

FILED
FULTON COUNTY
COMMON PLEAS COURT
2011 OCT -4 A 10: 24
PAUL E. MACDONALD
CLERK

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

THE FARMERS & MERCHANTS
STATE BANK,

Plaintiff,

-vs-

ARCHBOLD ELEVATOR, INC., et al.,

Defendants.

) Case No. 11CV000128

) Judge Barber

) **RECEIVER'S THIRD MOTION TO
APPROVE PARTIAL SALE AND
MEMORANDUM IN SUPPORT**

) Gerald R. Kowalski (0022323)

Renisa A. Dorner (0040192)

) COOPER & WALINSKI, LPA
900 Adams Street

) Toledo, Ohio 43604

Telephone: (419) 241-1200

) Telefax: (419) 720-3421

Email: kowalski@cooperwalinski.com

) dorner@cooperwalinski.com

) Receiver and Counsel

Now comes the Receiver and hereby moves this Court for an order approving the sale of:

- The elevator and feed business to Gerald Grain Company for \$2,380,000.00 plus the cost of feed inventory (to be determined on the date of the closing);
- A farmhouse, barn and other buildings and associated real estate located on County Road D in Fulton County, Ohio to Randy Ruffer for \$213,078.00; and
- Residential lots located in Jefferson Village, Williams County, Ohio to Michael and RoseMarie Dick for \$7,750.00;

All parties to this lawsuit consent to these sales. Further details are contained in the following memorandum. The Receiver expects to seek Court approval for the sale of the remaining assets within ten days.

MEMORANDUM

As reported in the Receiver's Status Reports, the Receiver, with the input and consent of all parties, initiated a bid process for all of the business assets of the Archbold Entities. The most significant asset of the Archbold Entities is the elevator and feed facility. The Receiver received five competitive bids for the elevator and feed facility by the deadline of August 30, 2011. After receiving these bids, the Receiver continued further negotiations with the bidders which resulted in the highest and best bid being submitted by Gerald Grain Company in the amount of \$2,380,000. This bid amount includes the feed and grain facility, the repair and maintenance garage and related assets, including most of the rolling stock associated with this operation. A bill of sale and contract are being finalized. All material issues have been agreed to. Additionally, Gerald Grain will pay for the cost of the feed inventory as determined on the date of closing. Gerald Grain Company has agreed to honor the Anderson's contracts for delivery to Archbold which will greatly reduce the negative equity claim of the Anderson's.

As reported in the Receiver's Emergency Motion to Approve this sale filed on September 29, 2011, all parties had consented to and approved this sale except for William Fricke. Subsequent discussions with Mr. Fricke and his counsel have resulted in Mr. Fricke's consent to this sale.

The Receiver believes that the bid process that was utilized resulted in commercially reasonable bids and the Receiver believes that this bid is fair and reasonable based on all of the circumstances surrounding the Archbold Entities and is in the best interest of the Receivership, creditors and employees.

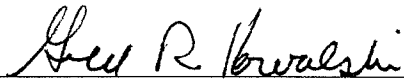
The Receiver also moves to approve the sale of certain assets of the Archbold Entities unrelated to the business operations. The Archbold Entities owned a 39-acre farm and associated buildings in Fulton County. The Archbold Entities also own three residential lots in Williams County, Ohio. With the consent of the parties, the Receiver retained the services of Elias H. Frey

& Sons, Inc. to sell these properties at public auction. The public auction occurred on Friday, September 23, 2011 and successful bidders signed purchase contracts at the conclusion of that auction (Exhibits A and B attached). The Receiver believes that the prices received at auction for the farm property and the residential lots are fair and reasonable and that these sales are in the best interests of the Receivership, creditors and employees.

Therefore, the Receiver moves this Court for an order approving the sale of these assets.

As indicated above, all parties consent to these sales.

Respectfully submitted,



Gerald R. Kowalski, Receiver
Renisa A. Dorner
Receiver and Counsel

Email Consent

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Email Consent

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*Counsel for Agricultural Products Extension,
LLC*

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of October, 2011, a copy of the foregoing *Receiver's Third Motion to Approve Partial Sale and Memorandum in Support* was served by email and ordinary United States mail upon:

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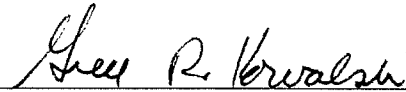
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Gerald R. Kowalski, Receiver
Renisa A. Dorner
Receiver and Counsel



Frey & Sons



Realtors, Auctioneers, Appraisers

106 Stryker St. • Archbold, OH 43502
Ph. (419) 445-3739 • Fax (419) 445-8888

127 W. Butler St. • Bryan, OH 43506
Ph. (419) 633-3739 • Fax (419) 633-9277

REAL ESTATE PURCHASE CONTRACT

Adopted by Northwestern Ohio Board of Realtors

Archbold, Ohio September 23, 20 11
OFFER TO PURCHASE

The undersigned, the Purchaser, hereby offers and agrees to purchase from the Seller the following described premises:

Archbold Elevator Inc.
Lot #1 #2 #3 and West 36' of Lot #11 (Approx. 7.09 Acres) Jefferson Village Jefferson Twp
Williams Co., Ohio Parcel #s: 073-080-00-037.000 073-080-00-038.000 073-080-00-039.000
073-080-00-040.000

TERMS AND CONDITIONS

The terms and conditions of this Agreement are as follows:

- PURCHASE PRICE AND TERMS:** The purchase price shall be \$ 7750. to be paid in accordance with the terms of Paragraph A. (insert A, B, or C).
 - CASH.** The entire Purchase price shall be paid in cash.
 - CASH WITH NEW MORTGAGE.** Buyers obligations are contingent upon Buyer arranging within _____ calendar days after acceptance hereof a _____ (specify Conventional, VA, FHA, etc.) first mortgage commitment in the amount of (\$ _____), at a rate not to exceed _____%. Buyer agrees to make immediate application for such financing.
 - LAND CONTRACT.** The parties agree to enter into a Land Installment Contract providing for _____ down payment and the balance bearing interest at the rate of _____ percent per annum, and with payment of _____ per month, with the entire balance due _____.

The contract shall provide that marketable title evidence shall be delivered by seller at or prior to execution of the Land Installment Contract, and that any further title examination or evidence shall be at the expense of Purchaser.
 - TAXES AND ASSESSMENTS:** Seller shall assume and pay the taxes and assessments, upon the real estate, to date of closing. If the tax rate is not finalized, the last rate and value shall be used in this computation.
 - POSSESSION:** Possession of the Real Estate shall be delivered to Buyer on or before at closing. For rental property, rents and utilities shall be prorated as of the date of closing. For non-rental property utilities shall be prorated to date of possession. Insurance shall be provided by the seller until date of closing.
 - IMPROVEMENT AND FIXTURES:** The property shall include the land and all buildings and fixtures delivered in their present condition, unless exempted herein, including, without limitation; all shades, awnings, storm windows, and screens, curtain rods and curtains, T.V. antennas, garage door opener and controls, gas or electric heaters, water heater and softener (unless leased), incinerator, trash compactors, all heating, plumbing and bathroom fixtures, affixed mirrors, air conditioning units, humidifiers, all built-in appliances and accessories, door bells, chimes, fireplace grate and equipment, smoke detectors, all tacked down carpeting and floor covering, all landscaping, all oil or propane in storage, and oil or propane tanks (unless leased) and None.
- The following shall be excluded:
None
- DEPOSIT:** The buyer shall deposit with the Seller's agent named below the sum of \$ 775. Upon acceptance of this offer by Seller, Buyer will deposit with such agent additional money in the sum of \$ 0. The deposit paid under this Agreement shall be deducted from any payment required to be paid at the closing.
 - ACCEPTANCE:** If this offer is accepted, it shall constitute an agreement between Buyer and Seller, binding to the benefit of them and their respective heirs and personal representatives. If, after acceptance, buyer fails to complete the purchase as agreed, the deposit shall be forfeited to Seller as liquidated damages. If this offer is not accepted in writing on or before September 24, 20 11, it shall then expire, and the deposit shall be returned to Buyer without delay.
 - TITLE EVIDENCE:** Prior to closing Seller shall furnish a properly prepared Attorney's Certificate of Title or updated Abstract, for the Real Estate, disclosing a marketable title in Seller. Seller will have a reasonable time to meet such requirements, if any, as may be necessary to render marketable his title to the Real Estate, in accordance with the standards of marketability of title as adopted by the Ohio State Bar Association. Buyer is hereby advised to seek his own legal counsel.
 - CLOSING:** This transaction shall be closed as soon as title to the Real Estate meets necessary legal requirements and Buyer obtains the necessary financing if any, as hereinabove provided, but no later than October 24 2011. At closing, Buyer shall make payment of the purchase price as provided in Section 1 above, and Seller shall deliver to Buyer a properly prepared and executed General Warranty Deed or Fiduciary Deed or Land Contract, conveying or contracting to convey the Real Estate and all improvements thereon in the same condition they now are, usual wear and tear excepted. Seller shall assume the risk of loss or damage to the Real Estate and all improvements thereon until the delivery of the General Warranty Deed, Fiduciary Deed or Land Contract. In the event the Real Estate and all improvements thereon cannot be conveyed or contracted to be conveyed to Buyer in substantially their present condition, usual wear and tear excepted, this Agreement, at Buyer's election, shall not be binding upon Buyer and money deposited hereunder shall be returned to Buyer without delay.
 - Buyer has personally inspected and examined the Real Estate and makes this offer in good faith. All the terms and conditions are stated herein, there being no verbal agreements.
 - CONTINGENCY CLAUSE:** The obligation of the Purchaser under this contract is contingent upon the successful sale and closing of Purchasers property located at N/A on or before noon the _____ day of _____, 20 _____. The Purchaser agrees the Seller's property is to remain on the market for sale during the interim, and that the Seller's have the right to accept any other offer which is non-contingent except as to financing. The Seller's acceptance of any such offer and notification of such sale to Purchaser shall terminate this contract.
 - It is further agreed Sold subject to court approval.

PURCHASER:	ADDRESS	TELEPHONE	DATE
<u>Michael Dick</u>	<u>401 OAK ST Montpelier OH</u>	<u>419-485-3447</u>	<u>9-23</u>
<u>Michael + Rose-Marie Dick</u>			

DEPOSIT RECEIPT

Receipt is hereby acknowledged as agent for the Seller of \$ 775. Deposit subject to the terms of the within contract.
Frey & Sons Realtor by James M. St... 9/23, 20 11

ACCEPTANCE BY SELLER

The undersigned Seller accepts the above offer and agrees with its terms and conditions. Seller also agrees to pay its Agent named above a commission of \$ 387.50, which shall be deducted at closing. Seller also authorizes its agent to hold all money deposits in escrow until the closing of this transaction.

SELLER:	ADDRESS	TELEPHONE	DATE
<u>Anna Adams</u>	<u>Carol Koubtski</u>		
<u>Wally J. Rescove</u>			

FAIR HOUSING STATEMENT

It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, handicap, or national origin; or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

Exhibit A



Frey & Sons

Realtors, * Auctioneers, Appraisers



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Ph. (419) 445-3739 • Fax (419) 445-8888

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REAL ESTATE PURCHASE CONTRACT

Adopted by Northwest Ohio Board of Realtors

Archbold, Ohio September 23, 2011

OFFER TO PURCHASE

The undersigned, the Purchaser, hereby offers and agrees to purchase from the Seller the following described premises:

Archbold Elevator Inc. 21886 Co. Rd. D Archbold Ohio 43502
Home, barn & building on approx. 39.459 acres Sec. 27 German Twp, Fulton Co, Ohio
Fulton Co. Parcel # 15-027476-01.000

TERMS AND CONDITIONS

The terms and conditions of this Agreement are as follows:

1. PURCHASE PRICE AND TERMS: The purchase price shall be \$ 213,078 to be paid in accordance with the terms of Paragraph

A (insert A, B, or C).

A. CASH. The entire Purchase price shall be paid in cash.

B. CASH WITH NEW MORTGAGE. Buyers obligations are contingent upon Buyer arranging within _____ calendar days after acceptance hereof a _____ (specify Conventional, VA, FHA, etc.) first mortgage commitment in the amount of (\$ _____), at a rate not to exceed _____ %.

C. LAND CONTRACT. The parties agree to enter into a Land Installment Contract providing for _____ down payment and the balance bearing interest at the rate of _____ percent per annum, and with payment of _____ per month, with the entire balance due _____.

The cost of preparing and recording the Land Installment Contract shall be paid by _____. The contract shall provide that marketable title evidence shall be delivered by seller at or prior to execution of the Land Installment Contract, and that any further title examination or evidence shall be at the expense of Purchaser.

2. TAXES AND ASSESSMENTS: Seller shall assume and pay the taxes and assessments, upon the real estate, to date of closing. If the tax rate is not finalized, the last rate and value shall be used in this computation.

3. POSSESSION: Possession of the Real Estate shall be delivered to Buyer on or before at closing. For rental property, rents and utilities shall be prorated as of the date of closing. For non-rental property utilities shall be prorated to date of possession. Insurance shall be provided by the seller until date of closing.

4. IMPROVEMENT AND FIXTURES: The property shall include the land and all buildings and fixtures delivered in their present condition, unless exempted herein, including, without limitation; all shades, awnings, storm windows, and screens, curtain rods and curtains, T.V. antennas, garage door opener and controls, gas or electric heaters, water heater and softener (unless leased), incinerator, trash compactors, all heating, plumbing and bathroom fixtures, affixed mirrors, air conditioning units, humidifiers, all built-in appliances and accessories, door bells, chimes, fireplace grate and equipment, smoke detectors, all tacked down carpeting and floor covering, all landscaping, all oil or propane in storage, and oil or propane tanks (unless leased) and none.

The following shall be excluded:

Reserved: 1) Growing Crops @ Straw in barn

5. DEPOSIT: The buyer shall deposit with the Seller's agent named below the sum of \$ _____. Upon acceptance of this offer by Seller, Buyer will deposit with such agent additional money in the sum of \$ 0. The deposit paid under this Agreement shall be deducted from any payment required to be paid at the closing.

6. ACCEPTANCE: If this offer is accepted, it shall constitute an agreement between Buyer and Seller, binding to the benefit of them and their respective heirs and personal representatives. If, after acceptance, buyer fails to complete the purchase as agreed, the deposit shall be forfeited to Seller as liquidated damages. If this offer is not accepted in writing on or before September 24, 2011, it shall then expire, and the deposit shall be returned to Buyer without delay.

7. TITLE EVIDENCE: Prior to closing Seller shall furnish a properly prepared Attorney's Certificate of Title or updated Abstract, for the Real Estate, disclosing a marketable title in Seller. Seller will have a reasonable time to meet such requirements, if any, as may be necessary to render marketable his title to the Real Estate, in accordance with the standards of marketability of title as adopted by the Ohio State Bar Association. Buyer is hereby advised to seek his own legal counsel.

8. CLOSING: This transaction shall be closed as soon as title to the Real Estate meets necessary legal requirements and Buyer obtains the necessary financing if any, as hereinabove provided, but no later than October 24 2011. At closing, Buyer shall make payment of the purchase price as provided in Section 1 above, and Seller shall deliver to Buyer a properly prepared and executed General Warranty Deed or Fiduciary Deed or Land Contract, conveying or contracting to convey the Real Estate and all improvements thereon in the same condition they now are, usual wear and tear excepted. Seller shall assume the risk of loss or damage to the Real Estate and all improvements thereon until the delivery of the General Warranty Deed, Fiduciary Deed or Land Contract. In the event the Real Estate and all improvements thereon cannot be conveyed or contracted to be conveyed to Buyer in substantially their present condition, usual wear and tear excepted, this Agreement, at Buyer's election, shall not be binding upon Buyer and money deposited hereunder shall be returned to Buyer without delay.

9. Buyer has personally inspected and examined the Real Estate and makes this offer in good faith. All the terms and conditions are stated herein, there being no verbal agreements.

10. CONTINGENCY CLAUSE: The obligation of the Purchaser under this contract is contingent upon the successful sale and closing of Purchasers property located at N/A on or before noon the _____ day of _____, 20____. The Purchaser agrees the Seller's property is to remain on the market for sale during the interim, and that the Seller's have the right to accept any other offer which is non-contingent except as to financing. The Seller's acceptance of any such offer and notification of such sale to Purchaser shall terminate this contract.

11. It is further agreed 1) Sold subject to court approval @ Barn reserved until November 1, 2011

PURCHASER: Ray E. Effen ADDRESS _____ TELEPHONE _____ DATE _____

DEPOSIT RECEIPT

Receipt is hereby acknowledged as agent for the Seller of \$ 21,308. Deposit subject to the terms of the within contract.

Frey & Sons Realtor by Kevin Frey Sept. 23, 2011

ACCEPTANCE BY SELLER

The undersigned Seller accepts the above offer and agrees with its terms and conditions. Seller also agrees to pay its Agent named above a commission of \$ 10,653.90, which shall be deducted at closing. Seller also authorizes its agent to hold all money deposits in escrow until the closing of this transaction.

SELLER: Paul and Dore ADDRESS _____ TELEPHONE _____ DATE _____
Consul for Receiver
Carol R. Kowalski

FAIR HOUSING STATEMENT

It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, handicap, or national origin; or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

Exhibit B