

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

In re:)	Chapter 11
)	
CLINE GRAIN, INC.,)	Case No. 17-80004-JJG-11
ALLEN L. CLINE & TERESA A.)	
CLINE,)	Jointly Administered
MICHAEL B. CLINE & KIMBERLY)	
A. CLINE, et al.,)	
)	
Debtors)	

**Debtors’ Motion Pursuant to 11 U.S.C. § 363
To Sell Farm Land By Auction Free And Clear**

Allen L. Cline and Teresa A. Cline and Michael B. Cline and Kimberly A. Cline, debtors and debtors-in-possession in these jointly administered cases (the “Individual Debtors”), 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-6004-4, by this motion seek an order authorizing and approving the sale of the Individual Debtors’ farm land 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 Individual Debtors state 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 Individual Debtors have 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 Individual Debtors cases of Allen and Teresa Cline and Michael and Kimberly Cline would be Chapter 12 family farm cases; however, the amount of their debt exceeds the jurisdictional limit contained in 11 U.S.C. §109(f) and 101(18) thus necessitating these cases being filed under Chapter 11.

6. The Individual Debtors own or have a beneficial interest in the following farm land real estate consisting of the land listed on **Attachment A** (the “Farm Land”)¹:

7. The Farm Land, as the schedules filed in these cases reveal, is held in a variety of ways. Most is held by Allen and Mike Cline, as tenants in common. Some is held by Allen and Terri Cline and some is held by Mike and Kim Cline and some is held by all four. Certain properties are being purchased by Allen and Terri Cline under land sale contracts with respect to which Allen and Terri Cline have equitable title and/or a beneficial interest.

8. Pursuant to this Sale Motion, the Individual Debtors seek an order to approve and authorize a sale of the Farm Land at public auction free and clear of any liens and claims of any and every kind or nature whatsoever pursuant to 11 U.S.C. §363(f) and all other applicable laws; however, prior to the Auction the Individual Debtors will make an effort to sell all or a part of the Farm Land by a private sale or series of private sales if the Individual Debtors determine such sales would provide a better result for the Individual Debtors, the creditors and this estate.

9. In addition to this Sale Motion, the Individual Debtors are also filing an application to hire Halderman Real Estate Services, Inc. (the “Auctioneer”) to market and conduct the proposed auction on November 15, 2017 (the “Auction”).

10. The determination of whether or not to include any parcel in the Auction sale will be made no later than October 1, 2017. Accordingly, this Motion seeks to sell more of the Farm Land than is likely to ultimately be included in the auction.

11. The Debtors believe the sale of the Farm Land is in the best interest of the estate and creditors.

¹ The Individual Debtors have requested, and MetLife and Wells Fargo have agreed, to permit a carve-out of the Individual Debtors’ homes (located in Deans and Grandma Ashers on the attached list of properties) and surrounding 10 acres (with legal descriptions to be determined) (the “Homestead Carve-out”). The Homestead Carve-Out property is not included in the Farm Land to be sold.

III. THE AUCTION

12. The Farm Land is being sold at the Auction “as-is” with no express or implied warranty. Bidders shall have the opportunity prior to the auction to complete their due-diligence of the Farm Land at their own expense. The Auctioneer will have the exclusive right to sell the Farm Land from October 1, 2017 through the Auction and may only sell the Farm Land at the contemplated Auction.

13. There are no contingencies of sale, including the buyer seeking financing.

IV. ASSERTED INTERESTS

14. All the debt of the Individual Debtors has been fully disclosed in their schedules. All claims bar dates have passed.

15. After a diligent search, including reviewing title work and filed claims and the Individual Debtors’ records, the Individual Debtors, upon information and belief, assert the following are the only mortgages, liens, charges, interests in and encumbrances on the Farm Land:

A. A mortgage from the Individual Debtors in favor of Wells Fargo Bank, National Association (“Wells”), dated March 27, 2014 and filed on May 5, 2014, and recorded in Instrument No. 2014001703 in Putnam County, Indiana. The Individual Debtors do not have a payoff amount from Wells, but upon information and belief that amount will be, after distribution of proceeds from the sale of certain grain elevator properties, between \$1,900,000 and \$2,000,000, which will continue to accrue interest as well as additional attorney fees and expenses.

B. A mortgage from the Individual Debtors in favor of Wells, dated March 27, 2014 and filed on May 5, 2014, and recorded in Instrument No. 201402096 in Montgomery County, Indiana.

C. A mortgage from the Individual Debtors in favor of Metropolitan Life Insurance Company (“MetLife”), dated March 4, 2015 and filed on March 5, 2015, and recorded in Instrument No. 2015000961 in Putnam County, Indiana. The Individual Debtors do not have a payoff amount from MetLife, but upon information and belief that amount is approximately \$6,570,000 as of August 30, 2017, and will continue to accrue interest as well as additional attorney fees and expenses. By virtue of an inter-creditor agreement, Wells has subordinated its mortgages to MetLife.

D. A mortgage from the Individual Debtors in favor of MetLife, dated March 4, 2015 and filed on March 5, 2015, and recorded in Instrument No. 201501205 in Montgomery County, Indiana.

E. The Indiana Department Revenue (the "IDR") has filed 23 warrants in Putnam and Montgomery Counties dated from February 8, 2016 to December 21, 2016 against the Individual Debtors. If validly perfected, the liens would attach to all the Farm Land being sold, with the exception of the 40 acre parcel in Boone County, IN. The warrant details are attached to the IDR proofs of claim filed on June 6, 2017. The IDR asserts a secured claim of \$58,154.48.

F. The Internal Revenue Service (the "IRS") has filed four liens in Putnam and Montgomery Counties on September 26, 2016 against Allen L. Cline and Teresa A. Cline only. If validly perfected, the liens would attach to all the Farm Land being sold, with the exception of the 40 acre parcel in Boone County, In. The IRS lien details are attached to the IRS proof of claim filed on February 1, 2017. The amounts of the lien have been substantially reduced by prior sales of vehicles in the jointly administered *In Re Cline Transport, Inc.* case. The Individual Debtors estimate the current balance due under the liens is \$315,031.76.

G. Everett L. Bamish is the vendor on approximately 40 acres of the Farm Land in Boone County, IN. (the "Bamish Boone Collateral") and 319.55 acres of the farm land in Montgomery County, IN (the "Bamish Montgomery Collateral") and together with the Bamish Boone Collateral, the "Bamish Collateral") and Allen L. Cline and Teresa A. Cline are the buyers. Allen L. Cline and Teresa A. Cline have approximately \$2,000,000-\$2,500,000 in equity in that property over and above that which they still owe Mr. Bamish on the land contract, which is \$1,065,887.50 according to his proof of claim, filed on April 25, 2017.

H. Mr. Bamish's lender, Fountain Trust Company has filed a mortgage and an assignment of the land contract on Bamish Collateral. The mortgage was filed on October 5, 2012 in Montgomery County, In. as Instrument No. 201205768. The assignment was filed on October 5, 2012 in Montgomery County, In. as Instrument No. 201205769. The mortgage and assignment appear to secure a loan of \$564,000.00 and that is the maximum amount of the mortgage. Any amounts owed to Fountain Trust Company are *included in* and not in addition to the remaining balance due Everett Bamish on the land contract.

16. MetLife has a first priority lien on all the Farm Land with the exception of the Bamish Collateral (the “MetLife Collateral”). Wells Fargo has a second priority lien on the MetLife Collateral with the exception of two parcels commonly referred to as “Jerry Smith’s Farm” and “Purcell’s Farm” (the “Wells Fargo Collateral”).

17. The liens of the IDR and the IRS would appear to be third priority liens on the MetLife Collateral and second priority liens on the Bamish Montgomery Collateral. Given the number of liens filed by the IDR and IRS at about the same period in time, the Individual Debtors are not able at this point to provide an opinion on the priority of liens. The Individual Debtors do however estimate enough funds are available from the sale of Farm Land to more than pay off any and all such liens, presuming the amounts stated herein as the balance for such liens is approximately correct.

18. Bamish/Fountain Trust have a first priority lien on the Bamish Collateral only.

19. There may be covenants and restrictions that run with the land. The Individual Debtors are not seeking to sell free and clear of any such covenant or restriction. Potential bidders will be advised of such covenants and restrictions in title work obtained as part of the auction and the purchase agreement they sign will indicate the same. Title work reviewed by the Individual Debtors disclosed no such covenants or restrictions.

V. CREDIT BIDS

20. MetLife and Wells Fargo should be entitled to exercise credit bid rights under §363(k) for the total amount of their remaining claim, less any amounts received by private sales, which will have closed no later than November 15, 2017.

21. The auction to be conducted shall be a “multi parcel auction” whereby individual farms will be separately auctioned from the whole or larger tracts which will also be auctioned. At the end of the auction, the Individual Debtors will accept the largest dollar amount consisting of either: a. one bid for all parcels; or b. a combination of parcels by multiple bids. In either case, at the close of the auction, MetLife and Wells will be entitled to credit bid against the final dollar amount to be received from the auction. It is submitted this is the easiest way to resolve what could be a very complicated credit bidding scenario if the lenders had to credit bid for each and every parcel.

22. Because MetLife has the first lien on the MetLife Collateral, the right of Wells to credit bid would also require Wells to pay MetLife in cash in full as part of such exercise.

23. Bamish would retain his right to credit bid on the Bamish Collateral.

24. It is submitted that the IDR and IRS should not be permitted to exercise their credit bid rights as such exercise would unduly complicate the auction and would require

them to pay in cash MetLife and Wells on the MetLife Collateral, and Bamish on the Bamish Collateral.

VI. BIDDING PROCEDURES

25. The Auctioneer will have the exclusive right to sell the Farm Land from September 13, 2017 through the Auction and may only sell the Farm Land at the public Auction subject to any prior contracts which have been approved by the Bankruptcy Court and are pending closing. On September 13, 2017, following a hearing to approve private sales, the Individual Debtors will advise which properties are under contract for private sale and which are not. Those not under private contract will be included in the Auction.

26. On October 1, 2017, if buyers of properties under private sale contract have not eliminated any financing contingency, such properties shall be included in the Auction. Any private sale agreement executed by the Individual Debtors shall include provisions in such contract that comport to these timelines and contingency elimination.

27. The Auctioneer shall control all aspects of the Auction, including: preparation, marketing, conduct of the sale, including all terms of sale; and determination of qualification of bidders. The Auctioneer shall use its best efforts to obtain the highest available price for the Farm Land at Auction.

28. In exchange for auction services, the Auctioneer shall be paid a commission according to its auction contract (attached to the application to employ the Auctioneer) as follows: 2.5% commission if the total acres sold at auction are greater than 800; 3.25% commission if the total acres sold at auction are less than 800 but greater than 300; and a 3.9% commission if less than 300 total acres are sold at auction (the "Commission"). References to "acres" are to total acres, and not just tillable acres.

29. At the option of the Individual Debtors, 1% of the Commission may be structured as a buyer's premium to further reduce the Commission payable by the estates.

30. As the Auction will be an absolute auction, there will be no marketing expense charged by the Auctioneer.

31. Considering the size of the Auction and the value of the Farm Land, the Individual Debtors submit the terms for Commission are fair.

32. Bidders shall have the opportunity, prior to the Auction, to complete their due-diligence of the Farm Land at their own expense. Any successful buyer will be required to provide a non-refundable deposit on the day of sale and a second deposit within 48 hours

of the sale bringing the total deposit amount to 10% of the total purchase price. Final payment is due at closing, on or within 30 days.

33. Bidders will sign a form when they come to inspect to waive liability for injury at the Individual Debtors' property; otherwise, Individual Debtors have insurance to cover liability for any injury.

34. The Individual Debtors anticipate executing debtor-in-possession deeds, purchase agreements, vendor's affidavits and Indiana Sales Disclosure Forms in reference to any sale and closing in order to transfer title. All sales are as-is, where-is with no warranties.

35. The Individual Debtors anticipate that they will pay real property taxes through the date of closing (they are current). Other closing charges the Individual Debtors will incur will include the cost of title work and title company closing costs. These costs will be deducted from proceeds due the seller prior to paying any secured claim.

36. The sale will have to be subject to the rights of the current tenants (the Cline sons) to harvest the 2017 crop, with all rents coming to the estate.

37. The Individual Debtors anticipate requiring bidders to sign a term sheet prior to bidding that requires them to agree to the non-refundability of their deposit on certain terms.

38. The record of all sales shall be kept to allow parties to determine which funds belong to which individual estate, if necessary. If a winning bid is selected that is for parcels belonging to more than one estate, the issue of resolution of which estate the funds belong to shall be reserved for Court determination.

39. The Individual Debtors by Sale Motion are requesting authority to allow MetLife and Wells to be paid in full at any closings or closing without the need of further Court hearing or order. It is in the best interests of the estate to pay those claims as soon as possible, as they are both over-secured and therefore post-petition interest, attorney fees and costs accrue on the claims.

VII. BASIS FOR RELIEF REQUESTED

40. 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).

41. 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.

42. The Individual Debtors submit that the sale of the Farm Land is within its sound business judgment. The Individual Debtors have determined that the sale of the Farm Land will maximize the value of the Individual Debtors' estate and is in the best interest of the estate and its creditors.

43. 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 only liens on the Farm Land are described herein, but the Individual Debtors 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 Farm Land will be deemed to have consented to the sale thereby satisfying §363(f)(2).

44. 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.

45. The Individual Debtors submit that one or more of the conditions set forth in §363(f) will be satisfied with the respect to the sale of the Farm Land. 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.

46. The Individual Debtors also request 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.

REQUEST FOR RELIEF

The Individual Debtors request the entry of an Order: authorizing the sale of the Farm Land 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/ Jeffrey M. Hester
Jeffrey M. Hester
Suite 1600
One Indiana Square
Indianapolis, IN 46204
jhester@hbkfirm.com
jallman@hbkfirm.com
317.608.1129 direct
317.833.3031 fax

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2017, a copy of the foregoing *Debtors' Motion Pursuant to 11 U.S.C. §363 to sell Farm Land by Auction Free and Clear* 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** — ustpreion10.in.ecf@usdoj.gov
- **Ronald J. Moore** — ronald.moore@usdoj.gov
- **Jay Jaffe** — jay.jaffe@faegrebd.com
- **Weston E. Overturf** — woverturf@boselaw.com
- **Elizabeth M. Little** — elizabeth.little@faegrebd.com
- **Kayla D. Britton** — kayla.britton@faegrebd.com
- **Gary A. Barnes** — gbarnes@bakerdonelson.com
- **Whitney L. Mosby** — wmosby@bgdlegal.com
- **Scott R. Leisz** — sleisz@bgdlegal.com
- **James E. Carlberg** — jcarlberg@boselaw.com
- **Charles F. Miller** — cfmjratty@iquest.net
- **James P. Moloy** — jmoloy@boselaw.com
- **Michael J. Hebenstreit** — mjh@whzlaw.com; arlene@whzlaw.com
- **Jeffrey A. Hokanson** — jeff.hokanson@icemiller.com
- **W. Randall Kammeyer** — wrkammeyer@hawkhaynie.com
- **Sarah L. Fowler** — sarah.fowler@icemiller.com
- **Michael J. Hebenstreit** — mjh@whzlaw.com
- **Heather M. Crockett** — heather.Crockett@atg.in.gov
- **Karen L. Lobring** — lobring@msn.com
- **Harley K. Means** — HMeans@kgrlaw.com
- **James G. Lauck** — JLauck@kgrlaw.com
- **Rachana Fischer** — Rachana.Fischer@usdoj.gov
- **Chris Shelby** — cshelby@comcast.net
- **Andrew Kight** — akight@jhklegal.com

I further certify that on August 10, 2017, a copy of the foregoing was mailed by certified U.S. Mail, postage prepaid, and properly addressed to the following:

Indiana Department of Revenue
Attn: Commissioner Adam J. Krupp
Indiana Government Center North
100 N. Senate Ave., N-105
Indianapolis, IN 46204

Indiana Department of Revenue
Attn: Indiana Attorney General
302 W. Washington St., 5th Floor
Indianapolis, IN 46204

Indiana Department of Revenue
Attn: Todd Nichols, Bankruptcy Department
Indiana Government Center North
100 N. Senate Ave., N-240 MS108
Indianapolis, IN 46204

/s/ Jeffrey M. Hester
Jeffrey M. Hester

ATTACHMENT A

County	S	T	R	Acres	Tillable	Description	Co Parcel #	State Parcel #
Boone	30	18	2	40	39.83	Bamish Boone Co 40	005-00240-00	06-05-30-000-022.000-008
Montgomery	25	18	3	48.34	66	Bamish 67	09-25-100-002.000-.32	54-09-25-100-002.000-.032
Montgomery	25	18	3	15.91		Bamish 67	09-25-700-003.002-032	54-09-25-700-003.002-032
Montgomery	25	18	3	159.77	167	Bamish 167	09-25-700-003.003-032	54-09-25-700-003.003-032
Montgomery	36	18	3	21.00		Bamish 167	09-36-100-002.000-032	54-09-36-100-002.000-032
Montgomery	36	18	3	14.64	69	Bamish Silo	09-36-100-005.000-032	54-09-36-100-005.000-032
Montgomery	36	18	3	59.69		Bamish Silo	09-36-500-003.000-032	54-09-36-500-003.000-032
Montgomery	15	18	4	20.00	128.92	350 Farm	10-15-300-012.000-025	54-10-15-300-012.000-025
Montgomery	22	18	4	116.59		350 Farm	10-22-500-002.001-025	54-10-22-500-002.001.025
Montgomery	1	17	4	52.29	52.29	Arnold	15-01-900-012.000-020	54-15-01-900-012.000-020
Montgomery	28	17	40	40.00	40.00	Hog Farm	16-04-200-005.000-007	54-16-04-200-005.000-007
Montgomery	27	17	3	80.00	79.00	Hog Farm	16-05-400.006.000-007	54-16-05-400-006.000-007
Montgomery	28	17	3	74.98	74.98	Leach Farm	16-24-700.008.000-007	54-16-24-700-008.000-007
Montgomery	27	17	3	73.00	73.00	Zimmerman	16-26-200-006.000-007	54-16-26-200-006.000-007
Montgomery	27	17	3	9.37	36.00	Huff	16-27-200-009.000-007	54-16-27-200-009.000-007
Montgomery	28	17	3	26.67		Huff	16-28-100-001.000-007	54-16-28-100-001.000-007
Montgomery	28	17	3	39.05	142.31	Joe's	16-28-100-002.000-007	54-16-28-100-002.000-007
Montgomery	28	17	3	6.30		Joe's	16-28-400-016.000-007	54-16-28-400-016.000-007
Montgomery	27	17	3	103.42		Joe's	16-27-600-010.000-007	54-16-27-600-010.000-007
Montgomery	27	17	3	45.45	45.45	Mitchell	16-27-900-007.001-007	54-16-27-900-007.001-007
Montgomery	28	17	3	27.59	168.71	Tom Longs	16-28-100-004.001-007	54-16-28-100-004.001-007
Montgomery	28	17	3	141.12		Tom Longs	16-28-800-006.000-007	54-16-28-800-006.000-007
Montgomery	27	17	3	100.00	88.00	Deans	16-27-800-014.000-007	54-16-27-800-014.000-007
Montgomery	30	17	3	13.75	7.00	Dennis O'Hair	16-30-400-009.000-007	54-16-30-400-009.000-007
Montgomery	33	17	3	16.97	13.66	Jerry Crawford's	16-33-100-001.000-007	54-16-33-100-001.000-007
Montgomery	28	17	3	3.00		Jerry Crawford's	16-28-400-014.000-007	54-16-28-400-014.000-007
Montgomery	36	18	3	7.72	7.00	Wallace 8 acres	09-36-300-024.000-032	54-09-36-300-024.000-032
Putnam	10	16	3	80.5	108.12	Grandma Asher's	001-501160-00	67-01-10-400-016.000-009
Putnam	10	16	3	67.5		Grandma Asher's	001-501070-00	67-01-10-400-017.000-009
Putnam	5	16	4	19.798	19.31	Jerry Smith's Farm	002-503410-01	67-02-05-300-023.002-005
Putnam	12	16	4	147.35	144.95	Purcell's	002-502633-00	67-02-12-600-003.000-005
				1671.77	1570.53			