

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

|                                       |   |                                |
|---------------------------------------|---|--------------------------------|
| In re:                                | ) |                                |
|                                       | ) | Chapter 11                     |
| HINES HORTICULTURE, INC. <sup>1</sup> | ) | Case No. 08- <u>11922</u>      |
|                                       | ) |                                |
| Debtor.                               | ) | Joint Administration Requested |
|                                       | ) |                                |
| In re:                                | ) | Chapter 11                     |
|                                       | ) |                                |
| HINES NURSERIES, INC. <sup>2</sup>    | ) | Case No. 08- <u>11923</u>      |
|                                       | ) |                                |
| Debtor.                               | ) | Joint Administration Requested |
|                                       | ) |                                |

**MOTION OF THE DEBTORS FOR AN ORDER DIRECTING JOINT  
ADMINISTRATION OF THEIR RELATED CHAPTER 11 CASES**

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The above-captioned debtors (collectively, the “Debtors”) hereby move the Court, pursuant to this motion (the “Motion”), for the entry of an order, substantially in the form of Exhibit A, directing joint administration of their related chapter 11 cases. In support of this Motion, the Debtors respectfully state as follows:<sup>3</sup>

**Jurisdiction**

1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> The last four digits of Hines Horticulture Inc.’s tax identification numbers are (3204). The location of its corporate headquarters and its service address is: 12621 Jeffrey Road, Irvine, California 92620.

<sup>2</sup> The last four digits of Hines Nurseries, Inc.’s tax identification numbers are (1319). The location of its corporate headquarters and its service address is: 12621 Jeffrey Road, Irvine, California 92620.

<sup>3</sup> The facts and circumstances supporting this Motion are set forth in the Declaration of Claudia M. Pieropan, Chief Financial Officer of Hines Horticulture, Inc., in Support of First Day Motions (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meanings set forth in the First Day Declaration.

3. The statutory bases for the relief requested herein are section 105(a) of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 1015-1 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

### **Background**

4. On the date hereof (the “Petition Date”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases.

5. The Debtors operate one of the largest commercial nursery operations in North America, producing and distributing one of the broadest assortments of ornamental shrubs, color plants and container-grown plants in the industry. The Debtors sell their green goods to more than 1,180 retail and commercial customers, representing more than 6,670 outlets throughout the United States, including premium local and regional garden centers, as well as leading national home centers and retailers, such as The Home Depot, Lowe’s and Wal-Mart.

6. As of the Petition Date, the Debtors employed approximately 1,600 employees. The Debtors’ employee base fluctuates seasonally from a low of approximately 1,500 to a high of approximately 3,000 employees during the activity-intensive preparation and selling season from February to June. None of the Debtors’ employees are represented by a labor union. Hourly, salaried and contract labor comprise nearly 45% of the Debtors’ production costs.

7. The Debtors produce approximately 5,100 varieties of ornamental shrubs, color plants, and container-grown plants grown primarily for outdoor use, most of which are sold under the Hines Nurseries<sup>TM</sup> trade name. The Debtors operate seven nurseries located in Arizona, California, Oregon and Texas.

8. In 2007, the Debtors recorded net sales of approximately \$215.1 million. In addition, the Debtors recorded net sales of \$40.5 million for the first three months of 2008, ended March 31, 2008. As of March 31, 2008, the Debtors reported approximately \$297.4 million in total assets and approximately \$317.3 million in total liabilities, including secured obligations under the Debtors' prepetition secured credit facility (the "Prepetition Credit Facility") in the approximate amount of \$38.0 million and approximately \$175.0 million under the Debtors' 10.25% senior subordinated unsecured notes due 2011 (the "10.25% Senior Notes").

9. Several factors have led to the filing of these Chapter 11 Cases. First, the Debtors experienced significantly greater than expected declines in revenue. The Debtors' decline in revenue stems primarily from, among other things: (a) inclement weather in many parts of the country during the spring planting season; (b) a weaker consumer environment for products in the Debtors' industry; (c) pricing pressure from certain of the Debtors' largest customers; and (d) significant increases in production and distribution costs. Additionally, the Debtors have suffered recently from a severe liquidity shortfall, precipitated by a recent downward adjustment in the rate at which the Debtors' prepetition secured lenders (the "Prepetition Lenders") have been willing to loan against the Debtors' inventory under the Debtors' Prepetition Credit Facility. This downward adjustment was made based on the results of a new inventory valuation report commissioned by the administrative agent for the Prepetition Lenders that showed a decline in the value of the Debtors' inventory.

10. Prior to the Petition Date, the Debtors and their advisors extensively explored multiple restructuring alternatives, including the sale of all or specific portions of the Debtors' operations, a new debt or equity capital infusion and a comprehensive restructuring of the Debtors' balance sheet. As a result of these efforts, contemporaneously herewith, the Debtors filed a motion seeking approval of bidding procedures for the sale of all or substantially all of the Debtors' assets and asking this Court to set a hearing date to approve the sale transaction. The Debtors' proposed stalking horse bidder is an affiliate of Black Diamond Capital Management LLC ("Black Diamond"). In addition to being the Debtors' stalking horse bidder, Black Diamond is the Debtors' largest unsecured creditor, holding a majority of the Debtors' 10.25% Senior Notes.

**Relief Requested**

11. By this Motion, the Debtors seek entry of an order directing joint administration of these Chapter 11 Cases for procedural purposes only. Specifically, the Debtors request that the Court maintain one file and one docket for all of the jointly-administered cases under the case of Hines Horticulture, Inc. and that the cases be administered under a consolidated caption, as follows:

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

|  |   |                           |
|--|---|---------------------------|
| In re:   | ) |                           |
|  | ) | Chapter 11                |
| HINES HORTICULTURE, INC., et al., <sup>1</sup> | ) | Case No. 08- <u>11922</u> |
| Debtors.                                       | ) | Jointly Administered      |
|  | ) |                           |

<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.

12. The Debtors also request that a docket entry, substantially similar to the following, be entered on the docket of each of Hines Nurseries, Inc. to reflect the joint administration of these Chapter 11 Cases:

An order has been entered in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing the procedural consolidation and joint administration of the chapter 11 cases of Hines Horticulture, Inc. and Hines Nurseries, Inc. and all further pleadings and other papers shall be filed in, and all further docket entries shall be made in, Case No. 08-11922.

#### **Basis for Relief**

13. Bankruptcy Rule 1015(b) provides, in pertinent part, that “(i)f . . . two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order a joint administration of the estates.” Fed. R. Bankr. P. 1015(b). The Debtors are “affiliates” as that term is defined under section 101(2) of the Bankruptcy Code. Accordingly, this Court is authorized to grant the relief requested herein.

14. Section 105(a) of the Bankruptcy Code also provides this Court with the power to grant the relief requested herein by the Debtors. Section 105(a) states that a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

15. In addition, Local Rule 1015-1 provides as follows:

An order of joint administration may be entered, without notice and an opportunity for hearing, upon the filing of a motion for joint administration pursuant to Fed. R. Bankr. P. 1015, supported by an affidavit, declaration or verification, which establishes that the joint administration of two or more cases pending in this Court under title 11 is warranted and will ease the administrative burden for the Court and the parties. An order of joint administration entered in accordance with this Local Rule may be reconsidered upon motion of any party in interest at any time. An order of joint administration under this Local Rule is for procedural purposes only and shall not cause a “substantive” consolidation of the respective debtors’ estates.

Del. Bankr. L.R. 1015-1.

16. The entry of joint administration orders in multiple related cases is common and generally non-controversial in this district. See, e.g., In re ACG Holdings, Inc., Case No. 08-11467 (Bankr. D. Del. July 16, 2008); In re Vertis Holdings, Inc., Case No. 08-11460 (Bankr. D. Del. July 16, 2008); In re Tropicana Entm't, LLC., Case No. 08-10856 (Bankr. D. Del. May 6, 2008); In re Leiner Health Prods. Inc., Case No. 08-10446 (Bankr. D. Del. Mar. 12, 2008); In re Wickes Holdings, LLC, Case No. 08-10212 (Bankr. D. Del. Feb. 5, 2008); In re Pope & Talbot, Inc., Case No. 07-11738 (Bankr. D. Del. Nov. 21, 2007); In re Am. Home Mortgage Holdings, Inc., Case No. 07-11047 (Bankr. D. Del. Aug. 7, 2007); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (Bankr. D. Del. June 13, 2007); In re Dura Auto. Sys., Inc., Case No. 06-11202 (Bankr. D. Del. Oct. 31, 2006); In re J.L. French Auto. Castings, Inc., Case No. 06-10119 (Bankr. D. Del. Feb. 13, 2006).

17. Joint administration in these Chapter 11 Cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings and orders that will arise in these Chapter 11 Cases will jointly affect both Debtors. Entry of an order directing joint administration of these cases will permit the Debtors to reduce fees and costs in connection with the administration of these Chapter 11 Cases by avoiding the duplication of effort associated with, for example, filing multiple duplicative documents in the Debtors' individual cases, monitoring each of the Debtors' individual dockets and maintaining individual case files for each of the Debtors that will largely duplicate one another. In addition, the ability of parties in interest to monitor these cases will be facilitated by having all pleadings grouped together on one docket. Joint administration also will relieve the Court of the burden of entering duplicative orders and maintaining duplicative files. Finally,

supervision of the administrative aspects of the Chapter 11 Cases by the Office of the United States Trustee for the District of Delaware will be simplified.

18. The joint administration of these Chapter 11 Cases will not adversely affect the Debtors' respective creditors because this Motion requests only administrative, and not substantive, consolidation of the estates. For example, any creditor may still file a claim against a particular Debtor or its estate (or against both Debtors and their respective estates), intercompany claims among the Debtors will be preserved and the Debtors will maintain separate records of assets and liabilities. Thus, individual creditors' rights will not be harmed by the relief requested; by contrast, rather, the constituents will benefit from the cost reductions associated with the joint administration of these cases.

19. For the foregoing reasons, the Debtors respectfully request the immediate entry of an order providing for the joint administration of the Debtors' Chapter 11 Cases.

#### **No Prior Request**

20. No prior motion for the relief requested herein has been made to this or any other court.

#### **Notice**

21. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Local Rule 2002-1(b); (c) counsel to the agent for the Debtors' prepetition and proposed postpetition secured lenders; (d) the indenture trustee for the Debtors' 10.25% Senior Notes; and (e) the Internal Revenue Service. A copy of this Motion is also available on the website of the Debtors' proposed notice

and claims agent, Epiq Bankruptcy Solutions, LLC, at <http://chapter11.epiqsystems.com/hines>.<sup>5</sup> Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

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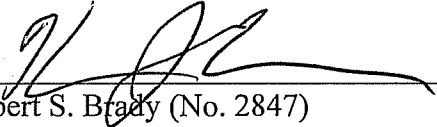
<sup>5</sup> Contemporaneously herewith, the Debtors have filed an application for approval by this Court of their retention of Epiq Bankruptcy Solutions, LLC as their notice and claims agent.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A, (a) authorizing the joint administration of these Chapter 11 Cases and (b) granting such other and further relief as is just and proper.

Dated: August 20, 2008  
Wilmington, Delaware

Anup Sathy, P.C. (IL 6230191) (*pro hac vice* pending)  
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and

  
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Proposed Co-Counsel for the Debtors

**EXHIBIT A**

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

|                                       |   |                                |
|---------------------------------------|---|--------------------------------|
| In re:                                | ) | Chapter 11                     |
| HINES HORTICULTURE, INC. <sup>1</sup> | ) | Case No. 08- <u>11922</u>      |
| Debtor.                               | ) | Joint Administration Requested |
| In re:                                | ) | Chapter 11                     |
| HINES NURSERIES, INC. <sup>2</sup>    | ) | Case No. 08- <u>11923</u>      |
| Debtor.                               | ) | Joint Administration Requested |

**ORDER DIRECTING JOINT ADMINISTRATION  
OF THE DEBTORS' RELATED CHAPTER 11 CASES**

Upon the motion (the "Motion")<sup>3</sup> of the above-captioned debtors (collectively, the "Debtors") for the entry of an order (the "Order"), directing the joint administration of the Debtors' related Chapter 11 Cases and the First Day 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 Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and

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<sup>2</sup> The last four digits of Hines Nurseries, Inc.'s tax identification numbers are (1319). The location of its corporate headquarters and its service address is: 12621 Jeffrey Road, Irvine, California 92620.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED

- 1. The Motion is granted as provided herein.
- 2. The above-captioned Chapter 11 Cases are consolidated for procedural purposes only and shall be jointly administered by this Court.
- 3. Nothing contained in the Motion or this Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the Debtors' Chapter 11 Cases.
- 4. The caption of the jointly administered cases should read as follows:

**UNITED STATES BANKRUPTCY COURT  
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|  |   |                           |
|--|---|---------------------------|
| In re:   | ) |                           |
|  | ) | Chapter 11                |
| HINES HORTICULTURE, INC., et al., <sup>1</sup> | ) | Case No. 08- <u>11922</u> |
| Debtors.                                       | ) | Jointly Administered      |
|  | ) |                           |

5. A docket entry shall be made in each of the above-captioned cases substantially as follows:

An order has been entered in accordance with Rule 1015(b) of the Federal Rules of Bankruptcy Procedure directing the procedural consolidation and joint administration of the chapter 11 cases of Hines Horticulture, Inc. and Hines Nurseries, Inc. and all further pleadings and other papers shall be filed in, and all further docket entries shall be made in, Case No. 08- 11922.

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

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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.

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

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

Dated:  
Wilmington, Delaware

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United States Bankruptcy Judge