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UNITED STATES BANKRUPTCY COURT
 DISTRICT OF HAWAII
 1132 Bishop Street, Suite 250
 Honolulu, Hawaii 96813

Debtor(s):
**NATURESCAPE HOLDING GROUP INT'L INC.
 MOUNTAIN THUNDER COFFEE PLANTATION INT'L
 INC.**

Chapter: **11**
 Hearing Date:
 Time:

16-00982
 Case No.: 16-00984

COVER SHEET – MOTION TO SELL PROPERTY	
Moving Party:	Trustee Elizabeth A. Kane
Property Description:	See attached Exhibit "1."
This motion affects property rights of:	See attached Exhibit "1."
Selling Price:	\$100,00 in cash, payment of all allowed administrative expenses, and credit bid in the amount of \$1,751,966.80
Proposed Buyer:	Gemcap Lending I, LLC
Overbid Provisions:	See attached Exhibit "1."
<input checked="" type="checkbox"/> Sale is property of the estate and is being sold free and clear of liens under 11 U.S.C. § 363(f).* \$176 filing fee due	Check each statement that applies: <input checked="" type="checkbox"/> (1) Applicable bankruptcy law permits sale of such property free and clear of such interest. <input type="checkbox"/> (2) Such entity consents. <input type="checkbox"/> (3) Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property. <input type="checkbox"/> (4) Such interest is in bona fide dispute. <input type="checkbox"/> (5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

90355.pdf

Dated: February 6, 2017

/s/ Alika L. Piper
 For Moving Party

*In CM/ECF, select Motions & Responses > Motions/Applications > Sell Property Free and Clear of Liens Under Section 363(f) (Motion) (FEE 176). If not a sale under § 363(f) because property is not property of the estate, is unencumbered, or is being sold subject to liens, select Approve Sale (Motion).

EXHIBIT “1” to Cover Sheet- Motion to Sell Property

Property Description:

(i) all tangible and intangible assets described in Gemcap Lending I, LLC’s (“Gemcap”) loan documents, but not the assets encumbered by a first priority security interest held by Direct Capital Corporation, Leaf Commercial Capital, Inc. Deere & Company or Ford Motor Credit Company, LLC; (ii) the claims and causes of action against Trent Bateman, Lisa Bateman, and certain family members, including trusts in which they have an interest or are beneficiaries, to acquire or improve certain real property; (iii) the claims and causes of action arising from the pre-petition assets of the Debtors to acquire or improve the property located at 72-3375 Hawaii Belt Road, Captain Cook, Hawaii (the “Hualalai Ranch Property”), (iv) claims and potential causes of action against Receiver George Van Buren, (v) the estates’ interest in the Hualalai Ranch Property, (vi) the leasehold interests with respect to (a) the real property located at 84-4995 Hawaii Belt Road, Captain Cook, Hawaii (the “Honaunau Wet Mill Property”) and (b) the real property located at 73-1942 Hao Street, Kailua-Kona, Hawaii (the “Kaloko Property”), as set forth in rental agreements, provided Gemcap shall pay all amounts required to cure the obligations under these rental agreements, and (vii) the interests of the Trustee in certain of the Assumed Contracts, provided Gemcap pays all amounts required to cure the obligations under the respective assigned Assumed Contracts. The purchased assets shall not include the Debtor’s interest in (i) certain claims against Grant Kidani, The Kidani Law Firm, The Kidani Law Center, and their respective attorneys, principals, agents, representatives, successors and assigns; (ii) the claims and causes of action respecting judgments obtained against Kona’s Best Natural Coffee, LLC; (iii) certain preference or avoidance claims and actions of the Trustee; (iv) the Trustee’s rights under the APA and other related transaction documents; (v) any documents or materials subject to attorney-client privilege; and (vi) any federal and state tax receivables, credits, or refunds owed to the Trustee.

This Motion affects property rights of:

Trent A. Bateman, individually and as trustee of the
Trent A. Bateman Trust, dated January 28, 2013
73-1942 Hao Street
Kailua-Kona, Hawaii

Lisa J. Bateman, individually and as trustee of the
Lisa J. Bateman Trust, dated January 28, 2013
73-1942 Hao Street
Kailua-Kona, Hawaii

Brooke Decker
73-1942 Hao Street
Kailua-Kona, Hawaii

Kidani Law Firm, ALC
201 Merchant Street, Suite 2300
Honolulu, Hawaii 96813

Corporation Service Company, As Representative
PO Box 2576
Springfield, IL 62708

Corporation Service Company
801 Adlai Stevenson Drive
Springfield, IL 62703

Plant Automation Group, Ltd.
PO Box 718
Brookfield, CT 06804

JM Estrada S.A.
PO Box 5462
Medellin, Columbia

Auto Capital Group
2010 Main Street, Suite 1150
Irvine, CA 92614

Hawaii Coffee Co.
1555 Kalani Street
Honolulu, Hawaii 96817

Paradise Beverages, Inc.
1555 Kalani Street
Honolulu, Hawaii 96817-4908

Kona's Best Natural Coffee, LLC
c/o Joseph Fagundes, III
PO Box 2609
Kailua-Kona, Hawaii 96745

Kurt Schweickhard
c/o Olson & Sons
79-7516 Hawaii Belt Road
Kealahou, Hawaii 96750

Overbid Provisions:

1. Any third party (the "Potential Bidder") must deliver a cashier's check payable to the Trustee in the amount 10% of the Potential Bidder's maximum bid, no later than five business days prior to the hearing;
2. At the time of the hearing, the Potential Bidder must deliver to the Trustee a cashier's check in the amount of 90% of their intended maximum bid;
3. Any overbid shall be in increments of \$ 100,000.00;
4. Anyone wishing to submit an overbid must notify the Trustee's counsel in writing by the deadline for filing objections to this motion.

KLEVANSKY PIPER , LLP
A Limited Liability Law Partnership

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Attorneys for Trustee ELIZABETH A. KANE

**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)

THIS MOTION AFFECTS THE
PROPERTY RIGHTS OF:

1) TRENT A. BATEMAN,

**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**

- individually and as trustee of the Trent A. Bateman Trust, dated January 28, 2013
- 2) LISA J. BATEMAN, individually and as trustee of the Lisa J. Bateman Trust, dated January 28, 2013
 - 3) BROOKE DECKER
 - 4) KIDANI LAW FIRM, ALC
 - 5) CORPORATION SERVICE COMPANY, AS REPRESENTATIVE
 - 6) CORPORATION SERVICE COMPANY
 - 7) PLANT AUTOMATION GROUP, LTD.
 - 8) JM ESTRADA S.A.
 - 9) Auto Capital Group
 - 10) Hawaii Coffee Co.
 - 11) Paradise Beverages, Inc.
 - 12) Kona's Best Natural Coffee, LLC
 - 13) Kurt Schweickhard

(IV) GRANTING SUCH FURTHER RELIEF; MEMORANDUM IN SUPPORT OF TRUSTEE'S MOTION; EXHIBITS "1" AND "2"; DECLARATION OF ELIZABETH A. KANE

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

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”) hereby moves the Court for entry of an order (i) approving the Asset Purchase, Settlement and Release Agreement¹ (“APA”) with Gemcap Lending I, LLC (“Gemcap”) in substantially the form attached hereto as Exhibit “1”, (ii) approving the sale of certain assets (the “Purchased Assets”) of the Debtors’ bankruptcy estates free and clear of certain encumbrances listed in the APA (the “Encumbrances”), pursuant to Bankruptcy Code section 363(f), (iii) approving the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases (the “Assumed Contracts”), pursuant to the procedure set forth in the APA, and (iv) granting such other and further relief. In accordance therewith, the Trustee requests that the Court enter the Order granting this Motion (the “Approval Order”), in a form to be submitted prior to the hearing upon this matter.

¹ The Motion and accompanying memorandum summarize the principal terms of the APA. To the extent there is any inconsistency, the APA controls.

The Trustee further requests authority to allow other interested parties to overbid for the Purchased Assets at the hearing, on the same terms and conditions as the APA, provided however, that:

1. Any third party (the “Potential Bidder”) must deliver a cashier’s check payable to the Trustee in the amount 10% of the Potential Bidder’s maximum bid, no later than five business days prior to the hearing;
2. At the time of the hearing, the Potential Bidder must deliver to the Trustee a cashier’s check in the amount of 90% of the Potential Bidder’s intended maximum bid;
3. Any overbid shall be in increments of \$ 100,000.00;
4. Anyone wishing to submit an overbid must notify the Trustee’s counsel in writing by the deadline for filing objections to this motion.

The Trustee requests authority to sell the Purchased Assets to the highest bidder.

The Trustee further requests that the Court determine that the Purchased Assets shall be purchased in good faith within the meaning of Bankruptcy Code Section 363(m).

This motion is made pursuant to Bankruptcy Code §363 and Fed. R. Bankr. P. 9019, and is supported by the memorandum and declaration filed concurrently herewith together with the record in this case.

DATED: Honolulu, Hawaii, February 6, 2017.

/s/ Alika L. Piper

SIMON KLEVANSKY

ALIKA L. PIPER

Attorneys for Trustee Elizabeth A.

Kane

In re Naturescape Holding Group Int'l Inc., Debtor, Case No. 16-00982, and In re Mountain Thunder Coffee Plantation Int'l Inc., Case No. 16-00984, United States Bankruptcy Court, District of Hawaii; 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

**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)

**MEMORANDUM IN SUPPORT OF
TRUSTEE'S MOTION**

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MEMORANDUM IN SUPPORT OF TRUSTEE'S MOTION

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") hereby submits this memorandum in support of the accompanying Motion (the "Motion"), in which the Trustee seeks entry of an order:

(i) approving the Asset Purchase, Settlement and Release Agreement ("APA") with Gemcap Lending I, LLC ("Gemcap") in substantially the form attached hereto as Exhibit "1",

(ii) approving the sale of certain assets (the "Purchased Assets") of the Debtors' bankruptcy estates free and clear of certain encumbrances listed in the APA (the "Encumbrances"), pursuant to Bankruptcy Code section 363(f),

(iii) approving the assumption and assignment of the Debtors' executory contracts and unexpired leases (the "Assumed Contracts") pursuant to the procedure set forth in the APA, and

(iv) granting such other and further relief.

In accordance therewith, the Trustee requests that the Court enter the Order granting this Motion (the "Approval Order"), in a form to be submitted prior to the hearing upon this matter.

STATEMENT OF FACTS

Beginning in 2011, Naturescape and Mountain Thunder entered into Loan Security Agreements (“LSA”) with Gemcap which included (1) the Loan Security Agreement dated September 26, 2011, as amended and (2) the Amended and Restated Loan and Security Agreement, dated September 27, 2013, as amended.

Pursuant to the LSAs, Naturescape and Mountain Thunder, and others, executed in favor of Gemcap: (i) a Secured Term Loan Note in the principal amount of \$440,000.00, which was amended to \$328,970.08, and further amended to \$244,578.07 (“Term Note I”), (ii) a Secured Revolving Loan Note up to the amount of \$1,550,000.00, which was amended three times up to \$4,550,000.00 (the “Revolver”), and (iii) an additional Term Loan Note in the principal amount of \$1,250,000.00 (“Term Note II”) (collectively the “Notes”). The Notes were secured by mortgages including (i) a Mortgage, dated September 28, 2011, recorded in the Bureau of Conveyances as Document No. 2011-190516, (ii) a Mortgage, dated October 22, 2013, recorded in the Bureau as Document No. A-50600132, and (iii) a Mortgage dated August 7, 2015, recorded in the Bureau as Document No. A-57500020 (collectively the “Mortgages”).

Gemcap perfected its secured interests in certain assets of Naturescape and Mountain Thunder by filing and recording a UCC Financing Statement dated

September 27, 2011, recorded in the Bureau of Conveyances as Document No. 2011-157170.

Hereinafter, the Notes, Mortgages, and UCC Financing Statements, along with the accompany loan agreements, are collectively referred to as the “Loan Documents”.

On September 16, 2016, an involuntary Chapter 11 bankruptcy petition was filed against Mountain Thunder. On November 16, 2016, the Court entered an order approving the appointment of the Trustee as the bankruptcy trustee of the estate.

On September 16, 2016, an involuntary Chapter 11 bankruptcy petition was filed against Naturescape. On December 21, 2016, the Court entered an order approving the appointment of the Trustee as the bankruptcy trustee of the estate.

The Trustee and Gemcap have negotiated a sale of the Purchased Assets, as set forth in the APA, the principal terms of which are set forth below.

I. PRINCIPAL TERMS OF THE ASSET PURCHASE AGREEMENT

The following are the principal terms of the Asset Purchase Agreement:

1. Purchased Assets. Pursuant to the APA, the Trustee shall sell, assign, convey, and transfer to Gemcap all of the estates’ interests in the Purchased

Assets, which shall include (i) all tangible and intangible assets described in the Loan Documents, but not the assets encumbered by a first priority security interest held by Direct Capital Corporation, Leaf Commercial Capital, Inc. Deere & Company or Ford Motor Credit Company, LLC; (ii) the claims and causes of action against Trent Bateman, Lisa Bateman, and certain family members, including trusts in which they have an interest or are beneficiaries, to acquire or improve certain real property; (iii) the claims and causes of action arising from the pre-petition assets of the Debtors to acquire or improve the property located at 72-3375 Hawaii Belt Road, Captain Cook, Hawaii (the “Hualalai Ranch Property”), (iv) claims and potential causes of action against Receiver George Van Buren, (v) the estates’ interest in the Hualalai Ranch Property, (vi) the leasehold interests with respect to (a) the real property located at 84-4995 Hawaii Belt Road, Captain Cook, Hawaii (the “Honaunau Wet Mill Property”) and (b) the real property located at 73-1942 Hao Street, Kailua-Kona, Hawaii (the “Kaloko Property”), as set forth in rental agreements, provided Gemcap shall pay all amounts required to cure the obligations under these rental agreements, and (vii) the interests of the Trustee in certain of the Assumed Contracts, provided Gemcap pays all amounts required to cure the obligations under the respective assigned Assumed Contracts.¹

¹ The Purchased Assets shall not include the Debtor’s interest in (i) certain claims against Grant Kidani, The Kidani Law Firm, The Kidani Law Center, and their respective attorneys, principals, agents, representatives, successors and

The sale of the Purchased Assets shall be free and clear of those Encumbrances, as defined in the APA, pursuant to Bankruptcy Code section 363(f).

2. **Assumption and Assignment of Assumed Contracts.** The Trustee shall provide notice of assumption and proposed cure amounts to the counterparties under the Rental Agreement. The Trustee shall assume and assign to Gemcap the Rental Agreements, effective upon closing, provided that to the extent any Rental Agreement is subject to cure pursuant to Bankruptcy Code section 365, Gemcap shall pay all such amounts owed before closing. With respect to the Assumed Contracts (other than the Rental Agreements), the Trustee is authorized to send notices of the estimated cure amounts to the counterparties, and absent an objection from the counterparties within 21 days, the cure amount shall be paid. Within four business days following closing, the Trustee shall provide notice of assumption and proposed cure amounts to the counterparties under the Assumed Contracts (other than the Rental Agreements). To the extent a counterparty objects to the notice of estimated cure amounts or to the assumption

assigns; (ii) the claims and causes of action respecting judgments obtained against Kona's Best Natural Coffee, LLC; (iii) certain preference or avoidance claims and actions of the Trustee; (iv) the Trustee's rights under the APA and other related transaction documents; (v) any documents or materials subject to attorney-client privilege; and (vi) any federal and state tax receivables, credits, or refunds owed to the Trustee.

or assignment of an Assumed Contract within the 21 day notice period, a hearing shall be scheduled to resolve such objection.

3. **Assumption of Assumed Liabilities.** On the date of closing, Gemcap 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).

4. **Purchase Price.** The purchase price for the Purchased Assets shall be: (i) \$100,0000 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), and (iii) a credit bid in the amount of \$1,751,966.80, as the same may be increased by Gemcap, which will be offset against the secured portion of Gemcap's claim.

5. **Gemcap's Claim.** Pursuant to the APA, the parties shall stipulate to the amount of Gemcap's credit bid claim (\$1,751,966.80), and Gemcap's deficiency claim (\$3,834,244.00). Gemcap shall retain the deficiency claim as an unsecured claim in the Chapter 11 cases; provided that Gemcap shall subordinate its deficiency claim to the first \$150,000.00 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.

6. **Mutual Release of Claims.** Pursuant to the APA, the Trustee and Gemcap shall release their claims against each other, except for certain limited excluded claims.

II. **OVERBIDDING**

The Trustee further requests authority to allow other interested parties to overbid for the Purchased Assets at the hearing, on the same terms and conditions as the APA, provided however, that:

1. Any third party (the "Potential Bidder") must deliver a cashier's check payable to the Trustee in the amount 10% of the Potential Bidder's maximum bid, no later than five business days prior to the hearing;
2. At the time of the hearing, the Potential Bidder must deliver to the Trustee a cashier's check in the amount of 90% of their intended maximum bid;
3. Any overbid shall be in increments of \$ 100,000.00;
4. Anyone wishing to submit an overbid must notify the Trustee's counsel in writing by the deadline for filing objections to this motion.

III. LEGAL ARGUMENT

The Court may approve the sale of the Purchased Assets to Gemcap, pursuant to Bankruptcy Code Section 363(f) and the assumption and assignment of the Assumed Contracts, pursuant to Bankruptcy Code Section 365.

A. Sale Pursuant to Bankruptcy Code Section 363(f)

As set forth above and in the accompanying APA, the Trustee requests that the sale of the Purchased Assets be free and clear of the Encumbrances, pursuant to Bankruptcy Code Section 363(f).

As explained above, Gemcap shall assume and agree to pay, perform, and discharge when due all obligations of the Trustee under the Assumed Contracts and the obligations of the Trustee with respect to the Purchased Assets (i.e, the Assumed Liabilities) at closing. Bankruptcy Code Section 363(f) authorizes a sale of assets free and clear of liens if applicable nonbankruptcy law permits sale of such property free and clear of such interest. Bankruptcy Code Section 363(f)(1). In this case, Hawaii UCC law permits the sale free and clear of any junior interest. Haw. Rev. Stat. section 490:9-617(a) provides “a secured party’s disposition of collateral after default: (i) transfers to a transferee for value all of the debtor’s rights in the collateral, (ii) discharges the security interest under which the disposition is made, and (iii) discharges any subordinate security interest or other subordinate lien.” See Haw. Rev. Stat. section 490:9-617(a) (emphasis

added). Accordingly, Bankruptcy Code Section 363(f)(1) permits the sale free and clear of such liens.

Attached as Exhibit “2” are printouts of searches for Naturescape and Mountain Thunder from the Bureau of Conveyances website. The printout for Naturescape identifies several UCC financing statements filed by Corporation Service Company, as a representative. These financing statements were all filed after Gemcap’s initial UCC financing statement, filed on September 27, 2011, and are therefore subordinate junior interests in any property of the Debtor. The judgment held by Kurt Schweickhard does not attach to personal property of the Debtor.

With respect to the printout for Mountain Thunder, there were several financing statements filed before Gemcap’s initial UCC financing statement, including Paradise Beverage, Inc., filed on October 23, 2002, Auto Capital Group, filed on April 12, 2007, Hawaii Coffee Co., filed on December 31, 2007, and the Kidani Law Firm ALC, filed on November 22, 2010, for which it appears no continuation statements were filed. Accordingly, it appears any security interest created by the filings of these UCC financing statements have lapsed.

The judgment held by Kona’s Best Natural Coffee, LLC, filed on June 8, 2011, and the judgment held by Kurt Schweickhard, filed on August 11, 2016, do not attach to personal property of the Debtor.

With respect to any financing statements filed by Direct Capital Corporation, Leaf Commercial Capital, Inc. Deere & Company or Ford Motor Credit Company, LLC, the assets covered by these financing statements are not included in the assets to be sold under the APA.

The printout for Mountain Thunder identifies several UCC financing statements filed by Corporation Service Company, as a representative, and a separate financing statement for the Kidani Law Firm, filed on February 26, 2016. These financing statements were all filed after Gemcap's initial UCC financing statement, filed on September 27, 2011, and are therefore subordinate junior interests in any property of the Debtor.

Accordingly, the Purchased Assets may be sold free and clear of these interests, pursuant to Bankruptcy Code Section 363(f).

B. Assumption and Assignment of Assumed Contracts

The Trustee requests approval of the assumption and assignment of the Assumed Contracts, including the Rental Agreements, to Gemcap, pursuant to the following procedure as set forth in the APA:

(1) With respect to the Rental Agreements, the Trustee shall provide notice of assumption and proposed cure amounts to counterparties under the Rental Agreements simultaneously with the filing of this Motion. To the extent that any Rental Agreement is subject to a cure pursuant to Section 365 of the

Bankruptcy Code, Gemcap shall pay all such amounts owed at or before the closing. At closing, the Trustee shall assign to Gemcap the Rental Agreements.

(2) With respect to the Assumed Contracts (other than the Rental Agreements), Gemcap will provide the Trustee with a list of such contracts at or before closing. Within four (4) business days following the closing, the Trustee shall provide notice of assumption and proposed cure amounts to counterparties under Assumed Contracts (other than the Rental Agreements). 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 Gemcap 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 Gemcap, Gemcap 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, Gemcap shall pay the cure amount to the counterparty, and the Assumed Contract (other than the Rental Agreements) shall be assigned to Gemcap.

Under Bankruptcy Code Section 365(a), a trustee may assume an executory contract or unexpired lease if the conditions in Bankruptcy Code section

365(b)(1) are met. Bankruptcy Code Section 365(b) provides that a trustee may assume an executory contract or unexpired lease that is in default if: (i) the trustee cures the default, (ii) the trustee either compensates or provides adequate assurance of prompt redress to the nondebtor party for any monetary loss caused by the default, and (iii) the trustee furnishes adequate assurance of future performance of the executory contract or unexpired lease. See Bankruptcy Code Section 365(b). See also In re Bowman, 194 B.R. 227 (Bankr. D. Ariz. 1995); In re AEG Acquisition Corp., 127 B.R. 34 (Bankr. C.D. Cal. 1991).

Section 365(f) of the Bankruptcy Code provides that a trustee may assign a contract or lease, provided that the trustee first assume the contract or lease, and that adequate assurance of future performance by the assignee be provided.

The standard applied to determine whether the assumption and assignment of an executory contract or unexpired lease should be authorized is the “business judgment” standard. NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523, 104 S. Ct. 1188, 1194-95, 79 L.Ed.2d 482 (1984); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098-99 (2d Cir. 1993), *cert. dismissed*, 511 U.S. 1026, 114 S.Ct. 1418, 128 L.Ed.2d 88 (1994). In applying the business judgment standard, courts show great deference to a debtor’s or trustee’s decision. In re Pomona Valley Medical Group, Inc., 476 F.3d

665, 670 (9th Cir. 2007) (“the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate”); In re G.I. Industries, Inc., 204 F.3d 1276, 1282 (9th Cir. 2000) (“bankruptcy court’s hearing on a motion to reject is a summary proceeding that involves only a cursory review of a trustee’s decision”); Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47 (4th Cir. 1985), *cert. denied*, 475 U.S. 1057, 106 S. Ct. 1285, 89 L.Ed.2d 592 (1986); Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

In the instant case, the Trustee believes it is in the estates’ best interest to assume the Assumed Contracts and assign the Trustee’s interest in the Assumed Contracts to Gemcap, provided the Gemcap pays all amounts owed. Under the APA, Gemcap has confirmed that it will cure any defaults under the Assumed Contracts and will assume all Assumed Liabilities with respect to the Assumed Contracts. Gemcap’s ability to finance the Debtors postpetition, and pay cure amounts, establishes adequate assurance of its future performance.

C. **Good Faith Purchaser Determination**

The Court may also determine that the Purchased Assets are being purchased in good faith within the meaning of Bankruptcy Code § 363(m). As set forth in the attached declaration of Elizabeth Kane, the proposed sale was negotiated in an arm's length transaction.

D. **Release of Claims Under Fed.R.Bankr. P. 9019.**

The APA provides for the mutual release of certain claims between the parties. Fed. R. Bankr. P. 9019(a) authorizes the Court to approve a compromise or settlement of claims on motion by the trustee and after a hearing with notice to creditors.

Under the standard established by the Ninth Circuit, the Court should approve a compromise or settlement if it is "fair and equitable". Woodson v. Firemans' Fund Ins. Co., 838 F.2d 610, 620 (9th Cir. 1988). Specific factors a Court considers when determining whether a settlement is fair and equitable include the following: (i) the probability of success in the litigation, (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (iv) the proper deference to the reasonable views of parties having a paramount interest. See Woodson, 838 F.2d at 620.

In evaluating the “fairness” of a compromise or settlement, a “trial” or “mini-trial” on the merits is not required. Official Committee of Unsecured Creditors v. James Talcott, Inc., 103 B.R. 420, 423 (S.D.N.Y. 1989). Rather, the Court must simply consider the various factors that determine the reasonableness of the compromise. In re A&C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). This Court should approve the settlement as long as it is above the “lowest point of reasonableness”. See In re International Distrib. Centers, Inc., 103 B.R. 420, 423 (S.D.N.Y. 1989).

In the instant case, the Trustee believe that the APA is fair and equitable and satisfies the factors set forth in Woodson and is well within the lowest point of reasonableness. Pursuant to the APA, the parties will mutually release their claims against each other, except for certain excluded claims. In exchange, the estate will receive the sum of \$100,000 for unsecured creditors, and the administrative expenses as set forth herein shall be paid by Gemcap. By settling the claims pursuant to the APA, the Trustee avoids the expense of further litigation with Gemcap.

IV. CONCLUSION

Based upon the foregoing, the Trustee respectfully requests that the Court grant this Motion, and enter the Approval Order and approve such further relief.

DATED: Honolulu, Hawaii, February 6, 2017.

/s/ Alike L. Piper

SIMON KLEVANSKY
ALIKA L. PIPER
Attorneys for Trustee ELIZABETH
A. KANE

In re Naturescape Holding Group Int'l Inc., Debtor, Case No. 16-00982, and In re Mountain Thunder Coffee Plantation Int'l Inc., Case No. 16-00984, United States Bankruptcy Court, District of Hawaii; MEMORANDUM IN SUPPORT OF MOTION

EXHIBIT “1”

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 _____, 2017

EXHIBIT "1"

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Exhibit B	Form of Approval Order
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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.

"Batemens" 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 Batemens arising from transfers made by the Batemens, 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;

“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, unmatured, 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 be 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, web domain, domain names, trade names 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: David Ellis

Title: Co-President

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

SCHEDULE 3 – LIST OF RENTAL AGREEMENTS

EXHIBIT “2”



Department of Land & Natural Resources

Bureau of Conveyances - Official Public Records

Search Results

12 documents found matching Naturescape holding group
For better results, [narrow your search.](#)

The data is defaulted to sort by Recording Date in ascending order. To sort on a different criteria, click on the column heading.

12 items found, displaying all items. [View first 20](#) Common Instrument Codes: AD= Apartment Deed, D= Deed, L = Lease, M = Mortgage, R= Release, TS= Time Share [|All Codes >](#)

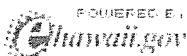
<u>Document Number</u>	<u>Grantor</u> ? Party transferring interest.	<u>Grantee</u> ? Party acquiring interest.	<u>Instrument Code</u> ? <u>Instrument Code= Filing Type</u>	<u>Recording Date</u>	<u>TMK</u> ? Tax Map Key. Parcel identification, if known. Used for real property assessments purposes
A2011157170	NATURESCAPE HOLDING GROUP INT'L INC	GEMCAP LENDING I LLC	FSU-FINANCING [... FINANCING STATEMENT]	2011-09-27	
A49271312	NATURESCAPE HOLDING GROUP INT'L INC	CORPORATION SERVICE COMPANY REPRESENTATIVE	FSU-FINANCING [... FINANCING STATEMENT]	2013-06-28	
A49400466	NATURESCAPE HOLDING GROUP INT'L INC	CORPORATION SERVICE COMPANY REPRESENTATIVE	AMU-AMEND [... AMEND STATEMENT (UCC)]	2013-07-11	
A51640946	NATURESCAPE HOLDING GROUP INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	FSU-FINANCING [... FINANCING STATEMENT]	2014-02-20	
A53220692	NATURESCAPE HOLDING GROUP INT'L INC	NATURESCAPE HOLDING GROUP INT'L INC	AMU-AMEND [... AMEND STATEMENT (UCC)]	2014-07-28	
A53430571	NATURESCAPE HOLDING GROUP INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	FSU-FINANCING [...]	2014-08-18	

EXHIBIT "2"

<u>Document Number</u>	<u>Grantor</u> ? <u>Party transferring interest.</u>	<u>Grantee</u> ? <u>Party acquiring interest.</u>	<u>Instrument Code</u> ? <u>Instrument Code= Filing Type</u>	<u>Recording Date</u>	TMK ? <u>Tax Map Key. Parcel Identification, if known. Used for real property assessments purposes</u>
			<u>FINANCING STATEMENT</u>		
<u>A53960289</u>	CAPTAIN COOK COFFEE COMPANY LIMITED	NATURESCAPE HOLDING GROUP INTERNATIONAL INC	AL-ASSIGNMENT [... <u>ASSIGNMENT OF LEASE</u>]	2014-10-10	3-8-4-007-033-
<u>A54370599</u>	NATURESCAPE HOLDING GROUP INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	AMU-AMEND [... <u>AMEND STATEMENT (UCC)</u>]	2014-11-20	
<u>A56860425</u>	NATURESCAPE HOLDING GROUP INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	AMU-AMEND [... <u>AMEND STATEMENT (UCC)</u>]	2015-07-27	
<u>A57500020</u>	NATURESCAPE HOLDING GROUP INT'L INC	GEMCAP LENDING I LLC	M-MORTGAGE	2015-09-29	3-8-4-007-033-
<u>A59950765</u>	NATURESCAPE HOLDING GROUP INT'L INC	GEMCAP LENDING LLC	LP-LIS [... <u>LIS PENDENS</u>]	2016-05-31	3-7-3-026-022-
<u>A60670461</u>	NATURESCAPE HOLDING GROUP INT'L	SCHWEICKHARD KURT	J-JUDGMENT	2016-08-11	

Common Instrument Codes : AD = Apartment Deed, D = Deed, L = Lease, M = Mortgage, R = Release, TS = Time Share | [All Codes >](#)
[Back To Search](#)

Information deemed reliable but not guaranteed.
 Posted Through Date : 2016-12-20.



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Department of Land & Natural Resources

Bureau of Conveyances - Official Public Records

Search Results

28 documents found matching Mountain thunder
For better results, [narrow your search](#).

The data is defaulted to sort by Recording Date in ascending order. To sort on a different criteria, click on the column heading.

28 items found, displaying all items. [View first 20](#) Common Instrument Codes: AD= Apartment Deed, D= Deed, L = Lease,

M = Mortgage, R= Release, TS= Time Share [All Codes >](#)

<u>Document Number</u>	<u>Grantor</u> ? <u>Party transferring interest.</u>	<u>Grantee</u> ? <u>Party acquiring interest.</u>	<u>Instrument Code</u> ? <u>Instrument Code= Filing Type</u>	<u>Recording Date</u>	TMK ? Tax Map Key. Parcel identification, If known. Used for real property assessments purposes
A2002189431	MOUNTAIN THUNDER COFFEE PLANTN	PARADISE VEVERAGES INC	FSU-FINANCING [... FINANCING STATEMENT]	2002-10-23	
A2004201630	MOUNTAIN THUNDER COFFEE PLANTN INTL INC	MOUNTAIN THUNDER COFFEE PLANTN INTL INC	FSU-FINANCING [... FINANCING STATEMENT]	2004-09-30	
A2006108496	MOUNTAIN THUNDER COFFEE PLANTN INTL INC	BANK OF HAWAII	FSU-FINANCING [... FINANCING STATEMENT]	2006-06-14	
A2007008862	MOUNTAIN THUNDER COFFEE PLANTATION INC	DIMENSIONS FUNDING LLC	FSU-FINANCING [... FINANCING STATEMENT]	2007-01-17	
A2007022521	DIMENSION FUNDING LLC	MOUNTAIN THUNDER COFFEE PLANTATION INTL	TU-TERMINATION [... TERMINATION OF STATEMENT (UCC)]	2007-02-06	

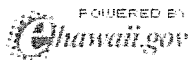
<u>Document Number</u>	<u>Grantor</u> ② <u>Party transferring interest.</u>	<u>Grantee</u> ② <u>Party acquiring interest.</u>	<u>Instrument Code</u> ② <u>Instrument Code= Filing Type</u>	<u>Recording Date</u>	<u>TMK</u> ② <u>Tax Map Key. Parcel identification, if known. Used for real property assessments purposes</u>
<u>A2007065858</u>	MOUNTAIN THUNDER COFFEE PLANTN INTL INC	AUTO CAPITAL GROUP	FSU-FINANCING [... FINANCING STATEMENT]	2007-04-12	
<u>A2007224258</u>	MOUNTAIN THUNDER COFFEE PLANTATION	HAWAII COFFEE CO	FSU-FINANCING [... FINANCING STATEMENT]	2007-12-31	
<u>A2010180696</u>	MOUNTAIN THUNDER COFFEE PLANTN INTL INC	KIDANI LAW FIRM ALC	FSU-FINANCING [... FINANCING STATEMENT]	2010-11-22	
<u>A2011091033</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	KONA'S BEST NATURAL COFFEE LLC	J-JUDGMENT	2011-06-08	
<u>A2011148431</u>	MOUNTAIN THUNDER COFFEE PLANTATION INTERNATIONAL INC		NTC-NOTICE	2011-09-14	
<u>A2011157170</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	GEMCAP LENDING I LLC	FSU-FINANCING [... FINANCING STATEMENT]	2011-09-27	
<u>A2011183873</u>	BANK OF HAWAII	MOUNTAIN THUNDER COFFEE PLANTATION INTL INC	TU-TERMINATION [... TERMINATION OF STATEMENT (UCC)]	2011-11-07	
<u>A2011198029</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	LEAF CAPITAL FUNDING LLC	FSU-FINANCING [... FINANCING STATEMENT]	2011-11-23	
<u>A2011205122</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	LEAF CAPITAL FUNDING LLC	AMU-AMEND [... AMEND STATEMENT (UCC)]	2011-12-06	
<u>A45840767</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	FSU-FINANCING [... FINANCING STATEMENT]	2012-07-20	
<u>A47481106</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	LEAF CAPITAL FUNDING LLC	FSU-FINANCING [... FINANCING STATEMENT]	2012-12-31	

<u>Document Number</u>	<u>Grantor</u> ① <u>Party transferring interest.</u>	<u>Grantee</u> ① <u>Party acquiring interest.</u>	<u>Instrument Code</u> ① <u>Instrument Code= Filing Type</u>	<u>Recording Date</u>	TMK ① Tax Map Key. Parcel Identification, if known. Used for real property assessments purposes
<u>A49271312</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	CORPORATION SERVICE COMPANY REPRESENTATIVE	FSU-FINANCING [... FINANCING STATEMENT]	2013-06-28	
<u>A51640946</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	FSU-FINANCING [... FINANCING STATEMENT]	2014-02-20	
<u>A53220691</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	AMU-AMEND [... AMEND STATEMENT (UCC)]	2014-07-28	
<u>A53430571</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	FSU-FINANCING [... FINANCING STATEMENT]	2014-08-18	
<u>A53590871</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	DEERE & COMPANY	FSU-FINANCING [... FINANCING STATEMENT]	2014-09-03	
<u>A53590872</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	DEERE & COMPANY	FSU-FINANCING [... FINANCING STATEMENT]	2014-09-03	
<u>A54370600</u>	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	AMU-AMEND [... AMEND STATEMENT (UCC)]	2014-11-20	
<u>A56820585</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	LEAF CAPITAL FUNDING LLC	AMU-AMEND [... AMEND STATEMENT (UCC)]	2015-07-23	
<u>A56860426</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	CORPORATION SERVICE COMPANY AS REPRESENTATIVE	AMU-AMEND [... AMEND STATEMENT (UCC)]	2015-07-27	
<u>A59000757</u>	MOUNTAIN THUNDER COFFEE PLANTATION INTERNATIONAL INC	KIDANI LAW FIRM ALC	FSU-FINANCING [... FINANCING STATEMENT]	2016-02-26	
<u>A59950765</u>	MOUNTAIN THUNDER COFFEE PLANTATION INT'L INC	GEMCAP LENDING LLC	LP-LIS [... LIS PENDENS]	2016-05-31	3-7-3-026-022-
<u>A60670461</u>	MOUNTAIN THUNDER COFFEE PLANTATION	SCHWEICKHARD KURT	J-JUDGMENT	2016-08-11	

<u>Document Number</u>	<u>Grantor</u> ? <u>Party transferring interest.</u>	<u>Grantee</u> ? <u>Party acquiring interest.</u>	<u>Instrument Code</u> ? <u>Instrument Code= Filing Type</u>	<u>Recording Date</u>	<u>TMK</u> ? Tax Map Key. Parcel identification, if known. Used for real property assessments purposes
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Common Instrument Codes : AD = Apartment Deed, D = Deed, L = Lease, M = Mortgage, R = Release, TS = Time Share | [All Codes >](#)
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Information deemed reliable but not guaranteed.
 Posted Through Date : 2016-12-20.



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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)

**DECLARATION OF ELIZABETH
A. KANE**

DECLARATION OF ELIZABETH A. KANE

I, ELIZABETH A. KANE, declare under penalty of perjury that:

1. I am the duly appointed bankruptcy trustee of the bankruptcy estates of Naturescape Holding Group Int'l, Inc. and Mountain Thunder Coffee Plantation Int'l, Inc. (sometime collectively the "Debtors") in the above-referenced bankruptcy case. I make these statements based on my personal knowledge and a review of certain documents in this case.

2. I make this declaration in support of the 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 (the “Motion”).

3. A true and correct copy of the Asset Purchase, Settlement and Release Agreement (“APA”) with Gemcap Lending I, LLC (“Gemcap”) is attached to the Motion as Exhibit “1”.

4. Attached as Exhibit “2” are true and correct copies of printouts from the Bureau of Conveyances website for Naturescape and Mountain Thunder.

5. I believe it is in the best interests of the estates to enter into the APA. Under the APA, the estates will receive the sum of \$100,000 for unsecured creditors, and the administrative expenses as set forth in the accompanying Motion and memorandum shall be paid by Gemcap. It is unlikely that I would obtain more than this amount, if I sold the subject assets separately because of Gemcap’s security interest.

6. The APA was negotiated in an arm’s length transaction over a period of several weeks. The APA was negotiated by the parties, through their counsel, without collusion and in good faith.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, February 6, 2017.

/s/ Elizabeth A. Kane
ELIZABETH A. KANE