

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re:

AGAWAM HUNT, LLC
Debtor-In-Possession

BK 17-10056
CHAPTER 11

**PROPOSED CONSENT ORDER (I) AUTHORIZING USE OF CERTAIN CASH
COLLATERAL POSTPETITION (II) PROVIDING ADEQUATE PROTECTION TO
PREPETITION SECURED PARTY AND (III) MODIFYING
THE AUTOMATIC STAY**

Upon the consent motion (the "Motion"), filed by Agawam Hunt, LLC, as debtor and debtor in possession, the "Debtor") and New Agawam, LLC ("LLC") for entry of an order (the "Order") authorizing the use of LLC's cash collateral (as defined below) pursuant to section 363 of title 11 of the United State Code (the "Bankruptcy Code") on an interim basis and in limited amounts pending a final hearing on the Motion (the "Final Hearing"), granting LLC, the Debtor's secured lender, adequate protection including modification of the automatic stay pursuant to Bankruptcy Code section 361, 362, 363 and 507; and in accordance with Rule 4001 (b) (2) and (d) (3) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") requesting that this Court schedule the Final Hearing and approve notice with respect thereto and an order granting the relief requested in the Motion on a final basis (the "Final Order"); with the consent of LLC and the Court having considered the Motion, including, without limitation, the Budget (as hereinafter defined); and upon all of the pleadings previously filed with the Court and all of the proceedings previously held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefore, and no objections having been filed, the Court entered a Final Order on February 6, 2017 (Doc No. 41). The Order authorized the Debtor's use of Bank Rhode Island ("Bank") Cash Collateral through March 8, 2017. The Bank subsequently agreed and the Court approved the Debtor's continued use of Bank's Cash

Collateral on several occasions through May 20, 2017 (Doc. 71), subject to certain terms and conditions as set forth in several prior orders. The Debtor and LLC subsequently entered into a series of consent orders to use LLC's cash collateral, approved by the Court, granting use through December 15, 2017, and

THE COURT HEREBY FINDS THAT:¹

A. Petition Date. On January 13, 2017 (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 Rhode Island (the "Chapter 11 Case").

B. Debtor in Possession. The Debtor is continuing in the management and operation of its business and property as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. § 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a "core proceeding" under 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Case appears proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Trustee or Examiner. No request has been made for the appointment of a trustee or examiner.

E. Notice. Notice of the Final Hearing and the relief requested in the Motion has been given to: (i) the United States Trustee for the District of Rhode Island (the "U.S. Trustee"); (ii) those parties listed on the Debtor's respective List of Creditors Holding the 20 Largest Unsecured Claims; (iii) counsel to LLC, Richard Land, Esq.; (iv) the City of East Providence, Rhode Island ("EP"); (vi) any party asserting a lien against any of the Debtor's assets; (vii) the

¹ The findings of fact and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

Internal Revenue Service; and (viii) those parties who have entered their appearance in the case pursuant to Rule 2002. Given the nature of the relief sought, this Court concludes that sufficient and adequate notice of the original Motion, the relief requested therein and the Order had been given pursuant to Bankruptcy Rules 2002, 4001(b) and (d) and 9014 and section 102(1) of the Bankruptcy Code as required by section 361 and 363 of the Bankruptcy Code, and that no further notice of, or hearing on, the relief sought in the Motion and the relief granted herein is necessary or required.

F. Prepetition Documents. 1. LLC and the Debtor agree that the Debtor is indebted to LLC pursuant to the following loan and security documents:

On or about June 30, 2004 BRI extended a secured construction loan to the Debtor in the original principal amount of Four Million (\$4,000,000.00) Dollars (the "Construction Loan") and a Four Hundred Twenty Five Thousand (\$425,000.00) Dollars Line of Credit (the "Line"). The Construction Loan and the Line are evidenced by those certain promissory notes in the principal amounts of \$4,000,000.00 and \$425,000.00 ("Notes"). As security for the Notes, the Debtor executed and delivered to BRI: 1) a mortgage dated June 25, 2009 ("Mortgage"); 2) a security agreement dated June 25, 2009 ("Security Agreement") and 3) a Collateral Assignment of Leases and Rents dated June 25, 2009 ("Assignment"). The Mortgage was duly recorded in the land evidence records of the City of East Providence. The Debtor executed and delivered to BRI modification documents on February 24, 2016, inter alia, extending the maturity dates of the Construction Loan and the Line. BRI also filed UCC Financing Statements and Continuation Statements at the office of the Rhode Island Secretary of State to perfect its security interest in the Debtor's personal property. The Notes, Mortgage, Security Agreement, Assignment and

related documents were sometimes hereinafter collectively referred to as the “BRI Loan Documents”.

The balance due under the Construction Loan as of July 13, 2016 was \$3,005,140.19 plus interest, fees and costs. The balance due under the Line as of July 13, 2016 was \$237,187.62, plus interest, fees and costs, for a total due BRI as of July 13, 2016 of \$3,226,125.39.

G. LLC closed on a purchase of the BRI Loan Documents on May 12, 2017. Debtor is advised by Bank and LLC that LLC is the current holder in due course of the BRI Loan Documents.

H. LLC has also recently purchased the EP claims.

I. Prepetition Liens and Collateral. LLC and the Debtor agree that as more fully set forth in the BRI Loan Documents prior to the Petition Date, as security for the BRI Prepetition Obligations, BRI was the holder of a duly perfected first-priority security interest in and lien upon substantially all of the Debtor’s assets (not including certain excluded purchase money assets) (collectively, the “BRI Prepetition Liens”), including but not limited to, the Cash Collateral (collectively, the “BRI Prepetition Collateral”). LLC is now the holder of the BRI Loan Documents and the BRI Prepetition (hereinafter called the “LLC Prepetition Liens” and “LLC Prepetition Collateral”). Except as set forth, nothing contained herein shall constitute a determination by the Court as to the validity and/or priority of the LLC Prepetition Liens.

J. Cash Collateral. For purposes of the prior Cash Collateral Orders and this Order, “Cash Collateral” of LLC has the meaning set forth in § 363(a) of the Bankruptcy Code and includes (a) all funds of the Debtor (including any funds subject to a right of setoff in favor of the LLC, any funds on deposit or maintained in any account, and any proceeds of the LLC Prepetition Collateral) as of the Petition Date; (b) all cash proceeds of the LLC Prepetition

Collateral received after the Petition Date; and (c) all cash arising from the operation of the LLC Prepetition Collateral.

K. Adequate Protection. LLC is entitled to receive adequate protection to the extent of any diminution in value of its interest in the LLC Prepetition Collateral, resulting from the use, consumption or shrinkage of the LLC Prepetition Collateral (the “Diminution in Value”), pursuant to sections 361, 362 and 363 of the Bankruptcy Code.

L. Use of Cash Collateral. Unless otherwise ordered by this Court, after notice and a hearing, the Debtor’s continuing use of the LLC Cash Collateral shall be solely upon the protections, terms and conditions provided for in this Order.

M. Good Faith. Based on the record before the Court, the terms of the use of the LLC Cash Collateral as provided in this Order have been negotiated at arms’ length and in “good faith” as that term is used in § 363(m) of the Bankruptcy Code and are in the best interests of the Debtor, its estate and creditors. LLC is permitting the use of its Cash Collateral in good faith and LLC is entitled to the benefits of the provisions of § 363(m) of the Bankruptcy Code.

Based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect to the Motion, and good and sufficient cause appearing therefore,

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Use of Cash Collateral. The use of LLC Cash Collateral, pursuant to Bankruptcy Code section 363(c)(2)(A) as set forth herein, is authorized and subject to the terms of this order through January 31, 2018.

2. Authorization for the Use of LLC Cash Collateral; Prior Payroll Orders and Budget Restraints. Subject to the terms and conditions of the previously issued Orders to use Cash Collateral, the Debtor is authorized to use the LLC Cash Collateral solely and exclusively

for the disbursements set forth in the budget attached hereto as Exhibit 1 (the “Budget”) for the period of time from December 16, 2017 until the earlier to occur of (a) January 31, 2018; or (b) the occurrence and continuation of a “Termination Event.” A Termination Event shall constitute any of the following:

- (a) the Chapter 11 Case shall be dismissed or converted to a case under Chapter 7 of Bankruptcy Code or the Debtor shall file a motion or other pleading seeking the dismissal of the Chapter 11 Case pursuant to § 1112 of the Bankruptcy Code or otherwise; or
- (b) a Trustee under Chapter 11 of the Bankruptcy Code, a responsible officer, or an Examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in § 1106(a)(3) and (4) of the Bankruptcy Code) under § 1106(b) of the Bankruptcy Code shall be appointed or elected in the Chapter 11 Case.

3. The Debtor’s authority to use the LLC’s Cash Collateral shall continue through January 31, 2018 or upon entry of an order by the Court after Emergency Hearing, upon the occurrence of any of the hereinafter defined “Events of Default.” Notwithstanding anything herein or the occurrence of an Event of Default, all of the rights, remedies, benefits and protections provided to LLC under this order shall survive the entry of any order terminating this order. Notwithstanding termination of the authority to use LLC’s Cash Collateral, the Debtor is authorized to use LLC’s Cash Collateral to pay any expenses incurred prior to such termination so long as the same were incurred in the ordinary course of business and in accordance with the Budget attached hereto. An Event of Default shall constitute any of the following:

- (a) the Debtor shall fail to comply with any of the terms or conditions of this order and shall fail to cure such failure within five (5) business days after receiving written notice from LLC;
- (b) the Debtor shall seek any modification or extension of this order without the prior written consent of LLC and an order shall be entered, other than with the consent of LLC, reversing, amending, supplementing, staying, vacating or otherwise modifying this order in any material respect or terminating the use of LLC’s Cash Collateral by the Debtor pursuant to this order;

- (c) an application shall be filed by the Debtor for approval to incur debt to third parties, other than unsecured credit in the ordinary course of business, and an order shall be entered authorizing such application; or
- (d) the Debtor shall fail to pay to EP on the 30th day of each calendar month, one twelfth of the current annual real estate taxes due to EP for the Debtor's property located at 15 Roger Williams Avenue, Rumford, Rhode Island ("AH Property") along with one twelfth of the current annual water and sewer charges plus an amount equal to the monthly interest accruing and all unpaid real estate taxes and other municipal charges;
- (e) The Debtor shall fail to pay monthly sales tax to the State of Rhode Island on the last day of each calendar month for the sales tax due for the previous month;
- (f) the loss, theft, damage or destruction of any LLC Prepetition Collateral unless fully covered by insurance;
- (g) the cumulative aggregate cash disbursements exceed one hundred ten percent (110%) of the cumulative aggregate cash disbursements for the period of December 16, 2017 to January 31, 2018 as projected in Exhibit A to this Motion (the "Budget").

provided, however, that LLC may waive in writing any Event of Default.

4. Adequate Protection. LLC is entitled, under § 363(e) of the Bankruptcy Code, to adequate protection of its interest in the Prepetition Collateral, including all Cash Collateral. LLC has consented to the Debtor's use of LLC's Cash Collateral, subject to and expressly conditioned upon the granting of the following adequate protections (the "Adequate Protection Obligations"), for which the Debtor shall be obligated.

- (a) Payment of Current RE Taxes and Municipal Charges. The Debtor shall pay to EP, by the 30th day of each calendar month, one twelfth of the current annual real estate taxes due to the Town for the AH Property along with (i) one twelfth of the current annual water and sewer charges; and (ii) an amount equal to the monthly interest accruing on all unpaid real estate taxes and other municipal charges.

(b) Post Petition Lien/Replacement Lien. Pursuant to Sections 361 and 363(e) of the Bankruptcy Code, as further adequate protection to LLC, with consent of LLC, for any diminution in value which results from the Debtor's use of Cash Collateral, LLC is hereby granted a post-petition lien and security interest (the "Replacement Lien") on all of the same types of business assets of the estate, whether acquired prior to, concurrently with or after the filing of the petition commencing the Debtor's Chapter 11 case, against which LLC (through BRI's Loan Documents) held security interests and/or liens, as of the Petition Date including, without limitation, all Cash Collateral; provided, however, that no such liens or claims shall attach to any proceeds of any claims or causes of action asserted by the Debtor, an subsequently appointed estate representative, or any trustee for the Debtor, pursuant to Sections 544, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code. LLC's Replacement Lien granted under this Order shall maintain the same priority, validity and enforceability as their respective pre-petition security interest/liens, and shall be valid and perfected without the need for the execution or filing of any further document or instrument otherwise required to be executed or filed under applicable non-bankruptcy law.

(c) To the extent that the adequate protection provided for herein is not sufficient to protect LLC against any diminution in the value of LLC's collateral as a result of Debtor's use thereof, LLC is entitled to the protections provided by Section 507(b) of the Bankruptcy Code.

5. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code (the “Automatic Stay”) shall be modified as necessary to effectuate all of the terms and provisions of this order.

6. Reporting. Commencing on January 15, 2018, and for each month thereafter, the Debtor shall provide LLC and the United States Trustee with (a) an actual-to-budget report for the prior month period; and (b) an aged report of accounts receivable and post-petition accounts payable.

7. Payment Notification. The Debtor shall provide to counsel for LLC, by the 30th of each calendar month, proof of Debtor’s payment of real estate taxes and municipal charges and interest paid on account of unpaid real estate taxes, other unpaid municipal charges and sales tax paid for each prior calendar month.

8. All Acts. The Debtor is authorized to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this order and the transactions contemplated hereby.

9. Rights Preserved. Notwithstanding anything herein to the contrary but subject to paragraph 10, below, the entry of this order is without prejudice to, and does not constitute a waiver of any of the rights of LLC or the Debtor under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of the Chapter 11 Case, conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans. Other than

as expressly set forth in this Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of LLC or the Debtor are preserved.

10. Claims Objection. Debtor had previously reviewed Bank's claim and has no objection to either Bank's claim or LLC's claim. LLC's security interest and lien in the pre-petition collateral is valid, binding, allowed and in full force and effect with respect to all parties in this proceeding including without limitation the Debtor, any Chapter 11 Trustee and any Chapter 7 Trustee appointed hereafter, as a fully perfected, allowed secured claim pursuant to Section 506(a) and (b) of the Bankruptcy Code, subject only to the right to seek a determination of the value of the pre-petition collateral as of the Petition Date and whether LLC is entitled to post-petition interest, fees and costs pursuant to Section 506(b). No Committee has been appointed. There has been no determination of the value of LLC's pre-petition collateral to date.

11. No Waiver by Failure to Seek Relief. The failure of LLC to seek relief or otherwise exercise its rights and remedies under this order, the LLC Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of LLC.

12. Binding Effect of Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Order shall become valid and binding upon and inure to the benefit of the Debtor, LLC and all other creditors of any of the Debtor, any Court-appointed committee appointed in the Chapter 11 Case, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Chapter 11 Case.

13. No Modification of Order. Any liens or claims granted to LLC hereunder arising prior to the effective date of any such modification, amendment or vacatur of this order shall be

governed in all respects by the original provisions of this order, including entitlement to all rights, remedies, privileges and benefits granted herein.

14. Survival. The provisions of this order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (b) dismissing the Chapter 11 Case or any successor case; (c) discharging the Debtor; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Case or successor case. The terms and provisions of this Order shall continue in the Chapter 11 Case, in any successor case, or following dismissal of the Chapter 11 Case or any Successor case, and shall maintain their priority as provided by this Order until the indefeasible payment in full of all LLC Prepetition Secured Obligations, notwithstanding the expiration of the Specified Period or any earlier termination of the Debtor's authorization to the continued use of Cash Collateral.

15. Notwithstanding anything herein to the contrary, LLC objects to the continued use of any of the Cash Collateral and nothing contained in or contemplated by this order shall be deemed a consent to such use, directly or indirectly by the Debtor, any Committee or any other person or entity to (A) object, contest, or raise any defense to the validity, perfection, priority, extent or enforceability of the LLC Prepetition Obligations or the LLC Prepetition Liens; (B) assert or prosecute any claims and defenses against LLC on account of the LLC Prepetition Obligations, or its respective predecessors-in-interest, agents, affiliates, representatives, attorneys or advisors; (C) obtain Liens that are senior to, or on parity with the Liens or Adequate Protection Liens of LLC in the Collateral or any portion thereof; or (D) seek or obtain Liens on any avoidance actions against LLC.

16. Effect of this order. This order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon execution hereof.

17. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this order according to its terms.

ORDER: *Diane Finkle* 12/26/2017 ENTER: PR

Dated: 12/26/17

Assented to:

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