

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

In re:)	Chapter 7
)	
PIKE NURSERY HOLDING LLC,)	Case No. 07-79129-MGD
)	
Debtor.)	Judge Diehl

**EMERGENCY MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT
BETWEEN MARCUS A. WATSON, CHAPTER 7 TRUSTEE OF
PIKE NURSERY HOLDING LLC, AND PNC BANK, NATIONAL ASSOCIATION**

Marcus A. Watson as the Chapter 7 Trustee for Pike Nursery Holding LLC (the “Trustee”) files this Emergency Motion for Approval of Compromise and Settlement Between Marcus A. Watson, as Chapter 7 Trustee of Pike Nursery Holding LLC, and PNC Bank, National Association and respectfully represents the following:

BACKGROUND

1.

On November 14, 2007 (the “Petition Date”), Pike Nursery Holding LLC (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. On March 19, 2008, the Court approved the United States Trustee’s appointment of Marcus A. Watson as the Chapter 11 Trustee for the Debtor.

3.

On March 19, 2008, the Trustee filed the Chapter 11 Trustee’s Motion to Convert Case to Chapter 7 seeking authority to convert the Chapter 11 bankruptcy case to a Chapter 7 case.

4.

On March 24, 2008, the Court entered an order converting the case.

5.

On April 1, 2008, the United States Trustee appointed Marcus A. Watson as interim chapter 7 trustee.

COMPROMISE AND SETTLEMENT

6.

The Trustee and PNC Bank, National Association ("PNC") have agreed, subject to court approval, to enter into a settlement agreement, a copy of which is attached as Exhibit "A" (the "Settlement Agreement") pursuant to which the parties propose to compromise and settle their disputes. A summary of some of the relevant terms are set forth below:

- (i) PNC will reduce its claim by \$150,000.00 (the "Reduced PNC Claim");
- (ii) The Trustee will pay PNC the full amount of the Reduced PNC Claim on or before May 30, 2008;
- (iii) PNC is giving the Trustee and the bankruptcy estate a general release of all of its claims other than the following: (i) claims arising under the Settlement Agreement due to the Trustee's failure to perform his obligations thereunder; (ii) claims arising from that certain Irrevocable Standby Letter of Credit issued by PNC in favor of Carter Lindbergh Retail, L.L.C. in the amount of \$500,000; and (iii) claims arising from PNC incurring attorneys' fees and expenses arising after April 30, 2008.

- (iv) Likewise, the Trustee is giving PNC a general release other than any claim against PNC arising under the Settlement Agreement due to PNC's failure to perform its obligations under the Settlement Agreement; and
- (v) The Settlement Agreement shall be binding on all creditors and parties in interest including the parties' allocation of the settlement amount. Moreover, the settlement shall prevent creditors and parties in interest from seeking to surcharge PNC pursuant to section 506(c) of the Bankruptcy Code.

JUSTICE OAKS' STANDARDS

7.

When deciding whether to approve a proposed settlement, courts consider (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay; and (d) a deference to the reasonable views of creditors. See Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990); In re Carragher, 249 B.R. 817 (Bankr. N.D. Ga. 2000).

a.

Probability of Success

In determining the probability of success in the litigation, courts analyze facts rather than allegations. Carragher, 249 B.R. at 819. Specifically, the Court considers both the explanation and proposed value of a claim. Id. The Trustee asserts that he is entitled to surcharge PNC's collateral for, among other things, unpaid administrative expenses from the chapter 11. PNC maintains that the Trustee cannot surcharge its collateral because, among other things, there is more than enough money to pay PNC's claim in full. Moreover, PNC asserts that, even if the

Trustee could surcharge its collateral, PNC would be entitled to a superpriority claim based on the Final Order (A) Authorizing Debtor in Possession to Obtain Secured Postpetition Financing from PNC with Priority Set Forth Herein, (B) Approving Agreements Relating to the Foregoing; and (C) Granting Related Relief (Docket Entry No. 166) (the “Final PNC Financing Order”).

In addition, the Trustee asserts that PNC is liable to the estate based on the Lender Causes of Action¹ and the Challenge Rights in connection with, among other things, the distribution that the Debtor made to its shareholders as part of the sale/leaseback transaction. PNC denies that it has any such liability. Moreover, PNC has taken the position that it will seek reimbursement of its attorneys’ fees and expenses incurred in defending any lawsuits filed against it by the Trustee.

The parties acknowledge that there is a certain degree of uncertainty regarding the outcome if they were to litigate these issues.

b.

Difficulties in Collection

Issues of collectability are often difficult to gauge.

c.

Complexity of Litigation, Expense, Inconvenience and Delay

The complexity of the litigation, and the expense, inconvenience, and delay involved in litigating the claims involved would be time consuming and very expensive. It is conceivable that, if pursued, litigation expenses/costs would be several hundreds of thousands of dollars for the estate.

¹ Capitalized but undefined terms shall have the meaning ascribed to the Final PNC Financing Order.

d.

Deference to the Reasonable Views of Creditors

The Trustee hopes that creditors will support his business judgment in settling with PNC and anticipates that many of the creditors will.

8.

Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, the Trustee seeks approval of the Settlement Agreement. The Trustee has evaluated the facts, the case law, and the practicalities and believes that the proposed compromise and settlement detailed in the Settlement Agreement is in the best interest of the estate, the Debtor, and its creditors.

Request for Expedited Relief

9.

The Trustee requests that the Court hear this motion on an expedited basis pursuant to BLR 9013-4. The Court is currently scheduled to hear PNC's motion to reconsider the Court's order denying payment to PNC without prejudice at 2:00 p.m. on May 29, 2008. See Docket Entry No. 500. The Trustee requests that the Court hear this motion at the same time. PNC's willingness to settle expressly conditioned on it receiving payment on or before May 30, 2008. Although the Trustee acknowledges that setting the hearing as requested provides short notice, under the circumstances, the Trustee submits that it is in the best interest of the estate.

WHEREFORE, Marcus A. Watson as the Chapter 7 Trustee for Pike Nursery Holding LLC requests that the Court hear this motion on an expedited basis, approve the Settlement Agreement, and grant such other and further relief as is just.

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Special Counsel to the Trustee

Exhibit A

SETTLEMENT AGREEMENT

This settlement agreement (the "Settlement Agreement") is made and entered into as of this 28th day of May, 2008, by and between Marcus A. Watson, in his capacity as the chapter 7 trustee (the "Trustee") for Pike Nursery Holding LLC (the "Debtor"), and PNC Bank, National Association on its own behalf, in its capacity as the DIP Agent,² and on behalf of the all of the DIP Lenders and the Prepetition Lenders (collectively, "PNC").

W I T N E S S E T H:

WHEREAS, on November 14, 2007, the Debtor instituted case number 07-79129-MGD (the "Bankruptcy Case") by filing a voluntary chapter 11 petition under Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court");

WHEREAS, on December 20, 2007, the Bankruptcy Court entered the Final PNC Financing Order;

WHEREAS, on March 17, 2008, the Court entered an Order Directing the United States Trustee to Appoint Chapter 11 Trustee;

WHEREAS, on March 19, 2008, the Court approved the United States Trustee's appointment of Marcus A. Watson as the Chapter 11 Trustee for the Debtor (the "Chapter 11 Trustee");

WHEREAS, on March 19, 2008, the Chapter 11 Trustee filed the Chapter 11 Trustee's Motion to Convert Case to Chapter 7 seeking authority to convert the Chapter 11 bankruptcy case to a Chapter 7 case;

WHEREAS, on March 24, 2008, the Court entered an order converting the case;

WHEREAS, on April 1, 2008, the United States Trustee appointed Marcus A. Watson as interim chapter 7 trustee;

WHEREAS, PNC asserts that it is entitled to immediate payment of all amounts

² Capitalized but undefined terms shall have the meaning ascribed to them in the Final Order (A) Authorizing Debtor in Possession to Obtain Secured Postpetition Financing from PNC with Priority Set Forth Herein, (B) Approving Agreements Relating to the Foregoing; and (C) Granting Related Relief (Docket Entry No. 166) (the "Final PNC Financing Order").

allegedly due under the Final PNC Financing Order;

WHEREAS, the Trustee disputes that PNC is entitled to such immediate payment;

WHEREAS, PNC Bank, National Association represents that it has authority to enter into the Settlement Agreement;

WHEREAS, the Trustee asserts that he is entitled (i) to surcharge PNC's collateral based on Section 506(c) of the Bankruptcy Code and (ii) to recover money from the proceeds of the sales of substantially all of the Debtor's assets notwithstanding PNC's asserted lien and security interest on such proceeds without paying PNC in full based on equitable principles (items (i) and (ii) collectively, the "Surcharge Claim");

WHEREAS, PNC disputes the Surcharge Claim;

WHEREAS, the Trustee also asserts that PNC is liable to the estate based on the Lender Causes of Action and the Challenge Rights;

WHEREAS, PNC disputes that any liability exists under the Lender Causes of Action and the Challenge Rights;

WHEREAS, pursuant to the terms of this Agreement, and in settlement of the disputes set forth herein, PNC has agreed to reduce the amount of its asserted claim by \$150,000.00; and

WHEREAS, in order to avoid the uncertainty inherent in litigation, and the attorneys' fees and other expenses that would be associated with the prosecution and defense of such litigation, and after negotiations and the exchange of information, the Trustee and PNC have agreed to resolve this matter through compromise and settlement, according to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Trustee shall pay to PNC in good funds the total sum of \$_____ (the "Settlement Amount"), on or before May 30, 2008. Said funds shall be made payable to PNC via wire instructions contained in Exhibit A hereto. Time is of the essence and payment on or before May 30, 2008, prior to 3 P.M. (Atlanta Time) is a material term of this Settlement Agreement.

2. Upon PNC's receipt of the Settlement Amount, the Trustee, for himself in his capacity as Trustee and on behalf of the Debtor and its estate, waives, and releases PNC from, any and all claims, causes of actions, suits, debts, obligations, liabilities, demands, losses, costs and expenses (including attorney's fees) of any kind that the Trustee, the Debtor or its estate (collectively, the "Bankruptcy Estate"), may have against PNC including, but not limited to, the Challenge Rights and the Lender Causes of Action, disputes regarding valuation of PNC's collateral, or the Surcharge Claim; provided, however, that that the Trustee specifically does not waive or release, and hereby preserves, any claim against the PNC arising under this Settlement Agreement due to PNC's failure to perform its obligations hereunder. (PNC shall have the right to object to any such claim.)

3. Upon PNC's receipt of the Settlement Amount, PNC waives, and releases the Bankruptcy Estate, from, any and all claims, causes of actions, suits, debts, obligations, liabilities, demands, losses, costs and expenses (including attorney's fees) of any kind that PNC may have against Bankruptcy Estate including, but not limited to, claims arising under or relating to the Final DIP Financing Order, the DIP Loan Documents, the Prepetition Agreement including the Prepetition Indebtedness and Postpetition Obligations other than as specifically set forth below in this paragraph; provided, however, that PNC specifically does not waive or release, and hereby preserves, any claim against the Bankruptcy Estate for the following: (i) claims arising under the Settlement Agreement due to the Trustee's failure to perform his obligations hereunder; (ii) claims arising from that certain Irrevocable Standby Letter of Credit issued by PNC in favor of Carter Lindbergh Retail, L.L.C. in the amount of \$500,000; and (iii) claims arising from PNC's incurring attorneys' fees and expenses arising after April 30, 2008. All of the foregoing reserved claims shall continue to be obligations under, and shall continue to be governed by, the Final DIP Agreement and the Final PNC DIP Financing Order. (The Trustee shall have the right to object to any such claims.)

4. The Trustee and PNC agree to allocate the \$150,000.00 settlement amount to claims asserted by the Trustee against PNC other than the Surcharge Claim.

5. The Trustee and PNC acknowledge that the Settlement Agreement is subject to approval by the Bankruptcy Court. The settlement is conditioned upon the entry of an order by the Bankruptcy Court in form and substance acceptable to the Trustee and PNC.

6. The Trustee and PNC hereby represent and warrant that there has been no assignment, sale, pledge, hypothecation or other transfer or disposition of any interest in any of the claims hereinbefore released and forever discharged.

7. The Trustee and PNC agree to take any and all actions and to execute all such documents as may be reasonably required to implement this Settlement Agreement. To the extent that either party takes such action at the request of the other, the requesting party shall pay the other party such reasonable fees and expenses as the other party may incur.

8. All terms and conditions of the Settlement Agreement shall be binding upon the parties hereto, their successors and assigns, the creditors of the Bankruptcy Estate, and all other parties in interest in the Bankruptcy Case. Specifically, the terms and conditions of the Settlement Agreement will be binding on all parties which attempt to claim a right to pursue claims against PNC for any amounts pursuant to Section 506(c) of the Bankruptcy Code.

9. The Trustee and PNC hereby acknowledge and represent that they fully understand the legal implications of their rights and responsibilities under the Settlement Agreement, that they have read, know, and understand completely the contents hereof, and that they have voluntarily executed the same.

10. The Settlement Agreement (along with all orders and other documents specifically referenced in the Settlement Agreement) constitutes the entire agreement and understanding between the parties relating to the subject matter contained herein, and this Settlement Agreement may not be altered, amended, or modified in any respect or particular whatsoever, except by a writing duly executed by the Trustee and PNC.

11. The Settlement Agreement may be executed in several counterparts, each of which shall be an original, so that all of which taken together shall constitute one and the same instrument. Facsimile signatures hereon or .pdf signatures sent by electronic mail shall be acceptable and deemed binding as if originals.

12. The Settlement Agreement may not be amended, changed, modified, altered or terminated except in writing executed by all parties with the same formality as this agreement is executed.

13. The Settlement Agreement shall, in all respects, be governed by and interpreted in accordance with the laws of the State of Georgia.

14. The Bankruptcy Court shall retain jurisdiction over the parties to hear and determine any matters or disputes arising from or related to this Settlement Agreement, and the Trustee and PNC acknowledge and consent to such jurisdiction.

[remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed as of the day and year first above written.

**MARCUS A. WATSON, IN HIS CAPACITY AS THE
CHAPTER 7 TRUSTEE FOR
PIKE NURSERY HOLDINGS, LLC**

By: _____
Marcus A. Watson

PNC BANK, NATIONAL ASSOCIATION

By: _____
Its: _____

Exhibit A

SETTLEMENT AGREEMENT

This settlement agreement (the "Settlement Agreement") is made and entered into as of this 28th day of May, 2008, by and between Marcus A. Watson, in his capacity as the chapter 7 trustee (the "Trustee") for Pike Nursery Holding LLC (the "Debtor"), and PNC Bank, National Association on its own behalf, in its capacity as the DIP Agent,³ and on behalf of the all of the DIP Lenders and the Prepetition Lenders (collectively, "PNC").

WITNESSETH:

WHEREAS, on November 14, 2007, the Debtor instituted case number 07-79129-MGD (the "Bankruptcy Case") by filing a voluntary chapter 11 petition under Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court");

WHEREAS, on December 20, 2007, the Bankruptcy Court entered the Final PNC Financing Order;

WHEREAS, on March 17, 2008, the Court entered an Order Directing the United States Trustee to Appoint Chapter 11 Trustee;

WHEREAS, on March 19, 2008, the Court approved the United States Trustee's appointment of Marcus A. Watson as the Chapter 11 Trustee for the Debtor (the "Chapter 11 Trustee");

WHEREAS, on March 19, 2008, the Chapter 11 Trustee filed the Chapter 11 Trustee's Motion to Convert Case to Chapter 7 seeking authority to convert the Chapter 11 bankruptcy case to a Chapter 7 case;

WHEREAS, on March 24, 2008, the Court entered an order converting the case;

WHEREAS, on April 1, 2008, the United States Trustee appointed Marcus A. Watson as interim chapter 7 trustee;

WHEREAS, PNC asserts that it is entitled to immediate payment of all amounts allegedly due under the Final PNC Financing Order;

³ Capitalized but undefined terms shall have the meaning ascribed to them in the Final Order (A) Authorizing Debtor in Possession to Obtain Secured Postpetition Financing from PNC with Priority Set Forth Herein, (B) Approving Agreements Relating to the Foregoing; and (C) Granting Related Relief (Docket Entry No. 166) (the "Final PNC Financing Order").

WHEREAS, the Trustee disputes that PNC is entitled to such immediate payment;

WHEREAS, PNC Bank, National Association represents that it has authority to enter into the Settlement Agreement;

WHEREAS, the Trustee asserts that he is entitled (i) to surcharge PNC's collateral based on Section 506(c) of the Bankruptcy Code and (ii) to recover money from the proceeds of the sales of substantially all of the Debtor's assets notwithstanding PNC's asserted lien and security interest on such proceeds without paying PNC in full based on equitable principles (items (i) and (ii) collectively, the "Surcharge Claim");

WHEREAS, PNC disputes the Surcharge Claim;

WHEREAS, the Trustee also asserts that PNC is liable to the estate based on the Lender Causes of Action and the Challenge Rights;

WHEREAS, PNC disputes that any liability exists under the Lender Causes of Action and the Challenge Rights;

WHEREAS, pursuant to the terms of this Agreement, and in settlement of the disputes set forth herein, PNC has agreed to the reduce the amount of its asserted claim by \$150,000.00; and

WHEREAS, in order to avoid the uncertainty inherent in litigation, and the attorneys' fees and other expenses that would be associated with the prosecution and defense of such litigation, and after negotiations and the exchange of information, the Trustee and PNC have agreed to resolve this matter through compromise and settlement, according to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Trustee shall pay to PNC in good funds the total sum of \$_____ (the "Settlement Amount"), on or before May 30, 2008. Said funds shall be made payable to PNC via wire instructions contained in Exhibit A hereto. Time is of the essence and payment on or before May 30, 2008, prior to 3 P.M. (Atlanta Time) is a material term of this Settlement Agreement.

2. Upon PNC's receipt of the Settlement Amount, the Trustee, for himself in his capacity as Trustee and on behalf of the Debtor and its estate, waives, and releases PNC from, any and all claims, causes of actions, suits, debts, obligations, liabilities, demands, losses, costs and expenses (including attorney's fees) of any kind that the Trustee, the Debtor or its estate (collectively, the "Bankruptcy Estate"), may have against PNC including, but not limited to, the Challenge Rights and the Lender Causes of Action, disputes regarding valuation of PNC's collateral, or the Surcharge Claim; provided, however, that that the Trustee specifically does not waive or release, and hereby preserves, any claim against the PNC arising under this Settlement Agreement due to PNC's failure to perform its obligations hereunder. (PNC shall have the right to object to any such claim.)

3. Upon PNC's receipt of the Settlement Amount, PNC waives, and releases the Bankruptcy Estate, from, any and all claims, causes of actions, suits, debts, obligations, liabilities, demands, losses, costs and expenses (including attorney's fees) of any kind that PNC may have against Bankruptcy Estate including, but not limited to, claims arising under or relating to the Final DIP Financing Order, the DIP Loan Documents, the Prepetition Agreement including the Prepetition Indebtedness and Postpetition Obligations other than as specifically set forth below in this paragraph; provided, however, that PNC specifically does not waive or release, and hereby preserves, any claim against the Bankruptcy Estate for the following: (i) claims arising under the Settlement Agreement due to the Trustee's failure to perform his obligations hereunder; (ii) claims arising from that certain Irrevocable Standby Letter of Credit issued by PNC in favor of Carter Lindbergh Retail, L.L.C. in the amount of \$500,000; and (iii) claims arising from PNC's incurring attorneys' fees and expenses arising after April 30, 2008. All of the foregoing reserved claims shall continue to be obligations under, and shall continue to be governed by, the Final DIP Agreement and the Final PNC DIP Financing Order. (The Trustee shall have the right to object to any such claims.)

4. The Trustee and PNC agree to allocate the \$150,000.00 settlement amount to claims asserted by the Trustee against PNC other than the Surcharge Claim.

5. The Trustee and PNC acknowledge that the Settlement Agreement is subject to approval by the Bankruptcy Court. The settlement is conditioned upon the entry of an order by the Bankruptcy Court in form and substance acceptable to the Trustee and PNC.

6. The Trustee and PNC hereby represent and warrant that there has been no assignment, sale, pledge, hypothecation or other transfer or disposition of any interest in any of the claims hereinbefore released and forever discharged.

7. The Trustee and PNC agree to take any and all actions and to execute all such documents as may be reasonably required to implement this Settlement Agreement. To the extent that either party takes such action at the request of the other, the requesting party shall pay the other party such reasonable fees and expenses as the other party may incur.

8. All terms and conditions of the Settlement Agreement shall be binding upon the parties hereto, their successors and assigns, the creditors of the Bankruptcy Estate, and all other parties in interest in the Bankruptcy Case. Specifically, the terms and conditions of the Settlement Agreement will be binding on all parties which attempt to claim a right to pursue claims against PNC for any amounts pursuant to Section 506(c) of the Bankruptcy Code.

9. The Trustee and PNC hereby acknowledge and represent that they fully understand the legal implications of their rights and responsibilities under the Settlement Agreement, that they have read, know, and understand completely the contents hereof, and that they have voluntarily executed the same.

10. The Settlement Agreement (along with all orders and other documents specifically referenced in the Settlement Agreement) constitutes the entire agreement and understanding between the parties relating to the subject matter contained herein, and this Settlement Agreement may not be altered, amended, or modified in any respect or particular whatsoever, except by a writing duly executed by the Trustee and PNC.

11. The Settlement Agreement may be executed in several counterparts, each of

which shall be an original, so that all of which taken together shall constitute one and the same instrument. Facsimile signatures hereon or .pdf signatires sent by electronic mail shall be acceptable and deemed binding as if originals.

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13. The Settlement Agreement shall, in all respects, be governed by and interpreted in accordance with the laws of the State of Georgia.

14. The Bankruptcy Court shall retain jurisdiction over the parties to hear and determine any matters or disputes arising from or related to this Settlement Agreement, and the Trustee and PNC acknowledge and consent to such jurisdiction.

[remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed as of the day and year first above written.

**MARCUS A. WATSON, IN HIS CAPACITY AS THE
CHAPTER 7 TRUSTEE FOR
PIKE NURSERY HOLDINGS, LLC**

By: _____
Marcus A. Watson

PNC BANK, NATIONAL ASSOCIATION

By: _____
Its: _____

Exhibit A

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WITNESSETH:

WHEREAS, on November 14, 2007, the Debtor instituted case number 07-79129-MGD (the "Bankruptcy Case") by filing a voluntary chapter 11 petition under Title 11, United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court");

WHEREAS, on December 20, 2007, the Bankruptcy Court entered the Final PNC Financing Order;

WHEREAS, on March 17, 2008, the Court entered an Order Directing the United States Trustee to Appoint Chapter 11 Trustee;

WHEREAS, on March 19, 2008, the Court approved the United States Trustee's appointment of Marcus A. Watson as the Chapter 11 Trustee for the Debtor (the "Chapter 11 Trustee");

WHEREAS, on March 19, 2008, the Chapter 11 Trustee filed the Chapter 11 Trustee's Motion to Convert Case to Chapter 7 seeking authority to convert the Chapter 11 bankruptcy case to a Chapter 7 case;

WHEREAS, on March 24, 2008, the Court entered an order converting the case;

WHEREAS, on April 1, 2008, the United States Trustee appointed Marcus A. Watson as interim chapter 7 trustee;

WHEREAS, PNC asserts that it is entitled to immediate payment of all amounts allegedly due under the Final PNC Financing Order;

WHEREAS, the Trustee disputes that PNC is entitled to such immediate payment;

WHEREAS, PNC Bank, National Association represents that it has authority to enter into the Settlement Agreement;

WHEREAS, the Trustee asserts that he is entitled (i) to surcharge PNC's collateral based on Section 506(c) of the Bankruptcy Code and (ii) to recover money from the proceeds of the sales of substantially all of the Debtor's assets notwithstanding PNC's asserted lien and security

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interest on such proceeds without paying PNC in full based on equitable principles (items (i) and (ii) collectively, the "Surcharge Claim");

WHEREAS, PNC disputes the Surcharge Claim;

WHEREAS, the Trustee also asserts that PNC is liable to the estate based on the Lender Causes of Action and the Challenge Rights;

WHEREAS, PNC disputes that any liability exists under the Lender Causes of Action and the Challenge Rights;

WHEREAS, pursuant to the terms of this Agreement, and in settlement of the disputes set forth herein, PNC has agreed to reduce the amount of its asserted claim by \$150,000.00; and

WHEREAS, in order to avoid the uncertainty inherent in litigation, and the attorneys' fees and other expenses that would be associated with the prosecution and defense of such litigation, and after negotiations and the exchange of information, the Trustee and PNC have agreed to resolve this matter through compromise and settlement, according to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Trustee shall pay to PNC in good funds the total sum of \$_____ (the "Settlement Amount"), on or before May 30, 2008. Said funds shall be made payable to PNC via wire instructions contained in Exhibit A hereto. Time is of the essence and payment on or before May 30, 2008, prior to 3 P.M. (Atlanta Time) is a material term of this Settlement Agreement.

2. Upon PNC's receipt of the Settlement Amount, the Trustee, for himself in his capacity as Trustee and on behalf of the Debtor and its estate, waives, and releases PNC from, any and all claims, causes of actions, suits, debts, obligations, liabilities, demands, losses, costs and expenses (including attorney's fees) of any kind that the Trustee, the Debtor or its estate (collectively, the "Bankruptcy Estate"), may have against PNC including, but not limited to, the Challenge Rights and the Lender Causes of Action, disputes regarding valuation of PNC's collateral, or the Surcharge Claim; provided, however, that the Trustee specifically does not waive or release, and hereby preserves, any claim against the PNC arising under this Settlement Agreement due to PNC's failure to perform its obligations hereunder. (PNC shall have the right to object to any such claim.)

3. Upon PNC's receipt of the Settlement Amount, PNC waives, and releases the Bankruptcy Estate, from, any and all claims, causes of actions, suits, debts, obligations, liabilities, demands, losses, costs and expenses (including attorney's fees) of any kind that PNC

may have against Bankruptcy Estate including, but not limited to, claims arising under or relating to the Final DIP Financing Order, the DIP Loan Documents, the Prepetition Agreement including the Prepetition Indebtedness and Postpetition Obligations other than as specifically set forth below in this paragraph; provided, however, that PNC specifically does not waive or release, and hereby preserves, any claim against the Bankruptcy Estate for the following: (i) claims arising under the Settlement Agreement due to the Trustee's failure to perform his obligations hereunder; (ii) claims arising from that certain Irrevocable Standby Letter of Credit issued by PNC in favor of Carter Lindbergh Retail, L.L.C. in the amount of \$500,000; and (iii) claims arising from PNC's incurring attorneys' fees and expenses arising after April 30, 2008. All of the foregoing reserved claims shall continue to be obligations under, and shall continue to be governed by, the Final DIP Agreement and the Final PNC DIP Financing Order. (The Trustee shall have the right to object to any such claims.)

4. The Trustee and PNC agree to allocate the \$150,000.00 settlement amount to claims asserted by the Trustee against PNC other than the Surcharge Claim.

5. The Trustee and PNC acknowledge that the Settlement Agreement is subject to approval by the Bankruptcy Court. The settlement is conditioned upon the entry of an order by the Bankruptcy Court in form and substance acceptable to the Trustee and PNC.

6. The Trustee and PNC hereby represent and warrant that there has been no assignment, sale, pledge, hypothecation or other transfer or disposition of any interest in any of the claims hereinbefore released and forever discharged.

7. The Trustee and PNC agree to take any and all actions and to execute all such documents as may be reasonably required to implement this Settlement Agreement. To the extent that either party takes such action at the request of the other, the requesting party shall pay the other party such reasonable fees and expenses as the other party may incur.

8. All terms and conditions of the Settlement Agreement shall be binding upon the parties hereto, their successors and assigns, the creditors of the Bankruptcy Estate, and all other parties in interest in the Bankruptcy Case. Specifically, the terms and conditions of the Settlement Agreement will be binding on all parties which attempt to claim a right to pursue claims against PNC for any amounts pursuant to Section 506(c) of the Bankruptcy Code.

9. The Trustee and PNC hereby acknowledge and represent that they fully understand the legal implications of their rights and responsibilities under the Settlement Agreement, that they have read, know, and understand completely the contents hereof, and that they have voluntarily executed the same.

10. The Settlement Agreement (along with all orders and other documents specifically referenced in the Settlement Agreement) constitutes the entire agreement and understanding between the parties relating to the subject matter contained herein, and this Settlement Agreement may not be altered, amended, or modified in any respect or particular whatsoever, except by a writing duly executed by the Trustee and PNC.

11. The Settlement Agreement may be executed in several counterparts, each of which shall be an original, so that all of which taken together shall constitute one and the same instrument. Facsimile signatures hereon or .pdf signatures sent by electronic mail shall be acceptable and deemed binding as if originals.

12. The Settlement Agreement may not be amended, changed, modified, altered or terminated except in writing executed by all parties with the same formality as this agreement is executed.

13. The Settlement Agreement shall, in all respects, be governed by and interpreted in accordance with the laws of the State of Georgia.

14. The Bankruptcy Court shall retain jurisdiction over the parties to hear and determine any matters or disputes arising from or related to this Settlement Agreement, and the Trustee and PNC acknowledge and consent to such jurisdiction.

[remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed as of the day and year first above written.

**MARCUS A. WATSON, IN HIS CAPACITY AS THE
CHAPTER 7 TRUSTEE FOR
PIKE NURSERY HOLDINGS, LLC**

By: _____
Marcus A. Watson

PNC BANK, NATIONAL ASSOCIATION

By: _____
Its: _____

Exhibit A

Wiring Instructions

For PNC wire of \$_____.

Bank Name: PNC BANK,N.A.
City & State: EAST BRUNSWICK, NJ
ABA Routing No.: 031207607
Credit: PNC BUSINESS CREDIT
Account #: 196039957830
Customer Name: PIKE NURSERY (LOAN PAYOFF)

For Moore & Van Allen wire of \$_____

Bank Name: Bank of America
City & State: Charlotte, NC
ABA Routing No.: 026009593
Account #: 000001097070
Reference: JXL/031558-000102