

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

|                  |   |                          |
|------------------|---|--------------------------|
| IN RE:           | ) |                          |
|                  | ) |                          |
| RONALD MARKT NAY | ) | CASE NO. 16-90762-BHL-11 |
| SHERRY L. NAY    | ) |                          |
|                  | ) |                          |
| Debtors          | ) |                          |
| <hr/>            |   |                          |

**MOTION FOR ORDER APPROVING LEASE OF FARMLAND  
BY DEBTORS TO GRAHAM CREEK FARMS**

\* \* \* \* \*

Come now the Debtors, Ronald Markt Nay and Sherry L. Nay (collectively, the “Nays”), by counsel, and move the Court to enter an order approving the lease of certain farmland described more specifically at paragraph 4 herein (the “Leased Property”) to Dave Corya d/b/a Graham Creek Farms (the “Tenant”) on the terms described in the writing attached hereto as “**Exhibit A**” (the “Agreement”). In support of this Motion, the Nays state as follows:

1. On May 13, 2016, Nays filed in this Court their voluntary petition for relief under chapter 11 of the Bankruptcy Code, initiating the instant case. Pursuant to 11 U.S.C. §§ 1107(a) and 1108, the Nays continue to operate their business and manage their property as debtors in possession. No trustee or examiner has been appointed, and no committee has been appointed or designated in this chapter 11 case.

2. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 and Local Rule S.D. Ind. B-1002-1(e). This Motion is brought pursuant to 11 U.S.C. § 363(b)(1) and (e), Rules 4001 and 6004 of the Federal Rules of Bankruptcy Procedure, and Rules B-6004-1 and B-6004-2 of this Court’s Local Rules.

3. The Tenant leased farmland from the Nays, including the Leased Property, during 2016.

4. Under the terms of the Agreement, the Tenant will lease the real property described more specifically by the Nays on lines 1.2–1.6 of the Nays' *Schedule A/B* [Doc. 39 at 4–6. The Leased Property consists of approximately 334 acres, of which approximately 241.66 acres is tillable. The Tenant will pay \$75 per tillable acre, for a total of \$18,124.50, for the use of the Leased Property for the remainder of the growing season, and would vacate the Leased Property after harvest, in late October of this year. The Agreement is non-renewable.

5. There are no material contingencies to the sale.

6. The property was not marketed to be leased.

7. Due to the advanced stage of the growing season, last weekend presented the Tenant with the final opportunity to plant crops on the Leased Property. The Tenant has done so.

8. This late in the growing season, the range of crops that can be planted is limited. Accordingly, the Leased Property is of less value than it may have been if leased earlier in the spring. Also, there has been and continues to be significant uncertainty about whether and when the Nays will obtain confirmation of a chapter 11 plan, and if so, whether the confirmed plan would provide for the retention or sale of the Leased Property. This uncertainty, including the possibility that the Leased Property could be marketed for sale during the 2017 growing season, negatively affects the amount the Nays and their bankruptcy estate could have and can now realize from a lease of the Leased Property this season.

9. The Leased Property is subject to mortgages and assignments of rents in favor of MainSource Bank, *see* MainSource Bank's relevant *Proofs of Claims* [Claims 62–67].

As adequate protection of MainSource Bank's security in the rent, the Nays propose to assign the rent to MainSource Bank and to cause the Tenant to pay the rent directly to MainSource Bank, when it is payable on November 1, 2017.

10. The Nays intend to propose to surrender the Leased Property to MainSource Bank by their forthcoming First Amended Chapter 11 Plan of Reorganization.

11. MainSource Bank has been consulted about the Agreement and has indicated to the undersigned that it has no objection to the Agreement, subject to the conditions described herein.

PLEASE TAKE NOTICE THAT any objection must be filed with the Bankruptcy Clerk within 21 days from the date of service. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier, overnight/express mail, or in person at:

110 U.S. Courthouse  
121 W. Spring St.  
New Albany, IN 47150

The objecting party must ensure delivery of the objection to the movants. If an objection is NOT timely filed, the requested relief may be granted.

WHEREFORE, the Nays pray for an order approving the Agreement, and for all other appropriate relief.

A proposed Order is tendered herewith.

Respectfully submitted,

*/s/ William P. Harbison*

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*Counsel for Ronald Markt Nay and Sherry L. Nay*

**CERTIFICATE OF SERVICE**

On June 21, 2017, I filed a copy of this *Motion for Order Approving Lease of Farmland by Debtors to Graham Creek Farms* electronically. Notice of the filing will be sent via the Court’s CM/ECF system to the following:

- U.S. Trustee: ustpreion10.in.ecf@usdoj.gov
- Bradley Scott Salyer, Counsel for MainSource Bank: bss@morganandpottinger.com
- Jeannette Eisan Hinshaw, Counsel for the U.S. Trustee: jeannette.hinshaw@usdoj.gov
- Harley K. Means, Counsel for Ford Motor Credit Co. and Santander Consumer USA Inc.: hkm@kgrlaw.com
- James E. Rossow Jr., Counsel for Premier Ag Co-Op: jim@rubin-levin.net
- Scott R. Leisz, Counsel for Crop Production Services, Inc.: sleisz@bgdlegal.com
- W. Randall Kammeyer, Counsel for CNH Industrial Capital America LLC: wrkammeyer@hawkhaynie.com
- Jeffrey M. Monberg, Counsel for LEAF Funding, Inc. and VSF Leasing Co.: jeff.monberg@quarles.com
- Andrew D. Stosberg, Counsel for TCF Equipment Finance, Inc.: astosberg@lloydmc.com
- Meredith R. Theisen, Counsel for Premier Ag Co-Op: mtheisen@rubin-levin.net
- Dennis M. Ostrowski, Counsel for Ally Financial: reamer.ecf@reimerlaw.com
- Michael J. Hebenstreit, Counsel for DLL Finance, LLC: mjh@whzlaw.com
- Jacob V. Bradley, Counsel for LEAF Capital Funding, LLC : jacob.bradley@quarles.com

Furthermore, on April 24, 2017, I served a copy of this *Motion for Order Approving Lease of Farmland by Debtors to Graham Creek Farms* upon the following:

Centra Credit Union  
P.O. Box 789  
Columbus, IN 47202

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

John Deere Financial  
P.O. Box 6600  
Johnston, IA 50131

Capital One Bank (USA), N.A.  
c/o American InfoSource LP  
P.O. Box 71083  
Charlotte, NC 28272-1083

BMO Harris Bank N.A.  
1010 Thomas Edison Blvd. SW  
Cedar Rapids, IA 52404

Synchrony Bank  
c/o R.M.S.C.  
25 SE 2nd Ave. # 1120  
Miami, FL 33131-1605

/s/ William P. Harbison  
WILLIAM P. HARBISON

# 2017 Farm Ground Rent

Farm 5284-Tract 40 - 85.4 acres

Farm 5284-Tract 11554 - 14.64 acres

Farm 182-Tract 162 - 108.77 acres

Farm 5312-Tract 12015 - 17.19 acres

Farm 4798-Tract 11585 - 15.66 acres

241.66 acres

Ground rented to Graham Creek Farms  
for \$75/acre x 241.66 acres =  
\$ 18,124.50

Cash rent due Nov. 1, 2017

all cash rent payable to Main Source Bank

Ronald M. Nay  
SR = ✓

Ronald E. Nay  
Shery R. Nay

Graham Creek Farms by Geo E. Coors  
Graham Creek Farms by Dave Coors

Graham Creek Farms / George Coors / Dave Coors

7840 S. Hwy 3

Commiskey, IN 47227

812-346-2740