

**FLORIDA DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES**

**FILED**  
2017 FEB -9 AM 11:54  
DIVISION OF  
ADMINISTRATIVE HEARINGS

**HIBERNIA ENTERPRISES, LLC,**

Petitioner,

vs.

**TURNER TREE FARM, INC, D/B/A/  
TURNER TREE AND LANDSCAPE**

DACS Case No: 1512-46865  
Agency Clerk Filing No.: B03508  
DOAH Case No: 16-0278  
Amount of Claim: \$16,189.33

and

**GREAT AMERICAN INSURANCE  
COMPANY,**

Respondents.

\_\_\_\_\_ /

**FINAL ORDER**

THIS CAUSE, arising under the Florida Agricultural License and Bond Law, Sections 604.15-604.34, Florida Statutes, came before the Commissioner of Agriculture of the State of Florida for consideration and final agency action.

**I. PRELIMINARY STATEMENT**

The Petitioner, Hibernia Enterprises, LLC (Petitioner) in the above-captioned matter, is a producer of Florida agricultural products. Petitioner sold agricultural products to Turner Tree Farm, Inc. d/b/a Turner Tree and Landscape (Respondent) on July 20, 2015, through August 21, 2015. On November 13, 2015, Petitioner filed a complaint for non-payment against Respondent totaling \$16,189.33, which includes the \$50 claim filing fee. The Notice of Filing of a Producer Claim, copies of the claim, and supporting evidence thereto were mailed by the Florida Department of Agriculture and Consumer Services (Department) to Respondent's registered agent by UPS on December 9, 2015. The Respondent's Representative received the notice on

December 14, 2015. The Respondent responded to the claim and requested a hearing. Notice of the claim was also sent to Co-Respondent, Great American Insurance Company, via UPS. The notice was received on December 16, 2015. Co-Respondent did not contest the matter or request a hearing contesting the matter. On January 14, 2016, the Department referred this matter to the Division of Administrative Hearings (DOAH) for an administrative hearing in accordance with the provisions of Section 120.57(1), Florida Statutes. A hearing was held on June 23, 2016, and the Administrative Law Judge (ALJ) entered a Recommended Order on December 2, 2016, a copy of which is attached hereto. Neither party filed written exceptions.

The Record consists of all notices, pleadings, motions, intermediate rulings, evidence admitted and matters of officially recognized, proposed findings, stipulations of the parties and the Recommended Order.

## **II. FINDINGS OF FACT**

The Commissioner of Agriculture adopts the findings of fact made by the ALJ in the Recommended Order, attached hereto.

## **III. CONCLUSIONS OF LAW**

The Commissioner of Agriculture adopts the conclusions of law made by the ALJ in the Recommended Order, attached hereto.

Upon consideration of the foregoing, review of the record, and being otherwise fully advised in the premises,

**IT IS ORDERED AND ADJUDGED** that:

The Co-Respondent, Great American Insurance Company, Inc., is ordered to provide payment under the conditions and provisions of the bond in the amount of \$16,189.33, to **ADAM H. PUTNAM, COMMISSIONER OF AGRICULTURE**, as Obligee on the bond.

**NOTICE OF RIGHTS**

Any party to these proceedings adversely affected by this Final Order is entitled to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Judicial review proceedings must be instituted by filing a Notice of Appeal with the Department's Agency Clerk, 407 South Calhoun Street, Suite 509, Tallahassee, Florida, 32399-0800, within thirty (30) days of rendition of this order. A copy of the Notice of Appeal must be filed with the Clerk of the appropriate District Court of Appeal accompanied by any filing fees prescribed by law.

**DONE AND ORDERED** at Tallahassee, Leon County, Florida, this 2nd day of February, 2017.

**ADAM H. PUTNAM  
COMMISSIONER OF AGRICULTURE**



**MICHAEL A. JOYNER  
Assistant Commissioner of Agriculture**

Filed, this 2nd day of February, 2017.

Agency Clerk

Copies Furnished to:

Turner Tree Farm, Inc., d/b/a Turner Tree and Landscape  
c/o Amy Denton Harris  
Stichter, Riedel, Blain & Postler, P.A.  
110 East Madison Street, Suite 200  
Tampa, FL 33602

Great American Insurance Company  
301 East 4<sup>th</sup> Street  
Post Office Box 2119  
Cincinnati, OH 45202

Hibernia Enterprises LLC  
c/o Shiobhan Olivero, Esq.  
3900 North Boulevard  
Tampa, FL 33603

Honorable Judge James Peterson, III  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

**EXHIBIT B**

DIVISION UNITED STATES BANKRUPTCY COURT  
CONSUMER SERVICES MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

2016 SEP 23 P 53

[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

DEPT OF AGRICULTURE  
AND CONSUMER SERVICES

SEP 21 2016

BUREAU OF FINANCE  
AND ACCOUNTING

In re:

LEN-TRAN, INC.,  
d/b/a TURNER TREE & LANDSCAPE

Case No. 8:16-bk-4145-MGW

Chapter 11

Debtor.

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**DEBTOR'S MOTION FOR ENTRY OF  
AN ORDER (I) AUTHORIZING THE SALE OF ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES  
PURSUANT TO 11 U.S.C. § 363; (II) APPROVING BIDDING AND SALE  
PROCEDURES; (III) APPROVING THE FORM AND MANNER OF  
NOTICES; (IV) SCHEDULING AN AUCTION; (V) APPROVING PROCEDURES  
FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES; AND (VI) GRANTING RELATED RELIEF**

LEN-TRAN, INC., d/b/a TURNER TREE & LANDSCAPE, as debtor and debtor in possession ("Turner Tree" or the "Debtor"), by and through its undersigned counsel, and pursuant to 11 U.S.C. §§ 105, 363 and 365, Fed. R. Bank. P. 2002, 6004, 6006, and 9014 and Local Rules 2002-1, 6004-1, and 9014-1, moves this Court for entry of an order (i) authorizing the sale of the assets of the Debtor described in the Purchase Agreement (as defined below) (the "Assets"), free and clear of liens, claims, encumbrances, and interests, pursuant to 11 U.S.C. §363, except as to the Encumbered Tangible Personal Property (as defined below), to Turner Landscape, Inc., a Florida corporation (the "Purchaser"), pursuant to that certain Asset Purchase Agreement between the Debtor and the Purchaser, attached hereto as Exhibit "A" (the "Purchase Agreement"), subject to higher and better offers; (ii) approving bidding and sale procedures in connection with the sale of Assets; (iii) approving the form and manner of notices of the bidding and sale procedures; (iv) scheduling an auction to be held in the event additional qualified bids for the Assets are received; (v) approving procedures for the assumption and assignment of certain

executory contracts and unexpired leases to which the Debtor is a party; and (vi) granting related relief. In support of this motion (the "**Motion**"), the Debtor states as follows:

#### INTRODUCTION

In order to maximize the value of its assets for its estate and its creditors, subject to this Court's approval, the Debtor intends to sell the Assets to the Purchaser, pursuant to the sale and bidding processes described below. The sale will be "as-is," "where is," without any warranties of any kind other than as to title, free and clear of all liens, claims, encumbrances, and interests, except as to those certain items of tangible personal property which are subject to purchase money security interests to be assumed by the Purchaser at the closing and as specifically set forth on Schedule 1.1(a) of the Purchase Agreement (the "**Encumbered Tangible Personal Property**"). Additionally, the Debtor seeks to assume and assign to the Purchaser certain executory contracts and unexpired leases, as described below.

The Debtor believes that the bidding and auction procedures described herein, including proceeding with the Purchaser as the "stalking horse" bidder, sets forth a process to achieve the highest and best offer for the benefit of the estate.

The Debtor has proposed a sale process, pursuant to the Purchase Agreement and this Motion, or as otherwise ordered by the Court, in order to provide maximum flexibility to the estate to ensure a reasonable outcome for the estate.

#### JURISDICTION, VENUE, AND STATUTORY AND PROCEDURAL BASIS

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the requested relief are §§ 105(a), 363(b), (f), (k), and (m), and 365(a) and (f) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

(the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (“**Fed. R. Bankr. P.**”) and Local Rules 2002-1, 6004-1, and 9014-1.

#### **BACKGROUND**

1. On May 13, 2016 (the “**Petition Date**”), the Debtor filed with this Court its Voluntary Petition for Relief under chapter 11 of the Bankruptcy Code.

2. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. The Debtor is a Florida corporation that operates a business providing comprehensive, full-service landscaping installation to its customers in both the residential and commercial arenas.

#### **PROPOSED SALE TRANSACTION, BIDDING PROCEDURES, AND SALE PROCESS**

4. This Motion is filed, in part, to seek approval of the bidding and sale procedures in connection with the sale of the Assets. The Debtor intends to sell the Assets through a sale process described in this Motion, pursuant to the schedule proposed herein or as directed by the Court, and consistent with: (i) the due process requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure; and (ii) the Purchase Agreement. The Assets to be sold are expressly defined in the Purchase Agreement.

5. The sale of the Assets to the Purchaser is conditioned upon the following: (i) the entry of an order of this Court pursuant to § 363 of the Bankruptcy Code in form and substance reasonably acceptable to the Purchaser; (ii) a transfer of the Assets, except the Encumbered Tangible Personal Property, free and clear of all liens, claims, encumbrances and interests to the fullest extent permitted by applicable bankruptcy law; (iii) a transfer of the Encumbered Tangible Personal Property to the Purchaser subject to the respective purchase money security interests



which the Purchaser will assume at closing; and (iv) a finding that the Purchaser is entitled to the protections given to good faith purchasers pursuant to § 363(m) of the Bankruptcy Code.

***Description of the Purchase Agreement***

6. The Purchase Agreement contemplates, *inter alia*, the following:<sup>1</sup>

- Seller:** Len-Tran, Inc., a Florida corporation d/b/a Turner Tree & Landscape
- Purchaser:** Turner Landscape, Inc., a Florida corporation
- Property:** The assets described in Section 1.1 of the Purchase Agreement, including, but not limited to, the Debtor's equipment, machinery, inventory, accounts receivable (with the exception of the Excluded Accounts Receivable (as defined in the Purchase Agreement)), cash, intellectual property, telephone numbers, telephone listings, websites, web pages, logos, trade dress, and contract rights.
- Purchase Price:** The purchase price for the Assets shall be \$775,000.00 (the "Purchase Price").
- Deposit:** Upon the Purchaser's execution of the Purchase Agreement, the Purchaser has placed into escrow with bankruptcy counsel for the Debtor a good faith deposit in the amount of \$75,000.00, to be applied to the Purchase Price or returned as provided in the Bid Procedures.
- Free and Clear:** The Debtor will convey, except as to the Encumbered Tangible Personal Property, the Assets to the Purchaser free and clear of all liens, claims, liabilities, encumbrances, and other interests, which shall attach to the proceeds pursuant to §363.
- Purchase Money Security Interests:** The Debtor will convey the Encumbered Tangible Personal Property to the Purchaser subject to the respective purchase money security interests which the Purchaser will assume at closing.
- Assumption of Contracts:** The Debtor will assume and assign to the Purchaser the Assumed Contracts (as defined in Section 1.1(e) of the Purchase Agreement), which Assumed Contracts expressly exclude the Excluded Contracts (as defined in Section 1.1(e) of the Purchase Agreement).
- Assumed Liabilities:** Except for the liabilities and obligations set forth on Schedule 1.1(a), Schedule 1.3, and the obligations under the Assumed Contracts, the Purchaser is not assuming any obligations of the Debtor. The sale order

<sup>1</sup> The above terms are merely set forth for convenience. The Purchase Agreement should be consulted for the actual terms of the sale. In the event of a conflict, the terms of the Purchase Agreement control.

shall provide that the Purchaser shall not be deemed a successor to the Debtor for any purpose.

#### SALE PROCESS

7. The Debtor seeks to foster a competitive bidding process and will accept the highest and best offer for the Assets as determined by the Debtor and its professionals. Accordingly, the Debtor seeks approval and implementation of a three-step sale process, as follows:

- (a) a bid procedures and sale process hearing, which the Debtor asks the Court to schedule within two (2) weeks of the date of this Motion (the "**Bid Procedures Hearing**") at which the Debtor will seek approval of: (i) the Bid Procedures (as defined herein) for bidding on the Assets, including approval of the Overbid Amount (defined below), (ii) the form and manner of notice of the Bid Procedures and the proposed sale of the Assets, and (iii) the scheduling of an auction and a sale approval hearing;
- (b) an auction to be conducted in accordance with the Bid Procedures and to occur at such time as set forth in the order approving the Bid Procedures at the offices of Stichter, Riedel, Blain & Postler, P.A., 110 E. Madison Street, Suite 200, Tampa, FL 33602 (the "**Auction**"). At the Bid Procedures Hearing, the Debtor will ask the Court to schedule an auction for October 24, 2016, at 1:00 p.m.; and
- (c) a hearing approving the sale of the Assets to the successful bidder at the Auction (the "**Sale Hearing**"), to occur after the date of the Auction. At the Bid Procedures Hearing, the Debtor will ask the Court to set the Sale Hearing for a date that is within three (3) days following the date of the Auction.

#### BIDDING AND SALE PROCEDURES

8. The Debtor believes that the bidding procedures set forth in this Motion will assist in determining the highest and best offer available to the Debtor for the sale of the Assets. The Debtor believes that these procedures are favorable to the Debtor, its estate and creditors and create a fair and level playing field for all interested bidders. The Debtor submits that these proposed procedures will satisfy the interests of all creditors in assuring that the Debtor will achieve the maximum value for the Assets.

10. The Debtor, in the exercise of its business judgment and subject to Court approval, has elected to proceed with the Purchaser as the "stalking horse" bidder under the sale process

outlined in this motion. To ensure a competitive sale process, the bidding and auction procedures will provide for an open and competitive process to achieve the highest and best offer.

11. The Debtor requests that this Court approve the procedures, dates and times as set forth on Exhibit "B" hereto (the "**Bid Procedures**"), for the submission and consideration of any written competing bid ("**Bid**") by any competing bidder ("**Bidder**") for the Assets to be sold to the Purchaser.

12. The Debtor also asks the Court to set a deadline of five (5) business days prior to the Auction for any party to object to file any objection to the sale of assets contemplated by the Motion (the "**Sale Objection Deadline**"). Any party who fails to object to this Motion prior to the Sale Objection Deadline shall be deemed to have consented to the relief requested in this Motion within the meaning of § 363(f) of the Bankruptcy Code.

#### ADVERTISEMENT OF SALE

13. The Debtor also seeks approval for the notice of the sale (the "**Sale Notice**") in the form attached as Exhibit "C" to be used in connection with the print and internet marketing and advertising.

14. The Debtor will publish the Sale Notice in two (2) print editions of the Business Observer to be run in October, 2016.

#### INITIAL UPSET BID, MINIMUM OVERBID AMOUNT AND EXPENSE REIMBURSEMENT

15. As noted above, the sale is subject to higher and better offers. The Debtor and the Purchaser have agreed on an incremental amount by which each bid must exceed the prior bid in the amount of \$10,000.00 above the prior bid (the "**Overbid Amount**"). The Debtor submits that this Overbid Amount is reasonable.

16. The Purchase Agreement requires a prevailing Bidder to pay the Purchaser an expense reimbursement in an amount equal to \$15,000.00, as liquidated damages for the

Purchaser's time, expenses, and legal costs in the event the Debtor accepts and closes on an offer for the Assets from a competing Bidder whose Bid is approved by order of this Court (the "Expense Reimbursement"). This Expense Reimbursement would be payable to the Purchaser by the prevailing Bidder upon the closing with such competing Bidder. The Debtor believes that the Expense Reimbursement is fair and reasonable, especially after taking into account the time, effort, legal costs and expenses of the Purchaser in conducting its due diligence of the Assets.

17. Taking into account the Overbid Amount and the Expense Reimbursement, the minimum upset bid required to start the auction sale shall be \$25,000.00 above the Purchase Price (the "Initial Upset Bid").

#### SALE OF ASSETS

18. By this Motion, the Debtor requests that this Court, pursuant to §§ 363(b), (f), and (m) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure, approve the Purchase Agreement and the sale of the Assets to the Purchaser free and clear of liens, claims, and encumbrances, except for the encumbrances on the Encumbered Tangible Personal Property, to the fullest extent permitted by applicable bankruptcy law, subject to higher and better offers as described above.

19. Section 363(b)(1) of the Bankruptcy Code states that the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts usually defer to the business judgment of a debtor in deciding whether or not to authorize a debtor to sell property outside the ordinary course of business. See *In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Mason's Nursing Center, Inc.*, 73 B.R. 360, 362 (Bankr. S.D. Fla. 1987).

20. In considering whether a debtor is justified in selling assets outside the ordinary course of business, courts consider four factors: (1) a sound business reason or emergency justifies a pre-confirmation sale; (2) adequate and reasonable notice of the sale was provided to interested parties; (3) the sale has been proposed in good faith; and (4) the purchase price is fair and reasonable.

21. For all of the reasons set forth in this Motion, the Debtor, in the exercise of its business judgment, has determined that the sale of the Assets to the Purchaser is in the best interests of the Debtor's estate.

22. The Purchase Agreement was negotiated in good faith and at arm's length between the Purchaser and the Debtor.

23. The Debtor believes that the sale of the Assets pursuant to the Purchase Agreement is reasonable and is within the Debtor's best business judgment, and the Purchase Price represents fair value for the Assets. Moreover, the proposed sale is subject to higher and better offers which will ensure that the price is fair and reasonable.

24. Consummation of the Purchase Agreement will have the following financial impact upon the Debtor: (a) it will relieve the Debtor of continuing exposure to liability and loss of value; and (b) it will provide the Debtor with proceeds to pay a portion of the claims of its creditors which are not otherwise being assumed or paid by the Purchaser as part of the Purchase Agreement. At the Sale Hearing, the Debtor will request that the Court enter an order waiving the 14-day stay period set forth in Rule 5004(h) of the Federal Rules of Bankruptcy Procedure and providing that the order granting this Motion be immediately enforceable and that the closing may occur immediately. The Debtor proposes that any objection to the relief requested in this paragraph must be filed with the Court and served on the parties listed in the Certificate of Service of this Motion so as to be actually received by no later than the Sale Objection Deadline.

**SALE FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, AND INTERESTS**

25. Pursuant to 11 U.S.C. § 363(f), the Debtor proposes to sell the Assets free and clear of all liens, claims, encumbrances, and interests, including, without limitation, any successor liability claims, except for the encumbrances on the Encumbered Tangible Personal Property.

26. Section 363(f) allows a debtor or trustee to sell assets of a bankruptcy estate free and clear of liens, with secured claims attaching to the proceeds of such sale. The Debtor proposes that the sale is the best mechanism to allow the creditors to receive the highest and best recovery on their claims. Here, the sale satisfies Section 363(f)(1) and (5), as well as potentially (f)(4).

27. Section 363(f) authorizes the sale free and clear of any successor liability claims. "It is the express language of section 363(f) that allows the sale of these assets free and clear of the successor liability claim of [a claimant], something that is not available outside of bankruptcy." *In re Ormet Corp.*, No. 13-10334, 2014 WL 3542133, at \*3 (Bankr. D. Del. July 17, 2014). Further, "the term 'any interest' as used in § 363(f) is sufficiently elastic" and "authorize[s] a bankruptcy court to bar any interest that could potentially travel with the property being sold." *PBBPC, Inc. v. OPK Biotech, LLC*, 484 B.R. 860, 869 (B.A.P. 1st Cir. 2013) (internal citations omitted).

**ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS**

28. Pursuant to the Purchase Agreement, the Debtor also will assume and/or assign to the Purchaser, pursuant to § 365 of the Bankruptcy Code, certain executory contracts to which the Debtor is a party (collectively, the "Contracts"). The Excluded Contracts have been designated (subject to the Purchaser's right to exclude any other Contracts) by the Purchaser as set forth on Schedule 1.1(e)(ii) to the Purchase Agreement.

29. By this Motion, the Debtor requests authority to assume and/or assign the Contracts to the Purchaser, and the Debtor's assumption and/or assignment to the Purchaser of the Contracts will be conditioned upon the approval of this Court and the closing of the transactions

contemplated by the Purchase Agreement as well as the resolution of the objections, if any, to this Motion filed pursuant to the procedures described below.

30. The Debtor also asks the Court to set a deadline of five (5) business days prior to the Auction (the "**Contract Objection Deadline**") for any party to object to and/or assert any cure claims, defaults or any other claims against the Debtor in connection with the assumption and/or assignment of its Contract and file with this Court any objection to the assumption and/or assignment of its Contract and/or the assertion of any claim or default (the "**Contract Cure Claim**"), which Contract Cure Claim shall set forth:

- (a) the specific grounds for such Contract Cure Claim;
- (b) any and all defaults of the Debtor (whether monetary or non-monetary) that it alleges are in existence under such Contract and, (i) if such alleged defaults are monetary, the nature of such monetary defaults (including the date and amount of any payment allegedly due under the Contract) and cure amounts, if any, due and owing by the Debtor pursuant to 11 U.S.C. §365(b) and, (ii) if such alleged defaults are non-monetary, the nature of such non-monetary defaults and the amount of money or the type of action required to cure such non-monetary defaults; and
- (c) any and all claims of any nature whatsoever against the Debtor.

31. The Debtor further requests that this Court enter an order providing that parties to such Contracts who fail to timely file written Contract Cure Claims to the proposed assumption and/or assignment of their Contracts as set forth above shall be conclusively deemed to have waived any such Contract Cure Claims and to have consented to such assumption and/or assignment of their Contract to the Purchaser and further providing that any party not specifying any default or claim as required herein shall be deemed to have conclusively acknowledged that no default or claim exists under any such Contract.

NOTICE

32. A copy of this Motion without Exhibits A through C is being sent to (i) the Purchaser, (ii) counsel for the Purchaser, (iii) the Office of the United States Trustee, (iv) all creditors and parties in interest, (v) parties to Contracts, and (vi) all parties (“Interested Buyers”) that have expressed an interest or may have an interest in acquiring the Assets. A copy of Exhibit A – Purchase Agreement, Exhibit B – Bid Procedures and Exhibit C – Sale Notice may be obtained from the undersigned’s website at [www.srbp.com/srbp/case-documents](http://www.srbp.com/srbp/case-documents) or by sending an email request to Amy Denton Harris at [aharris@srbp.com](mailto:aharris@srbp.com). The Debtor proposes to send a copy of Exhibit B – Bid Procedures and Exhibit C – Sale Notice to all of the foregoing parties once they have been approved by the Court.

WHEREFORE, the Debtor respectfully requests entry of orders granting the relief requested herein, and providing such other and further relief as is just and proper.

Dated: September 19, 2016.

/s/ Amy Denton Harris

Elena Paras Ketchum (FBN 0129267)

Amy Denton Harris (FBN 0634506)

Stichter, Riedel, Blain & Postler, P.A.

110 East Madison Street, Suite 200

Tampa, Florida 33602

Telephone: (813) 229-0144

Facsimile: (813) 229-1811

Email: [eketchum@srbp.com](mailto:eketchum@srbp.com); [aharris@srbp.com](mailto:aharris@srbp.com)

Attorneys for Debtor



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Debtor's Motion For Entry of an Order (I) Authorizing the Sale of Substantially All Assets Free and Clear of Liens, Claims and Encumbrances Pursuant To 11 U.S.C. § 363; (II) Approving Bidding and Sale Procedures; (III) Approving the Form and Manner of Notices; (IV) Scheduling an Auction; (V) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (VI) Granting Related Relief* without Exhibits A through C has been furnished on September 19, 2016, by either the Court's CM/ECF noticing system, E-Mail Transmission, or by U.S. mail to:

Office of the U.S. Trustee

All parties receiving notice via CM/ECF transmission

All Creditors and Parties in Interest as set forth on the attached matrix

All parties to the Contracts listed on the attached Contracts Service List

Turner Landscape, Inc.  
4654 State Road 64 East, #513  
Bradenton, Florida 342078

The Robins & Morton Group  
Attn: Derek Gregg, Operations Manager  
423 S. Keller Road #200  
Orlando, Florida 32810

Tula M. Haff, Esq.  
135 North 6th Street, Second Floor  
Haines City, FL 33844-4247  
[Tula@tulahaffattorney.com](mailto:Tula@tulahaffattorney.com)

First Florida Building Corporation  
c/o W. Robert Miller, President  
1533 Sunset Drive, Suite 150  
Miami, Florida 33413

Denis J. Burke  
Business Broker World  
2803 Fruitville Road, Suite 222  
Sarasota, Florida 34237

Jake C. Blanchard  
Blanchard Law, P.A.  
1501 S. Belcher Road, 2B  
Largo, Florida 33771  
[jake@jakeblanchardlaw.com](mailto:jake@jakeblanchardlaw.com)

Eastwood Tuff Turf  
c/o Jason Eastwood, President  
1615 Oklahoma Street  
Oviedo, Florida 32765

Toledo Price Plaza, LLC  
Attn: Daniel Hotte, Manager  
2875 NE 191<sup>st</sup> Street, PH 1B  
Aventura, Florida 33180  
[daniel.hotte@echion.net](mailto:daniel.hotte@echion.net)

Kevin M. Capuzzi  
Benesch, Friedlander, Coplan & Aronoff LLP  
222 Delaware Avenue, Suite 801  
Wilmington, Delaware 19801-1611  
[kcapuzzi@beneschlaw.com](mailto:kcapuzzi@beneschlaw.com)

Interested Buyers and their counsel:

Juniper Landscaping  
Brandon Duke, Vice President  
[Brandon@juniperlandscaping.com](mailto:Brandon@juniperlandscaping.com)

AFS Janitorial  
Bryson Raver, President  
[Braver@afsjanitorial.com](mailto:Braver@afsjanitorial.com)

Scott A. Underwood  
Buchanan Ingersoll & Rooney PC  
SunTrust Financial Center  
401 E. Jackson Street, Suite 2400  
Tampa, Florida 33602-5236  
[Scott.Underwood@bipc.com](mailto:Scott.Underwood@bipc.com)

Patrick M. Mosley  
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101 E Kennedy Blvd Ste 3700  
Tampa, FL 33602-5195  
[Patrick.mosley@hwlaw.com](mailto:Patrick.mosley@hwlaw.com)

Kathleen A. Murphy  
Buchanan Ingersoll & Rooney PC  
919 North Market Street, Suite 1500  
Wilmington, DE 19801-3046  
[Kathleen.murphy@bipc.com](mailto:Kathleen.murphy@bipc.com)

*/s/ Amy Denton Harris*

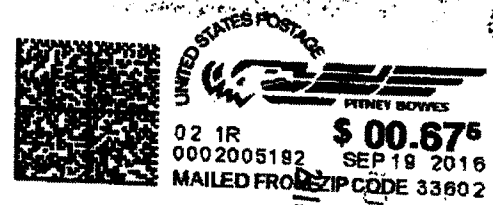
Amy Denton Harris

**EXHIBIT C**

STICHTER, RIEDEL, BLAIN & POSTLER, P.A.  
ATTORNEYS AT LAW  
110 E. Madison Street  
Suite 200  
Tampa, Florida 33602-4700

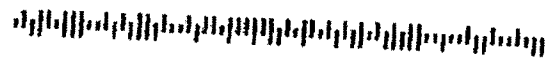
FDACS  
P.O. Box 6700  
Tallahassee, FL 32314-6700

TAMPA  
FL 335  
19 SEP 2016  
PM 3 L



DIVISION  
CONSUMER SERVICES  
2016 SEP 26 PM 3:53  
ICES

32314-670000



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\* File Name

\* Order Category  ...  Firm Num

\* Division/Bureau   ...

\* Amount  Division File ID

\* Bus. Location

\* City  \* State  \* Zip  Zip4

\* Org Code, EO & Obj. Code    ...



Admin. Complaint #

**B03508**

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File Name

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Report Date: 01/04/2017 10:15:28  
Report Generated by: ANITA FRANCIS

# Case Summary Report

Page 1 of 3

Case Number: **1512-46865**

Case Status: Open

Recv Date: 12/07/2015

Name: **TURNER TREE FARM, INC.**  
Doing Business As Name: **TURNER TREE AND LANDSCAPE**  
Business Address: **2504 64TH STREET CT E, BRADENTON, FL 34208-6443**  
Mailing Address: **2504 64TH STREET CT E, BRADENTON, FL 34208-6443**  
Region/County: **South / MANATEE**  
Phone(Business): **941-745-2101**  
Sub Status: **Bond Collection Pending**  
Subject: **148 - AG Dealer**

Case Manager:

**ANITA FRANCIS**

Phone Number **850-410-3772**

Company Comments:

Case Summary: **No Summary Available**

<u>Start Date</u>	<u>Case Activities</u>
12/07/2015	<b>Opening comments (BILL NASS)</b> Turner Tree Farm Inc dba Turner Tree and Landscaping Ag Dealer # 118745 owes Hibernia Enterprises LLC dba Hibernia Nursery \$16,189.33. See scan items.
12/07/2015	<b>DOS Search (BILL NASS)</b> DOS - Both companies - Active
12/07/2015	<b>New Documents received. Please look. (BILL NASS)</b> Claim info, DOS and License and Bond info on #118745
12/09/2015	<b>Initial Case Review (ANITA FRANCIS)</b> Claim review prepped
12/09/2015	<b>Refer to Supervisor (ANITA FRANCIS)</b> Claim prepared
12/09/2015	<b>Other (ANITA FRANCIS)</b> claim prepared.
12/11/2015	<b>Other (ANITA FRANCIS)</b> 1Z4AW8674264038300 - TURNER TREE FARM, INC. Hibernia enterprises - 1Z4AW8674264530321 Great American - 1Z4AW8674264288531
12/11/2015	<b>Bond Demand Notices Mailed (TINA R ROBINSON)</b>
12/14/2015	<b>14 Day Call (ANITA FRANCIS)</b> Called Carol Garcia at 941-745-2101 ext 129 and left her a message to return my call.
12/14/2015	<b>Other (ANITA FRANCIS)</b> Tracking Number: 1Z4AW8674264038300 Delivery Date / Time: 14-December-2015 / 2:54 PM Delivery Location: OFFICE Signed by: SAMMONS PETER MACKEY, ESQ TURNER TREE FARM, INC. 2504 64TH STREET CT E BRADENTON  Tracking Number: 1Z4AW8674264530321 Delivery Date / Time: 14-December-2015 / 4:51 PM Delivery Location: FRONT DESK Signed by: LEONE Shipment Detail Ship To: DAVID COUNIHAN HIBERNIA ENTERPRISES, LLC 1176 C 478A WEBSTER FL 33597 US  Tracking Number: 1Z4AW8674264288531 Delivery Date / Time: 16-December-2015 / 9:42 AM Delivery Location: DOCK Signed by: OFFICE Shipment Detail  Ship To: C/O BOND CLAIM DEPARTMENT GREAT AMERICAN INSURANCE COMPANY 301 E 4TH ST ROOM 800 CINCINNATI OH 45202 US

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<u>Start Date</u>	<u>Case Activities</u>
01/04/2016	<b>HR - Hearing request received by H/O (TINA R ROBINSON)</b>
01/12/2016	<b>Refer to Supervisor (ANITA FRANCIS)</b> Letter to DOAH
01/12/2016	<b>Other (ANITA FRANCIS)</b> Letter to DOAH prepared.
01/13/2016	<b>File returned to the Case Manager (TINA R ROBINSON)</b> Corrections required "D"
01/15/2016	<b>Referred for Formal Hearing (ANITA FRANCIS)</b>
01/29/2016	<b>Phone Call (ANITA FRANCIS)</b> Michelle Simmons called from 941-745-2101 from Turner Farms called and wanted to know when the date of the hearing is going to be held. Informed her that if I hear about the hearing first will call and inform her about the date and how they do the hearing.
02/19/2016	<b>Phone Call (ROSS LANGFORD)</b> David of Hibernia Nursery was transferred to me with questions about his claim. After reviewing file forwarded response from respondent to claimant and informed him all further correspondence should be referred to DOAH.
02/23/2016	<b>Phone Call (ANITA FRANCIS)</b> Called Joy Hayes Court Reporting 352-726-4451 and spoke to Bridget and told her that I will be sending her an e-mail.
02/23/2016	<b>E-Mail (ANITA FRANCIS)</b>
02/24/2016	<b>Claim referred to DOAH (ANITA FRANCIS)</b>
03/07/2016	<b>Phone Call (ANITA FRANCIS)</b> Attorney Drew from Mackey Law Group called and said that Hibernia changed their claim with DOAH. Informed him to contact DOAH.
03/28/2016	<b>E-Mail (ANITA FRANCIS)</b> From: Francis, Anita Sent: Monday, March 28, 2016 11:21 AM To: 'office@joyhayescourtreporting.com' Subject: RE: Confirmation Request - DOAH Hearing before Judge Peterson - Hibernia Enterprises, LLC vs Turner Tree Farm, Inc. - 03/29/2016 - 9:00am - (111280)

Dear Ms. Bridget,

Please find enclosed the cancellation of the hearing and I have not heard about the rescheduled date.

Thank you.

Anita Francis  
Regulatory Consultant  
Division of Consumer Services  
Florida Department of Agriculture and Consumer Services

(850) 410-3772  
(850) 410-3801 Fax  
Anita.Francis@FreshFromFlorida.com

www.FreshFromFlorida.com

Please note that Florida has a broad public records law (Chapter 119, Florida Statutes). Most written communications to or from state employees are public records obtainable by the public upon request. Emails sent to me at this email address may be considered public and will only be withheld from disclosure if deemed confidential pursuant to the laws of the State of Florida.

From: office@joynayescourtreporting.com [mailto:office@joyhayescourtreporting.com]  
Sent: Monday, March 28, 2016 10:38 AM  
To: Francis, Anita  
Subject: Confirmation Request - DOAH Hearing before Judge Peterson - Hibernia Enterprises, LLC vs Turner Tree Farm, Inc. - 03/29/2016 - 9:00am - (111280)

Good Monday morning, Miss Anita! Are we still on for the 9:00 hearing tomorrow in Dade City?

Report Name: Case\_Summary

Report Date: 01/04/2017 10:15:28

Report Generated by: ANITA FRANCIS

## Case Summary Report

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Case Number: **1512-46865**

Case Status: Open

Recv Date: 12/07/2015

Start Date

Case Activities

Please let me know at your convenience,  
Bridget

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Date: 03/29/2016, Time: 9:00am  
Assignments: Reporter: Beth Bunn  
Location: Old Historic Courthouse - Board Room  
37918 Meridian Avenue  
Dade City  
Case Style: Hibernia Enterprises, LLC vs Turner Tree Farm, Inc.  
Witness: DOAH Hearing before Judge Peterson  
Client: W. Alan Parkinson  
FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SER  
Department of Consumer Services  
2005 Apalachee Parkway  
Tallahassee, FL 32314  
Phone: 850-410-3695

Confirms to: Anita (Anita.Francis@freshfromflorida.com)

04/05/2016

**E-Mail (ANITA FRANCIS)**

From: Francis, Anita  
Sent: Tuesday, April 05, 2016 12:33 PM  
To: 'Joy Hayes Court Reporting'  
Subject: RE: Confirmation Request - DOAH Hearing before Judge Peterson - Hibernia Enterprises, LLC vs Turner Tree Farm, Inc. - 03/29/2016 - 9:00am - (111280)

Dear Ms. Bridget,

Please find enclosed the re-scheduled court date for June 23, 2016 at 9:30 am.

Thank you.

Anita Francis  
Regulatory Consultant  
Division of Consumer Services  
Florida Department of Agriculture and Consumer Services

(850) 410-3772  
(850) 410-3801 Fax  
Anita.Francis@FreshFromFlorida.com

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01/04/2017

**FO Prepared (ANITA FRANCIS)**

01/04/2017

**FO to Supervisor (ANITA FRANCIS)**