

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	)	Case No. 08-11922 (KJC)
	)	
HINES HORTICULTURE, INC., et al., <sup>1</sup>	)	Jointly Administered
	)	
Debtors.	)	Chapter 11
	)	
	)	Ref. Docket No. 58

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**ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF  
MILLER BUCKFIRE & CO., LLC AS INVESTMENT BANKER AND FINANCIAL  
ADVISOR FOR THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE NUNC  
PRO TUNC TO THE PETITION DATE**

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Upon the application (the "Application")<sup>2</sup> of the above-captioned debtors (collectively, the "Debtors") for the entry of an order (the "Order") authorizing the Debtors to employ and retain Miller Buckfire as their investment banker and financial advisor effective nunc pro tunc to the Petition Date, pursuant to sections 327 and 328(a) of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules") and the Erickson Declaration; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court

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<sup>1</sup> The Debtors in these Chapter 11 Cases, and the last four digits of each Debtor's federal tax identification numbers are: Hines Horticulture, Inc. (3204) and Hines Nurseries, Inc. (1319). The location of the Debtors' corporate headquarters and the service address for both Debtors is: 12621 Jeffrey Road, Irvine, California 92620.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

pursuant to 28 U.S.C. §§ 1408 and 1409; it appearing that due and adequate notice of the Application has been given and that no other notice need be given; and that Miller Buckfire does not hold or represent interests adverse to the Debtors' estates and that Miller Buckfire is a "disinterested person" as such term is defined under section 101(14), as modified by Section 1107(b), of the Bankruptcy Code; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

1. The Application is granted as provided herein.

2. The Debtors are authorized pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1(b) to employ and retain Miller Buckfire as their investment banker and financial advisor in accordance with the terms and conditions set forth in the Engagement Letter attached hereto as Exhibit 1 as modified by this Order, effective nunc pro tunc to the Petition Date, and to pay fees to Miller Buckfire on the terms and at the times specified in the Engagement Letter.

3. Miller Buckfire shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any applicable orders of the Court. Compensation paid to Miller Buckfire remains subject to disgorgement pending interim and final allowance by this Court, all in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any applicable orders of the Court.

4. Notwithstanding the prior paragraph, the fees payable to Miller Buckfire pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth

in section 330 of the Bankruptcy Code, except that the U.S. Trustee shall retain the right to object to the transaction fees payable pursuant to subparagraphs 2(b) and 2(c) of the Engagement Letter based on the reasonableness standard provided for in Section 330 of the Bankruptcy Code (with the understanding that "reasonableness" for this purpose shall be evaluated by comparing the transaction fees payable in these cases to fees paid to other investment banking firms offering comparable services in other Chapter 11 cases and shall not be evaluated primarily on hourly or length of case based criteria).

5. Notwithstanding the foregoing, Local Rule 2016-2 is waived to authorize Miller Buckfire to maintain time records in half-hour increments and Miller Buckfire shall not be required to provide or conform to any schedule of hourly rates.

6. The Indemnification Provisions of the Engagement Letter are approved, subject to the following modifications during the pendency of the Chapter 11 Cases:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtors are authorized to indemnify, and shall indemnify, Miller Buckfire, in accordance with the Engagement Letter, for any claim arising from, related to or in connection with their performance of the services described in the Engagement Letter.
- b. Miller Buckfire shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services other than the services provided under the Engagement Letter, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.
- c. Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct or (ii) for a contractual dispute in which the Debtors allege breach of Miller Buckfire's obligations under the Indemnification Provisions or (iii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that

person should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter as modified by this Order.

- d. If, before the earlier of (i) the entry of an order confirming a Chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these Chapter 11 Cases, Miller Buckfire believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by this Order), including without limitation the advancement of defense costs, Miller Buckfire must file an application with this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving such indemnification, contribution and/or reimbursement. This subparagraph (d) only specifies the period of time under which the Court shall have jurisdiction over any request for fees and expenses for indemnification, contribution or reimbursement and does not limit the duration of the Debtors' obligation to indemnify, reimburse and/or make contributions to Miller Buckfire.
- e. The first sentence of the third paragraph of the Indemnification Provisions of the Engagement Letter is amended in its entirety to read as follows:

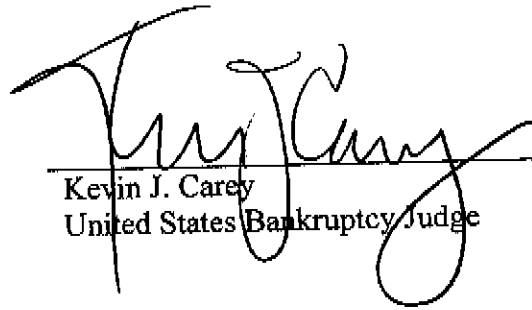
"The Company agrees that if any indemnification sought by an indemnified person pursuant to these indemnification provisions is held by a court to be unavailable for any reason other than as specified in the second sentence of the first paragraph of these indemnification provisions, then (whether or not Miller Buckfire is the indemnified person), the Company and Miller Buckfire will contribute to the losses, claims, damages, liabilities and expenses for which such indemnification is held unavailable (i) in such proportion as is appropriate to reflect the relative benefits to the Company, on the one hand, and Miller Buckfire, on the other hand, in connection with Miller Buckfire's engagement referred to above, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i), but also the relative fault of the Company, on the one hand, and Miller Buckfire, on the other hand, as well as any other relevant equitable considerations."

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Date: Sept 9 2008  
Wilmington, Delaware

  
Kevin J. Carey  
United States Bankruptcy Judge