

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

In re:

**Cline Grain, Inc.,  
Allen L. Cline & Teresa A. Cline,  
Michael B. Cline & Kimberly A. Cline,**

Debtors

Case No: 17-80004-JJG-11  
JOINTLY ADMINISTERED

**Debtor's Motion For Entry Of  
Order Authorizing Debtor To  
Utilize Cash Collateral Pursuant  
To 11 U.S.C. §363 And Granting  
Adequate Protection**

In support of the above-entitled motion (this "Motion"), Cline Grain, Inc., a debtor and debtor-in-possession (the "Debtor"), by counsel, states:

**I. Background**

1. The Debtor filed its petitions for relief under Title 11, Chapter 11 of the United States Code on January 3, 2017 (the "Petition Date").
2. The Debtor has continued after the Petition Date in the possession of its property and the management of its business as a Debtor-in-Possession pursuant to 11 U.S.C. §1107 and 1108.
3. On January 10, 2017, this Court order the joint administration of all the Debtors' cases under the caption above.
4. This Court has jurisdiction over this Motion and this matter pursuant to 28 U.S.C. §157(b). Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
5. The statutory predicates for relief are §§ 103, 105(a), 361, 363(a), 363(c)(2), 1007, and 1108 of the Bankruptcy Code; Federal Rule of Bankruptcy Procedure 4001(b); and Southern District of Indiana Local Rule B-4001-2.
6. On April 27, 2017, the Court entered the *Amended Order Approving Debtor's Application to Employ Auctioneer* [Docket #260] (the "Order") whereby New Winchester Properties, LLC

(“New Winchester”), a related debtor, obtained authority to employ Maas Companies, Inc. (“Maas”) as auctioneer to assist New Winchester in liquidating several tracts of real estate and related equipment. Per the Order, New Winchester obtained authority to pay Maas its Marketing I Pre-Marketing fee of \$1,500.00 and Marketing II Advertising and Marketing Fee of \$24,837.47 (collectively, the “Marketing Fees”).

7. This Motion is being filed to request authority to use the Debtor’s cash collateral to help pay the Marketing Fees. Contemporaneously with the filing of this Motion, New Winchester is also filing a motion requesting authority to use its cash to help pay the Marketing Fees.

## **II. Cash Use Facts**

8. The Debtor currently has \$23,710.30 (the “Cash Collateral”) in its checking account at Huntington Bank. These funds represents proceeds from sold grain. New Winchester currently has \$6,000.00 in its checking account at Huntington Bank. Those funds represent cash rents from the New Market real estate.

9. The Marketing Fees total \$26,337.47. The Debtor and New Winchester propose that New Winchester pay all of its cash collateral towards the Marketing Fees as Maas is employed to help liquidate New Winchester’s property and that the Debtor (Cline Grain, Inc.) pays the balance (\$20,337.47).

10. By this Motion, the Debtor seeks authority to pay \$20,337.47 of the Marketing Fees.

11. Wells Fargo Bank, National Association (“Wells”) may assert a properly perfected lien on the Cash Collateral by virtue of UCC statement 2013000010939008 filed on December 13, 2013. Pinnacle Agriculture Distribution, Inc. (“Pinnacle”) may also assert a properly perfected lien on the Cash Collateral by virtue of UCC statement 201500005843260 filed on July 27, 2015. The Indiana Grain Buyers and Warehouse Licensing Agency (the “State Agency”) may also assert a statutory lien on the Cash Collateral pursuant to Indiana Code 26-3-7-16.8. The Debtor believes the State Agency’s lien, if any, became effective sometime in 2016. Certain parties may also assert a statutory lien pursuant to I.C. 26-3-7-16.8 as they were not paid by the State Agency. These parties are listed on the Debtor’s Schedule E/F and are as follows: Gene Myers; Larry Myers; Elaine Sullivan; David Thornton; V & M Farms; and Wolf Creek Cattle Company (collectively, these parties shall be referred to as the “Parties”).

12. The Debtor is unaware of any other parties who may assert a perfected lien on the Cash Collateral. The Debtor believes that Wells has a priority lien on the Cash Collateral over Pinnacle, the State Agency, the Parties, and any other creditor or party in interest who may assert a lien on the Cash Collateral.

### **III. Basis for Relief**

13. Pursuant to 11 U.S.C. §363(c)(2), the Debtor may use cash collateral only if the parties with an interest in the Cash Collateral consent or the Court authorizes the use of such cash collateral after notice and a hearing. Here, the Debtor has obtained consent to use the Cash Collateral from Wells. The State Agency's and the Parties' statutory lien is significantly junior to Wells' and Pinnacle's liens which collectively total approximately \$3,000,000.00. The Debtor shall serve this Motion pursuant to Fed. R. Bankr. P. 4001(b)(1) (C) as well as on the Parties, and a hearing will be held on this Motion.

14. The Debtor shall benefit from helping pay the Marketing Fees because the Debtor is a co-borrower of the Wells' debt which shall be paid first from the sale proceeds of New Winchester's property. Accordingly, a sale of the elevators reduces the Wells' debt which reduces that debt on the books of the Debtor.

15. The Debtor submits that none of the provisions of S.D. Ind. L.R. B-4001-2(b) apply.

### **IV. Request For Relief**

The Debtor respectfully requests that this Court grant all just and proper relief in the premises on this Motion, including entry of an order for use of cash collateral.

Respectfully submitted,

/s/ Jeffrey M. Hester

Jeffrey M. Hester

Christopher E. Baker

John J. Allman

Suite 1600

One Indiana Square

Indianapolis, IN 46204

jhester@hbkfirm.com

317.608.1129 direct

317.833.3031 fax

**Certificate Of Service**

I hereby certify that on May 8, 2017, a copy of the foregoing *Debtor's Motion For Entry Of Order Authorizing Debtors To Utilize Cash Collateral Pursuant To 11 U.S.C. And Granting Adequate Protection* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

- **U.S. Trustee** — ustpreion10.in.ecf@usdoj.gov
- **Ronald J. Moore** — ronald.moore@usdoj.gov
- **Jay Jaffe** — jay.jaffe@faegrebd.com
- **Elizabeth M. Little** — elizabeth.little@faegrebd.com
- **Kayla D. Britton** — kayla.britton@faegrebd.com
- **Gary D. Barnes** — gbarnes@bakerdonelson.com
- **Whitney L. Mosby** — wmosby@bgdlegal.com
- **Scott R. Leisz** — sleisz@bgdlegal.com
- **James E. Carlberg** — jcarlberg@boselaw.com
- **Charles F. Miller** — cfmjratty@iquest.net
- **James P. Moloy** — jmoloy@boselaw.com
- **Michael J. Hebenstreit** — mjh@whzlaw.com; arlene@whzlaw.com
- **Jeffrey A. Hokanson** — jeff.hokanson@icemiller.com
- **W. Randall Kammeyer** — wrkammeyer@hawkhaynie.com
- **Sarah L. Fowler** — sarah.fowler@icemiller.com
- **Michael J. Hebenstreit** — mjh@whzlaw.com
- **Heather M. Crockett** — heather.Crockett@atg.in.gov
- **Karen L. Lobring** — lobring@msn.com
- **Harley K. Means** — HMeans@kgrlaw.com
- **James G. Lauck** — JLauck@kgrlaw.com
- **Rachana N. Fischer** — rachana.Fischer@usdoj.gov
- **Andrew T. Kight** — akight@jnklegal.com

/s/ Jeffrey M. Hester  
Jeffrey M. Hester