether a mold problem is present on the Premises. To do so, the Buyer should hire a qualified inspector and make any contract to purchase, rent or lease contingent upon the results of that inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of or propensity for mold in a building that is subject to any contract to purchase, rent or lease. Seller hereby states that it has no knowledge that the Premises has mold present; no knowledge that the Premises has been tested for mold; and no knowledge that any mitigation or treatment for mold has been proposed or performed on any building on the Premises

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

Circle 9 Cattle Company, LLC,

Debtor.

Chapter 11

Case No. 18-10569

ORDER GRANTING DEBTOR'S MOTION FOR ORDER AUTHORIZING: (i) SALE OF DEBTOR'S PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; (ii) PAYMENT OF COMMISSION TO DEBTOR'S REAL ESTATE BROKER; (iii) RETENTION OF AND PAYMENT TO LOCAL COUNSEL IN MONTANA; (iv) DISTRIBUTION OF SALE PROCEEDS AT CLOSING; (v) TRANSFER OF DEBTOR'S REMAINING POST-CLOSING PROCEEDS TO TERRANCE MCCLINCH; AND (vi) CONTINGENT DISMISSAL OF THE DEBTOR'S CASE

This matter having come before the Court on the Motion for Order Authorizing: (i) Sale of Debtor's Property Free and Clear of Liens, Claims, and Encumbrances; (ii) Payment of Commission to Debtor's Real Estate Broker; (iii) Retention of and Payment to Local Counsel in Montana; (iv) Distribution of Sale Proceeds at Closing; (v) Transfer of Debtor's Remaining Post-Closing Proceeds to Terrance McClinch; and (vi) Contingent Dismissal of the Debtor's Case [Dkt. No. ____] (the "Motion"), filed by Circle 9 Cattle Company, LLC (the "Debtor"), seeking entry of an order authorizing the following relief: (i) the sale of substantially all of the Debtor's property free and clear of all liens, claims, and encumbrances to David Schuett ("Buyer") in accordance with the Offer and Agreement for Sale and Purchase (the "Agreement"); (ii) payment of a commission to the Debtor's real estate broker upon the closing of the sale; (iii) retention of and payment to local counsel in Montana to assist the Debtor with closing the sale; (iv) distribution of the proceeds from the sale at closing in the manner specifically set forth herein, including in full and final satisfaction of the claims of certain secured creditors; (v) transfer of

the remaining proceeds held by the Debtor after closing and payment of allowed claims to the chapter 11 estate of Terrance McClinch (“McClinch”); and (vi) dismissal of the Debtor’s bankruptcy case contingent upon the closing of the sale in accordance with the Agreement and resolution and payment of allowed claims (as are more fully described below); a hearing having been held on December 20, 2018; all parties in interest having been afforded an opportunity to be heard with respect to the Motion and all of the relief related thereto; it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest, and is in the public interest; and after due deliberation thereon and sufficient cause appearing therefore, the Court hereby finds as follows:¹

A. This Court has jurisdiction over all assets of the Debtor and its chapter 11 estate, including, without limitation, the Property, and the Court has all necessary power and authority to grant the relief contained herein. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. As evidenced by the certificate of service filed with the Court, proper, timely, adequate and sufficient notice of the Motion has been provided under the circumstances.

C. The Agreement is the result of the Debtor’s extensive efforts to maximize recoveries to the Debtor’s estate for the benefit of creditors.

D. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Property.

E. The actions to be taken by the Debtor and Buyer are appropriate under the circumstances of this chapter 11 case and are in the best interests of the Debtor, its estate, its

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

creditors, and other parties in interest, and are in the public interest. Approval of the Agreement and of the sale at this time is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest, and is in the public interest.

F. The Agreement was negotiated, proposed, and entered into by the Debtor and Buyer without collusion, in good faith, and based upon arm's-length bargaining. Neither the Debtor, its insiders and affiliates, nor Buyer, has engaged in any conduct that would cause or permit the Agreement to be avoided under § 363(n) of the Bankruptcy Code. Buyer is not an "insider" or "affiliate" of the Debtor (as such terms are defined in the Bankruptcy Code).

G. Buyer is acting, with respect to the Agreement, and the transactions contemplated thereby, as a good faith purchaser (as that term is used in the Bankruptcy Code) and is, accordingly, entitled to all of the protections set forth in § 363(m) of the Bankruptcy Code. Buyer will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transactions contemplated by the Agreement at all times after the entry of this Order.

H. The Agreement must be approved promptly in order to preserve the value of the Debtor's estate for the benefit of creditors.

I. As set forth in the Agreement, Buyer would not have entered into the Agreement and would not consummate the sale if the sale of the Property was not, pursuant to § 363(f) of the Bankruptcy Code, free and clear of any and all liens, claims, and interests.

J. The Debtor may sell the Property free and clear of any and all liens, claims, and interests of any kind or nature whatsoever, including any rights or claims based on any putative successor or transferee liability, because, in each case, one or more of the standards set forth in § 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

K. Upon closing of the sale, the transfer of the Property to Buyer shall be a legal, valid, and effective transfer of the Property and shall vest Buyer with all right, title, and interest of the Debtor in, to and under the Property free and clear of any and all liens, claims, and interests.

L. Under the circumstances of and on the record of this case, the Court hereby finds that good cause exists to waive and vacate the stay imposed by Bankruptcy Rule 6004(h). Accordingly, such stay is hereby vacated and shall have no application to the relief afforded by this Order.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREEED AS FOLLOWS:

1. The Motion is granted, and the relief requested therein is granted, as is further described herein.

2. All objections, if any, to the entry of this Order or the relief granted herein and requested in the Motion, that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, are denied and overruled.

3. The Agreement, and all of its terms, conditions, schedules, exhibits, and ancillary documents, are fully and finally approved. Pursuant to §§ 105 and 363 of the Bankruptcy Code, the Debtor is authorized and directed to take any and all actions necessary to fulfill its obligations under, and comply with the terms of, the Agreement and to consummate the sale pursuant to, and in accordance with, the terms and conditions of the Agreement and this Order, without further leave of the Court. The Debtor is authorized to take any and all further actions as may reasonably be requested by Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to Buyer the Property or as may be necessary or appropriate to the

performance of the Debtor's obligations as contemplated by the Agreement without further leave of the Court.

4. This Order shall be binding in all respects upon all known and unknown creditors of, and holders of equity interests in, the Debtor and any and all other parties in interest, including, without limitation, any holders of liens, claims, and interests (including holders of any rights or claims based on any putative successor or transferee liability).

5. Pursuant to §§ 105(a) and 363(f) of the Bankruptcy Code, upon the closing and payment of the Purchase Price, the Property shall be transferred to Buyer free and clear of any and all liens, claims, and interests, whether in law or in equity, known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, direct or indirect, and whether arising by agreement, understanding, law, equity or otherwise, and whether occurring or arising before, on or after the Petition Date, or occurring or arising prior to the closing.

6. All entities that are currently, or on the closing may be, in possession of any or all of the Property are hereby directed to promptly surrender possession of such Property to Buyer on the closing, unless Buyer otherwise agrees in writing; provided, however, that nothing set forth herein shall prevent the Debtor and/or McClinch from having access to the Property after closing to recover the personal property of McClinch and/or the Debtor, which access shall be coordinated with Buyer.

7. The Debtor and Buyer, and each of their respective officers, employees, and agents, shall be authorized and empowered to take all actions and to execute and deliver any and

all documents and instruments that the Debtor or Buyer deem necessary or appropriate to implement and effectuate the terms of the Agreement and this Order.

8. The sale free and clear of liens, claims, and interests is self-executing, and neither the Debtor nor Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order.

9. The consideration provided by Buyer for the Property under the Agreement is fair and reasonable, and may not be avoided under § 363(n) of the Bankruptcy Code. The consideration provided by Buyer for the Property under the Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Agreement was not entered into, and the sale is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtor under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtor nor Buyer has entered into the Agreement or any agreement contemplated thereby or are consummating the sale with any fraudulent or otherwise improper purpose. No other person or entity or group of persons or entities has offered to purchase the Property for an amount that would provide greater value to the Debtor and its estate than Buyer. The Court's approval of the Motion and the Agreement are in the best interests of the Debtor, the bankruptcy estate of the Debtor, its creditors, and all other parties in interest.

10. The sale and any other transactions contemplated by the Agreement are undertaken by Buyer without collusion and in good faith in accordance with § 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization

provided in this Order to consummate the sale shall not affect the validity of the sale or the Agreement. Buyer is a purchaser in good faith of the Property pursuant to the Agreement and is entitled to all the protections afforded by § 363(m) of the Bankruptcy Code. Further, Buyer is released of any and all liability, if any, owed to any creditor of the estate.

11. The automatic stay provisions of § 362 of the Bankruptcy Code are lifted and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order.

12. The failure to specifically include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

13. The Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that: (i) Buyer consents to any such modification, amendment, or supplement in writing; and (ii) any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

14. Upon the closing of the sale as provided for by the Agreement, the Debtor is hereby authorized to distribute from the proceeds of such sale the amount of **\$169,257.00** to Hall & Hall, as full and final satisfaction of the amount owed by the Debtor to Hall & Hall for Hall & Hall's real estate brokerage services to the Debtor.

15. The Debtor is authorized to retain and pay local counsel in Montana through proceeds of the sale at closing to assist the Debtor with the closing, in an amount not to exceed **\$5,000.00**.

16. Upon the closing of the sale as provided for by the Agreement, the Debtor is hereby authorized to distribute the proceeds from the sale of the Property as set forth herein; provided, however, that the distribution to TPL and Coastal (exclusively as to the default fee) shall be held in escrow upon closing pending final resolution of the disputed amounts:

Total Sale Proceeds	\$5,129,000.00
Distribution of Proceeds at Closing	
Lease Credit	\$200,000.00
Broker Commission	\$169,257.00
U.S. Trustee Fees	\$51,290.00
Title Costs	\$9,611.00
First Interstate	\$1,931,103.01
Coastal	\$1,210,753.54
Coastal – Default Fee	\$108,394.40
TPL	\$775,899.19
CNB	\$516,211.25
Estimated Administrative Expenses	\$40,000.00
Local Montana Counsel	\$5,000.00
Total Distribution:	\$5,017,519.39
Remaining Proceeds Held by the Debtor	\$111,480.61

17. The payment amounts set forth above shall constitute the full and final satisfaction of all debt obligations owed to First Interstate and CNB by the Debtor, McClinch, 120 Commercial Street, LLC, Boothbay Harbor Shipyard, LLC, and Cross Land and Cattle, LLC (as applicable).

18. Upon the payment of \$1,210,753.54 to Coastal and a final determination and payment of the disputed payment amount as to the default fee sought by Coastal, such payments shall constitute the full and final satisfaction of all debt obligations owed to Coastal by the Debtor, McClinch, Candlelight Farms Aviation, LLC, and Cross Land and Cattle, LLC (as applicable).

19. Upon a final determination of the disputed payment amount as to TPL, such payment, once made, shall constitute the full and final satisfaction of all debt obligations owed to TPL by the Debtor, McClinch, Candlelight Farms Aviation, LLC, 120 Commercial Street, LLC, Boothbay Harbor Shipyard, LLC, and Cross Land and Cattle, LLC (as applicable).

20. Following the closing and the distribution of the sale proceeds as set forth in this Order (including as to actual administrative expenses), the Debtor shall distribute the remaining proceeds from the sale to McClinch, as the sole member and equity holder of the Debtor; provided, however, that to the extent any amounts placed in escrow at closing ultimately are not distributed to a creditor upon a final determination of the disputed amounts, such funds shall also be distributed to McClinch.

21. Upon an affidavit from the Debtor providing that: (i) closing of the sale has occurred in accordance with the Agreement, including the passage of time for appeal after entry of this Order; and (ii) the remaining disputes regarding the amounts owed to creditors (as set forth in this Order) have been resolved, the Debtor's bankruptcy case shall be dismissed.

22. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall not be stayed and shall be effective immediately upon entry, and the Debtor and Buyer are authorized to close the sale at the earliest practicable time under the terms of the Agreement upon the entry of this Order.

23. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order, the Agreement, all amendments thereto, and any waivers and consents thereunder.

Date:

Michael A. Fagone
United States Bankruptcy Court Judge
District of Maine