

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

In re Plainville Livestock Commission,
Inc., Debtor

)
)
)
)

Case No. 19-10293
Lead Case

In re Plainville Livestock, LLC, Debtor

)
)
)
)

Case No. 19-10294
Jointly Administered

TRUSTEE’S MOTION FOR AN ORDER (1) SCHEDULING AN AUCTION FOR SALE OF ASSETS FREE AND CLEAR OF LIENS; (2) APPROVING PROCEDURES FOR AUCTIONS, INCLUDING TERMS OF SALE; (3) APPROVING SURCHARGE OF AUCTION PROCEEDS TO PAY TRUSTEE’S FEES AND COSTS, AND OTHER ADMINISTRATIVE EXPENSES; (4) APPROVING THE DISTRIBUTION OF THE NET FUNDS TO CERTAIN LIENHOLDERS AT THE CLOSING; (5) SCHEDULING HEARING ON APPROVAL OF SALE; AND (6) APPROVAL OF ADDITIONAL MATTERS RELATED TO SALE.

NOTICE OF SHORTENED OBJECTION/RESISTANCE DEADLINE AND OF HEARING ON MOTION (IN THE EVENT OF OBJECTION) AND PROOF OF SERVICE.

The Trustee, James A. Overcash, (“Trustee”), is the duly appointed trustee for the Chapter 11 proceedings of Plainville Livestock Commission, Inc. (“PLC Inc.”) and Plainville Livestock, LLC (“PL LLC”) (jointly referred to as “Debtors”). The Trustee respectfully requests that this Court enter an order, pursuant to sections 105(a), 363, and 506 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 9007, and 9013 of the Federal Rules of Bankruptcy Procedure and the local rules of the United States Bankruptcy Court for the District of Kansas, including but not limited to Local Rule 9013 which:

- (i) schedules an auction for the sale of the assets free and clear of liens pursuant to 11 U.S.C. §363 to take place on June 27, 2019, at the location of the real property located at 907 NW 3rd Street, Plainville, Kansas;
- (ii) approves bidding procedures for the Sale Barn Auction as set forth herein and as announced by the Trustee at the auction, and approves the Trustee setting minimum bidding increments as the Trustee, in consultation with Almena State

Bank (“ASB”), may determine and announce from time to time during the auction;

- (iii) approves the auction of personal property listed on Exhibit C, as may be amended by the Trustee;
- (iv) approves the surcharge of the sale proceeds to pay all Trustee Administrative Costs as approved by the Court;
- (v) approves distribution, after closing costs, auctioneer costs and expenses, and surcharged Trustee Administrative Costs to secured creditors;
- (vi) schedules a hearing for approval of the successful bidder for the Sale Barn Auction Assets;
- (vii) orders that there are no sales or use taxes associated with the sale as, without limitation, the sale constitutes an occasional sale under Kansas law for which no sales or use tax applies;
- (viii) orders that, in the event there are any taxes associated with the sale which would normally be the responsibility of the seller and are not otherwise the responsibility of the buyer, said taxes shall be claims against the bankruptcy estate only and not against the Trustee personally;
- (ix) orders that the successful purchaser at any auction be afforded the protections of Section 363(m) of the Bankruptcy Code;
- (x) orders that upon entry of the order approving this motion, the Court lift all stays to closing the sale, including the stay of Fed. R. Bankr. P. 6004(h), so that any sale and closing can proceed promptly as set forth herein; and
- (xi) the Trustee requests such other and further relief as is just and appropriate under the circumstances and reasonably necessary to facilitate the liquidation of the assets.

In support of this motion, the Trustee respectfully states:

JURISDICTION

1. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334.

This motion raises a core proceeding within the meaning of 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested in this motion are 11 U.S.C. §§ 105(a), 363, and 506 and Fed. R. Bankr. P. 2002, 6004, 9007, and 9013.

BACKGROUND

3. This motion seeks approval of two separate auctions to occur the same day. The first auction would be for the Sale Barn Auction Assets and the second auction would be for assets not sold with the Sale Barn Auction Assets.

4. For reference, the following is a partial list of defined terms used in the motion:

a. “ASB” means Almena State Bank.

b. “Debtors” means both Plainville Livestock Commission, Inc. and Plainville Livestock, LLC.

c. “Earnest Money Deposit” means the earnest money deposit of \$200,000 made by the successful bidder at the close of business the day of the Sale Barn Auction.

d. “TBK” means TBK Bank.

e. “Trustee” means James A. Overcash, Chapter 11 Trustee.

f. “PLC Inc.” means Plainville Livestock Commission, Inc.

g. “PL LLC” means Plainville Livestock, LLC.

h. “Sale Barn” means the livestock sale barn owned by PL LLC in Plainville, Kansas.

i. “Sale Barn Auction Assets” mean the assets listed on Exhibit A and B.

j. “Sale Barn Auction” means the auction of the real estate shown in Exhibit A and the personal property listed in Exhibit B.

k. “Sale Barn Auction - Qualified Bidder” means those parties who are approved by the Trustee to participate in the Sale Barn Auction.

l. “Sale Hearing” means the Court at which the Trustee will seek the entry of an order approving the sale.

m. “Trustee Administrative Costs” means the costs defined below, including cost of the sale, accounting fees, legal fees, Trustee compensation, and United States Trustee fees.

5. On March 1, 2019, the Debtors filed a voluntary Chapter 11 Petition. Before filing this bankruptcy, the Debtors owned and operated a livestock sale barn in Plainville, Kansas (“Sale Barn”). The Debtors last sale was on February 5, 2019.

6. On May 2, 2019, the Trustee was appointed as the Chapter 11 Trustee of the Debtors (Filing #108) and continues to act in this capacity.

7. The primary assets of the bankruptcy estate consist of real property and tangible and personal property that was used to operate the Sale Barn. Generally, PLC Inc. owns the personal property that supports the operation of the Sale Barn and PL LLC owns the real property.

8. The Trustee believes the Debtor’s property should be sold because the Debtors can no longer operate the Sale Barn.

9. The real property that will be sold by the Trustee pursuant to this motion is described in Exhibit A.

10. The personal property assets to be sold by the Trustee pursuant to this motion are categorized as follows (Exhibits B, C, and D):

Exhibit	Category
B	Preliminary Description of Personal Property to be Sold with Real Property
C	Preliminary Description of Personal Property for Auction
D	Preliminary Description of Personal Property for Later Sale

The Trustee requests the flexibility to move personal property assets between the Exhibit B, C, and D categories based upon the consent of ASB and TBK, comments from potential buyers, advice from the personal property auctioneer, and the status of the title paperwork for specific pieces of personal property. The personal property to be sold with the real property will be reviewed based upon the personal property's direct use in the operation of the Sale Barn. The final list of the personal property for each Exhibit will be determined by the Trustee prior to the start of the real property auction.

11. To be clear, the Sale Barn is actively in use and the sale pursuant to this motion will not include property of any third party and no livestock will be sold by the Trustee. Assets that are not part of the estate will not be part of this sale and will not be sold or transferred to any purchaser at this sale.

12. The Trustee has leased the Sale Barn to Heartland Regional Stockyards, Inc. (Filing 99, 118, and 125), and that lease will be terminated within six days following the approval of the sale by the Bankruptcy Court.

13. ASB has claimed a security interest in the real property and this interest has been reviewed by the Trustee. (See Case #19-10293; Claim #11 and Case #1910294; and Claim #2.) Based upon the claim filed by ASB, the Trustee believes that ASB has a first lien on the real property to be sold and a second lien on the equipment to be sold as shown in Exhibits B and C. The Trustee requests that ASB be paid directly at the close of the sale, however this payment

and the Trustee’s preliminary finding should not preclude the Trustee or any other party from objecting to the payment or ASB’s claim.

14. TBK has claimed a security interest in the equipment and this claim has been reviewed by the Trustee. (See Case #19-10293 and Claim #12.) Based upon the claim filed by TBK, the Trustee believes that TBK has a first lien on the equipment to be sold as listed in Exhibits B and C. The Trustee requests that TBK be paid directly at the close of the sale, however this payment and the Trustee’s preliminary finding should not preclude the Trustee or any other party from objecting to the payment or TBK’s claim.

15. There are additional secured creditors that have claimed security interests in motor vehicles and equipment. These claims are as follows:

Claimant	Collateral	Claim Filing	Claim Amount
Ally Bank	2015 Chevy Silverado	Case #19-10293 Claim #7	\$11,891.09
CNH Industrial Capital	New Holland Skid Loader NEM483984	Case #19-10293 Claim #3	\$8,488.43
Ford Motor Credit Company	2017 F-150	Case #19-10293 Claim #1	\$25,235.18
Ford Motor Credit Company	2015 F-150	Case #19-10293 Claim #2	\$15,532.23
Wells Fargo Bank	2017 Ford Truck F350	Case #19-10294 Claim 1	\$34,185.32

Based upon these claims, the Trustee believes these creditors hold the first lien on the collateral described above. If this collateral is sold, the Trustee requests that each of these creditors be paid directly at the close of the sale out of the funds from their respective collateral, in that collateral is sold, however this payment and the Trustee’s preliminary finding should not preclude the Trustee or any other party from objecting to the payment or the creditor’s claim.

16. The Trustee has learned from other parties that there is an interest in purchasing the Sale Barn real and personal property together as a package. The Trustee is reviewing these requests and will make a final determination about how the real and personal property will be auctioned prior to the sale.

TERMS OF SALES

17. All assets are to be sold as is, where is without representation or warranty of any type or kind, free and clear of all liens and encumbrances, pursuant to Section 363 of the Bankruptcy Code, with all said liens and encumbrances attaching to the sale proceeds.

18. All real property shall be transferred pursuant to the Trustee’s deed form which will be provided by the Trustee after discussions with the closing company prior to the sale date. All personal property shall be transferred pursuant to the bill of sale form, attached as Exhibit E.

SALE BARN AUCTION – SALE AND BIDDING PROCEDURES

19. The Trustee requests that this Court approve certain procedures for selling the assets listed on Exhibits A and B (“Sale Barn Auction Assets”) by auction and distribution of proceeds related to this auction (“Sale Barn Auction”). The processes for the Sale Barn Auction are designed to maximize the value to be realized by the estate. The Trustee requests approval of the following:

- a) Sale Barn Auction - Bidders; Participation Statement: Before the start of the Sale Barn Auction, anyone desiring to be a bidder at the Sale Barn Auction must submit a participation statement to the Trustee demonstrating to the Trustee’s satisfaction, in consultation with ASB, that the bidder has:
 - i) a bona fide interest in purchasing the Sale Barn Auction Assets;

ii) the financial ability to make an earnest money deposit of \$400,000 before the close of business the day of the Sale Barn Auction in immediately available funds (the “Earnest Money Deposit”); and

iii) the financial ability to close on the purchase of the Sale Barn Auction Assets at the closing of the Sale Barn Auction in the event the participant is the high bidder.

Only those parties who are approved by the Trustee shall be allowed to participate in the Sale Barn Auction (“Sale Barn Auction - Qualified Bidder”). ASB is approved by the Trustee as a Sale Barn Auction - Qualified Bidder.

- b) Auction/Participation/Bidding: If there are one or more Sale Barn Auction - Qualified Bidders prior to the scheduled auction date, then the Sale Barn Auction shall be held at 11:00 a.m. central time, on Thursday, June 27, 2019 at the Sale Barn in Plainville, Kansas.
- c) Only Sale Barn Auction - Qualified Bidders shall be permitted to participate at the Sale Barn Auction.
- d) All Sale Barn Auction - Qualified Bidders shall appear at the Sale Barn Auction in person or through a duly authorized representative who shall appear in person.
- e) The opening bid shall be at least \$750,000 or other amount announced at the auction by the Trustee. After the initial bid, all subsequent bids shall be in increments as announced by the Trustee at the Sale Barn Auction from time to time, which shall be determined by the Trustee after consultation with ASB.
- f) Each bid submitted at the Sale Barn Auction shall be deemed an irrevocable offer to purchase the Sale Barn Auction Assets for the price bid.

g) The Sale Barn Auction shall remain open for 30 minutes, unless at end of this time period there is active bidding or reasonable deliberations for further bidding, the auction shall continue until such time as the active bidding or reasonable deliberations cease as determined by the Trustee. The high bidder at the auction for the Sale Barn Auction Assets is hereinafter sometimes referred to as having the “Successful Bid” and the party that submitted such bid, the “Successful Bidder”. The Successful Bidder shall be required to make an Earnest Money Deposit to the Trustee at the close of the Sale Barn Auction.

20. The Trustee shall seek approval from the Court of the Successful Bid at the hearing (“Sale Hearing”), as described below. The Trustee shall declare the name of the Successful Bidder.

21. Back-up Bidder: The Trustee shall have the right (but not the obligation) to select any bidder at the Sale Barn Auction, whom the Trustee determines has submitted the second highest bid to serve as the back-up bidder (the “Back-Up Bidder”) and to retain such bid in place for up to forty-five (45) days following entry of an order approving the sale, or for such longer period as mutually agreed by the parties. At the Sale Hearing, the Trustee may request that this Court confirm the Back-Up Bidder as a contingent buyer to eliminate the need for an additional hearing in case the Successful Bidder fails to close; and the Back-Up Bidder shall perform as the buyer if (but only if) the Back-Up Bidder is notified by the Trustee within forty five days following entry of an order approving the sale that the initial Successful Bidder failed to close.

22. Earnest Money Deposit: All Earnest Money Deposits shall be held by the Trustee in a non-interest bearing separate account. The gross Earnest Money Deposit of the Successful Bidder shall be applied to the cash component of such bidder's purchase price at the closing. If the Successful Bidder is unable to close, the Trustee shall retain the Earnest Money Deposit as liquidated damages and said retained amounts shall be subject to the secured claims of ASB which are subject to the surcharge rights of the Trustee, and shall be thereafter distributed upon further order of the Court. If ASB is the Successful Bidder, the Trustee will not require an Earnest Money Deposit.

23. Sale Hearing: If an auction occurs and the Trustee declares a Successful Bidder, a Sale Hearing shall be held at such time promptly after the Sale Barn Auction as may be scheduled by the Court at the United States Bankruptcy Court for the District of Kansas, at which the Trustee will seek the entry of an order approving and authorizing the sale to the Successful Bidder on terms and conditions consistent with this motion.

24. Closing of the sale shall occur at the offices of the Trustee or another location agreed to by the Trustee as soon as reasonably possible following the entry of an Order approving the sale. At the closing of the sale, the Trustee shall (by virtue of the order approving this motion) be authorized to make distributions from the proceeds from the sale of the Sale Barn Auction Assets as follows, without further order of the Court:

- (a) first, to payment of fees and costs of the Trustee for normal and customary seller closing expenses;
- (b) second, pay or retain a reasonable amount equal to all of the Trustee's anticipated Trustee Administrative Costs (defined below) to the extent they have been or will

be approved by the Court after notice to all parties so entitled and an opportunity to object (with any balance remaining after payment of Trustee Administrative Costs to be then distributed to ASB as proceeds of its secured claim upon the case closing);

(c) third, the net proceeds to ASB up to ASB’s claim amount; and

(d) fourth, the amounts of any unsecured proceeds, if any, shall be retained as part of the estate by the Trustee.

25. The Successful Bidder for the Sale Barn Auction Assets will allow the Trustee to store all Exhibit D assets at the Sale Barn and to hold any subsequent auction at the Sale Barn without any compensation.

PERSONAL PROPERTY (EX. C) – AUCTION

26. By this motion the Trustee requests that this Court approve that the property listed on Exhibit C may be sold by auction. The various assets listed on Exhibit C are subject to the security interest of various creditors. The Trustee requests that the assets listed in Exhibit C be sold free and clear of liens with the liens attaching to the proceeds.

27. The Trustee will submit a separate motion to retain an auctioneer for the sale of Exhibit C assets. The Trustee believes the auctioneer will be Palmer Auction.

28. The auction of Exhibit C assets shall be held at 1:00 p.m. central time, on Thursday, June 27, 2019, at the Sale Barn in Plainville, Kansas.

29. Once the sale is completed by the auctioneer, all funds will be paid to the Trustee and the Trustee will propose a distribution from the sale to the secured creditors. This proposed determination

will be submitted to the Court for review and approval. Generally, it is anticipated that the proposed distribution will be as follows:

- (a) first, payment of fees and costs of the Trustee for normal and customary seller closing expenses and the compensation and expenses of the auctioneer;
 - (b) second, pay or retain a reasonable amount equal to all of the Trustee's anticipated Trustee Administrative Costs to the extent they have been or will be approved by the Court after notice to all parties so entitled and an opportunity to object (with any balance remaining after payment of Trustee Administrative Costs to be then distributed to ASB as proceeds of its secured claim upon the case closing);
 - (c) third, the specific sale amounts for specific pieces of collateral, less the proportional share of the compensation, expenses and costs outlined in subparagraph a and b above, to be paid to specific secured creditors that holds a security interest in a specific asset;
 - (d) fourth, the net proceeds to each ASB and TBK as follows:
 - TBK shall receive all proceeds up to TBK's claim amount. Once TBK's claim amount is paid, ASB shall receive all proceeds up to ASB's claim amount ; and
 - (e) fifth, the amounts of any unsecured proceeds, if any, shall be retained as part of the estate by the Trustee.
30. The Sale Barn Auction is in the best interest of the Debtor's estate and creditors thereof.
31. Sale Hearing: The Trustee shall report the results of the Sale Barn Auction sale to the Court. A Sale Hearing shall be held at such time promptly after the Sale Barn Auction as

may be scheduled by the Court at the United States Bankruptcy Court for the District of Kansas, at which the Trustee will seek the entry of an order approving Sale Barn Auction Assets sale.

PERSONAL PROPERTY (EX. D) – SALE PLAN – REMAINING ASSETS

32. The Trustee will in the future submit a new sale motion to dispose of any remaining assets that are not sold pursuant to this motion. These expected assets are listed in Exhibit D.

33. The Successful Bidder for the Sale Barn Auction Assets will allow the Trustee to store all Exhibit D assets at the Sale Barn and to hold any subsequent auction at the Sale Barn without any compensation.

SURCHARGE OF ADMINISTRATIVE AND SALE EXPENSES

34. Trustee requests to surcharge all sale proceeds and retain funds from the sale proceeds to pay the reasonable costs of the following:

- i. Auction sale expenses and auctioneer compensation. This will be for the sale of personal property only. The Trustee is conducting the sale of the real property;
- ii. Normal closing costs for the sale of all property;
- iii. Trustee Administrative Costs. These costs do not include i or ii above and will be referred to as “Trustee Administrative Costs.” Trustee Administrative Costs shall be as follows:
 - a. Services of a certified public accountant to prepare all Federal and State income tax returns and other tax records on behalf of the bankruptcy estate.

- b. Trustee’s attorney fees and expenses. The Trustee will hold the amount of attorney fees and expenses paid at closing until an application is filed for approval of the Trustee’s attorney fees and expenses.
- c. Compensation for the Trustee shall be paid for the work of the Trustee and the Trustee’s paralegal at their normal hourly rates from the date of Trustee’s appointment. The Trustee shall not be paid a separate trustee fee as a percentage of the sale from the sale proceeds, such as the percentages listed in 11 U.S.C. §326.
- d. All United States Trustee fees shall be paid at closing of the sale. The United States Trustee fees are estimated to be \$325 for each calendar quarter and one percent of the total sale price.
- e. The Trustee Administrative Costs will be surcharged against the proceeds of all secured creditors collateral and will not exceed five percent (5%) of the total gross selling price of all secured collateral. This amount will be paid to the Trustee for the Trustee’s use in payment of Trustee Administrative Costs.
- f. The actual payment of Trustee Administrative Costs will be approved by this Court.

TAXES AND OTHER MATTERS

35. The Trustee believes that there are no income tax consequences to any sale of the assets inasmuch as the Debtors are a single member LLC pass through entity or a subchapter S corporation. However, the Trustee needs to retain an accounting firm to conduct a review. The

Trustee likewise believes there are no sales or use taxes associated with the sale of the Sale Barn and the personal property (except for motor vehicles or trailers) as this transaction constitutes an isolated or occasional sale under Kansas law for which no sales or use tax applies (See Kansas Sales Tax and Compensating Use Tax publication PUB KS-1510; Rev. 2-19). In the event there are any taxes associated with the sale which would normally be the responsibility of the seller, said taxes shall be claims against the bankruptcy estate only and not against the Trustee personally.

36. Without limitation, the Trustee believes there will be real estate taxes and personal property taxes due after the closing, and that there will be adjustments on a closing statement for pro-rated real estate taxes for 2019. The Trustee will not pay any personal property taxes. The closing costs, title insurance, and any other tax or transfer cost for the real estate shall be paid by the Successful Bidder. The closing company for the real estate will be Coast to Coast Title Company, Inc. of Stockton, Kansas, however this is subject to change by the Trustee.

37. The Trustee believes that proceeding as set forth herein is in the best interests of this bankruptcy estate; and that the successful purchasers should be found to be acting in good faith and afforded the protections of Section 363(m) of the Bankruptcy Code.

38. The Trustee requests that upon entry of the order approving this motion that the Court lift all stays to closing the sale, including the stay of Fed. R. Bankr. P. 6004(h), so that the sale and closing can proceed promptly as set forth herein.

39. A draft order to approve this motion and set the sale confirmation hearing for the Sale Barn Auction Assets is attached as Exhibit F.

40. A draft order approving the sale of the Sale Barn Auction Assets is attached as Exhibit G.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order which:

- (i) schedules an auction for the sale of the assets free and clear of liens pursuant to 11 U.S.C. §363 to take place on June 27, 2019, at the location of the real property located at 907 NW 3rd Street, Plainville, Kansas;
- (ii) approves bidding procedures for the Sale Barn Auction as set forth herein and as announced by the Trustee at the auction, and approves the Trustee setting minimum bidding increments as the Trustee, in consultation with the ASB, may determine and announce from time to time during the auction;
- (iii) approves the auction of personal property listed on Exhibit C, as may be amended by the Trustee;
- (iv) approves the surcharge of the sale proceeds to pay all Trustee Administrative Costs as approved by the Court;
- (v) approves distribution, after closing costs, auctioneer costs and expenses, and surcharged Trustee Administrative Costs to secured creditors;
- (vi) schedules the hearing for approval of the Successful Bidder for the Sale Barn Auction Assets;
- (vii) orders that there are no sales or use taxes associated with the sale as, without limitation, the sale constitutes an occasional sale under Kansas law for which no sales or use tax applies;
- (viii) orders that in the event there are any taxes associated with the sale which would normally be the responsibility of the seller and are not otherwise the responsibility of the buyer, said taxes shall be claims against the bankruptcy estate only and not against the Trustee personally;
- (ix) orders that the Successful Bidder at any auction be afforded the protections of Section 363(m) of the Bankruptcy Code;
- (x) orders that upon entry of the order approving this motion that the Court lift all stays to closing the sale, including the stay of Fed. R. Bankr. P. 6004(h), so that any sale and closing can proceed promptly as set forth herein; and

- (xi) the Trustee requests such other and further relief as is just and appropriate under the circumstances and reasonably necessary to facilitate the liquidation of the assets.

Dated this 31st day of May, 2019.

s/ James A. Overcash
James A. Overcash, Chapter 11 Trustee
301 S 13th St., Suite 500
Lincoln, NE 68508
402-437-8500
jovercash@woodsaitken.com

Exhibit List

Exhibit	
A	Real Property
B	Preliminary Description of Personal Property to be Sold with Real Property
C	Preliminary Description of Personal Property for Auction
D	Preliminary Description of Personal Property for Later Sale
E	Form – Bill of Sale for Personal Property
F	Form – Court Order Approving Sale Procedures
G	Form – Court Order Approving Sale

EXHIBIT A

Description of Real Property

907 NW Third Street, Plainville, Kansas 67663, also known as:

Tract A: A tract of land in the Southeast Quarter (SE/4) of Section Twenty-seven (27), Township Nine (9) South, range Eighteen (18) West of the 6th Principal Meridian, Rooks County, Kansas. Commencing at the Southeast Corner (SE/c) of Section Twenty-seven (27), Township Nine (9) South, Range Eighteen (18) West of the 6th Principal Meridian; thence on an assumed bearing of North 00 Degrees 56 Minutes 09 Seconds East (N00°56'09"E) along the East line of said Southeast Quarter (SE/4) of Section Twenty-seven (27) 366.66 feet to the point of beginning; thence North 88 Degrees 25 Minutes 48 Seconds West (N88°25'48"W) 1633.12 feet along the centerline of the abandoned Union Pacific Railroad tracks to a point; thence North 01 Degrees 34 Minutes 09 Seconds East (N01°34'09"E) 480.95 feet to a point on K-18 highway right-of-way; thence North 84 Degrees 42 Minutes 24 Seconds East (N84°42'24"E) 1484.57 feet along K-18 highway right-of-way to a point; thence South 16 Degrees 00 Minutes 04 Seconds West (S16°00'04"W) 165.27 feet to a point; thence North 88 Degrees 35 Minutes 16 Seconds East (N88°35'16" E) 195.01 feet to a point on the East line of said Southeast Quarter (SE/4) of Section Twenty-seven (27); thence South 00 Degrees 56 Minutes 09 Seconds West (S00°56'09"W) 508.49 feet along the East line of said Southeast Quarter (SE/4) of Section Twenty-seven (27) to the point of beginning. This tract contains 21.01 acres more or less.

Tract B: A tract of land in the Southeast Quarter (SE/4) of Section Twenty-seven (27), Township Nine (9) South, Range Eighteen (18) West of the 6th Principal Meridian, Rooks County, Kansas. Commencing at the Northeast Corner (NE/c) of the Southeast Quarter (SE/4) of Section Twenty-seven (27), Township Nine (9) South, Range Eighteen (18) West of the 6th Principal Meridian; thence on an assumed bearing of South 00 Degrees 56 Minutes 09 Seconds West (S00°56'09"W) 1602.22 feet along the East line of said Southeast Quarter (SE/4) of Section Twenty-seven (27) to the point of beginning; thence South 00 Degrees 56 Minutes 09 Seconds West (S00°56'09"W) 168.15 feet along the East line of said Southeast Quarter (SE/4) of Section Twenty-seven (27) to a point; thence South 88 Degrees 35 Minutes 16 Seconds West (S88°35'16"W) 195.01 feet to a point; thence North 16 Degrees 00 Minutes 04 Seconds East (N16°00'04"E) 165.23 feet to a point on K-18 highway right-of-way; thence North 84 Degrees 42 Minutes 24 Seconds East (N84°42'24"E) 152.15 feet along K-18 highway right-of-way to the point of beginning. This tract contains 0.65 acres more or less.

The property is located in Rooks County, Kansas.

Note: The Trustee is reviewing this legal description to make sure it accurately reflects the location of the Sale Barn. This description may be updated.

EXHIBIT B

Preliminary Description of Personal Property to be Sold with Real Property

Office Equipment:

3 White Tables
8 Black Chairs
1 Brown Chair
10 Gray Chairs
1 Couch
3 End Tables
6 Computers
2 Printers

Café Equipment:

50 Black Chairs
Tables
Ice Machine
Freezer
Refrigerator – 2 Door
Refrigerator
Stove/Oven
Grill
Prep Table
2 Fryers
Freezer Comm
Dishware

EXHIBIT C

Preliminary Description of Personal Property for Auction

Year	Description
UNK	New Holland L223 Skid Loader
UNK	New Holland T6 145 Tractor
2002	Polaris 400 Sportman
	10' Speed Motor
	Deck Mower
	Blattner Panels - Gates
	Blattner Bale Trailer
	Cresote Posts & Steel Posts
	40 Panel Trailer
	Schaben Boom Sprayer - 4 Wheeler
2014	Silencer Chute
2007	C&S Chute
	Portable Load Out Chute
	Vet Tub 7 Circular Processing
	Tanks 1000 gal - 8 stock Tanks
	Tanks Upright 1500 x 2
	JD Power Washer (2)
	Bunks / Feeders
	Lincoln Welder/Torch/Shop Equipment
	Miller Bobcat 225G Weld/ Gen
	Miller Wire Feed Welder
	Polaris Sprayer
	EX Roll-Wire Roller & Wire
2016	Ford NY 145 Tractor
	JD 544J Front End Loader
	Volvo 85 HP Skid Steer Tracks
1969	JD 4020
	JD Motor Grader
2008	Hustler 60" Mower
2013	Polaris Ranger

All of the Equipment listed herein is the Trustee's best estimate of personal property ready for sale.

EXHIBIT D

Preliminary Description of Personal Property for Later Sale

Year	Description
2015	Chevy Silverado
2015	Ford F150
2017	Ford F150
2002	Merritt Cattle Trailer
2015	Merritt Aluminum Trailer
2004	Neckover Cattle Trailer
2012	PJ Tandem Dully Trailer
1991	Peterbilt 379
2003	Dodge 3500 Truck
1990	Chevy 4x4 Truck
2018	Haybuster
1994	4 Star 7x20 Aluminum Trailer
2016	Hughes Livestock Trailer
	Belly Dump Semi Trailer
	EZ Loader Trailer
2008	Eagle Flatbed Trailer
1977	S&H Gooseneck Trailer
2015	PJ Trailer
2010	Chevrolet Camaro
1978	GMC TK
1982	INTL CC
1974	INTE 1600
2016	PJ Trailer - 77" Channel Utility
2003	CPS UT
2013	PJ Trailer - Gooseneck

The Equipment listed on this Exhibit may contain duplicative entries for the same asset. The Trustee is reviewing the titles of the equipment to determine a final list and the ability to transfer the property at the June 27, 2019 auction. This Exhibit will be updated.

EXHIBIT E

Form – Bill of Sale for Personal Property

**TRUSTEE’S BILL OF SALE FOR PERSONAL PROPERTY OF
PLAINVILLE LIVESTOCK COMMISSION, INC.**

KNOW ALL PERSONS BY THESE PRESENTS:

For the consideration of the sum of _____ dollars (\$ _____) and other valuable consideration, Plainville Livestock Commission, Inc., a Chapter 11 Debtor, (the “Seller”), does hereby, effective as of the date hereof, finally and irrevocably convey, grant, sell, transfer, set over, assign, bargain, release, deliver and confirm unto _____ (the “Buyer”), for itself and for its successors and assigns forever, all of Seller’s right, title and interest in and to the personal property listed on Attachment A to this Bill of Sale (the “Assets”).

TO HAVE AND TO HOLD, the Assets unto Buyer to and for its use and benefit forever, with full power and authority to Buyer with respect to the Assets to demand, receive, and to sue for, or otherwise to obtain possession of the Assets and to enforce the rights transferred hereunder, hereby ratifying and confirming to all that the Buyer may do so by virtue hereof. Seller acknowledges that this authorization is irrevocable and coupled with an interest.

1. Seller hereby covenants with Buyer that Seller is the owner of said personal property and that Seller has good and lawful authority to sell, transfer, and assign the same.

2. SELLER HEREBY SELLS, TRANSFERS AND ASSIGNS SAID PERSONAL PROPERTY IN "AS IS" CONDITION. ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL EXPRESSED OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE IN REGARD TO SAID PERSONAL PROPERTY ARE HEREBY EXCLUDED.

3. Accordingly, each of the parties hereto covenants and agrees from and after the date hereof, at its own expense, to execute and deliver, at the written request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to consummate the sale, transfer, conveyance, assignments and assumptions contemplated by this Agreement.

5. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Kansas.

IN WITNESS WHEREOF, Seller and Buyer have caused this Bill of Sale and Assumption Agreement to be duly executed as of _____, 2019.

**Plainville Livestock Commission, Inc.
By James A. Overcash, Chapter 11, Trustee
("Seller")**

James A. Overcash, Chapter 11 Trustee

EXHIBIT F

Form - Court Order Approving Sale Procedures

IN THE UNITED STATES BANKRUPTCY COURT

In re Plainville Livestock Commission,
Inc., Debtor

)
)
)
)

Case No. 19-10293
Lead Case

In re Plainville Livestock, LLC, Debtor

)
)
)
)

Case No. 19-10294
Jointly Administered

**ORDER GRANTING MOTION TO SELL PROPERTY UNDER 11 U.S.C. §§ 105(A) AND
363 AND FED. R. BANKR. P. 2002 AND 6004 AND APPROVING SALE PROCEDURES
AND FORM AND MANNER OF NOTICE**

This matter comes before the Court on a Motion filed by James A. Overcash, Chapter 11

Trustee, (the “Sale Motion”) for the sale of property requesting an Order be entered which:

- (i) schedules an auction for the sale of the assets free and clear of liens pursuant to 11 U.S.C. § 363 to take place on July 1, 2019, at the location of the real property located at 907 NW 3rd Street, Plainville, Kansas;
- (ii) approves bidding procedures for the sale as set forth therein and as announced by the Trustee at the auction, and approves the Trustee setting minimum bidding increments as the Trustee, in consultation with Almena State Bank (“ASB”), may determine and announce from time to time during the auction;
- (iii) approves the auction of personal property listed on Exhibit C, as may be amended by the Trustee;
- (iv) approves the surcharge of the sale proceeds to pay all administrative costs;
- (v) after closing costs and surcharged administrative costs, approves distribution, to ASB, the first lienholder for the real property and second lien holder for the equipment, and TBK Bank (“TBK”), the first lien holder for the equipment;
- (vi) schedules a hearing for approval of the successful bidder for the Sale Barn Assets;

- (vii) orders that there are no sales or use taxes associated with the sale as, without limitation, the sale constitutes an occasional sale under Kansas law for which no sales or use tax applies;
- (viii) orders that in the event there are any taxes associated with the sale which would normally be the responsibility of the seller and are not otherwise the responsibility of the buyer said taxes shall be claims against the bankruptcy estate only and not against the Trustee personally;
- (ix) orders that the successful purchaser at any auction be afforded the protections of Section 363(m) of the Bankruptcy Code;
- (x) orders that upon entry of the order approving this motion, the court lift all stays to closing the sale, including the stay of Fed. R. Bankr. P. 6004(h), so that any sale and closing can proceed promptly as set forth herein; and
- (xi) the Trustee requests such other and further relief as is just and appropriate under the circumstances and reasonably necessary to facilitate the liquidation of the assets.

A hearing was held regarding the Sale Motion. James Overcash appeared for the Chapter 11 Trustee. Christopher T. Borniger appeared for the United States Trustee. J. Michael Morris of Klenda Austerman LLC appeared for the Official Committee of Unsecured Creditors. Wesley F. Smith of Stevens & Brand, LLP appeared for Lloyd Schneider, Judy Schneider, and Heartland Regional Stockyards, Inc. Bruce J. Woner of Woner, Reeder & Girard, P.A., appeared for Almena State Bank. Additional parties related to the cases were also present in the Courtroom.

The Court FINDS:

- A. On May 31, 2019, the Trustee filed the Sale Motion.
- B. There were no objections filed to the Sale Motion.
- C. The Court has jurisdiction over this matter and over the property of the Debtors and its bankruptcy estate pursuant to 28 U.S.C. § 1334 and § 157(a).

D. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

E. The Trustee has filed a motion to approve the sale of the assets free and clear of all liens, claims, and encumbrances (Filing #__) (the "Sale Motion"), seeking an order (the "Sale Order") authorizing the sale (the "Sale") of the assets free and clear of all liens, claims, and encumbrances (with such liens, claims, and encumbrances to attach to the proceeds of the Sale and with the same priority).

F. The Trustee has articulated good and sufficient reasons for approving (i) the Sale Motion and (ii) the bidding procedures.

G. The sale procedures set forth in the Sale Motion are reasonable and appropriate, based upon the Trustee's situation and represent the best method for maximizing the return for the estate.

H. During the hearing held on June ___, 2019, there were no oral objections made to the Sale Motion.

I. The Court has reviewed the Sale Motion and based upon the record at the hearing finds that the Sale Motion should be granted.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Sale Motion is **GRANTED**.
2. The undersigned United States Bankruptcy Judge, shall conduct a hearing (the "Sale Hearing") on _____, 2013 at _____ a.m. Central Time in the United States Bankruptcy Court for the District of Kansas in the Federal Courthouse located in Wichita, Kansas, at which time the Court shall consider the Sale Motion and approval of the results of the auction, if any for the Sale Barn Assets. Objections to the Sale or the process followed by

the Trustee shall be filed and served upon the Trustee, so that such objections are received no later than 4:30 p.m. (Central Time) on the day of the auction (the "Objection Deadline").

3. The failure of any objecting person or entity to timely file its objection shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion or the Sale, if authorized by the Court.

4. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court, or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date.

Notice

5. Notice of (a) this Order, (b) the Sale Motion, and (c) the Sale Hearing shall be good and sufficient, and no other or further notice shall be required, if given as follows: Within one (1) business day after the entry of this Order (the "Mailing Date"), the Trustee shall serve the Sale Motion and a copy of this Order either by the ECF System or by first-class mail, postage prepaid, upon (i) all entities known to have expressed an interest in a transaction with respect to the assets or a portion thereof; and (ii) all entities requesting notice on the court's ECF System.

Terms of Sale, Auction, and Bidding Procedures

6. The terms of sale and sale procedures, as set forth on Sale Motion, are incorporated herein by reference as if fully set forth in this Order, are hereby approved in their entirety and shall govern all proceedings relating to the sale.

7. The Trustee is hereby authorized to conduct the sale of the assets without the necessity of complying with any state or local bulk transfer laws or requirements.

8. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

9. Notwithstanding Fed. R. Bankr. P. 6004(g), this Order shall become immediately effective upon entry.

IT IS SO ORDERED.

#

Submitted by:

JAMES A. OVERCASH,
CHAPTER 11 TRUSTEE

James A. Overcash, Chapter 11 Trustee
301 S 13th St., Suite 500
Lincoln, NE 68508
402-437-8500
jovercash@woodsaitken.com

EXHIBIT H

Form – Court Order Approving Sale

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

In re Plainville Livestock Commission,
Inc., Debtor

)
)
)
)

Case No. 19-10293
Lead Case

In re Plainville Livestock, LLC, Debtor

)
)
)
)

Case No. 19-10294
Jointly Administered

**ORDER APPROVING SALE OF PERSONAL AND REAL PROPERTY FREE AND
CLEAR OF LIENS**

This matter is before the Court upon the Motion of James A. Overcash, Chapter 11 Trustee for the sale of property and was filed by the Trustee on May 31, 2019 at Filing XX (“Sale Motion”). The Trustee is now seeking approval of the sale that has occurred pursuant to the sale motion.

A hearing was held regarding the Sale Motion on June ___, 2019. James Overcash appeared for the Chapter 11 Trustee. Christopher T. Borniger appeared for the United States Trustee. J. Michael Morris of Klenda Austerman LLC appeared for the Official Committee of Unsecured Creditors. Wesley F. Smith of Stevens & Brand, LLP, appeared for Lloyd Schneider, Judy Schneider, and Heartland Regional Stockyards, Inc. Bruce J. Woner of Woner, Reeder & Girard, P.A., appeared for Almena State Bank. Additional parties related to the cases were also present in the Courtroom.

The Court FINDS:

- A. On May 31, 2019, the Trustee filed the Sale Motion.
- B. There were no objections filed to the Sale Motion.
- C. The Court has jurisdiction over this matter and over the property of the Debtors and its bankruptcy estate pursuant to 28 U.S.C. § 1334 and § 157(a).
- D. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).
- E. The Trustee has filed a report of the sale (Filing #XX) (“Trustee Sale Report”) to the Court and is seeking an order (the "Sale Order") approving and authorizing the sale (the "Sale") of the assets free and clear of all liens, claims, and encumbrances (with such liens, claims, and encumbrances to attach to the proceeds of the Sale and with the same priority).
- F. During the hearing held on June ___, 2019, there were no oral objections made to the Sale Motion.
- I. The Court has reviewed the Sale Motion, the Trustee’s sale report and based upon the record at the hearing finds that the Sale Motion should be granted.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

- 1. The Sale Motion is **GRANTED and the sale described in the Trustee’s Sale Report is authorized and approved.**
- 2. Any and all objections to the Sale Motion or the Trustee’s Sale Report that have not been withdrawn, waived, overruled, or settled, and all reservations of rights included therein, are hereby overruled on the merits. The sale of the personal and real property of Debtors free and clear of any liens and encumbrances is approved.

3. The Trustee is authorized to perform its obligations and to take all necessary and appropriate actions to consummate the sale as outlined in the Sale Motion and Trustee Sale Report.

4. The payments to Almena State Bank and TBK Bank proposed by the Trustee at closing in the Trustee’s Sale Report are approved.

5. The Court finds that the buyers of all property, as reported in the Trustee’s Sale Report purchased such property in good faith and should be afforded the protections found in 11 U.S.C. §363(m).

6. Following entry of this order, no holder of a claim or interest in the Debtor shall interfere with the any buyer's title to or use and enjoyment of the assets based on or related to such claim or interest.

7. This order shall be effective and enforceable immediately upon entry. The stay otherwise imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived. Time is of the essence in closing the transaction, and Trustee intends to move forward and auction the property as soon as possible. Therefore, any party objecting to this order must exercise due diligence in filing an appeal and pursuing a stay, or risk their appeal being foreclosed as moot.

IT IS SO ORDERED.

#

Submitted by:

JAMES A. OVERCASH,
CHAPTER 11 TRUSTEE

James A. Overcash, Chapter 11 Trustee
301 S 13th St., Suite 500
Lincoln, NE 68508
402-437-8500
jovercash@woodsaitken.com