

Date Signed:
March 21, 2017



SO ORDERED.

A handwritten signature in black ink, appearing to read "R. Faris", written over a horizontal line.

Robert J. Faris
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

NATURESCAPE HOLDING GROUP
INT'L INC.,

Debtor.

CASE NO. 16-00982
(Chapter 11)

In re

MOUNTAIN THUNDER COFFEE
PLANTATION INT'L INC.,

Debtor.

CASE NO. 16-00984
(Chapter 11)

**ORDER GRANTING TRUSTEE'S
MOTION FOR ORDER (I)
APPROVING ASSET PURCHASE
AGREEMENT, (II) APPROVING
SALE OF ESTATE'S ASSETS
PURSUANT TO SECTION 363(F),
(III) APPROVING ASSUMPTION
AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (IV)
GRANTING SUCH FURTHER
RELIEF, FILED ON FEBRUARY 6,
2017; EXHIBIT "1"**

HEARING

Date: March 8, 2017

Time: 10:30 a.m.

Judge: Honorable Robert J. Faris

BK 16-00982 Related Docket No. 281

BK 16-00984 Related Docket No. 177

ORDER GRANTING TRUSTEE’S MOTION FOR ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) APPROVING SALE OF ESTATE’S ASSETS PURSUANT TO SECTION 363(F), (III) APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING SUCH FURTHER RELIEF, FILED ON FEBRUARY 6, 2017

On February 6, 2017, Elizabeth A. Kane (the “Trustee”), the duly appointed bankruptcy trustee of the estates of Debtor NATURESCAPE HOLDING GROUP INT’L INC. and Debtor MOUNTAIN THUNDER COFFEE PLANTATION INT’L INC., (sometimes collectively the “Debtors”) filed a “Motion for Order (I) Approving Asset Purchase Agreement, (II) Approving Sale of Estate’s Assets Pursuant to Section 363(f), (III) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Such Further Relief (the “Motion”). The Motion came on for hearing on March 8, 2017 before the Honorable Robert J. Faris, United States Bankruptcy Judge. Appearances of counsel were noted on the record at the hearing.

The Court has read the Motion and the memoranda filed in support and in opposition thereto, and has heard the arguments of counsel at the hearing.

NOW, THEREFORE, after due deliberation and for good cause shown and for the reasons stated in open Court,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. The Bankruptcy Court's findings shall also include any oral findings of fact and conclusions of law made by the Bankruptcy Court during or at the conclusion of the Approval Hearing.

B. **Jurisdiction and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Determination of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Motion is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Notice and Opportunity to Object.** Actual written notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Motion has been given, as required by the Bankruptcy Code and the Bankruptcy Rules, to all persons entitled to notice. No other or further notice of the Motion, the hearing, or the entry of this Order is required.

~~D. **Final Order.** This Approval Order constitutes a final order within the meaning of 28 U.S.C. §158(a).~~¹

E. **Sound Business Purpose.** The Asset Purchase, Settlement and Release Agreement (“APA”) by and between the Trustee and GemCap Lending I, LLC or its designee (“GemCap”), and matters contemplated therein, in substantially the form attached hereto as Exhibit “1”, are in the best interest of the Debtors’ Estates² and represents the Trustee’s sound business judgment and present the best outcome for the Debtors’ Estates. The APA avoids the costs and delay associated with litigating disputes, provides significant value to the Debtors’ Estates, serves the paramount interest of creditors, and was negotiated at arms-length and in good faith between the Trustee and GemCap. The consideration under the APA constitutes reasonably equivalent value and fair consideration and the APA is fair, equitable, and reasonable.

F. **Good Faith; No Collusion.** The Trustee and GemCap, and their respective counsel and advisors, have negotiated, proposed and entered into the APA in good faith, without collusion and from arm’s-length bargaining positions.

¹ **NOTE:** the Court deleted this paragraph because it is for the appellate court, not the bankruptcy court, to determine whether an order is final and therefore whether the appellate court has jurisdiction. Further, this order does not satisfy the “separate document” requirement of Fed. R. Civ. P. 54(a), made applicable by Fed R. Bankr. P. 7054(a) and 9014(c).

² All capitalized terms herein shall have the same meaning as set forth in the APA, except as otherwise stated.

GemCap and its designee (hereinafter sometimes collectively referred to as the “Buyer”) is a “good faith purchaser” and is acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. The Buyer is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in Section 101 of the Bankruptcy Code.

G. **Notice.** As evidenced by the certificates of service filed with the Bankruptcy Court: (i) due, proper, timely, adequate and sufficient notice of the Motion and hearing thereon was provided by the Trustee, (ii) such notice was good, sufficient and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion and hearing is required.

H. **Cure Notice.** As evidenced by the certificates of service filed with the Bankruptcy Court, the Trustee has served, prior to the Approval Hearing, a notice of assumption and assignment and estimated cure amount upon (i) George Van Buren, in his capacity as State Court Receiver, and (ii) the Trustees of Bishop Estate, who hold the lessors’ interests under the Rental Agreements, as that term is defined in the APA.

I. **Satisfaction of Section 363(f) Standards.** The Trustee may sell the Purchased Assets free and clear of the Encumbrances as defined in the APA, pursuant to Bankruptcy Code section 363(f); *provided, however*, that nothing herein

shall be deemed, or construed as, a ruling or determination by this Bankruptcy Court that the Assumed Liabilities encumber the Purchased Assets.

J. **Legal and Factual Bases.** The legal and factual bases set forth in the Motion and at the Approval Hearing establish just cause for the relief granted herein.

NOW THEREFORE, IT IS ORDERED THAT:

1. **Relief Requested is Granted.** The Motion is GRANTED.
2. **Objections Overruled.** All objections are hereby overruled on the merits and with prejudice.
3. **Approval of the APA.** The APA, in substantially the form attached hereto as Exhibit “1”, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved.
4. **Approval of Sale of Purchased Assets.** The Trustee is authorized to sell the Purchased Assets of the Debtors’ Estates to the Buyer, free and clear of Encumbrances, pursuant to Bankruptcy Code Section 363(f), as set forth in the APA, for the purchase price of: (i) \$100,000 in cash, together with a reduction in the secured portion of GemCap’s claim against the estate in the amount of \$100,000, for payment of allowed unsecured claims, (ii) payment of all allowed administrative expenses under Bankruptcy Code section 503(b), (iii) a credit bid in the amount of \$1,751,966.80, as the same may be increased by GemCap, which shall be offset

against the secured portion of GemCap's claim, and (iv) GemCap shall subordinate its Deficiency Claim to the first \$150,000 of net recoveries from the Debtors' estates after payment of the Administrative Expenses and the Unsecured Creditors' Carve-out from the assets remaining in the estates.

5. **Sale is "As Is"; No Warranties.** The Purchased Assets shall be sold to the Buyer "AS IS" and "WHERE IS" in all respects, via quitclaim assignment, and the Trustee makes no warranties of title or ownership as to any Purchased Assets, and no representations or warranties with respect any of the Purchased Assets, as further set forth in Section 7.1 of the APA.

6. **Transfer of Purchased Assets Free and Clear.** Pursuant to Sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, the Trustee is authorized to transfer the Purchased Assets in accordance with the terms of the APA. The Purchased Assets shall be transferred to the Buyer, and, upon the Closing, such transfer shall: (a) be valid, legal, binding and effective, (b) vest the Buyer with all right, title and interest of the Debtors' Estates in the Purchased Assets, and (c) be free and clear of the encumbrances identified in the APA as the "Encumbrances", pursuant to Section 363(f) of the Bankruptcy Code.

7. **Assumption and Assignment of Rental Agreements.** The Trustee is hereby authorized, in accordance with Sections 105(a) and 365 of the Bankruptcy Code, to assume and assign, effective upon Closing, the Rental Agreement to the

Buyer; provided however that (i) to the extent that any Rental Agreement is subject to a cure pursuant to Section 365 of the Bankruptcy Code, the Buyer shall pay all such amounts owed at or before the Closing, and (ii) no counterparty to a Rental Agreement has timely objected to the assumption and assignment. In accordance therewith, the Trustee is authorized to execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Rental Agreements to the Buyer as provided in the APA. Upon the Closing, the Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors' Estates under the Rental Agreements and, pursuant to Section 365(k) of the Bankruptcy Code, the Trustee and the Debtors' Estates shall be relieved from any further liability with respect to the Rental Agreements. Buyer acknowledges and agrees that from and after the Closing, subject to and in accordance with the APA, it shall comply with the terms of each assumed and assigned Rental Agreement in its entirety. The assumption by the Trustee and assignment to the Buyer of the Rental Agreements shall not be a default under any such Rental Agreements.

To the extent to the extent a counterparty objects to the notice of estimated cure amounts sent by the Trustee or to the assumption or assignment of a Rental Agreement within twenty-one (21) days of the applicable notice, the Court shall determine such objection at a hearing on **April 10, 2017 at 9:30 A.M.**

8. **Assumption and Assignment of Assumed Contracts.** The Trustee is hereby authorized, in accordance with Sections 105(a) and 365 of the Bankruptcy Code, to assume and assign, the Assumed Contracts to the Buyer, pursuant to the procedures set forth in the APA; provided however that to the extent a counterparty objects to the notice of estimated cure amounts sent by the Trustee or to the assumption or assignment of an Assumed Contract within twenty-one (21) days of the applicable notice, a hearing shall be scheduled before the Bankruptcy Court to resolve such objection; *provided, however,* that Buyer shall retain the right to forego assumption and assignment of any Assumed Contract in the event that such an objection is filed; *provided further, however,* that as to any Assumed Contract not assumed by Buyer, Buyer shall pay any administrative expense thereunder, if any, and such Assumed Contract shall thereupon be deemed abandoned by the Debtors' estates. If there is no objection, Buyer shall pay the cure amount to the counterparty, and the Assumed Contract shall be assigned to Buyer.

To the extent there are any timely objections to the cure amount, or the assumption and assignment of an Assumed Contract, the Court shall determine such objection at a hearing on **April 10, 2017 at 9:30 A.M.**

9. **Assumption of Assumed Liabilities.** On the date of Closing, Buyer shall assume and agree to pay, perform, and discharge when due all obligations of

the Trustee under the assigned Assumed Contracts and the obligations of the Trustee with respect to the Purchased Assets (i.e., the Assumed Liabilities).

10. **Allowance of GemCap's Claim.** Pursuant to the APA, GemCap's credit bid claim in the amount of \$1,751,966.80 and GemCap's deficiency claim in the amount of \$3,834,244.00 is allowed; provided however, that the allowance or determination of GemCap's claim herein is not a final determination with respect to the liability of any person other than the Debtors for the debt owed to GemCap.³ GemCap shall be entitled to retain the deficiency claim as an unsecured claim in the Chapter 11 cases; provided that GemCap shall subordinate its deficiency claim to the first \$150,000 of net recoveries from the Debtors' estates after payment of the administrative expenses and the unsecured creditors' carve-out from the assets remaining in the estates.

11. **Claims of Finance Factors, Limited, CIT/Direct Capital.** This Approval Order and the transactions contemplated herein and in the APA shall not affect, or alter, in any way, the prior senior security interest of Finance Factors, Limited or CIT/Direct Capital in any of its collateral, all of which interest is specifically reserved.

12. **Claims of State Court Receiver and His Counsel.** To the extent valid, the superpriority and administrative claims of the State Court Receiver and his

³ NOTE: The court revised this sentence.

counsel with respect to any of the assets of the Debtors' Estates, including the Purchased Assets, are not affected by the Approval Order, the APA, or the transactions contemplated therein, all of which claims are specifically reserved, including the rights of any party to object thereto. The Bankruptcy Court will determine the allowance of the fees and costs from the bankruptcy estates of the State Court Receiver and his counsel.

13. **Consummation of Transactions Contemplated by APA.** The Trustee and her agents are authorized to execute and deliver, and authorized to perform under, consummate and implement all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, without further order of the Bankruptcy Court.

14. **Taxing Authorities.** Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Buyer, and upon closing shall be free and clear of the "Encumbrances", as that term is defined in the APA, including those that may be asserted by any tax authority, except as may be provided in this Approval Order.

15. **Statutory Mootness.** The transactions under the APA are undertaken by the Buyer without collusion and in good faith, as that term is used in Section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein of the transactions shall neither affect

the validity of the transactions nor the transfer of the Purchased Assets to the Buyer, free and clear of the Encumbrances, unless such authorization is duly stayed before the Closing pending appeal. The Buyer is a good faith purchaser of the Purchased Assets and is entitled to all of the benefits and protections afforded by Section 363(m) of the Bankruptcy Code. The Trustee and the Buyer will be acting in good faith if they proceed to consummate the transactions at any time after entry of this Approval Order.

16. **Waiver of Bankruptcy Rules 6004(h) and 6006(d)**. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Approval Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply.

17. **Benefit of APA and Approval Order**. The APA and the Approval Order shall inure to the benefit of the Trustee, the Debtors' Estates, the Buyer, and their respective successors and assigns.

18. **Conflicts; Precedence**. In the event that there is a direct conflict between the terms of this Approval Order and the APA or any documents executed in connection therewith, the provisions contained in this Approval Order shall govern.

19. **Retention of Jurisdiction/Interpretation.** This Bankruptcy Court shall retain exclusive jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Approval Order and the APA, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith), to adjudicate disputes related to this Approval Order or the APA (and such other related agreements, documents or other instruments) and to enforce the injunctions set forth herein.

END OF ORDER

Submitted by:

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In re Naturescape Holding Group Int'l Inc., Debtor, Case No. 16-00982, United States Bankruptcy Court, District of Hawaii; and In re Mountain Thunder Coffee Plantation Int'l Inc., Debtor, Case No. 16-00984, , United States Bankruptcy Court, District of Hawaii; ORDER GRANTING TRUSTEE'S MOTION FOR ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) APPROVING SALE OF ESTATE'S ASSETS PURSUANT TO SECTION 363(F), (III) APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING SUCH FURTHER RELIEF, FILED ON FEBRUARY 6, 2017

ASSET PURCHASE, SETTLEMENT AND RELEASE AGREEMENT

BY AND BETWEEN

**ELIZABETH A. KANE, BANKRUPTCY TRUSTEE OF
THE ESTATE OF NATURESCAPE HOLDING GROUP INT'L, INC. AND
THE ESTATE OF MOUNTAIN THUNDER COFFEE PLANTATION INT'L, INC.**

AND

GEMCAP LENDING I, LLC, A DELAWARE LIMITED LIABILITY COMPANY

DATED AS OF MARCH 8, 2017

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	1
Section 1.1 Definitions	1
Section 1.2 Construction	6
ARTICLE II PURCHASE AND SALE	6
Section 2.1 Purchase and Sale of Assets	6
Section 2.3 Assumed Liabilities	8
Section 2.4 Excluded Liabilities	8
Section 2.5 Assumption and Assignment of Certain Assumed Contracts	8
ARTICLE III PURCHASE PRICE	9
Section 3.1 Purchase Price	9
Section 3.2 Administrative Expenses	9
ARTICLE IV COVENANTS OF THE PARTIES	9
Section 4.1 Access to Properties	9
Section 4.2 Buyer’s Claim	10
Section 4.3 Further Assurances	10
Section 4.4 Bankruptcy Court Approval	10
Section 4.5 Bid Procedures	10
Section 4.6 Transfer of Purchased Assets	10
ARTICLE V THE CLOSING	11
Section 5.1 Time and Place of the Closing	11

Section 5.2 Deliveries by the Seller	11
SECTION 5.3 DELIVERIES BY THE BUYER.....	11
Section 5.4 Assignment of Certain Turnover Claims	11
ARTICLE VI MUTUAL RELEASE.....	12
Section 6.1 Released Claims	12
Section 6.2. Excluded Claims	12
Section 6.3. Complete Bar	12
Section 6.4. Covenant Not to Sue	13
ARTICLE VII DISCLAIMER OF SELLER’S WARRANTY.....	13
Section 7.1. Disclaimer of Warranty; Purchased Assets Sold “As Is”.....	13
ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF BUYER AND SELLER	13
Section 8.1. Organization and Good Standing	13
Section 8.2. Authority Relative to this Agreement	13
Section 8.3. Brokers	14
ARTICLE IX CONDITIONS TO CLOSING	14
Section 9.1. Conditions to Each Party’s Obligations to Effect the Closing.....	14
Section 9.2. Conditions to Obligations of the Buyer	14
Section 9.3. Conditions to Obligations of the Seller.....	15
ARTICLE X MISCELLANEOUS PROVISIONS.....	15
Section 10.1. Amendment and Modification	15
Section 10.2. Waiver of Compliance	15
Section 10.3. Survival	15

Section 10.4. Notices.....	15
Section 10.5. Assignment.....	16
Section 10.6. Severability.....	17
Section 10.7. Governing Law.....	17
Section 10.8. Submission to Jurisdiction	17
Section 10.9. Counterparts	17
Section 10.10. Incorporation of Schedules and Exhibits	17
Section 10.11. Entire Agreement	17
Section 10.12. Remedies	17
Section 10.13. Headings.....	18

SCHEDULES

Schedule 1	Assumed Contracts
Schedule 2	List of Real Property
Schedule 3	List of Rental Agreements

EXHIBITS

Exhibit A	Form of Bill of Sale and Assignment Agreement
Exhibit B	Form of Approval Order
Exhibit C	Quitclaim Deed

ASSET PURCHASE, SETTLEMENT AND RELEASE AGREEMENT

This Asset Purchase, Settlement and Release Agreement (this “Agreement”) is made and entered into as this ____ day of _____, 2017 by and between Elizabeth A. Kane, bankruptcy trustee (the “Trustee” or the “Seller”) in the bankruptcy proceeding entitled In re Naturescape Holding Group Int’l, Inc., Bk. No. 16-00982 (the “Naturescape Bankruptcy Case”), pending in the United States Bankruptcy Court for the District of Hawaii (the “Bankruptcy Court”) and bankruptcy trustee in the bankruptcy proceeding entitled In re Mountain Thunder Coffee Plantation Int’l, Inc., Bk. No. 16-00984 (the “Mountain Thunder Bankruptcy Case” and, with the Naturescape Bankruptcy Case and any successor cases to the Naturescape Bankruptcy Case or Mountain Thunder Bankruptcy Case, the “Chapter 11 Cases”), pending in the Bankruptcy Court, and GemCap Lending I, LLC, a Delaware limited liability company, or its designee (the “Buyer”). The Seller and the Buyer are referred to herein, individually, as a “Party” and, collectively, as the “Parties.”

WHEREAS, the Seller is the duly appointed bankruptcy trustee of the bankruptcy estate (the “Naturescape Estate”) of Naturescape Holding Group Int’l Inc. (“Naturescape”) in the Naturescape Bankruptcy Case and the duly appointed bankruptcy trustee of the bankruptcy estate (the “Mountain Thunder Estate”) of Mountain Thunder Coffee Plantation Int’l, Inc. (“Mountain Thunder”) in the Mountain Thunder Bankruptcy Case;

WHEREAS, the Buyer desires to purchase from the Seller, and the Seller desires to sell to the Buyer, certain of Naturescape Estate’s and Mountain Thunder Estate’s interests in assets free and clear of Encumbrances (as defined in Section 1.1 hereof) and to assume from the Naturescape Estate and Mountain Thunder Estate certain specified Liabilities pursuant to the terms and subject to the conditions set forth herein; and

WHEREAS, the Parties have negotiated in good faith regarding their respective rights, claims and defenses and each recognizes the uncertainties and costs of litigation. The Parties now desire to resolve, compromise, and settle all claims and controversies between them.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms have the meanings specified in this Section 1.1:

“Administrative Expense Holdback” shall have the meaning set forth in Section 3.2 hereof.

“Administrative Expenses” means all allowed administrative expenses under Section 503(b) of the Bankruptcy Code, including, without limitation, (i) Seller’s compensation paid on all amounts disbursed by Seller, in accordance with Section 326 of the Bankruptcy Code, plus all

costs incurred by Seller, and fees and costs incurred by professionals retained by the Trustee (specifically, the Seller's counsel, the Seller's business consultant, and the Seller's accountant), subject to approval of the Bankruptcy Court, which fees and costs were incurred during the periods of the Parties' Stipulation to Entry of Agreed Orders (1) Authorizing Interim Use of Cash Collateral and (2) Granting Adequate Protection (Dkt. No. 258), as extended and continued through the date of Closing and as to post-closing procedures hereunder, after Closing, (ii) fees charged by the Office of the United States Trustee, (iii) fees awarded by the Court to the petitioning creditors' counsel, and (iv) any fees and expenses awarded to the Receiver and Receiver's counsel.

“Approval Hearing” means a hearing of the Bankruptcy Court where the Parties seek entry of the Approval Order. The Seller shall request that such hearing be held on February 21, 2017 or as soon thereafter as the Bankruptcy Court shall allow.

“Approval Order” means an order of the Bankruptcy Court in the form of Exhibit B (except as modifications to the same may be agreed to by the Parties in each Party's sole discretion) (i) approving this Agreement and the sale of the Purchased Assets to Buyer free and clear of liens, claims and Encumbrances, pursuant to Section 363(f) of the Bankruptcy Code, and (ii) finding that Buyer is a good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code, and (iii) containing the authorization for the Seller to assume and assign executory contracts and unexpired leases in accordance with Section 2.5 hereof.

“Assumed Contracts” means (i) the Rental Agreements and (ii) those Contracts specified on Schedule 1 hereto, which will be assumed and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code.

“Assumed Liabilities” means the obligations of the Seller under the Assumed Contracts and the obligations of the Seller with respect to the Purchased Assets.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

“Batemans” means Trent A. Bateman and Lisa J. Bateman, Brooke Decker, Susan Luntz, Graysen Gaine (f/k/a Brent Thomas William Bateman) and Bryce Bateman along with any other family members or persons holding interest through them, including any trusts in which they have an interest or are beneficiaries, directly or indirectly, including but not limited to (i) the Trent Bateman Trust and (ii) the Lisa Bateman Trust.

“Bateman Property Claims” means those claims and causes of actions against the Batemans arising from transfers made by the Batemans, or any of them, of any assets of the Debtors in such cases (including the Buyer's collateral) to acquire or improve the Real Property, or any portion thereof.

“Bill of Sale” means the Bill of Sale and Assignment Agreement to be executed and delivered by the Seller to the Buyer at the Closing, in the form of Exhibit A (except as modifications to the same may be agreed to by the Parties in each Party's sole discretion).

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in Honolulu, Hawaii.

“Claim” shall have the meaning set forth in Section 101(5) of the Bankruptcy Code.

“Closing” means the closing of the transactions contemplated by this Agreement.

“Contract” means any lease, contract, deed, mortgage, license or other legally enforceable agreement or instrument.

“Credit Bid Claim” means the amount of Buyer’s Claim that Buyer credit bids in respect of the Purchased Assets pursuant to Section 363(k) of the Bankruptcy Code.

“Debtors” means Naturescape and Mountain Thunder.

“Debtors’ Estates” means the Naturescape Estate and the Mountain Thunder Estate.

“Deficiency Claim” means the Buyer’s general unsecured Claim in the Chapter 11 Cases for the unpaid balance owed to Buyer under the Loan Documents in the amount of \$3,834,244.00, which amount may be reduced by the Credit Bid Claim and by any accepted overbid, as applicable, and any other recovery by Buyer from the Debtors’ Estates.

“Encumbrances” means any charge, lien (statutory or otherwise), mortgage, lease, hypothecation, encumbrance, pledge, security interest, option, right of use, first offer or first refusal, easement, servitude, restrictive covenant, encroachment, Claim (but not Claims of ownership), Liability, conditional or installment sale agreement, use or transfer limitation, equitable interest or similar restriction; *provided, however*, that Assumed Liabilities shall not constitute Encumbrances.

“Entry of Order of Relief” means the date that the Court entered the orders for relief in the Naturescape Bankruptcy Case (December 20, 2016) and the Mountain Thunder Bankruptcy Case (November 16, 2016).

“Excluded Assets” shall have the meaning set forth in Section 2.2 hereof.

“Excluded Claims” means the Claims described in Section 6.2 hereof.

“Excluded Liabilities” shall have the meaning set forth in Section 2.4 hereof.

“Foreclosure Litigation” means that litigation captioned Gemcap Lending I, LLC v. Trent A. Bateman, et al., pending in the Circuit Court of the Third Circuit, State of Hawaii, Civil No. 15-1-0428K.

“Honaunau Wet Mill Property” means that certain real property located at 84-4995 Hawaii Belt Road, Captain Cook, Hawaii (Tax Map Key No. 3-8-4-007-033), fee simple title to which is held by the Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, deceased, and leased to Naturescape.

“Hualalai Ranch Property” means that certain real property located at 72-3375 Hawaii Belt Road, Captain Cook, Hawaii (Tax Map Key No. 3-7-2-002-001), fee simple title to which is

held by the Trustees Under the Will and of the Estate of Bernice Pauahi Bishop, deceased, and leased to the Batemans.

“Hualalai Ranch Property Claims” means those claims and causes of action arising from transfers of any assets of the Debtors prior to the Entry of Order of Relief in such cases (including Buyer’s collateral) to acquire or improve the Hualalai Ranch Property and those claims and causes of action to seek conveyance or foreclosure of the leasehold interest in the Hualalai Ranch Property pursuant to the Loan Documents.

“Intellectual Property” means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or governmental authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential and proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other governmental authority-issued indicia of invention ownership (including inventor’s certificates, petty patents and patent utility models); and (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation.

“Kaloko Property” means that certain real property located at 73-1942 Hao Street, Kailua-Kona, Hawaii (Tax Map Key No. 3-7-3-026-022) purported to be owned jointly by the Lisa Bateman Trust and the Trent Bateman Trust, and leased to Naturescape.

“Kidani Law Firm Claims” means those certain claims, rights, and causes of action against Grant K. Kidani, The Kidani Law Firm, A Law Corporation, The Kidani Law Center, and their respective attorneys, principals, agents, representatives, successors and assigns.

“Liability” means any debt, obligation or liability of any nature (including any unknown, undisclosed, unmaturred, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation or liability is immediately due and payable.

“Lisa Bateman Trust” means the Lisa J. Bateman Trust, dated January 28, 2013.

“Loan Agreement” means that certain Amended and Restated Loan and Security Agreement, dated as of September 27, 2013, as amended, restated, supplemented or otherwise modified from time to time, by and between the Debtors and the Buyer.

“Loan Documents” means (i) Term Note I, (ii) the Revolver and (iii) Term Note II, and the other Loan Documents, as defined in the Loan Agreement.

“Person” means any individual, corporation, partnership, limited partnership, limited liability company, syndicate, group, trust, association or other organization or entity or government, political subdivision, agency or instrumentality of a government.

“Post-Administrative Expense Payment Assets” shall have the meaning set forth in Section 3.2 hereof.

“Potential Bidder” shall have the meaning set forth in Section 4.5(a) hereof.

“Purchase Price” shall have the meaning set forth in Section 3.1 hereof.

“Purchased Assets” means the interests of the Debtors’ Estates in the assets to be acquired by the Buyer as described in Section 2.1 below; *provided, however*, that the Purchased Assets shall not include any interests of the Debtors’ Estates in assets encumbered by a first priority security interest of Direct Capital Corporation, Leaf Commercial Capital, Inc., Deere & Company, or Ford Motor Credit Company, LLC.

“Real Property” means that certain real property described in Schedule 2 attached hereto.

“Receiver” means George Van Buren, appointed as the receiver by order, dated January 4, 2016, entered in the Foreclosure Litigation.

“Receiver Claims” means those claims and potential causes of action against the Receiver related to or arising out of his role as the Receiver, including, without limitation, any claims for malfeasance or negligence.

“Released Claims” means the Claims described in Section 6.1 hereof.

“Rental Agreements” means those certain agreements of the Real Property, described in Schedule 3 attached hereto.

“Revolver” means the Secured Revolving Loan Note, dated September 28, 2011, evidencing debt owed by the Debtors, jointly and severally, in the original principal amount of \$1,550,000.00 (which amount was later increased to \$4,550,000.00), payable to Buyer.

“Tax” means any tax (including any income tax, franchise tax, service tax, capital gains tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, withholding tax or payroll tax), levy, assessment, tariff, duty (including any customs duty), deficiency or fee (including any fine, addition, penalty or interest), imposed, assessed or collected by or under the authority of any

governmental authority or any Liability with respect to the foregoing by virtue of any Contract or otherwise.

“Term Note I” means the Secured Term Loan Note, dated September 28, 2011, evidencing debt owed by the Debtors, jointly and severally, in the original principal amount of \$440,000.00 (which amount was later reduced to \$244,578.07), payable to Buyer.

“Term Note II” means the Secured Term Loan Note, dated August 7, 2015, evidencing debt owed by the Debtors, jointly and severally, in the original principal amount of \$1,250,000.00, payable to Buyer.

“Transaction Documents” means this Agreement, the Bill of Sale and any other Contract to be entered into by the parties hereto in connection with the Closing.

“Trent Bateman Trust” means the Trent A. Bateman Trust, dated January 28, 2013.

“UCC Financing Statements” means (i) the UCC Financing Statement, dated September 27, 2011, recorded in the Bureau of Conveyances as Document No. 2011-157170; (ii) UCC Financing Statement Amendment, dated July 28, 2014, recorded in the Bureau of Conveyances as Document No. A-53220691; and (iii) UCC Financing Statement Amendment, dated July 28, 2014, recorded in the Bureau of Conveyances as Document No. A-53220692.

“Unsecured Creditors’ Carve-Out” shall have the meaning set forth in Section 3.1 hereof.

Section 1.2 Construction. The terms “hereby,” “hereto,” “hereunder” and any similar terms as used in this Agreement, refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The term “including,” when used herein without the qualifier, “without limitation,” shall mean “including, without limitation.” Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The word “or” shall not be construed to be exclusive. Provisions shall apply, when appropriate, to successive events and transactions. Unless otherwise indicated, references to Articles, Sections, Schedules and Exhibits refer to Articles, Sections, Schedules and Exhibits of and to this Agreement.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Subject to the terms and conditions contained in this Agreement, at the Closing, the Seller shall sell, assign, convey, transfer and deliver the Purchased Assets to the Buyer, and the Buyer shall, by the Buyer’s payment of the Purchase Price, purchase the interests of the Debtors’ Estates in the Purchased Assets; *provided, however,* that the Purchased Assets shall not include any of the Excluded Assets; *provided further, however,* that the sale of the Purchased Assets to the Buyer shall effected by a quitclaim of the Debtors’ Estates’ interests in the Purchased Assets, with no representations or warranties as to ownership of the Purchased Assets by the Seller or the Debtors’ Estates, except that the

Seller represents that, to her knowledge, the Debtors' Estates are the true and lawful owners of the lessee's leasehold interests set forth in the Rental Agreements. The Purchased Assets constituting personal property shall be transferred to Buyer by the Bill of Sale. Seller shall also deliver all such other instruments of assignment or conveyance as shall be reasonably necessary to transfer to the Buyer title to all of the Purchased Assets in accordance with this Agreement, including, without limitation, any documents necessary to transfer titled vehicles. Without limiting the generality of the foregoing, the Purchased Assets shall include the following (except to the extent listed or otherwise included as an Excluded Asset):

(a) all tangible and intangible assets described in the Loan Documents, including, without limitation, the UCC Financing Statements, including but not limited to, cash (after allowance for payment of projected Administrative Expenses and Unsecured Creditors' Carve-Out, defined below), accounts receivables, inventory, equipment, vehicles, machinery, any and all personal property, furniture, books, records (inclusive of passwords), keys, customer lists, vendor lists, Intellectual Property and telephone numbers, wheresoever located;

(b) the Bateman Property Claims;

(c) the Hualalai Ranch Property Claims;

(d) the Receiver Claims;

(e) the Debtors' Estates' interests in the Hualalai Ranch Property;

(f) the leasehold interests with respect to (i) The Honaunau Wet Mill Property and (ii) the Kaloko Property, as set forth in the Rental Agreements; provided that the Buyer shall pay all amounts required to cure the obligations under the Rental Agreements, and the Buyer hereby covenants to pay all such amounts necessary to cure any defaults as contemplated by Section 365 of the Bankruptcy Code and as determined by the Bankruptcy Court; and

(g) the interests of Seller in any Assumed Contracts, by way of a quitclaim assignment of all Seller's interests in such Assumed Contracts; *provided* that the Buyer shall pay all amounts required to cure the obligations under the respective Assumed Contracts, and the Buyer hereby covenants to pay all such amounts necessary to cure any defaults as contemplated by Section 365 of the Bankruptcy Code and as determined by the Bankruptcy Court.

Section 2.2 Excluded Assets. Notwithstanding any provision herein to the contrary, the Purchased Assets shall not include the following (collectively, the "Excluded Assets"):

(a) the Kidani Law Firm Claims;

(b) all claims and causes of action respecting the judgments obtained against Kona's Best Natural Coffee, LLC and any and all claims and causes of action related thereto;

(c) all preference or avoidance claims and actions of the Seller, including any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code, and those set forth in Hawaii Rev. Stat. Chapter 651C, but not including the Bateman Property Claims and the Hualalai Ranch Property Claims;

- (d) the Seller's rights under this Agreement and the other Transaction Documents;
- (e) any documents or other materials which are subject to attorney-client privilege; and
- (f) any Federal and State Tax receivables, Tax credits, or Tax refunds owed to the Seller.

Section 2.3 Assumed Liabilities. On the date of the Closing, the Buyer shall assume and agree to pay, perform and discharge when due the Assumed Liabilities.

Section 2.4 Excluded Liabilities. The Buyer shall not assume or be obligated to pay, perform or otherwise discharge any Liabilities of the Seller other than the Assumed Liabilities (collectively the "Excluded Liabilities"). The Excluded Liabilities include the following, whether incurred or accrued before or after the Entry of Order of Relief in each of the Chapter 11 Cases or the Closing:

- (a) all Income Taxes of the Seller; and
- (b) all Liabilities relating to Excluded Assets.

Section 2.5 Assumption and Assignment of Certain Assumed Contracts. Seller shall provide notice of assumption and proposed cure amounts to counterparties under the Rental Agreements simultaneously with the filing of the motion seeking entry of the Approval Order. The Approval Order shall provide for (i) the assumption by the Seller and (ii) the assignment by the Seller to the Buyer, effective upon the Closing, of the Rental Agreements; *provided, however*, that to the extent that any Rental Agreement is subject to a cure pursuant to Section 365 of the Bankruptcy Code, the Buyer shall pay all such amounts owed at or before the Closing. At the Closing, the Seller shall assign to the Buyer the Rental Agreements. The Approval Order shall also provide (i) that the Seller is authorized to send notices of the estimated cure amounts to counterparties to the Assumed Contracts (other than the Rental Agreements) after the Closing, and (ii) that, absent an objection from the counterparties to the Assumed Contracts (other than the Rental Agreements) within twenty-one (21) days of the applicable notice and upon payment of the cure amount set forth in such notice, the cure amount shall be paid and shall be sufficient to cure all defaults under the applicable Assumed Contract. At or before the Closing, the Buyer shall provide the Seller with a list of the Assumed Contracts (other than the Rental Agreements). Within four (4) Business Days following the Closing, the Seller shall provide notice of assumption and proposed cure amounts to counterparties under Assumed Contracts (other than the Rental Agreements) in accordance with the procedures set forth in this Section 2.5 and in the Approval Order. To the extent a counterparty objects to the notice of estimated cure amounts sent by the Seller or to the assumption or assignment of an Assumed Contract within twenty-one (21) days of the applicable notice, a hearing shall be scheduled before the Bankruptcy Court to resolve such objection; *provided, however*, that Buyer shall retain the right to forego assumption and assignment of any Assumed Contract in the event that such an objection is filed; *provided further, however*, that as to any Assumed Contract not assumed by Buyer, Buyer shall pay any

Administrative Expense thereunder, if any, and such Assumed Contract shall thereupon be deemed abandoned by the Debtors' Estates.

ARTICLE III PURCHASE PRICE

Section 3.1 Purchase Price. In consideration for the transfer of the Purchased Assets to Buyer, subject to the terms and conditions of this Agreement, and the entry and effectiveness of the Approval Order, the purchase price for the Purchased Assets shall be: (i) \$100,000.00, in cash, together with a reduction in the secured portion of Buyer's Claim against the estate in the amount of \$100,000.00, so that the cash payment will be a carve-out of the secured portion of the Buyer's Claim against the Debtors' Estates for payment of allowed unsecured Claims (the "Unsecured Creditors' Carve-Out"), (ii) payment of the Administrative Expenses in accordance with Section 3.2 hereof, and (iii) a credit bid in the amount of \$1,751,966.80 (as the same may be increased by Buyer in its sole discretion), which will be offset against the secured portion of Buyer's Claim ((i)-(iii), collectively, the "Purchase Price").

Section 3.2 Administrative Expenses. The Seller shall be entitled to retain cash (the "Administrative Expense Holdback"), and receive cash from Buyer, in addition to the cash portion of the Unsecured Creditors' Carve-Out, in an amount necessary to satisfy the Administrative Expenses. To the extent the Seller retains any of the Administrative Expense Holdback (the "Post-Administrative Expense Payment Assets"), other than Excluded Assets, after all Administrative Expenses have been paid, the Seller shall deliver the Post-Administrative Expense Payment Assets to the Buyer within three (3) Business Days of the final Administrative Expense being paid. The Seller agrees, and the Approval Order shall provide, that the Buyer shall retain a first priority security interest in and lien on the Administrative Expense Holdback; *provided, however*, that the Seller may pay Administrative Expenses in accordance with the projections delivered to Buyer pursuant to Section 5.2(d) hereof without further order of the Bankruptcy Court or further consent of the Buyer.

ARTICLE IV COVENANTS OF THE PARTIES

Section 4.1 Access to Properties. With respect to the Debtors' Estates' interests in the Real Property, the Seller consents to the Buyers' access to the Real Property, and to the electrical connections and existing Wi-Fi and/or existing Internet connections, provided Buyer pays all costs and assumes all obligations with respect to such access. Further, with respect to the Debtors' Estates' interests in the Real Property, the Seller does not object to the Buyer's installation of surveillance equipment and/or security at the Real Property, provided Buyer pays all costs and assumes all obligations with respect to such installation and security. The Seller's consent to the foregoing is conditioned upon (i) Buyer indemnifying Seller for any claims, causes of action or Liabilities arising from or related to Buyer's access to the Real Property and installations as described herein, (ii) Buyer obtaining adequate insurance to cover all claims arising from or related to Buyer's access to the Real Property and installations as described

herein, and (iii) Buyer's acknowledgement and agreement that Seller makes no representations or warranties regarding the Real Property, or the Buyer's access or installations as contemplated herein, and Buyer hereby agrees to insure and indemnify the Seller accordingly.

Section 4.2 Buyer's Claim. The Approval Order shall contain a provision pursuant to which the Parties shall stipulate to the extent, priority, validity and amount of Buyer's Claim as follows: (i) Buyer's Credit Bid Claim in the amount of \$1,751,966.80 (as the same may be increased by Buyer in its sole discretion), and (ii) Buyer's Deficiency Claim in the amount of \$3,834,244.00 (as the same may be reduced by any increase to the Credit Bid Claim, and any subsequent recoveries on such Deficiency Claim). Buyer shall retain the Deficiency Claim as an unsecured Claim in the Chapter 11 Cases; *provided, however*, that Buyer shall subordinate the Deficiency Claim to the first \$150,000.00 of net recoveries from the Debtors' Estates, after payment of Administrative Expenses and the Unsecured Creditors' Carve-Out, from assets remaining in the Debtors' Estates. The Seller agrees, and the Approval Order shall provide, that the Buyer's Claim is allowed in the Chapter 11 Cases as set forth in this Section 4.2 and the Approval Order. The Seller further agrees, and the Approval Order shall further provide, that the Buyer shall be entitled to share ratably in recovery with all other general unsecured creditors on account of the Deficiency Claim after payment by the Seller of the Unsecured Creditors' Carve-Out and subject to the subordination described in this Section 4.2.

Section 4.3 Further Assurances. Subject to the terms and conditions of this Agreement and until the complete liquidation of the Debtors' Estates, or the earlier termination of this Agreement, the Seller and the Buyer shall use reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable legal requirements to consummate and make effective the sale of the Purchased Assets and assumption of the Assumed Liabilities in accordance with this Agreement.

Section 4.4 Bankruptcy Court Approval. This Agreement is subject to and conditioned upon the entry of the Approval Order by the Bankruptcy Court on or before the date that is set forth in Section 9.1 hereof. The Seller shall file with the Bankruptcy Court a motion seeking, among other things, the entry of the Approval Order.

Section 4.5 Bid Procedures. No fewer than five (5) Business Days prior to the Approval Hearing, any third party other than Buyer interested in purchasing the Purchased Assets (a "Potential Bidder") must deliver a cashiers' check payable to the Seller in the amount of 10% of the Potential Bidder's intended maximum bid. At the Approval Hearing, the Potential Bidder must deliver to the Seller a cashiers' check in the amount of 90% of their intended maximum bid. The Potential Bidder's maximum bid must exceed the Purchase Price.

Section 4.6 Transfer of Purchased Assets.

(a) The Buyer will make all necessary arrangements for the Buyer to take possession of the Purchased Assets.

(b) After the Closing, if the Seller receives any payment, refund or other amount, including, without limitation, checks or wire transfers payable to the Debtors, which is a

Purchased Asset or which is otherwise properly due and owing to the Buyer, the Seller shall remit, or shall cause to be remitted, such amount to the Buyer.

ARTICLE V THE CLOSING

Section 5.1 Time and Place of the Closing. Subject to the terms and conditions of this Agreement, the Closing (except those transaction that occur post-Closing hereunder) shall take place not later than the second Business Day following the date on which the conditions set forth in Article IX hereof have been satisfied (other than the conditions with respect to actions the Parties hereto will take at or after the Closing itself) or, to the extent permitted, waived by the applicable Party in writing, or at such other place and time as the Buyer and the Seller may mutually agree.

Section 5.2 Deliveries by the Seller. At or prior to the Closing, the Seller shall deliver the following to the Buyer:

(a) the Bill of Sale, duly executed by the Seller, and all such other instruments of assignment or conveyance as shall be reasonably necessary to transfer to the Buyer title, to all of the Purchased Assets in accordance with this Agreement;

(b) certified copies of the Approval Order as entered by the Bankruptcy Court; and

(c) a quitclaim deed with respect to the Debtors' Estates' interests in the Hualalai Ranch Property, in the form attached hereto as Exhibit C.

Section 5.3 Deliveries by the Buyer. At or prior to the Closing, the Buyer shall deliver the following to the Seller:

(a) The cash portion of the Unsecured Creditors' Carve-Out; and

(b) the Bill of Sale, duly executed by the Buyer, and all such other instruments of assignment or conveyance as shall be reasonably necessary to transfer to the Buyer title, to all of the Purchased Assets in accordance with this Agreement.

Section 5.4 Assignment of Certain Turnover Claims. The Seller shall assign to Buyer the Seller's claim to recovery of all assets of the Debtors as set forth on Schedule 5.4 hereto, that are (i) now in the possession of the Batemans, (ii) which have been removed from the Real Property or the Debtors' businesses or (iii) which have been otherwise dissipated from the Debtors' Estates by the Batemans. The Approval Order shall contain a finding of the Bankruptcy Court that the Buyer is permitted to exercise the Seller's "strong arm" powers under the Bankruptcy Code.

**ARTICLE VI
MUTUAL RELEASE**

Section 6.1 Released Claims. Subject to the exceptions stated below, from and after the Closing, Seller and Buyer, in consideration of the performance of the mutual promises provided in this Agreement, do hereby release, remise and forever discharge each other of and from any and all manner of actions, causes and causes of action, suits, debts, sums of money, accounts, bonds, bills, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, whether presently known or unknown, whether material, immaterial, contingent, potential or direct, and whether arising in tort, in contract, by statute, at common law, or otherwise, which Seller has, has had or may have against Buyer and which Buyer has, has had or may have against the Seller which arise out of, relate to, are connected with or in any way pertain to the following:

(a) the secured portion of the Buyer's Claim against the Debtors or the Seller under the Loan Documents, *provided, however*, that the Buyer shall retain a first priority security interest and lien on the Administrative Expense Holdback and any other cash in the possession of Seller (other than the cash portion of the Unsecured Creditors' Carve-Out) until such time as (i) the Post-Administrative Expense Payment Assets have been delivered to Buyer, and (ii) the Assumed Contracts have been assumed and assigned to Buyer in accordance with Section 2.5 hereof.

(b) the Real Property and personal property which are described in the Loan Documents.

(c) Claims, if existing, relating to: (i) the Chapter 11 Cases and the underlying claims and causes of action set forth therein, and the negotiations and transactions related or ancillary thereto; and (ii) Claims arising under, based upon or related to any actions by the Parties since the Entry of Order of Relief, any rights or claims under Section 506(c) of the Bankruptcy Code, and any "equities of the case" claims or other equitable claims under Sections 105(a) or 552(b) of the Bankruptcy Code.

(d) Any other claim of the Seller or the Buyer against the other, except for the Excluded Claims.

Section 6.2. Excluded Claims. The Seller and Buyer understand and expressly agree that Released Claims shall not include the following, which are specifically reserved:

- (a) Any Claim arising under this Agreement;
- (b) The Deficiency Claim.
- (c) Claims against third parties, including, without limitation, the Batemans and the Receiver.

Section 6.3. Complete Bar. The release described in Section 6.1 hereof is a complete and final bar to all Released Claims and forever and finally compromises, settles and terminates all of the Released Claims whether known or unknown, contingent or uncertain, suspected or

unsuspected. In furtherance of Section 6.2 hereof, the Seller agrees that the Buyer shall retain the right to object to any Claims in the Chapter 11 Cases, except those Claims of the Seller.

Section 6.4. Covenant Not to Sue. The Seller and Buyer agree not to assert any Released Claims from and after the Closing.

ARTICLE VII DISCLAIMER OF SELLER'S WARRANTY

Section 7.1. Disclaimer of Warranty; Purchased Assets Sold "As Is" The Seller represents to Buyer, and the Buyer hereby accepts and acknowledges, that (A) the Purchased Assets are sold "AS IS", "WHERE IS" in all respects, and Seller makes no warranties of title as to any of the Purchased Assets, and no representations or warranties with respect thereto, including but not limited to physical condition (including but not limited to the soil and subsurface conditions and termites), developability (or lack thereof), zoning, land use, past, present, or future development or use, marketability of title or marketability for any other reason (or lack thereof), compliance (or lack thereof) with applicable laws, codes, or regulations, existence or effect of Encumbrances, boundaries, encroachments, access (or lack thereof), area, subdivision, merchantability or economic value (or lack thereof), environmental, archaeological, historical, cultural, religious, or biological aspects, hazardous wastes or substances or pollutants, habitability or fitness for a particular purpose (or lack thereof) of said property, or any matters that any survey or other investigation of said property does or might show; and (B) Seller does not represent or warrant (i) whether Buyer can develop, improve, operate or use the Purchased Assets as Buyer may wish to do, or (ii) the accuracy, validity, or completeness of any document, information or material on which Buyer may rely or may have relied concerning the Purchased Assets; AND (C) Seller shall have no obligation or Liability to Buyer on account of such reliance, whether or not Buyer acquired or acquire any such document, information, or material from Seller (or any of his representatives), Buyer having accepted and undertaken the entire obligation and risk of acquiring and evaluating any and all information, documents, and materials concerning the Purchased Assets; AND (D) Seller has not undertaken any obligation or Liability to disclose material information about the Purchased Assets, is not required to do or pay for any investigation or evaluation of such information, and will not be liable on account of any nondisclosure, inaccuracies, incompleteness or obsolescence of any such information.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF BUYER AND SELLER

Section 8.1. Organization and Good Standing. The Buyer hereby represents and warrants to the Seller as of the Closing that the Buyer is duly organized, validly existing and in good standing under the laws of the State of Delaware.

Section 8.2. Authority Relative to this Agreement. The Buyer hereby represents and warrants to the Seller as of the Closing that the Buyer has all corporate power and authority necessary to execute and deliver this Agreement and the other Transaction Documents to which

it is party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents to which the Buyer is party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized, and no other corporate proceedings on the part of the Buyer are necessary to authorize this Agreement or the other Transaction Documents to which it is party or to consummate the transactions contemplated hereby or thereby. This Agreement and the other Transaction Documents to which the Buyer is party have been duly and validly executed and delivered by the Buyer, and, constitute valid and binding agreements of the Buyer, enforceable against the Buyer in accordance with their terms.

Section 8.3. Brokers. The Buyer hereby represents and warrants to the Seller as of the Closing that no Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by the Buyer.

ARTICLE IX CONDITIONS TO CLOSING

Section 9.1. Conditions to Each Party's Obligations to Effect the Closing. The respective obligations of each Party to effect the Closing are conditioned upon the Bankruptcy Court having entered the Approval Order within seven days of the Approval Hearing (except if modified or amended with the written consent of the Seller and the Buyer or as agreed to on the record at any hearing before the Bankruptcy Court).

Section 9.2. Conditions to Obligations of the Buyer. The obligation of the Buyer to effect the Closing is subject to the following additional conditions:

(a) the Purchased Assets shall be able to be delivered free and clear of any Encumbrances, to the extent permitted by Section 363(f) of the Bankruptcy Code;

(b) the Rental Agreements shall be assumed and assigned to the Buyer and all cure costs with respect to the Rental Agreements shall have been paid by the Buyer;

(c) The Approval Order has not been stayed, or any stay has expired, pursuant to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure; and

(d) the Seller shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by the Seller on or prior to the Closing and the representations and warranties of the Seller which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing as though made at and as of the date of the Closing.

Any condition specified in this paragraph may be waived by the Buyer; *provided* that no such waiver shall be effective against the Buyer unless it is set forth in a writing executed by the Buyer.

Section 9.3. Conditions to Obligations of the Seller. The obligation of the Seller to effect the Closing is subject to the following additional conditions:

(a) the Buyer shall have performed and complied in all material respects with the covenants contained in this Agreement which are required to be performed and complied with by the Buyer on or prior to the Closing and the representations and warranties of the Buyer which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the date of the Closing as though made at and as of the date of the Closing; and

(b) the Seller shall have received the other items to be delivered to it pursuant to the Agreement.

Any condition specified in this Agreement may be waived by the Seller; *provided* that no such waiver shall be effective against the Seller unless it is set forth in a writing executed by the Seller.

ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.1. Amendment and Modification. This Agreement may be amended, modified or supplemented only by the mutual written agreement of the Seller and the Buyer.

Section 10.2. Waiver of Compliance. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may be waived by the party or parties entitled to the benefits thereof only by a written instrument signed by the party or parties granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, or condition shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

Section 10.3. Survival. The Parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder, and none of the Parties nor any of their respective officers, directors, representatives, employees, advisors or agents shall have any Liability to the other after the Closing for any breach thereof (it being understood that nothing in this Agreement shall impact any remedy available to any party hereto in the event of bad faith, good negligence or willful misconduct). The Parties hereto agree that only the covenants contained in this Agreement to be performed at or after the date of Closing shall survive the Closing hereunder, and each Party hereto shall be liable to the other after the date of Closing for any breach thereof.

Section 10.4. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express), two Business Days after delivery to such courier; (c) if sent by facsimile transmission before 5:00 p.m. in Hawaii, when transmitted and receipt is confirmed;

(d) if sent by facsimile transmission after 5:00 p.m. in Hawaii and receipt is confirmed, on the following Business Day; (e) if sent by electronic mail transmission before 5:00 p.m. in Hawaii, upon receipt; (f) if sent by electronic mail transmission after 5:00 p.m. in Hawaii, on the following Business Day; and (g) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

(a) If to the Seller, to:

Simon Klevansky
Alika L. Piper
Davies Pacific Center
841 Bishop Street, Suite 1707
Honolulu, Hawaii 96813
Email: sklevansky@kplawhawaii.com; apiper@kplawhawaii.com

(b) If to the Buyer, to:

Morris Weiss
Waller Lansden Dortch & Davis, LLP
100 Congress Avenue, Suite 1800
Austin, Texas 78701
Email: Morris.Weiss@wallerlaw.com

-and-

Louise Ing
Kristin Holland
Alston Hunt Floyd & Ing
1001 Bishop Street, Suite 1800
Honolulu, Hawaii 96813
Email: ling@ahfi.com; kholland@ahfi.com

Section 10.5. Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns (including, without limitation, any Chapter 7 trustee that may be appointed in either or both of the Chapter 11 Cases); *provided, however*, that: (a) subject to clause (b), neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law prior to the date of Closing, without the prior written consent of the other party hereto; and (b) this Agreement shall be assignable by the Buyer, without the prior written consent of the Seller, so long as the Buyer shall continue to remain obligated hereunder. Any assignment of this Agreement or any of the rights, interests or obligations hereunder in contravention of this paragraph shall be null and void and shall not bind or be recognized by the Seller or the Buyer.

Section 10.6. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 10.7. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii (except insofar as it is subject to and governed by provisions of the United States Bankruptcy Code), without giving effect to the principles of conflicts of laws thereof.

Section 10.8. Submission to Jurisdiction. Unless and to the extent otherwise specifically provided herein, the parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith or any of the transactions contemplated hereby or thereby. Each party hereby irrevocably agrees that all Claims in respect of such dispute or proceedings may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute or proceeding brought in such courts or any defense of inconvenient forum in connection therewith.

Section 10.9. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Facsimile and electronically transmitted signatures shall be deemed to be, and shall be legally effective as, original signatures for all purposes of this Agreement.

Section 10.10. Incorporation of Schedules and Exhibits. All Schedules and all Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

Section 10.11. Entire Agreement. This Agreement (including all Schedules and all Exhibits), and the Transaction Documents, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings, written and oral, among the parties with respect thereto.

Section 10.12. Remedies. The parties hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement and that, in such event, each party or its respective successors or assigns may, in addition to any other rights and remedies existing in their favor, apply to the Bankruptcy Court or any other court of competent jurisdiction for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Agreement.

Section 10.13. Headings. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

[The remainder of this page is intentionally left blank.]

[The immediately following pages are the signature pages hereof.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

ELIZABETH A. KANE, Bankruptcy Trustee of the Estate
of Naturescape Holding Group Int'l, Inc. and Bankruptcy
Trustee of the Estate of Mountain Thunder Coffee
Plantation Int'l, Inc.

GEMCAP LENDING I, LLC, a Delaware Limited
Liability Company

By: _____

Name:

Title:

SCHEDULE 1 – ASSUMED CONTRACTS

- Rental Agreements

[Remainder to be provided at or before the Closing]

SCHEDULE 2 – LIST OF REAL PROPERTY

<u>Property Address</u>	<u>Tax Map Key No.</u>	<u>Owned By</u>
73-1942 Hao Street, Kailua-Kona, HI (the " <u>Kaloko Property</u> ")	3-7-3-026-022	Trent Bateman Trust and Lisa Bateman Trust Leased to: Naturescape Holding
84-4995 Hawaii Belt Road Captain Cook, HI (the " <u>Honaunau Wet Mill Property</u> ")	3-8-4-007-033	Trustees of the Estate of Bernice Pauahi Bishop (fee simple) Naturescape Holding (leasehold)
72-3375 Hawaii Belt Road Captain Cook, HI (the " <u>Hualalai Ranch Property</u> ")	3-7-2-002-001	Trustees of Estate of Bernice Pauahi Bishop (fee simple) Licensed to: Trent and Lisa Bateman

4850-1979-9360.20

SCHEDULE 3 – LIST OF RENTAL AGREEMENTS

- That certain Indenture, dated as of July 1, 1975, by and between the Trustees of the Estate of Bernice Pauahi Bishop and John L. Ross and Helen O. Ross, as tenants by the entirety (which leasehold interest was later assigned to Naturescape)
- That certain Rental Agreement, dated as of December 22, 2015, by and between the Lisa Bateman Trust and the Trent Bateman Trust and Naturescape.