

Form JTG15 (07/15)

**United States Bankruptcy Court  
Western District of Michigan**  
One Division Ave., N.  
Room 200  
Grand Rapids, MI 49503

**IN RE:** Debtor (name used by the debtor in the last 8 years, including married, maiden, trade, and address):

**Klingaman Brothers**  
14001 W. Drive South  
Tekonsha, MI 49092  
Tax ID: 38-3405321

Debtor

**Case Number 10-00535-jtg**

**Chapter 12**

**Honorable John T. Gregg**

**NOTICE TO PARTIES IN INTEREST OF HEARING**

YOU ARE HEREBY NOTIFIED that a hearing will be held at the United States Bankruptcy Court, Federal Building, U.S. Courthouse, Room 114, 410 W. Michigan Avenue, Kalamazoo, MI 49007 on **November 19, 2015 at 09:00 AM** to consider and act upon the following matter:

**Debtor's Motion for Authority to Sell Real Property by Courtroom Auction**

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a written response to the motion explaining your position. Any response shall be mailed to the Clerk of the United States Bankruptcy Court, One Division Ave., N., Grand Rapids, Michigan 49503, and should be received by the Clerk at least 7 (seven) days before the above hearing date. A copy of your responses should also be mailed upon the opposing party and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion and may enter an order granting relief requested.

DANIEL M. LAVILLE  
CLERK OF BANKRUPTCY COURT

**Dated:** October 26, 2015

/s/ \_\_\_\_\_

Kim Davis  
Deputy Clerk

A copy of this notice returned to Steven L. Rayman, Esq. on October 26, 2015 for service upon the mailing matrix.

NOTICE IS HEREBY GIVEN THAT THE COURT MAY, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest ~~will not~~ be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be accessed through the Bankruptcy Court's web site ([www.miwb.uscourts.gov](http://www.miwb.uscourts.gov)) provided the person has a PACER login and password, or by visiting the clerk's office of the United States Bankruptcy Court located at One Division Ave., N., 2nd Floor, Grand Rapids MI 49503. Information about a PACER login and password may be obtained by either calling PACER service center between 8:00 a.m. and 5:00 p.m. Monday through Friday, CST at (800) 676-6856 or via its web site at <http://pacer.psc.uscourts.gov>

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

IN THE MATTER OF:

KLINGAMAN BROTHERS,

Case No.: 10-00535

Chapter 12 - Filed: 01/20/2010

Debtor.

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**MOTION FOR AUTHORITY TO SELL REAL PROPERTY BY COURTROOM  
AUCTION FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. § 363**

NOW COMES Klingaman Brothers, Debtor ("Debtor"), by and through its attorneys, Rayman & Knight, and for its Motion for Authority to Sell Real Property at Courtroom Auction Free and Clear of Liens Pursuant to 11 U.S.C. § 363 ("Motion"), says as follows:

**JURISDICTION**

1. That jurisdiction over this case and proceeding exists in this Court under 28 U.S.C. §1334(a) and (b) and by reference from the District Court in accordance with 28 U.S.C. §157(a). Determination of this Motion is a core proceeding, as defined in 28 U.S.C. §157(b), arising under the United States Bankruptcy Code ("Bankruptcy Code"). Venue of this Motion is properly placed in this Court pursuant to 28 U.S.C. §1409(a).

2. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2) (A), (N) & (O).

3. The authority upon which this Motion is based are 11 U.S.C. §§105, 363, and 365 and Fed. R. Bankr. P. 6004 and L.B.R. 6004.

**BACKGROUND**

4. On January 20, 2010 ("Petition Date") the Debtor filed for relief under Chapter 12 of the Bankruptcy Code, which case is still pending before this Honorable Court.

5. During the course of these proceedings, one Southern Michigan Bank & Trust

("Bank"), the Debtor's primary secured creditor, received an Order granting relief from the automatic stay. *See*, Order Approving Settlement of Motions for Relief from the Automatic Stay Between Southern Michigan Bank & Trust and Debtor dated December 9, 2014 [DN 105].

6. Prior to the entry of the Order granting relief from stay, the Debtor had confirmed a 100% Plan to all creditors. However, the Plan was to culminate in a balloon payment, including a contemplated balloon to the Bank. The Debtor was unable to make the balloon payment and relief from stay entered.

7. A foreclosure sale on the Debtor's property was scheduled for August 27, 2015. Directly prior to the foreclosure sale, the Debtor and the Bank entered into a certain Forbearance and Deed in Lieu Agreement ("Bank Agreement").

8. Pursuant to the Bank Agreement, the Debtor agreed with the Bank that:

- a. It would conduct a public auction or sell in a manner agreed upon by the Bank and the Debtor, approximately 160 acres referred to as "Mark's Farm" by November 16, 2015 or such earlier date this autumn as is recommended by the agreed upon auctioneer. Closing of the sale must occur no later than December 31, 2015. The reserve price for Mark's Farm is to be \$700,000.00. Mark and Michele Klingaman's home is to be "cut out" of the property to be sold;
- b. It would refinance or commit to sell, via public auction or otherwise as may be agreed upon, a 125 acre parcel known as "Dad's Farm" by January 1, 2016, with an auction to be scheduled by February 15, 2016 or such earlier date as is recommended by the agreed upon auctioneer. The closing of the sale must occur no later than March 1, 2016. Any refinancing must occur by February 15, 2016. The reserve price for Dad's Farm is to be \$400,000.00;
- c. It was anticipated that the Bank would be paid in full as a result of the two auctions/sales or refinancing described above. However, if the Bank remained unpaid after the above sales, the Debtor agreed to sell the remaining farm, referred to as the "Main Farm", in an auction or otherwise as agreed to take place by November 16, 2016 or such earlier date as is recommended by the agreed upon auctioneer. Closing of the sale must occur by December 31, 2016; and

- d. All proceeds from the sales and/or refinancing must first be used to pay auction or sale expenses and closing costs (including but not limited to real estate taxes, title insurance and recording costs) acceptable to the Bank. The balance shall be payable to secured creditors in descending rank and priority.

9. The Debtor entered into a certain Purchase and Sale Agreement between itself as seller and one Ceres Farms, LLC as purchaser ("Purchaser"). A copy of the Purchase and Sale Agreement ("Agreement") is attached as Exhibit "A". By this Motion, the Debtor seeks approval to sell the real estate, Mark's Farm, that is the subject of this Motion and otherwise approve the terms and conditions of the Agreement, subject to competitive bidding that may take place in open court on the date and time scheduled for the sale. It is further requested that the sale be subject to any current crop leases for the crop year 2015. The Agreement, generally, provides:

- a. Subject to Bankruptcy Court approval, the Debtor shall sell Mark's Farm to Purchaser for the sum of \$671,500.00 ("Purchase Price"). The Purchase Price shall be adjusted based upon surveyed acres at a price of \$4,250.00 per surveyed acre;
- b. Purchaser shall deposit the sum of \$67,000.00 consistent with ¶1.01(a)(i) of the Agreement;
- c. Survey costs, if applicable, shall be split equally between the Seller and the Buyer;
- d. Possession shall be subject to 2015 farming rights. The Seller shall pay all taxes for 2015;
- e. Expenses shall be split consistent with ¶5.03 of the Agreement;
- f. The sale is "AS IS, WHERE IS" consistent with ¶6.01 of the Agreement;
- g. Closing shall take place on or before November 15, 2015 or within ten (10) days of presentation of free and clear title and warranty deeds. The Debtor anticipates that the closing date is subject to modification based on the date scheduled for this Motion.

**RELIEF REQUESTED**

10. This Motion will seek to sell Mark's Farm as described in the Agreement or to

such other purchaser as bids more in open court on terms consistent with the agreement.

11. Your Debtor requests that this Court enter an Order which:
  - a. Approves the sales of Mark's Farm consistent with this Motion;
  - b. Eliminates the 14 day stay contained in Fed. R. Bankr. P. 6004; and
  - c. Provides that all liens, claims or encumbrances in the real estate to be sold, including all security interests, shall attach to sale proceeds in the same rank and priority as existed prior to sale.

12. Your Debtor believes that the sale of its real estate, consistent with the Agreement and this Motion, is in the best interests of the estate and its creditors. Absent the sale of Mark's Farm the Debtor will not be able to reorganize. The Debtor anticipates the sale of Dad's Farm at a future date. Moreover, the Debtor intends on modifying its Chapter 12 Plan so as to pay all of its creditors in full, including post-petition creditors. It also intends to increase its dairy herd and make other modifications to its business plan in order to achieve a 100% payout to its creditors.

13. Due to the time constraints, and the need to begin advertising, your Debtor requests that the 14 day stay contained in Fed. R. Bankr. P. 6004 be waived.

**LIEN HOLDERS AND OTHER CLAIMS AGAINST THE REAL ESTATE**

14. The sale of the real estate shall be deemed free and clear of liens pursuant to 11 U.S.C. §363(f). The sale shall be free and clear of the liens of the following creditors, which claims are known to have a lien in the real estate subject to sale:

- a. Bank;
- b. ABF, Inc.<sup>1</sup>;
- c. First Farmers Bank and Trust;
- d. Calhoun County Treasurer;

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<sup>1</sup> The lien priorities of creditors claiming liens subordinate to the Bank are not relevant as all proceeds, after payment of *ad valorem* taxes and sale expenses shall be paid to the Bank.

- e. Internal Revenue Service;
- f. Monsanto; and
- g. Rabo Agrifinance, Inc.

(other than Monsanto and Rabo Agrifinance, Inc., collectively the "Lien Holders").

15. The judgment liens of Monsanto and Rabo Agrifinance, Inc. have expired pursuant to MCLA § 600.2809. Therefore, 11 U.S.C. § 363(f)(1) applies to those judgment liens.

16. Your Debtor expects that it will obtain the affirmative consent of all Lien Holders and, further, to the extent Lien Holders do not object to the sale, each has been deemed to have consented to the sale. *See, FutureSource LLC v. Reuters Ltd.*, C.A.7 (Ill.) 2002, 312 F.3d 281, certiorari denied 123 S.Ct. 1769, 538 U.S. 962, 155 L.Ed.2d 513; *see also, Veltman v. Whetzal*, 93 F.3d 517, 520 (8th Cir.1996); *contra, see In re Roberts*, 249 B.R. 152, 154-57 (Bankr.W.D.Mich.2000). As such, the Debtor may sell its real estate, pursuant to 11 U.S.C. § 363(f)(2).

17. The real estate may be sold free and clear of the claims of Lien Holders, pursuant to 11 U.S.C. § 363(f)(3). Pursuant to 11 U.S.C. § 506(a), the value of the Lien Holders' liens is limited to the value of their collateral. As the value of the collateral will be determined by the sale, and as each creditor had the right to credit bid, pursuant to credit bid, the Debtor may sell its real estate, pursuant to 11 U.S.C. § 363(f)(3). (*See generally, In re Becker Indus., Inc.*, 63 B.R. 474 (Bankr. S.D.N.Y. 1986) and *In re Terrance Gardens park P'ship*, 96 B.R. 707 (Bankr. W.D. Tex. 1989).

18. Each of the Lien Holders are compelled to accept a money satisfaction of their lien rights, such as this Chapter 12 proceeding. As such, the Debtor may sell its real estate, pursuant to 11 U.S.C. § 363(f)(5). Further, any Lien Holder who is not paid from the sales of Mark's Farm and Dad's Farm (other than Monsanto and Rabo Agrifinance, Inc. as discussed

below) will retain its lien on the Main Farm if the Main Farm is not sold.

19. The real estate may be sold free and clear of the claims of Calhoun County, a tax claimant, pursuant to 11 U.S.C. § 363(f)(3) as it will be paid in full from the sale.

20. The real estate may be sold free and clear of the claims of the Lien Holders, with liens attaching to proceeds in the same rank, validity and priority as existed as of the date of the Petition pursuant to 11 U.S.C. § 363(f)(2)(3)(4)&(5).

21. The sale shall be deemed free and clear of liens pursuant to 11 U.S.C. §363(f), other than easements and restrictions of record, all oil and gas leases, the Farmland Development Rights Agreement on Mark's Farm, the gravel lease of Carr Brothers & Sons, Inc., and an existing crop lease, with the purchaser(s) taking the estate's interest in the real property being sold free and clear of any liens and encumbrances with such liens and encumbrances attaching to the sale proceeds in the same rank, validity and priority as existed as of the date of the Petition.

22. The proposed sales pursuant to this Motion are in the best interests of the estate and its creditors.

#### **COURTROOM AUCTION PROCESS**

23. The sales of the real estate and the assignment of any of the leases shall be "As Is, Where Is", with the Debtor making no representations, warranties, statements or promises with respect to the same, including, but not limited to, description, fitness for purpose, merchantability, quantity, the conditions or the quality of any matter or thing whatsoever, with any and all conditions and warranties expressed or implied by law being deemed not to apply to the sales of the property. Any purchaser shall take the real estate and any lease with all of its faults.

24. That the Debtor asks this Court to conduct a sale, in open Court, at the time and place scheduled for the hearing on this Motion, with the opening bid of \$671,500.00 being that

provided by Purchaser:

- a. Any other party wishing to bid shall provide the Trustee with a deposit in the amount of \$67,000.00 prior to 48 hours before the scheduled sale and provide the Trustee with such satisfactory evidence of financial ability to close the transaction as determined by the Trustee. The deposit shall be retained by the Trustee and shall not be refundable should the successful purchaser fails to close for any reason other than those stated in the Agreement or failure of the Court to approve the sale;
- b. Bidding shall commence at \$675,000.00 with increments of not less than \$1,000.00; and
- c. All bids shall be in conformance with the Agreement. In the event the high bidder fails to close, Trustee may proceed with sale to the next highest bidder who is ready, willing and able to close for the amount bid at the auction subject to the other terms of this Motion.

25. The sale shall be on a cash basis, with the closing and full purchase price being payable by the Purchaser within 10 days from the conclusion of the hearing on the sale.

26. That there is no broker nor real estate commission that shall be payable on this transaction.

27. Lien Holders shall have the right to credit bid at the sale, pursuant to 11 U.S.C. § 363(k), a maximum amount equal to the value of their respective debts. The Lien Holder must pay all expenses of sale, including closing costs and the payment of all superior liens (after application of any cash sales) including all *ad valorem* taxes owed as of the date of closing.

28. That the Debtor reserves the right to sell the real estate in such lots as it deems, after consultation with Lien Holders, to be in the best interests of the estate.

29. The Debtor will accept the highest and best bid.

30. The Debtor shall review all bids received and, on the basis of such factors as it may determine in its sole discretion, after consultation with Lien Holders and other parties in interest. The factors to identify the highest and otherwise best offer for the real estate will

include, without limitation, the Lien Holders' approval of a bid, the financial and contractual terms of each bid and factors concerning the speed, certainty of consummation of the transactions contemplated by each bid.

31. The Debtor shall distribute funds to Lien Holders at the closings unless prior to closing the Debtor or secured creditor files a Notice of Dispute Regarding Secured Claims ("Dispute Notice"). If a Dispute Notice is filed, the Debtor will hold the sale proceeds until further order of this Court or by an agreement of all Lien Holders with respect to the particular parcel or parcels of real estate.

32. Any real estate that is not sold shall be retained by the estate for further disposition.

33. The Debtor reserves the right to place reserves on certain parcels of real estate.

34. The Debtor also seeks the authority to accept such back-up bidder(s) as it deems appropriate on the date of the auction. Said back-up bidder will be such bidder that has the second best bid for each or all of the real estate sold.

35. That portion of the real estate which is subject to the crop lease will be sold subject to the lessee's rights to harvest the 2015 crop.

### CONCLUSION

36. The auction process is expected to begin immediately. As such, the Debtor submits that it is appropriate to waive the provisions of Federal Rules of Bankruptcy Procedure 6004(h).

37. The sale of the real estate is in the best interests of the estate, the Debtor has consented to the sale of the real estate and this Motion should be approved.

**WHEREFORE**, your Debtor prays:

A. That this Court enter an Order authorizing the sale of the real estate on the terms

and conditions set forth herein;

B. That this Court enter an Order authorizing the sale of the real estate free and clear of liens pursuant to 11 U.S.C. §363(f) with all liens attaching to proceeds;

C. That the Debtor be authorized to execute a Trustee's Deed and/or Trustee's Bill of Sale for fixtures in conformance with the terms herein;

D. That the Debtor be authorized to pay the Auctioneer pursuant to this Motion and to pay such other appropriate and necessary expenses of sale including all applicable real estate taxes without further Order of this Court;

E. That the Debtor be authorized to accept a back-up bidder;

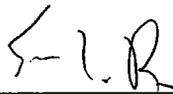
F. That the Court enter an Order waiving the 14 day stay contained in Fed. R. Bankr.

P. 6004.

G. That this Court order such other relief as it finds just and equitable.

**RAYMAN & KNIGHT**  
Attorneys for Debtor

Dated: October 22, 2015

By:   
\_\_\_\_\_  
Steven L. Rayman (P30882)

BUSINESS ADDRESS:  
141 E. Michigan Avenue, Suite 301  
Kalamazoo, MI 49007  
Telephone: (269) 345-5156

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT (the "Agreement") is made this 15th day of October 2015 (the "Effective Date"), by and between Klingaman Farm, a Michigan Partnership, ("Sellers") and Ceres Farms, LLC its nominees or assignees ("Purchaser").

### RECITAL

- a) The Seller is the fee owner of approximately 158+/- acres located in Section 13, Tekonsha Township, Calhoun County, Michigan, together with all improvements, thereon, and all privileges, rights, easements and appurtenances thereto (the "Property"), commonly known as the **Klingaman Farm**. See Exhibit A.
- b) Seller desires to sell and Purchaser desires to purchase the Property upon and subject to the terms and conditions hereinafter set forth.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, warranties, agreements, covenants and conditions herein contained, and other good and valuable consideration, Seller and Purchaser agree as follows:

- 1.01 **Purchase and Sale:** Subject to the conditions and on the terms contained in this Agreement, at the Closing (as hereinafter defined), Seller shall cause to be conveyed fee simple title to the Property to Purchaser or any assignee or designee of Purchaser by good, sufficient and recordable warranty deed. Seller shall also convey all mineral rights owned by Seller to Purchaser, if any.
  - a. **Purchase Price:** The purchase price ("Purchase Price") shall be Six Hundred Seventy-One Thousand Five Hundred Dollars (\$671,500). Total Purchase Price shall be adjusted based on surveyed acres at a price of \$4,250 per surveyed acre. The Purchase Price shall be paid as follows:
    - i. Within 2 business days of acceptance of this agreement, Purchaser shall deposit with Escrowee (as hereinafter defined) the sum of \$67,000 Dollars (the "Initial Deposit"), which amount shall be nonrefundable but credited towards and be applicable to the Purchase Price to be paid at Closing (as hereinafter defined). In the event of a default by Seller under this Agreement, Escrowee shall promptly return the Initial Deposit to Purchaser within five (5) days of receipt of notice of default from Purchaser, with notice to Seller. Termination as result of the Inspection (as defined in Paragraph 6.02 hereof) in compliance with Paragraph 6.02 hereof will also result in return of Initial Deposit. Alternatively, in the event of default Purchaser may seek specific performance of the terms of this Agreement but in no event shall Purchaser be entitled to a damage remedy in the event of Seller default, but Purchaser may seek return of the Initial Deposit. Notwithstanding any other provision hereof, Purchaser shall have the right to terminate this Agreement and receive a return of the Initial Deposit if the Title

EXHIBIT

A

Commitment (as defined in Paragraph 4.01) contains unpermitted exceptions to title which are not removed by Seller as set forth in Section 4.01; provided Purchaser has provided Seller with Purchaser's notice of termination of the Agreement in compliance with the terms of Paragraph 4.01.

- 3.01 **Survey:** Seller shall provide Purchaser with an existing survey, if available. If no existing survey is available, Seller shall provide Purchaser with a new survey, with cost to be shared equally.
- 4.01 **Title Commitment:** This Agreement shall become effective after approval by the Bankruptcy Court for Western District of Michigan ("Bankruptcy Court"). Not later than fifteen (15) days following the Effective Date and approval by the Bankruptcy Court, Seller shall deliver a commitment for an ALTA Form B Owner's Title Insurance Policy for the Property in the full amount of the Purchaser Price covering title to the Property on or after the date hereof, showing Seller as owner of the Property in fee simple, subject only to exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at Closing (the "Title Commitment"), at Seller's sole cost and expense. Seller shall have ten (10) days from the date of delivery of the Title Commitment to Purchaser to have all exceptions to title which do not constitute Permitted Title Exceptions removed from the Title Commitment and to provide evidence thereof to Purchaser, and if Seller fails to have all such exceptions removed or advises Purchaser of its unwillingness or inability to remove such un-permitted title exceptions in writing, Purchaser may elect, on or before three (3) business days after receipt from Seller of written notice of the same to: (1) terminate this Agreement in which event the Initial Deposit shall be forthwith returned to Purchaser together with any and all interest earned thereon; or (ii) accept title subject to those of such un-permitted exceptions as the Title Insurer has not removed. On the Closing Date, Seller shall cause the Title Insurer to issue an owner's title insurance policy (herein a "Title Policy") at Seller's expense, pursuant to and in accordance with the Title Commitment, in the full amount of the Purchaser Price, insuring fee simple title to the Property in the Purchaser, subject only to the Permitted Title Exceptions and such other exceptions as Purchaser may approve pursuant to clause (ii) above.
- 5.01 **Possession:** Sole and exclusive possession of the Property shall be delivered to Purchaser on the Closing Date subject to 2015 farming rights. All farm rights for the 2016 crop year and beyond shall belong to the Purchaser.
- 5.02 **Real Estate Taxes/Income:** Seller shall pay all unpaid prior year taxes and ditch/drainage assessments and all taxes and ditch/drainage assessments for the current calendar year. Purchaser shall assume all taxes for calendar year 2016 and beyond.
- 5.03 **Expenses:** Seller shall be responsible for the payment of all State of Michigan and County of Calhoun transfer and stamp taxes, fifty (50%) percent of all deed and money escrow fees and Survey costs, and one hundred percent (100%) of all title insurance premiums and charges for the issuance of the Title Policy and for fifty (50%) percent of the "New York Style Closing and Gap Coverage," if any. Purchaser shall be responsible

for the payment of all recording fees, one hundred percent (100%) of any money lender's escrow fee, fifty percent (50%) of all other escrow fees and Survey costs, and for fifty (50%) percent of the "New York Style Closing and Gap Coverage," if any:

- 6.01 **"As Is" Condition:** Notwithstanding anything to the contrary Purchaser is purchasing the Property (and any structures upon the Property, if any) in "As Is" condition and, neither Seller nor any employee, agent or representative of Seller has made any representation, warranty, or promise to Purchaser concerning: (a) the physical condition of the Property; (b) the feasibility or desirability of the purchase or development of the Property; or (c) any other matter whatsoever with respect to the Property, express or implied including, without limitation, representations, warranties or promises regarding fitness for a particular purpose or use. As of the date of this Agreement, to the best of Seller's actual knowledge, Seller is aware of no existing violation of any environmental laws pertaining without inquiry to the Property. Seller shall provide Purchaser with Bill of Sale for all improvements located on the Property at Closing.
- 6.02 **Inspection/Notice Date:** The obligation of Purchaser to close the transaction contemplated hereby is, at Purchaser's option, subject to Purchaser on or before twenty (20) days after the date hereof (the "Notice Date") confirming that all aspects of the Property are acceptable to Purchaser, in Purchaser's sole and absolute discretion, and suitable for Purchaser's intended use of the Property (the "Inspection"). Purchaser shall provide Seller with copies of all written reports, studies, test results, plans and all other documents prepared by or finished to Purchaser in connection with or pursuant to this Section. Failure by Purchaser to notify Seller in writing of its termination of the Agreement on or before the Notice Date shall cause the waiver and expiration of Purchaser's right to terminate the Agreement pursuant to the terms of this Paragraph 6.02.
- 7.02 **Escrow:** On the Effective Date, the parties, through their respective attorneys, shall establish a Strict Joint Order Escrow and Purchaser shall cause the Initial Deposit to be placed in said escrow in a non interest bearing account. The escrow instructions shall be in the form customarily used by the Escrowee with such special provisions added thereto as may be required to conform to the provisions of this Agreement. Said escrow shall be auxiliary to this Agreement, and this Agreement shall not be merged into nor in any manner superseded by said escrow. The cost of said Strict Joint Order Escrow shall be split equally between the parties.
- 8.01 **Closing:** The transaction contemplated hereby shall close **within Ten (10) days after the entry of a final order for sale issued by the Bankruptcy Court** or within 10 days of presentation of free and clear title and warranty deeds of the Property to the Purchaser, (the "Closing Date" or the "Closing") in a "New York Style" closing, at the offices of the Escrowee, or on such other date, time and place as the parties may mutually agree, in accordance with the general provisions of the usual form of Deed and Money Escrow Agreement with such special provisions inserted in the escrow agreement as may be necessary to conform with this Agreement. The cost of the Deed and Money Escrow and New York Style closing fee shall be divided equally between Seller and Purchaser. All

or part of the Purchaser Price may be deposited pursuant to the terms of a separate moneylender's escrow, the cost of which shall be borne by Purchaser.

- 9.01 **Seller's Deposits:** At the Closing, Seller shall deliver to the Escrowee in exchange for the payment to Seller of the Purchase Price (plus or minus prorations) all documentation required by Title Company to lawfully convey the Property to Purchaser as contemplated herein.
- 10.01 **Purchaser's Deposits:** At the Closing, Purchaser shall deliver all documentation reasonably required by Title Company to lawfully convey the Property to Purchaser as contemplated herein.
- 11.01 **Joint Deposits:** At the Closing, Seller and Purchaser shall jointly execute **State of Michigan and Calhoun County** transfer/transaction tax declaration(s) and shall jointly execute and deliver to each other an agreed upon closing statement.
- 12.01 **Notices:** Any notice, request, demand, instruction or other document to be given or served hereunder or any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally with a receipt requested therefore or by a recognized overnight courier service or by United States registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below or by telefax or E-mail, and the same shall be effective: (i) upon receipt or refusal if delivered personally; (ii) one (1) business day after depositing with such an overnight courier service; or (iii) two (2) business days after deposit in the mails if mailed; (iv) upon transmission with receipt in the case of fax or E-mail. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Purchaser:

Brandon Zick  
Ceres Partners, LLC  
1251 N. Eddy St. Suite 200  
South Bend, IN 46617  
Fax: 855-242-3747  
E-Mail: [bzick@cerespartners.com](mailto:bzick@cerespartners.com)

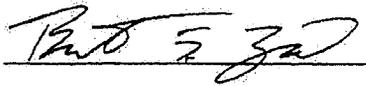
If to Seller:

Kevin Klingaman  
14301 W Drive South  
Tekonsha, MI 49092  
Phone: 269-207-7713

- 13.01 **Further Assurances:** The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the Closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.
- 16.01 **Interpretation:**
- a) This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
  - b) Whenever under the terms of this Agreement the time for performance of a covenant or condition falls on a Saturday, Sunday or holiday, such time for performance shall be extended to the next business day. Otherwise, all references herein to "days" shall mean calendar days.
  - c) This Agreement shall be governed by and construed in accordance with laws of the State of Michigan.
  - d) Time is of the essence of this Agreement.
  - e) In the event of litigation arising out of this Agreement, the prevailing party may recover its reasonable attorneys' fees.
  - f) This Agreement is binding upon the heirs, legal representatives, successors and assignees of the Parties.
- 17.01 **Brokerage:** Purchaser hereby represents and warrants to Seller that Purchaser has not dealt with any broker or finder with respect to the transaction contemplated who will be paid by Purchaser. Purchaser hereby agrees to indemnify Seller for any claim for brokerage commission or finder's fee asserted by any person, firm or corporation claiming to have been engaged by Purchaser.
- 18.01 **Expiration of Offer:** Unless accepted by Seller and delivered to Purchaser by 5:00PM the 20th day of October 2015, this Purchase Agreement shall be null and void and all parties shall be relieved and released of any and all liability or obligations.
- 19.01 **Conservation Reserve Program:** Seller shall not renew any and all CRP contracts on the Property beyond 2015. Property shall be delivered to Purchaser free and clear of any new land conservation encumbrances.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by Seller and Purchaser on the respective dates set forth beneath each of their signatures.

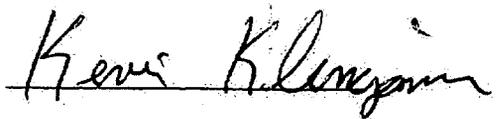
PURCHASER:  
Ceres Farms, LLC

By: 

Its: Brandon Zick, Authorized Agent

Dated: 10/15/2015

SELLER:



Dated: 10-19-15



Dated: 10-19-15