

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT
Debtor-In-Possession

BK 17-10056
CHAPTER 11

DEBTOR'S EMERGENCY MOTION FOR EXPEDITED DETERMINATION FOR APPROVAL OF SALE PROCEDURES AND NOTICE IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE AND CLEAR OF LIENS AND CLAIMS PURSUANT TO BANKRUPTCY CODE SECTION 363 APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND GRANTING RELATED RELIEF AND REQUEST TO LIMIT NOTICE

Now comes the debtor in possession, Agawam Hunt (“AH” or “Debtor”) and hereby moves (“Motion”) on an Emergency Basis, pursuant to Local Rules 1005-1(d)(2)(H) and 9013-2(d)(2) for expedited determination of the Court’s (A) entry of an Order substantially in the form attached as **Exhibit A** (the “Procedure Order”) by this Motion authorizing and approving (1) the auction procedures attached as **Exhibit B** (“Auction Procedures”); and (2) the form and manner of Notice of Sale attached as **Exhibit C** (“Sale Notice”) and (B) approval of the form of Order attached as **Exhibit D** (“Approval Order”), authorizing and approving (i) the sale at auction free and clear of liens, claims and encumbrances under 11 U.S.C. § 363 (“Sale”) pursuant to the terms and conditions of the Asset Purchase Agreement (“APA”); (ii) the assumption and assignment of certain executory contracts, and (iii) the Debtor’s consummation of the transactions set forth in the Motion. The Debtor also seeks to limit notice as set forth herein. In Support of the Motion, the Debtor respectfully represents as follows:

Preliminary Statement

1. On January 13, 2017, AH filed a Voluntary Petition under Chapter 11 of the Code in this District (“Petition Date”).

2. The Debtor is operating as a Debtor in Possession pursuant to § 1107 and 1108 of the Bankruptcy Code.
3. Debtor has determined, in the exercise of its reasonable business judgment, that selling substantially all of its assets (“Assets”) through an auction process under 11 U.S.C. § 363, free and clear of liens, encumbrances and interests, is the best way to maximize the value of Debtor’s assets for the benefit of Debtor’s Estate and its creditors.
4. The Debtor believes that the establishment of a process for the auction sale of the Assets is the most efficient and effective method of selling the Assets, and that such a process is necessary and in the best interests of all stakeholders. The proposed auction process will ensure that the maximum value is obtained for the Assets by selling them through a Court approved competitive bidding process.

Jurisdiction and Venue

5. This Court has jurisdiction to consider the matter pursuant to 28 U.S.C. §§ 157 and 1334.
6. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 & 1409.
8. The statutory predicates for the relief requested herein are sections 101, 105(a), 363, and 365 of Title 11 of the United States Code (“Code”), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Rules 1005-1(d)(2)(H), 6004 and 9013-2(d)(2) of the Rhode Island Local Bankruptcy Rules (“RILBR”).

Background

9. AH owns and operates a private country club located in East Providence, Rhode Island. The establishment of AH dates back to 1897.
10. The AH Assets include, among other things, approximately 132 acres of real estate (“Property”), a golf course, machinery and equipment, indoor and outdoor racquet facilities, a swimming pool, a clubhouse and a restaurant. (the “Assets”).
11. On or about June 30, 2004, Bank Rhode Island (“BRI”) extended a construction loan in the amount of \$4,000,000 and a line of credit in the amount of \$425,000 to the Debtor. The two BRI obligations were evidenced by notes secured by (i) a first mortgage on Debtor’s real estate and (ii) a first lien on substantially all of Debtor’s personal property (“BRI Loans”).
12. AH, like many other private country clubs nationally, experienced a reduction in membership and a corresponding loss of revenue in the last 5 years which caused AH to have cash flow problems and ultimately default on obligations owed to the City of East Providence (“EP”) for real estate taxes and municipal charges and obligations owed to BRI under the BRI Loans.
13. Pre-petition, AH attempted to refinance the BRI Loans, through over 10 lenders, but was unsuccessful.
14. As an alternative to the refinancing, AH raised over \$1,000,000 from its members pursuant to unsecured member loans, but these loan proceeds were ultimately insufficient to avoid the bankruptcy filing in January, 2017 which occurred because of BRI’s intended Receivership filing.

15. AH currently employees approximately 38 employees. Its business is cyclical, with the winter months providing the lowest sales revenue for AH with resulting cash flow shortages. The peak income months for AH are May through September.
16. During this proceeding, Debtor and BRI entered into a series of Cash Collateral Orders which permitted AH to use BRI's "cash collateral" for various consideration granted to BRI and to EP, per orders of Court.
17. On or about May 12, 2017, an LLC consisting substantially of members of AH named New Agawam Hunt, LLC ("New AH"), purchased the BRI Loans.
18. New AH is now the holder of the BRI Loans and the holder of the first mortgage on Debtor's real estate and holder of a first lien on substantially all of Debtor's personal property securing the loans. (the "New AH Loans").
19. Debtor and New AH have since entered into several consensual Cash Collateral Agreements, which were approved by Orders of this Court.
20. In addition to its prepetition refinancing efforts, AH independently marketed its Assets for sale through its Board of governors.
21. Post-petition, AH focused its efforts on finding a buyer for its assets but was unable to solicit any actual offers that were sufficient to pay off the BRI Loans and the EP claim in full, which was a necessary precondition in order to pay any dividend to unsecured creditors in this proceeding under a plan.
22. In conjunction with its post petition sale efforts, AH negotiated non-disclosure agreements with over fifteen interested parties and distributed due diligence materials.

23. Several of those interested parties negotiated briefly with AH and then elected to approach BRI directly to negotiate with BRI to purchase the BRI Loans. No party, other than New AH, was able to reach an agreement with BRI on the terms of a purchase of the BRI Loans.
24. New AH recently completed the purchase of the priority secured claims held by EP (EP's proof of claims asserts claims of approximately \$500,000) and those claims now become part of the principal amount of the secured claim of New AH, totaling approximately \$4,000,000 ("New AH Claim").
25. The Debtor has negotiated an asset purchase agreement with New AH and the Nature Conservancy ("NC") ("Buyer") for the sale of the Assets to the Buyer pursuant to 11 U.S.C. §363 free and clear of liens and encumbrances (the "Stalking Horse Agreement" or "APA").
26. The Buyer's Offer includes a combination of cash bid of \$2,000,000 and a credit bid of up to \$4,000,000.
27. The Debtor is filing, contemporaneously with this Motion, a Motion for Entry of Order Authorizing and Approving (I) Sale of Assets Free and Clear of Liens, Claims and Encumbrances; (II) Assumption and Assignment of Executory Contracts and (III) Related Relief ("Sale Motion").
28. Approval of a standardized set of Bidding Procedures and related relief will provide a more efficient and orderly process for the sale of the Debtor's Assets, will reduce the number of hearings required for the sale of the Assets, will shorten the time between when the Debtor enters into the APA and when the Sale Hearing

occurs, and will provide interested parties with the opportunity to review the proposed sale offer, submit competing bids for the Assets and be heard.

29. Subject to this Court's approval and the proposed method of competitive bidding pursuant to the Auction Procedures, the proposed buyer has executed the APA which sets forth the terms and conditions for Buyer's acquisition of Debtor's Assets.

THE STALKING HORSE PURCHASE AGREEMENT

30. The Debtor and the Buyer have agreed to the terms of the APA for the purchase of substantially all Debtor's Assets free and clear of liens and encumbrances. Generally, the APA involves: (i) a cash offer of \$2,000,000 to purchase certain conservation rights in portions of the Property which will forever preserve said real estate for the NC; and (ii) a credit bid offer by New AH to credit bid up to the full amount of its secured claim which totals approximately \$4,000,000 million. The APA includes an agreement by New AH to carve out funds from the proceeds of Sale, that New AH would otherwise be entitled to pursuant to its first position secured claim in the AH Assets, sufficient to fund the payments the Debtor will propose to pay creditors under Debtor's plan ("Carve Out"). The Carve Out will be in an amount sufficient to pay Allowed Administrative Claims, Allowed Professional Fees and Expense Claims (to be reduced by Agreement), Allowed Cure Amounts to holders of assumed and assigned Executory Contracts (if any) (unless otherwise paid by New Agawam directly), payment of fees to the U.S. Trustee, payment of Priority Claims and provide for a distribution of 5% to be paid to holders of Allowed unsecured

creditor claims. The balance of the \$2,000,000 cash portion of the offer, not utilized for the Carve Out, will be paid to New AH towards its secured claim under its plan.

32. The APA may be terminated by: (i) by mutual written consent of Debtor and the Buyer at any time prior to the Closing; (ii) by the Buyer if the Chapter 11 Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code prior to the sale; (iii) or if a Trustee or Examiner, with expanded powers to operate or manage the financial affairs of, the business of the Debtor, is appointed in the Chapter 11 Case; or (iv) automatically upon consummation of a sale to any party other than New AH and NC.

33. The APA is subject to Court approval.

BIDDING PROCEDURES

33. The Bidding Procedures are a material inducement to and condition of the willingness of New AH and NC to enter into the Stalking Horse Agreement and will serve as a minimum base bid which the Debtor and its creditors can rely upon.

34. The Bidding Procedures and the APA were negotiated by the parties at great length, over an extended period of time and in good faith.

35. New AH and NC have provided a material benefit through the APA and the proposed Carve Out by increasing the likelihood that the best possible price for the assets will be obtained and the Debtor will be provided a Carve Out of funds from the net sale proceeds due New AH to use to fund its Chapter 11 plan.

36. The Debtor will continue to market the Assets to any potential bidders up until the time of the Auction.

ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRES LEASES

37. As part of this Motion, the Debtor seeks authority from the Court to assume and assign certain Assigned Contracts to the Successful Bidder.

38. The Debtor requests that with respect to Assigned Contracts, by December 18, 2017 or as soon thereafter as practicable, the Debtor will file with the Court and serve a notice, substantially in the form attached hereto as **Exhibit F** (the "Cure Notice").

39. The Cure Notice shall notify each party that such party's lease or contract will be assumed and assigned to the Successful Bidder identified at the auction and shall state the cure amount the Debtor believes is necessary to assume and assign such contract or lease pursuant to § 365 of the Code (the "Cure Amount") to be paid out of the Carve Out.

40. The Notice shall also provide parties with a deadline by which they may assert the existence of any other executory contracts or cure amounts.

41. The Debtor requests that objections, if any, to the proposed assumption and assignment must be filed by December 26, 2017. Such objections must state with specificity the basis for any objection and what cure the party to the Assigned Contract believes is required, with appropriate documentation in support thereof.

42. If no objection is timely received, the Cure Notice shall be controlling notwithstanding anything to the contrary in any Assigned Contract or other document, and the non-debtor party to the Assigned Contract shall be forever barred from asserting any other pre-assignment claim based on the Assigned Contract against the Debtor or the Successful Bidder.

43. The Bidding Procedures contain the terms and procedures that will govern the submission of bids for the Assets being sold.

44. The Debtor will serve copies of this Motion on (i) the Office of the United States Trustee; (ii) all known holders of Liens against the Debtor's Assets; (iii) counsel for New AH; (iv) any party to an executory contract with the Debtor and (v) those parties which receive CM/ECF filings in this case.

45. The Debtor will also serve a copy of the Auction/Bidding Procedures, the Procedure Order and the Sale Notice at least fifteen (15) days prior to the Auction, on (i) the Stalking Horse, (ii) any party who in the past twelve (12) months expressed in writing to the Debtor an interest in acquiring the Assets and any party who the Debtor believes may otherwise have an interest in acquiring the Assets; (iii) New AH and any other party with a lien of record on, or other written asserted interest in, the Assets; (iv) the U.S. Trustee (v) all other parties who have filed a notice of appearance and request for service of documents in this case, EP, the State of RI and the IRS (collectively referred to herein as the "Auction Notice Parties"). The Debtor will also publish the Auction Notice in the Providence Journal.

46. The Auction Notice will include (i) a description of the Assets to be sold, (ii) the date, time and location of the Auction and (iii) the criteria for and a deadline for submitting competing bids and objections. Additionally, the Debtor will attach a copy of the APA to the Auction Notice.

47. The Debtor will continue to market the Assets through the time of the auction in an effort to generate a competing bid for the Assets, however, an Auction will only be held if one or more bids, determined to be Qualified Bids under the terms of the Bidding Procedures, is timely received pursuant to the Bidding Procedures before the Bid Deadline.

48. If an Auction is held, the Debtor will evaluate all Qualified Bids received and will select the Qualified Bid that reflects the highest and best offer, as determined by the Debtor in its absolute discretion, as the “Minimum Auction Bid” for the Assets. At the Auction, all Bidders will be permitted to increase their bids in minimum \$25,000 increments and all bids subsequent to the Minimum Auction Bid, whether oral or written, shall be deemed to constitute valid modifications or amendments to the bids previously submitted by said bidder.

49. At the end of the Auction, the Debtor will determine the highest and best bid for the Assets with the goal of maximizing the total value to the Debtor’s estate and the funding of a Chapter 11 plan, designate such bidder as the successful bidder to the Court (the “Successful Bidder”) and request that the Court approve the sale to the Successful Bidder.

50. If no Qualified Bid other than the Stalking Horse bid is received by the Bid Deadline, then the Auction will not be held, and pursuant to the APA, the Stalking Horse Bidder shall be considered the Successful Bidder and the Debtor shall seek approval of the sale to the Stalking Horse Bidder pursuant to the terms of the APA.

51. The Notice of Sale, substantially in the form included in the Sale Motion, is appropriate and reasonable under the facts and circumstances of the case.

52. The Notice of Sale will provide all interested parties with timely and prior Notice of the Sale of Assets, the date, time and location of the auction (if necessary), the deadline for filing objections to the Sale, the date and time of hearing, a description that the sale is free and clear of liens, encumbrances and interests under 11 U.S.C. § 363, the terms of the offer and the Notice of the assumption and assignment or

rejection of executory contracts under the APA. No other Notice of Sale shall be required.

53. The Debtor will attach to the Sale Hearing Notice a copy of the APA entered into with New AH and the NC. Service of the Sale Hearing Notice will be in accordance with the procedures described above for service of the Auction Notice.

54. In the Proposed Sale Order, the Debtor will seek certain findings from the Bankruptcy Court regarding the Auction and related matters, including, among other things, that (i) Notice was sufficient, (ii) the Auction was conducted in a fair and reasonable manner, (iii) the Successful Bidder was selected in accordance with the Bidding Procedures, and (iv) consummation of the Sale contemplated by the Successful Bid will provide the highest and best value for the Assets and is in the best interest of the Debtor and its Estate.

Provisions to Highlight in the Bidding Procedures

55. The Debtor highlights the following provisions in the Bidding Procedures and request approval of them as proposed:

- **Bid Deadline and Requirements:** To make a qualified Bid, a bidder shall deliver, prior to the Bid Deadline set by the Debtor, written copies of its bid to counsel for the Debtor, the US Trustee and Counsel to New AH, together with the items set forth below.
- **Due Diligence:** The Debtor shall afford each qualified Bidder reasonable due diligence information. The Debtor reserves the right to require that potential bidders sign a form of nondisclosure agreement proposed by the Debtor as a condition to receiving due diligence information. The due diligence period will end on the Bid Deadline date. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.
- **Form of Qualified Bid:** To be a Qualified Bid, any bid must:
 - a) be a written irrevocable offer from a bidder (i) state that the bidder offers to consummate a Sale; (ii) confirm that the offer

shall remain open and irrevocable until the closing of a Sale to the Successful Bidder or to the Next Highest Bidder (as defined below); (iii) enclose a copy of the proposed bid; and (iv) enclose a certified or bank check or wire transfer, acceptable to the Debtor, equal to \$200,000, as a minimum deposit (the "Minimum Deposit");

- b) provide for the purchase of the Assets and may not have conditions to close not present in the APA, unless waived by the Debtor;
 - c) not to be conditioned on due diligence or financing;
 - d) not request or entitle the subsequent bidder to any expense reimbursement;
 - e) disclose the identity of each entity bidding for the Assets or participating in connection with a bid, and the terms of any such participation;
 - f) contain written evidence that the bidder has the requisite corporate or similar authority to consummate the proposed Sale;
 - g) offer a Qualified Minimum Auction Bid, or other consideration acceptable to the Debtor in its discretion;
 - h) be accompanied by an acknowledgment that the Bidder has had an opportunity to conduct due diligence, does not require further due diligence and has relied solely upon its own independent review in making its bid;
 - i) be accompanied by a signed contract substantially in the form of the APA and marked to show any proposed changes made thereto.
- Minimum Deposit: As noted above, each Qualified Bid must be accompanied by a Minimum Deposit of \$200,000. Such Minimum Deposit, other than that submitted by the Successful Bidder shall be returned within three (3) business days after the Auction. The Minimum Deposit of the Successful Bidder shall be held until the closing of the Sale, and the deposit of the Successful Bidder will be applied to the amount of the Successful Bid. If the Successful Bidder fails to close the Sale, it will forfeit its Minimum Deposit.
 - Credit Bidding: In conjunction with the cash portion of the bid of \$2,000,000, New AH, shall be entitled to credit bid at the Auction the amount of its secured claim, an amount up to approximately \$4,000,000, pursuant to Section 363(k) of the Bankruptcy Code. In the event New AH and the NC are the Successful Bidder at Auction, the Debtor reserves all its rights under Section 506(c) of the Bankruptcy Code to recover their costs of securing or disposing of the Assets.

- Modifications of Bidding Procedures or Conducting an Auction: The Debtor may extend an Auction deadline and/or adjourn, continue or suspend such Auction and/or the applicable Sale Hearing for any reason by filing a notice with the Bankruptcy Court and serving such notice on the Auction Notice Parties. At or prior to the Auction, the Debtor, in its sole and absolute discretion, may adopt other rules for the Auction that, in its reasonable judgment, will better promote the goals of the Auction.
- Closing with Alternative Back-Up Bidders: If, for no reason of the Debtor, the Successful Bidder fails to close the Sale contemplated by its Successful Bid, then, without notice to any other party or further Bankruptcy Court order, the Debtor shall be authorized to close the Sale with the Bidder that submitted the Next Highest Bid (the “Next Highest Bidder”) in accordance with the forgoing procedures.

56. Approval of standardized bidding procedures for the Assets eliminates the need for a separate motion and hearing to approve individual bidding procedures. The procedures will allow the Debtor to act quickly on market interest in the Assets while also providing interested parties sufficient notice of the terms of the proposed sale to submit competing bids.

57. The Bidding Procedures are designed to attract the maximum number of bidders while allowing the Debtor flexibility to select the bid that optimizes the value for the Debtor’s Estate from the sale. Further, the Bidding Procedures are fair and open and do not unfairly favor the Stalking Horse Bidder. The Bidding Procedures, when combined with the marketing previously conducted by the Debtor, the Notice proposed and advertising, set out a time frame that will allow potential bidders sufficient time to conduct due diligence, arrange financing and construct and submit informed competing Qualified Bids, while still providing for the expeditious sale of the Assets.

58. Based upon the foregoing, the Debtor submits that the Bidding Procedures will help ensure that the highest and best bids are received for the Assets and should be approved by this Court.

59. Bankruptcy Rule 6004 prescribes the notice that must be given of a proposed sale of property pursuant to Section 363(b) of the Bankruptcy Code. Pursuant to Bankruptcy Rule 6004(a), notice of a proposed use, sale or lease of property not in the ordinary course of business must satisfy the requirements of Bankruptcy Rule 2002(a)(2), (c)(1), (i) and (k).

60. As described above, the Auction Notice Parties will include all parties required to be served, including New AH, EP, the U.S. Trustee, all parties who have expressed interest in the Assets during the last 12 months, the State of RI, the IRS, all parties who have filed a notice of appearance and request for service, and certain parties whose rights may be affected by the sale (such as parties with liens on other interests in the Assets to be sold) will receive fifteen (15) days' notice of the Auction, as well as the terms of any Stalking Horse Agreement. After the Auction or expiration of the Bid Deadline, they will receive a Sale Hearing Notice indicating the results of the Auction and a copy of the Debtor's proposed Sale Order.

61. Bankruptcy Rule 6004(c) requires that a motion pursuant to 363(f) of the Code for authority to sell property free and clear of liens and other interests "shall be served on the parties who have liens or other interest in the property to be sold." Fed. R. Bankr. P. 6004(c). The Auction Notice Parties include holders of liens or other interests in the Assets to be sold. They will be served with copies of the Auction Notice, the Bidding Procedures and the APA at least fifteen (15) days prior to the Bid Deadline. This

procedure will provide parties holding liens or other interest in the Assets with the requisite notice for them to be heard and protect their interests at any Sale Hearing.

62. The Auction Notice and Sale Hearing Notice will set forth all the information a potential bidder and any other party in interest should require about the bidding process for the Assets, including the following: a copy of the Bidding Procedures; the Bid Deadline; the time, date and location of the Auction; the time, date and location of the Sale Hearing; the Sale Order; the Minimum Auction Bid, the cure Notice and copies of the APA or other purchase agreement governing the sale of the Assets. These notice procedures satisfy the requirements of Bankruptcy Rule 6004 and should be approved.

APPLICABLE AUTHORITY

63. The proposed Sale complies with the provisions of RILBR 6004-1. In particular, the motion/notice includes a summary of the terms and conditions of the proposed sale, a statement of the aggregate amount of liens or encumbrances known to the Debtor, and the proposed sale price is at least equal to or more than the value of the property.

Sale pursuant to Section 363(b)(1)

64. A trustee or Debtor, “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).

65. The proposed auction procedures appear to be the best means available to the Debtor for liquidating the Assets under the present circumstances.

Sale “Free and Clear” pursuant to Section 363(f)

66. Under § 363(f) of the Bankruptcy Code, a trustee or Debtor may sell property free and clear of any lien, claim, or encumbrance if, among other things: (1) applicable non bankruptcy law permits the 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 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).

67. Here, the primary secured creditor, New AH, has consented to the Sale and Sale Procedures for the sale of Debtor's Assets.

68. Accordingly, the Debtor requests that the Assets be transferred to the Buyer or the Successful Bidder free and clear of all liens, claims, and encumbrances (other than liens resulting from assumed liabilities and permitted encumbrances), with such liens, claims and encumbrances to attach to the net proceeds of the Sale.

REQUEST TO LIMIT NOTICE AND FOR EMERGENCY DETERMINATION

69. Emergency Determination of this Motion is requested because of Debtor's seasonal reduced cash flow and the need for the infusion of additional capital after the 1st of the year to continue operations, the Debtor and the proposed Buyer under the APA request the auction Sale occur occur before the end of 2017.

70. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) all known holders of Liens against the Debtor's Assets; (iii) counsel for New AH; (iv) any party to an executory contract with the debtor and (v) those parties which receive CM/ECF filings in this case.

WHEREFORE, the Debtor respectfully prays:

1. Grant Expedited Determination of this Motion;
2. That this Court enter the Procedure Order on an expedited basis in a form substantially similar to the proposed order submitted herewith as **Exhibit A**;
3. That this Court approve the Auction Procedures attached as **Exhibit B**;
4. That this Court approve the Sale Notice attached as **Exhibit C**;
5. That this Court approve the form of Approval Order substantially in the form attached as **Exhibit D** authorizing and approving (1) the Sale, free and clear of all liens, claims, interests, and other encumbrances, of the Assets to the Successful Bidder, pursuant to the terms and conditions of the APA, (2) the assumption and assignment of certain executory contracts and unexpired leases to the Successful Bidder, and (3) the Debtor's consummation of the transactions contemplated in the Motion;
6. That this Court approve the form of Cure Notice substantially in the form attached as **Exhibit F**; and
7. That this Court grant such other and further relief as is just and proper.

Respectfully Submitted:

Agawam Hunt,
By its attorney,

/s/ Peter J. Furness, Esq.
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NOTICE

PURSUANT TO LOCAL RULES 1005-1(d)(2)(H) and 9013-2(d)(2), THE RESPONSE TIME IS NOT SET FORTH BECAUSE RELIEF IS SOUGHT ON AN EMERGENCY BASIS AND THE MOTION CONTAINS A REQUEST FOR EMERGENCY DETERMINATION BY THE COURT.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT
Debtor-In-Possession

BK 17-10056
CHAPTER 11

ORDER (“PROCEDURAL ORDER”) APPROVING EXPEDITED MOTION FOR ENTRY OF ORDER: (A) AUTHORIZING AND APPROVING SALE PROCEDURES AND FORM AND MANNER OF NOTICE; AND (B) APPROVING THE FORM OF ORDER AUTHORIZING (1) SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES; AND (2) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Upon the Debtor’s emergency motion dated December 8, 2017 [Doc.____] (the “Sale Procedure Motion”)¹ of Agawam Hunt (the “Debtor” or “AH”) seeking an order authorizing and approving the sale of substantially all assets of the Debtor’s Estate, subject to competitive bidding, pursuant to the procedures (the “Sale Procedures”) attached hereto as **Schedule A** approved by this order (the “Procedure Order”), all as more fully set forth in the Sale Procedures Motion and the Sale Motion; appropriate notice having been given and after hearing thereon,

IT IS HEREBY FOUND AND DETERMINED THAT:²

- A. The Court’s exercise of jurisdiction over this matter and over the Assets of the Debtor and its Estate is proper pursuant to 28 U.S.C. §§ 1134 and § 157(a).
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Procedures Motion, the Sale Motion (as defined in the Sale Procedures Motion), or the Agreement (as defined in the Sale Procedures Motion), as applicable. Definitions contained in the Agreement shall control over conflicting meanings in the Sale Procedures Motion or the Sale Motion.

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

C. It appears, based on the certificate(s) of service filed in connection with the Sale Motion and the Sale Procedures Motion and statements of counsel made at the hearing, that the Debtor has caused to be served a copy of the Sale Procedures Motion, Sale Motion, and related Notice of Hearing on: (i) the Office of the United States Trustee; (ii) all known holders of Liens against the Debtor's Assets; (iii) counsel for New AH; (iv) any party to an executory contract with the debtor and (v) those parties which receive CM/ECF filings in this case. Under the circumstances, notice of the Sale Procedures Motion and the preliminary hearing on the Sale Motion insofar as it pertains to the Sale Procedures was sufficient and no other or further notice need be given.

D. The Debtor has articulated good and sufficient reasons for approving (i) the form and manner of notice of the Sale Motion, Procedure Order, Sale and Sale Hearing; (ii) the form and manner of notice of Debtor's assumption of the Assigned Contracts and proposed cure amounts, to be filed and served on the parties to the Assigned Contracts; and (iii) the Sale Procedures.

E. The Sale Procedures are reasonable and appropriate and represent the best method for maximizing the return to the Debtor's estate from a sale of the Acquired Assets; hence, approval of the Sale Procedures is in the best interests of the Debtor, its estate, and its creditors.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Sale Procedures Motion is granted.
2. All unresolved objections filed in response to the Sale Procedures Motion, or any part of the Sale Motion applicable to this Procedure Order, are overruled.

Sale Hearing

3. The Sale Hearing on the Debtor's Sale Motion shall be held before the Court on December , 2017 at 10:00 a.m. before the Honorable Diane Finkle, Judge of the United States Bankruptcy Court for the District of Rhode Island, 380 Westminster Street, Providence, Rhode Island, at which time the Court shall consider the Sale Motion and confirm the results of the Auction, if any.

4. The Debtor must receive Qualified Bids, as defined in the Sale Procedures attached as **Exhibit B** to the Sale Procedures Motion, so as to be received no later than 12:00 p.m. eastern time on December 26, 2017 (the "Bid Deadline") by service upon the Debtor's counsel, Peter J. Furness, Esq. at 182 Waterman Street, Providence, RI 02906. (peter@rhf-lawri.com)

5. Objections to the Sale Motion shall be filed with the Court and served, so as to be received no later than 12:00 p.m. eastern time on December 26, 2017 (the "Objection Deadline") upon: the Debtor's counsel, Peter J. Furness, Esq., at 182 Waterman Street, Providence, RI 02906 (peter@rhf-lawri.com); the United States Trustee, One Exchange Terrace, Suite 431 Providence, RI 02903, Sandra.nicholls@usdoj.gov; and counsel to the Buyers, Richard Land, Esq., 1 Park Row #300, Providence, RI 02903. (rland@crflp.com)

6. The failure of any party to timely file its objection shall be a bar to its assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Sale, or the Debtor's consummation and performance of the Agreement (including the transfer of the Assets and Assigned Contracts free and clear of all liens, claims, interests, and encumbrances, other than permitted encumbrances) if authorized.

7. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date.

Notice

8. Notice of (a) the Sale Motion, (b) the Sale Hearing, and (c) the proposed assumption and assignment of the Assigned Contracts shall be good and sufficient, and no other or further notice shall be required, if given as follows:

a. Notice of Sale; Sale Hearing. By December 13, 2017, or as soon thereafter as practicable, the Debtor shall cause to be served this Order, including the attached Exhibits, the Sale Motion, the Agreement, and the Sale Notice, substantially similar to the form annexed hereto as **Exhibit B**, upon (i) all entities known to have expressed an interest in a transaction with respect to the Assets during the past twelve (12) months; (ii) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon the Acquired Assets; (iii) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; (iv) all parties to the Assigned Contracts other than the Debtor; (v) the United States Trustee; (vi) the Town of East Providence; (vii) the Rhode Island Division of Taxation; (viii) the Internal Revenue Service; and (ix) all parties who have requested notice of all pleadings. In addition, the Debtor shall cause a copy of the Sale Notice to be published in the *Providence Journal*.

b. Cure Notice. By December 18, 2017, or as soon thereafter as practicable, the Debtor shall file with the Court and serve on all non-debtor parties to any Assigned Contracts, a notice substantially in the form annexed hereto as **Exhibit C** ("Cure Notice"). The parties to the Assigned Contracts, other than the Debtor, shall have until 12:00 p.m. on December 27, 2017

(the “Objection Deadline”) to file an objection to the cure amount set forth in the Cure Notice and must state in its objection with specificity what cure is required (with appropriate documentation in support thereof). Objections to the Cure Notice shall be filed with the Court and served upon: Peter J. Furness, Esq., Counsel to the Debtor, at Richardson, Harrington & Furness, 182 Waterman Street, Providence, RI 02906; the United States Trustee, One Exchange Terrace, Suite 431 Providence, RI 02903; and counsel to the Buyers, Richard Land, Esq., 1 Park Row #300, Providence, RI 02903. If no objection is timely received, the Cure Amount in the Cure Notice shall be controlling, notwithstanding anything to the contrary in any Assigned Contract or other document, and the party shall be forever barred from asserting any other claims against the Debtor, or Buyer as to such Assigned Contract. If an objection is timely received, the objection shall be heard by the Court on December ____, 2017 at 10:00 a.m. in conjunction with the Sale Hearing.

Sale Procedures

9. The Sale Procedures are set forth on **Exhibit A** and incorporated herein by reference as if fully set forth in this Procedure Order, are hereby approved and shall govern all proceedings relating to the Sale, the Agreement and any subsequent bids for the Assets.

10. The Debtor is authorized to enter into the Agreement, subject to the Sale Procedures, and the Agreement and the Debtor’s execution thereof is authorized and approved.

11. The Debtor is authorized to conduct the Sale, in accordance with the Sale Procedures, for the sale of the Assets free and clear of all liens, claims, interests, and encumbrances (other than permitted encumbrances), with all such liens, claims, interests, and encumbrances to attach to the sale proceeds in the same order, priority, and dignity as

existed at the commencement of the case, subject to a further hearing and final court approval of the Sale.

12. The Debtor is authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established by this Procedure Order and the Sale Procedures.

13. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Procedure Order.

14. This Order is effective immediately.

ENTER:

Dated this _ day of _____, 2017

Diane Finkle
United States Bankruptcy Judge

EXHIBITS

Exhibit A
(Sale Procedures)

Exhibit B
(Notice of Sale)

Exhibit C
(Cure Notice)

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT

Bk. No. 17-10056
Chapter 11

SALE PROCEDURES

Introduction

Agawam Hunt (the "Debtor") is conducting a sale of substantially all of the Debtor's assets ("Assets"). The Bankruptcy Court has authorized the Debtor to enter into an agreement for sale of the Assets to New Agawam Hunt, LLC ("New AH") and the Nature Conservancy ("NC") (hereinafter referred to as the "Buyer" or "Stalking Horse") pursuant to an Asset Purchase Agreement entered into between the Debtor and the Stalking Horse (the "Stalking Horse Agreement" or "APA"), but subject to and in accordance with the process and procedures described below (the "Sale Procedures").

The Debtor shall manage the Sale Procedures. The description of the Assets of the Debtor being sold are set forth in the APA.

Key Dates

The key dates for this process are as follows:

December ____, 2017	Sale Procedures Hearing
December 26, 2017	Deadline for Objections to Cure Notice
December 26, 2017	Deadline for Objections to Sale and Submission of Qualified Bids
December ____, 2017	Auction and Sale Approval Hearing

The Bidding Process

The Debtor shall (i) determine whether any person is a Qualified Bidder (defined below), (ii) coordinate the efforts of the Qualified Bidders in conducting their respective diligence investigations with respect to the Assets, (iii) receive bids from Qualified Bidders for the Assets and determine which, if any, are Qualified Bids (defined below), and (iv) conduct the auction (described below) and determine the highest or otherwise best bid and second highest or otherwise best bid (collectively, the "Bidding Process"). Any person who wishes to participate in the Bidding Process must be a Qualified Bidder. Neither the Debtor nor its representatives shall be obligated to furnish any due diligence information relating to the Assets

to any person who is not a Qualified Bidder. For any bid by a Qualified Bidder to be considered by the Debtor and the Bankruptcy Court, the bid must be a Qualified Bid. Upon notice to and consent by the Stalking Horse, the Debtor shall have the right to amend the rules set forth herein for the Bidding Process or adopt such other rules for the Bidding Process which, in the Debtor's reasonable judgment, will better promote the goals of the Bidding Process and which are not inconsistent with the terms of the APA, the Bankruptcy Code, or any order entered by the Court, including without limitation the order approving these Sale Procedures.

Qualified Bidders

Unless otherwise ordered by the Court for cause shown, to participate in the Bidding Process, each person wishing to bid on the assets must deliver to the Debtor:

- a. A qualified bid (as defined herein);
- b. an executed confidentiality agreement customary for transactions of this type, in form and substance satisfactory to the Debtor;
- c. financial disclosure as may be acceptable to the Debtor in its discretion, that the bidder has the financial ability to timely complete the purchase of the Assets; and
- d. Pay a deposit to the Debtor.

A "Qualified Bidder" is a Bidder: (i) who delivers the documents described in subparagraphs (a) and (b) above; (ii) whose financial information and credit-quality support or enhancement demonstrate the financial capability of the Bidder to consummate the purchase of the Assets; and (iii) who the Debtor determines is likely to be able to consummate the transaction within the time frame contemplated by the APA.

The Stalking Horse is a Qualified Bidder, and shall be deemed to have standing in this case.

The Debtor shall determine whether any Bidder is a Qualified Bidder. The Debtor shall allow the Qualified Bidder to conduct due diligence as hereinafter provided.

Due Diligence

The Debtor shall provide each Qualified Bidder with documentation (the "Due Diligence Package") to assist the Qualified Bidder in performing its due diligence. Due diligence access may include access to pertinent business and financial information and such other matters which a Qualified Bidder may request and as to which the Debtor, in its discretion, may agree. Due diligence shall not continue after the Bid Deadline (defined below). The Debtor may, in its discretion, coordinate due diligence efforts such that multiple Qualified Bidders

have simultaneous access to due diligence materials. The Debtor is not obligated to furnish any information relating to the Assets to any person other than to Qualified Bidders. Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone, including the Debtor or its counsel.

Bid Deadline

All Qualified Bidders that desire to make a bid for the Assets shall: (i) file a notice of the bid with the Clerk of the Court at the Clerk's Office, United States Bankruptcy Court, 380 Westminster Street, Providence, RI 02903; (ii) deliver the original bid and the Good Faith Deposit (defined below) to the Debtor's counsel Peter J. Furness, Esq., Richardson, Harrington & Furness, 182 Waterman Street, Providence, RI 02906; and (iii) serve copies of the bid on the United States Trustee, One Exchange Terrace, Suite 431, Providence, RI 02903 and counsel to the Stalking Horse, Richard Land, Esq., Chase, Ruttenberg & Freedman, LLP, 1 Park Row, Suite 300, Providence, RI 02903 so as to be received by each such party by 12:00 p.m. eastern time on December__, 2017 (the "Bid Deadline"). The Debtor shall deliver a copy of each such bid, immediately after receipt thereof, to each other Qualified Bidder from whom a Qualified Bid has been received.

Bid Requirements

A Qualified Bidder shall submit to the Debtor, by the Bid Deadline, the following items (collectively, the "Bid Package"):

- a. The identity of the parties submitting the bid and any affiliation with the Debtor.
- b. A written acknowledgement that the Qualified Bidder agrees to all the terms set forth in these Auction Procedures, including that the bid is irrevocable.
- c. Written evidence of a commitment for financing or other evidence of the Qualified Bidder's ability to close on the sale to said Qualified Bidder on a timely basis.
- d. A signed asset purchase agreement in the form of the APA and "red-lined" to show any differences between the Qualified Bidder's asset purchase agreement and the APA. Such asset purchase agreement shall not be conditioned on obtaining financing, and shall not request or entitle the Qualified Bidder to any break-up or termination fee, expense reimbursement, or similar payment. The asset purchase agreement must also include a list of unexpired leases and executory contracts to be assumed by the Debtor and assigned to the Qualified Bidder, and a list of all other liabilities to be assumed by the Qualified Bidder. Such asset purchase agreement shall offer a cash purchase price that is

at least equal to the sum of the full purchase price offered in the APA (calculated to include the total combined amount of the credit bid and cash component) as is more fully set forth in the APA.

e. A deposit in the amount of \$200,000 (the "Good Faith Deposit"), by either wire transferred funds to the counsel for the Debtor's account, or a certified check payable to the Debtor.

A bid received from a Qualified Bidder that the Debtor determines meets the above requirements is a "Qualified Bid." The offer contained in the Stalking Horse Agreement is a Qualified Bid. The Debtor will not be accepting bids to purchase anything less than all of the Assets. The Debtor's counsel may, at any time, contact bidders to discuss or clarify terms and to indicate any terms that need to be modified in order to conform the bid to a Qualified Bid or to negotiate terms.

Auction

Within twenty-four (24) hours after the Bid Deadline, the Debtor shall provide a summary of all Qualifying Bids to all Qualifying Bidders who submitted Qualifying Bids. At the hearing on the Sale Motion, an auction (the "Auction"), as described below, shall be conducted. **The Auction shall take place at 10:00 a.m. eastern time on December __, 2017** before the Honorable Diane Finkle ("Judge"), Judge of the United States Bankruptcy Court for the District of Rhode Island, 380 Westminster Street, Providence, Rhode Island, or such later time as the Debtor shall notify the Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction and the United States Trustee. Only Qualified Bidders who submitted Qualified Bids, which shall include the Stalking Horse (such persons being the "Qualified Auction Participants"), will be eligible to participate at the Auction.

At least twenty-four (24) hours prior to the Auction, the Debtor shall provide a copy of the Qualified Bid that the Debtor believes is the highest or otherwise best bid to: (i) the Qualified Bidders who submitted Qualified Bids (including the Stalking Horse), and (ii) to the United States Trustee. A Qualified Bid will be evaluated and valued based upon a variety of factors such as the net value provided to the Estate and the likelihood and timing of consummating such transaction. The asset purchase agreement from the Qualified Bid that the Debtor believes is the highest or otherwise best offer shall be the opening auction sale bid.

At the Auction, each Qualified Auction Bidder wishing to participate shall be offered an opportunity to submit a bid containing its highest and best offer for the Assets. Bidding shall continue until such time as the Debtor determines, in its discretion, that no further higher or better bid is forthcoming. When the bidding has ceased, the Debtor shall consider each such bid, and announce the bid that it believes is the highest or otherwise best bid.

Successful Bid and Sale Approval

At the conclusion of the Auction, the Debtor shall identify: (i) the highest or otherwise best offer for the Assets (the "Successful Bid," and the Qualified Bidder making such bid, the "Successful Bidder"), and (ii) the second highest or otherwise best offer for the Assets (the "Backup Bid", and the Qualified Bidder making such bid, the "Backup Bidder"). The Debtor shall request from the Bankruptcy Court entry of an order, among other things, authorizing and approving the sale of the Assets to the Successful Bidder, pursuant to the terms and conditions of the relevant asset purchase agreement. The approval hearing may be adjourned from time-to-time without notice other than by announcement in open court.

Following approval by the Court of a sale to the Successful Bidder, and if that Successful Bidder fails to consummate the transaction, because of a breach or failure to perform on the part of the Successful Bidder fails, within twenty-three (23) business days after the Court order approving the sale becomes final and non-appealable, such defaulting Successful Bidder shall forfeit its Good Faith Deposit, and the Backup Bid shall be deemed to be the Successful Bid and the Debtor shall be permitted to close on the sale of the Assets to the Backup Bidder without further order of the Court.

The Debtor's presentation to the Court regarding the Auction and seeking approval of the sale does not constitute the Debtor's acceptance of any bid. The Debtor shall have accepted a bid only when that bid has been approved by the Court.

Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be retained by the Debtor, and all Qualified Bids shall remain open, until approval by the Court of a sale of the Assets. Unless otherwise agreed, the Good Faith Deposits of all parties that are not the Successful Bidder or Backup Bidder shall be returned within seventy-two (72) hours of the Approval Hearing. The Good Faith Deposit of the Backup Bidder shall be returned within seventy-two (72) hours of the closing of the sale to the Successful Bidder. No interest shall accrue on any Good Faith Deposit held by the Debtor.

Modifications

The Debtor may (a) determine, in its business judgment, which Qualified Bid and which bid at the Auction, if any, is the highest or otherwise best offer, (b) consult with the representatives of any significant constituent in connection with the Bidding Process, and (c) reject at any time before entry of an order of the Court approving a Qualified Bid, any bid (with the exception of the bid by

the Stalking Horse) that, in Debtor's business judgment, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, these Sale Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtor, its Estate, and creditors.

"As Is: Where Is"

The sale of the Assets shall be on an "as is, where is" basis and without any representations or warranties of any kind, nature, or description by the Debtor, its counsel, its agents, or Estate, except as provided in the Stalking Horse APA. All of the Debtor's right, title, and interest in and to the Assets shall be sold free and clear of all liens, claims, and encumbrances, except as provided in the Stalking Horse APA (the "Non-transferred Liens"), with the Non-transferred Liens to attach to the proposed carve out being made available by New AH from the net proceeds of sale.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to inspect and examine the Assets and to conduct any and all required due diligence prior to making its offer, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in the Bidding Process, except as expressly stated in the Stalking Horse APA.

Respectfully Submitted:

AWAGAM HUNT

By its Attorneys,

/s/ Peter J. Furness

Peter J. Furness, Esq.(#3608)

Richardson, Harrington & Furness

182 Waterman Street

Providence, RI 02906

(401) 273-9600

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT

Bk.No. 17-10056
Chapter 11

**NOTICE OF INTENDED AUCTION SALE OF ASSETS OF
AGAWAM HUNT AND DEADLINE FOR
SUBMITTING OBJECTIONS AND HIGHER OFFERS AND HEARING DATE**

To Creditors and Parties in Interest:

Notice is hereby given, pursuant to 11 U.S.C. Sections 105 and 363, Fed. R. Bankr. P. 2002(a)(2) and 6004, and RILBR 2002-1 and 6004-1, that the Debtor intends to sell substantially all assets of the Debtor (the "Assets") free and clear of all liens, claims, interests, and encumbrances, on an "as is, where is" basis, according to the terms set forth in the Asset Purchase Agreement (the "Agreement") which has been filed with the Court.

The terms of the proposed sale are more particularly described in a Motion for Entry of Orders Approving Sale Procedures, Form and Manner of Notice (the "Sale Procedures Motion"), and a Motion for Entry of Order Authorizing and Approving (I) Sale of Assets Free and Clear of Liens, Claims, and Encumbrances; (II) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (iii) Related Relief (the "Sale Motion"), both filed with the Court on November 8, 2017 and the Agreement. Copies of the Sale Procedures Motion, the Sale Motion, and the Agreement are available from the undersigned upon request.

The Assets will be sold "As Is", "Where Is", free and clear of all liens, claims, and encumbrances (as described in the Agreement). Any liens shall attach to the proceeds of the sale according to priorities established under applicable law.

Any objections to the sale, and any offers for the Assets shall be filed in writing with the Clerk, United States Bankruptcy Court, 380 Westminster Street, Providence, Rhode Island 02903 so as to be received on or before December 26, 2017 at 12:00 p.m. (the "Objection Deadline"). A copy of any objection or offer also shall be served upon the undersigned as well as: the United States Trustee, One Exchange Ten-ace, Suite 431, Providence, RI 02903 and counsel to the Buyer, Richard Land, Esq., Chace Ruttenberg & Freedman LLP, One Park Row, Suite 300, Providence, RI 02903.

Any objection to the sale must be in writing, state with particularity the grounds for the objection and why the intended sale should not be authorized. Any objection to the sale shall be governed by Fed. R. Bankr. P. 9014. Any party who has filed an objection or submitted a higher offer is expected to be present at the hearing, failing which the objection will be overruled or the higher offer stricken. The Court may take evidence at the sale hearing to resolve issues of fact.

Sale Procedures

Attached are the procedures for the sale (the "Sale Procedures"), which are incorporated herein by reference.

Dated this 8th day of December, 2017.

Respectfully Submitted:

AGAWAM HUNT
By Its Attorneys,

/s/ Peter J. Furness
Peter J. Furness, Esq. (#3608)
Richardson, Harrington &
Furness
182 Waterman St.
Providence, RI 02906
(401) 273-9600
Peter@rhf-lawri.com

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT

Bk. No. 17-10056

Chapter 11

ORDER AUTHORIZING AND APPROVING:
(I) SALE OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND
CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES; AND
(II) ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES

Upon the Motion dated December 8, 2017 (the “Sale Motion”)¹ (Doc. #__) of Agawam Hunt (the “Debtor”), for *inter alia*, entry of an order (this “Sale Order”) under §§ 105(a), 363, and 365 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing and approving (i) the sale (the “Sale”) of substantially all of the Debtor’s assets (the “Assets”) pursuant to that certain Asset Purchase Agreement (the “Agreement” or “APA”) by and between the Debtor as (the “Seller”) and New Agawam LLC (“New AH”) and The Nature Conservancy (“NC”) jointly as (the “Buyers”), and (ii) the Debtor’s assumption and assignment to the Buyers of certain executory contracts and unexpired leases (the “Assigned Contracts”); and the Court having entered an order on December ___, 2017 (the “Procedure Order”) approving (i) the Auction Procedures, (ii) the form and manner of notice of the Sale and the sale Hearing (as hereinafter defined), and (iii) the form and manner of notice of the assumption and assignment of Assigned Contracts; and a hearing on the Sale Motion having

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Procedures Motion, the Sale Motion (as defined in the Sale Procedures Motion), or the Agreement (as defined in the Sale Procedures Motion), as applicable. Definitions contained in the Agreement shall control over conflicting meanings in the Sale Procedures Motion of the Sale Motion.

been held on December ____, 2017 (the “Sale Hearing”), at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion and to present evidence with respect to the Sale Motion; and the Court having reviewed and considered (i) the Sale Motion, (ii) any objections thereto, (iii) the arguments made by counsel, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested is in the best interest of Debtor, the Estate, creditors, and other parties in interest; and upon the record of the Sale Hearing; and after due deliberation thereon; and good cause appearing therefore,

IT IS HEREBY FOUND AND DETERMINED THAT:²

- A. The Court’s exercise of jurisdiction over the Sale Motion and the transactions contemplated by the Agreement is proper pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(N). Venue of this case and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.
- B. The statutory predicates for the relief sought are §§ 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014.
- C. As evidenced by the certificates of service and publication filed with the Court, and based on the representations of counsel at the Hearing, (i) proper, timely, adequate, and sufficient notice of the Sale Motion, the Sale Hearing, the Sale, and the assumption and assignment of the Assigned Contracts has been provided in accordance with §§ 102(1), 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014 and in compliance with Procedure Order; (ii) such notice was good and sufficient, and appropriate under the particular circumstances of this case; and (iii) no other or further notice of the Sale Motion, the

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

Sale Hearing, the Sale, or the assumption and assignment of the Assigned Contracts is or shall be required.

D. As demonstrated by (i) the evidence proffered or adduced at the Sale Hearing; and (ii) the representations of counsel made at the Sale Hearing, the Debtor has marketed its assets and conducted the sale process in compliance with the Procedures Order, and the Auction was duly noticed and conducted in a non-collusive, fair, and in good faith manner.

E. The Debtor (i) has full power and Authority to execute the Agreement and all other documents contemplated thereby, and has all of the power and authority necessary to consummate the transactions contemplated by the Agreement; (ii) has taken all action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated thereby and (iii) no consents or approvals, other than those expressly provided for in the Agreement, are required to consummate such transaction.

F. Approval of the Agreement and consummation of the Sale at this time are in the best interest of the Debtor, its creditors, its Estate, and other parties in interest.

G. The Debtor has demonstrated a good, sufficient, and sound business purpose and justification for the Sale pursuant to § 363(b) of the Bankruptcy Code.

H. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested parties, including: (i) all entities known to have expressed an interest in a transaction with respect to the Assets during the past twelve (12) months; (ii) all entities known to have asserted any liens, claims, encumbrances, or interests in or upon the Assets; (iii) all federal, state, and local regulatory or taxing authorities which have a reasonably known interest in the relief requested by the Sale Motion; (iv) all non-Debtor parties to the Assigned Contracts;

(v) the United States Trustee; (vi) all creditors who filed proofs of claim and (vii) all parties that have requested notice of all pleadings.

I. Based on the evidence presented at the Sale Hearing, the Debtor has established that the Agreement was proposed and entered into without collusion and with full disclosure, in good faith, and from arm's-length bargaining positions. Neither the Debtor nor Buyer have engaged in any conduct that would cause or permit the Agreement to be avoided under § 363(n) of the Bankruptcy Code.

J. The Buyer is a good faith buyer under § 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

K. The consideration provided by the Buyers for the purchase of the Assets pursuant to the Agreement (i) is fair and reasonable; (ii) is the highest or otherwise best offer for the Assets; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other available alternatives; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code.

L. The Buyers would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, its Estate, its Plan and eventual distribution to its creditors, if the sale of the Assets to the Buyers and the assignment of the Assigned Contracts to the Buyers was not free and clear of all liens and interests of any kind or nature.

M. The Debtor is authorized to sell the Assets free and clear of all interests of any kind or nature (other than Permitted Exceptions (as defined in the Agreement)) because, in each case, one or more of the standards set fourth in § 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Any (i) holders of interests; and (ii) non-debtor parties to Assigned Contracts which did object fall within one or more of the other

subsections of § 363(f) of the Bankruptcy Code and are adequately protected by having their interests, if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim a lien or an interest.

N. The Debtor has demonstrated the assumption and assignment of the Assigned Contracts is in the best interest of the Debtor, its Estate, and its creditors. The Assigned Contracts being assigned to, and the liabilities being paid for and assumed by the Buyers are an integral part of the Assets being purchased by the Buyers and, accordingly, such assumption and assignment of Assigned Contracts and liabilities are reasonable and enhance the value of the Debtor's Estate.

O. The Debtor provided the parties to the Assigned Contracts proper notice of their right to cure, object, or assert additional obligations. The Buyers have provided adequate assurance of its future performance of and under the Assigned Contracts, within the meaning of § 365(b)(1)(C) of the Bankruptcy Code. At closing, the Debtor shall (i) cause to be cured, or provide adequate assurance of cure from the carve out provided by New AH from the net proceeds of the Sale due New AH ("Carve Out"), of any default existing prior to the date hereof under any of the Assigned Contracts, within the meaning of § 365(b)(1)(A) of the Bankruptcy Code. Approval of the Agreement and assumption and assignment of the Assigned Contracts and consummation of the Sale of the Assets at this time are in the best interest of the Debtor, its creditors, its estate, and other parties in interests.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

General Provisions

1. The Sale Motion is granted.

2. Any objections to the Sale Motion that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled on the merits.

Approval of the Agreement

3. The Agreement, and all of the terms and conditions thereof, is hereby approved.

4. Pursuant to § 363(b) of the Bankruptcy Code, the Debtor is authorized and directed to perform its obligations under and comply with the terms of the Agreement and consummate the Sale, pursuant to and in accordance with the terms and conditions of the Agreement.

5. This Sale Order and the Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, all successors and assigns of the Buyers, the Debtor, and its affiliates, and any subsequent trustees appointed in the Debtor's case.

6. The Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided such modification is consistent with the terms of this Order and is not material.

Transfer of Assets

7. Except as expressly permitted or otherwise specifically provided for in the Agreement or this Sale Order, pursuant to §§ 105(a) and 363(f) of the Bankruptcy Code, the Assets shall be transferred to the Buyers, upon consummation of the Agreement, free and clear of all liens and interests of any kind or nature whatsoever, with all such interests of any kind or nature whatsoever, to attach to the net proceeds of the Sale in the order of their priority, if any, with the same validity, force, and effect which they now

have as against the Assets subject to any claims and defenses the Debtor may possess with respect thereto.

8. Except as expressly permitted or otherwise specifically provided for by the Agreement or this Sale Order, all persons and entities including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders and trade and other creditors holding interests of any kind or nature whatsoever against or in the Debtor or the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in anyway relating to, the Debtor, the Assets, the operation of the business prior to Closing, or the transfer of the Assets to the Buyers, hereby are forever barred, estopped, and permanently enjoined from asserting against the Buyers, their successors or assigns, its property, or the Assets, such person's or entity's interests.

9. The transfer of the Assets to the Buyers pursuant to the Agreement constitutes a legal, valid, and effective transfer of the Assets, and shall vest the Buyers with all right, title and interest of the Debtor in and to the Assets free and clear of all liens and interests of any kind or nature.

10. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing interests in the Debtor or the Assets shall not have delivered to the Debtor prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtor or Assets or otherwise, then (a) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases, and other documents

on behalf of the person or entity with respect to the Assets; and (b) the Buyer is hereby authorized to file, register, or otherwise record an originally executed order or certified copy of this Sale Order which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all interests in the Assets of any kind or nature.

Assumption and Assignment to Buyer of Assigned Contracts

11. Pursuant to §§ 105(a) and 365 of the Bankruptcy Code, and subject to and conditioned upon Closing of the Sale, the Debtor's assumption and assignment to the Buyer, and the Buyer's assumption on the terms set forth in the Agreement, of the Assigned Contracts is hereby approved, and the requirements § 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

12. The Debtor is hereby authorized and directed in accordance with §§ 105(a) and 365 of the Bankruptcy Code to (a) assume and assign to the Buyer, effective upon Closing of the Sale, the Assigned Contracts free and clear of all interests of any kind or nature whatsoever; and (b) execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Assigned Contracts to the Buyer.

13. With respect to the Assigned Contracts, (a) the Assigned Contracts shall be transferred and assigned to, and following Closing of the Sale, remain in full force and effect for the benefit of the Buyers in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in §§ 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to § 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assigned Contracts after such assignment to and assumption by the Buyers; (b) each Assigned Contract is an executory contract of the Debtor under §§ 363

and 365 of the Bankruptcy Code; (c) the Debtor may assume and assign each Assigned Contract in accordance with § 365 of the Bankruptcy Code and any provisions in any Assigned Contract that prohibit or condition the assignment of such Assigned Contract or allow the party to such Assigned Contract to terminate, recapture, impose any penalty, condition renewal or extension modify any term or condition upon the assignment of such Assigned Contract, constitute unenforced anti-assignment provisions which are void and no force and effect; (d) all other requirements conditions under §§ 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Buyers of each Assigned Contract have been satisfied; and (e) upon Closing, in accordance with §§ 363 and 365 of the Bankruptcy Code, the Buyers shall be fully and irrevocably vested in all right, title, interest of each Assigned Contract.

14. All defaults or other obligations of the Debtor under the Assigned Contracts arising or accruing prior to Closing under the Agreement (without giving effect to any acceleration clauses or any default provisions of the kind specified in § 365(b)(2) of the Bankruptcy Code) shall be cured or caused to be cured pursuant to the Carve Out of Sale proceeds by the Buyers at Closing of the Sale or as soon thereafter as practicable, except as otherwise expressly provided in the Agreement.

15. Each non-Debtor party to an Assigned Contract hereby is forever barred, estopped, and permanently enjoined from asserting against the Debtor, or the Buyers, or the property of any of them, any default existing as of the Closing of the Sale.

16. After Closing, the Debtor, and its Estate shall have no further liabilities or obligations with respect to any assumed liabilities and all holders of such claims are forever barred and estopped from asserting such claims against the Debtor, or its successors or assigns, its property, or its assets or estate.

Additional Provisions

17. The consideration provided by the Buyers for the Assets shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession. The consideration provided by the Buyers for the Assets is fair and reasonable and the sale may not be avoided under § 363(n) of the Bankruptcy Code.

18. This Sale Order (a) shall be effective as a determination that, as of Closing, all interests of any kind or nature whatsoever existing as to the Debtor or the Assets prior to Closing have been unconditionally released, discharged, and terminated (other than surviving obligations under the terms of the Agreement), and that the conveyances described herein have been effected; and (b) shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registers of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets; and (c) shall be effective as a determination that, as of Closing, good and marketable title to the Assets has vested in the Buyers, free and clear of all liens and interests.

19. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

20. The Buyers shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Assets, except as set forth in the

Agreement. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Agreement, the Buyers shall not be liable for any claims against the Debtor, or any of its predecessors or affiliates, and the Buyers shall have no successor or vicarious liabilities of any kind whether known or unknown as of Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to Closing including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or relating to the operation of the business prior to Closing.

21. Under no circumstances shall the Buyer be deemed a successor of or to the Debtor for any interest against or in Debtor or the Assets of any kind or nature. All persons holding interests against or in the Debtor or the Assets of any kind or nature (including but not limited to, the Debtor and/or its respective successors, including any trustees thereof, creditors, employees, unions former employees, shareholders, administrative agencies, governmental units, secretaries of state, federal, state, and local officials, and their respective successors or assigns) shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such interests of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtor, its estate, officers, directors, shareholders, or the Assets. Following Closing, no holder of an interest in the Debtor shall interfere with the Buyers' title to or use and enjoyment of the Assets based on or related to such interest, or any actions that the Debtor may have taken or may take in this case.

22. The Court shall retain jurisdiction to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder, and of each of the agreement executed in connection therewith in all respects (other than Assigned Contracts) including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets

to the Buyers; (b) compel delivery the purchase price or performance of other obligations owed to the Debtor; (c) resolve any disputes arising under or related to the Agreement, except as otherwise provided therein; (d) interpret, implement and enforce the provisions of this Sale Order; and (e) protect the Buyers against (i) any excluded liabilities; or (ii) any interests in the Debtor or the Assets, of any kind or nature whatsoever, attaching to the proceeds of the Sale.

23. The transactions contemplated by the Agreement are undertaken by the Buyers in good faith as that term is used in § 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization and approval provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyers (including the assumption and assignment of any of the Assigned Contracts), unless such authorization and approval is duly stayed pending such appeal. The Buyers are a buyer in good faith and are entitled to all of the protections afforded by § 363(m) of the Bankruptcy Code.

24. The terms and provisions of the Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its Estate, and its creditors, the Buyers, and its respective affiliates, successors, and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets to be sold to the Buyer pursuant to the Agreement, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code.

25. The failure to include any particular provisions of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

26. The Agreement and any other related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in writing, and in accordance with the terms thereof, without further order of the Court, provided that any such

modification, amendment, or supplement does not have a material adverse effect on the Debtor's Estate.

27. As provided by Bankruptcy Rules 6004(h) and 6006(d), this Sale Order shall not be stayed for 14 days after entry and shall be effective immediately upon entry.

Dated this __ day of December, 2017

Diane Finkle
United States Bankruptcy Judge

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT
Debtor-In-Possession

BK. 17-10056
CHAPTER 11

CURE NOTICE

NOTICE IS HEREBY GIVEN by Agawam Hunt (the “Debtor”) pursuant to an order of the United States Bankruptcy Court, District of Rhode Island, Chapter 11 Case No. 17-10056, that certain leases and contracts of the Debtor will be assumed by the Debtor and assigned to the successful bidder identified at a forthcoming auction (“Assumed Contract”). The cure amount the Debtor believes is due with respect to your Assumed Contract (“Cure Amount”) is set forth below.

Any party to an Assumed Contract that asserts a claim for a different cure amount for the Debtor’s proposed assumption and assignment thereof, or who otherwise objects to such assumption and assignment, must, on or before the deadline set forth below, file with the Court and serve upon the parties identified below a pleading (the “Response”) indicating (a) any disagreement with the Cure Amount(s) and (b) any objection to Debtor’s proposed assumption and assignment thereof. **The Cure Amount for your contract or lease has been determined to be \$_____. The deadline by which you must file your Response is December __, 2017 (the “Response Date”).**

Responses and objections, if any, to the proposed assumption and assignment must be filed with the Court by the Response Date. Such objections must state with specificity the basis for any objection and what cure the party to the Assigned Contract believes is required, with appropriate documentation in support thereof. If no objection is timely filed, this Cure Notice shall be controlling notwithstanding anything to the contrary in any Assigned Contract or other document, and the non-debtor party to the Assigned Contract shall be forever barred from asserting any other pre-assignment claim based on the Assigned Contract against the Debtor or the Successful Bidder. Responses must be delivered to Debtor’s counsel, Peter J. Furness, Esq. Any responses must be delivered to the undersigned, the United States Trustee, One Exchange Terrace, Suite 431, Providence, RI 02903; and counsel to the Buyer, Richard Land, Esq., Chace Ruttenberg & Freedman LLP, One Park Row, Suite 300, Providence, RI 02903.

Please contact me prior to the Response Date should you have any questions or require additional information.

Peter J. Furness, Esq., Counsel for the Debtor
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Providence, RI 02906
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