

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT
Debtor-In-Possession

BK 17-10056
CHAPTER 11

ORDER APPROVING 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.146] (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 ("Assets"), subject to competitive bidding and Court Approval,, pursuant to the procedures (the "Sale Procedures") attached hereto as **Exhibit 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 hearings 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 hearings thereon, 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 (v) all creditors who have filed Proof of Claims; (vi) the top 20 unsecured creditors and (vii) 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, Procedures Order, Sale and Sale Hearing; ^{Notice} (ii) the form and manner of notice of Debtor's assumption of the Assigned Contracts and proposed cure amounts ("Cure Notice"), 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 an auction sale of the 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 Procedures Order, are overruled.

Sale Hearing

3. The Sale Hearing on the Debtor's Sale Motion shall be held before the Court on **January 25, 2018** 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 Cure Notice 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 A**, so as to be received no later than **January 19, 2018** (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), counsel to New Agawam, LLC ("New A"), Richard Land, Esq., 1 Park Row #300, Providence, RI 02903. (rland@crflp.com) and counsel to the Nature Conservancy ("NC") Hans Birle, Esq., The Nature Conservancy, Eastern Resource Office, 99 Bedford St., 5th Floor Boston, MA 02111, (hbirle@tnc.org)

5. Objections to the Sale Motion and Cure Notice shall be filed with the Court and served, so as to be received on **January 19, 2018** (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, counsel to the New A, Richard Land, Esq., 1 Park Row #300, Providence, RI 02903. (rland@crflp.com) and counsel to NC Hans Birle, Esq., The Nature Conservancy, Eastern Resource Office, 99 Bedford St., 5th Floor Boston, MA 02111, hbirle@tnc.org.

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 Cure Notice, 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 but subject to the rights of any licensor of intellectual property, software or copyrights with respect to the Buyer's use of such property subsequent to the Closing Date,) 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 28, 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, upon (i) all entities known to have expressed an interest in a transaction with respect to the purchase of 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 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) all creditors; (vi) the United States Trustee; (vii) the Town of East Providence; (viii) the Rhode Island Division of Taxation; (ix) the Internal Revenue Service; (x) all parties to any license, software or copyright agreements held by Debtor including Go Daddy Web Hosting,

Network Solutions, Jonas Club Software, Salesforce and GolfNow and (xi) 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 28, 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 **January 17, 2018** (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, peter@rhf-lawri.com; the United States Trustee, One Exchange Terrace, Suite 431 Providence, RI 02903, Sandra.nicholls@usdoj.gov; Richard Land, Esq., 1 Park Row #300, Providence, RI 02903, rland@crfillp.com and Hans Birle at The Nature Conservancy, Eastern Resource Office, 99 Bedford St., 5th Floor Boston, MA 02111, hbirle@tnc.org. 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 January 25, 2018 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 Procedures 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, **subject to higher or better offers and Court Approval**, free and clear of all liens, claims, interests, and encumbrances (other than permitted encumbrances subject to the rights as are fully set forth in the Bankruptcy Code, the terms and conditions of those licenses, copyrights and other similar agreements which the Debtor is presently a party to), 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. If there are competing Qualified Bids for the Assets, a representative from New A and a representative from the NC must be present at the Sale Haring on **January 25, 2018 at 10:00 A.M.**

13. At the Sale Hearing, the Debtor shall request from the Court entry of an Order, among other things, authorizing and approving the sale of Assets to the successful Bidder, pursuant to the terms and conditions of the relevant asset purchase agreement.

14. 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 Procedures Order and the Sale Procedures.

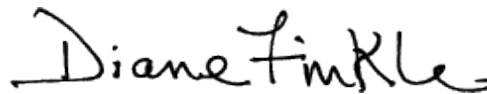
15. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Procedures Order.

16. This Order is effective immediately.

ENTER:

PR

29
Dated this _ day of December, 2017

 12/29/2017

Diane Finkle
United States Bankruptcy Judge

EXHIBITS

Exhibit A
(Sale Procedures)

Exhibit B
(Notice of Sale)

Exhibit C
(Cure Notice)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT

Bk. No. 17-10056
Chapter 11

AMENDED 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, LLC ("New A") 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"), subject to higher and better offers, Court Approval, and in accordance with the auction sale process and the procedures as described below (the "Sale Procedures").

Stalking Horse:

The Stalking Horse is a combination of NC and New A. The Nature Conservancy is a 501(c)(3) public charity organized and existing under the laws of the District of Columbia. It works with local governments, communities, and partner organizations in sharing science-based and collaborative methods to ensure each region's needs—for people and for nature—are best met.

New A is a Rhode Island LLC comprised of 17 members who are also members of the Debtor, two members of New A, James McCulloch and Lance Pryor, are uncompensated participants in the management of the Debtor.

While NC is not inclined at this time to partner with another bidder, if another bidder appears and they are considered to be Qualified and willing to abide by the terms of, maintain and manage the conservation easement, NC may reconsider their position.

Stalking Horse Bid

The offer made by the Buyer includes a combined cash bid of \$2,000,000 paid by NC for a conservation easement (a summary of the easement is described in the Amended Notice of Intended Auction Sale and a copy is available from the undersigned) and a credit bid made by New A as a secured creditor of AH OF \$1,500,000 ("Minimum Credit Bid Amount"). The Credit Bid Amount represents a portion of the Court-approved debt, accrued interest thereon and other amounts outstanding under certain promissory notes currently held by New A (originally in favor

of Bank Rhode Island in the original principal amounts of \$4,000,000 and \$425,000 dated June 20, 2004 and which notes are secured by a first priority court-approved lien on all of Debtor's assets, together with amounts paid by New A to the Town of East Providence on account of its secured claims). New A reserves the right to increase the Credit Bid Amount at any time prior to the end of bidding at the Auction up to a total credit bid amount of approximately \$4,000,000 ("Maximum Credit Bid Amount").

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

Key Dates

The key dates for this auction sale process are as follows:

December 28, 2017	Mail Notice of Sale, Procedures, Notice to Cure Notice and Sale Procedures Order
January 17, 2018	Deadline for Objections to Cure Notice
January 19, 2018	Deadline for Objections to Sale and Submission of Qualified Bids
January 25, 2018: 10:00 a.m.	Auction and Sale Approval Hearing
January 25, 2018: 10:00 a.m	Hearing on disputes as to Qualified Bids or to any Sale Procedure

The Bidding Process

The Debtor shall (i) coordinate the efforts of interested parties in conducting their respective diligence investigations with respect to the Assets after signing a confidentiality agreement (as attached), (ii) receive bids from interested parties for the Assets and determine which, if any, are Qualified Bids (defined below), and (iii) 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 Auction must be a qualified bidder.

Qualified Bidders

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

- a. An executed confidentiality agreement;
- b. 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
- c. Pay a deposit to the Debtor of \$200,000.00 in cash or certified funds ("Deposit").

A "Qualified Bidder" is a Bidder: (i) who delivers the documents described in subparagraphs (a) through (c) 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; (iii) who pays the Deposit; and (iv) 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 will initially determine whether any Bidder is a Qualified Bidder. Any disputes as to whether a party qualifies as a Qualified Bidder will be resolved by the Court prior to the Auction Sale hearing.

Due Diligence

The Debtor shall provide each interested bidder with documentation (the "Due Diligence Package") to assist the bidder in performing its due diligence. Due diligence access may include access to pertinent business and financial information and such other matters which a 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 interested parties have simultaneous access to due diligence materials. The Debtor is not obligated to furnish any information relating to the Assets to any person who fails to furnish Debtor with an executed confidentiality agreement. 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 Deposit to the Debtor's counsel Peter J. Furness, Esq., Richardson, Harrington & Furness, 182 Waterman Street, Providence, RI 02906, Peter@rhf-lawri.com; and (iii) serve copies of the bid on the United States Trustee, One Exchange Terrace, Suite 431, Providence, RI 02903, Sandra.Nicholls@usdoj.gov; and counsel to the Stalking Horse, Richard Land, Esq., Chase, Ruttenberg & Freedman, LLP, 1 Park Row, Suite 300, Providence, RI 02903, rland@crflp.com; and counsel to the Nature Conservancy ("NC") Hans Birle, Esq., The Nature Conservancy,

Eastern Resource Office, 99 Bedford St., 5th Floor Boston, MA 02111, hbirle@tnc.org so as to be received by each such party on **January 19, 2018** (the "Bid Deadline"). The Debtor shall deliver a copy of each such Qualified Bid, immediately after receipt thereof, to New A, NC and 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 and all differences between the Qualified Bidder's proposed asset purchase agreement and the APA. Such asset purchase agreement shall not be conditioned on obtaining financing, shall not contain a credit bid, 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 proposed to be assumed by the Qualified Bidder. Such asset purchase agreement shall offer a cash purchase price that is at least equal to 3.5 million (\$3,500,000.00), determined by adding the NC cash bid and the New A Minimum Credit Bid ("Minimum Qualified Bid").
- e. The \$200,000 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 an interested party that the Debtor determines meets the above requirements is a "Qualified Bid." Any disputes as to whether a bid qualifies as a Qualified Bid will be resolved by the Court on January 25, 2018 at 10:00 a.m. The offer contained in the Stalking Horse Agreement is considered to be 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. on January 25, 2018** at the United States Bankruptcy Court for the District of Rhode Island, 380 Westminster Street, 6th Floor, 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 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 Deposit

The 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 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 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 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, but subject to the rights of any licensor of intellectual property with respect to the Buyer's use of such intellectual property subsequent to the Closing Date, pursuant to the Sale Procedures and the Sale Procedures Order 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 A to Debtor 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, the Notice of Sale, the APA and reviewed these Amended Sale Procedures 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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT

Bk.No. 17-10056
Chapter 11

**AMENDED NOTICE OF INTENDED AUCTION SALE OF
ASSETS OF AGAWAM HUNT AND DEADLINE FOR
SUBMITTING OBJECTIONS AND QUALIFIED 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, but subject to the rights of any licensor of intellectual property with respect to the Buyer's use of such intellectual property subsequent to the Closing Date, on an "As Is, Where Is" basis, according to the terms set forth in the Asset Purchase Agreement (the "Agreement" or "APA"), which has been filed with the Court, to the Nature Conservancy Conservatory ("NC") and to New Agawam, LLC ("New A") ("Buyer"). New A is a Rhode Island LLC comprised of 17 members who are also members of the Debtor. Two of the members of New A, James McCulloch and Lance Pryor, are uncompensated participants in the management of the Debtor. NC is a 501(c)(3) public charity organized and existing under the laws of the District of Columbia, with offices throughout the United States, including two offices in Rhode Island. It works with local governments, communities, and partner organizations in sharing our science-based and collaborative methods to ensure each region's needs are best met.

While NC is not inclined at this time to partner with another bidder. If another bidder appears and they are considered to be Qualified and willing to abide by the terms of and maintain the Easement, NC may reconsider their position.

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"), the 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 December 8, 2017, the Sale Procedures and the Agreement. Copies of the Sale Procedures Motion, Sales Procedures, the Sale Motion, and the Agreement are available from the undersigned upon request.

The offer made by the Buyer includes a combined cash bid of \$2,000,000 paid by NC for a conservation easement (a summary of the easement is described below and a copy is available from the undersigned) and a credit bid made by New A as a secured creditor of AH.

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Exhibit B Page 2 of 3
The Credit Bid Amount means \$1,500,000, which represents a portion of the Court-
approved debt, accrued interest thereon and other amounts outstanding under certain promissory
notes in favor of Bank Rhode Island in the original principal amounts of \$4,000,000 and
\$425,000 dated June 20, 2004 which notes are secured by a first priority court-approved lien on
all of Debtor's assets, together with amounts paid by New AH to the Town of East Providence
on account of its secured claims; provided that, Buyer reserves the right to increase the Credit
Bid Amount at any time prior to the Closing Date up to a total Credit Bid Amount of
approximately \$4,000,000

Conservation Easement – Summary

1. **The Protected Property** – an area of approximately 80 acres located in East Providence, Rhode Island.
2. **Ecological Significance** - the Protected Property includes approximately 2,640 feet of frontage on the Ten Mile River which is a regionally important stream emptying in to the Seekonk River Estuary comprising the headwaters of Narragansett Bay and supports a healthy population of river herring, a National Ocean and Atmospheric Administration Trust Resource Federally Managed through the Atlantic States Marine Fisheries Commission.
3. **Purpose.** It is the purpose of the Conservation Easement to assure that the Protected Property will be retained forever predominantly in its natural condition; to the extent possible protect any river buffers, rare plants, animals, or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above.
4. **Prohibited Activities, among other things: –**
 - a. The Protected Property may not be divided, partitioned, or subdivided, nor conveyed, except in its current configuration as an entity.
 - b. The development rights which are encumbered and extinguished by this Conservation Easement shall not be transferred to any other lands pursuant to a transferrable development rights scheme or cluster development arrangement or otherwise or included for density or lot coverage purposes for other properties.
 - c. There shall be no constructing or placing of any building, tennis or other recreational court, mobile home, swimming pool, fence or sign asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on or above Protected Property.
 - d. There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of paved roads or change in the topography of the land in any manner, excepting in the operation of the current golf course, restoration activities or construction of a public walking path.
 - e. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, and no use of devices commonly known as "bug-zappers," excepting in the operation of the golf course more specifically described in the Management Plan.
 - f. There shall be no depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall there be any pollution or activities which would be detrimental to water purity, or which could alter natural water level and/or flow.
5. **Rights of Holder of Conservation Easement, among other things: –**
 - a. The right to preserve and protect the conservation values of the Protected Property.
 - b. The right to require restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.
 - c. The right to undertake the restoration of the Ten Mile River's and tributaries' vegetation buffer.
 - d. The right to create, construct, and maintain a five (5') foot wide public walking trail, and associated trail signage and other trail infrastructure, in a location along the Ten Mile River.
 - e. The right to purchase for one thousand and 00/100 dollars (\$1,000.00) and assume ownership of the Protected Property for the purposes of turning it into a public park and wildlife area should the Protected Property cease to function as a golf course, or other use of equal or lesser ecological impact than a golf course, for more than twenty-four (24) consecutive months,

The Assets will be sold at a public auction, subject to higher and better offers and Court

Approval "As Is", "Where Is", free and clear of all liens, claims, and encumbrances, but subject to the rights of the Debtor in intellectual property subsequent to the Closing Date, pursuant to the Sale Procedures and the Sale Procedures Order ("Auction Sale"). The Auction Sale shall take place at 10:00 a.m. on January 25, 2018 in the United States Bankruptcy Court for the District of Rhode Island, 380 Westminster Street, Providence, Rhode Island 02903, or at such other time as the Court directs. Any liens or encumbrances shall attach to the proceeds of the sale according to priorities established under applicable law.

Any objections to the Auction Sale, and any Qualified Bids 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 **January 19, 2018** at 12:00 p.m. (the "Objection Deadline" and the "Bid Deadline") and also shall be served upon the undersigned as well as the United States Trustee, One Exchange Terrace, Suite 431, Providence, RI 02903, counsel to New A, Richard Land, Esq., Chace Ruttenberg & Freedman LLP, One Park Row, Suite 300, Providence, RI 02903 and counsel to NC Hans Birle at **The Nature Conservancy, Eastern Resource Office, 99 Bedford St., 5th Floor Boston, MA 02111, hbirle@tnc.org**.

Any objection to the Auction 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 Auction Sale shall be governed by Fed. R. Bankr. P. 9014. Any party who has filed an objection or submitted a higher offer must be present at the hearing on **January 25, 2018** at 10 A.M., failing which the objection will be overruled or the higher offer stricken. Any objections to the Auction Sale, disputes as to whether an offer is a Qualified Bid or any other disputes will be resolved by the Court prior to the Auction Sale on **January 25, 2018 at 10:00 A.M.** If a competing Qualified Bid is made, a representative of New AH and a representative of NC must be present at the hearing on **January 25, 2018 at 10:00 A.M.** The Court may take evidence at the Auction 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 28th 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

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 (Deere Credit, Inc.) has been determined to be \$110,000.00 in exchange for free and clear title to the equipment covered by Master Lease Agreement (“Deere Agreement”) dated on or around May 22, 2015, with the balance owed to Deere under the Deere Agreement in the amount of \$79,749.00 to be treated as a general unsecured claim. The deadline by which you must file your Response is January 17, 2018 (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
Richardson, Harrington & Furness
182 Waterman Street
Providence, RI 02906
(401) 273-9600
Peter@RHF-LawRI.com

UNITED STATES BANKRUPTCY COURT
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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.

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UNITED STATES BANKRUPTCY COURT
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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 (Toro NSN) has been determined to be \$800.00. The deadline by which you must file your Response is January 17, 2018 (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.

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