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FULTON COUNTY
COMMON PLEAS COURT
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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 FOURTH 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

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) dorner@cooperwalinski.com

) Receiver and Counsel

Now comes the Receiver and hereby moves this Court for an order approving the sale of breeding sow stock and other assets located at Fenstermaker Farms. All parties consent to this motion and sale. Details of this transaction are contained in the following memorandum.

MEMORANDUM

In the Receiver's Fifth Status Report, the Receiver reported that competing bids had been received for the remaining Archbold Entities assets – the Henry Pig sow unit, the O-Mi-O sow unit, the Fenstermaker/Leipsic sow unit and the Kainos nursery. At that time, there were two

competing bids for the Fenstermaker/Leipsic sow units – one bid from the owner of the farm, Fenstermaker Farms, Inc. and one bid from William Fricke. Mr. Fricke has withdrawn his bid for these assets. The Fenstermaker Farms bid for these assets is attached as Exhibit A. Specifically, Fenstermaker Farms, Inc. has bid \$490,000 for the following assets:

All breeding sow stock located at Fenstermaker Farms, Inc., Road H, Leipsic, Ohio, including without limitation all sows, boars, unborn piglets of sows, and unweaned pigs located in the farrowing barn at Fenstermaker Farms, Road H, Leipsic, Ohio (“Facility”), and all gilts located at the Larry Higley Farm; five (5) collection boars located at Eastern AI; all drug and feed inventory and supplies located in the farrowing barn and the gestation barn at Fenstermaker Farms; GMC 1999 bulk feed truck located at Fenstermaker Farms; all pig busses currently used at the Facility.

When the Receiver was appointed on April 12, 2011, the Archbold Entities operated five sow units. Two of the sow unit facilities were wholly-owned by the Archbold Entities. Three facilities were leased by the Archbold Entities but the Archbold Entities owned the breeding stock at these facilities. The Receiver has already sold the breeding stock at two of the three facilities – Liberty Center and Rolling Meadows – and this transaction was detailed in the Receiver’s Second Motion to Approve Partial Sale, filed on August 22, 2011 and approved by this Court on August 23, 2011. The Fenstermaker / Leipsic sow unit is the third leased facility.

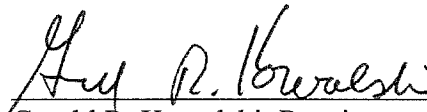
As reported previously by the Receiver, the Receiver initially received only one bid for the assets at Fenstermaker / Leipsic and the Receiver was prepared to recommend this sale. All parties except William Fricke consented to this sale. Mr. Fricke objected to this sale and submitted a competitive bid. This issue was explained in the Receiver’s Motion for Instructions filed on October 24, 2011. Subsequently, William Fricke withdrew his bid. Therefore, there is only one bid for the assets at Fenstermaker/Leipsic. All parties have been provided with a copy of this bid (Exhibit A) and all parties consent to the bid. The bid is for a total of \$490,000. However, as indicated in the bid, Fenstermaker Farms, Inc. has requested a credit in the amount of \$252,042 plus accrued and unpaid interest. Fenstermaker Farms, Inc. is a secured creditor of

the Archbold Entities. No determination has been made as to their priority status although Fenstermaker Farms, Inc. has conceded that Farmers & Merchants Bank has priority over its secured claim. Thus, the sale of these assets will result in a payment to the Receiver in the amount of \$490,000 less the amount of Fenstermaker's secured claim to be determined at the time of closing.

The Receiver believes that this sale is in the best interest of the Receivership since no other bids were received for these assets. The Receiver believes that this proposed sale price is commercially reasonable under the circumstances and not inconsistent with the suggested sale price contained in the Veid & Veid calculation report of May 16, 2011.

Therefore, the Receiver moves this Court for an order approving the sale of these assets at Fenstermaker Farms, Inc. as stated above.

Respectfully submitted,



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

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CERTIFICATE OF SERVICE

This is to certify that on this 1 day of November, 2011, a copy of the foregoing

Receiver's Fourth Motion to Approve Partial Sale and Memorandum in Support was served by email and ordinary United States mail upon:

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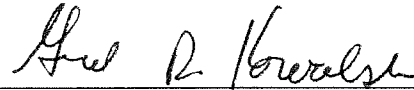
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Gerald R. Kowalski, Receiver
Renisa A. Dorner
Receiver and Counsel

FENSTERMAKER FARMS, INC.
1799 County Road H
Leipsic, Ohio 45856

August 30, 2011

Gerald R. Kowalski, Receiver
of Archbold Elevator, Inc.
Cooper & Walinski, LPA
900 Adams Street
Toledo, OH 43604

Bid

Dear Mr. Kowalski:

This letter constitutes a binding bid by Fenstermaker Farms, Inc., an Ohio corporation ("Buyer") for the purchase from you, in your capacity as Receiver of Archbold Elevator, Inc., of the following receivership assets (collectively, "Acquired Assets") for the respective purchase prices set forth opposite each asset class below:

	Asset Class	Purchase Price
1.	All breeding sow stock located at Fenstermaker Farms, Inc., Road H, Leipsic, Ohio, including without limitation all sows, boars, unborn piglets of sows, and unweaned pigs located in the farrowing barn at Fenstermaker Farms, Road H, Leipsic, Ohio (" <u>Facility</u> "), and all gilts located at the Larry Higley Farm; five (5) collection boars located at Eastern AI; all drug and feed inventory and supplies located in the farrowing barn and the gestation barn at Fenstermaker Farms; GMC 1999 bulk feed truck located at Fenstermaker Farms; all pig busses currently used at the Facility	\$490,000.00

Principal Purchase Terms

On the conditions set forth in this letter:

1. At the closing of the transactions described in this letter ("Closing"), Buyer will purchase and the Receiver will sell the Acquired Assets for an aggregate purchase price as computed in accordance with this letter.

Exhibit A

(a) The Purchase Price for all livestock will be the extended price for the number of head of living livestock at the Facility on the Closing date multiplied by the per head prices set forth above, determined by a joint physical inventory taken on or not more than one day prior to the Closing.

(b) Buyer's bid is an aggregate bid conditioned on Buyer being the successful bidder for all of the assets listed under Asset Class 1 above. If Buyer is not the successful bidder for all of the assets listed under Asset Class 1 above, then Buyer requests that the Receiver contact Buyer for an itemization of the individual components of the bid.

The tentative aggregate purchase price as adjusted in accordance with (a) - (b) above shall be the final purchase price ("Purchase Price").

2. Buyer's bid deposit shall be a credit bid against Buyer's filed secured claim in the Receivership with a balance of principal of \$252,042 plus accrued and unpaid interest.

3. The Purchase Price shall be payable as follows: (a) Buyer shall credit bid the full amount of its filed secured claim in the Receivership with a balance of principal of \$252,042 plus accrued and unpaid interest, and (b) the balance of the Purchase Price, if any, shall be payable by bank cashier's check or wire transfer at the Closing.

4. Buyer will assume no liabilities or obligations of the Receiver related to arising in connection with the Acquired Assets or otherwise.

Conditions to Closing

The transaction described above will be subject to the completion or waiver of the following conditions:

5. The Receiver shall then have and shall convey to Buyer clear title to the Acquired assets, free and clear of all liens, claims and encumbrances.

6. The Receiver shall have executed and delivered to Buyer an agreement terminating the Lease Agreement for the sow facility at Fenstermaker Farms currently in effect between Archbold Elevator, Inc. and Buyer effective at the Closing, provided that any claims under the Lease Agreement which accrue prior to the date of Closing shall not be released or discharged upon such termination.

7. The Court in *The Farmers & Merchants State Bank v. Archbold Elevator, Inc., et al.*, Case Number 11CV000128 pending in the Fulton County, Ohio Court of Common Pleas ("Receivership Proceedings"), shall have entered an order approving the sale of the Acquired Assets to Buyer in accordance with the terms and conditions of this Bid.

8. The Acquired Assets shall remain substantially in the condition as exists on the date of this Bid, reasonable cull loss to livestock and wear and tear excepted.

Other Matters

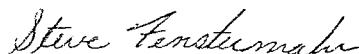
9. This letter agreement will terminate when and if the Court in the Receivership Proceedings shall have entered an order approving the sale of the assets in Asset Class 1 to any party other than Buyer.

Signature page follows.

If the foregoing is acceptable, please sign this letter and return a fully executed counterpart to the undersigned.

Very truly yours,

FENSTERMAKER FARMS, INC.



Steve Fenstermaker
President

ACCEPTED AND AGREED TO ON _____, 2011

Gerald R. Kowalski, Receiver
of Archbold Elevator, Inc.

**IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO**

THE FARMERS & MERCHANTS STATE BANK,)	Case No. 11CV000128
)	Judge Barber
Plaintiff,)	<u>ORDER</u>
-vs-)	
ARCHBOLD ELEVATOR, INC., et al.,)	
Defendants.)	

This matter came on for consideration of the Receiver's Fourth Motion to Approve Partial Sale of the assets at the Fenstermaker Farms / Leipsic sow facility as detailed in the bid attached to the Receiver's Motion, Exhibit A. The Court has carefully reviewed the Receiver's Status Reports, the pending Motion and the bid for these assets. The Court notes that all parties consent to this Motion. The Court believes that the sale of these assets is in the best interest of the Receivership and finds this Motion well-taken and is hereby granted.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that the Receiver's Fourth Motion to Approve the sale of the assets at Fenstermaker Farms, Inc. as stated in the bid attached to its Motion (Exhibit A) is found well-taken and is hereby granted. The Receiver is hereby ordered to take all necessary steps to complete this closing.

IT IS SO ORDERED.

Honorable James E. Barber