

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CASE NO. 17-11059
ERNEST A. VICKNAIR, JR. SECTION B
DEBTOR CHAPTER 11

MOTION OF THE DISBURSING AGENT PURSUANT TO 11 U.S.C. §§ 105, 363, AND 365 AND FED. R. BANK. P. 2002, 6004, AND 6006 FOR ENTRY OF (I) AN ORDER APPROVING BIDDING AND SALE PROCEDURES REGARDING THE SALE OF DEBTOR'S INTERESTS IN HAMILTON, LLC AND SETTING A FINAL HEARING ON APPROVAL OF SAME AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF AND (II) A FINAL ORDER (A) APPROVING THE SALE OF DEBTOR'S INTERESTS IN HAMILTON, LLC PURSUANT TO 11 U.S.C. § 363(b) AND FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS UNDER 11 U.S.C. § 363(f) AND APPROVING PAYMENT OF KATHY NEUGENT AS AGENT IN RELATION TO SALE; AND (III) GRANTING OTHER RELATED RELIEF

NOW INTO COURT, through undersigned counsel, comes Patrick J. Gros as Disbursing Agent ("*Disbursing Agent*") in the above-captioned matter and moves for the entry of (i) an order, substantially in the form attached hereto as **Exhibit A** (the "*Bid Procedures Order*") approving bidding and sale procedures ("*Bid Procedures*") regarding the sale of Debtor's ten percent (10%) interest in Hamilton, LLC (the "*Hamilton Interest*") to Quentin Falgoust, or his designee (the "*Proposed Purchaser*"), setting a final hearing on this Motion and approving the form and manner of notice of the auction and final hearing, and (ii) a final order pursuant to 11 U.S.C. §§ 363(b), (f), and (m) approving the sale of the Hamilton Interest, to the Proposed Purchaser, or other successful bidder(s) at auction, free and clear of liens, claims and interests; (ii) approving the payment of professional fees and commission to Kathy Neugent as agent in connection with the sale of the Hamilton Interest (the "*Sale Order*"); and (iii) granting additional further appropriate relief, and in support thereof respectfully submits:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

2. The statutory and procedural predicates for the relief sought in this Motion include Bankruptcy Code Sections 105 and 363 and Bankruptcy Rules 2002 and 6004.

Background

3. This case was commenced on April 27, 2017 (the “*Petition Date*”) by the filing of a voluntary petition for relief under Chapter 11 of Title 11, United States Code, by Ernest A. Vicknair, Jr. (the “*Debtor*”).

4. On March 8, 2018, this Court issued an *Order Confirming the Plan of Reorganization as of December 4, 2017 with Immaterial Modifications as of February 28, 2018*. ECF No. 284.

5. On April 9, 2018, this Court issued an *Order Amending Order Confirming the Plan of Reorganization as of December 4, 2017 with Immaterial Modifications as of February 28, 2018*, recognizing and appointing Patrick J. Gros as Disbursing Agent in the above-captioned matter. ECF No. 298.

6. Article V of the *Plan of Reorganization as of December 4, 2017 with Immaterial Modifications as of February 28, 2018* [ECF Doc. 283] (the “*Plan*”) provides, in relevant part, that the Disbursing Agent is to market and sell the non-exempt assets of the Debtor’s estate identified on Exhibit 2 to the Plan including the Hamilton Interest and is authorized to retain appropriate professionals to carry out his duties under the Plan. ECF Doc. 283 at Sections 5.2 and 5.4 and Exhibit 2.

7. On May 17, 2018, the Disbursing Agent filed the *Application for Authority to*

Employ Realtor Nunc Pro Tunc to May 15, 2018 seeking authority to employ Kathy Neugent as realtor for purposes of listing certain properties for sale. ECF Doc. 324.

8. The Order granting the application to employ Ms. Neugent was entered on June 21, 2018. ECF Doc. 352.

9. On September 10, 2018, the Disbursing Agent filed the *Supplemental Application for Authority to Employ Realtor Nunc Pro Tunc to August 1, 2018* seeking to expand the employment of Ms. Neugent with respect to four (4) additional properties of the Debtor's bankruptcy estate but which did NOT specifically include the Hamilton Interest. ECF Doc. 381. The Supplemental Application was granted by the Order of this Court entered on October 3, 2018. ECF Doc. 393.

10. Hamilton, LLC is a Louisiana limited liability company which was formed on January 7, 2004. The Debtor is a member in Hamilton, LLC and holds a ten percent (10%) membership interest therein. ECF Doc. 283 at § 5.2 and Exhibit 2. Upon information and belief, Hamilton, LLC's primary asset is a piece of undeveloped agricultural land acquired on January 21, 2004 and described as follows:

A CERTAIN TRACT OF LAND situated in the Parish of Lafourche, State of Louisiana, about three miles below Thibodaux, on the left descending bank of Bayou Lafourche, in Section 64, Township 15 South, Range 17 East, and in Section 81, Township 14 South, Range 17 East, measuring three arpents from more or less in width by a depth to the eighty arpent line, with the side lines opening as they recede from the Bayou; the front or South line of said property beginning at a point 1070' North of the right of way of State Highway #308; bounded on the West by property of Clement L. Hebert, now or formerly, on the East by property of Salvadore Morello, on the North by property of Laurel Valley Planting Company, Inc. and Mrs. Zephirin Boudreaux, now or formerly, and on the South by other property of Mrs. Edna McDonald Verdin. Together with all rights, ways, privileges, and servitudes thereunto belonging or in anywise appertaining.

11. Through the efforts of the Disbursing Agent and Ms. Neugent, the Disbursing Agent received an initial offer from Quentin Falgoust to purchase the Hamilton Interest for a total

of \$15,000 (the “*Initial Offer*”).

12. On November 28, 2018, the Disbursing Agent filed the first motion to approve the sale of the Hamilton Interest (the “*First Motion*”) and a hearing was initially scheduled to be held on December 19, 2018. ECF Nos. 445 and 446.

13. On November 30, 2018, undersigned counsel received a request for additional information from another potential purchaser interested in submitting a higher bid for the Hamilton Interest.

14. On or about December 11, 2018, the Disbursing Agent was contacted by Nicholas Zeringue, the Manager of Hamilton, LLC, who produced to the Disbursing Agent a copy of the Operating Agreement of Hamilton, LLC dated December 15, 2003 which includes the following provisions:

12. SALE OF COMPANY INTEREST.

12.1 If any Member desires to sell all or any part of his Company Interest (“the available interest”) to any person or entity other than to another Member or the Company, he must first give to all of the other Members written notice that he intends to dispose of all or a part of the available interest in the Company, including in such notice, the name and address of the proposed transferee, a description of the available interest, and a full, accurate and complete description of the price and terms upon which the transfer is to be made. The transferring Member may not transfer the available interest to the proposed transferee if one or more of the other Members elect to acquire the available interest as is permitted by this section.

12.2 Each of the other Members shall the option for a period of sixty (60) days after receipt of the notice to elect to purchase all or any fraction of the available interest for the price and upon the terms that the proposed transfer is to be made. If more than one Member exercises the option to purchase, the available interest shall be divided among the electing Members in proportion their respective Company Interests. The selling Member must receive the exercising Member’s written notice of exercise of the option within the sixty (60) day period. The transfer of the available interest shall take place on the first day of the month following the month in which the exercise of the option takes place.

12.3 If all of the available interest is not subscribed for by the end of the sixty (60) day period pursuant to subsection 12.2 of this section, then the transferring Member shall not be obligated to transfer any of the available interest to the other Members but shall have the right to transfer all of the available interest,

but only at the price, on the terms and conditions, and to the transferee stated in his notice given pursuant to the subsection 12.1, and only for a period of ninety (90) days after the end of the 60-day period specified in subsection 12.2.

12.4 Any transfer of a Company Interest to someone other than a Member or the Company under subsection 12.3 above shall convey to the transferee not only the transferor's right to share in profits, losses and capital upon liquidation (or prior distribution) with respect to the Company Interest transferred, but shall also convey rights to participate in the management of the Company and shall not diminish or in any way effect the liabilities and obligations of the transferring Member under this Agreement, nor with the transferee be recognized as a member, unless and until:

12.4.1 The transferee shall agree in writing to be bound by the terms and conditions of this Operating Agreement;

12.4.2 The transferee assumes all obligations and liabilities of the transferring Member with respect to the Company; and

12.4.3 An instrument setting forth the fact of the transfer and the new Company Interests of the effected Members shall have been placed of record in the Company records in the same manner as this Agreement.

A copy of the complete Operating Agreement of Hamilton, LLC is attached hereto as **Exhibit B**.

15. The communication from Mr. Zeringue indicated that either the existing members or Hamilton, LLC itself intended to exercise rights to purchase the Hamilton Interest pursuant to Section 12 of the Operating Agreement of Hamilton, LLC.

16. On December 12, 2018, undersigned counsel received correspondence from Nicholas Zeringue purporting to be an objection to the First Motion, an exercise of "Right of First Refusal" pursuant to Section 12 of the Operating Agreement of Hamilton, LLC, and an alternative proposal for purchase of the Hamilton Interest for \$16,000. A copy of the correspondence is attached hereto as **Exhibit C**. Although the correspondence was not filed with this Court, it was sent to undersigned counsel as well as counsel for the Proposed Purchaser. See Exhibit C.

17. On December 14, 2018, counsel for the Proposed Purchaser increased the proposed purchase price for the Hamilton Interest to \$20,000.

18. On December 17, 2018, the Disbursing Agent filed a motion to continue the hearing on the First Motion to January 16, 2019 which was granted by the Order of this Court entered on December 18, 2018. ECF Nos. 459 and 460.

19. On January 8, 2019, the Disbursing Agent sought a further continuance of the hearing on the First Motion from January 16, 2019 to February 20, 2019 which was granted by the Order of this Court entered on that same date. ECF Nos. 466 and 467.

The Proposed Auction Process

20. In light of the interest received from multiple parties including existing members of Hamilton, LLC and in order to address the issues presented by Section 12 of the Operating Agreement of Hamilton, LLC, the Disbursing Agent proposes to conduct an auction at which he will present the Hamilton Interest for sale (the “*Auction*”).

21. The prevailing bidder at such auction may be required to inter into one or more agreements to purchase the Hamilton Interest including, but not limited to, agreements and acknowledgments required pursuant to the Operating Agreement of Hamilton, LLC.

22. The Disbursing Agent proposes that the auction process be governed by the Bid Procedures, a copy of which is attached to Exhibit A. The Disbursing Agent submits that the Bid Procedures will ensure that maximum value is obtained through the Auction of the Hamilton Interest.

23. The proposed Bid Procedures include a requirement for the submission of competing initial written bids for the Hamilton Interest (each, a “*Bid*”) and submission of certain documentation that shows that it is a Qualified Bidder (*as defined below*).

24. The proposed Bid Procedures also provide that in order to be entitled to participate in the Auction, a Potential Bidder must submit a Bid that:

- a. is in writing;
- b. is not conditioned on any contingency, including, among others, on obtaining any of the following: (i) financing; (ii) shareholder, board of directors or other approval(s), and/or (iii) the outcome or completion of a due diligence review by the Potential Bidder;
- c. provides the Disbursing Agent with sufficient and adequate information to demonstrate to the satisfaction of the Disbursing Agent that the Potential Bidder has the financial wherewithal and ability to consummate the proposed purchase with readily available funds, including executed copies of any financing agreements, letters or commitments which are not subject to any contingency;
- d. fully discloses the identity of each entity that will be directly or indirectly bidding for or purchasing the Hamilton Interest or otherwise participating in connection with such Bid, along with sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated in the Bid; and
- e. does not request any transaction or break-up fee, expense reimbursement, termination or similar type of fee or payment.

25. For avoidance of doubt, like all other Qualified Bidders, the Proposed Purchaser will not be entitled to any break-up or other similar fee or compensation in the event of an overbid or other bid protections which are not specifically included in the Bid Procedures Order. However, the Proposed Purchaser will not be required to submit a further Bid and is deemed to have submitted a Qualified Bid of \$20,000 for the purchase of the Hamilton Interest.

26. Furthermore, the proposed Bid Procedures provide that in order for Bids to be determined to be a Qualified Bid (*defined below*), the Bids must be delivered via mail, courier, facsimile transmission, or electronic mail to undersigned counsel for the Disbursing Agent no later than forty-eight (48) hours prior to the Auction (the “***Bid Deadline***”).

27. The proposed Bid Procedures provide that after receipt of the Bids, the Disbursing Agent, in consultation with undersigned counsel, will determine which, if any, Bids submitted are

deemed to have satisfied the above requirements for bidding and are thus “*Qualified Bids*” and which Potential Bidders are “*Qualified Bidders*” entitled to participate in the Auction and shall notify the Qualified Bidders of same no later than twenty-four (24) hours prior to the Auction. However, the proposed Bid Procedures specifically provide that the Potential Purchaser has submitted a Qualified Bid and is a Qualified Bidder.

28. Thereafter, the proposed Bid Procedures provide that the Disbursing Agent shall evaluate and determine which of the Qualified Bids is the highest or otherwise best Bid for the Hamilton Interest (the “*Starting Bid*”) and shall notify the Qualified Bidders of the terms of the Starting Bid.

29. In the event that no Qualified Bids other than the Bid of the Proposed Purchaser are received, then the Auction will not occur.

30. If one or more Qualified Bids other than the Bid of the Proposed Purchaser are received, then the Auction will occur on the date, time, and location to be established at the hearing regarding the Bid Procedures Order.

31. The proposed Bid Procedures provide that the Auction shall be governed by the following rules and procedures:

- a. only Qualified Bidders and their legal and financial advisors shall be entitled to bid at the Auction;
- b. the Qualified Bidders shall appear in person or through duly-authorized representatives at the Auction;
- c. bidding at the Auction shall begin at the Starting Bid;

- d. subsequent bids submitted by Qualified Bidder(s) which ARE members of Hamilton, LLC may choose to match the preceding bid by a Qualified Bidder which is NOT a member of Hamilton, LLC, but shall be made in minimum increments of at least \$500.00 if the preceding bid was submitted by a Qualified Bidder which IS a member of Hamilton, LLC;
- e. subsequent bids submitted by Qualified Bidders which ARE NOT members of Hamilton, LLC shall be made in minimum increments of at least \$500.00;
- f. absent irregularities in the conduct of the Auction, the Court will not consider bids made after the Auction is closed.

32. At the conclusion of the Auction, the highest or otherwise best Bid (the “*Successful Bid*” and the Qualified Bidder(s) submitting such Successful Bid(s) (the “*Successful Bidder(s)*”) will be announced. Likewise, the second highest or otherwise best Bid will be designated as the “*Back-Up Bid*” and the Qualified Bidder submitting such Back-Up Bid designated as the “*Back-Up Bidder.*”

33. The Disbursing Agent requests that a Sale Hearing be scheduled to be held after the conclusion of the Auction. At the Sale Hearing, the Disbursing Agent will request entry of the Sale Order confirming the results of the Auction, if held, and approving the sale of the Hamilton Interest to the Successful Bidder(s) or the Proposed Purchaser if an Auction is not held.

The Proposed Sale Notice

34. The Disbursing Agent proposes to serve the Notice Parties (*as defined below*) with a “*Sale Notice*”, substantially in the form attached hereto as **Exhibit D**, which provides a description of the Hamilton Interest, the time and place of the Auction and Sale Hearing, and copies of the Bid Procedures Order and Bid Procedures.

35. The Disbursing Agent proposes that the Sale Notice will be served no later than twenty-one (21) days prior to the Bid Deadline upon the following entities (collectively, the

“*Notice Parties*’): (i) all known creditors of the Debtor, (ii) all parties appearing through counsel and/or requesting notice in this matter, (iii) all relevant, federal, state, and local regulatory or taxing authorities or recording offices, (iv) Hamilton, LLC and its individual members and managers, and (v) any other party which the Disbursing Agent has determined in his discretion may have an interest in submitting a Qualified Bid.

The Sale of the Hamilton Interest Should Be Approved

36. The Disbursing Agent seeks the entry of an order (the “*Sale Order*”) (a) authorizing the sale of the Hamilton Interest under Section 363(b) to the Proposed Purchaser, or other Successful Bidder(s), free and clear of liens, claims, and interests, with liens, claims, and interests attaching to the proceeds under Section 363(f) (the “*Sale*”); (b) abrogating the fourteen (14) day stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedures; and (c) granting such other related and appropriate relief.

37. This Motion contemplates that the Proposed Purchaser or the Successful Bidder(s) will buy the Hamilton Interest. This Sale will be accomplished pursuant to 11 U.S.C. § 363, which provides that the Disbursing Agent “after notice and a hearing, may . . . sell, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). Additionally, as noted herein above, the proposed Sale is contemplated in the Plan. See ECF Doc. 283 at page 12 and Exhibit 2.

38. The Court should approve the Sale of the Hamilton Interest if it finds that the Disbursing Agent has demonstrated a sound business reason for the sale and the parties acted in good faith to sell the Hamilton Interest at a fair and reasonable price.¹

39. Courts typically consider the following four (4) factors in determining whether a

¹ See *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Continental Air Lines, Inc.*, 780 F.2d 1223 (5th Cir. 1986). See also *In re 240 N. Brand Partners*, 200 B.R. 653, 659 (9th Cir. B.A.P. 1996).

proposed sale satisfies the standard: (a) whether a sound business justification exists for the sale, (b) whether adequate and reasonable notice of the sale was given to interested parties, (c) whether the sale will provide a fair and reasonable price for the property, and (d) whether the parties have acted in good faith.²

a. Sound Business Justification

40. When a debtor-in-possession articulates a valid business reason for a sale, the business judgment rule acts as a presumption that it has acted on an informed basis, in good faith, and in the honest belief that the sale is in the best interests of the estate.³

41. In this matter, the Disbursing Agent did not make a decision to sell the Hamilton Interest since the sale of that property is required by the terms of the Plan. Therefore, the Disbursing Agent submits that the requirement of a showing of a sound business justification was either met previously or is inapplicable under the present circumstances.

b. Adequate and Reasonable Notice of the Sale

42. Bankruptcy Rule 6004(a) requires, in relevant party, that notice of a proposed sale of estate property outside of the ordinary course of business be given under Bankruptcy Rule 2002(a)(2), (c)(1), (i), and (k). Bankruptcy Rule 2002 requires, in turn, that notice be provided to the debtor, the trustee, all creditors, the United States Trustee, and any committee, at least 21 days prior to a hearing to approve the sale. The Disbursing Agent has satisfied these requirements and the notice of the Sale is therefore adequate and reasonable.

² See, e.g., *In re Weatherly Frozen Food Group, Inc.*, 149 B.R. 480, 483 (Bankr. N.D. Ohio 1992); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

³ See *In re Gulf States Steel Inc. of Ala.*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002) (“The Trustee is responsible for the administration of the estate and his or her judgment on the sale and procedure for the sale is entitled to respect and deference from the Court, so long as the burden of giving sound business reasons is met.”).

c. Fair and Reasonable Price

43. Because of Ms. Neugent's and the Disbursing Agent's efforts, the Sale will produce a fair and reasonable price for the Hamilton Interest. Indeed, Exhibit 2 to the Plan provided that the estimated net proceeds of the Hamilton Interest would be approximately \$0.00. This asset has been sufficiently exposed to the market and the Disbursing Agent does not believe that further marketing is necessary or advisable under the circumstances. Indeed, given the fractional nature of the Hamilton Interest, the Disbursing Agent has reason to believe that there may be few, if any, alternative purchasers for the Hamilton Interest.

d. Parties Acting in Good Faith

44. The parties have acted in good faith. The proposed sale is the culmination of arms-length negotiations and the Disbursing Agent has no connection whatsoever to the Proposed Purchaser.

45. The Disbursing Agent is proceeding in good faith and asserts that the Proposed Purchaser has thus far acted in good faith. Courts generally conclude the parties have acted in good faith with respect to proposed sale if the purchase price is adequate and reasonable and the terms of the sale are fully disclosed.⁴

46. Therefore, the four factors identified above have been satisfied. Pursuant to the Plan the Disbursing Agent was charged with marketing and selling these and other properties of the Debtor's estate in order to maximize the value of that estate. The proposed sale of the Hamilton Interest will generate cash for potential distribution to unsecured creditors of the Debtor's estate. The Disbursing Agent will also be providing adequate and reasonable notice to interested parties of the opportunity to object to the proposed Sale.⁵

⁴ See, e.g., *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986).

⁵ See, e.g., *Folger Adam Security Inc. v. DeMatteis/MacGregor*, 209 F.3d 252, 265 (3d Cir. 2000) (stating that notice

Sale Free and Clear of Liens, Claims, Encumbrances, and Interests

47. The Disbursing Agent also requests authorization to sell the Hamilton Interest free and clear of any liens, claims, encumbrances, or other interests that may be asserted against those assets. Section 363(f) provides for the sale of property of the estate by the debtor “free and clear of any interest in such property of any entity other than the estate.”⁶ Such “free and clear” provision permits sales free and clear of interests beyond liens and permits a sale free and clear of claims,⁷ contractual rights,⁸ and statutory interests.⁹

48. Section 363(f) permits the sale “free and clear” of an interest if any one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) the lienholder or claimholder consents;
- (3) such interest is a lien, and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) the lienholder or claimholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.¹⁰

is sufficient if it includes “the time and place of any public sale, the terms and conditions of any private sale, states the time for filing objections, and, if real estate is being sold, provides a general description of the property”); *In re WBQ P’ship*, 189 B.R. 97, 103 (Bankr. E.D. Va. 1995) (“notice is sufficient if it includes the terms and conditions of the sale, if it states the time for filing objections, and if the estate is selling real estate, it generally describes the property”) (quoting *In re Karpe*, 84 B.R. 926, 929 (Bankr. M.D. Pa. 1988)).

⁶ 11 U.S.C. § 363(f).

⁷ *In re Trans World Airlines, Inc.*, 322 F.3d 283 (3d. Cir. 2003).

⁸ See *Unsecured Cred. Comm. of Robert L. Helms Constr. & Devel. v. Southmark Corp.*, 139 F.3d 702 (9th Cir. 1998).

⁹ See *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 543-48 (7th Cir. 2003).

¹⁰ 11 U.S.C. § 363(f).

Additionally, a court may authorize the sale of a debtor's assets free and clear of any liens, claims, or encumbrances under Section 105 of the Bankruptcy Code.¹¹

49. The subparts of Section 363(f) are drafted in the disjunctive and satisfaction of any of the enumerated provisions therein is sufficient to justify sale free and clear of all interests and claims.¹²

50. In Louisiana, the liens and mortgages affecting real property are filed in the public records of the parish in which the real property is located. Hamilton, LLC is registered in the State of Louisiana and the property of Hamilton, LLC is located in Lafourche Parish, and the Disbursing Agent's search of the mortgage records affecting the Hamilton Interest does not indicate that there is any mortgage or lien against the Hamilton Interest.

51. Sale under Section 363(f) "free and clear" of the above interests is appropriate because:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest; and
- (2) the lienholder or claimholder consents.

52. Specifically, the Disbursing Agent believes that there are no lienholders with claims against the Hamilton Interest.

53. The Disbursing Agent requests that the Court approve the Sale as free and clear of any liens, claims, and interests whether now known, with any such liens, claims, and interests attaching instead to the proceeds of the Sale.

¹¹ See *In re White Motor Credit Corp.*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of liens] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

¹² See *Citicorp Homeowners Services, Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

Good Faith Purchaser

54. Section 363(m) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. §363(m).

55. It is anticipated that the Successful Bidder(s) does not hold any interest in the Debtor and is not otherwise affiliated with the Debtor or the Disbursing Agent other than potentially being a creditor of the Debtor or a member with the Debtor in Hamilton, LLC. Moreover, each Successful Bidder will likely not be an “insider” of the Debtor within meaning of section 101(31) of the Bankruptcy Code, and is not controlled by, or acting on behalf of, any insider of the Debtor.¹³ The Disbursing Agent will present evidence at the Sale Hearing to prove the foregoing. Accordingly, the Disbursing Agent requests that the Court determine that the Successful Bidder(s) is acting in good faith and is entitled to the protections of a good faith purchaser under section 363(m) of the Bankruptcy Code.

Approval of the Bid Procedures is Warranted

56. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales.¹⁴

57. The Disbursing Agent submits that the Bid Procedures are in the best interests of

¹³ See, e.g., *In re After Six, Inc.*, 154 B.R. 876, 883 (Bankr. E.D. Pa. 1993) (good faith found where officers, directors and employees of debtors had no apparent connection to purchasers).

¹⁴ See, e.g., *Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992).

the Debtor, his estate, and his creditors because they will enable the Disbursing Agent to realize the maximum value from the sale of the Hamilton Interest. The Auction is designed to generate interest and bidding, thereby yielding the highest and best offer(s) for the Hamilton Interest. Finally, the Bid Procedures include appropriate noticing procedures to ensure all parties in interest will receive adequate notice of all relevant information.

**The Auction and Bid Procedures Satisfy the Provisions
of Section 12 of the Operating Agreement of Hamilton, LLC**

58. As disclosed herein above, the Hamilton Interest is an asset of the Debtor's estate and the Plan specifically contemplated the sale of the Hamilton Interest and the Disbursing Agent has a duty and obligation to attempt to sell the Hamilton Interest in a manner that is expeditious and will result in the maximum value for that asset.

59. The "right of first refusal" included in Section 12 of the Operating Agreement of Hamilton, LLC does not prohibit the sale of the Hamilton Interest to a party who is not a member of Hamilton, LLC, it merely affords the members of Hamilton, LLC a right to match the offer of any non-member for the purchase of an interest.

60. The Bid Procedures enable all of the members of Hamilton, LLC to exercise their option to purchase the Hamilton Interest as contemplated in Section 12 of the Operating Agreement, but does so in an expeditious manner which will maximize the value received by the Debtor's estate from the sale of the Hamilton Interest.

Payment of Fee and Commission to Ms. Neugent is Appropriate

61. Although Ms. Neugent's employment pursuant to the prior Orders of this Court did not include authorization for payment of a commission or fee in connection with the sale of the Hamilton Interest, the Disbursing Agent requests that this Court authorize the Disbursing Agent

to pay Ms. Neugent a fee and commission of \$900¹⁵ from the proceeds of the Sale for her work and assistance in preparing for and closing the Sale.

Proposed Disposition of the Net Proceeds of the Sale

62. The Disbursing Agent proposes and requests authority to hold in trust the net proceeds of the Sale for distribution pursuant to the other applicable provisions of the Plan.

Relief from Bankruptcy Rule 6004(h) is Appropriate

63. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, lease of property . . . is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” Fed. R. Bank. P. 6004(h).

64. All creditors and interested parties will receive notice of the proposed Sale and will be provided with an opportunity to be heard. Furthermore, all such creditors and interested parties were provided notice and opportunity to object to the terms of the Plan prior to its confirmation by this Court. Such notice is adequate for entry of an order approving this Motion and waiving the fourteen (14) day waiting period under Bankruptcy Rule 6004(h).

The Notice of this Motion is Reasonable and Appropriate

65. The Disbursing Agent intends to notice a full copy of this Motion and exhibits to the (a) Office of the United States Trustee, (b) Hamilton, LLC and its individual members and managers, (c) all creditors on the Debtor’s mailing matrix, (d) the Unsecured Creditors Panel created pursuant to the Plan, and (e) all parties that have appeared and requested notice in this matter.

¹⁵ Equivalent to a six percent (6%) commission on the Initial Offer.

WHEREFORE, the Disbursing Agent requests the entry of (i) the Bid Procedures Order approving the Bid Procedures for the sale of the Hamilton Interest, authorizing the Auction, setting a date for the Sale Hearing, and the Sale Notice and the form and manner of notice of the Auction and Sale Hearing; (ii) the Sale Order approving the sale of the Hamilton Interest to the Proposed Purchaser, or other successful bidder(s) at Auction, free and clear of liens, claims and interests, approving the payment of professional fees and commission to Kathy Neugent as agent in connection with the sale of the Hamilton Interest, abrogating the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h); and (iii) granting additional further appropriate relief,

Respectfully Submitted,

/s/ Christopher T. Caplinger
CHRISTOPHER T. CAPLINGER (#25357)
MEREDITH S. GRABILL (#35484)
LUGENBUHL, WHEATON, PECK,
RANKIN & HUBBARD
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Email: ccaplinger@lawla.com; mgrabill@lawla.com
Counsel for the Disbursing Agent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon Nicholas Zeringue (Email njz@zeringuelawgroup.com); Matthew Pryor, 12320 Louisiana Highway 44, Building 4, Suite C, Gonzales, LA 70731 (mpryor@ppiattorneys.com); and Jerry Fink, 1511 Kings Road Newport Beach, CA 92663 (jerryfink@earthlink.com) the parties that receive electronic notice via the Court's CM/ECF system listed below as well as upon the parties on the attached service list by first class mail on January 30, 2019.

Greta M. Brouphy on behalf of Creditor Synergy Bank gbrouphy@hellerdraper.com,
kfritscher@hellerdraper.com; lwright@hellerdraper.com
Frederick L. Bunol on behalf of Attorney Derbes Law Firm fbunol@derbeslaw.com,
derbespacer@gmail.com; derbeser72443@notify.bestcase.com
Frederick L. Bunol on behalf of Debtor Ernest A. Vicknair, Jr. fbunol@derbeslaw.com,
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mlandry@newmanmathis.com, faith@newmanmathis.com
Darryl T. Landwehr on behalf of Creditor Low Land Investors, LLC dtlandwehr@cox.net
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richard@rwmapl.com, claire@rwmapl.com
Mark Mintz on behalf of Creditor United Community Bank mmintz@joneswalker.com,
hstewart@joneswalker.com
Stewart F. Peck on behalf of Creditor Express Steel speck@lawla.com, yamaranto@lawla.com
William Allen Schafer on behalf of Creditor DONOVAN MARINE, INC., C/o Wm. Allen
Schafer Schafer@carverdarden.com, connie@lobranolaw.com
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Office of the U.S. Trustee USTPRegion05.NR.ECF@usdoj.gov

/s/ Christopher T. Caplinger

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Thibodaux, LA 70301-5887

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Belle Chasse, LA 70037-0208

Mississippi River Bank
Robert L. Marrero
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Gretna, LA 70056

Richard W. Martinez
228 St. Charles Ave. Ste. 1311
New Orleans, LA 70130

Sevpro of New Orleans
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Slidell, LA 70458-8631

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Eastern District of La.
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New Orleans, LA 70130

ASI Federal Credit Union
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New Orleans, LA 70123

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Atlanta, GA 30348-5262

AT&T
P.O. Box 5014
Carol Stream, IL 60197-5014

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Thibodaux, LA 70301

American Express
P.O. Box 981537
El Paso, TX 79998

American Express
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Dallas, TX 75265

American Express Centurion Bank
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Thibodaux, LA 70302

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Mandeville, LA 70471

Beier Radio
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Covington, LA 70433

Bruce Vicknair
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C. Berwick Duval, II
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Houma, LA 70361

CBP/Classic Business Products
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Morgan City, LA 70380

Cabela's Club Visa
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Lincoln, NE 68501

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Capital One Bank USA
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Salt Lake City, UT 84130

Capital One NA
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Chardonnay Village Condo. Assoc.
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Charles Theriot and Company
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Houma, LA 70360

Chase Auto Finance
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Fort Worth, TX 76101

Chase Ink
P.O. Box 94014
Palatine, IL 60094

Chase Ink Bold
P.O. Box 15123
Wilmington, DE 19850

Chase/Bank
P.O. Box 15298
Wilmington, DE 19850

Coburn Supply Co.
Coburn's Wholesale Distributors
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Denham Springs, LA 70727

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First American Bank
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Vacherie, LA 70090

Ford Motor Credit
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Omaha, NE 68154

GMAC
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Minneapolis, MN 55438

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LSU Athletic Ticket Office
Athletic Administration Building
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New Generation Shipbuilding
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Nissan Motor Acceptance
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PRA Receivables Management
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Pitney Bowes Global Finac.
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Southern Outdoors & Marine
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Spectrum Business/Charter Comm.
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Sprint Nextel Correspondence
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Overland Park, KS 66207

Steven Constantine
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Tiger Athletic Foundation
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Lafourche Parish Assessor
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WAN, LLC
c/o Nicole A. Falgoust, Member
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Citrus Queen Farms, LLC
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Citrus Queen Farms, LLC
c/o Guy P. Zeringue, Jr., M.D., Manager & Member
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Citrus Queen Farms, LLC
c/o Jane G. Zeringue, Member
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Thibodaux, LA 70301

DIRT NAP, LLC
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Louis Parro Fairbanks
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Mrs. Noelle Parro

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Carl E. Heck, Jr.
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Houma, LA 70360

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Newport Beach, CA 92663

Randolph H. Parro
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Thibodaux, LA 70301

Exhibit A - Proposed Bid Procedures Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CASE NO. 17-11059
ERNEST A. VICKNAIR, JR. SECTION B
DEBTOR CHAPTER 11

ORDER (A) APPROVING BID PROCEDURES FOR SUBMISSION AND ACCEPTANCE OF COMPETING BIDS IN CONNECTION WITH THE SALE OF THE DEBTOR’S INTERESTS IN HAMILTON, LLC; (B) SCHEDULING BID DEADLINE, AUCTION DATE, AND SALE HEARING DATE; AND (C) FIXING NOTICE PROCEDURES AND APPROVING FORM OF NOTICE

This matter came before the Court on Tuesday, February [●], 2019, on the motion of the Patrick Gros as Disbursing Agent (“filed January [●], 2019 (the “*Motion*”) (ECF No. ●), seeking, *inter alia*, entry of an order (i) approving the proposed bid procedures annexed hereto as Exhibit A for submission and acceptance of competing bids (the “*Bid Procedures*”) for the sale of the Debtor’s interests in Hamilton, LLC (the “*Hamilton Interest*”); (ii) scheduling a bid deadline, an auction date, and a sale hearing date; and (iii) fixing notice procedures and approving forms of notice and the Objections to the Bid Procedure Relief (*as defined below*) filed on behalf of [●] (ECF No. ●) and [●] (ECF No. ●)(collectively, the “*Objections*”).

Appearances:

Christopher T. Caplinger
Counsel for Patrick Gros as Disbursing Agent

[●]
Counsel for [●].

[●]
Counsel for [●]

The Court having reviewed the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to

Exhibit A - Proposed Bid Procedures Order

28 U.S.C. §157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion was good and sufficient under the circumstances and that no other or further notice need be given; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court held on February [●], 2019 (the "**Hearing**"); and it appearing that entry of this order is in the best interests of the Debtor, his estate, his creditors and all parties in interest; and upon the Motion and the record of the Hearing and all other proceedings had before the Court; and after due deliberation and good cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:¹

A. The Disbursing Agent has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the bid process (the "**Bid Procedure Relief**"), including the Court's (i) approval of the Bid Procedures, (ii) scheduling bid deadline, auction date, and sale hearing date, and (iii) approval of the adequacy of, and authorization to serve, the sale notice (the "**Sale Notice**").

B. The Disbursing Agent has articulated good and sufficient reasons for, and the best interests of its estate will be served by, this Court scheduling a subsequent hearing (the "**Sale Hearing**") to consider whether to grant the remainder of the relief requested in the Motion, including the approval of the sale of the Hamilton Interest (the "**Sale**") in accordance with the terms described in the Bid Procedures, free and clear of all liens, claims, interests and encumbrances whatsoever (the "**Interests**") with the same to attach to the proceeds therefrom

¹ 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.

Exhibit A - Proposed Bid Procedures Order

(the “*Sale Proceeds*”), pursuant to Section 363 of title 11, United States Code (the “*Bankruptcy Code*”).

NOW THEREFORE, AND BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SET FORTH ON THE RECORD AT THE HEARING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Bid Procedure Relief sought in the Motion is **GRANTED**.
2. The Bid Procedures, which are incorporated herein by reference, are hereby approved and shall govern all bids and bid and auction proceedings relating to the Sale of the Hamilton Interest. The Disbursing Agent is authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.
3. The deadline for submitting a Bid shall be [●] [●], 2019, at 5:00 o’clock p.m. (CST). In order to be a Qualified Bid, the Bid must conform to the requirements set forth in the Bid Procedures.
4. As further described in the Motion and the Bid Procedures the Disbursing Agent may conduct the Auction on [●] [●], 2019.
5. The Objections, to the extent they were not withdrawn or are not resolved by the provisions of the Order and the attachments thereto, are overruled with respect to the Bid Procedures Relief granted pursuant to this Bid Procedures Order. All objections to any other relief requested in the Motion and proposed Sale are specifically reserved to and are not waived by any interested party. Such objections to the Motion and the proposed Sale, including but not limited to, the sale of the Hamilton Interest free and clear of liens, claims, encumbrances, and interests pursuant to Section 363 of the Bankruptcy Code, shall be filed with the Clerk of Court

Exhibit A - Proposed Bid Procedures Order

and served on counsel for the Disbursing Agent no later than [●] [●], 2019 at [●]:00 o'clock [●].m. (CST) (the "*Objection Deadline*").

6. The Court shall conduct the **Sale Hearing on [●] [●], 2019 at [●]:00 o'clock [●].m. (CST)**, at which time the Court will consider approval of the Motion and Sale to the Successful Bidder(s) and any objections thereto. Any party in interest who has properly and timely filed and served an objection as described herein must appear at the Sale Hearing and present such objection. **Failure to present such objection at the Sale Hearing may be deemed a waiver and bar the party from asserting any and all objections. The Sale Hearing may be continued to another date or location by announcement made at such hearing.**

7. The notices described below shall be good and sufficient notice of the Motion and the relief requested therein, and no other or further notice shall be required if given as follows: No later than [●] [●], 2019, the Disbursing Agent shall serve by mail a copy of the Sale Notice Package which shall consist of: (i) this Order (including a copy of the Bid Procedures), and (ii) the Sale Notice in substantially the form attached to the Motion as Exhibit E, on (i) the Unsecured Creditor Panel created pursuant to the Plan, (iii) all known creditors of the Debtor, (iii) Hamilton, LLC and its members and managers, (iv) all relevant federal, state and local regulatory or taxing authorities or recording offices that have the ability to impose a tax on or a charge or lien against the Hamilton Interest or the property of Hamilton, LLC, and (v) any other party which the Disbursing Agent has determined may have an interest in submitting a Qualified Bid.

8. The failure of any objecting person or entity to timely file its objection by the Objection Deadline shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, or the consummation and performance of the Sale contemplated in the

Exhibit A - Proposed Bid Procedures Order

Motion (including the transfer free and clear of all liens, claims, encumbrances, and interests of the Hamilton Interest).

9. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order. The Disbursing Agent is hereby 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 of this Order. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for fourteen (14) days after the entry hereof and shall be effective and enforceable immediately upon signature hereof.

10. 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.

11. If there is any inconsistency between this Order, the Bid Procedures, and the record of the Hearing, the record of the Hearing shall control.

Exhibit A - Proposed Bid Procedures Order

Exhibit A

Bid Procedures

Exhibit A - Proposed Bid Procedures Order

BID PROCEDURES FOR AUCTION OF THE DEBTOR'S INTEREST IN HAMILTON, LLC

Patrick J. Gros as Disbursing Agent (“*Disbursing Agent*”) through counsel for the Disbursing Agent (the “*Disbursing Agent’s Counsel*”), proposes to conduct an auction of Ernest A. Vicknair, Jr.’s ten percent (10%) membership interest in Hamilton, LLC (the “*Hamilton Interest*”) and will proceed in accordance with the following bid procedures (“*Bid Procedures*”) which have been approved pursuant to an Order entered by the United States Bankruptcy Court for the Eastern District of Louisiana (“*Bankruptcy Court*”) on [●] [●], 2019 (“*Bid Procedures Order*”).

1. **Assets to Be Sold.** These Bid Procedures set forth the terms by which prospective bidders may qualify for and participate in the Auction (*defined below*), thereby competing to make the highest or otherwise best offer to purchase free and clear of any and all claims, liens, and other encumbrances the Hamilton Interest.
2. **Marketing of the Assets.** The Disbursing Agent has and will continue to market the Hamilton Interest and solicit requests to participate in the Auction pursuant to these Bid Procedures.
3. **Bid Requirements:** To be entitled to participate in the Auction, a Potential Bidder (other than the Proposed Purchaser, Quentin Falgoust, who is hereby designated a Qualified Bidder) must deliver to the Disbursing Agent’s Counsel by the Bid Deadline an irrevocable offer or offers (each a “*Bid*”) that must:
 - a. be in writing;
 - b. not be conditioned on any contingency, including, among others, on obtaining any of the following: (i) financing; (ii) shareholder, board of directors or other approval(s), and/or (iii) the outcome or completion of a due diligence review by the Potential Bidder;
 - c. provide the Disbursing Agent with sufficient and adequate information to demonstrate to the satisfaction of the Disbursing Agent that the Potential Bidder has the financial wherewithal and ability to consummate the proposed purchase with readily available funds, including executed copies of any financing agreements, letters or commitments which are not subject to any contingency;
 - d. fully disclose the identity of each entity that will be directly or indirectly bidding for or purchasing the Hamilton Interest or otherwise participating in connection with such Bid, along with sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated in the Bid; and

Exhibit A - Proposed Bid Procedures Order

- e. not request any transaction or break-up fee, expense reimbursement, termination or similar type of fee or payment.
4. **Bid Deadline:** To be entitled to be Qualified Bids (*defined below*), Bids must be received by Disbursing Agent’s Counsel (Christopher T. Caplinger, 601 Poydras Street, Suite 2775, New Orleans, LA 70130; Fax: (504) 310-9195; Email: ccaplinger@lawla.com; so as to be actually received **no later than 5:00 p.m. (CST) on [●] [●], 2019** (the “*Bid Deadline*”).
5. **Determination of Qualified Bidders and Qualified Bids:** **No later than [●]:00 [●].m. (CDT) on [●] [●], 2019**, the Disbursing Agent shall determine which Bids satisfy the requirements set forth in paragraph 3 above and are thus deemed to be “*Qualified Bids*” and which Potential Bidders are “*Qualified Bidders*” and will notify the Qualified Bidders whether any bids submitted constitute Qualified Bids so as to enable Qualified Bidders to bid at the Auction. Any bid that is not deemed a “Qualified Bid” shall not be considered by the Disbursing Agent for any purpose. The determination by the Disbursing Agent that a Bid is or is not a Qualified Bid can be reviewed by the Bankruptcy Court upon a motion for good cause shown. The Proposed Purchaser, Quentin Falgoust, shall be deemed to be a Qualified Bidder and authorized to bid at the Auction. The Disbursing Agent, in his discretion, may designate bidders as Qualified Bidders regardless of the passage of the Bid Deadline in the event that there is an incomplete bid or missing information with respect to the financial capacity of the Potential Bidder that is in each case cured prior to the announcement of the Starting Bids (*defined below*).
6. **Evaluation of Qualified Bids and Determination of the Starting Bids:** The Disbursing Agent, after consultation with his counsel, shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Disbursing Agent’s reasonable, good faith business judgment, the highest or otherwise best Bid (the “*Starting Bid*”). **No later than [●] [●], 2019**, the Disbursing Agent shall notify all Qualified Bidders as to which Qualified Bid is the Starting Bid.
7. **No Qualified Bids:** If no Qualified Bids, other than the Bid of the Proposed Purchaser, are received by the Bid Deadline, then the Auction may not occur.
8. **Auction:** If one or more Qualified Bids, other than the Bid of the Proposed Purchaser, are received by the Bid Deadline, then the Disbursing Agent shall conduct the Auction. The Auction shall commence on **[●] [●], 2019 at [●]:00 [●].m. (CST)** at [location to be designated], or such later time or other place as the Disbursing Agent shall timely notify all Qualified Bidders following consultation with his advisors. The Auction will be conducted in accordance with the following procedures (the “*Auction Procedures*”):
 - a. only Qualified Bidders and their legal and financial advisors shall be entitled to bid at the Auction;

Exhibit A - Proposed Bid Procedures Order

- b. the Qualified Bidders shall appear in person or through duly-authorized representatives at the Auction;
- c. bidding at the Auction shall begin at the Starting Bid;
- d. subsequent bids submitted by Qualified Bidder(s) which ARE members of Hamilton, LLC may choose to match the preceding bid by a Qualified Bidder which is NOT a member of Hamilton, LLC, but shall be made in minimum increments of at least \$500.00 if the preceding bid was submitted by a Qualified Bidder which IS a member of Hamilton, LLC;
- e. subsequent bids submitted by Qualified Bidders which ARE NOT members of Hamilton, LLC shall be made in minimum increments of at least \$500.00;
- f. absent irregularities in the conduct of the Auction, the Court will not consider bids made after the Auction is closed.

9. Acceptance of the Successful Bid and Designation of the Back-Up Bid:

- a. Upon the conclusion of the Auction (if such Auction is conducted), the Disbursing Agent, in the exercise of his reasonable, good-faith business judgment, shall identify the highest or otherwise best bid(s) submitted at the Auction (the “*Successful Bid*”). The Qualified Bidder(s) having submitted the Successful Bid will be deemed the “*Successful Bidder(s)*.”
- b. Upon conclusion of the Auction, the Disbursing Agent, in the exercise of his reasonable, good-faith business judgment, shall also identify the next highest or otherwise best Qualified Bid (the “*Back-Up Bid*” and the party submitting the Back-Up Bid, the “*Back-Up Bidder*”). The Back-Up Bid shall remain open and the Back-Up Bidder shall remain obligated to perform pursuant thereto until the first business day following the consummation of a sale of the Hamilton Interest.
- c. The Disbursing Agent will present the results of the Auction to the Court at the Sale Hearing (*defined below*), at which certain findings will be sought from the Court regarding the Auction, including, among other things, that (i) the Auction was conducted, and the Successful Bidder(s) were selected, in accordance with these Bid Procedures, (ii) the Auction was fair in substance and procedure, (iii) the Successful Bid was a Qualified Bid, and (iv) consummation of the sales contemplated by the Successful Bid will provide the highest or otherwise best value for the Hamilton Interest.
- d. If an Auction is held, the Disbursing Agent shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid at the Auction and (ii) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Court of the Successful Bid and

Exhibit A - Proposed Bid Procedures Order

the entry of an Order approving such Successful Bid.

10. Sale Hearing.

- a. A hearing to consider approval of the sale(s) of the Hamilton Interest to the Successful Bidder(s) (the “*Sale Hearing*”) is presently scheduled to take place on [●] [●], 2019 at [●]:00 o’clock [●].m (CST), or as soon thereafter as counsel may be heard, before the Honorable Jerry A. Brown, United States Bankruptcy Judge, 500 Poydras Street, Suite B-705, New Orleans, Louisiana, 70130.
- b. The Sale Hearing may be continued to a later date by the Disbursing Agent by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.
- c. At the Sale Hearing, the Disbursing Agent shall present the Successful Bid to the Court for approval.
- d. After the Sale Hearing, an Order approving the Sale may be entered by the Bankruptcy Court and shall provide that any such Sale shall be free and clear of any and all claims, liens, and other encumbrances (the “*Sale Order*”).

11. Performance by the Back-Up Bidder: In the event that a Successful Bidder fails to consummate an approved Sale within ten (10) business days after the entry of the Sale Order, the Disbursing Agent shall be authorized, but not required, to deem the Back-Up Bid as disclosed at the Sale Hearing, the Successful Bid, and the Disbursing Agent shall be authorized, but not required, to consummate the Sale with the Back-Up Bidder submitting such Bid without further order of the Court. The Disbursing Agent may extend in writing the deadline for a Successful Bidder to consummate the approved sale of the Hamilton Interest for a period of not longer than ten (10) additional business days: if the deadline is so extended, the Back-Up Bidder shall remain bound to, and for the performance of, the Back-Up Bid for the period of such extension despite any other provisions of these Bid Procedures.

12. Reservation of Rights: THE DISBURSING AGENT RESERVES HIS RIGHTS, FOLLOWING CONSULTATION WITH DISBURSING AGENT’S COUNSEL, TO MODIFY THESE BID PROCEDURES IN ANY MANNER THAT IS NOT INCONSISTENT WITH THE BID PROCEDURES ORDER AND THAT WILL BEST PROMOTE THE GOALS OF THE BIDDING PROCESS AND TO IMPOSE, AT OR PRIOR TO THE AUCTION, ADDITIONAL CUSTOMARY TERMS AND CONDITIONS ON THE SALE OF THE HAMILTON INTEREST, INCLUDING, WITHOUT LIMITATION, MODIFYING THE REQUIREMENTS FOR A QUALIFIED BID, EXTENDING THE DEADLINES SET FORTH IN THESE BID PROCEDURES, ADJOURNING THE AUCTION AT THE AUCTION AND/OR ADJOURNING THE SALE HEARING IN OPEN COURT WITHOUT FURTHER NOTICE, CANCELING THE AUCTION, AND

Exhibit A - Proposed Bid Procedures Order

REJECTING ANY OR ALL QUALIFIED BIDS IF, IN THE DISBURSING AGENT'S REASONABLE, GOOD-FAITH BUSINESS JUDGMENT, FOLLOWING CONSULTATION WITH DISBURSING AGENT'S COUNSEL, THE DISBURSING AGENT DETERMINES THAT SUCH QUALIFIED BID IS (I) INADEQUATE OR INSUFFICIENT, (II) NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE BANKRUPTCY CODE OR ANY RELATED RULES OR THE TERMS SET FORTH HEREIN, OR (III) CONTRARY TO THE BEST INTERESTS OF THE DEBTOR'S ESTATE.

Exhibit B

OPERATING AGREEMENT

STATE OF LOUISIANA

OF

HAMILTON L.L.C.

PARISH OF LAFOURCHE

BE IT KNOWN, that on this fifteenth day of December, in the year of Our Lord Two Thousand Three;

BEFORE ME, JESS J. WAGUESPACK, a Notary Public, duly commissioned and qualified, in and for the State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned:

PERSONALLY CAME AND APPEARED:

MAG 10 CORPORATION, a Louisiana corporation domiciled in Lafourche Parish (441 Highway 308, P. O. Box 715, Thibodaux, LA 70302), herein represented by its President, Earnest A. Vicknair, Jr., duly authorized by Consent Resolution of the Shareholders and Directors of the corporation dated December 15, 2003 (hereinafter "Members" or "Member");

WHO DECLARED THAT:

Whereas, they it has organized and formed HAMILTON L.L.C. (hereinafter "Company") pursuant to La. R. S. 12:1301 et seq. for the ownership, management and operation of movable and immovable property, they therefore have adopted the following Operating Agreement (hereinafter "Agreement") to govern and regulate the said Company, effective December 15, 2003, to-wit:

1. NAME AND ADDRESS. The Company shall be known as HAMILTON L.L.C. Its address shall be 441 Highway 308, P. O. Box 715, Thibodaux, LA 70302.

2. BUSINESS AND POWERS.

2.1 The general purpose of the Company shall be to own, build upon, construct, alter, repair, rent, lease, sub-lease, subdivide, sell, purchase, operate, manage, and otherwise deal with movable and immovable property and the improvements thereon. Such purpose may be accomplished in any manner deemed appropriate or advisable by the Managers, including, the borrowing of money from banks and other lending institutions for Company purposes, including a loan secured by the pledging of Company property for the repayment of such loans.

2.2 In addition, the Company may engage in any lawful activity for which Louisiana Limited Liability Companies may be formed under the laws of the State of Louisiana. The Company business may be conducted in the State of Louisiana or any other state upon complying with the laws of the state regulating Limited Liability Companies.

3. TERM.

3.1 The Company shall continue until dissolved by:

3.1.1 The consent of Members holding two-thirds of the company interests;

3.1.2 A judgment of dissolution; and,

3.1.3 The granting of an order of relief to the Company under any provision of the U.S. Bankruptcy

Code dealing with Limited Liability Companies.

3.2 This provision is intended to apply in lieu of La. R. S. 12:1334 and therefore provides the exclusive causes of a dissolution of the Company.

4. COMPANY INTEREST.

Exhibit B

4.1 The Company Interest of each Member shall mean the entire ownership interest of a Member in the Company at any particular time, which shall be determinative of each Member's interest in profits, gains, losses, cash distributions and capital and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, including the right to vote, together with the obligations of such Member to comply with all of the terms and conditions of this Agreement.

4.2 The Company Interest of each member shall be denominated in "units of interest".

4.3 Each unit of interest shall be initially valued at \$100.00 per unit.

4.4 The value assigned to each unit of interest issued for property transferred to the Company may be increased or decreased at the discretion of the existing Members.

4.5 The initial units of interest of each Member shall be as indicated on the attached Exhibit A.

4.6 Units of interest, once issued, may not be increased or decreased with respect to any Member, without the unanimous consent of all Members.

5. CAPITAL.

5.1 The capital of the Company shall initially consist of those items of property transferred by a separate instrument to the Company by the Members in exchange for Company Interests.

5.2 The Members, by mutual agreement, may at the end of any Company year transfer undistributed earnings to capital of the Company. Except as provided for in the event of withdrawal by a Member, no Member may withdraw any part of his or its original or additional capital without the consent of all of the other Members. The capital account of the Members shall be maintained in proportion to their Company Interest.

6. PROFIT AND LOSS. The net profits (excess of receipts over disbursements) and net losses (excess of disbursements over receipts) of the Company shall be credited or debited, as appropriate, to the drawing accounts of the Members in proportion to their Company Interests.

7. DRAWINGS. The Members shall have drawings in proportion to their Company Interest and in such amounts as may be agreed upon by them.

8. INTEREST ON CAPITAL. No interest shall be paid to the Members on their original capital, their additional capital, or their credit balances in their drawing account.

9. BANKING. All funds of the Company shall be deposited in the Company bank accounts, as designated from time to time by the Managers. All withdrawals from such accounts shall be made upon checks signed by those persons designated by the Managers.

10. BOOKS. The books of the Company shall be maintained on the cash basis, and shall be closed and balanced at December of each year.

11. VOTING.

11.1 In all matters requiring a vote of the Managers, a majority of the Managers shall be required.

11.2 In all matters requiring a vote of the Members, a majority in Company Interest of the Members present at a meeting at which a quorum is present (as required by Section 17.3) shall be required, unless otherwise provided herein.

Exhibit B

11.3 Each Member that is not a natural person shall designate through its governing body and pursuant to applicable governance laws and regulations one natural person who will represent its Company Interest.

11.3.1 Such designation as contemplated above shall be made in writing to the Company prior to the Member exercising any voting rights.

11.3.2 Should a conflict arise as to the entitlement of any person exercising the right to vote on behalf of a Member, the right of the Member to vote shall be suspended pending resolution of the conflict but that Member's interest shall be counted in determining a quorum.

11.4 Each Member's voting participation in all matters relating to the Company shall be in proportion to his Company Interest.

11.5 Usufructuaries shall vote the Company Interest held by them.

12. SALE OF COMPANY INTEREST.

12.1 If any Member desires to sell all or any part of his Company Interest ("the available interest") to any person or entity other than to another Member or the Company, he must first give to all of the other Members written notice that he intends to dispose of all or a part of the available interest in the Company, including in such notice, the name and address of the proposed transferee, a description of the available interest, and a full, accurate and complete description of the price and terms upon which the transfer is to be made. The transferring Member may not transfer the available interest to the proposed transferee if one or more of the other Members elect to acquire the available interest as is permitted by this section.

12.2 Each of the other Members shall have the option for a period of sixty (60) days after receipt of the notice to elect to purchase all or any fraction of the available interest for the price and upon the terms that the proposed transfer is to be made. If more than one Member exercises the option to purchase, the available interest shall be divided among the electing Members in proportion their respective Company Interests. The selling Member must receive the exercising Member's written notice of exercise of the option within the sixty (60) day period. The transfer of the available interest shall take place on the first day of the month following the month in which the exercise of the option takes place.

12.3 If all of the available interest is not subscribed for by the end of the sixty (60) day period pursuant to subsection 12.2 of this section, then the transferring Member shall not be obligated to transfer any of the available interest to the other Members but shall have the right to transfer all of the available interest, but only at the price, on the terms and conditions, and to the transferee stated in his notice given pursuant to the subsection 12.1, and only for a period of ninety (90) days after the end of the 60-day period specified in subsection 12.2.

12.4 Any transfer of a Company Interest to someone other than a Member or the Company under subsection 12.3 above shall convey to the transferee not only the transferor's right to share in profits, losses and capital upon liquidation (or prior distribution) with respect to the Company Interest transferred, but shall also convey any rights to participate in the management of the Company and shall not diminish or in any way effect the liabilities and obligations of the transferring Member under this Agreement, nor will the transferee be recognized as a member, unless and until:

12.4.1 The transferee shall agree in writing to be bound by the terms and conditions of this Operating

Exhibit B

Agreement;

12.4.2 The transferee assumes all obligations and liabilities of the transferring Member with respect to the Company; and

12.4.3 An instrument setting forth the fact of the transfer and the new Company Interests of the effected Members shall have been placed of record in the Company records in the same manner as this Agreement.

13. TRANSFERS AS SECURITY. Any Member may transfer or assign all or any part of his Company Interest by way of collateral security for a loan of the Member and the provisions of Section 12 shall not apply so long as the Member remains the legal owner of the Company Interest so given as security. However, without the unanimous written consent of all Members, the Company Interest cannot be transferred or sold to satisfy the debt for which it was given as security without complying with the provisions of Section 12.

14. OTHER TRANSFERS. No Member or any transferee or successor of a Member may transfer, sell, give, donate, bequeath, assign, alienate, or otherwise dispose of or encumber any of his Company Interest except:

14.1 By way of sale (subject to the provisions of Section 12);

14.2 As collateral security for a loan of the Member (subject to the provisions of Section 13);

14.3 By way of any form of transfer (including the creation of a usufructuary interest or a life estate) to an existing Member or any one or more of his spouse, children, grandchildren, or other lineal descendants, or heirs, the spouses of any of them, or any trust for their benefit, or to a corporation, all of the stock of which is owned by the Member, his spouse, lineal descendants or heirs, or the spouse of any of them, and then only after compliance with Section 12.4 by the transferee, naked owner, or remainderman; or,

14.4 By way of any form of transfer to the Company.

15. MANAGEMENT.

15.1 The management of the Company shall be exclusively vested in one or more persons who shall act as Managers. Managers need not be Members and they shall serve at the pleasure of the Members. They may act to bind the Company as provided for herein and who shall serve until terminated by the Members as contemplated in Section 17. The Managers shall represent and act for and on behalf of the Company in any matter or thing whatsoever, their being hereby expressly authorized and empowered in their sole and unlimited discretion to conduct, manage and transact all and singular the business affairs and concerns of the Company as contemplated in Section 2; and to do any and all other acts and things which may be necessary, requisite or proper for the business of the Company and pursuant to the powers herein granted. However, the Managers may not sell or grant any security interest in any immovable property of the Company without the consent of a majority of the Members in Company Interest. Without the written consent of the Managers, no Member may act on behalf of the Company to bind the Company in any way. Managers may, among themselves, delegate authority to act on various matters, in writing, to each other, as they see fit.

15.2 In addition to the authority granted above, the Managers shall have the authority to cause the Company to make an election pursuant to I.R.C. Section 754 and Regs. Section 1.754-1(b) to adjust the basis of partnership property in the manner provided in I.R.C. Sections 734(b) and 743(b).

Exhibit B

15.3 The initial Managers shall be Earnest A. Vicknair, Jr., Randolph H. Parro and Carle E. Heck, Jr.

15.4 If a Manager should die or retire from the Company business or become unwilling or unable to act as a Manager, a Successor Manager may be elected to replace the vacant Manager's position, but until such Successor Manager is elected, the surviving Managers shall continue to serve with full authority to act until a Successor Manager is elected.

16. TERMINATION OF MEMBERSHIP.

16.1 Membership of a Member shall terminate upon his, her or its transfer of membership as specified in Sections 12 and 14, withdrawal or bankruptcy.

16.2 Upon the dissolution of any Member, the shareholders or successors in interest of the dissolved Member shall succeed to the Company Interest of the dissolved Member upon compliance with the provisions of Section 12.4 and such shareholders or successors in interest shall have the rights and obligations in the Company of the dissolved Member.

16.3 Upon the distribution of Company Interests to the beneficiaries of a trust, the beneficiaries shall succeed to the interest of the trust upon compliance with the provisions of Section 12.4.

16.4 A Member may withdraw from the Company only on the last day of any calendar year and then only upon giving the remaining Members at least ninety days written notice of his intention to do so.

16.4.1 Withdrawal by a Member shall require the unanimous consent of the Members.

16.4.2 The withdrawn Member shall be paid the balance of his capital account on the date of withdrawal (as determined in accordance with generally accepted accounting principles by the Certified Public Accountant who prepares the tax return for the Company for the year of withdrawal), in monthly installments over a period not exceeding fifteen (15) years, without interest.

16.5 A Member's Company Interest shall terminate immediately upon the filing of a petition in bankruptcy and his interest shall be that as specified in Section 16.3.1 except that the date of withdrawal shall be the date of filing of the petition in bankruptcy.

16.6 The expiration of a usufructuary interest or a life estate in a Company Interest shall not be deemed a termination of a Member's Company Interest or a withdrawal by a Member.

17. MEETINGS OF THE MEMBERS.

17.1 Meetings of the Members may be called at any time by Members holding Company Interests equal to thirty-three percent (33%).

17.2 A notice of such meetings shall be sent to all Members indicating the time, place and purpose of said meeting.

17.3 No business shall be transacted at any such meeting unless Members representing a majority in Company Interest are present.

17.4 Any Member holding any other Member's power of attorney or mandate may act on behalf of the absent Member at such meeting, and in such event the absent Member shall be counted as present.

17.5 Any meeting of the Members contemplated herein may be held by any means of communication wherein

Exhibit B

all of the participants in the meeting can hear and communicate with each other.

17.6 In lieu of a meeting, any Company action may be taken by the written consent of all of the Members.

18. MEMBER INDEMNIFICATION. The Company may indemnify any Member in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of the Company's business or property.

19. NOTICES.

19.1 Notices required or permitted by this agreement shall be given:

19.1.1 To each Member and to his spouse, such representatives, heirs, legatees, legal representatives and successors at the Member's address as maintained at the principal office of the Company, and

19.1.2 To the Company at its registered office, or the office of the Company's registered agent as indicated by the Office of the Louisiana Secretary of State.

19.2 The Company, any Member or any other person may change the address for the giving of written notices of it or him by giving the Managers a written notice of the new address, and if mailed, by certified mail, return receipt requested. All notices shall be deemed given the date received by the addressee, as indicated on the return receipt.

20. APPLICABLE LAW. The relations of the Members with each other and with third persons shall be governed by the laws of the State of Louisiana, particularly, except where otherwise specified herein, La. R. S. 12:1301 et seq.

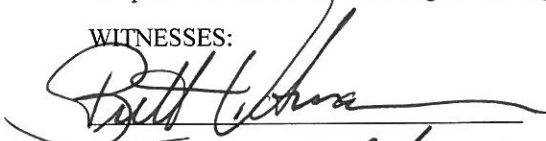
21. AMENDMENTS.

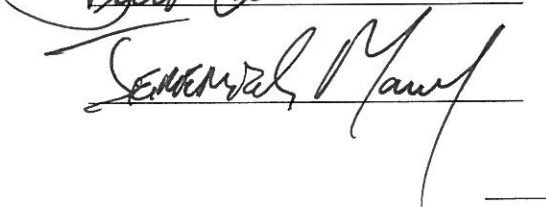
21.1 Except as otherwise provided herein, this Operating Agreement may be amended only by an instrument in writing signed by a majority in Company Interest of the Members.

21.2 Because it is the intention of the parties to this agreement that the Company be treated as a partnership for federal income tax purposes, they and their successors in interest agree to revise, amend or modify this agreement and do whatever else is necessary to maintain and continue that treatment.

THUS DONE AND SIGNED by the parties on the date first above written, in the presence of me, Notary, and the following competent witnesses who have signed in the presence of the parties and me, Notary.

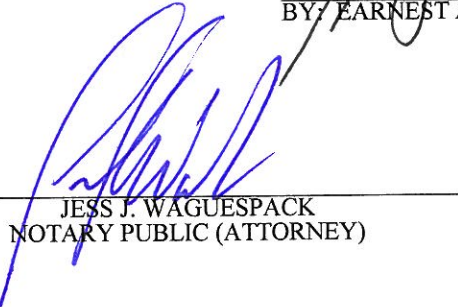
WITNESSES:





MAG 10 CORPORATION

BY: EARNEST A. VICKNAIR, JR.



JESS J. WAGUESPACK
NOTARY PUBLIC (ATTORNEY)

Exhibit D - Proposed Sale Notice

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CASE NO. 17-11059
ERNEST A. VICKNAIR, JR. SECTION B
DEBTOR CHAPTER 11

**NOTICE OF AUCTION AND SALE HEARING
TO SELL DEBTOR'S INTEREST IN HAMILTON, LLC**

PLEASE TAKE NOTICE that Patrick J. Gros as Disbursing Agent (the “*Disbursing Agent*”) has filed a motion on [●] [●], 2019 (the “*Motion*”) seeking entry of an Order (a) Approving Bid Procedures for Submission and Acceptance of Competing Bids in Connection with the Sale of the Debtor’s interests in Hamilton, LLC (the “*Hamilton Interest*”) (b) Scheduling Bid Deadline, Auction Date, and Sale Hearing Date, and (c) Fixing Notice Procedures and Approving Form of Notice. Copies of the Motion may be obtained by sending a request via email to ccaplinger@lawla.com.

PLEASE TAKE FURTHER NOTICE that a hearing regarding the Motion was held before the United States Bankruptcy Court for the Eastern District of Louisiana (the “*Bankruptcy Court*”) on [●] [●], 2019 and the Bankruptcy Court issued an order dated [●] [●], 2019 (the “*Bid Procedures Order*”), which among other things, approved the Bid Procedures¹ and authorized an auction and set a hearing regarding the outcome of that Auction.

A. THE PURCHASED ASSETS

The Disbursing Agent invites prospective bidders to qualify for and participate in the Auction, and to compete to make the highest or otherwise best offer to purchase the Hamilton Interest free and clear of any and all claims, liens, and other encumbrances.

B. AUCTION AND BIDDING PROCEDURES AND ORDER REGARDING SAME

The Bid Procedures Order and the Bid Procedures attached thereto describe the process for submitting initial Bids and how to become a Qualified Bidder which may participate in the Auction. Copies of the Bid Procedures Order (including a copy of the Bid Procedures) can be obtained by sending a request via email to ccaplinger@lawla.com.

C. THE AUCTION

The Auction will be conducted on [●] [●], 2019, at [●]:00 o’clock [●].m. (CST) at the [location to be designated]. The Auction may be held at such later time or other place as determined by the Disbursing Agent and of which the Disbursing Agent will notify all Qualified Bidders who have submitted Qualified Bids (*as those terms are defined in the Motion and Bid*

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion and/or Bid Procedures Order.

Exhibit D - Proposed Sale Notice

Procedures). The Disbursing Agent will provide notice of any adjournment or change in location of the Auction to those parties who have submitted Qualified Bids (*as defined in the Motion and Bid Procedures*).

D. THE SALE HEARING

The Sale Hearing will be held before the Honorable Jerry A. Brown, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of Louisiana, 500 Poydras Street, Suite B-705, New Orleans, Louisiana, 70130 on [●] [●], 2019, at [●]:00 o'clock [●].m. (CST).

Responses or objections, if any, to the relief sought in the Motion, including, without limitation, any objections to the Sale of the Hamilton Interest, must be filed with the Clerk of the Court and served upon (i) the Disbursing Agent's bankruptcy counsel, Christopher T. Caplinger, 601 Poydras Street, Suite 2775, New Orleans, Louisiana, 70130, **so as to be received no later than [●] [●] 2019, at [●]:00 o'clock [●].m. (CST).**

Dated: [●] [●], 2019
New Orleans, LA

/s/ Christopher T. Caplinger
CHRISTOPHER T. CAPLINGER (#25357)
MEREDITH S. GRABILL (#35484)
LUGENBUHL, WHEATON, PECK,
RANKIN & HUBBARD
601 Poydras Street, Suite 2775
New Orleans, LA 70130
Telephone: (504) 568-1990
Facsimile: (504) 310-9195
Email: ccaplinger@lawla.com; mgrabill@lawla.com
Counsel for the Disbursing Agent