

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 Vehicles By
Private Sale Free And Clear**

Cline Transport, Inc., a debtor and debtor-in-possession (the “Debtor” or “Cline Transport”), 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 Cline Transport’s vehicles via private sale free and clear of liens, claims, interests, and encumbrances, with valid liens attaching to the sale proceeds (the “Sale Motion”). In support, the Debtor states the following:

I. JURISDICTION AND VENUE

1. The Debtor filed its petition for relief under Title 11, Chapter 11 of the United States Code on January 3, 2017 (the “Petition Date”). 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. §1107 and 1108.
2. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(M) and (N). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. No trustee or examiner have been appointed in these chapter 11 cases, and no committees have been appointed or designated.

II. BACKGROUND

4. Cline Transport owns the vehicles and related equipment that are listed in the attached **Attachment A** (collectively, the “Vehicles”).

5. The Debtor has received an offer for the Vehicles for \$56,800.00 (the “Purchase Price”) pursuant to a Purchase Agreement (the “Agreement”), a copy of which is attached hereto as **Attachment B**. The persons that made the offer for the Vehicles are Kyle D. Cline, Tyler J. Cline, and Michael L. Cline (collectively, the “Purchasers”).

6. The Purchasers are the Debtor’s shareholders’ sons. Along with the familial relationship, the Debtor’s shareholders and the Purchasers farm the family’s farm ground as a family. In order to obtain crop input financing for 2016 and 2017 at a time when the Debtor’s shareholders could not because of their financial difficulties, the Purchasers and other Cline family members obtained such crop input loans. The Debtor’s shareholders and their sons have continued to farm together since the Petition Date, and it is anticipated that the Debtor’s shareholders will always be jointly involved in all aspects of the Cline family farm for the foreseeable future.

7. Pursuant to this Sale Motion, the Debtor seeks authority to transfer the Vehicles as a legal, valid, and effective transfer of the Vehicles which will vest the Purchaser with all right, title, and interest in the Vehicles 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.

8. The Debtor believes the sale of the Vehicles is in the best interest of the estate and creditors, and the sale will help the Debtor pay down tax debt.

III. MARKETING OF THE VEHICLES

9. The Debtor was always aware that the Purchasers would continue farming the Debtor’s shareholder’s farm ground and that the Purchasers intended to buy the Vehicles. The Debtor was also aware that the Purchasers had the means to buy the Vehicles. The Debtor had the Vehicles appraised and the Purchase Price is the fair market value price. Therefore, no other offers were sought for the Vehicles.

10. Because the Purchase Price is equal to the fair market value, as established by the attached Jack Fife appraisal, the Debtor submits that no further marketing is necessary and that the Agreement is a result of arms-length and good-faith negotiations.

IV. ASSERTED INTERESTS IN THE VEHICLES

11. The only interests in the Vehicles that the Debtor is aware of are tax liens filed by the Internal Revenue Service (the “IRS”) and the warrants filed by the Indiana Department of Revenue (the “IDR”).

12. Upon information and belief, the IRS filed notices of federal tax liens against Cline Transport as early as November 23, 2015.

13. Upon information and belief, the IDR filed tax warrants against Cline Transport as early as February 8, 2016.

14. Because the IRS lien was filed prior to the IDR's, the Debtor submits that the IRS has a first-priority lien on the Vehicles. Accordingly, the Debtor proposes that the net proceeds be paid to the IRS. The IRS has agreed to allow a carve-out for the Debtor's attorney's fees and for United States Trustee's fees pursuant to 11 U.S.C. §506(c). The Debtor does not anticipate that the net proceeds shall satisfy the Debtor's (Cline Transport's) IRS tax obligations; however, in the event the net proceeds do satisfy the Debtor's IRS tax obligation, then the excess proceeds shall be paid to the IDR.

V. BASIS FOR RELIEF REQUESTED

15. 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).

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

17. The Debtor submits that the sale of the Vehicles is within its sound business judgment. The Debtor has determined that the sale of the Vehicles will maximize the value of the Debtor's estate and is in the best interest of the estate and its creditors. The Debtor is no longer operating and has no other use for the Vehicles, so liquidation makes eminent sense.

18. 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 Vehicles are described herein, 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 Vehicles will be deemed to have consented to the sale thereby satisfying §363(f)(2).

19. 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 Vehicles. Specifically, those parties holding liens, claims, 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.

20. 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.

REQUEST FOR RELIEF

The Debtor requests the entry of an Order: (A) authorizing the sale of the Vehicles 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; (B) 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 (C) 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
317.608.1129 direct
317.833.3031 fax

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2017, a copy of the foregoing *Debtor's Motion Pursuant To 11 U.S.C. §363 To Sell Vehicles By Private Sale 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** — ustpregion10.in.ecf@usdoj.gov
- **Ronald J. Moore** — ronald.moore@usdoj.gov
- **Jay Jaffe** — jay.jaffe@faegrebd.com
- **Elizabeth M. Little** — elizabeth.little@faegrebd.com
- **Kayla D. Britton** — kayla.britton@faegrebd.com
- **Gary D. 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** — cfmjraty@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. Lohring** — lohring@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 November 1, 2017, a copy of the foregoing was mailed by first-class 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

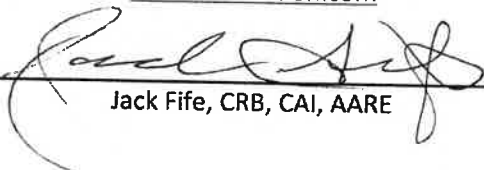
Indiana Department of Revenue
Attn: Todd Nichols, Bankruptcy Department
Indiana Government Center North
100 N. Senate Ave., N-240 MS108
Indianapolis, IN 46204

/s/ John J. Allman
John J. Allman

Cline Transport, Inc.
100 W. Main Street
Ladoga, IN 47954

10000 Gallon Double Wall Tank	3500
2007 Peterbilt 62869	15000
2004 Peterbilt 19453	12000
2007 Peterbilt No Transmission 43811	2000
2-2000 Freightliners	200
2001 Peterbilt	10000
2015 GMC Sierra Pick Up	12000
2011 Sure Trac Lawnmower Trailer	1000
2012 Sure Trac Lawnmower Trailer	1000
1979 INT'L 16557	100
Total	56800

Jack Fife, CRB, CAI, AARE
Fife Real Estate and Auction Service
4061 N. Meridian Street
Indianapolis, IN 46208
Phone: 317-251-9402
www.fifeauction.com

 10/5/17
Jack Fife, CRB, CAI, AARE

PURCHASE AGREEMENT

This Purchase Agreement (this "**Agreement**"), dated as of November, __ 2017, is entered into between Cline Transport, Inc. ("**Seller**") and Kyle D. Cline, Tyler J. Cline, and Michael L. Cline (collectively, the "**Buyer**").

RECITALS:

WHEREAS, Seller is the owner of certain equipment, machinery and tools more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Equipment**"); and

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Equipment, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.01 Purchase and Sale of Equipment. Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any charges, claims, liens, options, security interests or restrictions of any kind, all of Seller's right, title and interest in and to the Equipment. Buyer shall not assume and shall not be responsible to pay, perform or discharge any liabilities, obligations or commitments of any nature whatsoever, known or unknown, absolute or contingent, matured or unmatured or otherwise of Seller.

Section 1.02 Purchase Price. The purchase price for the Equipment shall be Fifty Six Thousand and Eight Hundred Dollars (\$56,800.00) (the "**Purchase Price**"). Buyer shall pay the Purchase Price to Seller at Closing.

Section 1.03 Delivery. Seller shall deliver the goods to Buyer at Closing.

ARTICLE II CLOSING

Section 2.01 Closing. The transactions contemplated by this Agreement shall be consummated as of the first business day after the date on which all of the conditions set forth in Section 2.02 below are satisfied (the "**Closing**"). Buyer and Seller shall execute and deliver all customary instruments of transfer, assumption or consents as may be required to give effect to this Agreement.

Section 2.02 Conditions to Closing. The obligations of Buyer under this Agreement are contingent upon satisfaction of the following conditions:

Exhibit B

(a) Seller shall have remedied all Objections (as defined below) to Buyer's satisfaction, in Buyer's sole discretion, or Buyer shall have waived, in writing all Objections which have not been so remedied.

(b) Receipt of court approval of this Agreement pursuant to an order acceptable to Buyer in its sole discretion (the "**Sale Order**"), and the Sale Order must not be stayed pending appeal or reversed as of the Closing. The Sale Order must authorize and direct Seller to sell the Equipment to Buyer free and clear of all claims, interests, liabilities, encumbrances or liens such that Buyer shall not incur any liability as a successor to Seller and enjoins every holder of every liability of Seller from commencing, continuing or otherwise pursuing or enforcing any remedy, claim, cause of action or encumbrance against the Equipment or Buyer.

(c) The representations and warranties of Seller hereunder shall be true and correct on and as of the Closing with the same force and effect as if made on and as of said Closing date.

(d) Seller shall have performed and complied with all covenants and obligations under this Agreement.

(e) The Equipment shall be in substantially the same condition as it was in as of the date of this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct.

Section 3.01 Authority. Seller, as a debtor-in-possession, is the owner of, and has the authority to convey ownership and good and valid title to, the Equipment. The conveyance hereunder is effective to convey to Buyer all right, title and interest of Seller in the Equipment as and to the extent such was obtained by Seller as a debtor-in-possession in the Seller's bankruptcy case, free and clear of liens, claims, interests and encumbrances.

Section 3.02 Title to Purchased Assets. Seller has good and valid title to all of the Equipment. All Equipment are free and clear of any charges, claims, liens, options, security interests or restrictions of any kind.

Section 3.03 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.01 Sufficiency of Funds. Buyer has sufficient sources of immediately available funds to pay the Purchase Price.

Section 4.02 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

ARTICLE V COVENANTS

Section 5.01 Sale Order. Seller shall request a prompt hearing relative to, and shall use its best efforts to obtain, any necessary entry of the Sale Order and any and all other approvals or orders necessary, and shall take all other actions necessary to implement this Agreement and the sale of the Equipment to Buyer. In the event an appeal is taken or a stay pending appeal is requested, from the Sale Order, Seller shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer within one business day after Seller's receipt thereof, a copy of the notice of appeal or order of stay. Seller shall also provide Purchaser with a written notice of any motion or application filed in connection with any appeal from either of such orders.

Section 5.02 Bankruptcy Filings. From and after the date hereof until the Closing, Seller shall deliver to Buyer at least five days prior to the filing copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that Seller files in the bankruptcy cases that relate to this Agreement, the sale of the Equipment, or in any manner relate to or affect the transactions contemplated hereby.

Section 5.03 Further Assurances. Following Closing, each of the parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

ARTICLE VI MISCELLANEOUS

Section 6.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 6.02 Interpretation. This agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 6.03 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 6.04 Entire Agreement. This Agreement and the other transaction documents executed in connection herewith constitute the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

Section 6.05 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party. No assignment shall relieve the assigning party of its obligations hereunder.

Section 6.06 Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by both parties. No waiver of any of the provisions hereof shall be effective unless explicitly set forth in writing. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified in such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall be construed as a waiver thereof.

Section 6.07 Governing Law. The interpretation and construction of this Agreement and all matters related hereto shall be governed by the laws of the State of Indiana. Any judicial proceeding brought against any of the parties to this Agreement, on any dispute arising out of this Agreement, or any matter related hereto or thereto shall be brought in the United States Bankruptcy Court for the Southern District of Indiana, and by execution and delivery of this Agreement, each of the parties to this Agreement accepts the exclusive jurisdiction of such courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement.

Section 6.08 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall have the same legal effect as delivery of an original signature.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

BUYER

SELLER: Cline Transport, Inc.

Kyle D. Cline

Name: _____

Title: _____

Tyler J. Cline

Michael L. Cline

EXHIBIT A

Equipment

The Equipment shall include the following items, and all of Seller's rights under warranties, indemnities and all similar rights against third parties (including suppliers) to the extent related to the items listed below: