UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

IN RE:	:	CHAPTER 7
	:	
PIKE NURSERY HOLDING, LLC,	:	CASE NUMBER: 07-79129
	:	
Debtor.		

TRUSTEE'S SUPPLEMENTAL APPLICATION FOR APPROVAL OF EMPLOYMENT OF BENNETT THRASHER PC

COMES NOW the Chapter 7 Trustee for Pike Nursery Holding, LLC, Marcus A. Watson, Sr. ('Trustee'), and files this supplement to his prior Application seeking approval of his employment of Bennett Thrasher PC ('Bennett Thrasher') to prepare the bankruptcy estate's 2012 and 2013 federal and state tax returns. The Trustee shows as follows:

- 1. On November 14, 2007 (the 'Petition Date'), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
- 2. On March 17, 2008, the Court entered an Order Directing the United States Trustee to Appoint Chapter 11 Trustee in this bankruptcy case. On March 19, 2008, the Court approved the United States Trustee's appointment of Marcus A. Watson, Sr. as the Chapter 11 Trustee for the Debtor.
- 3. On March 24, 2008, the Court converted the case to Chapter 7 and Marcus A. Watson, Sr. was appointed as Chapter 7 Trustee.

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- 4. On April 10, 2009, the Trustee filed an Application for Approval of Employment of Bennett Thrasher (Bennett Application) to prepare the Estate's federal and state income tax returns. [Docket No. 680] The Court granted the Bennett Application pursuant to the Order Granting Trustee's Application for Approval of Employment of Bennett Thrasher PC as Accountants entered on May 1, 2009. [Docket No. 683] On April 19, 2010, the Trustee filed a Supplemental Application for Approval of Employment of Bennett Thrasher, PC to continue to provide tax preparation services for 2009. [Docket No. 880.] On April 22, 2010, the Court granted the supplemental application pursuant to the Order Granting trustee's Supplemental Application to Employ Bennett Thrasher, PC as Accountants. [Docket No. 881.] On June 28, 2012, the Trustee filed a Supplemental Application for Approval of Employment of Bennett Thrasher, PC to provide tax preparation services for 2010, 2011 and 2012. [Docket No. 1376.] On June 29, 2012, the Court granted the Order Granting Trustee's Supplemental Application to Employ Bennett Thrasher, PC as Accountants. [Docket No. 1377.]
- 5. The Trustee previously reached an agreement for the preparation of the 2012 state and federal income tax returns for a flat rate of \$2400. When Bennett Thrasher began the preparation, it agreed to reduce the flat rate for \$2400 to \$1200 and to also prepare the 2013 state and federal income tax returns for the

same flat rate. The agreement between the Trustee and Bennett Thrasher for the flat rate of \$1200 is attached hereto as **Exhibit "A"**. The Trustee requests that he be permitted to pay the flat rate agreed upon after the completion of the tax returns for the applicable year and receipt of the invoice from Bennett Thrasher without further application to the Court. As the retention is for a set rate of \$1200, the Court and interested parties do not need to further consider the reasonableness of the compensation.

- 6. The Trustee shows that it remains necessary to employ Bennett Thrasher to prepare the tax returns for the Estate.
- 7. The proposed flat rate for the preparation of the tax returns is fair and reasonable for the preparation of the final income tax returns and related services.
- 8. Bennett Thrasher remains a disinterested party as contemplated by 11 U.S.C. § 101(14). Other than as disclosed in Rule 2014 Verification and Disclosure with Regard to Employment of Bennett Thrasher, P.C. filed with the Bennett Application and in this supplement, Bennett Thrasher continues to represent no interest adverse to the Debtor or the Trustee as to matters upon which it is to be engaged.

WHEREFORE, the Trustee prays that the Court enter an Order authorizing the continued employment of Bennett Thrasher & Company, LLC to prepare the

bankruptcy estate's 2012 and 2013 federal and state income tax returns pursuant to the agreement attached hereto as **Exhibit "A"**. The Trustee further requests that the Court authorize him to pay the flat rate agreed upon after the completion of the tax returns for the applicable year and receipt of the invoice from Bennett Thrasher without further application to the Court.

This 6th day of May, 2013.

/s/ John A. Christy
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EXHIBIT A

March 19, 2013

Mr. Marc Watson Pike Nursery Holding, LLC

Dear Marc:

We are members of the American Institute of Certified Public Accountants Division for CPA Firms and as part of our commitment to quality service, our firm's policy requires us to obtain a signed engagement letter for the preparation of income tax returns. The purpose of this letter is to clarify the scope of our engagement and to avoid any misunderstanding as to the tax return preparation services we provide. This is an <u>important</u> procedure and your signed response will be requested at the end of this letter to acknowledge your agreement with the terms and conditions included herein, before we begin our services. We will perform our services in accordance with the Statements on Standards for Tax Services issued by the American Institute of Certified Public Accountants.

From the information you provide to us, we will prepare your federal and state partnership income tax returns as listed on Exhibit 1. We will not prepare any tax returns except those identified in the Exhibit without your written authorization to do so.

As part of this engagement, we may provide limited consulting services that may arise to advise you, orally or in writing, on tax issues that may arise during the tax return preparation process. If such matters are of a nature that we believe a separate engagement letter is appropriate, then we will issue a separate engagement letter to confirm the scope and related terms of that engagement. You should always advise us <u>in advance</u> of any proposed tax transactions to avoid unexpected tax consequences.

Our fees for the services set forth in this letter will be computed at our current standard rates plus out-of-pocket expenses and will be billed monthly as the work progresses. Our fees for any tax advisory services covered by this engagement will be based on the actual time required of the individuals who will be performing the services, and will be based on our standard hourly rates.

Beginning this year, we will be transmitting an electronic copy of your tax return through our secure portal and we will not be printing a paper copy of your tax return. If you would like to receive a paper copy of your tax return, then please notify us. If you have not created your login and password for our secure portal, then please contact your tax advisor at (770) 396-2200.

Please review the attached **Terms and Conditions** as they are an integral part of this engagement letter and by signing this letter you are agreeing to those terms and conditions.

A PROFESSIONAL CORPORATION OF CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

One Overton Park 3625 Cumberland Boulevard Suite 1000 Atlanta, Georgia 30339 phone 770.396.2200 fax 770.390.0394 www.btcpa.net



If you are in agreement with the terms of this letter and attachment, then please sign one copy and return it to us for our files. It is our policy to initiate services only after we receive the signed copy of this engagement letter from you. We appreciate the opportunity to provide these services for you.

Yours very truly, .

Bernest Husher PC

The foregoing letter fully describes our understanding and is accepted by us.

ien Representative Title



TERMS AND CONDITIONS

Timing and Tax Return Extensions

The original filing due date for your partnership income tax returns is April 15, 2013. It may become necessary to apply for extensions of time to file the return(s) listed on Exhibit 1 if there are unresolved tax issues or delays in processing, or if we do not receive all of the necessary information from you on a timely basis. Applying for an extension of time to file may extend the time available for a government agency to undertake an audit of your return or may extend the statute of limitations. All taxes owed are due by the original filing due date. Additionally, extensions may affect your liability for penalties and interest or compliance with government or other deadlines. We are available to discuss this matter with you at your request at our regular hourly fee should the need arise. We are not responsible for any taxes, penalties or interest attributed to underpayments as of the due date.

We expect to begin the preparation of your returns upon receipt of all 2012 tax documents requested by our office. Our services will be concluded upon delivery to you of your 2012 tax returns for your review and filing (or e-filing) with the appropriate taxing authorities.

State Tax Filings and Nexus

Please note that a taxable presence (e.g., an employee or any tangible property owned or rented within the state) in a state not listed may subject an entity to state and local income or franchise tax in that state or locality. It is your obligation to notify Bennett Thrasher, PC if assistance is needed to determine whether your company or companies may be liable for state income or franchise tax or if a filing requirement in states not listed on Exhibit 1 exists. You are responsible for determining your state or local tax filing obligations with any state or local tax authorities, including, but not limited to, income, franchise, sales, use, payroll and property taxes. You agree that we have no responsibility to research these obligations or to inform you of them. If it comes to our attention that you may have an obligation to file additional income tax returns, then we will notify you of this in writing and ask you to contact us. If you ask us to prepare these returns, then we will confirm this in a letter and detail the additional charges for this service.

Scope, Retention and Review

We will retain, as part of our files, any information which we deem necessary that you provide to us for use in preparing your income tax returns. However, all original documents will be returned to you and we may retain copies. Our work in connection with the preparation of your income tax returns does not include any procedures designed to discover defalcations or other irregularities, should any exist.



As tax preparers, we are not required to apply procedures to document or to substantiate any information you furnish to us; further, we will not audit or otherwise verify the data you submit although we may ask you to clarify some of it or furnish us with additional data.

You confirm that you will furnish us with the necessary information required for preparing the returns on a timely basis. We may deem it necessary to provide you with accounting and bookkeeping assistance solely for the purpose of preparing the income tax returns. We will request your approval before rendering these services. If you provide us with general ledger or account information, then you will notify us if you make any subsequent changes.

The tax returns and other information we provide to you are not intended for third-party use, either to obtain credit or for any other purpose. As a result, you agree to indemnify and hold our firm and any of its partners, principals, shareholders, officers, directors, members, employees, agents or assigns harmless with respect to any and all claims arising from the use of the tax returns for any purpose other than filing with the IRS and state and local tax authorities regardless of the nature of the claim, including the negligence of any party.

Unless we are otherwise advised, you are responsible for confirming that personal expenses, if any, are segregated from business expenses and expenses such as meals, travel, entertainment, vehicle use, gifts and related expenses, are supported by necessary records required by the IRS and other taxing authorities. At your request, we are available to answer your questions and advise you on the types of supporting records required.

We are not responsible for taxing authorities' disallowance of doubtful deductions or deductions unsupported by required documentation, and any taxes, penalties or interest that result. You authorize us to use our professional judgment in evaluating the best tax return treatment for your information.

It is your responsibility to inform us if you directly or indirectly hold any interest or signatory authority in any assets located in a foreign country. Include any interests you may have in foreign pension plans, deferred compensation plans, estates, trusts, partnerships or other foreign entities. Based on the information which you provide, this information will be used to calculate any applicable foreign tax credits. We will also use this data to inform you of any additional filing requirements, which may include Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). Failure to file required forms can result in the imposition of both civil and criminal penalties, which can be significant. These are not tax returns and their preparation is not within the scope of this engagement. If you ask us to prepare these forms, then we will confirm this in a separate engagement letter and delineate the additional charges for this service.



When records are returned to you, it is your responsibility to retain and protect your records for possible future use, including potential examination by any government or regulatory agencies. It is our policy to keep records related to this engagement for seven (7) years. It is our policy to destroy any records, including tax returns, which are retained after a period of seven years.

Whenever we are aware that a possibly applicable tax law is unclear or that there are conflicting interpretations of the law by authorities (e.g., tax agencies and courts), we will explain the possible positions that may be taken on your return. We will follow whatever position you request on your return so long as it is consistent with the Internal Revenue Code and regulations and interpretations that have been promulgated. If any taxing authority should later contest the position taken, then there may be an assessment of additional tax plus interest and penalties. We assume no liability for any such additional penalties or assessments.

We reserve the right to withdraw from this engagement without preparing your income tax returns in the event you disagree with our recommendations regarding tax return filing and reporting obligations, tax return positions to be taken, or disclosures to be made in the returns. Our engagement does not include tax-planning services, which are available as a separate engagement. During the course of preparing the tax returns identified above, we may bring to your attention certain available tax saving strategies for you to consider as possible means of reducing your income taxes in subsequent tax years. However, we have no responsibility to do so, and will take no action with respect to any such recommendations, as the responsibility for implementation remains with you, the taxpayer.

This engagement does not include responding to inquiries by any governmental agency or tax authority. If your tax return is selected for examination or audit, then you may request that we assist you in responding to such inquiry. In that event, we would be pleased to discuss providing assistance to you under the terms of a separate engagement letter for that specific purpose.

Management is responsible for the proper recording of transactions in the books of accounts, for the safeguarding of assets, and for the substantial accuracy of the financial records. You have the final responsibility for your income tax returns and, therefore, you should review them carefully before you sign and file them.

If you provide our firm with copies of brokerage (or investment advisory) statements, then we will use the information from these statements solely in connection with the preparation of your income tax returns. We will rely on the accuracy of the information provided in the statements and will not undertake any action to verify this information. We will not monitor investment activity, provide investment advice, or supervise the actions of the entity or individuals performing investment activities on your behalf. We recommend you review all brokerage (or investment advisory) statements promptly and carefully, and direct any questions regarding activities on your account to your broker (or investment advisor).



This engagement does not include any services not specifically identified in this letter. You agree that you will not and are not entitled to rely on any advice unless it is provided in writing. Additional services you may request will be subject to arrangements made at the time requested. In the absence of any other written communication from us documenting such additional services, our services will continue to be governed by the terms of this engagement letter.

You are responsible for complying with any other country's reporting requirements. We have no responsibility to discuss these issues with you. If you have specific questions regarding your tax filing obligations, then please contact us to schedule an appointment to discuss your concerns.

If you wish to take a tax position based on the advice of another tax advisor, you agree to obtain a written statement from the advisor confirming that the position should meet the substantial authority, or "more likely than not", standards, as applicable. To the extent a position is based on the advice of another tax advisor, prior to preparing or signing the tax return, the American Institute of Certified Public Accountants Statements on Standards for Tax Services Section 100 requires our firm to have a good faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits, if challenged. You agree to pay additional charges incurred to perform required research.

This engagement letter will apply to the preparation of the income tax returns as listed in Exhibit 1 unless either party terminates this agreement.

Possible Understatement Penalties and Disclosures

The tax laws provide various penalties that may be imposed when taxpayers understate their tax liability. If you would like information on the amount or circumstances of these penalties, then please contact us.

Recent tax law changes have equalized the level of support and authority for tax positions taken by both taxpayers and tax preparers to a "substantial authority" standard in order to avoid possible penalties for understatement of tax. A higher "more likely than not" standard applies to any item which is considered to be a tax shelter. We will assume that the information that you submit to us will meet the substantial authority standard (or the more likely than not standard, if a tax shelter item), unless we are notified or unless we discover information to the contrary while preparing your return(s).

If the information you supply to us does not meet the substantial authority standard (or the higher, more likely than not standard in the case of a tax shelter item), then we will be advising you to disclose such a position so as to minimize possible penalties in the event of an understatement of tax. If you refuse to disclose a position that, in our professional opinion, would be appropriate and necessary to minimize potential penalties, then we reserve the right



to stop work and we shall not be liable to you for any claims or damages that occur as a result of our ceasing to render services.

Electronic Data Communication and Storage and Use of Third Party Service Provider

In the interest of facilitating our services to your company, we may communicate by facsimile transmission, send data over the Internet, store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data that is confidential to your company may be transmitted or stored using these methods. We may use third-party service providers to store or transmit this data, such as providers of tax return preparation software. In using these data communication and storage methods, our firm employs measures designed to maintain data security. We use reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. We also require all of our third-party vendors to do the same.

You recognize and accept that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors. You consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

Professional Fees

Invoices are due and payable upon receipt by you. Billings become delinquent if not paid within thirty (30) days of the invoice date. No work will be resumed until your account is paid in full. If billings are not paid within 30 days of the invoice date, at our election, then we will stop all work until your account is brought current, or we will withdraw from this engagement. You acknowledge and agree that we are not required to continue work in the event of your failure to pay on a timely basis for services rendered as required by this engagement letter. You further acknowledge and agree that in the event we stop work or withdraw from this engagement as a result of your failure to pay on a timely basis for services rendered as required by this engagement letter, we shall not be liable to you for any damages (including, but not limited to consequential, indirect, lost profits, or punitive damages) that occur as a result of our ceasing to render services.

Services that were requested in the PBC (prepared by client) package and were performed by our staff are not included in the engagement and will be billed separately in addition to the tax return fee.

Any fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the preparation of the income tax returns.



Confidentiality of Information

As your CPA, we collect information provided by you from your electronic data, worksheets, documents, and discussions as well as information that we develop as part of this engagement. We are required to keep all information about our engagement confidential, so we will not disclose any information about you unless we have your approval or unless we are otherwise required pursuant to professional standards, statutory or regulatory authority, or court order. This applies even if you are no longer a client. We are committed to the safekeeping of your confidential information and we maintain physical, electronic, and procedural safeguards to protect your information.

Federal and some State laws have extended a privilege to some, but not all, communications between a client and the client's CPA. Generally, the privilege is limited to non-criminal tax matters. Communications solely concerning the preparation of a tax return will not be privileged.

In addition, your confidentiality privilege can be inadvertently waived if you discuss the contents of any privileged communication with a third party, such as a lending institution, a friend, or a business associate. We recommend that you contact us or legal counsel before releasing any privileged information to a third party. As a company, you need to be especially careful about privileged communications. If a communication is made in the presence of a corporate employee who is not authorized to act or speak for the corporation in relation to the communication's subject matter, then the communication may be deemed to be made in the presence of a third party and any privilege may be waived.

If we are asked to disclose any privileged communication, unless we are required to disclose the communication by law, then we will not provide such disclosure until you have had an opportunity to argue that the communication is privileged. You agree to pay any and all reasonable expenses that we incur, including legal fees, that are a result of attempts to protect any communication as privileged.

Limitation of Liability

Neither you nor Bennett Thrasher shall be liable to the other for any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the engagement letter except to the extent of the current annual amount of fees paid or owing to Bennett Thrasher for services rendered by Bennett Thrasher under the engagement letter. In no event shall either party be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs) except to the extent of the current annual amount of fees paid or owing to Bennett Thrasher for services rendered by Bennett Thrasher under the engagement letter. The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort or otherwise.



Dispute Resolution

In the unlikely event that a dispute arises, we believe that most disagreements can be resolved to mutual satisfaction in a friendly, non-threatening environment. While we do not expect there to be any problems whatsoever with our relationship, misunderstandings can occur. Therefore, we agree that any dispute arising under this agreement (including the scope, nature and quality of services to be performed by us, our fees and other terms of the engagement) shall be submitted to mediation. A competent and impartial third party, acceptable to both parties, shall be appointed to mediate, and each disputing party shall pay an equal percentage of the mediator's fees and expenses. No suit or arbitration proceeding shall be commenced under this agreement until at least 60 days after the mediator's first meeting with the involved parties. If the dispute requires litigation, we agree that the situs of the litigation shall be Cobb County, Georgia, and the court shall be authorized to impose all defense costs against any non-prevailing party found not to have participated in the mediation process in good faith.

You and Bennett Thrasher both agree that any unresolved dispute over fees charged by Bennett Thrasher will be submitted for resolution by arbitration in accordance with the Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, in the event of a dispute over fees charged by the accountant, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury and instead we are accepting the use of arbitration for resolution.

Termination and Other Terms

Any claim arising out of this Agreement shall be commenced within one year of the delivery of the work product to the client. Any action not brought within that one year time period shall be barred despite any other limitations period set forth by either case law or statute.

We reserve the right to withdraw from this engagement without completing the returns if you fail to comply with the terms of this engagement letter or as we determine professional standards require. If any portion of this agreement is deemed invalid or unenforceable, then said finding shall not operate to invalidate the remainder of the terms set forth in this engagement letter.

These Terms and Conditions are an integral part of this engagement letter.

EXHIBIT 1

Pike Nursery Holding, LLC

Return Preparation Fee

For the tax year ended December 31, 2012

\$1,200

- Form 1065, U.S. Partnership Income Tax Return
- Form 700, Georgia Partnership Income Tax Return

For the tax year ended December 31, 2013

\$1,200

- Form 1065, U.S. Partnership Income Tax Return
- Form 700, Georgia Partnership Income Tax Return

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Trustee's Supplemental Application to Employ Bennett Thrasher PC was served via the ECF system where indicated or by first class United States mail in properly addressed envelopes with sufficient postage affixed thereon to insure delivery upon the parties listed on the Master Service List which is attached hereto as Exhibit "A".

This 6th day of May, 2013.

/s/ J. Carole Thompson Hord
J. Carole Thompson Hord

Schreeder, Wheeler & Flint, LLP 1100 Peachtree Street, N.E. Suite 800 Atlanta, Georgia 30309 Telephone: (404) 681-3450

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CHAPTER 7 MASTER SERVICE LIST

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Internal Revenue Service Centralized Insolvency Operation P. O. Box 21126 Philadelphia, PA 19114

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Commissioner Georgia Department of Labor Sussex Place - Room 600 148 International Blvd., N.E. Atlanta, GA 30303

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