

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

In re:

**Cline Grain, Inc.,  
Allen L. Cline and Teresa A. Cline,  
Michael B. Cline and Kimberly A. Cline**

Debtors

Case No.: 17-80004-JJG-11  
Jointly Administered

**DEBTOR'S MOTION PURSUANT TO 11  
U.S.C. §363 TO SELL REAL ESTATE BY  
AUCTION FREE AND CLEAR *NUNC PRO  
TUNC* TO JUNE 29, 2017**

New Winchester Properties, LLC, a debtor and debtor-in-possession in these jointly administered cases (the "Debtor"), by counsel, pursuant to 11 U.S.C. §§ 363(b) and (f); Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure; and Local Bankruptcy Rules B-6004-1 and B-6004-2, seeks an order authorizing and approving the sale of the Debtor's real estate free and clear of liens, claims, interests, and encumbrances, with valid liens attaching to the sale proceeds (this "Sale Motion"). In support, the Debtor states the following:

**I. JURISDICTION AND VENUE**

1. This proceeding was commenced on January 3, 2017 (the "Petition Date"), with the filing of a petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code. The Debtor has continued after the Petition Date in the possession of its property and the management of its business as a debtor-in-possession pursuant to 11 U.S.C. §1203 of the Bankruptcy Code (the "Code").

2. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Sale Motion is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

3. No trustee or examiner has been appointed in these Chapter 11 cases, and no committees have been appointed or designated.

## II. BACKGROUND

4. On January 10, 2017, this Court ordered the joint administration of these cases.
5. The Debtor owns the following real estate, which was not the subject of prior sale motions and does not contain an elevator. Rather it contains a storage building (the "Real Estate"):

*Kingman*, Common address of 625 E. State Street, Kingman, IN 47952. State Parcel Id. No. 23-15-36-118-001.000-021, which contains approximately 1.787 acres more or less.
6. Although not an elevator, the Real Estate was auctioned by Maas at the auction, which took place on June 29, 2017. There was interest in the Real Estate at that time, and there were many bidders at the auction.
7. The bid procedures that applied to the Elevator sales were followed in all respects to the Real Estate's sale. The Real Estate's sale was conducted in the same manner as the Elevator sales and with the same parties.
8. The Real Estate was advertised along with the Elevators, however, it was indicated that additional Court authority was needed to sell the Real Estate.
9. Due to the fact that all parties thought a good price could be reached by selling the Real Estate at the auction, the Real Estate was offered for sale and competitive bidding took place, subject of course to court authority.
10. The winning bidder was aware by the nature of the Purchase Agreement that the sale needed bankruptcy court approval. A copy of the Purchase Agreement is attached hereto as Exhibit "A". The prospective buyer has offered at the auction the sum of \$23,000.00 plus a buyers premium of \$1,380.00.
11. The prospective buyer has tendered the down payment and is prepared to close upon the Court entering an Order approving the sale nunc pro tunc to June 29, 2017.
12. The Debtor believes the sale of the Real Estate is in the best interest of the estate and creditors.
13. There are no contingencies of sale, including the buyer seeking financing.
14. For the reasons set forth herein, and because the Real Estate's sale was the result of a public auction after significant marketing and exposure to the general public, the Debtor submits that the Purchase Agreement is a result of arms-length and good-faith negotiations.

### III. ASSERTED INTERESTS

15. All the debt of the Debtor has been fully disclosed in the schedules and amendments thereto filed in this matter. The complete schedules were filed on the Petition Date, and have been amended as needed to insure full disclosure of any and all debts.

16. There are no liens on the Real Estate other than taxes so the net proceeds will be available for the Debtor's Estate.

17. There may be covenants and restrictions that run with the Real Estate. The Debtor is not—by this Sale Motion—seeking to sell free and clear of any such covenant or restriction

### IV. BASIS FOR RELIEF REQUESTED

18. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor to sell or lease property other than in the ordinary course of business after notice and a hearing. Generally speaking, a Court will approve a proposed sale or lease of property outside the ordinary course of business if such a sale or lease represents sound business judgment. See *In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Allegheny Int'l Inc.*, 117 B.R. 171, 176-77 (W.D. Pa. 1990); *In re Stroud Ford, Inc.*, 163 B.R. 730, 732 (Bankr. M.D. Pa. 1993). Such a sale or lease must be proposed in good faith. *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 147-50 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1070-71; *In re Allegheny Inc.*, 117 B.R. at 176-77; *In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

19. Courts have found a sound business purpose if the sale of a debtor's assets is necessary to preserve the value of the assets for the estate, its creditors, or interest holders. *In re Abbotts Dairies, Inc.*, 788 F. 2d at 150.

20. The Debtor submits that the sale of the Real Estate is within its sound business judgment. The Debtor has determined that the sale of the Real Estate will maximize the value of the Debtor's estate and is in the best interest of the estate and its creditors.

21. Section 363(f)(2) of the Bankruptcy Code provides that a sale may be free and clear of any interest in such property of an entity other than the estate if such entity consents. The Debtor believes there are no liens on the Real Estate, but the Debtor will be serving all its creditors with this Sale Motion and notice of opportunity to object. Absent any objection to this Sale Motion, any parties holding liens, claims, interests or encumbrances on the Real Estate will be deemed to have consented to the sale thereby satisfying §363(f)(2).

22. Additionally 363(f)(3) of the Bankruptcy Code provides that a sale may be free and clear of any interest in such property of an entity other than the estate if the purchase price is greater than the aggregate value of all liens on such property.

23. The Debtor submits that one or more of the conditions set forth in §363(f) will be satisfied with the respect to the sale of the Real Estate. Specifically, those parties holding liens, claim, interests or encumbrances will consent, or absent an objection to the Sale Motion, shall be deemed to have consented. Further, any such lien, claims, interest or encumbrance will be adequately protected by attachment to the sale proceeds.

24. The Debtor also requests that if no objections are filed or pending at the time of hearing on this motion, that the Court waive the 14-day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

#### V. REQUEST FOR RELIEF

The Debtor requests the entry of an Order *Nunc Pro Tunc* to June 29, 2017: authorizing the sale of the Real Estate free and clear of liens, claims, interests and encumbrances pursuant to 11 U.S.C. §§ 363(b) and (f), with valid liens to attach to the proceeds of the sale; waiving the 14-day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure if no objections are filed or pending at the time of the hearing on this motion; and granting all other just and proper relief.

Respectfully submitted,

HESTER BAKER KREBS LLC

By: /s/ John J. Allman

Jeffrey M. Hester

John J. Allman

Suite 1600

One Indiana Square

Indianapolis, IN 46204

jhester@hbkfirm.com

jallman@hbkfirm.com

317.608.1128 direct

317.833.3031 fax

**CERTIFICATE OF SERVICE**

I hereby certify that on August 4, 2017, a copy of the foregoing *Debtor's Motion Pursuant to 11 U.S.C §363 to sell Real Estate by Auction Free and Clear Nunc Pro Tunc to June 29, 2017* 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.

- **U.S. Trustee** — [ustpregion10.in.ecf@usdoj.gov](mailto:ustpregion10.in.ecf@usdoj.gov)
- **Ronald J. Moore** — [ronald.moore@usdoj.gov](mailto:ronald.moore@usdoj.gov)
- **Jay Jaffe** — [jay.jaffe@faegrebd.com](mailto:jay.jaffe@faegrebd.com)
- **Weston E. Overturf** — [woverturf@boselaw.com](mailto:woverturf@boselaw.com)
- **Elizabeth M. Little** — [elizabeth.little@faegrebd.com](mailto:elizabeth.little@faegrebd.com)
- **Kayla D. Britton** — [kayla.britton@faegrebd.com](mailto:kayla.britton@faegrebd.com)
- **Gary D. Barnes** — [gbarnes@bakerdonelson.com](mailto:gbarnes@bakerdonelson.com)
- **Whitney L. Mosby** — [wmosby@bgdlegal.com](mailto:wmosby@bgdlegal.com)
- **Scott R. Leisz** — [sleisz@bgdlegal.com](mailto:sleisz@bgdlegal.com)
- **James E. Carlberg** — [jcarlberg@boselaw.com](mailto:jcarlberg@boselaw.com)
- **Charles F. Miller** — [cfmjraty@iquest.net](mailto:cfmjraty@iquest.net)
- **James P. Moloy** — [jmoloy@boselaw.com](mailto:jmoloy@boselaw.com)
- **Michael J. Hebenstreit** — [mjh@whzlaw.com](mailto:mjh@whzlaw.com); [arlene@whzlaw.com](mailto:arlene@whzlaw.com)
- **Jeffrey A. Hokanson** — [jeff.hokanson@icemiller.com](mailto:jeff.hokanson@icemiller.com)
- **W. Randall Kammeyer** — [wrkammeyer@hawkhaynie.com](mailto:wrkammeyer@hawkhaynie.com)
- **Sarah L. Fowler** — [sarah.fowler@icemiller.com](mailto:sarah.fowler@icemiller.com)
- **Michael J. Hebenstreit** — [mjh@whzlaw.com](mailto:mjh@whzlaw.com)
- **Heather M. Crockett** — [heather.Crockett@atg.in.gov](mailto:heather.Crockett@atg.in.gov)
- **Karen L. Lobring** — [lobring@msn.com](mailto:lobring@msn.com)
- **Harley K. Means** — [HMeans@kgrlaw.com](mailto:HMeans@kgrlaw.com)
- **James G. Lauck** — [JLauck@kgrlaw.com](mailto:JLauck@kgrlaw.com)
- **Rachana Fischer** — [Rachana.Fischer@usdoj.gov](mailto:Rachana.Fischer@usdoj.gov)

I further certify that on August 4, 2017, a copy of the foregoing was mailed by first-class, U.S. mail, postage prepaid, and properly addressed to the following:

All creditors and parties in interest listed in Exhibit "B" attached hereto and made a part hereof.

/s/ John Joseph Allman

John Joseph Allman

~~Label 17-80004-11011~~  
~~0756-2--~~  
~~Case 17-80006-JSM:ll~~  
~~Southern District of Indiana~~  
~~Forre-Haute~~  
~~Fri Aug 4 10:14:55 EDT 2017~~  
~~Creed Tolin~~  
~~5041 N 600 E~~  
~~Crawfordsville, IN 47933-6331~~

~~Ch Capital Services, LLC~~  
~~c/o W. Randall Ramseyer, Esq.~~  
~~116 East Berry Street~~  
~~Lincoln Tower Suite 302~~  
~~Port Wayne, IN 46802-2487~~

~~New Winchester Properties, LLC~~  
~~12161 N 650 E~~  
~~Roachdale, IN 46172~~

~~First Farmers Bank & Trust~~  
~~c/o James E. Garibery~~  
~~111 Monument Circle, Suite 3700~~  
~~Indianapolis, IN 46204-3120~~

~~First Farmers Bank and Trust~~  
~~123 N. Jefferson Street~~  
~~Converse, IN 46919-2124~~

~~Indianapolis Propane Exchange, LLC~~  
~~P.O. Box 652~~  
~~Danville, IN 46122-0652~~

~~Internal Revenue Service~~  
~~PO Box 7346~~  
~~Philadelphia PA 19101-7346~~

~~Jay Jaffe~~  
~~Jaeger-Baker Denials~~  
~~600 N. 36th Street, Suite 400~~  
~~Indianapolis, IN 46240-3788~~

~~Logansport Savings Bank~~  
~~723 East Broadway~~  
~~Logansport, IN 46947-3159~~

~~Montgomery County Treasurer~~  
~~100 E. Main Street~~  
~~Crawfordsville, IN 47933-1709~~

~~NEW WINCHESTER PROPERTIES, LLC~~  
~~Cline Grain, Inc.~~  
~~6980 US Hwy 36~~  
~~Danville, IN 46122-9615~~

~~Patricia Cline~~  
~~10643 S 875 E~~  
~~Ladoga, IN 47954-7269~~

~~Pinnacle Agriculture Distribution, Inc.~~  
~~P.O. Box 1169~~  
~~Cleveland, MS 38732-1169~~

~~R. Tod Guff~~  
~~216 Fourth Street~~  
~~Logansport, IN 46947-3104~~

~~SCI Leasing~~  
~~2400 W. State Road 38~~  
~~Bharidan, IN 46069-8400~~

~~Stephen Wilson~~  
~~101 W. Sycamore Street~~  
~~Kokomo, IN 46901-4634~~

~~Taylor Chadd Minnette Schneider Cletter~~  
~~105 N. Washington Street~~  
~~Crawfordsville, IN 47933-1734~~

~~Tri-County Bank~~  
~~18 E. Washington Street~~  
~~Roachdale, IN 46172-9063~~

~~U.S. Trustee~~  
~~Office of U.S. Trustee~~  
~~101 W. Ohio St., Ste. 1000~~  
~~Indianapolis, IN 46204-1982~~

~~Wells Fargo Bank, N.A.~~  
~~625 Marquette Avenue, 13th Floor~~  
~~Minneapolis, MN 55402-2323~~

~~Wells Fargo Bank, National Association~~  
~~NAC 89300-120, 600 S 4th St~~  
~~Minneapolis, MN 55415~~

~~Wells Fargo Bank~~  
~~Account Analysis~~  
~~BN 7091 P.O. Box 1450~~  
~~Minneapolis, MN 55495-1450~~

~~Jeffrey M. Hunter~~  
~~Hunter-Baker-Koch LLC~~  
~~One Indiana Square, Suite 1600~~  
~~211 N. Pennsylvania Street~~  
~~Indianapolis, IN 46204-1959~~

~~John Joseph Allman~~  
~~Hunter-Baker-Koch, LLC~~  
~~One Indiana Square, Suite 1600~~  
~~211 N. Pennsylvania Street~~  
~~Indianapolis, IN 46204-1959~~

~~Indiana Department of Revenue~~  
~~Bankruptcy Section, N-240~~  
~~100 N. Senate Avenue~~  
~~Indianapolis, IN 46204~~

~~Cline Grain, Inc.~~  
~~6980 US Hwy 36~~  
~~Danville, IN 46122~~

~~The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.~~



DATE: June 29, 2017  
AUCTIONEER: Maas Companies Inc. ("Auction Company")  
SELLER: New Winchester Properties, LLC a debtor-in-possession in the Bankruptcy Court for the Southern District of Indiana, Terre Haute Division under cause 17-80004-JJG-11 ("Seller")  
PURCHASER: Rick Patton 9484 N 525 W Kingman, IN 47952 ("Purchaser")  
PARCEL NUMBER: 23-15-36-118-001.000-021  
ADDRESS: 625 E. State Street Kingman, IN 47952  
LEGALLY DESCRIBED AS: See Exhibit A attached hereto. The full legal to be provided upon receipt. (the "Property")

THESE PREMISES ARE SOLD SUBJECT TO BANKRUPTCY COURT APPROVAL upon the following terms and conditions:

1. The final purchase price of the Property is as follows: The bid price \$ 23,000.00 dollars plus a Buyer's Premium of six percent (6%) or \$ 1,380.00 dollars for a Total Purchase Price of \$ 24,380.00 dollars.
2. Purchaser shall remit a cashier's check payable to the Title Company as Escrow Agent as a non-refundable initial deposit (the "Deposit") equaling 20% of the purchase price in escrow within 24 hours of the sale. The Deposit money shall become Earnest Money Deposit and is non-refundable. The Earnest Money Deposit will be refunded only if the Seller is unable to deliver clean title. If any date for the performance of any required action under this Agreement falls on a holiday or during the weekend, the date for performance shall be extended to the next business day.
3. The Purchaser shall have until July 29, 2017 ("Closing Date") to close on the Property. Seller shall determine the time and place of closing. If the Purchaser is not ready to close by the Closing Date, any extension, if granted by Seller, shall be conditioned on all pro rations and adjustments being determined as of the Closing Date and the payment of an additional non-refundable deposit.
4. This sale is not contingent upon the ability of the Purchaser to secure financing, sell another property or any contingencies whatsoever.
5. Purchaser expressly warrants the purchase is being made in AS IS CONDITION and solely based upon Purchaser's examination of the Property, and without any expressed or implied warranties of the Auction Company or Seller. The Property is sold and the Purchaser agrees to accept the Property in its present condition, AS IS, with all faults, in all respects, subject to utility easements, zoning ordinances, and any other restrictions of record. Seller is not responsible for any removal of trash, scrap, furniture, fixtures, chemicals or any other personal property and may become property of the Purchaser. Purchaser acknowledges the opportunity it was afforded for physical, environmental, lead, radon or other inspections prior to execution of the auction and hereby waives any further right to additional inspections. No warranties as to physical condition, environmental condition, habitability, suitability to particular purpose, tenancies, or compliance with any laws, codes or ordinances, including those relating to water supplies and septic systems ("Deficiencies") are made by the Seller, unless specifically stated herein.
6. If prior to the Closing Date condemnation proceedings are commenced against any portion of the Property, Purchaser shall have the right to appear and defend in such condemnation proceedings, and any award in condemnation shall become the property of Purchaser and the purchase price shall not be reduced.
7. Risk of loss by damage or destruction to the Property prior to the closing shall be borne by Seller. In the event any such damage or destruction is not fully repaired prior to the Closing Date, Purchaser, at its option, may either (a)

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Seller Initials



terminate this Agreement, or (b) elect to close the transaction, in which event Seller's right to all insurance proceeds (if any) resulting from such damage or destruction shall be assigned in writing by Seller to Purchaser.

8. Any inspections previously made by Purchaser or his/her/their representatives were done at Purchaser's expense and for his/her/their information only. Cost and responsibility for curing Deficiencies, if any, is the Purchaser's, and the correction and cure of any Deficiencies shall not be a condition of this sale or in any way affect Purchaser's obligations under this Agreement.
9. Utilities, income, rents and any other matters appropriate for prorating and adjustment shall be prorated between the Seller and the Purchaser to the Closing Date. Any installments for local improvements not due and payable at the time of closing shall be paid for by the Purchaser as they thereafter become due. The Property taxes will be prorated between the Seller and the Purchaser to the Closing Date. Purchaser should not rely solely on past property taxes as a guide to future property assessments and taxes as Indiana property tax laws have been subject to significant change in the recent past. Closing fees, if any, will be shared equally between Seller and Purchaser except for those fees specific to Seller or Purchaser, i.e. recording fees.
10. Any security deposits on account with Seller as may be applicable to each particular location on the Closing Date will be paid over to Purchaser to be held as security deposits. Property is being sold subject to the rights of any tenants.
11. The Seller shall be required at his own expense to furnish to the Purchaser prior to the Closing Date, a preliminary binder of title insurance by a recognized title company, showing good and marketable or insurable title to the Property. On the Closing Date, the Seller shall tender to the Purchaser an insurable deed to the Property free and clear of all liens and encumbrances except for easements, restrictions and covenants of record together with an owner's policy of title insurance. Stewart Title is the escrow agent and shall act as closing agent with respect to the closing of this sale.
12. The Auction Company was retained by the Seller and has functioned throughout the transaction as an agent for the Seller exclusively. I.C. 25-34.1-10-9.5 provides that the Licensee (Auction Company) has an agency relationship with, and represents the interests of the Seller as Seller's agent to sell the Property. Auction Company owes duties of trust, loyalty, confidentiality, accounting and disclosure to the Seller. However, Auction Company must deal honestly with Purchasers and disclose certain information to the Purchasers about the Property. All representations made by Auction Company about the Property are made as the agent of the Seller.
13. If the Purchaser fails to comply with this Agreement, the Earnest Money Deposit shall be forfeited. The Seller shall be entitled to pursue all other available legal and equitable remedies against Purchaser, including but not limited to holding Purchaser liable for any deficiency resulting from a subsequent resale.
14. Purchaser acknowledges that the auction and auction site may pose obvious, hidden, and unknown dangers, defects, and other perils. Purchaser agrees to assume the risk of all injury, loss, and/or death from any cause whatsoever, and to indemnify Auction Company and Seller and hold them harmless for any injury, death, or other damage to person or property while attending the auction or at the auction site before or after the auction.
15. In the event of any litigation arising out of this sale, this Agreement or any breach thereof, the successful party in any litigation shall be entitled to attorney fees and all costs of litigation.
16. In an action concerning any aspect of this Agreement, Purchaser agrees to submit irrevocably, at Seller's election, to the jurisdiction and venue of the United States Bankruptcy Court for the Southern District of Indiana and agrees to waive any right of removal. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, notwithstanding any conflict of laws and/or provisions.
17. This Agreement constitutes the entire agreement between Seller and Purchaser and supersedes all prior discussions, negotiations and agreements, whether oral or written; however, it is subject to the terms of any applicable order entered in the Seller's bankruptcy case and it is subject to the further authority of the Bankruptcy Court over the Seller, the Property, and this transaction. It is mutually agreed that this Agreement shall be binding and obligatory upon the

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Seller Initials

undersigned, their separate heirs, administrators, executors, assigns and successors in interest of the undersigned. Purchaser may not assign this Agreement to any other party voluntarily without the Seller's consent.

18. No amendment, alterations or withdrawal of this Agreement shall be valid or binding unless made in writing and signed by both Seller and Purchaser.

x Paul Peth 7-12-17

Purchaser

Date

x

Purchaser

Date

### Recapitulation of Funds

<b>Bid Price</b>	<b>\$ - 23,000.00</b>	
<b>Plus Buyer Premium</b>	<b>\$ - 1,380.00</b>	<b>6.00%</b>
<b>TOTAL PURCHASE PRICE</b>	<b>\$ - 24,380.00</b>	
<b>Deposit Paid within 24 hours of Sale</b>	<b>\$ 4,876.00</b>	
	<b>\$ -</b>	
<b>BALANCE DUE UPON CLOSING</b>	<b>\$ -19,504.00</b>	

This Agreement is accepted on the date subscribed below.

x [Signature]

Seller

Date

x [Signature]

Seller

Date

Title Company confirms receipt of the Earnest Money Deposit to be held in escrow in accordance the terms and conditions of this Agreement.

STEWART TITLE COMPANY

By: \_\_\_\_\_

\_\_\_\_\_  
Buyer Initials

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Seller Initials