

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re)	Chapter 11
)	Case No. 16-00783
Thomas E. and Donna L. Beeson,)	Hon. Janet S. Baer
)	Hearing Date: September 28, 2017
Debtors.)	Time: 9:30 p.m.

Notice of Motion

TO: *SEE ATTACHED SERVICE LIST*

PLEASE TAKE NOTICE that on September 28, 2017 at 9:30 a.m. or as soon thereafter as counsel may be heard, we shall appear before the Honorable Janet S. Baer, United States Courthouse, 219 South Dearborn Street, Room 615, Chicago, Illinois and then and there present the **Debtors' Motion to 1) Sell Real Property Free and Clear of Liens under Section 363(f) – 1300 Half Day Road, Deerfield, IL, 2) Pay Customary Closing Costs and 3) to Shorten Notice**, a true and correct copy of which is attached hereto and hereby served upon you.

/s/ Joseph A. Baldi

CERTIFICATE OF SERVICE

I, Joseph A. Baldi, an attorney, hereby certify that on September 14, 2017 I caused a true and correct copy of the foregoing Notice of Motion and the document identified therein, including exhibits and a proposed order, to be served on the persons on the attached service list by electronic notice or First-Class mail as indicated on the service list.

/s/ Joseph A. Baldi

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Case No. 16-00783

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**UNITED STATES BANKRUPTCY COURT
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) Case No. 16-00783
Thomas E. and Donna L. Beeson,) Hon. Janet S. Baer
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**Debtors' Motion to 1) Sell Real Property Free and Clear of Liens under Section 363(f) –
1300 Half Day Road, Deerfield, IL, 2) Pay Customary Closing Costs and 3) to Shorten
Notice**

Thomas E. and Donna L. Beeson, debtors and debtors in possession ("Debtors"), pursuant to 11 U.S.C. §§ 105, 363 (b) and 363 (f) of the Bankruptcy Code ("Code") and Rules 2002(a)(2), 6004 and 9006 of the Federal Rules of Bankruptcy Procedure ("Rules") request this Court enter an order 1) authorizing the sale of the real property commonly known as 1300 Half Day Road, Deerfield, IL (hereinafter the "South Parcel") free and clear of liens, claims and interests, 2) authorizing Debtors to pay the customary closing costs from the proceeds of sale and 3) shortening notice. In support of this Motion, the Debtors respectfully state as follows:

Introduction

1. The Debtors commenced this bankruptcy case on January 11, 2016 by the filing of a voluntary petition for relief under chapter 11 of title 11 of the Code.
2. Pursuant to sections 1107 and 1108 of the Code, the Debtors continue to operate their business and manage their assets as debtors in possession.
3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is being heard by the Court pursuant to 28 U.S.C. §157(a) and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O).
4. No creditors' committee, trustee or examiner has been appointed in this chapter 11 case.

I. Background

A. Debtors Business and Real Estate Holdings

5. Debtors operate a nursery business through their wholly owned corporation, Beeson Plantation, Inc (“Plantation”). Debtors, through Plantation, utilize the South Parcel located at 1300 Half Day Road, Deerfield, IL, for its retail nursery operations and the property at 12526 W. Highway 22, Bannockburn, IL (the “Highway 22 Property”) for its wholesale nursery operations.

6. Debtors formerly owned a parcel of real estate located at 23443 N. Waukegan Road, Bannockburn, IL, (“North Parcel”) which was a vacant parcel of land approximately 9 acres in size. Pursuant to an order of this Court, Debtors sold the North Parcel as part of the North Parcel Transaction more fully described below.

7. Debtors currently own the South Parcel, which they acquired as part of the North Parcel Transaction. The South Parcel is a property approximately 5 acres in size and is located at the intersection of Waukegan Road and Highway 22 (Half Day Road). The Debtors operate the retail portion of the Plantation nursery business out of the South Parcel and the buildings located on the South Parcel. Pursuant to the North Parcel Transaction more fully described below, Debtors acquired title to the South Parcel free and clear of any liens, claims or interests. Debtors are not aware of any liens or encumbrances against the South Parcel other than real estate taxes which are not yet due and payable.

8. Debtors own the Highway 22 Property, located at 12526 W. Highway 22, Bannockburn, Illinois. Plantation uses the Highway 22 Property in its wholesale nursery operations. Pursuant to the North Parcel Transaction, the liens which were formerly outstanding against the Highway 22 Property were satisfied and released. Debtors are not aware of any liens or encumbrances against the Highway 22 Property other than real estate taxes which are not yet due and payable.

9. As a result of the foregoing, Debtors own both the South Parcel and the Highway 22 Property free and clear of liens and encumbrances, other than non-delinquent real estate taxes.

B. North Parcel Transaction

10. Prior to the filing of this case, Debtors engaged in a substantial effort to market and sell or develop the North Parcel and the South Parcel to pay the liens outstanding against the North Parcel and the Highway 22 Parcel while still allowing the Debtors to continue their nursery business. Debtors negotiated at length with Continental Properties Company, Inc., ("Continental"), a Milwaukee based real estate development company, in their efforts to sell the North Parcel and provide for its development as a commercial property. As a result of those efforts the Debtors entered into an agreement in January of 2013 to grant an option to Continental Beeson Corner LLC. ("Continental Beeson")¹ to purchase the North Parcel (the "North Parcel Option"). At the same time, Continental 165 Fund, LLC ("Continental 165"), purchased the South Parcel from the Debtors for \$3.5 million which was used to pay delinquent liens against the South Parcel and prevent the South Parcel from being acquired by competing interests.

11. The North Parcel Option granted Continental Beeson an option to purchase the North Parcel for a purchase price of \$10,000,000.00. The exercise of the North Parcel Option was contingent upon the Debtors obtaining agreements with their lenders to satisfy all existing liens against the North Parcel and upon Continental Beeson obtaining necessary approvals to allow it to develop the North Parcel with a Mariano's grocery store. The North Parcel Option agreement also provided that approximately \$3.5 million of the purchase price would be satisfied through the transfer of the South Parcel back to Debtors pursuant to an agreement with

¹ Continental Beeson Corner LLC is a limited liability company in which the members are Continental 278 Fund LLC ("Continental 278"), which held 80% of the membership interests and 23443 Waukegan Road, LLC. ("Waukegan Road") which held 20% of the membership interests. Continental Beeson, Continental 165 and Continental 278 are affiliates of or entities related to Continental. The members of 23443 Waukegan Road, LLC are Colleen Grant and Drew Beeson, who are the children of Debtors. Pursuant to agreements between Continental 278 and Waukegan Road, the membership interest of Waukegan Road in Continental Beeson was reduced to 1% at the time of the closing for the sale of the North Parcel.

Continental Beeson and its affiliate Continental 165 Fund LLC. The North Parcel Option and its related agreements were executory contracts on the date this case was filed.

12. On April 13, 2016, Debtor presented Debtors' Motion to 1) Assume the Real Property Option Agreement with Continental Beeson Corner LLC, 2) Assume the Real Property Option Agreement with Continental 165 Fund LLC, 3) Authorize the Sale of Real Property Pursuant to Real Property Option Agreement – 23443 N. Waukegan Road, Bannockburn, IL, 4) Authorize the Purchase of Real Property – 1300 Half Day Road, Deerfield, IL, and 5) Approve Assumption of Settlement Agreement and Mutual Release with BMO Harris Bank, N.A. and for Other Relief, ("North Parcel Sale Motion") (Docket #35), seeking approval of the transactions contemplated by the North Parcel Option. On May 4, 2016, this Court entered its order granting the North Parcel Sale Motion ("North Parcel Sale Order") (Docket #47) and authorizing Debtor to perform the obligations under the North Parcel Option and its related agreements.

13. After the entry of the North Parcel Sale Order, Continental Beeson exercised the North Parcel Option and the closing for the transactions contemplated pursuant to the North Parcel Option Agreement took place in July of 2016. As a result, liens against the North Parcel, the South Parcel and the Highway 22 Property were satisfied and released and Debtors became the owners of the South Parcel, free and clear of any liens, claims or encumbrances. Since the closing, Continental Beeson has completed the construction of the Mariano's grocery store on the North Parcel, which in turn has significantly enhanced the value of the South Parcel owned by Debtors.

C. Debtors' Plan of Reorganization

14. Debtors have filed their Plan of Reorganization Dated January 5, 2077 (Docket #89) and Disclosure Statement (Docket #92) in this case. The Plan provides for 4 classes of creditors, two of which are for creditors holding liens and mortgages against property owned by the Debtors and one class consists of undisputed unsecured creditor claims. The fourth class consists of the Claim of Ice Miller, LLP, former attorneys for Thomas Beeson, which is a disputed

claim. Pursuant to the proposed plan, the allowed claims of the secured creditors will either be paid in full at confirmation or their claims will be satisfied by curing all defaults under their loan documents and reinstating their claims. Administrative claimants and undisputed unsecured creditors will be paid in full on confirmation. The Ice Miller claim will not be paid unless and until it is allowed. Debtors have objected to the Ice Miller Claim and there is a malpractice case which Debtors filed against Ice Miller which seeks the disallowance of any fees claimed by Ice Miller. Under the Plan, Debtors are required to reserve an amount or otherwise secure payment of the amount, if any, ultimately determined by the Court to be due to Ice Miller. On confirmation, Debtors will require approximately \$1,300,000.00 in cash to fund the payments due under the Plan.

15. The funds for the payments due under the Plan will come from the sale or refinancing of the South Parcel. To that end, Debtors have worked with Continental to negotiate an agreement for the sale and development of the South Parcel. Debtors plan is to sell the South Parcel for redevelopment and move their wholesale nursery operations to the Highway 22 Property. Debtors believe that the development of the South Parcel as commercial and multiuse residential property will realize the best return for the South Parcel and will allow Debtors to confirm the Plan and fund all payments required under the Plan. The relocation of the Plantation nursery operations to the Highway 22 Property will also allow Debtors to rebuild their wholesale nursery business and continue their business operations on a profitable basis.

II. Purchase Agreement

16. Debtors have entered into an agreement, subject to approval by this Court, with Continental Beeson Corner South, LLC (“CBCS” or “Buyer”)² for the sale of the South Parcel,

² Continental Beeson Corner South, LLC is a joint venture in formation. The members of CBCS are Continental __ Fund, LLC and 23443 Waukegan Road, LLC. (“Waukegan Road”). The manager of CBCS is Continental. The members of 23443 Waukegan Road, LLC are Colleen Grant and Drew Beeson, who are the children of Debtors.

substantially in the form which is attached hereto as Exhibit A ("Purchase Agreement"). The essential terms of the Purchase Agreement are as follows:

- a. The Purchase Agreement shall become effective on the date this Court enters an order approving the Purchase Agreement and authorizing Debtors to enter into the Purchase Agreement ("Effective Date");
- b. Buyer shall have a period of 60 days from the Effective Date ("Contingency Waiver Date") during which it will seek all Approvals necessary for development of the Property ("Approvals"), as that term is defined in the Purchase Agreement;
- c. Upon Buyer notifying Debtors in writing prior to the Contingency Waiver Date that Buyer waives the Approval Contingency, Closing will take place 15 days after the Contingency Waiver Date or such earlier date as Buyer elects. If Buyer does not waive the Approval Contingency prior to the expiration of the Contingency Waiver Date, the Purchase Agreement shall terminate;
- d. The Purchase Price for the Property is \$3,250,000.00, payable as follows:
 - i. Within five days after the Effective Date, Buyer shall deposit \$10,000.00 in escrow as earnest money. The earnest money will be applied to the purchase price at closing or, in the event the contract is terminated by Buyer, Debtors will retain the earnest money to reimburse Debtors for the costs incurred to obtain approval of the Purchase Agreement;
 - ii. At closing, Buyer shall pay \$2,200,000, by crediting the amount of the Earnest Money against the Purchase Price, and paying the balance of \$2,190,000.00 to Debtors in cash, subject to adjustment for applicable credits or prorations pursuant to the terms of the Purchase Agreement;
 - iii. At closing, Buyer shall also deposit the balance of the Purchase Price, i.e. \$1,050,000.00, into escrow, which sum shall be disbursed to Debtors as follows:

1. \$400,000.00 shall be released to Debtors upon Buyer obtaining all Approvals for the Property; and
 2. \$650,000.00 shall be released upon Seller vacating the Property on or before the later of July 1, 2018 or 6 months after Closing under the Purchase Agreement.
- e. The sale of the Property shall be free and clear of any and all liens, claims or interests, if any, with such liens, claims or interests attaching solely to the proceeds of sale;
- f. Seller shall be granted a license to continue to occupy and use the Property for a period ending on the later of July 1, 2018 or six (6) months after Closing under the Purchase Agreement.

III. Basis for Relief Requested

17. By this Motion, Debtors seek the entry of an order i) approving of the sale of the South Parcel pursuant to §363(b)(1) and §363(f); ii) authorizing Debtors to pay the customary costs of sale at closing from the proceeds of sale and iii) shortening the notice required of the presentation of this Motion. Debtors have concluded that the Purchase Agreement, which was the result of arms-length negotiations and conducted in good faith, has a sound business purpose, is fair in all respects and will allow Debtors to fully fund the payments to creditors due under their plan of reorganization. Further, the sale of the South Parcel is for a price which is fair and reasonable under the circumstances of this case.

B. Sale under Section 363(b)(1) and (f)

18. Section 363 provides, in pertinent part, that “[t]he 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).

19. A debtor’s sale of its assets should be authorized pursuant to § 363(b)(1) of the Bankruptcy Code as long as a sound business purpose exists for doing so. *See, e.g., In*

re Schipper, 933 F. 2d 513, 515 (7th Cir. 1991); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983).

20. The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when “the transaction makes good business sense” and “preserves the priorities among creditors.” See, e.g., *United Retired Pilots Benefits Protection Assn. v. United Airlines, Inc. (In re UAL Corp.)*, 443 F.3d 565, 572 (7th Cir. 2006) (“the criteria for approval [under § 363(b)(1) is] whether the transaction makes good business sense and does not disturb creditors’ rights”); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (sale under § 363 involves exercise of fiduciary duty and requires an “articulated business justification”).

21. Once a debtor articulates a valid business justification for the sale of its assets, there “is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *Priddy v. Edelman*, 679 F. Supp. 1425, 1434 (E.D. Mich. 1988), *aff’d* 883 F.2d 438 (6th Cir. 1989); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor’s management decisions”).

22. Additionally, courts generally require that adequate and reasonable notice of the sale be provided to interested parties, and that the purchase price be fair and reasonable. See, *In re Delaware & Hudson Rwy. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Taylor*, 198 B.R. 142, 156-57 (Bankr. D. S.C. 1996); *In re Country Manor of Kenton, Inc.*, 172 B.R. 217, 220 (Bankr. N.D. Ohio 1994).

23. As noted above, Debtors believe that the only liens against the South Parcel are for taxes which are not yet due and payable. Debtors seek authority in this motion to pay or provide a credit at closing for the prorated portion of the accrued tax liability against the property. Under §363(f), Debtors may sell the South Parcel free and clear of any interest in such property if the interest is a lien and the price at which the property is to be sold is greater than the aggregate

value of all liens on the property or if the interest is in bona fide dispute. Debtors believe that the value of the liens, if any, against the property are less than the Purchase Price under the Purchase Agreement. To the extent that any other liens, claims or interests are asserted against the South Parcel, Debtors dispute the validity of such interests. As a result, Debtors request that the Court authorize the sale of the South Parcel free and clear of liens, claims or interests pursuant to §363(f).

D. Approval of the Purchase Agreement is in the Best Interests of the Estate

24. Under any of the criterion set forth above for approval of the proposed sale of the South Parcel out of the ordinary course pursuant to the Purchase Agreement can and should be approved.

25. Debtors have filed their Plan and Disclosure Statement which details the claims against the Estate and the way those claims will be treated under the Plan. Attached hereto as Exhibit B is a copy of the exhibit to the Disclosure Statement which has been updated to show the Debtors estimates of the amounts due creditors and the payments to be made under the Plan, assuming that effective date of the Plan is December 1, 2017. As noted above, the amount necessary to make the payments required under the Plan at confirmation will total a maximum of \$1,250,000.00, which sum includes a reserve for the disputed Ice Miller claim and estimates for additional amounts accruing between now and confirmation on the allowed claims of secured and administrative expense creditors. At closing on the sale of the South Parcel, Debtors will receive \$2.2 million of the total purchase price in cash. Further, after closing, Debtors will receive an additional \$1,050,000.00 for the balance of the purchase price by July of 2018. These amounts are sufficient to pay Debtors creditors the amounts due pursuant to the Plan and will leave Debtors with equity available to allow them to resume their nursery business. As a result, Debtors believe that the sale of the South Parcel pursuant to the Purchase Agreement is extremely advantageous to the Debtors, their creditors and the Estate and should be approved.

26. The benefits which are detailed above and which will be received by Debtors when the sale of the South Parcel closes by December 15, 2017 also represents the sound business justification required under §363(b) of the Code for approving the Purchase Agreement and allowing the Sale of the South Parcel.

27. Debtors have been working to market, sell, and develop the North Parcel and the South Parcel since 2010 and the North Parcel Option was granted in 2013. Debtors have met with numerous developers and reviewed their development plans for the North Parcel and the South Parcel. Only Continental offered a plan which Debtors believed could succeed.

28. Debtors selected Continental to develop both the North Parcel and the South Parcel on account of its ability to close the sale and execute a development plan. After the exercise of the North Parcel Option, Continental Beeson developed the North Parcel with a Mariano's grocery store, which is now open and operating. The development on the North Parcel has, in turn, significantly enhanced the value of the South Parcel as a site for redevelopment. Continental has also worked with officials from the Village of Bannockburn regarding annexation and zoning approval for the North Parcel and that experience will prove invaluable in obtaining the approvals required under the Purchase Agreement for the South Parcel. Debtors believe Continental and CBCS will continue to take all steps necessary to obtain those approvals in order to close this transaction .

29. The South Parcel sale will provide funding for Debtors' plan and will be undertaken pursuant to the Plan. Debtors anticipate that the confirmation hearing for the Plan will take place prior to closing under the Purchase Agreement. Under these circumstances, the sale under §363(b) is permissible in this case. See, e.g. *In re Weyland*, 63 B.R. 854 (Bankr. E.D. Wis. 1986). Further, the sale pursuant to the Purchase Agreement will constitute a sale "under a confirmed plan" within the meaning of §1146(a) and will, therefore be exempt from the imposition of any stamp tax or similar tax pursuant to that provision of the Code.

30. As a result, Debtors believe that the sale price for the South Parcel is a fair and reasonable price for the property to be sold. Further, in light of Debtors' plan to pay all creditors in full, their business judgment to accept the Purchase Agreement as they currently exist is sound and creditors will not be prejudiced by accepting the Agreements.

Payment of Closing Costs

31. Debtors will incur customary closing costs, including costs for recording fees, title charges, and title insurance charges in connection with the closing of the sale of the South Parcel for which the Estate is obligated pursuant to the Purchase Agreement. In addition, any real estate taxes which remain unpaid and the prorated portion of real estate taxes which have been assessed but are not yet due and payable must be paid or credited to Buyer at the closing of the sale of the South Parcel. All such charges are either administrative expenses of this Estate or are amounts secured by liens against the South Parcel which must be paid at closing in order to deliver good title to Buyer and comply with the Purchase Agreement. Accordingly, Debtors requests that they be authorized to pay or permit a credit against the Purchase Price for all customary closing costs and real estate taxes at the closing of the sale of the South Parcel from the proceeds of sale.

Notice

32. Debtors have provided fourteen (14) days' notice of the hearing on the Motion to all creditors and the United States Trustee in the form attached hereto as Exhibit C in accordance with Bankruptcy Rules 2002(a)(2) and 6004. Debtors request that this Court shorten the notice required of the hearing on the Motion for cause pursuant to Rule 9006(c)(1). The Purchase Agreement contains a Contingency Waiver Period of sixty days which will not commence to run until this Court enters its order granting the Motion. Debtors believe it is in the best interests of creditors and the Estate to start the Contingency Waiver Period as soon as possible. If the Motion is granted at the hearing on September 28, 2017, Debtors will be able to close the sale by

December of 2017 and fund their Plan before year-end. Debtors are obligated to pay continuing interest on the claims against the Estate and closing prior to year-end will save Debtors the continuing interests costs on those claims. Creditors have also been advised of the Debtors intention to sell the South Parcel to fund the Plan both through the Plan which is on file with the court and prior sale of the North Parcel. Debtors believe that the two-week notice the Motion which they have provided is adequate under the circumstances and therefore request that the Court waive further notice for cause shown.

WHEREFORE, Debtors requests this Court to enter an order:

- A. Authorizing and approving the sale of the South Parcel to Continental Beeson Corner South LLC on the terms set forth in the Purchase Agreement for a total purchase price of \$3,250,000.00;
- B. Authorizing Debtors to take such steps, execute such documents and do such acts as may be necessary or advisable in order to comply with and implement the terms of the Purchase Agreement;
- C. Authorizing Debtors to pay or provide credits at closing for customary closing costs, including title charges, real estate tax prorations, recording fees and other customary closing costs which Debtors are obligated to pay pursuant to the Purchase Agreement;
- D. Finding that the sale of the South Parcel will be consummated pursuant to a plan and that the provisions of §1146(a) apply to prohibit the imposition of any stamp tax or similar tax on the sale of the South Parcel;
- E. Finding that notice of the hearing on the sale is adequate under the circumstances and waiving further notice for cause shown pursuant to Rule 9006(c)(1);
- F. Modifying the automatic stay of §362(a) to permit all parties to the Purchase Agreement to take such actions as provided in such agreement without the need for any further notice and/or order of Court;

- G. Directing that Debtor deposit the sum of \$1,300,000.00 from the proceeds of sale at Closing into a segregated interest bearing escrow account as a plan deposit pursuant to Rule 3020(a), to be held and disbursed solely in accordance with further Order of Court, the Confirmation Order or the Plan; and
- H. For such other and further relief as this Court shall deem proper.

Dated: September 14, 2017

Respectfully submitted,
Thomas E. and Donna L. Beeson, debtors

By: /s/Joseph A. Baldi
One of their attorneys

Joseph A. Baldi
Baldi Berg, Ltd.
20 N. Clark St., Suite 200
Chicago, IL 60602
(312) 726-8150

REAL PROPERTY PURCHASE AGREEMENT

This Real Property Sale Agreement (the "**Agreement**") is entered into as of this ___ day of August, 2017 by and between **THOMAS E. BEESON** and **DONNA BEESON** (collectively, "**Seller**"), and **CONTINENTAL BEESON CORNER SOUTH LLC**, a Wisconsin limited liability company ("**Buyer**").

WITNESSETH THAT:

WHEREAS, Seller is the owner of a certain parcel of real property containing approximately 5 acres more or less, which is legally described in Exhibit "A" attached hereto, which is located in Lake County, Illinois and which is commonly known as 1300 Half Day Road, Deerfield, Illinois (hereinafter the "South Parcel"); and

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer, upon the terms and conditions hereinafter set forth, the South Parcel, to be determined by a "Survey" (as defined in Section 4(a) below), owned by Seller, located in the Lake County, Illinois, with the final legal description to be substituted for the legal description or outline of the property attached hereto as **Exhibit "A"**, together with all access rights, privileges, easements and appurtenances pertaining thereto and all buildings or other improvements, trees, bushes, landscaping and foliage thereon existing at Closing (the "**Property**"); and

WHEREAS, Seller filed a voluntary petition for relief under chapter 11 of Title 11, United States Code ("Bankruptcy Code") which is now pending in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division ("Bankruptcy Court") under case number 16-00783 ("Bankruptcy Case") and Seller currently remains in possession of his property, including the South Parcel, and is operating as a debtor in possession under the applicable provisions of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **Effective Date.** This Agreement is conditioned on and shall become effective on the date ("Effective Date") that an order of the Bankruptcy Court is entered in the Bankruptcy Case approving this Agreement and authorizing Seller to sell the Property and perform the obligations of Seller hereunder ("Approval Order").

2. **Purchase Price.** Seller shall sell and transfer the Property to Buyer, and Buyer shall purchase the Property from Seller on the terms and conditions set forth in this Agreement. The purchase price ("**Purchase Price**") to be paid by Buyer to Seller for the Property shall be Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000.00) payable as follows:

a. **Earnest Money.** Within five (5) business days after the Effective Date, Buyer agrees to deposit in escrow with **First American Title Insurance Company** 833 East Michigan St., Suite 550, Milwaukee, WI 53202 (the "**Title Company**"), to be held in an interest-bearing account, an earnest money deposit of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "**Initial Deposit**"). The Initial Deposit and any Additional Deposit (as hereinafter defined), together with all accrued interest thereon, shall hereinafter be referred to collectively as "**Earnest Money**". If this transaction closes, all Earnest Money shall be credited against the Purchase Price due hereunder. In the event this transaction does not close, the Earnest Money shall be disbursed to Seller to reimburse Sellers for the costs incurred in obtaining approval of this Agreement. The Title Company shall serve as the escrow agent ("**Escrow Agent**") and the parties agree to execute the

Exhibit A

“Escrow Agreement” attached hereto as Exhibit “B” within five (5) business days after the Effective Date.

b. **Balance of Purchase Price.** Buyer shall pay \$2,200,000 (“Closing Purchase Price”) of the Purchase Price to Seller at the “Closing” (as defined in Section 10 below) by i) receiving a credit for the amount of Earnest Money paid by Buyer pursuant to paragraph 2(a), and iii) by the payment of the balance of the Purchase Price in the form of a certified or cashier's check, or by electronic wire transfer or other immediately available funds, subject to adjustment for credits, and prorations as set forth in this Agreement.

c. **Balance of Purchase Price.** Buyer shall pay the balance of the Purchase Price into an escrow account (“Post-Closing Escrow”), which shall only be released to Seller as follows: (i) \$400,000 shall be released upon Buyer obtain all Approvals for the Property, and (ii) \$650,000 shall be released upon Seller vacating the Property in accordance with Section 28 of this Agreement. The parties shall enter into a Post-Closing Escrow Agreement in connection with Closing to memorialize the terms of the Post-Closing Escrow.

3. **Approval Contingency.**

a. **Approval Contingency Period.** Commencing upon the Effective Date and continuing through the sixty (60) days following the Effective Date (“Contingency Waiver Date”), Buyer and the employees, agents and contractors of Buyer shall have the right to study and investigate the Property in a manner deemed necessary by Buyer to determine whether the Property is suitable for Buyer’s contemplated use and to seek to obtain all approvals necessary for development of the Property (“Approvals”), including without limitation the following:

- i. Rezoning of the Property, if necessary, to a zoning classification satisfactory to Buyer with all rights of appeal of the zoning decision having expired;
- ii. Buyer obtaining the valid and irrevocable grant, on terms and conditions satisfactory to Buyer, of all permits, licenses, variances, and approvals that are necessary to permit Buyer to develop the Property as contemplated, including, without limitation, annexation, site development plan, buildings, occupancy, signs, curb cuts, driveways, ingress and egress to public thoroughfares, landscaping, utility service, storm water detention, environmental controls and association consents;
- iii. Platting or replatting the Property in a manner satisfactory to Buyer; and
- iv. Buyer and Seller agreeing to a form of Declaration of Covenants, Conditions and Restrictions with respect to the use and operation of the Property, which shall be recorded against the Property at Closing.

b. **Approvals Conditional.** This grant of inspection and Approval rights is subject to Buyer’s compliance with paragraph 5(b) below. Buyer hereby covenants and agrees with Seller that such Approvals shall not be binding on the Property until the Purchase Price has been irrevocably paid to Seller, unless expressly consented to in writing by Seller. Any resolution, ordinance, agreement or other document in writing evidencing the Approvals shall expressly state this condition. Except as otherwise expressly provided herein, if Closing does not occur when required hereunder, Buyer shall immediately restore the Property to its condition prior to entry.

c. **Expiration of Contingency Waiver Date.** Through the Contingency Waiver Date, Buyer shall have the right to terminate this Agreement for any reason whatsoever. Upon notice to Seller of such termination, the Title Company shall promptly return the Earnest Money to Buyer. In the event Buyer shall fail to give notice to Seller of the satisfaction or waiver of all contingencies on or before the expiration of the Contingency Waiver Date, the Contingencies shall be deemed not to have been satisfied and this Agreement shall automatically terminate, and the Earnest Money shall be disbursed to Seller to reimburse Sellers for the costs incurred in obtaining approval of this Agreement.

4. **Conditions to Closing.** Buyer's obligations hereunder are further contingent upon the following:

a. **Survey.** Buyer's approval of a survey of the Property (the "Survey") prepared by Buyer at Buyer's sole cost and expense, in accordance with the current standards of the American Land Title Association. Upon approval of the aforesaid Survey, the legal description of the Property shall be amended and conformed to the Survey and attached hereto as **Exhibit "A"**. Buyer shall have until the Contingency Waiver Date to review the Survey and provide written objections thereto to be delivered to Seller in conjunction with Buyer's written objections to title delivered below.

b. **Title Commitment.** Buyer's approval of all encumbrances, exceptions, requirements, terms and conditions shown on a commitment for an owner's policy of title insurance ("**Title Commitment**"), which policy shall be in the form of the current form of ALTA Owner's Policy of Title Insurance and which shall provide for an amount of insurance equal to the Purchase Price. Buyer shall order the Title Commitment and shall have until the expiration of the Approval Period to examine the Title Commitment and notify Seller of any objectionable matter or defect or any matter which adversely affects Buyer's proposed use of the Property ("**Title Defect**"). Seller shall exercise its best efforts to correct or cure the Title Defect unless the Title Defect is capable of being cured by the payment of money, in which case Seller shall be obligated to cure and remove such Title Defect. If the Title Defect cannot be corrected to Buyer's satisfaction prior to the date set for Closing despite Seller's best efforts, Buyer may, at its option: (i) declare this Agreement null and void, the Earnest Money shall be paid forthwith to Seller and the parties shall have no further liability or obligation under this Agreement; (ii) waive such Title Defect and proceed to Closing with the right to deduct from the Purchase Price liens or encumbrances of a definite or ascertainable amount; or (iii) specifically enforce this Agreement and require Seller, to the extent possible, to remove the Title Defect and proceed with Closing (which removal may include appropriate title endorsements). If Buyer waives in writing such Title Defect and proceeds to Closing, such Title Defect shall be deemed to be a "**Permitted Encumbrance**".

c. **Liens, Claims and Encumbrances.** The Approval Order shall provide that Seller shall sell the Property to Buyer free and clear of liens, claims or interests, with any such liens, claims or interests to attach solely to the proceeds of sale in the hands of Seller, to the fullest extent permitted pursuant to the provisions of Section 363(f) of the Bankruptcy Code.

d. **Seller's Reports.** Seller agrees to deliver to Buyer, within five (5) days after the Effective Date, a copy of Seller's existing title policy, any existing surveys and any other information, documents and materials relating to the Property in Seller's possession or control that may be relevant to a reasonable buyer's decision to purchase the Property (collectively, "**Seller's Reports**"). The Contingency Wavier Date shall be extended day for day for each day Seller is late in delivering the Seller's Reports.

5. **Access and Cooperation.**

a. Buyer, its agents, employees, contractors and designees, at any time after the Effective Date, shall have the right to enter upon the Property for the purpose of conducting any and all inspections, studies and investigations of the Property desired by Buyer.

b. Buyer shall indemnify and hold Seller harmless from and against any and all cost, expense, liability or damage arising out of the following (except in each case to the extent the following arises out of the gross negligence or willful misconduct of Seller): (i) any injury to any person or the Property attributable to Buyer's exercise of any of its rights hereunder (including, but not limited to, the entry upon the Property by Buyer or any of its agents or contractors); and (ii) any mechanics liens filed against the Property or claims or demands made against Seller for work performed by or on the behalf of Buyer. The proper installation and abandonment of soil borings and/or groundwater monitoring wells on or at the Property shall not constitute damage to the Property. Soil, rock, water, asbestos, and other samples taken from the Property shall remain the property of Seller. At Seller's request, Buyer will cooperate with Seller with respect to decisions regarding the lawful disposal of any contaminated samples. Seller, at Seller's expense, will dispose of any contaminated samples. Seller shall be required to sign any manifests and any other documents required in connection with (a) the disposal of contaminated samples and (b) in the event Closing occurs, the disposal of any Hazardous Substances (as defined in Section 5) located on the Property. Before Buyer and/or its agents enter the Property, the Buyer shall deliver certificates of insurance to Seller in form acceptable to Seller, in an amount not less than Two Million and 00/100 Dollars (\$2,000,000.00) protecting the Seller against liability and property damage arising by or through Buyer Parties. Buyer Parties shall not interfere with the business currently conducted on the Property. The terms of this Section 4 shall survive Closing or termination of this Agreement, as the case may be.

6. **Warranties and Representations.** Seller hereby warrants and represents to Buyer, which warranties and representations shall survive the Closing (with the exception of warranty (a) which shall apply only at closing), that, as of the Effective Date and as of the Closing Date, to the best of Seller's knowledge:

- a. Seller has authority to execute this Agreement pursuant to the Approval Order, and at Closing will have the right and authority to convey to Buyer good and indefeasible fee simple title to the Property, including all mineral rights, in accordance with the terms of this Agreement, free and clear of all liens, encumbrances and other exceptions to title (which may be by removal of such encumbrance or appropriate title endorsement) except for the Permitted Encumbrances;
- b. no improvements have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Property, and Seller has not been notified of, and otherwise has no actual knowledge of, any possible future improvements that might create an assessment against any part of the Property;
- c. neither the terms of this Agreement nor anything provided to be done by Seller hereunder (including, but not limited to, the conveyance and transfer of the Property) will violate any contract, agreement or instrument to which Seller is a party or which affects the Property;
- d. Seller has received no notice of, and otherwise has no actual knowledge (1) that any "**Hazardous Substances**," as that term is defined herein, have been treated, recycled, stored or disposed of on, under or at the Property and the Property is not in violation of any

“**Environmental Law**” (as defined herein); (2) of any release or threatened release of any Hazardous Substances from, at or to the Property; (3) of any activities on the Property that would subject Buyer to damages, penalties, injunctive relief or cleanup costs under any Environmental Laws; (4) of any underground storage tanks presently located on the Property (except an underground pressure tank, which has been disclosed to Buyer), (5) of any underground storage tanks that have been removed from the Property; and (6) of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property or with respect to the use, occupancy or construction thereon; and

- e. except as disclosed to Buyer in writing (including without limitation, those matters appearing in the Title Commitment), (1) Seller is not in default of any of its obligations or liabilities pertaining to the Property, and there is no state of facts, circumstance, condition or event which, after notice or lapse of time, or both, would constitute or result in any such default; (2) Seller has received no notice of, and otherwise has no actual knowledge of, any action, litigation, or proceeding by any individual or governmental agency or proceedings in eminent domain against the Property; (3) during Seller’s ownership of the Property, no portion of the Property has been excavated, no landfill was deposited on or taken from the Property, no construction debris or other debris was buried upon any portion of the Property, and, to the best of Seller’s actual knowledge, none of the foregoing has occurred with respect to the Property prior to the time Seller became the owner of the Property. Actual knowledge shall mean matters currently known to Thomas Beeson as of the date hereof, without investigation or inquiry of any kind.

For purposes of this Agreement, the term “**Environmental Laws**” shall mean all federal, state and local laws including statutes, regulations, codes and other governmental standards, restrictions and requirements in effect now or at any time in the past relating to the use, storage, disposal, release, emission, dispersal, spilling, leaking, burial, migration, seepage, movement, discharge, management, investigation, remediation, regulation or otherwise relating to air pollutants, water pollutants, groundwater, effluents, stormwater runoff, surface water runoff, the environment, Hazardous Substances or employee health and safety, including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Occupational Safety and Health Act of 1970 (all as the same may have been amended), regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency.

For purposes of this Agreement, the term “**Hazardous Substances**” shall mean all hazardous, toxic, flammable, explosive or radioactive substances, wastes and materials; any pollutants or contaminants (including, but not limited to, petroleum products, asbestos, raw materials and natural substances that include hazardous constituents); and any other similar substances or materials that are regulated under Environmental Laws.

Buyer represents and warrants that it has the full power and authority to execute and perform this Agreement.

7. **Operation and Maintenance of the Property.** Seller and Buyer understand and agree that Seller will continue to operate and maintain, individually and through Seller’s wholly owned company Beeson Plantation, Inc. a nursery business on the Property. Further, the Parties consent and agree that Seller shall be permitted to remove, transport or destroy any one or more of the buildings on the Property prior to the Closing Date. It is Seller’s intent to remove and relocate so much of the buildings, equipment and

accessories currently located on the Property to another location for the purpose of continuing as a wholesale or retail nursery operator, and Buyer expressly consents to such relocation, removal or destruction of any or all of the buildings and accessory structures currently located anywhere on the Property. Notwithstanding the foregoing, Seller covenants and agrees that it will, prior to Closing:

- a. continuously maintain in full force and effect insurance coverage covering premises liability on the Property;
- b. refrain from entering into any new lease, easement, agreement or contract, or modifying, amending, extending, terminating, canceling or granting concessions regarding any existing lease, easement, agreement or contract, unless approved by Buyer in writing (which approval may be granted or withheld in Buyer's sole discretion);
- c. not do or permit to be done any physical act with respect to the Property that would adversely affect or make more expensive Buyer's intended use thereof without obtaining Buyer's prior written consent; and
- d. not do or fail to do any act which may frustrate Buyer's intentions and purposes in entering into this Agreement.

8. **Survival of Representations and Warranties.** The representations and warranties made by Seller and Buyer in this Agreement and documents delivered pursuant hereto shall survive the Closing for a period of one (1) year. Seller and Buyer shall defend, indemnify and hold each other harmless from and against any and all claims, actions, losses, costs, damages and/or expenses (including reasonable attorneys' fees) arising out of, relating to or caused by the breach or inaccuracy of any representation, warranty, agreement or covenant of Seller or Buyer, as applicable, set forth in this Agreement or in any document or instrument executed in connection with this Agreement.

9. **Closing.** This transaction is to be closed (the "**Closing**") at the office of the Title Company on the first business day which is fifteen (15) days after the Contingency Waiver Date or such earlier date as elected by Buyer ("**Closing Date**"). For purposes of determining all prorations, the Closing Date shall be inclusive of said date.

a. **Prorations.** All real property ad valorem taxes shall be prorated (employing a 365-day year) between Buyer and Seller as of the Closing based upon the net general real estate taxes for the current year, if known, otherwise for the preceding year. Taxes shall be prorated between the parties based on 105% of the most recent ascertainable full year tax bill. All other assessments levied against the Property as of the Closing Date shall be paid in full by Seller on or before the Closing Date, including any assessment payable in installments. This provision shall survive the Closing and delivery of the Deed. Interest, rents and water and sewer use charges, if any, shall be prorated as of the Closing Date. Accrued income and expenses, including taxes for the Closing Date, shall accrue to Seller.

b. **Conveyance Documents.** At Closing, Seller shall, upon payment of the Purchase Price, convey fee simple title to the Property to Buyer, including all mineral rights, by general warranty deed (the "**Deed**"), free and clear of all liens and encumbrances except the Permitted Encumbrances, easements for public utilities serving the Property recorded prior to the Effective Date by or at the direction of Buyer, and general real estate taxes levied in the year of Closing if not yet due and payable. Seller shall also deliver or cause to be delivered at Closing: (i) the Approved REA, (ii) an affidavit or certificate stating that Seller has sole and exclusive possession of the Property and stating, among other things which may be required by the Title Company or Buyer, that

either: (a) there have been no improvements, additions, alterations, repairs or any changes of any kind whatsoever made to the Property during the applicable statutory period for the filing of a mechanic's lien preceding the Closing; or (b) if there have been any of the aforementioned activities, that all lien holders or potential lien holders in connection with such activities have been paid in full; (iii) a Certificate of Non-Foreign Status (FIRPTA Certificate) in the form required by the I.R.C.; (iv) an affidavit of title and bill of sale in customary form in the jurisdiction in which the Property is located; (v) a closing statement; (vi) the Post-Closing Escrow; and (vii) such other documents and instruments reasonably requested by the Title Company or Buyer to consummate the transactions contemplated by this Agreement. Legal and exclusive possession of the Property shall be delivered to Buyer on the Closing Date, subject to the right of Seller to continue to occupy the Property pursuant to the license set forth below.

c. **Closing Costs.** In the event that the Title Company has not received the Purchase Price in readily available funds by 2:00 p.m. Central Standard Time, then for purposes of all prorations, the Closing Date shall be the next business day. Closing costs shall be paid by the parties as set forth below; however, in the event any charge or fee is not covered herein, the charge or fee shall be paid according to local custom.

(i) Seller shall pay Seller's attorneys' fees, all transfer and recording taxes, and tax collection fees, all recording fees on recordable sale documents and one-half of all escrow fees and closing fees, if any.

(ii) Buyer shall pay Buyer's attorneys' fees, the premium for an ALTA Owner's Policy of Title Insurance (the "**Title Policy**"), the additional premium for the modification of the standard survey exceptions and deletion of standard exceptions, the cost of any endorsements to the Title Policy, and one-half of all escrow fees and closing fees, if any, and the cost of the Survey.

10. **Default.**

a. **Seller's Default.** In the event the purchase and sale is not consummated because of Seller's failure to perform Seller's obligations under this Agreement or in the event of any other default by Seller or in the event that any of the matters Seller has represented or warranted are determined to be inaccurate, Buyer shall have the following rights and remedies, which shall be cumulative to the fullest extent permitted by law: (i) to seek specific performance; (ii) to give notice terminating this Agreement, in which case the Earnest Money paid in connection with this Agreement shall be returned to Buyer; and/or (iii) to pursue any other right or remedy available at law or in equity. Prior to enforcing its remedies, Buyer shall give written notice to Seller of the alleged default and the action needed to correct such default. Seller shall have 5 business days from the receipt of such notice to cure such default; provided that if such default cannot be cured within such 5-business day period, then Seller shall have an additional 5 business days in which to cure such default. If Seller cures the applicable default within the foregoing time period, the claim of default shall be withdrawn. Buyer waives the right to assert lack of mutuality in any action for specific performance instituted by Seller.

b. **Buyer's Default.** In the event the purchase and sale is not consummated because of default by Buyer, then, after written notice to Buyer describing such default, the Seller shall retain the Earnest Money as full, complete and final liquidated damages; provided however, that Seller shall have all remedies at law and in equity with respect to a breach by Seller under paragraphs 5(b). Other than as excepted in the preceding sentence, Seller and Buyer hereby agree that it would be impossible to ascertain the damages accruing to Seller as a result of a default by Buyer under this

Agreement. The payment of said liquidated damages, therefore, shall constitute Seller's sole and exclusive remedy against Buyer and shall be in lieu of the exercise by Seller of any other legal or equitable right or remedy (including specific performance) which Seller may have against Buyer as a result of Buyer's default, all of which are hereby expressly waived by Seller. Seller waives the right to assert lack of mutuality in any action for specific performance instituted by Buyer.

c. **Legal Fees.** In the event legal action is instituted by any party to enforce the terms of this Agreement or which arises out of the execution of this Agreement, the prevailing party in such legal action will be entitled to receive from the other party the prevailing party's reasonable attorneys' fees and court costs, including the costs of appeal as may be determined by the court in which the action is brought.

11. **Brokers.** Neither Buyer nor Seller has used a broker in connection with this Agreement. Each Buyer and Seller shall indemnify, defend and holds the other harmless from and against any and all loss, cost or expense incurred by such party arising from any claim for commissions or brokerage fees arising by or through Buyer or Seller, as applicable.

12. **Captions, Gender.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such section or otherwise affect this Agreement. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless this Agreement requires otherwise.

13. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the state where the Property is located and the applicable provisions of the Bankruptcy Code.

14. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, whether oral or written, are superseded hereby.

15. **Time of Essence.** Buyer and Seller hereby agree that time is of the essence with regard to the terms and conditions of this Agreement.

16. **Binding Effect.** Seller and Buyer hereby acknowledge and agree that they intend this Agreement to be a binding and enforceable agreement, subject to the terms and conditions set forth herein, and each party hereby waives any right to hereafter challenge the enforceability of this Agreement on the basis that the Contingencies and Approvals are at the discretion of Buyer. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17. **Notices.** Any notice hereunder must be in writing, and shall be effective (i) two (2) days after deposited in the United States Mail, Certified Return Receipt Requested, (ii) one (1) day after deposited with a reputable overnight carrier service that provides delivery confirmation, (iii) in the case of facsimile notice (which shall be effective for all purposes hereunder), upon receipt of a facsimile confirmation page by the facsimile sender; or (iv) if by hand delivery, when received by the party to be notified. For purposes of notice, the addresses and facsimile numbers of the parties shall be as set forth below or as may be designated from time to time.

If to Seller:
Thomas E. Beeson

1300 Half Day Road
Deerfield, IL 60015
Facsimile: 847 945 0526 (call first)
Email: colleen@beesonsnursery.com
(Email for informational purposes only; not a form of notice)

With a copy to:
Joseph A. Baldi
Baldi Berg, Ltd.
20 N. Clark Street, Suite 200
Chicago, IL 60602
Facsimile: 312 470-6323
Email: jabaldi@baldiberg.com

If to Buyer:
Continental Beeson Corner LLC
c/o Continental Properties Company, Inc.
Attn: Legal Department
W134 N8675 Executive Parkway
Menomonee Falls, WI 53051
Facsimile: (262) 502-5522
Email: ekyser@cproperties.com; jbenesh@cproperties.com
(Email for informational purposes only; not a form of notice)

The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery. Any party delivering a notice to Escrow Agent must deliver a copy of such notice to the other party complying with the terms of this Section.

18. **Waiver.** The failure of either party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein, shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with such term, condition, or covenant.

19. **Severability.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted, and this Agreement shall be amended to the extent legally possible to conform to its original intent.

20. **Amendment.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived, or discharged either orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

21. **Waiver of Jury Trial.** Seller and Buyer, by this Section, waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Agreement against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of Seller and Buyer, Buyer's use or occupancy of the Property, or any other claims.

22. **No Third Party Beneficiaries.** Seller and Buyer agree and acknowledge that, except as expressly set forth herein, there are no intended third party beneficiaries of this Agreement nor any of the rights and privileges conferred herein.

23. **No Strict Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

24. **Counterparts, Separate Signature Pages, Facsimile Signatures.** This Agreement may be executed in several counterparts, by separate signature pages, and/or by facsimile or electronic mail signatures, each of which may be deemed an original, and all such counterparts, separate signature pages, and facsimile and electronic mail signatures together shall constitute one and the same Agreement.

25. **Business Days.** In the event that any date described in this Agreement for the performance of an action required hereunder by Seller, Buyer and/or the Title Company falls on a Saturday, Sunday or federal legal holiday, such date shall be deemed postponed until the next business day thereafter.

26. **OFAC Compliance.** Neither Seller nor any of Seller's respective officers, directors, shareholders, partners, members, managers, affiliates or associates, and no other direct or indirect holder of an equity interest in Seller, is an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of United States Presidential Executive Order 13224 issued on September 24, 2001 ("**Executive Order**"); (ii) whose name appears on the U.S. Department of the Treasury, Office of Foreign Assets Control's ("**OFAC**") most current list of "Specially Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, www.treas.gov/ofac/; (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in the Executive Order; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a "**Prohibited Person**"). Seller covenants and agrees to ensure that neither Seller, nor any of its respective officers, directors, shareholders, partners, members, managers, affiliates or associates, and no other direct or indirect holder of any equity interest in Seller will: (a) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (b) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Upon request by Buyer from time to time, Seller further covenants and agrees to promptly deliver to Buyer and Buyer's lender any such certification or other evidence as may be requested by Buyer in its sole and absolute discretion, confirming that no violation of this Section 29 shall have occurred. In the event Buyer learns that Seller is a Prohibited Person or has otherwise violated this Section 29, Buyer reserves the right to delay the Closing pending Buyer's investigation into the matter. If Buyer is advised and/or determines that Seller is a Prohibited Person, Buyer reserves the right to terminate this Agreement, promptly receive a refund of the Earnest Money and/or take all other actions necessary to comply with the requirements of the Executive Order. The provisions of this paragraph will survive Closing and/or termination of this Agreement.

27. **Landscaping.** In connection with the development of the Property, Buyer shall submit a request for proposal to Seller to perform all landscaping work for such development. Seller (or Seller's affiliate) shall have the right to enter a bid to provide such landscaping work. In the event that Buyer receives a bid from a third party that is lower than Seller's bid, Buyer shall provide written notice to Seller of the

amount and material terms of such lower bid. Upon receipt of such notice, Seller, or its written designee, shall have the right to match the price and terms of said lower bid. Such right shall be exercisable by written notice thereof to Buyer within ten (10) days after receipt of the notice from Buyer of the third-party offer. If Seller, or its written designee, is the low bidder or exercises its right to match the lowest bid pursuant hereto, Buyer (or Buyer's general contractor, in Buyer's sole discretion) and Seller shall enter into a written contract upon the agreed price and terms within ten (10) days following Buyer's exercise of its rights hereunder. If Seller fails to exercise its right to match the lowest bid within the time period specified herein, Buyer shall be free to enter into an agreement with the third party low bidder; provided, however, Buyer shall pay to Seller \$50,000. In addition, Buyer agrees that the third party performing such landscaping work for the development will not post signs signifying its company name on the Property. This Section 30 shall survive Closing of this Agreement.

28. **License Escrow.** Upon Closing, Buyer, as landlord, shall lease to Seller, as tenant, the Property pursuant to a license agreement (collectively, the "**License Agreement**") substantially in the form attached hereto as Exhibit C. The License Agreement shall have a term ("**Termination Date**") that expires on the later of (i) July 1, 2018, or (ii) 210 days following the Closing Date. The Termination Date may be extended by Buyer in Buyer's sole discretion. Buyer and Seller agree, that Seller or its designee shall pay a license fee of \$1.00 for the right to occupy the Property pursuant to the License Agreement. Buyer and Seller agree, pursuant to the Post-Closing Escrow Agreement, to be executed at Closing, that \$650,000 of the Purchase Price shall be held in escrow by the Escrow Agent until the Termination Date, pursuant to the terms and conditions of the License Agreement and the Post-Closing Escrow Agreement.

[remainder of page left intentionally blank]

[signatures on following page]

Exhibit A

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

CONTINENTAL BEESON CORNER SOUTH LLC, a Wisconsin limited liability company

By: Continental Properties Company, Inc., its manager

By: _____
Daniel J. Minahan, President

Agreement executed by Buyer this ____ day of _____, 2017.

SELLER:

THOMAS E. BEESON

DONNA BEESON

Agreement executed by Seller this ____ day of _____, 2017.

EXHIBIT A

Legal Description of Property

EXHIBIT B

Escrow Agreement

EXHIBIT C

License Agreement

(see attached)

Claims by Class			Plan Payments		Total Payments under Plan On Confirmation
Name	Allowed Claim	Estimated total claim	Class Totals	Payment on Confirmation	
Administrative Claims					
Baldi Berg	\$90,000.00	\$200,000.00		\$200,000.00	\$200,000.00
Shaw Fishman	\$40,898.00	\$40,898.00		\$40,898.00	\$40,898.00
US Trustee Quarterly fees		\$4,875.00		\$4,875.00	\$4,875.00
Total Administrative Claims	\$130,898.00		\$245,773.00	\$245,773.00	\$245,773.00

Name	Scheduled claim	Allowed Claim	Class Totals	Payment on Confirmation	Total Payments under Plan On Confirmation	Balance of reinstated claim	Monthly payments on claim
Creditors by Class							
Class 1 - Claims Secured by Mortgages on Debtors Residence							
Interest 11/1/17 to 12/1/17 for Citi and 10/1 to 21/1 for Third Federal							
Class 1 A - Citimortgage	\$229,491.00	\$363,258.15		\$363,258.15	\$1,123.50	\$364,381.65	\$0.00
Class 1B - Third Federal	\$165,884.00	\$186,256.83		\$53,711.95	\$948.42	\$54,660.37	\$165,796.65
Total Class 1	\$395,375.00		\$549,514.98	\$416,970.10	\$2,071.92	\$419,042.02	

Name	Scheduled Claim	Allowed Claim	Class Totals	Principal Payment on Confirmation	Interest @ 5% thru 12/1/17	Total Payments under Plan On Confirmation
Class 2 - Claims Secured by mortgages on North Carolina Property						
Interest 9/1 to 12/1/17						
Class 2A - PNC	\$435,536.00	\$465,335.23		\$112,762.31	cure thru 12/1/17	\$112,762.31
Class 2B - Chase	\$261,382.00	\$278,068.18		\$17,771.92	5715.09	\$23,487.01
Total Class 2	\$696,918.00		\$743,403.41	\$130,534.23		\$130,534.23

Name	Scheduled Claim	Allowed Claim	Class Totals	Principal Payment on Confirmation	Interest @ 5% thru 12/1/17	Total Payments under Plan On Confirmation
Class 3 - General Unsecured Claims						
Burns Family Deistry	\$11,047.55	\$11,047.55		\$11,047.55	\$1,044.22	\$12,091.77
Contract Callers	\$392.00	\$392.00		\$392.00	\$37.05	\$429.05
Certified Services, Inc.	\$1,507.00	\$1,507.00		\$1,507.00	\$142.44	\$1,649.44
Chicago Title Insurance	\$25,000.00	\$18,500.00		\$18,500.00	\$1,748.63	\$20,248.63
Citibank (Sears)	\$10,775.00	\$10,775.00		\$10,775.00	\$1,018.46	\$11,793.46
DSNB Macys	\$1,836.00	\$1,836.00		\$1,836.00	\$173.54	\$2,009.54
Peoples Gas	\$184.00	\$184.00		\$184.00	\$17.39	\$201.39
PNC Bank - poc	\$1,389.00	\$1,196.55		\$1,196.55	\$113.10	\$1,309.65
Shaw Fishman	\$100,987.34	\$25,987.34		\$25,987.34	\$2,456.34	\$28,443.68
Synchrony Bank (Banana Republic) - poc	\$2,884.00	\$2,784.36		\$2,784.36	\$263.18	\$3,047.54
TNB-Visa (Target)	\$16,758.00	\$16,758.00		\$16,758.00	\$1,583.98	\$18,341.98
US Department of Education - proof of claim	\$8,730.00	\$8,686.00		\$8,686.00	\$821.01	\$9,507.01
	\$181,489.89					
Total Class 3			\$99,653.80	\$99,653.80	\$9,419.33	\$109,073.13

Name	Proof of Claim	Allowed Claim	Class Total	Principal Payment on Confirmation	Interest @ 5% thru 12/1/17	Payment under Plan on Confirmation	Reinstated claims paid outside Plan
Class 4 - General Unsecured Claim Creditors with Claims against Non-Debtor Co Obligor							
Ice Miller, LLC	\$344,785.40	\$344,785.40		\$344,785.40	\$32,589.30	\$377,374.70	
Claim disputed, payment into escrow							
Total Class 4			\$344,785.40	\$344,785.40	\$32,589.30	\$377,374.70	

Total Amounts for Administrative claims and Classes 1, 2, 3 and 4	\$1,749,466.29		\$1,983,130.59	\$1,237,716.53	\$42,008.64	\$1,281,797.09	\$836,314.98
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Exhibit C

In re)	Chapter 11
)	Case No. 16-00783
Thomas E. and Donna L. Beeson,)	Hon. Janet S. Baer
)	Hearing Date: September 28, 2017
Debtors.)	Time: 9:30 p.m.

Notice of Debtors’ Motion to 1) Sell Real Property Free and Clear of Liens under Section 363(f) – 1300 Half Day Road, Deerfield, IL, 2) Pay Customary Closing Costs and 3) to Shorten Notice

Notice of Hearing on Motion: On Thursday, September 28, 2017, at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Janet S. Baer in Courtroom 615 of the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, and shall then and there present the **Debtors’ Motion to 1) Sell Real Property Free and Clear of Liens under Section 363(f) – 1300 Half Day Road, Deerfield, IL, 2) Pay Customary Closing Costs and 3) to Shorten Notice** (“Motion”) in the above referenced matter. A copy of the Motion is available for inspection and copying at the offices of the Clerk of the United States Bankruptcy Court, 219 South Dearborn Street, Chicago, Illinois 60604, or by requesting a copy from Baldi Berg at the office address indicated below on this notice. You may, but need not, appear and be heard on the Motion.

Sale of South Parcel: Debtors have entered into a Purchase Agreement for the sale of the Debtors’ 5 acre parcel of real property located at 1300 Half Day Road, Deerfield, IL., (the “South Parcel”) to Continental Beeson Corner South, LLC (“CBCS”) for a purchase price of \$3,250,000.00. Debtors currently use the South Parcel to operate a retail nursery business. CBCS intends to redevelop the South Parcel as a commercial and multiuse residential property. The Purchase Agreement will become effective on approval by the Court and CBCS will deposit an earnest money deposit of \$10,000.00 within 5 days after the Effective Date. CBCS has 60 days after the Effective Date (“Contingency Waiver Date”) in which to commence the process of obtaining Approvals necessary to develop the South Parcel. In the event that CBCS waives the Approval Contingency, the closing under the Purchase Agreement will take place 15 days after the Contingency Waiver Date, which will be approximately December 15, 2017. At closing CBCS will pay the purchase price by i) receiving a credit for the earnest money, ii) paying the sum of \$2,190,000.00 in cash to Debtors, iii) depositing \$400,000.00 into escrow, which will be released to Debtors when all approvals are obtained to develop the property, and iv) depositing \$625,000.00 into escrow, which will be released to Debtors on the date Debtors vacate the Property, which is to occur on the later of July 1, 2018 or 210 days after Closing. In the event that CBCS terminates the Purchase Agreement during the Contingency Waiver Period, the earnest money shall be paid to Debtors to compensate Debtors for the costs to obtain approval of this sale.

An entity named 23443 Waukegan Road, LLC (“Waukegan Road”) holds a 50% interest in CBCS. Colleen Grant, Debtors’ daughter, and Drew Beeson, Debtors’ son, are the members and managers of Waukegan Road.

Best Interests of the Estate to Approve Purchase Agreement: Approval of the Purchase Agreement will provide Debtors and creditors substantial benefits and will not prejudice creditors. Debtors own the South Parcel free and clear of liens. Debtors have previously worked with Continental Properties Company, Inc., (“Continental”), the manager of CBCS, on the sale and development of the property immediately north of the South Parcel and Continental has finished building a Mariano’s grocery store on that site. Debtors believe that Continental will be in the best position to obtain the approvals necessary to develop the South Parcel and will be successful in closing on the Purchase Agreement. The Debtors have filed their Plan of Reorganization in this case and they estimate that approximately \$1,300,000.00 will be necessary to fund the payments required under the Plan at confirmation. The proceeds of sale which Debtors will receive at closing will be sufficient to fund the necessary Plan payments and provide Debtors with sufficient funding to move their nursery business and continue wholesale operations at a new location owned by Debtors. As a result, Debtors believe that the sale of the South Parcel pursuant to the Purchase Agreement is in the best interests of creditors and the Estate and should be approved.

Objections to Motion: In accordance with Rule 6004(b) of the Federal Rules of Bankruptcy Procedure, objections, if any, to the proposed sale or the Motion must be filed on or before **September 27, 2017**, with the Clerk of the United States Bankruptcy Court, 219 South Dearborn Street, Chicago, IL 60604, with a copy to be served on the Debtors’ counsel at the address set forth below. If no party objects or requests a hearing on the Motion, the Motion may be granted without further hearing thereon.

Exhibit C

September 14, 2017

Joseph A. Baldi
Baldi Berg, Ltd.
20 N Clark Street, Suite 200
Chicago, IL 60602
(312) 726-8150

/s/ Joseph A. Baldi
One of Debtors' attorneys