

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re:

**HERRING CREEK ACQUISITION
COMPANY, LLC,**

Debtor.

Chapter 11

Case No. 14-15309-WCH

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
CONFIRMING PLAN OF REORGANIZATION OF HERRING
CREEK ACQUISITION COMPANY, LLC AND AUTHORIZING
SALE OF REAL PROPERTY TO DREAM ENTERPRISES, LLC**

Herring Creek Acquisition Company, LLC (the “Debtor”), the debtor and debtor-in-possession in the above captioned proceeding, having filed the *Plan of Reorganization of Herring Creek Acquisition Company, LLC* (the “Plan”) [doc. no. 26] and the *First Amended Disclosure Statement with Respect to Plan of Reorganization of Herring Creek Acquisition Company, LLC* (the “Disclosure Statement”) [docket no. 65] ; and the Court having entered an order dated March 2, 2015 [docket no. 68] approving the Disclosure Statement (the “Disclosure Statement Order”); and upon the certificate of service reflecting compliance with the notice requirements of the order approving the Disclosure Statement (the “Certificate of Service”) [docket no. 73]; and a hearing having been held on confirmation of the Plan on April 17, 2015 (the “Confirmation Hearing”); and upon the evidence submitted and the arguments of counsel made at the Confirmation Hearing; and the Court having reviewed all documents in connection with confirmation of the Plan and having heard all parties desiring to be heard; and upon the record compiled in the Bankruptcy Case,¹ and after due deliberation and consideration of all of

¹ Capitalized terms not otherwise defined in this Confirmation and Sale Order shall have the meanings attributed to them in the Plan and Disclosure Statement.

the foregoing; and sufficient cause appearing therefor; the Court hereby makes the following findings of fact, conclusions of law and order (the “Confirmation Order”):

FINDINGS OF FACT:

I. JURISDICTION AND VENUE.

A. This Court has jurisdiction over the Bankruptcy Cases pursuant to 28 U.S.C. §§ 1334(a) and 157(b)(1). Venue of these proceedings and the Bankruptcy Case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

B. As established through the Certificate of Service, the Debtor provided good and sufficient notice of the Confirmation Hearing and the deadline for filing and serving objections to the Plan.

II. BACKGROUND.

C. On November 12, 2014 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the “Court”).

D. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

E. The Plan proposes to fund distributions to creditors through the sale (the “Sale”) of a portion of the Debtor’s real property to Dream Enterprises, LLC (the “Buyer”), pursuant to a purchase and sale agreement (the “P&S”) that is attached to the Plan as Exhibit B. The P&S provides, among other things, that the Buyer may, by written notice to the Debtor (the “Designation Notice”), designate a different entity to take title to the real property to be sold under the P&S.

F. The Disclosure Statement Order, among other things, (i) fixed April 10, 2015 as the deadline to object to confirmation of the Plan and the deadline for submitting ballots, and (ii) established certain procedures for soliciting and tabulating votes with respect to the Plan.

G. As is evidenced by the Certificate of Service, the Debtor timely mailed Solicitation Packages (as defined in the Disclosure Statement Order), the Disclosure Statement Order and a ballot to creditors and parties-in-interest.

H. Notice of the Confirmation Hearing and service of the Solicitation Packages and the Disclosure Statement Order was adequate and in accordance with Bankruptcy Rule 2002(b).

I. The Debtor has filed a *Report of Plan Voting With Respect to Plan of Reorganization of Herring Creek Acquisition Company, LLC* (the "Voting Report") [docket no. 79] showing the results of the voting on the Plan.

J. The Debtor filed the affidavit of Robert Hughes in support of confirmation of the Plan (the "Confirmation Affidavit") [docket no. 80].

K. The Court concluded the Confirmation Hearing on April 17, 2015.

III. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE.

L. The Plan provides for the payment in full of all creditors, other than those creditors who have agreed to different treatment under the Plan and one creditor whose secured loan will be reinstated. The primary source of funding for the Plan is the sale of two parcels of the Debtor's real property, known as Cove House and Farm (each as defined in the P&S, and collectively the "Purchased Property"), to the Buyer pursuant to the P&S.

M. Pursuant to Sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, the Plan designates eight (8) Classes of Claims and Equity Interests. The Claims placed in each Class are

substantially similar to other Claims in each such Class, and the claims in each Class are treated the same.

N. The Disclosure Statement discloses that Robert Hughes, the Debtor's manager, will continue as the manager of the Reorganized Debtor after confirmation of the Plan. No one has objected to Mr. Hughes continuing to be the manager of the Reorganized Debtor.

O. The Debtor has complied with all applicable provisions of Section 1123(a) of the Bankruptcy Code.

P. The Plan complies with all applicable provisions of the Bankruptcy Code, as required by Section 1129(a)(1) of the Bankruptcy Code.

Q. The Debtor has complied with all applicable provisions of the Bankruptcy Code in accordance with Section 1129(a)(2) of the Bankruptcy Code.

R. The Plan satisfies the requirements of Section 1129(a)(3) of the Bankruptcy Code because the Debtor proposed the Plan in good faith and not by any means forbidden by law.

S. Any payments made or to be made for services or for costs and expenses accruing prior to Confirmation or in connection with the Bankruptcy Case have, to the extent required by the Bankruptcy Code, been approved by, or are subject to the approval of, the Court. Section 1129(a)(4) of the Bankruptcy Code has, therefore, been satisfied.

T. The Debtor has disclosed that Robert Hughes, an insider of the Debtor, will serve as the manager of the Reorganized Debtor and will not receive a salary. Mr. Hughes' continued service as the Debtor's manager is in the best interest of the Debtor, its creditors and holders of Equity Interests. The Plan therefore complies with Section 1129(a)(5) of the Bankruptcy Code.

U. With respect to each impaired Class of Claims against or Equity Interests in the Debtor, each holder of an impaired Claim or Interest has accepted or is deemed to have accepted

the Plan or will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtor was liquidated on the Effective Date under Chapter 7 of the Bankruptcy Code. The Plan therefore complies with Section 1129(a)(7) of the Bankruptcy Code.

V. Classes 1, 2 and 7 were entitled to vote to accept or reject the Plan. As is evidenced by the Voting Report, Classes 1, 2 and 7 have voted to accept the Plan in accordance with Section 1126 of the Bankruptcy Code or were deemed to accept the Plan. *See In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988) (nonvoting, non-objecting judgment lien creditor who was only member of class deemed to have accepted plan of reorganization without further showing that plan did not discriminate unfairly or that plan was fair and equitable); *see also In re Adelpia Communications Corp.*, 368 B.R. 140, 260-62 (Bankr. S.D.N.Y. 2007) (same). Because all impaired Classes of Claims have accepted the Plan or are deemed to have accepted the Plan, the requirements of Section 1129(a)(8) of the Bankruptcy Code have been met. *See* 11 U.S.C. § 1129(a)(8).

W. The Plan provides for treatment of Allowed Administrative Claims, and Priority Tax Claims in the manner required by Section 1129(a)(9) of the Bankruptcy Code. The Plan therefore complies with Section 1129(a)(9) of the Bankruptcy Code.

X. Impaired Classes 1, 2 and 7 have affirmatively voted to accept the Plan without including any acceptance of the Plan by any insider. The Plan therefore complies with Section 1129(a)(10) of the Bankruptcy Code.

Y. As is demonstrated by the Confirmation Affidavit, confirmation of the Plan is not likely to be followed by the liquidation, or the need for further reorganization, of the Debtor,

except to the extent such liquidation is provided for in the Plan. The Plan therefore complies with Section 1129(a)(11) of the Bankruptcy Code is, therefore, not applicable to the Plan.

Z. Pursuant to Article II, Section 2.2 of the Plan, all quarterly fees due and payable to the Office of the United States Trustee pursuant to Section 1930(a)(6) of Title 28 of the United States Code shall be paid in full on or before the Effective Date. Section 12.10 of the Plan provides for the timely payment of fees due to the Office of the United States Trustee after the Effective Date and until the Bankruptcy Case is closed. Accordingly, Section 1129(a)(12) of the Bankruptcy Code is satisfied.

AA. Sections 1129(a)(6), (a)(13), (a)(14), (a)(15) and (a)(16) of the Bankruptcy Code are not applicable to the Plan.

BB. The primary purpose of the Plan is not the avoidance of taxes or the avoidance of the requirements of Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e), as amended. The Reorganized Debtor remains responsible to file post-Effective Date tax returns and pay post-Effective Date taxes, in accordance with applicable law.

CC. The Plan also requests confirmation pursuant to Section 1129(b) of the Bankruptcy Code. Except for those creditors who have agreed to different treatment under the Plan, the Plan provides for all creditors holding secured claims to retain their liens until such creditors are paid in full, or for the reinstatement of the secured creditors claims pursuant to Section 1124(2) of the Bankruptcy Code. The Plan therefore meets the requirements of Section 1129(b)(2)(A) of the Bankruptcy Code. Class 7, consisting of General Unsecured Claims, has voted in favor of the Plan, and Section 1129(b)(2)(B) is, therefore, not applicable. Even if Section 1129(b)(2)(B) were applicable, the Plan provides for the payment in full of all unsecured claims, and provides that no distributions to any junior Class of Claims may occur until the

senior Classes of Claims are paid in full. The Plan therefore complies with the Absolute Priority Rule and meets the requirements of Sections 1129(b)(2)(B) and (C). Confirmation of the Plan pursuant to Section 1129(b) is also warranted.

IV. APPROVAL OF P&S; SALE OF PROPERTY.

DD. The Debtor's entry into the P&S and the consummation of the transactions contemplated in the P&S constitute the exercise by the Debtor of sound business judgment and such acts are in the best interests of the Debtor, its bankruptcy estate, creditor, and other parties in interest.

EE. The price offered for the Purchased Property is fair and reasonable, and the Debtor's acceptance of that price constitutes a valid and sound exercise of the Debtor's business judgment. The terms and conditions of the P&S are fair and reasonable.

FF. The transactions contemplated by the P&S were proposed and negotiated and entered into by the Debtor and the Buyer at arm's length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Buyer is a buyer of the Purchased Property in good faith under Section 363(m) of the Bankruptcy Code and is entitled to the protections afforded by that section of the Bankruptcy Code. The Buyer will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in consummating the transactions contemplated by the P&S.

GG. The Buyer and the Debtor have not engaged in any conduct that would cause or permit the P&S and the transactions contemplated in the P&S to be avoided under Section 363(n) of the Bankruptcy Code.

HH. The Buyer would not have entered into the P&S if the sale of the Purchased Property were not free and clear of all Liens, Claims and interests. Section 363(f) of the

Bankruptcy Code authorizes the Debtor to sell the Purchased Property free and clear of all Liens, Claims and interests.

ORDER

ACCORDINGLY, THE COURT HEREBY ORDERS THAT:

1. The Plan is hereby confirmed pursuant to Section 1129 of the Bankruptcy Code.
2. Any objections to confirmation of the Plan that have not been withdrawn are hereby overruled.
3. Notwithstanding any otherwise applicable law, immediately upon the entry of this Confirmation and Sale Order, the terms of the Plan and this Confirmation and Sale Order are deemed binding upon all Persons including any and all holders of Claims or Equity Interests, any and all nondebtor parties to Executory Contracts and Unexpired Leases with the Debtor, and any and all entities who are parties to or are subject to the releases, waivers, discharges and injunctions under the Plan and the respective heirs, executors, administrators, successors or assigns of any of the foregoing.

A. CLAIMS BAR DATES AND OTHER CLAIMS MATTERS

i. Bar Date for Administrative Expense Claims

4. All applications for reimbursement of expenses incurred before the Effective Date and all other requests or claims for payment of Administrative Expense Claims incurred on or before the Effective Date under Section 507(a)(1) or 507(b) of the Bankruptcy Code, other than the Professional Fee Claims, shall be filed with the Court on or before thirty (30) days after the Effective Date (the "Administrative Claim Bar Date"). Any holder of an Administrative Expense Claim, other than Professional Fee Claims, that fails to file and serve an application for allowance of such Claim on or before the Administrative Claim Bar Date shall be forever barred

from asserting such Administrative Expense Claim against the Debtor, the Reorganized Debtor, the Debtor's estate or any of its property, and such Claim shall be discharged, released and waived in accordance with the Plan.

ii. Bar Date for Professional Fee Claims.

5. All applications for final compensation and reimbursement of Professional Fee Claims incurred before the Effective Date shall be filed and served on or before sixty (60) days after the Effective Date, unless otherwise ordered by this Court.

iii. Bar Date for Rejection Damages Claims and Related Procedures.

6. Upon the Effective Date, any executory contract or unexpired lease (excluding any insurance policy) that (a) has not expired by its own terms on or prior to the Confirmation Date, (b) has not been assumed, assumed and assigned or rejected with the approval of the Court on or prior to the Confirmation Date, or (c) is not the subject of a motion to assume or reject which is pending at the time of the Confirmation Date, shall be deemed assumed as of the Effective Date. Entry of this Confirmation and Sale Order by the Court constitutes approval of such assumption pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code. To the extent any executory contract or unexpired lease is rejected pursuant to an order of the Court, any claim arising from such rejection (a "Rejection Claim") must be filed with the Court and served on counsel to the Debtor within thirty (30) days following the earlier to occur of: (i) the rejection of such executory contract or unexpired lease or (ii) the Effective Date. Any Rejection Claim that is not filed and served within such time shall be forever barred, and shall not share in any distributions under the Plan. The Reorganized Debtor shall have the right to object to any Rejection Claim.

B. IMPLEMENTATION OF THE PLAN

7. On the Effective Date, the Debtor shall become the Reorganized Debtor.

8. The Reorganized Debtor is authorized to enter into all documents, instruments and agreements reasonably necessary to effectuate the terms of the Plan.

9. On the Effective Date, all property of the Estate shall re-vest in the Reorganized Debtor. Except as may be expressly provided in the Plan or in a Non-Appealable Order of the Court, no Asset of the Estate shall be deemed abandoned and no defense, set-off, counterclaim or right of recoupment of the Debtor shall be deemed waived, released or compromised.

10. Except as provided in, and unless expressly waived, released, compromised or settled in this Confirmation and Sale Order, the Plan, any Non-Appealable Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with this Plan, and in accordance with Section 1123(a)(5)(A) of the Bankruptcy Code: (a) any Claims, demands, rights and Causes of Action that the Debtor or the Estate may hold against any Person or entity are fully preserved and vest with the Reorganized Debtor; and (b) neither the Debtor nor the Reorganized Debtor waive, relinquish, or abandon (nor shall they be estopped or otherwise precluded from asserting) any right, Claim, cause of action, defense, or counterclaim. No preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to the Debtor or the Reorganized Debtor by virtue of or in connection with the confirmation, consummation of effectiveness of the Plan.

11. Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise applicable principle of law or equity, the failure to list, disclose, describe, identify, or refer to a right, cause of action, defense, or counterclaim, or potential right, cause of action,

defense, or counterclaim in the Schedules, the Plan, the Disclosure Statement, or any other document filed with the Court, shall in no manner waive, eliminate, modify, release, or alter the Reorganized Debtor's right to commence, prosecute, defend against, settle, and realize upon any rights, causes of action, defenses, or counterclaims that any of the Debtor or the Reorganized Debtor has or may have as of the Confirmation Date.

12. Pursuant to Section 1146(a) of the Bankruptcy Code, neither the Debtor nor the Reorganized Debtor may not be taxed under any law imposing a stamp tax or similar tax for the issuance, transfer or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under Section 1129 of the Bankruptcy Code, including, without limitation, the transfers contemplated in the P&S.

13. The Reorganized Debtor will be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6) until the entry of a final decree in the Bankruptcy Case. After Confirmation of the Plan, the Reorganized Debtor will serve the United States Trustee with a quarterly report for so long as the Bankruptcy Case remains open. The quarterly report shall include the following:

- a. A statement of all disbursements made during the course of the quarter, whether or not pursuant to the Plan;
- b. A summary, by class, of amounts distributed or property transferred to each recipient under the plan, and an explanation of the failure to make any distributions or transfers of property under the plan;
- c. The Reorganized Debtor's projections as to its continuing ability to comply with the terms of the plan;
- d. A description of any other factors which may materially affect the Reorganized Debtor's ability to consummate the plan; and
- e. An estimated date when an application for final decree will be filed with the court (in the case of the final monthly report, the date the decree was filed).

C. DISCHARGE AND INJUNCTION

14. Except as otherwise expressly provided in Section 1141 of the Bankruptcy Code or the Plan, the distributions made pursuant to the Plan are in full and final satisfaction, settlement and release as against the Debtor and the Reorganized Debtor of any debt or obligation of the Debtor that arose before the Effective Date, and any debt of the Debtor of a kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code, and all Claims against the Debtor or its Estate of any nature, including, without limitation, any interest accrued thereon from and after the Petition Date, whether or not (i) a proof of claim based on such debt, obligation or Equity Interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) such Claim is Allowed under Section 502 of the Bankruptcy Code, or (iii) the holder of such Claim has accepted the Plan.

15. As of the Effective Date, all Persons are hereby permanently enjoined from commencing, continuing or enforcing in any manner or in any place, any action or other proceeding, whether directly, indirectly, derivatively or otherwise against the Debtor, its Estate, and/or the Reorganized Debtor, on account of, or respecting any Claims, debts, rights, obligations, Causes of Action or liabilities discharged pursuant to the Plan, except to the extent expressly permitted under the Plan.

16. None of the Debtor, the Reorganized Debtor, nor any of their respective present or former members, managers, officers, directors, employees, general or limited partners, advisors, attorneys, agents, successors or assigns, shall have or incur any liability to any holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the

administration of these Chapter 11 bankruptcy proceedings, the pursuit of confirmation of the Plan, the Disclosure Statement, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan occurring prior to the Effective Date, provided that the terms of Section 9.5 of the Plan shall not apply to any liability for willful misconduct or *ultra vires* acts.

D. SALE OF PROPERTY.

17. The P&S and all of its terms and conditions are hereby approved. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized to: (a) sell the Purchased Property to the Buyer upon the terms and conditions set forth in the P&S; (b) to perform under, consummate and implement the P&S and all other additional instruments and documents that may be reasonably necessary or desirable to implement the P&S and the transactions contemplated in the P&S; and (c) take all further actions as may reasonably necessary to assign, transfer, grant and convey to the Buyer, any or all of the Purchased Property, or as may be necessary or appropriate to the performance of the Buyer's and the Debtor's obligations under the P&S. A copy of any Designation Notice received by the Buyer shall be filed with the Court.

18. Pursuant to Section 363(f) of the Bankruptcy Code, upon the closing of the sale of Cove House under the P&S (the "Cove House Closing"), Cove House shall be transferred to the Buyer free and clear of all Liens, Claims and/or interests of any Person. This order is and shall be effective as a determination that, upon the Cove House Closing Date (as defined in the P&S), all Liens, Claims and/or interests of any person existing on or against Cove House prior to the Cove House Closing Date have been unconditionally released from Cove House. Any Liens, Claims and/or interests of any person shall, subject to the Plan, attach to the proceeds of the sale Cove House with the same extent, priority and validity as such Liens had immediately prior to

the Cove House Closing Date (without prejudice to the rights, claims, defenses, offsets, demands and objections, if any, of the Debtor with respect to, among other things, the extend, priority and validity of such Liens).

19. Pursuant to Section 363(f) of the Bankruptcy Code, upon the closing of the sale of Farm under the P&S (the "Farm Closing"), Farm shall be transferred to the Buyer free and clear of all Liens, Claims and/or interests of any Person. This order is and shall be effective as a determination that, upon the Farm Closing Date (as defined in the P&S), all Liens, Claims and/or interests of any person existing on or against Farm prior to the Farm Closing Date have been unconditionally released from Farm. Any Liens, Claims and/or interests of any person shall, subject to the Plan, attach to the proceeds of the sale Farm with the same extent, priority and validity as such Liens had immediately prior to the Farm Closing Date (without prejudice to the rights, claims, defenses, offsets, demands and objections, if any, of the Debtor with respect to, among other things, the extend, priority and validity of such Liens).

20. The transfer of each parcel of the Purchased Property pursuant to the P&S: (a) shall constitute legal, valid and effective transfers of property of the Estate to the Buyer; and (b) shall vest in the Buyer all of the Debtor's right, title and interest in each parcel of the Purchased Property free and clear of all Liens, Claims and/or interests of any Person, including, among other things, (i) those Liens that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor's or Buyer's interest in such Purchased Property, or any similar rights, and (ii) those Liens relating to taxes, or other fees or charges, arising under or out of, in connection with, or in any way relating to the operation of the Debtor's business prior to the sale.

21. Any documents that are required to be provided pursuant to Section 5.2(b) of the Plan (collectively the “Transactional Documents”) shall: (a) be provided to the Buyer’s title company not later than five (5) business days prior to the date of such sale, and (b) be held in escrow by the Buyer’s title company pending the payment of funds required under the Plan to the party supplying the respective Transactional Documents. The Transactional Documents shall include, without limitation, discharges of any mortgages or other Liens securing a Claim, and the following documents (each as defined in the P&S): (i) the Sanderling Easement Subordination, (ii) the Driveway Easement Subordination, and (iii) the Farming and Grazing Easement Subordination. The Debtor shall provide Santander Bank, NA and New England Phoenix Co., Inc. with ten (10) days’ notice of the closing of the sale of real estate against which such creditors hold a Lien.

22. The sale of the Purchased Property to the Buyer under the P&S will constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia, and may not be avoided under Section 363(n) of the Bankruptcy Code.

23. In consummating the transactions contemplated under the P&S, the Debtor and the Buyer shall have the protections provided under section 363(m) of the Bankruptcy Code.

24. Except as expressly set forth in the P&S, the Plan and/or this Confirmation and Sale Order, all persons and entities holding Liens, Claims and/or interests against the Debtor or the Purchased Property of any kind and nature whatsoever, are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Liens, Claims and/or interests against the Buyer, its affiliates, its parent, their respective owners, successors or assigns, their properties, or the Purchased Property with respect to any Lien, claim and/or interest

of any kind or nature whatsoever such person or entity had, has, or may have against or in the Debtor, the Estate, officers, directors, shareholders, or the Purchased Property. Following the respective closing of the sale of each parcel of the Purchase Property, no holder of a Lien, claim and/or interest against the Debtor shall interfere with the Buyer's title to or use and enjoyment of the Purchased Property based on or related to such Lien, claim and/or interest. All Liens against the Debtor's Assets are hereby subordinated to the extent provided in the P&S or as is reasonably necessary to effectuate the sale of Cove House and/or Farm.

25. Except as expressly set forth in the P&S and/or this Confirmation and Sale Order, the Buyer is not assuming nor shall it in any way whatsoever be liable or responsible, as a successor or otherwise, for any debts, liabilities, obligations, commitments or responsibilities of the Debtor or any of its predecessors or affiliates, or for any debts, liabilities, obligations, commitments, responsibilities or Liens in any way whatsoever relating to or arising from the Purchased Property, or any of the Debtor's operations or use or ownership of the Purchased Property, arising prior to consummation of the transactions contemplated by the P&S. The Buyer, its affiliates, parent, their respective owners, successors or assigns shall not have any successor or vicarious liabilities of any kind or character whether known or unknown, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor.

26. This Confirmation and Sale Order shall be binding upon and govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, Federal, state, and local officials, and all other persons and entities who may be required by

operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Property.

27. Each and every Federal, state, and local governmental agency, department or other entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the P&S and this Confirmation and Sale Order.

28. If any person or entity subsequently files or claims to have filed financing statements or other documents or agreements evidencing Liens against the Purchased Property, the Buyer is hereby authorized to file, register or otherwise record a certified copy of this Confirmation and Sale Order which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens of any kind or nature whatsoever against the Purchased Property.

29. The P&S, and any related agreements, documents or instruments may be modified, amended or supplemented by parties thereto in accordance with the terms of the P&S without further order of the Court, provided that such modifications, amendments or supplements, if any, are not material or adverse to the Debtor or the Estate.

30. Subject to the terms of the Plan, this Court shall retain jurisdiction: (a) to interpret and enforce the provisions of this Confirmation and Sale Order and the P&S, all amendments to the P&S, any waivers and consents under the P&S, and each of the agreements executed in connection with the P&S; (b) to protect the Buyer against any Liens, Claims and/or interests against or in the Purchased Property; (c) to compel delivery of the Purchase Price and all adjustments to the Purchase Price under the P&S; (d) to interpret, implement and enforce the

provisions of this Confirmation and Sale Order; and (e) to hear and determine any and all disputes between the Debtor and/or the Buyer arising out of or relating to this Confirmation and Sale Order and/or the P&S, and any non-Debtor party arising out of or relating to this Confirmation and Sale Order and the P&S; provided, however, that in the event the Court abstains from exercising or declines to exercise such jurisdiction, or is without jurisdiction with respect to the P&S or this Confirmation and Sale Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

31. The terms and provisions of the P&S and this Confirmation and Sale Order shall be binding on and inure to the benefit of the Buyer, the Debtor, the Estate, the Debtor's creditors and their respective affiliates, successors and assigns, including but not limited to any trustee that may be appointed in the Debtor's bankruptcy case, and shall be binding upon any trustee, any affiliate, any third party, and all persons asserting a Lien, Claim and/or interest against or in the Estates or all or any portion of the Purchased Property.

32. The failure to specifically include any particular provisions of the P&S in this Confirmation and Sale Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the P&S be approved in its entirety.

E. MISCELLANEOUS.

33. As soon as practicable after the Effective Date, the Reorganized Debtor (or its agents) shall give notice of the entry of this Confirmation and Sale Order, substantially in the form of Exhibit A to this Confirmation and Sale Order (the "Notice of Confirmation"), by United States first-class mail postage prepaid, by hand, or by overnight courier service to: (a) the United States Trustee, (b) each department, agency, or instrumentality of the United States that asserts a

claim against the Debtor, (c) entities which requested notices under Bankruptcy Rule 2002, (d) all creditors who have filed proofs of Claim in the Bankruptcy Case, and (e) all creditors who are listed in the Debtor's Schedules who are not listed as holding contingent, un-liquidated or disputed claims.


34. Notwithstanding anything to the contrary contained in this Confirmation and Sale Order, no notice or service of any kind will be required to be mailed or made upon any Person to whom: (a) the Debtor mailed a notice of the last date for filing proofs of claim in this Bankruptcy Case; or (b) the Debtor mailed the Solicitation Packages, but received any of such notices returned marked "undeliverable as addressed," "moved - left no forwarding address," or "forwarding order expired," or similar reason, unless the Debtor has been informed in writing by such Person of that Person's new address.

35. Mailing of the Notice of Confirmation in the time and manner set forth in the preceding paragraphs is adequate and satisfies the requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice is necessary.

36. This Court shall retain jurisdiction of all matters arising out of, or related to, the Bankruptcy Case and the Plan to the extent provided in the Plan and this Confirmation and Sale Order.

37. The failure to specifically include any particular provision of the Plan in this Confirmation and Sale Order shall not diminish or impair the efficacy of such provision, it being understood that the intent of this Court is that the Plan be confirmed and approved in its entirety.

38. This Confirmation Order shall be, and hereby is, deemed recordable in form and any and all recording authorities are directed to accept this Confirmation and Sale Order for filing.



Hon. William C. Hillman, 04/21/2015
United States Bankruptcy Judge

Dated: April 21, 2015

687602

EXHIBIT A

NOTICE OF CONFIRMATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re:

HERRING CREEK ACQUISITION
COMPANY, LLC,

Debtor.

Chapter 11

Case No. 14-15309-WCH

**NOTICE OF (A) CONFIRMATION OF PLAN OF REORGANIZATION OF HERRING
CREEK ACQUISITION COMPANY, LLC, (B) EFFECTIVE DATE, AND (C)
DEADLINES FOR FILING ADMINISTRATIVE EXPENSE CLAIMS, PROFESSIONAL
FEE CLAIMS, AND CERTAIN LEASE AND CONTRACT REJECTION CLAIMS**

PLEASE TAKE NOTICE THAT:

1. *Confirmation of Plan.* By order dated April __, 2015 (the “Order”), the United States Bankruptcy Court for the District of Massachusetts (the “Court”) confirmed the *Plan of Reorganization of Herring Creek Acquisition Company, LLC* (the “Plan”). The Order is available for inspection at the Office of the Clerk, United States Bankruptcy Court for the District of Massachusetts (Eastern Division), 5 Post Office Square, Suite 1150, Boston, Massachusetts 02109, and/or copies of the Order may be obtained upon request to the Debtor’s counsel, Murphy & King, Professional Corporation, One Beacon Street, 21st Floor, Boston, Massachusetts, Attn: D. Ethan Jeffery, Esq., Email: EJeffery@murphyking.com.

2. *Effective Date; Distribution.* The Debtor (as defined in the Plan) has established _____, 2015, as the effective date of the Plan (the “Effective Date”). Creditors holding Allowed Claims or Equity Interests against the Debtor’s estate as of February 27, 2015, which is the distribution record date for purposes of the Plan, will be entitled to receive Distributions in accordance with the terms of the Plan.

3. *Administrative Expense Claim Bar Date.* In accordance with Paragraph 3 of the Order, any and all applications for reimbursement of expenses incurred before the Effective Date and all other requests or claims for payment of Administrative Expense Claims incurred before the Effective Date under Section 507(a)(1) or 507(b) of the Bankruptcy Code other than the Professional Fee Claims, shall be filed with the Bankruptcy Court on or before thirty (30) days after the Effective Date, *i.e.*, _____, 2015, (the “Administrative Expense Claim Bar Date”) and must be the subject of a request filed with the Clerk, Office of the Clerk, United States Bankruptcy Court for the District of Massachusetts (Eastern Division), 5 Post Office Square, Suite 1150, Boston, Massachusetts 02109, and served upon the undersigned counsel to the Debtor so as to be received by the Administrative Expense Claim Bar Date. Any request for payment of an Administrative Expense Claim that is subject to the Administrative Expense Claim Bar Date and that is not filed and served on or before the Administrative Expense Claim Bar Date shall be forever barred; any party that seeks payment of Administrative Expense Claim and that (i) is required to file a request for payment of

such Administrative Expense Claim and (ii) does not file and serve such a request by the deadline established herein shall be forever barred from asserting such Administrative Expense Claim against the Debtor, the Reorganized Debtor, the Debtor's estate or any of their respective properties.

4. Professional Fee Claims. In accordance with Paragraph 4 of the Order, all applications for final compensation and reimbursement of Professional Fee Claims incurred before the Effective Date shall be filed on or before sixty (60) days after the Effective Date, *i.e.*, _____, 2015, (the "Professional Fee Claim Bar Date"), unless otherwise ordered by the Court, and must be filed with the Clerk, Office of the Clerk, United States Bankruptcy Court for the District of Massachusetts (Eastern Division), 5 Post Office Square, Suite 1150, Boston, Massachusetts 02109, and served upon the undersigned counsel to the Debtor, so as to be received by the Professional Fee Claim Bar Date.

5. Contract/Lease Rejection Claims. All Claims arising from the rejection of executory contracts or unexpired leases under the Plan must be filed with the Clerk, Office of the Clerk, United States Bankruptcy Court for the District of Massachusetts (Eastern Division), 5 Post Office Square, Suite 1150, Boston, Massachusetts 02109, and served upon the undersigned counsel to the Debtor on or before thirty (30) days following the earlier to occur of: (i) the rejection of such executory contract or unexpired lease or (ii) the Effective Date. Any such Rejection Claim that is not filed and served within such time shall be forever barred, and shall not share in any Distributions under the Plan. The Reorganized Debtor shall have the right to object to any such Rejection Claim.

Respectfully Submitted
HERRING CREEK ACQUISITION
COMPANY, LLC
By its attorneys,

/s/ _____
D. Ethan Jeffery (BBO #631941)
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DATED: _____, 2015