

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Tracy J. Clement,

Case No.: 16-31189

Debtor.

Chapter 11 Case

**NOTICE OF HEARING AND MOTION FOR SALE OF THE WANAMINGO DAIRY
PROPERTY FREE AND CLEAR OF LIENS, ENCUMBRANCES, AND OTHER
INTERESTS**

TO: Entities specified in Local Rule 9013-3.

1. Phillip L. Kunkel, the chapter 11 trustee (the “Trustee”), by and through his undersigned attorneys, moves the Court for the relief requested below and gives notice of a hearing.

2. The Court will hold a hearing on this Motion at **10:00 a.m. on Wednesday, November 29, 2017** in Courtroom 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this Motion must be filed and served not later than **Friday, November 24, 2017** pursuant to the applicable Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and

Local Rule 1070-1. This is a core proceeding. The petition in this case was filed on April 11, 2016 (the “Petition Date”). The case is now pending in this Court.

5. This Motion arises under 11 U.S.C. §§ 363(b), 363(f) and Bankruptcy Rule 6004.

BACKGROUND

6. On the Petition Date, Tracy J. Clement (the “Debtor”) filed a voluntary petition under chapter 11 of the Bankruptcy Code.

7. On May 3, 2016, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”).

8. On September 19, 2017, the Trustee was appointed as the chapter 11 trustee for the Debtor [Doc. No. 518].

I. THE WANAMINGO DAIRY PROPERTY.

9. The Trustee requests an order granting his request to sell the dairy facility and adjoining real estate located at 44656 County 1 Blvd., Wanamingo, Minnesota 55983, and legally described as:

The West One-Half of the Southwest Quarter, Section 28, Township 110 North, Range 17 West of the 5th P.M., Goodhue County, Minnesota, except the following tracts:

Beginning at the Southwest corner of said Southwest Quarter, thence east on the Section line fourteen rods, thence north eleven rods and seven feet, thence west fourteen rods, thence south eleven rods and seven feet to the point of beginning.

Commencing at the Southwest corner of said Southwest Quarter; thence on an assumed bearing of North along the west line of said Southwest Quarter 1320.00 feet to the point of beginning; thence continuing on a bearing of north along said west line 155.50 feet; thence on a bearing of east 110.00 feet; thence North 43 degrees 46 minutes 02 seconds East 117.78 feet; thence South 46 degrees 13 minutes 58 seconds East 143.89 feet; thence South 43 degrees 46 minutes 02 seconds West 195.27 feet; thence on a bearing of West 160.31 feet to the point of beginning.

(together with all equipment located on or used in connection with the dairy facility, the “Wanamingo Dairy Property”). The Wanamingo Dairy Property consists of approximately 80 acres, of which approximately 43.2 acres are tillable, and a dairy facility.

10. The Debtor and Steven A. Boyum (“Mr. Boyum”) purchased the Wanamingo Dairy Property as tenants in common in 2008 from West Woods Dairy, LLP.

11. In connection with the sale, West Woods Dairy, LLP executed a deed for the Wanamingo Dairy Property. The first deed, dated February 27, 2008, and recorded as Document No. 553596 with the Goodhue County Recorder, conveyed the Wanamingo Dairy Property from West Woods Dairy, LLP to the Debtor and Mr. Boyum, as tenants in common.

12. The Wanamingo Dairy Property is encumbered by a mortgage in favor of Citizen’s State Bank of Hayfield, dated February 27, 2008, filed March 21, 2008, as Document No. 554202, in the original amount of \$475,000 (the “Mortgage”). The outstanding balance is, as of October 13, 2017, \$350,000 in principal and \$3,548.61 in interest, for a total of \$353,548.61. Per diem interest after October 13, 2017 is \$48.6111.

II. THE PROPOSED TRANSACTION.

13. The Trustee seeks to sell the estate’s interests in the Wanamingo Dairy Facility free and clear of liens, encumbrances, and other interests pursuant to 11 U.S.C. § 363(f) with the liens to attach to the proceeds of the sale with the same dignity and priority as the liens attached to the property. The Wanamingo Dairy Facility is being sold “as is, where is” without representations or warranties.

14. The Debtor has received an offer from Steven A. Boyum and Tracy M. Boyum (the “Proposed Purchasers”) to purchase the Wanamingo Dairy Property for \$630,000.00, which

includes the undivided one-half interest of Mr. Boyum. The gross purchase price for the bankruptcy estate's undivided one-half interest in the Wanamingo Dairy Facility is \$315,000.00.

15. A true and correct copy of the Purchase Agreement (the "Purchase Agreement") is attached hereto as **Exhibit A**.

16. The offer received from the Proposed Purchasers is the highest and best offer the Trustee has received for the Wanamingo Dairy Property. As such, the Trustee believes the sale price is fair and reasonable. The Debtor estimates in his Disclosure Statement [Docket No. 318] that the liquidation value of the Wanamingo Dairy Property is \$500,000.00.

17. Prior to entering into the Purchase Agreement and pursuant to Bankruptcy Rule 7001(3), the Debtor filed an adversary proceeding against the Potential Purchasers to obtain approval of the sale of Mr. Boyum's interests in the Wanamingo Dairy Property (Adv. Case No. 17-03074). To resolve the adversary proceeding, the Trustee and the Potential Purchasers have entered into a settlement agreement (the "Settlement Agreement")¹.

18. The Settlement Agreement provides that the Potential Purchasers will receive a net credit in the amount of \$2,183.00 in exchange for resolutions of all claims in the adversary proceeding.

19. From the proceeds of the sale, the Trustee shall pay: all closing costs required to be paid by the Trustee under the Purchase Agreement, all amounts owed to Mr. Boyum as tenant in common, and the current and full balance of the Mortgage to Citizens State Bank of Hayfield. The remaining proceeds shall be held by the Trustee until further ordered by the Court to

¹ Simultaneously with this Motion, the Trustee has filed a Notice of Hearing and Motion Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 for An Order Approving a Settlement Agreement Between the Trustees and the Defendants. The Settlement Agreement is contingent on entry of an order granting this Motion.

distribute the proceeds. After the above-described payments, the Trustee expects the estate to realize approximately \$130,000.00-\$140,000.00 from this transaction.

20. The Trustee understands, through counsel, that the Debtor and Citizens State Bank of Hayfield both support the sale.

21. The Committee submits that the value of the Wanamingo Dairy Property to the estate is zero [*see* Committee's Disclosure Statement, Exhibit B, Doc. No. 550].

RELIEF REQUESTED

22. The Trustee seeks to sell the Wanamingo Dairy Property outside the ordinary course of business pursuant to 11 U.S.C. § 363(b)(1) and free and clear of all liens, encumbrances, and other interests pursuant to 11 U.S.C. § 363(f). In the Trustee's business judgment, the Trustee believes the sale of the Wanamingo Dairy Property is in the best interests of the Debtor's estate and all parties in interest. The Debtor believes that the lien holder, Citizens State Bank of Hayfield, consents to the sale of the Wanamingo Dairy Property and the proceeds from the sale will pay Citizens State Bank of Hayfield the value of its lien in full.

23. The Trustee further requests that the Court order that the stay provided in Bankruptcy Rules 4001 and 6004 does not apply to the immediate implementation of the sale.

24. Pursuant to Local Rule 9013-2(a), this Motion is verified and is accompanied by a memorandum of law, a proposed order, and proof of service.

25. Pursuant to Local Rule 9013-2(c), the Trustee gives notice that he may, if necessary, call the following to testify regarding the facts set out in this Motion: Phillip L. Kunkel.

WHEREFORE, the Trustee respectfully requests that the Court enter an order:

1. Granting the Motion.

2. Authorizing the Trustee to sell the Wanamingo Dairy Property free and clear of all liens, encumbrances, and interests pursuant to 11 U.S.C. §§ 363(b) and 363(f).
3. Waiving the stay provided for in Bankruptcy Rules 4001 and 6004.
4. Such other and further relief as the Court deems just and equitable.

Date: October 26, 2017

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

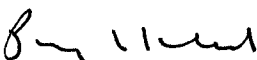
/s/ Abigail M. McGibbon
P. Jason Thibodeaux (#0395700)
Abigail M. McGibbon (#0393263)
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone: 612-632-3484
Fax: 612-632-4000
Email: jason.thibodeaux@gpmlaw.com
Email: Abigail.mcgibbon@gpmlaw.com

Attorney for Phillip L. Kunkel, as Trustee

VERIFICATION

I, Phillip L. Kunkel, the trustee in this case, declare under penalty of perjury that the facts contained in the foregoing notice of hearing and motion are true and correct to the best of my knowledge, information, and belief.

Dated: October 26, 2017



Phillip L. Kunkel

EXHIBIT A

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made and executed effective as of the 24th day of October, 2017 (the "Effective Date"), by and between PHILLIP L. KUNKEL, the chapter 11 trustee of the Tracy J. Clement dba Clement Farms bankruptcy estate (the "Trustee"), and STEVEN A. BOYUM and TRACY M. BOYUM, or their nominee or assignee (collectively, the "Buyer").

RECITALS

1. On April 11, 2016, Tracy J. Clement dba Clement Farms (the "Debtor"), the Debtor filed a petition under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court"), thereby commencing the chapter 11 bankruptcy case captioned as *In re Tracy J. Clement*, which case is currently pending as Bankruptcy Case No. 16-31189.

2. By order dated September 19, 2017, the Trustee was appointed as the chapter 11 trustee for the Debtor (the "Appointment Order"). A copy of the Appointment Order is attached hereto as Exhibit A.

3. The Trustee is authorized, subject to the approval of the Bankruptcy Court, to dispose of the real property assets of the Debtor's bankruptcy estate, including that certain real estate located at 44656 County 1 Boulevard, Wanamingo, Minnesota 55983, which is legally described on Exhibit B to this Agreement, together with all improvements and buildings located thereon, and all tenements, hereditaments, easements, improvements, and rights benefiting or appurtenant to the property (collectively, the "Real Property"), together with all equipment and fixtures located on and used in connection with the Real Property (collectively, the "Personal Property" and together with the Real Property, the "Property"), in accordance with the terms and conditions of this Agreement.

4. The Trustee and Buyer desire to sell and convey from Debtor's bankruptcy estate to Buyer all of the bankruptcy estate's interests in the Property, free and clear of liens, encumbrances, and other interests, in accordance with the terms and conditions of this Agreement.

AGREEMENT

IN CONSIDERATION of the foregoing premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Sale of Property**. Trustee, solely in his capacity as the chapter 11 trustee of the Debtor's bankruptcy estate, agrees to sell to Buyer, and Buyer agrees to buy from

the Debtor's bankruptcy estate, all of the bankruptcy estate's right, title and interest in the Property, free and clear of liens, encumbrances, and other interests, for the total sum of \$630,000.00, which includes the undivided 1/2 interest of Steven A. Boyum in the Property (the "Purchase Price"). The gross Purchase Price for the bankruptcy estate's undivided 1/2 interest in the Property is \$315,000.00. Ten (10%) percent of the total Purchase Price for the bankruptcy estate's interest (\$31,500.00) shall be paid within five (5) days of the execution of this Agreement to be held by Trustee in trust as earnest money hereunder (the "Deposit"). The Deposit is fully earned by Debtor's bankruptcy estate and nonrefundable to the Buyer under all circumstances other than: (i) Trustee's failure or refusal to tender to Buyer a Bankruptcy Local Form 6004-1(f) conveying the Property to Buyer by which title in accordance with the requirements of this Agreement could be conveyed to Buyer; or (ii) failure of the Bankruptcy Court to approve the sale contemplated by this Agreement.

2. **Payment of Purchase Price.** The Purchase Price shall be paid via wire transfer, to be confirmed received by the Trustee on or before the Closing Date (as defined below) using the following wiring instructions:

Bank: Associated Bank
ABA: 075900575
Acct: 2283366785
Acct Name: Tracy J Clement Bankruptcy Estate
Reference: Wanamingo Dairy Sale

or shall be payable in cash by certified or other immediately available funds.

3. **Conditions to Closing.** The obligations of Buyer under this Agreement are contingent upon each of the following:

- a. **Representations and Warranties.** The representations and warranties of Trustee contained in this Agreement, if any, must be true now and on the Closing Date as if made on the Closing Date.
- b. **Performance of Trustee's Obligations.** Trustee shall have performed all of the obligations required to be performed by Trustee under this Agreement, as and when referenced by this Agreement.
- d. **Expiration or Waiver of Inspection Period.** The Inspection Period shall have expired without Buyer terminating this Agreement in accordance with Section 3, or Buyer shall have waived the Inspection Period.

The obligations of Trustee under this Agreement are contingent upon each of the following:

- a. **Representations and Warranties.** The representations and warranties of Buyer contained in this Agreement, if any, must be true now and on the

Closing Date as if made on the Closing Date.

- b. Performance of Buyer's Obligations. Buyer shall have performed all of the obligations required to be performed by Buyer under this Agreement, as and when required by this Agreement.

4. Closing. The closing of the purchase and sale contemplated by this Agreement (the "Closing") shall occur at a mutually agreeable time on or before December 31, 2017 (the "Closing Date"). The Closing shall be conducted through a title insurance company mutually agreeable to Buyer and Trustee ("Title") and shall take place via facsimile, electronic mail, U.S. Mail and courier service.

- a. Trustee's Closing Documents. On the Closing Date, Trustee shall execute and deliver to Buyer the following (collectively, "Trustee's Closing Documents"):

- (i) Conveyance of Real Property. Bankruptcy Local Form 6004-1(f) conveying the Real Property to Buyer (the "Conveyance Instrument"). The parties acknowledge and agree that Trustee shall not be obligated to remedy or remove any defects or encumbrances affecting the Real Property and that Trustee's failure to remedy or remove those defects will only entitle Buyer to terminate the Agreement.

- (ii) Bill of Sale. A Bill of Sale conveying the Personal Property to Buyer but only to the extent of any interest the Debtor's bankruptcy estate may have, if any, in those items containing disclaimers of all representations and warranties concerning the condition, location, extent, quantity, completeness, quality, fitness or title of the Personal Property.

- (iii) Title Documents. Such affidavits or other documents as may be reasonably required by Title in order to record the Closing Documents.

- (iv) Other Documents. All other documents reasonably necessary to effect the sale of the Property.

- b. Buyer's Closing Documents. On the Closing Date, Buyer will execute, as applicable, and deliver to Trustee the following (collectively, "Buyer's Closing Documents"):

- (i) Purchase Price. The Purchase Price by wire transfer or other immediately available funds of United States currency on or before the Closing Date.

- (ii) Title Documents. Such affidavits or other documents as may be reasonably required by Title in order to record the Closing Documents.
- (iii) Other Documents. All other documents reasonably necessary to effect the sale of the Real Property.

5. **Allocation of Closing Costs**. Trustee and Buyer agree to the following allocation of costs regarding this Agreement:

- a. Closing Fee. Each party shall pay their own closing costs and fees.
- b. Conveyance Tax, Recording Costs. Buyer shall pay any conveyance taxes payable in connection with the recording of the Conveyance Instrument, and the other costs of recording the Conveyance Instrument and any mortgages or other documents pertaining to Buyer's financing.
- c. Real Estate Taxes and Special Assessments. General real estate taxes and installments of special assessments payable prior to the year in which the Closing occurs and all prior years will be paid by Trustee. General real estate taxes and installments of special assessments payable in the year 2017 will be prorated and paid by Trustee and Buyer as of the Closing Date based upon a calendar year. General real estate taxes and installments of special assessments payable in any year subsequent to the year in which the Closing occurs shall be paid by Buyer.
- d. Utility Expenses, Income. Utility expenses and income for the Real Property shall be prorated between the Trustee and the Buyer as of the date of Closing.

6. **Title Examination**. Title examination will be conducted as follows:

- a. Trustee's Title Evidence. Within fifteen (15) business days of the Effective Date, Buyer shall arrange for its own review of the title to the Property.
- b. Buyer's Objections. The Buyer acknowledges and agrees the only Objections (as defined below) that may be raised by Buyer to the condition of title are liens or encumbrances against the interest of the Debtor's bankruptcy estate in the Property, other than the Mortgage to Citizens State Bank of Hayfield, that would not otherwise be set aside under 11 U.S.C. § 363(f) pursuant to an Order entered by the Bankruptcy Court approving the purchase and sale of the Property as contemplated herein. If written objection to the condition of title is made by Buyer and delivered to Trustee on or before the later of twenty-five (25) business days of the Effective Date (the "Title Objection Period"), then timely

objection to title (collectively, the "Objections") shall have been made. In the event of Objections, Trustee shall have fifteen (15) days from the date it is notified in writing of the particular Objections, at Trustee's sole discretion, to: (i) remedy the title, (ii) obtain title insurance to insure over such Objections, subject to Buyer's written approval, or (iii) identify those Objections that Trustee is unable or unwilling to remedy or obtain the title insurance to insure over. If Trustee does not timely remedy or cure such Objections in accordance with the foregoing provisions, then Buyer may at its sole discretion: (i) waive such Objections and proceed to Closing, or (ii) terminate this Agreement, with any Deposit returned to the Buyer. Buyer's failure to deliver the Objections to Trustee on or before the expiration of the Title Objection Period will constitute a waiver of the Objections, and any matter shown on the Title Commitment and not so objected to by Buyer shall be deemed a "Permitted Encumbrance".

7. **Representations and Warranties by Trustee, Acknowledgement by Buyer.** The Trustee makes no representations or warranties whatsoever regarding the Property. Buyer acknowledges and agrees as follows: (i) the Trustee is the court appointed chapter 11 trustee of the Debtor's bankruptcy estate; (ii) the Trustee has never been in possession of or occupied the Real Property, and does not have any particular knowledge with respect to Real Property or its extent, condition or completeness; and (iii) the Trustee has no knowledge of the extent and ownership of the furniture, fixtures, equipment and other Personal Property located on the Real Property, and the Trustee, therefore, makes no representations, warranties or covenants of any kind, nature, or extent with regard to the furniture, fixtures, equipment and other personal property. The Property being purchased and sold in accordance with this Agreement is being purchased and sold "AS-IS," "WITH ALL FAULTS," and without any representations or warranties of any kind by Trustee, express or implied, and all such representations and warranties are expressly hereby disclaimed by Trustee and hereby waived by Buyer. The Buyer is purchasing the Property based upon their own investigation and inquiry and is not relying on any representation of Trustee or other person, and Buyer has accepted the Property, including the Property's extent, condition and completeness, and shall have no claim against Trustee or the Debtor's bankruptcy estate on account of any of the foregoing. The Trustee hereby disclaims all warranties, express or implied, contractual, statutory or otherwise, and the Buyer hereby waives all such warranties and claims of warranty.

Except as herein expressly stated, Trustee makes no representation or warranty of any kind, express or implied, with respect to the Property, Buyer is purchasing the Property based upon its own investigation and inquiry and is not relying on any representation of Trustee or other person, and is agreeing to accept and purchase the Property "AS IS, WHERE IS" subject to the conditions of examination herein set forth and the express warranties herein contained.

8. **Representations and Warranties by Buyer.** Buyer represents and warrants to Trustee as follows:

- a. Authority. Buyer has the requisite of power and authority to enter into this Agreement and the related documents signed by it; such documents have been duly authorized by all necessary action on the part of Buyer and have been duly executed and delivered; that the execution, delivery and performance by Buyer of such documents do not conflict with or result in violation of, as applicable, any judgment, order or decree of any court or arbiter to which the Buyer is a party; such documents are valid and binding obligations of Buyer, and are enforceable in accordance with their terms.
- b. Financial Ability. Buyer has the present ability to fully pay the Purchase Price in accordance with Section 1 of this Agreement, and that there is no financing contingency to Buyer's obligation to proceed to Closing and consummate the purchase of the Property. Buyer acknowledges that their ability to secure the Purchase Price is not a condition precedent to this Agreement or Buyer's duty to complete the purchase of the Real Property in accordance with this Agreement.
- c. Acknowledgments Concerning Real Property. Buyer acknowledges the following representations from Trustee with respect to the Real Property, and Buyer waives any and all claims against Trustee and the Debtor's bankruptcy estate based upon any of the following, except for with respect to occurrences or circumstances which constitute breaches of the Trustee's limited representations expressly set forth at Section 8 above: (i) the Trustee is the court appointed chapter 11 trustee of the Debtor's bankruptcy estate; (ii) the Trustee was never in physical possession of, and never occupied, the Real Property; (iii) the Trustee has no special knowledge of the condition of the Real Property; (iv) the Buyer is not relying upon the Trustee in any way or to any degree concerning the nature, condition, completeness or extent of the Real Property; (v) the Buyer was allowed to inspect the Real Property prior to Closing so that it satisfies itself as to the condition of the Real Property, and by its execution and delivery of this Agreement the Buyer hereby elects to purchase the Real Property, and the Buyer has accepted the Real Property, including the Real Property's extent, condition and completeness, and Buyer shall have no claim against Trustee or the Debtor's bankruptcy estate on account of any of the foregoing; and (vi) the Real Property is being purchased by Buyer "AS-IS," "WITH ALL FAULTS," and without any representations or warranties of any kind by Trustee, and all such representations and warranties are expressly hereby disclaimed by Trustee and hereby waived by Buyer.
- d. Personal Property. Trustee agrees that at Closing Trustee shall provide to Buyer a quit claim of any interest the Debtor's bankruptcy estate may have, if any, in the Personal Property located on the Real Property by operation of a bill of sale containing disclaimers of all representations and

warranties concerning the condition, location, extent, quantity, completeness, quality, fitness or title of said personal property.

Buyer will indemnify Trustee and the Debtor's bankruptcy estate, and will hold Trustee and the Debtor's bankruptcy estate harmless from any expenses or damages, including reasonable attorneys' fees, which the Trustee or the Debtor's bankruptcy estate incurs because of the breach of any of the above representations and warranties, whether such breach is discovered before or after closing. Except with respect to the foregoing Section 9.c. which shall in all events survive and be enforceable after the Closing, consummation of this Agreement by Trustee with knowledge of any such breach by Buyer will constitute a waiver or release by Trustee of any claims due to such breach.

9. **Damage.** If, prior to the Closing Date, all or any part of the Real Property is substantially damaged by fire casualty, the elements or any other cause, Trustee shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within fifteen (15) days after Trustee's notice), this Agreement shall terminate, in which event neither party will have any further obligations under this Agreement and the Deposit shall be refunded to Buyer and both parties shall have no further duties and obligations hereunder. For purposes of this Section, the words "substantially damaged" mean damage that would cost \$50,000.00 or more to repair. Any other damages shall be accepted by Buyer provided only that Trustee assigns any applicable loss insurance proceeds thereon to Buyer.

10. **Condemnation.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, Trustee shall immediately give notice to Buyer of such fact and at Buyer's option (to be exercised within fifteen (15) days after Trustee's notice), (i) Buyer may proceed to purchase the Property (subject to the condemnation proceedings or, if such proceedings are completed prior to Closing, with an assignment from Trustee to Buyer of all condemnation proceeds), or (ii) Buyer may terminate this Agreement, in which event neither party will have further obligations under this Agreement and the Deposit shall be refunded to Buyer.

11. **Post-Closing Confirmation.** Notwithstanding anything to the contrary in this Agreement, the sale of the Real Property to the Buyer is subject to the confirmation of the United States Bankruptcy Court for the District of Minnesota. In the event the sale of the Real Property is not confirmed, any earnest money paid by Buyer shall be refunded to Buyer, and this Agreement shall automatically terminate and the parties shall thereafter have no obligations under the Agreement.

12. **Assignment.** Buyer may assign its rights under this Agreement to an entity directly affiliated with the Buyer.

13. **Additional Provisions.** Notwithstanding anything in the contrary in this Agreement, the following shall govern:

- a. Buyer shall take title subject to the alleged interest of Bruce A. Boyum in the manure pit (Parcel B).
- b. The Trustee acknowledges that Steven A. Boyum owns an undivided 1/2 interest in the Property and is purchasing the undivided 1/2 interest of the bankruptcy estate of Tracy J. Clement in the Property for the sum of \$315,000.00.
- c. Steven A. Boyum shall not be responsible for payment of a real estate commission for the sale of the Property. After payment of the Mortgage to Citizens State Bank of Hayfield to be paid equally out of the gross proceeds of Steven A. Boyum and the Trustee, Buyer shall be entitled to a credit against the Purchase Price for Steven A. Boyum's share of the equity of the Property.
- d. Trustee and the Debtor's bankruptcy estate are not required to remove any personal property, debris, tires, or manure from the Property in connection with the closing, and Trustee and the Debtor's bankruptcy estate shall not incur any costs or be required to contribute any funds to any such removal. Boyum is purchasing the Property "as is" with no responsibility on the part of Trustee or the Debtor's bankruptcy estate to make any repairs or improvements to the Property.
- e. At Closing, Buyer shall be entitled to a credit of \$2,183.00 against the Purchase Price for settlement of the remaining claims in the adversary proceeding entitled *Clement v. Boyum (In re Clement)*, Adversary Proceeding No. 17-03074.

14. Miscellaneous.

- a. Survival. Except as specifically provided herein, all of the terms of this Agreement will survive and be enforceable after the Closing.
- b. Notices. Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is directed to Trustee by delivering it personally to an officer of Trustee; or if it is directed to Buyer, by delivering it personally to Buyer; or if mailed in a sealed envelope by United States registered or certified mail, return receipt requested, postage prepaid; or if transmitted by facsimile, copy followed by mailed notice as above required; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Trustee: Phillip L. Kunkel, Chapter 11 Trustee
c/o Gray Plant Mooty
1010 West St. Germain Street
Suite 500
St. Cloud, Minnesota 56301

With copies to: Gray Plant Mooty
Attn. Jason Thibodeaux
1010 West St. Germain Street
Suite 500
St. Cloud, Minnesota 56301
jason.thibodeaux@gpmlaw.com

Gray Plant Mooty
Attn. Abigail M. McGibbon
500 IDS
80 South Eighth Street
Minneapolis, Minnesota 55402
abigail.mcgibbon@gpmlaw.com

If to Buyer: Steven A. Boyum & Tracy M. Boyum
9144 County 30 Boulevard
Wanamingo, Minnesota 55983
tracy.boyum@byron.k12.mn.us

With copy to: Dunlap & Seeger, P.A.
Attn. Paul W. Bucher
P.O. Box 549
30 3rd Street SE, Suite 400
Rochester, Minnesota 55903-0549
pwb@dunlaplaw.com

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, ten (10) days prior to the effective date of such change.


- c. Captions. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.
- d. Entire Agreement; Modification. This written Agreement constitutes the

complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Property. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in a writing executed by the parties.

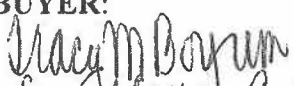
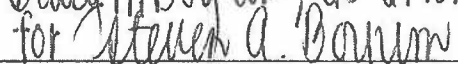
- e. Binding Effect. This Agreement binds and benefits the parties and their respective successors and permitted assigns.
- f. Time is of Essence. Time is of the essence in the payment and performance of the parties' covenants, agreements, duties and obligations hereunder.
- g. Controlling Law. This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.
- h. Counterparts; Facsimile/Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Copies of signature received by facsimile or electronic means shall be deemed originals for all purposes.
- i. Remedies. If Buyer defaults under this Agreement, Trustee shall have the right to terminate this Agreement by giving written notice to Buyer. If Buyer fails to cure such default within ten (10) days of the date of such notice, Trustee may, at his option, terminate this Agreement, and upon such termination Trustee will retain the Deposit as liquidated damages. In the alternative, Trustee may elect to enforce this Agreement and seek damages and specific performance. If Trustee defaults under this Agreement, this Section does not preclude Buyer from seeking specific performance of this Agreement. Buyer shall have no right to seek damages from Trustee for Buyer's loss of its bargain in failing to acquire the Property.

WHEREFORE, the parties have executed Purchase Agreement as of the date first set forth above.

TRUSTEE:


 Phillip L. Kunkel, the chapter 11 trustee
 of the Tracy L. Clement dba Clement
 Farms bankruptcy estate

BUYER:

 as attorney-in-fact
 for 
 Steven A. Boyum



 Tracy M. Boyum

EXHIBIT A

Appointment Order

[Attached]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Tracy John Clement Debtor	Case #16-31189 Chapter 11 Case Order Approving the Appointment of Trustee
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Based upon the Application for Order Approving Appointment of Trustee filed by the United States Trustee,

IT IS ORDERED: The appointment of Phillip L. Kunkel as the chapter 11 trustee in the above chapter 11 case is approved.

BY THE COURT:

Dated: September 19, 2017

/s/ Michael E. Ridgway
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT
Filed and Docket Entry made on 09/19/2017
Lori Vosejka, Clerk, by LMS

EXHIBIT B

Legal Description of Real Property

PARCEL A:

The West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 28, Township 110 North, Range 17 West of the 5th Principal Meridian, Goodhue County, Minnesota, except the following two tracts:

Beginning at the Southwest corner of said Southwest Quarter, thence East on the section line 14 rods, thence North 11 rods and 7 feet, thence West 14 rods, thence South 11 rods and 7 feet to the point of beginning.

Commencing at the Southwest corner of said Southwest Quarter; thence on an assumed bearing of North along the West line of said Southwest Quarter, 1320.00 feet to the point of beginning; thence continuing on a bearing of North along said West line, 155.50 feet; thence on a bearing of East 110.00 feet; thence North 43°46'02" East, 117.78 feet; thence South 46°13'58" East, 143.89 feet; thence South 43°46'02" West, 195.27 feet; thence on a bearing of West, 160.31 feet to the point of beginning.

Reserving ingress and egress easements across the existing north and south field roads for the appurtenant perpetual benefit of the following described property: The East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 28, Township 110 North, Range 17 West of the 5th Principal Meridian, Goodhue County, Minnesota.

TOGETHER WITH the beneficial rights to that certain Manure Hauling and Lease Agreement dated May 31, 2002, and recorded July 3, 2002, as Document No. 469883, as amended by a document dated March 22, 2005, and recorded April 12, 2005, as Document No. 517355, and Manure Hauling and Lease Agreement dated May 31, 2002, and recorded July 3, 2002, as Document No. 469885.

AND

PARCEL B:

That part of the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 28, Township 110 North, Range 17 West of the 5th Principal Meridian, Goodhue County, Minnesota, described as follows: Commencing at the Northwest corner of said East half of the Southwest Quarter; thence South 00°20'09" East (assumed bearing) along the West line of said East Half of the Southwest Quarter, 949.94 feet to the point of beginning; thence North 48°18'23" East, 86.39 feet; thence South 88°41'37" East, 83.67 feet; thence South 45°42'58" East, 270.77 feet; thence South 00°58'26" East, 83.14 feet; thence South 43°46'06" West, 244.62 feet; thence South 44°59'11" East, 231.19 feet; thence South 46°25'32" West, 183.62 feet; thence South 63°33'03" West, 169.20 feet; thence South 66°48'31" West, 94.81 feet to said West line of the East Half of the Southwest Quarter; thence North 00°20'09" West along said West line, 751.59 feet to the point of beginning. Containing 4.82 acres, more or less. Subject to a public road easement and all other easements and restrictions of record, if any.

Reserving ingress and egress easements across the existing south field road for the appurtenant perpetual benefit of the following described property: The balance of the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 28, Township 110 North, Range 17 West of the 5th Principal Meridian, Goodhue County, Minnesota, not conveyed above.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Tracy J. Clement,

Case No.: 16-31189
Chapter 11 Case

Debtor.

**MEMORANDUM IN SUPPORT OF MOTION FOR SALE OF THE WANAMINGO
DAIRY PROPERTY FREE AND CLEAR OF LIENS, ENCUMBRANCES, AND OTHER
INTERESTS**

Phillip L. Kunkel, the Trustee, submits this memorandum of law in support of his Motion for Sale of the Wanamingo Dairy Property Free and Clear of Liens, Encumbrances, and Other Interests (the “Motion”), seeking authority to sell property free and clear of liens, encumbrances, and other interests under 11 U.S.C. §§ 363(b), (f).

FACTS

The factual background is set forth in the verified Motion. All capitalized terms not otherwise defined have the meaning ascribed to them in the Motion.

ARGUMENT

I. THE SALE OF THE WANAMINGO DAIRY PROPERTY SATISFIES 11 U.S.C. § 363(b)(1).

Section 363(b)(1) of the Bankruptcy Code provides that the trustee, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *see also In re Hanson Industries*, 90 B.R. 405 (Bankr. D. Minn. 1988). Once a trustee articulates a valid business justification for a proposed sale of assets of the estate, the business judgment rule presumes that, in making the business decision, the trustee acted on an informed basis, in good faith, and in the honest belief that the action was in the best

interests of the company. *In re SNA Nut Company*, 186 B.R. 98 (Bankr. N.D. Ill 1995). Here, the Trustee has determined, after a reasonable investigation under the circumstances, that the proposed sale of the Wanamingo Dairy Property is beneficial to the estate and that the price is reasonable in the current market.

II. THE TRUSTEE MAY SELL THE WANAMINGO DAIRY PROPERTY FREE AND CLEAR OF LIENS, ENCUMBRANCES, AND INTERESTS UNDER 11 U.S.C. § 363(f).

Section 363(f) of the Bankruptcy Code permits a trustee to sell property “free and clear of any interest in such property of an entity other than the estate” if one of the following five criteria is met:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also Lindsey v. Ipock*, 732 F.2d 619, 622 (8th Cir. 1984). Courts consider the amount of the lien as well as to whether the estate has any equity in the property in approving sales. *In re Riverside Inv. Partnership*, 674 F.2d 634, 640 (7th Cir. 1982). The failure to object to a proposed sale could be construed as consent to the sale. *Veltman v. Whetzal*, 93 F.3d 517, 521-522 (8th Cir. 1996).

At least two of the five criteria listed in section 363(f) exist here. The liens on the Wanamingo Dairy Property will follow the proceeds of the sale and will be paid at closing pursuant to the priorities set forth in the Bankruptcy Code, which satisfies 11 U.S.C. § 363(f)(3).

Moreover, the Trustee understands that the lien holder, Citizens State Bank of Hayfield, consents to the sale, which satisfies 11 U.S.C. § 363(f)(2). Consequently, the sale of the Wanamingo Dairy Property may be sold free and clear of the lien under 11 U.S.C. § 363(f).

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Motion be granted and that the sale of the Wanamingo Dairy Property free and clear of liens, encumbrances, and interests be approved.

Date: October 26, 2017

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

/s/ Abigail M. McGibbon
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Abigail M. McGibbon (#0393263)
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Attorney for Phillip L. Kunkel, as Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

Tracy John Clement,

Debtor.

Court File No. 16-31189

Chapter 11 Case

CERTIFICATE OF SERVICE

I, Abigail M. McGibbon, hereby certify that on the 26th day of October, 2017, I caused a true and correct copy of the foregoing ***NOTICE OF HEARING AND MOTION PURSUANT TO SECTION 105(A) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 FOR AN ORDER APPROVING A SETTLEMENT AGREEMENT BETWEEN TRUSTEE AND THE DEFENDANTS, MEMORANDUM OF LAW AND PROPOSED ORDER*** to be served on the following parties in the manner indicated below by United States Mail and on the parties receiving service through the Electronic Case Filing (ECF) system via electronic mail in this proceeding.

<p><u>US TRUSTEE AND OTHER REQUIRED PARTIES</u></p>	<p>Internal Revenue Service Wells Fargo Place 30 E 7th St Mail Stop 5700 St. Paul, MN 55101</p>	<p>Goodhue County Assessor 509 W Fifth Street Red Wing MN 55066</p>
<p>United States Trustee U.S. Trustee's Office 1015 US Courthouse 300 South Fourth Street Minneapolis, MN 55415 ustregion12.mn.ecf@usdoj.gov (Via ECF)</p>	<p>Internal Revenue Service Centralized Insolvency Operations Unit PO Box 7346 Philadelphia, PA 19101</p>	<p>Howard County Treasurer Howard County Courthouse 137 N Elm Street Cresco IA 52136</p>
<p>U.S. Trustee Michael R. Fadlovich U.S. Trustee's Office 1015 US Courthouse 300 South Fourth Street Minneapolis, MN 55415 michaelladlovich@usdoj.gov (Via ECF)</p>	<p>MN Department of Revenue Collection Enforcement 551 Bankruptcy Section 600 North Robert Street St Paul, MN 55101-2228</p>	<p>Mower County Treasurer 201 First Street NE, Ste 7 Austin MN 55912</p>
<p>IRS District Counsel 380 Jackson St, Ste 650 St Paul, MN 55101-4804</p>	<p>Office of the U.S. Attorney 600 US Courthouse 300 S Fourth St Minneapolis, MN 55415</p>	<p>Olmsted County Treasurer Olmsted County Government Center 151 Fourth Street SE Rochester MN 55904</p>
	<p>Fillmore County Treasurer 101 Fillmore Street PO Box 466 Preston MN 55965</p>	<p><u>DEBTOR</u> Tracy Clement 12515 County 3 Spring Valley, MN 55975</p>

<u>MAJOR SECURED LENDERS</u>	David C. McLaughlin Fluegel, Anderson, McLaughlin & Brutlag, Chartered 25 NW 2 nd Street, Suite 102 Ortonville, MN 56278 David.fhmab@midconetwork.com (Via ECF)	Michael A. Stephani Gurstel Chargo PA 6681 Country Club Drive Golden Valley, MN 55427 m.stephani@gurstel.com (Via ECF)
C US Bank 111 N Elm Street Cresco IA 52136	Keith A. Gauer Davenport, Evans, Hurwitz & Smith, L.L.P. 206 West 14 th St, P.O. Box 1030 Sioux Falls, SD 57101-1030 KGauerdehs.com (Via ECF)	Christopher A. Camardello Winthrop & Weinstine, P.A. 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402 ccamardell@winthrop.com (Via ECF)
Citizens State Bank PO Box 5 Hayfield MN 55940	Paul W. Bucher Dunlap & Seeger, P.A. 30 3 rd Street Southeast, Suite 400 PO Box 549 Rochester, MN 55903 pbucher@dunlaplaw.com (Via ECF)	David Orenstein DeWitt Mackall Crouse & Moore, SC 1400 AT&T Tower 901 Marquette Avenue Minneapolis, MN 55402 dao@dewittmcm.com (Via ECF)
Lake City Federal Savings 201 E Marion St. Lake City, MN 55041	Christopher D. Nelson Dunlap & Seeger, P.A. 30 3 rd Street Southeast, Suite 400 PO Box 549 Rochester, MN 55903-0549 cdn@dunlaplaw.com (Via ECF)	Jeffrey D. Smith Lindquist & Venum LLP 80 South Eighth Street, Suite 4200 Minneapolis, MN 55402 jsmith@lindquist.com (Via ECF)
<u>OFFICIAL COMMITTEE OF UNSECURED CREDITORS</u>	Benjamin B. Bohnsack Rinke Noonan US Bank Plaza Building 1015 W St. Germain St. Suite 300 PO Box 1497 St. Cloud, MN 56302-1497 Bbohnsack@rinkenoonan.com (Via ECF)	Benjamin J. Court, Esq. Stinson Leonard Street LLP 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402 Benjamin.courtAstinson.com (Via ECF)
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<u>OTHER INTERESTED PARTIES & PARTIES REQUESTING NOTICE</u>	George E. Warner, Jr. Warner Law, LLC 120 South Sixth Street Suite 1515 Minneapolis, MN 55402-1817 George@warnerlawmn.com (Via ECF)	FLCC Financing 103 20 th Street NE, Ste. 4 Stewartville, 55976
Nancy Clement 12915 County Rd 3 Spring Valley MN 55975		James P. Ryan Jr. Citizen's State Bank Ryan & Grinde Ltd. 407 14 th St NW Rochester MN 55903-6667
Jacob B. Sellers Winthrop & Weinstine, P.A. 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402 jsellers@winthrop.com (Via ECF)		
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Roylene A. Champeaux Assistant United States Attorney 600 United States Courthouse 300 South Fourth Street Minneapolis, MN 55415 Roylene.Champeaux@usdoj.gov (Via ECF)		

Dated: October 26, 2017

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

/s/ Abigail M. McGibbon

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Tracy J. Clement,

Case No.: 16-31189
Chapter 11 Case

Debtor.

**ORDER APPROVING SALE OF THE WANAMINGO DAIRY PROPERTY FREE AND
CLEAR OF LIENS, ENCUMBRANCES, AND OTHER INTERESTS**

This matter came before the court on the Motion for Sale of the Wanamingo Dairy Property Free and Clear of Liens, Encumbrances, and Other Interests (the “Motion”) filed by Phillip L. Kunkel (the “Trustee”). Based upon all of the files, records, and proceedings herein,

THE COURT HEREBY FINDS AND DETERMINES THAT:

1. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. Adequate and sufficient notice to all creditors and interested parties to this case of the proposed entry of the order has been given.

3. The relief granted is in the best interest of the estate, all creditors, and other interested parties in this case.

4. The sale of the Wanamingo Dairy Property, as defined below, to Steven A. Boyum and Tracy Boyum (the “Purchasers”).

IT IS ORDERED:

1. The Motion is granted.

2. The Trustee is authorized to sell the real property located at 44656 County 1 Blvd., Wanamingo, Minnesota 55983, legally described as follows:

The West One-Half of the Southwest Quarter, Section 28, Township 110 North, Range 17 West of the 5th P.M., Goodhue County, Minnesota, except the following tracts:

Beginning at the Southwest corner of said Southwest Quarter, thence east on the Section line fourteen rods, thence north eleven rods and seven feet, thence west fourteen rods, thence south eleven rods and seven feet to the point of beginning.

Commencing at the Southwest corner of said Southwest Quarter; thence on an assumed bearing of North along the west line of said Southwest Quarter 1320.00 feet to the point of beginning; thence continuing on a bearing of north along said west line 155.50 feet; thence on a bearing of east 110.00 feet; thence North 43 degrees 46 minutes 02 seconds East 117.78 feet; thence South 46 degrees 13 minutes 58 seconds East 143.89 feet; thence South 43 degrees 46 minutes 02 seconds West 195.27 feet; thence on a bearing of West 160.31 feet to the point of beginning.

(together with all equipment located on or used in connection with the dairy facility, the “Wanamingo Dairy Property”) free and clear of any and all liens, encumbrances and other interests to the Purchasers for \$630,000.00.

3. All liens, encumbrances, or other interests shall attach to the proceeds of the sale of the Wanamingo Dairy Property with the same dignity, priority, and extent as held against the property prior to the sale.

4. The Trustee is authorized to pay all valid liens, interests, or expenses of the sale from the proceeds of the sale.

6. The fourteen-day stay as provided by Fed. R. Bankr. P. 4001(a)(3) and 6004(h) is waived.

7. The Wanamingo Dairy Property is being sold “as is, where is” without any representations and warranties.

8. The Trustee is authorized to take such other actions and execute and deliver such additional documents or instruments as will be reasonably necessary to effectuate the transactions contemplated in the Motion.

9. The Trustee is authorized to sell the Wanamingo Dairy Property upon all the terms set forth in the Motion, this order, and any agreement entered into by the parties.

Dated: _____

Michael E. Ridgway
United States Bankruptcy Judge