

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

**HOFFNER'S NURSERY, INC.**

Case No.: **8:14-bk-08915-KRM**  
Chapter: 11

Debtor(s)  
\_\_\_\_\_ /

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

**SCOTT HOFFNER  
and JODI HOFFNER**

Case No: **8:14-bk-08904-KRM**  
Chapter 11

Debtors  
\_\_\_\_\_ /

**EXPEDITED JOINT MOTION AND NOTICE OF  
OF PROPOSED COMPROMISE OF CONTROVERSY**

Debtor, **HOFFNER'S NURSERY, INC.** (the "**Corporate Debtor**"), Debtors, **SCOTT HOFFNER** and **JODI HOFFNER** ("**Individual Debtors**") (collectively "**the Debtors**") and Creditor Townsend Horticulture, Inc., together with Todd Townsend and his affiliated entities referenced below (collectively "**Townsend**"), by and through their respective undersigned attorneys, hereby gives notice to parties in interest, pursuant to Federal Rule of Bankruptcy Procedure 9019 and Local Rule 2002-4, providing notice to all interested parties, and moves this Court for approval of a proposed compromise of a controversy between the Corporate Debtor, Individual Debtors and Townsend, and in support thereof states as follows:

**\*\*\*IMPORTANT NOTICE TO CREDITORS AND ALL INTERESTED PARTIES\*\*\***

**NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files a response within twenty one (21) days from the date set forth on the proof of service attached to this paper plus an additional three days for service. If you object to the relief requested in this paper, you must file your response with the Clerk of the Court at Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Suite 555 Tampa, Florida 33602, [www.flmb.uscourts.gov](http://www.flmb.uscourts.gov); and serve a copy on the movant's attorney, Matthew J. Kovschak,, Esquire, 325 West Main Street, Bartow, FL 33830, and any other appropriate persons within the time allowed.

If you file and serve a response within the time permitted, the Court may schedule and notify you of a hearing, or the Court may consider the response and may grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

**BACKGROUND AND NATURE OF CONTROVERSY**

1. The Statutory predicates for the relief sought herein include, without limitation, Federal Rule of Bankruptcy Procedure 9019, Local Rule 2002-4, and §105 of the Bankruptcy Code. The Debtor submits that this Court has ample authority to grant the relief sought herein. Notwithstanding same, pursuant to §105 of the Bankruptcy Code, this Court may enter such orders as may be necessary or appropriate to carry out and effectuate the provisions of Chapter 11. Thus, §105 clearly empowers the Court to grant the relief requested in any event.

2. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§157 and 1334.

3. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper in this district pursuant to 28 U.S.C. §1408.

4. No previous application for the relief sought herein has been made by the Debtor to this Court or any other court.

5. The Corporate Debtor and Individual Debtors filed their voluntary Petitions under Chapter 11 of the Bankruptcy Code on July 31, 2014, case numbers 8:14-bk-08915-KRM and 8:14-bk-08904-KRM, respectively (collectively the “**Bankruptcy Cases**”).

6. By this Expedited Joint Motion to Compromise, the Debtors seek approval of a settlement with Townsend which achieves a global settlement of all claims and causes of action, including challenges to the Debtors' discharge and avoidance actions. The Compromise is intended to be memorialized by transactional documents that will be more specific than the summary set forth above, but will have no terms contrary to the summary set forth above, all of which, together with a proposed form of Compromise Order, will be filed of record under a "notice of filing" at least five (5) business days prior to any hearing with respect to this Compromise Motion.

7. On October 6, 2014, Townsend Horticulture, Inc. filed its Amended Proof of Claim the amount of \$126,211.32 (See: Claim 6-2)

8. On November 10, 2014, Townsend Horticulture, Inc. filed a separate Proof of Claim in the amount of \$466,140.44 (See: Claim 12-1).

9. With regard to Claim 6-2, Townsend Horticulture, Inc. is a creditor pursuant to a Commission Agreement executed on December 2, 2011. A true and correct copy of the Commission Agreement is attached hereto as Exhibit "A." The Commission Agreement requires the Corporate Debtor to pay Townsend Horticulture, Inc. commissions on sales to particular customers identified in the Commission Agreement. A listing of the unpaid commissions is attached to Claim 6-2 as Exhibit "B." As reflected in the itemized listing, the Corporate Debtor owes Townsend outstanding Commission Payments in the amount of \$107,420.32. In addition, the Corporate Debtor owes additional commissions for Sawyer Nursery. Based on the Debtor's first monthly operating report (Dkt. No. 67) which reflects \$187,915.11 collected from Sawyer Nursery between January 1, and August 31, 2014 (Dkt. No. 67 at p. 19), and the Debtor owes Townsend an additional 10% (or \$18,791) based on these sales. Accordingly, the total due Townsend is \$126,211.32 (\$107,420.32 + \$18,791).

10. With regard to claim 12-1, the Individual Debtors executed an unsecured promissory note in the amount of \$450,000 dated September 21, 20017 in conjunction with their purchase of the commercial nursery previously operated by Todd Townsend, the principal of Townsend

Horticulture, Inc. Over the course of several years, the Hoffners sent partial installment payments to Todd Townsend via checks made payable to "Townsend Horticulture, Inc." Following the execution of the original promissory note, a copy of which is attached hereto as Exhibit "C," the Hoffners executed additional promissory notes to extend the payment deadlines and to confirm the forgiveness of interest. True and correct copies of the subsequent notes dated August 29, 2008 and November 25, 2011 are attached hereto as Exhibits "D" and "E" respectively. Townsend further believes that a scrivener's error in the most recent promissory note dated November 13, 2012 in the principle amount of Four Hundred Sixty-Two Thousand and No/100 Dollars (\$462,000.00) (the "2012 Note") resulted in the inclusion of "Sebring Investments, LLC." A true and correct copy of the 2012 Note is attached hereto as Exhibit "F." It is undisputed that Sebring Investments obtained a Confession of Judgment in state court in Virginia against the Hoffners in the amount of \$445,500.00 on October 15, 2013. A true and correct copy of the Confession of Judgment is attached as Exhibit "G".

11. The Debtors are operating their business and managing their property as debtor(s)-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code.

12. No trustee or examiner has been appointed in this case and no official committees have yet been appointed pursuant to §§1102 of the Bankruptcy Code.

13. No Order has been entered approving a Plan of Reorganization.

14. The Corporate Debtor has agreed to pay Claims 6-2 and 12-1 of Townsend; and the Individual Debtors have agreed to guaranty the payment of Claims 6-2 and 12-1 of Townsend, as agreed to herein. The Corporate Debtor and Individual Debtors will execute new promissory note(s) and guaranty agreements evidencing their intent with regard to the payment of Claims 6-2 and 12-1 of Townsend, confirming that the obligations in Claims 6-2 and 12-1 are non-dischargeable in bankruptcy, confirming that the obligations are not impacted by the confirmation, conversion, or dismissal of the Bankruptcy Cases ( or any future bankruptcy filings), and specifying the penalties for late-payment and/or default and providing for the recovery of attorneys' fees and costs in the

event of default.

15. **SUMMARY OF SETTLEMENT**

**A.** Townsend's Claim 6-2 in the amount of \$126,211.32 shall be allowed in full and Townsend shall deem Claim 6-2 satisfied upon receipt of the Corporate Debtor's payment of \$80,000.00 without interest in sixty (60) equal monthly installments due the first of each month and commencing thirty (30) days from the Effective Date of the confirmation Order. A Promissory Note will be issued by the Corporate Debtor, and guaranteed by the Individual Debtors, to Townsend to evidence payments which Promissory Note and Guaranty shall not be deemed discharged or impacted whatsoever by the confirmation, dismissal, or conversion of the Bankruptcy Cases (or any future bankruptcy cases filed by the Debtors) and shall be enforceable in any State Court of Competent Jurisdiction.

**B.** Townsend's Claim 12-1 in the amount of \$466,140.44 shall be allowed in full and Townsend shall deem Claim 12-1 satisfied upon receipt of the Corporate Debtor's payment of \$250,000.00 without interest in ninety six (96) equal monthly installments due the first of each month and commencing thirty (30) days from the Effective Date of the Confirmation Order. A Promissory Note will be issued by the Corporate Debtor, and guaranteed by the Individual Debtors, to Townsend to evidence payments which Promissory Note and Guaranty shall not be deemed discharged or impacted whatsoever by the confirmation, dismissal, or conversion of the Bankruptcy Cases (or any future bankruptcy cases filed by the Debtors) and shall be enforceable in any State Court of Competent Jurisdiction.

**C.** Upon timely payment and receipt of the foregoing amounts, the Debtors and Townsend shall release each other from all claims and causes of action. The compromise is contingent on Bankruptcy Court approval, and the parties shall be returned to status quo in the event the Court does not approve the terms of the

compromise outlined in this Motion or the supporting transactional documents.

### **BEST INTERESTS OF THE ESTATE**

16. The Parties have taken into consideration the dispute(s), the defenses, together with the expense, inconvenience, and delay that would likely attend the litigation of the contested matter through trial.

17. The Parties believe that the compromise set forth in the Mediated Settlement Agreement is in the best interest of the Estate and creditors because the uncertainty of litigation, collection and the contingent expense to the Estate.

18. In deciding whether to approve or disapprove a proposed settlement, a Bankruptcy Court must consider the following factors:

- (a) The probability of success in the litigation;
- (b) the complexity of the litigation involved, and the expenses, inconvenience and delay necessarily attending it;
- (c) the paramount interest of the creditors and a proper defense to their reasonable views in the premises. ***Wallace v. Justice Oaks, II, Ltd.***, (In re Justice Oaks II, Ltd., 898 F. 2d 1544, 1549 (11th Cir. 1990).

In this case, the factors weigh in favor of approving the Mediated Settlement Agreement, to wit:

- a. The probability of success in the litigation. There are defenses available to the Debtor for which success is uncertain. Also, should this matter proceed to trial, the attorneys' fees and costs incurred will substantially diminish any ultimate recovery.
- b. The complexity and expense of the litigation. This factor is probably the single most important factor in this case and truly the focal point of the analysis. The expense of litigation will substantially diminish any ultimate recovery to either Party. This compromise avoids further litigation, thereby allowing the Debtor and Security Bank to avoid incurring those legal expenses. To this end, should this case proceed to trial, and the Estate is ultimately unsuccessful, the ultimate recovery to the Estate may be less than the amount recovered by the Settlement. Finally, there is a risk, as with any legal matter, that the Debtor may not prevail on its defenses. This compromise eliminates any such uncertainty.
- c. The paramount interest of the creditors and a proper deference to their reasonable views. In the Debtors' business judgment, this settlement is in the creditor's best interests. Townsend is due a combined total of approximately

\$600,000 and is willing to compromise approximately \$250,000 of the amount due in exchange for the approval of this compromise thereby freeing additional funds for the Estate(s). This compromise avoids further litigation, thereby allowing the Estate(s) to avoid incurring related costs and legal expenses that will diminish the value of the Estate(s) if the Debtors are not successful. The compromise also eliminates the costs and delay that litigation would cause in relation to the resolution of this case, including diminution of Estates' assets and delays in the administration of the Estates.

19. The standard for evaluating a proposed compromise under Federal Rule of Bankruptcy Procedure 9019 is whether the compromise is in the best interest of the Estate. See *In re Charter Co.*, 72 B.R. 70 (Bankr. M.D. Fla. 1987). In view of the foregoing, the parties believe the compromise is in the best interest of the Estate(s).

**WHEREFORE**, Debtor, **HOFFNER'S NURSERY, INC.**, Debtors, **SCOTT HOFFNER** and **JODI HOFFNER** and Creditor **TODD TOWNSEND**, together with his affiliated entities, respectfully request that this Honorable Court enter an Order approving the proposed compromise of controversy between the parties; and for such other and further relief as this Court shall deem appropriate.

**DATED** on this 4<sup>th</sup> day of December, 2014.

Respectfully submitted,

/s/ Matthew J. Kovschak  
**MATTHEW J. KOVSCHAK, ESQUIRE**  
Attorney for Hoffner's Nursery, Inc.

/s/ Pierce J. Guard, Jr.  
**PIERCE J. GUARD, JR., ESQUIRE**  
Attorney for Scott and Jodi Hoffner

/s/ Darren D. Farfente,  
**DARREN D. FARFANTE, ESQUIRE**  
Attorney for Todd Townsend  
and Affiliated Entities

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct photocopy of the foregoing has been sent, via regular United States mail postage pre-paid, and/or Electronically via ECF/PACER to all parties registered to receive pleadings and papers in this case via PACER/ECF; and to:

- All parties listed on CM/ECF Electronic Mailing List
- All parties listed on the Attached Court Matrix
- United States Trustee - Nicole.W.Peair@USdoj.gov

Dated: **December 4, 2014**

/s/ Matthew J. Kovschak  
**MATTHEW J. KOVSCHAK, ESQUIRE**  
*Of Counsel*  
Sutton Law Firm  
Florida Bar No.: 602876  
325 West Main Street  
Bartow, FL 33830  
863-533-8912 (telephone)  
863-533-4633 (telecopier)  
[mjkovschak@aol.com](mailto:mjkovschak@aol.com)  
Attorney for Debtor



EXHIBIT “A”

EXHIBIT “A”

EXHIBIT “A”

### COMMISSION AGREEMENT

This Commission Agreement is between **TOWNSEND HORTICULTURE, INC.** ("Townsend"), 1429 Baffly Loop, Chesapeake, Virginia 23320 and **HOFFNER'S NURSERY, INC.** ("Hoffner's"), 11007 Payne Road, Sebring, Florida 33875. Hoffner's agrees to pay Townsend the following:

**TERM:** This Agreement commenced on September 1, 2007 and shall continue until August 30, 2017. This Agreement can be renegotiated for an extended period.

**AMOUNT:** Ten Percent (10%) commission ("Commission") on all Net Sales that Townsend's generates with that customer. For purposes of this Agreement, "Net Sales" means gross revenues from a sale to a customer generated by Townsend, less the cost of shipping and crates, and less any interest paid by a customer. The Commission is not payable on all of Hoffner's sales, only those sales to customers generated by Townsend. The Commission shall be reduced in the event a customer is delinquent paying its invoice as follows: (i) the Commission is reduced to seven percent (7%) of Net Sales on customers' payments that are received more than 30 days after the stated payment terms of the sale, and (ii) the Commission is reduced to five percent (5%) of Net Sales on customers' payments received more than 60 days after the stated payment terms of the sale. For example if a sale offers 30 day payment terms and the payment is received 45 days after the sale, then the Commission will be an amount equal to seven percent (7%) of the Net Sale received.

**PAYMENT TERMS:** Hoffner's agrees to process and pay Townsend the Commission weekly on customer payments received. No interest charges are to be added to the commission amounts due to Townsend. If the customer becomes delinquent in their payment to Hoffner's, Todd Townsend will assist Hoffner's in dealing with delinquent customers. At the beginning of each month Hoffner's will send Townsend an updated account receivable report.

**SALES CONTRACTS:** All prices for sales to customers must be agreed upon between Hoffner's and Townsend before the contract is made with the customer. Reasonable pricing is to be used.

**CURRENT CUSTOMERS:** Sales to the following customers will result in Commissions being payable to Townsend: Bell-all locations, Casertanos, Corso's, Green Circle, Laymans, Sawyers, Stacys, and any other new customers generated by Townsend.

All sales payments from customers are to be made directly to Hoffner's as agreed upon by Hoffner's and Townsend.

No expense reimbursement is included in this Agreement.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Hoffner's Townsend Commission Agreement signature page

TOWNSEND HORTICULTURE, INC.

By: Todd Townsend  
Todd Townsend

11/29/11  
Date

HOFFNER'S NURSERY, INC.

By: Scott Hoffner  
Scott Hoffner

12-2-11  
Date

HOFFNER'S NURSERY, INC.

By: Jodi Hoffner  
Jodi Hoffner

12/2/11  
Date

EXHIBIT “B”

EXHIBIT “B”

EXHIBIT “B”

9:51 AM

**Hoffner's Nursery Inc: Outstanding Commission Payments**

08/02/14

**(Sawyers 2014 not included - missing from report)**

Accrual Basis

PO# = Hoffner Invoice # to Customer

Num	Date	Due Date	Amount	Open Balance	P. O. #	Memo
2300	06/17/2014	08/31/2014	930.60	930.60	4434 - Casertano	4434 - Casertano
2301	06/17/2014	08/31/2014	1,338.52	1,338.52	4435 - Bell	4435 - Bell
2295	06/13/2014	08/27/2014	1,268.40	1,268.40	4432 - Corso	4432 - Corso
2252	06/03/2014	08/17/2014	1,934.52	1,934.52	4452 - Hampshire	4452 - Hampshire
2263	06/03/2014	08/17/2014	945.00	945.00	4429 - Corso	4429 - Corso
2264	06/03/2014	08/17/2014	1,814.40	1,814.40	4428 - Corso	4428 - Corso
2265	06/03/2014	08/17/2014	1,934.52	1,934.52	4427 - Hampshire	4427 - Hampshire
2198	05/13/2014	07/27/2014	1,278.20	1,278.20	4425 Casertano	4425 Casertano
2199	05/13/2014	07/27/2014	607.50	607.50	4424 Corso	4424 Corso
2200	05/13/2014	07/27/2014	2,646.00	2,646.00	4423 Corso	4423 Corso
2201	05/13/2014	07/27/2014	1,210.00	1,210.00	4422 Corso	4422 Corso
2202	05/13/2014	05/13/2014	1,134.00	1,134.00	4421 Corso	4421 Corso
2203	05/13/2014	07/27/2014	1,279.80	1,279.80	4417 Hampshire	4417 Hampshire
2204	05/13/2014	07/27/2014	1,701.00	1,701.00	4416 - Hampshire	4416 - Hampshire
2205	05/13/2014	07/27/2014	997.50	997.50	4415 - Corso	
2206	05/13/2014	07/27/2014	810.00	810.00	4414 Corso	
2207	05/13/2014	07/27/2014	952.56	952.56	4413 Corso	4413 Corso
2208	05/13/2014	07/27/2014	1,907.08	1,907.08	4409 Hampshire	
2209	05/13/2014	07/27/2014	1,804.75	1,804.75	4397 Hampshire	4397 Hampshire
2210	05/13/2014	07/27/2014	795.75	795.75	4398 Corso	
2211	05/13/2014	07/27/2014	1,276.80	1,276.80	4393 Corso	
2212	05/13/2014	07/27/2014	991.87	991.87	4392 - Corso	4392 - Corso
2111	04/17/2014	07/01/2014	810.00	810.00	4387 Corso	
2112	04/17/2014	07/01/2014	1,090.32	1,090.32	4388 - Corso	
2105	04/15/2014	06/29/2014	1,083.60	1,083.60	4380 - Corsos	4380 - Corso
2103	04/13/2014	06/27/2014	1,360.80	1,360.80	4371 - Corso	4371 - Corso
1895	07/03/2013	09/16/2013	1,306.70	1,306.70	4299 - Twixwood	4299 - Twixwood
1888	06/27/2013	09/10/2013	905.28	905.28	4232 - Hampshire	4232 - Hampshire
1872	06/11/2013	08/25/2013	1,496.00	1,496.00	4317 - Corsos	
1873	06/11/2013	08/25/2013	1,337.89	1,337.89	4319 - Casertano	4319 - Casertano
1847	06/02/2013	08/16/2013	1,297.50	1,297.50	4316 - Corsos	4316 - Corso
1848	06/02/2013	08/16/2013	1,859.56	1,859.56	4308 - Hampshire	4308 - Hampshire
1849	06/02/2013	08/16/2013	1,349.50	1,349.50	4309 - Bell OH	4309 - Bell OH
1822	05/26/2013	08/09/2013	1,263.09	1,263.09	4303 - Casertano	4303 - Casertano
1823	05/26/2013	08/09/2013	1,585.65	1,585.65	4307 - Corso	4307 - Corso
1824	05/26/2013	08/09/2013	1,336.50	1,336.50	4305 - Corso	4305 - Corso
1828	05/26/2013	08/09/2013	1,649.62	1,649.62	4292 - Hampshire	4292 - Hampshire
1804	05/17/2013	07/31/2013	992.00	992.00	4295 - Laymans	4295 - Laymans
1805	05/17/2013	07/31/2013	1,371.00	1,371.00	4296 - Corso	4296 - Corso
1806	05/17/2013	07/31/2013	994.95	994.95	4298 - Corso	4298 - Corso
1807	05/17/2013	07/31/2013	1,379.87	1,379.87	4300 - Layman	4300 - Layman
1796	05/14/2013	07/28/2013	1,126.80	1,126.80	4290 - Corsos	4290 - Corsos
1798	05/14/2013	07/28/2013	590.40	590.40	4297 - Bell VA	4297 - Bell VA
1784	05/10/2013	07/24/2013	1,425.00	1,425.00	4285 - Corsos	4285 - Corsos
1785	05/10/2013	07/24/2013	950.00	950.00	4283 - Casertano	4283 - Casertano
1778	05/09/2013	07/23/2013	1,308.15	1,308.15	4278 - Corsos	4278 - Corsos
1779	05/09/2013	07/23/2013	1,966.50	1,966.50	4277 - Corsos	4277 - Corsos
1780	05/09/2013	07/23/2013	1,015.00	1,015.00	4276 - Corsos	4276 - Corsos
1773	05/07/2013	07/21/2013	1,888.95	1,888.95	4279 - Hampshire	4279 - Hampshire
1762	05/03/2013	07/17/2013	1,050.00	1,050.00	4274 - Corsos	4274 - Corsos
1761	04/30/2013	07/14/2013	2,097.22	2,097.22	4263 - Corso	4263 Corso
1752	04/30/2013	07/14/2013	1,059.00	1,059.00	4264 - Corso	4264 - Corso
1753	04/30/2013	07/14/2013	1,131.84	1,131.84	4265 - Corso	4265 - Corso
1740	04/24/2013	04/24/2013	1,699.20	1,699.20	4248 - Corso	4248 - Corso
1718	04/17/2013	07/01/2013	1,898.98	1,898.98	4238 - Hampshire	4238 - Hampshire
1698	04/11/2013	06/25/2013	1,147.20	1,147.20	4228 - Sawyer	4228 - Sawyer
1617	11/11/2012	01/25/2013	1,113.94	1,113.94	4137	4137
1618	11/11/2012	01/25/2013	973.38	973.38	4166	4166
1572	07/25/2012	10/08/2012	2,541.33	2,541.33	4188-Laymans	4188-Laymans
1574	07/25/2012	10/08/2012	1,415.66	1,415.66	4192 - Laymans	4192 - Laymans
1538	06/04/2012	08/18/2012	1,205.00	1,205.00	4178 - Sawyer	4178 - Sawyer
1526	05/29/2012	08/12/2012	1,873.76	1,873.76	4158 - Hampshire	4158-Hampshire
1497	05/10/2012	07/24/2012	874.40	874.40	4144 - Bell VA	4144 Bell VA
1489	05/02/2012	07/16/2012	1,395.80	1,395.80	4123 Bell MD	4123 Bell MD
1478	04/27/2012	07/11/2012	1,460.64	1,460.64	4114-Sawyer	4114 Sawyer
1450	04/24/2012	07/08/2012	1,584.48	1,584.48	4092 - Sawyer	4092 Sawyer
1452	04/24/2012	07/08/2012	1,192.57	1,192.57	4085 - Sawyer	4085 - Sawyer

Does not include Sawyers 2014 - still missing from report.

Page 1

9:51 AM

08/02/14

Accrual Basis

**Hoffner's Nursery Inc: Outstanding Commission Payments**  
**(Sawyers 2014 not included - missing from report)**  
**PO# = Hoffner Invoice # to Customer**

Num	Date	Due Date	Amount	Open Balance	P. O. #	Memo
1465	04/24/2012	07/08/2012	1,774.08	1,774.08	4100 - Sawyer	4100-Sawyer
1466	04/24/2012	07/08/2012	1,288.37	1,288.37	4102 - Sawyer	4102 Sawyer
1472	04/24/2012	07/08/2012	870.40	460.80	4111 - Bell OH	4111 - Bell OH
1473	04/24/2012	07/08/2012	870.40	460.80	4112 - Bell MD	4112 - Bell MD
1444	04/12/2012	06/26/2012	1,020.60	680.40	4090 - Bell MD	4090 - Bell MD
1446	04/12/2012	06/26/2012	1,214.55	352.80	4076 - Bell MD	4076 - Bell MD
1435	04/09/2012	06/23/2012	1,788.88	1,788.88	4079 - Hampshire	4079 Hampshire
1436	04/09/2012	06/23/2012	1,555.20	691.20	4080 - Bell VA	4080 - Bell VA
1404	03/29/2012	06/12/2012	1,075.20	1,075.20	4051 Sawyers	4051 Sawyers
1267	06/16/2011	08/30/2011	1,167.46	1,167.46	3983 Alabama	Sawyers
1251	06/06/2011	08/20/2011	1,186.40	1,186.40	3950 Alabama	Sawyers
1234	05/16/2011	07/30/2011	1,031.21	1,031.21	3971 Alabama	Sawyers
1199	05/15/2011	07/29/2011	958.17	958.17	3943 Alabama	Sawyers
1217	05/15/2011	07/29/2011	902.50	902.50	3951 Alabama	Sawyers
<b>Total</b>			<b>187,420.32</b>	<b>97,102.65</b>		

Does not include Sawyers 2014 - still missing from report.

Page 2

EXHIBIT “C”

EXHIBIT “C”

EXHIBIT “C”

### LOAN AGREEMENT

THIS LOAN AGREEMENT IS BETWEEN **TODD TOWNSEND**, 1429 BAFFY LOOP, CHESAPEAKE, VA 23320 AND **SCOTT & JODI HOFFNER**, 11007 PAYNE ROAD, SEBRING, FL 33875. SCOTT & JODI HOFFNER AGREE TO PAY TODD TOWNSEND THE FOLLOWING:

**DATE:** SEPTEMBER 21, 2007

**AMOUNT:** \$450,000

**INTEREST RATE:** 9 % ANNUAL RATE

**TERMS:** 2 YEAR NOTE

\$265,500 DUE ON SEPTEMBER 15, 2008 (1/2 P + \$40,500 I)

\$245,250 DUE ON SEPTEMBER 15, 2009 (1/2 P + \$20,250 I)

**LATE FEE:** A LATE FEE OF 2%/MONTH WILL BE ADDED TO EACH MONTH THAT A PAYMENT IS DELINQUENT.

THIS NOTE IS AN UNSECURED NOTE AND HAS NO ATTACHMENT TO ANY REAL ESTATE OR EQUIPMENT OF HOFFNER'S NURSERY, INC.

SCOTT & JODI HOFFNER PERSONALLY GUARANTEE THIS LOAN.

  
TODD TOWNSEND

9/30/07  
DATE

  
SCOTT HOFFNER

9-21-07  
DATE

  
JODI HOFFNER

9/21/07  
DATE



EXHIBIT “D”

EXHIBIT “D”

EXHIBIT “D”

FROM :

FAX NO. :

Aug. 29 2008 09:23AM P1

### LOAN AGREEMENT AMMENDMENT

THE ORIGINAL LOAN AGREEMENT BETWEEN TODD TOWNSEND, 1429  
BAFFY LOOP, CHESAPEAKE, VA 23320 AND SCOTT & JODI HOFFNER, 11007  
PAYNE ROAD, SEBRING, FL 33875, DATED SEPTEMBER 21, 2007 IS BEING  
AMMENDED AS FOLLOWS:

DATE: AUGUST 29, 2008

AMOUNT: \$450,000

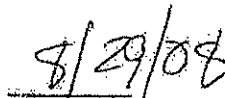
INTEREST RATE: 9 % ANNUAL RATE

TERMS: 2 YEAR NOTE-AMMENDED TO 3 YEARS (FROM  
ORIGINAL DATE OF SIGNING)  
\$306,000 DUE ON SEPTEMBER 15, 2009 (1/2 P + 2 YEARS OF  
INTEREST AT \$40,500/YEAR)  
\$245,250 DUE ON SEPTEMBER 15, 2010 (1/2 P + \$20,250 I)

THIS NOTE IS AN UNSECURED NOTE AND HAS NO ATTACHMENT TO ANY  
REAL ESTATE OR EQUIPMENT OF HOFFNER'S NURSERY, INC.

SCOTT & JODI HOFFNER PERSONALLY GUARANTEE THIS LOAN.

  
TODD TOWNSEND

  
DATE

  
SCOTT HOFFNER

  
DATE

  
JODI HOFFNER

  
DATE

EXHIBIT “E”

EXHIBIT “E”

EXHIBIT “E”

**IMPORTANT NOTICE**

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

**PROMISSORY NOTE**

\$500,000.00

Chesapeake, Virginia  
November 25, 2011

FOR VALUE RECEIVED, the undersigned Scott and Jodi Hoffner (collectively "Maker") jointly and severally promise to pay to the order of Todd Townsend ("Holder") at 1429 Baffly Loop, Chesapeake, Virginia 23320, or such other place as Holder may specify in writing, the principal sum of Five Hundred Thousand Dollars (\$500,000) without interest.

Beginning on the date of execution of this promissory note, and continuing on the 15th day of December 2011 and each calendar month thereafter through August 15, 2012, Maker shall pay to Holder the sum of One Thousand Five Hundred Dollars (\$1,500). On September 30, 2012 Maker shall pay Holder the sum of Two Hundred Forty Two Thousand Five Hundred Dollars (\$242,500). On October 15, 2012 and continuing on the 15th day of each calendar month thereafter through August 15, 2013, Maker shall pay to Holder the sum of One Thousand Five Hundred Dollars (\$1,500). On September 30, 2013, Maker shall pay to Holder the sum of Two Hundred Twenty Six Thousand Dollars (\$226,000). TIME IS OF THE ESSENCE with respect to Maker's payment obligations hereunder.

Upon (i) the death, or insolvency of either Maker, (ii) application for the appointment of a receiver for Maker, (iii) the filing of a petition in bankruptcy by or against either Maker, or (iv) the failure of the Maker to pay any installment or payment due hereunder strictly as called for, then this Note shall, at the option of the Holder, be considered to be in default and become immediately due and payable in full without further notice or demand.

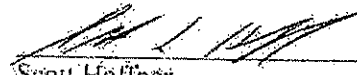
Right of prepayment is permitted.

Each Maker hereby; (i) waives presentment, demand, protest and notice of dishonor, and agrees that extension or extensions of the time of payment of this Note may be made before, at, or after maturity and for periods in excess of the original term of this Note by agreement with any one or more of the parties without notice to and without releasing the liability of any other party to the Note; (ii) waives the benefit of all homestead and similar exemptions as to this debt, and any right any of them may have to require the Holder to proceed against any other party or person before proceeding against any or all of them for all or any portion of the indebtedness owed under this Note; (iii) agrees to pay all court costs and expenses incurred in collecting this Note, including twenty percent (20%) attorney's fees if after default this Note be placed in the hands of an attorney for collection; and (iv) consents to personal jurisdiction and venue in the Circuit Court for the City of Chesapeake, Virginia.

The undersigned Maker hereby duly constitutes and appoints Douglas E. Kahle, Esq. as their true and lawful attorney-in-fact, to act for them, in their name, place and stead, and upon the occurrence of an event of default, to confess judgment against them in the Circuit Court for

the City of Chesapeake, Virginia upon this Note and all amounts owed hereunder, including costs of collection, attorneys fees as provided and court costs, hereby ratifying and confirming the acts of said attorney-in-fact as if done by themselves.

WITNESS the following signatures and seals effective the 25<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
Scott Hoffner

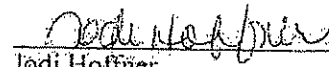
  
\_\_\_\_\_  
Jodi Hoffner

EXHIBIT “F”

EXHIBIT “F”

EXHIBIT “F”

BK 1236 PG 0749

1236

IMPORTANT NOTICE

0749

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

PROMISSORY NOTE

\$462,000.00

Chesapeake, Virginia  
November 13 2012

FOR VALUE RECEIVED, the undersigned Scott and Jodi Hoffner (collectively "Maker") jointly and severally promise to pay to the order of Sebring Investments, LLC, a Florida limited liability company ("Holder") at 1429 Baffly Loop, Chesapeake, Virginia 23320, or such place as Holder may specify in writing, the principal sum of Four Hundred Sixty Two Thousand Dollars (\$462,000) together with interest as stated below.

Beginning on the date of execution of this promissory note, and continuing on the 15<sup>th</sup> day of December 2012 and each calendar month thereafter through August 15, 2013, Maker shall pay to Holder the sum of One Thousand Five Hundred Dollars (\$1,500). On September 30, 2013 Maker shall pay Holder the sum of Two Hundred Four Thousand Five Hundred Dollars (\$204,500). Interest shall accrue at the rate of six percent (6%) per annum on the outstanding principal balance beginning on October 1, 2013. On October 15, 2013 and continuing on the 15<sup>th</sup> day of each calendar month thereafter through August 15, 2014, Maker shall pay to Holder the sum of One Thousand Five Hundred Dollars (\$1,500). On September 30, 2014, Maker shall pay to Holder the balance of the principal indebtedness hereunder together with all accrued and unpaid interest. TIME IS OF THE ESSENCE with respect to Maker's payment obligations hereunder.

Upon (i) the death, or insolvency of either Maker, (ii) application for the appointment of a receiver for either Maker, (iii) the filing of a petition in bankruptcy by or against either Maker, or (iv) the failure of the Maker to pay any installment or payment due hereunder strictly as called for, then this Note shall, at the option of the Holder, be considered to be in default and become immediately due and payable in full without further notice or demand.

Right of prepayment is permitted.

The Maker hereby; (i) waives presentment, demand, protest and notice of dishonor, and agrees that extension or extensions of the time of payment of this Note may be made before, at or after maturity and for periods in excess of the original term of this Note by agreement with any one or more of the parties without notice to and without releasing the liability of any other party to the Note; (ii) waives the benefit of all homestead and similar exemptions as to this debt, and any right any of them may have to require the Holder to proceed against any other party or person before proceeding against any or all of them for all or any portion of the indebtedness owed under this Note; (iii) agrees to pay all court costs and expenses incurred in collecting this Note, including thirty percent (30%) attorney's fees if, after default, this Note be placed in the hands of an attorney for collection; and (iv) consents to personal jurisdiction and venue in the Circuit Court for the City of Chesapeake, Virginia.

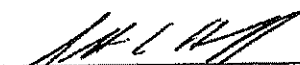
CIR. CT. RECORDED  
CHESAPEAKE, VIRGINIA  
OCT 16 AM 10:18  
PAGE 18  
W. HITCHELL  
Clerk of Court


BK 1236 PG 0750

1236  
0750

The undersigned Maker hereby duly constitutes and appoints Douglas E. Kahle, Esq., and Glen M. Robertson, Esq., either of whom may act, as their true and lawful attorney-in-fact, to act for them, in their name, place and stead, and upon the occurrence of an event of default, to confess judgment against them in the Circuit Court for the City of Chesapeake, Virginia upon this Note and all amounts owed hereunder, including costs of collection, attorneys fees as provided and court costs, hereby ratifying and confirming the acts of said attorney-in-fact as if done by themselves.

WITNESS the following signatures and seals effective the 17<sup>th</sup> day of December 2012.

  
\_\_\_\_\_  
Scott Hoffner

  
\_\_\_\_\_  
Jodi Hoffner

BOOK PAGE  
FAYE W. MITCHELL, CLERK  
13 OCT 16 AM 10:18  
CLERK OF COURT  
CHESAPEAKE, VIRGINIA  
CIR. CT. RECORDED



EXHIBIT “G”

EXHIBIT “G”

EXHIBIT “G”

1236  
0747

BK 1236PG0747

**CONFESSION OF JUDGMENT/  
CERTIFICATE OF CLERK**

Va. Code §§ 8.01-431, 8.01-433, 8.01-436, 8.01-437, 17.1-124

Case No. CL13 - 2465In the Clerk's Office of the Circuit Court of Chesapeake, Virginia**CONFESSION OF JUDGMENT****CREDITOR(S):**Sebring Investments, LLC1429 Baffly LoopChesapeake, VA 23320**DEBTOR(S):**Scott Hoffner and Jodi Hoffner11007 Payne RoadSebring, FL 33875

I/we, the above-named debtor(s), acknowledge myself/ourselves, to be justly indebted to, and do confess judgment in favor of, the above-named creditor(s) in the sum of \$ 445,500.00 ( Four Hundred Forty-Five Thousand Five Hundred dollars) together with interest thereon at the rate of 6.00 % from 10/14/13 until paid and cost of this proceeding (including the attorney's fees and collection fees provided for in the instrument on which the proceeding is based) hereby waiving my/our homestead exemptions as to the same, provided the instrument on which the proceeding is based carries such homestead waiver.

Given under my/our hand(s) this day.

Oct 15, 2013

DATE

**COSTS STATEMENT**

\$ 25.00 Writ Tax  
 \$ 240.00 Clerk's Fees  
 \$ 8.00 Docketing Fee  
 \$ 40.00 Tech Trust Fund Fee  
 \$ 5.00 Sheriff's Fee  
 \$ 15.00 Registered/Certified Mail  
 \$ 10.00 Legal Aid/Indigent Defense Fee  
 \$ 4.00 Courthouse Construction Fee  
 \$ 4.00 Law Lib/Courthouse Maintenance Fee  
 \$ 10.00 Court Technology Fee

by [Signature]

ATTORNEY IN FACT

☒ Power of Attorney in Debt Instrument☐ Separate Power of Attorney Document☐ Appointment of Substitute Attorney-in-fact

recorded on \_\_\_\_\_ DATE

Instrument No. \_\_\_\_\_

Deed Book/Page No. \_\_\_\_\_

**CERTIFICATE OF CLERK**

The foregoing judgment was confessed before me in my office on the date and time shown below and entered of record, also as shown below:

10-15-139:39 AM

DATE AND TIME OF CONFESSION

Order Book No. \_\_\_\_\_

Page No. \_\_\_\_\_

Instrument No. \_\_\_\_\_

Attached to this Judgment of Confession are:

- ☐ Debt instrument containing a Power of Attorney  
☐ Separate Power of Attorney  
☐ Separate Debt Instrument

**Faye W. Mitchell, Clerk**

, Clerk

by [Signature]

DEPUTY CLERK

10 IN CLERK'S OFFICE

BOOK PAGE  
FAYE W. MITCHELL, CLERK  
13 OCT 16 AM 10:18  
CHESAPEAKE, VIRGINIA

12900

BK 1236 PG 0748

1236

0748

**NOTICE TO DEBTOR:**

§ 8.01-433. Setting aside judgments confessed under § 8.01-432. — Any judgment confessed under the provisions of § 8.01-432 may be set aside or reduced upon motion of the judgment debtor made within twenty-one days following notice to him that such judgment has been entered against him, and after twenty-one days notice to the judgment creditor or creditors for whom the judgment was confessed, on any ground which would have been an adequate defense or setoff in an action at law instituted upon the judgment creditor's note, bond or other evidence of debt upon which such judgment was confessed. Whenever any such judgment is set aside or modified the case shall be placed on the trial docket of the court, and the proceedings thereon shall thereafter be the same as if an action at law had been instituted upon the bond, note or other evidence of debt upon which judgment was confessed. After such case is so docketed the court shall make such order as to the pleadings, future proceedings and costs as to the court may seem just.

CIR. CT. RECORDED  
CHESAPEAKE, VIRGINIA  
13 OCT 16 AM 10:18  
BOOK PAGE  
FAYE W. MITCHELL, CLERK  
*Cheryl H. Whitbeck*

BK 1236 PG 0751

1236  
0751

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

SEBRING INVESTMENTS, LLC,

Plaintiff,

v.

Case No.: CL13- 2465

SCOTT HOFFNER,

and

JODI HOFFNER,

Defendants.

CIR. CT. RECORDED  
CHESAPEAKE, VIRGINIA  
13 OCT 16 AM 10:18  
BOOK 116 PAGE 116  
FILED W. MITCHELL, CLERK  
(Jodi & Scott Hoffner)

**AFFIDAVIT**

This day personally appeared before me, the undersigned, Todd Townsend, and after being duly sworn made oath as follows:

1. I am authorized to make this Affidavit.
2. Scott Hoffner and Jodi Hoffner (collectively the "Makers") executed the attached Promissory Note dated November 13, 2012 (the "Note"), payable to the order of Sebring Investments, LLC (the "Holder") in the original principal amount of Four Hundred Sixty-Two Thousand and 00/100 Dollars (\$462,000.00).
3. The Makers failed to make the required payment of Two Hundred Four Thousand Five Hundred Dollars and 00/100 (\$204,500.00) on September 30, 2013, which constitutes an event of default under the terms of the Note.
4. The principal indebtedness, together with accrued interest, owed on the Promissory Note as of October 2, 2013 amounts to Four Hundred Forty-Five Thousand Five Hundred Dollars and 00/100 (\$445,500.00), accruing interest at six percent (6.0%) from the date of judgment.
5. The Promissory Note entitles the Plaintiffs to an award of all court costs and expenses incurred, including thirty percent (30%) attorney's fees.

1236  
0752

BK-1236PG0752

SEBRING INVESTMENTS, LLC

By: Todd Townsend  
Todd Townsend, Managing Member

STATE OF VIRGINIA,  
CITY OF Virginia Beach, to-wit:

The foregoing was subscribed and sworn to before me this 8<sup>th</sup> day of October, 2013, by Todd Townsend, Managing Member of Sebring Investments, LLC, personally known by me, or identified by me through satisfactory evidence of identity, and whose signature was voluntarily affixed by the individual for the purposes stated.

Kimberly S. Fraser  
Notary Public

My Commission Expires: July 31, 2014

My Registration Number: 7204191

KIMBERLY STIMMETTE-FRASER  
Notary Public  
Commonwealth of Virginia  
My Commission Expires July 31, 2014  
Registration # 7204191

L:\Document Directory\T\Townsend Companies, Inc., The\Affidavit (10-2-13).docx

CIR. CT. RECORDED  
CHESAPEAKE, VIRGINIA  
13 OCT 16 AM 10:18  
PAGE 18  
FAYE W. MITCHELL, CLERK  
Circuit Court Clerk  
Faye W. Mitchell

CERTIFIED TO BE A TRUE COPY  
OF THE RECORD IN MY CUSTODY,  
FAYE W. MITCHELL, CLERK  
CIRCUIT COURT, CHESAPEAKE, VA  
BY: Amanda Harris  
DEPUTY CLERK