

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT

[Big Trees Nursery, 12450 Highland Valley Road, Escondido, CA 92025]

THIS CONSENT TO ASSIGNMENT ("Consent") is provided by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective upon execution by CITY and approval by the San Diego City Attorney ("Effective Date"), as follows:

RECITALS

- A. WHEREAS, CITY, as the lessor, and BIG TREES NURSERY, INC., a California corporation ("ASSIGNOR"), as the lessee, are parties to that certain FLAT RATE LEASE ("Lease") having an effective date of May 1, 2014, and filed in the Office of the San Diego City Clerk as Document No. RR-308889 on April 22, 2014, and relating to that certain CITY-owned real property located at 12450 Highland Valley Road, Escondido, CA 92025 ("Subject Property"), as more particularly described in the Lease; and
- B. WHEREAS, ASSIGNOR now desires to assign all of its rights, title and interest in and to the Lease to ENVIRONMENTAL DESIGN CALIFORNIA, INC., a California corporation ("ASSIGNEE").
- C. WHEREAS, Section 4.2 of the Lease, titled Assignment and Subletting, requires the CITY to consent to the assignment of any of ASSIGNOR's right, title and/or interest in the Lease.

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated into this Consent by this reference, and for valuable consideration, the receipt and sufficiency of which is acknowledged, City agrees as follows:

1. Consent and Lease Controls. Subject to ASSIGNOR's compliance with the terms and conditions of this Consent, particularly ASSIGNOR's compliance with those requirements set forth in Section 2 of this Consent, CITY hereby consents to ASSIGNOR's request to assign all of its right, title and interest in and to the Lease to ASSIGNEE. This Consent is merely the CITY's consent to ASSIGNOR's assignment of the Lease, in accordance with Section 4.2 Assignment and Subletting of the Lease. CITY is not bound by any term or condition in any purchase agreement, or other assignment agreement, between ASSIGNOR and ASSIGNEE. All terms and conditions of the Lease shall control and supersede any inconsistent or contrary provisions in any purchase agreement, or other assignment agreement, executed between ASSIGNOR and ASSIGNEE.

2. Assumption of Rights. CITY's Consent is conditioned upon ASSIGNOR delivering to CITY, prior to the Effective Date of this Consent: (1) ASSIGNEE's written agreement that it will assume all rights and obligations as "Lessee" under the Lease, which obligations shall include but not be limited to all indemnification and insurance obligations; and (2) all required ASSIGNEE certificates of insurance and endorsement thereto, or if preapproved, a letter of self-insurance, covering all the required insurances, signed by the appropriate person authorized to issue such a letter.
3. Assignor's Obligations. CITY does not release, discharge or modify ASSIGNOR's obligations to City under the Lease. As set forth in applicable law, ASSIGNOR's obligations under the Lease shall survive said assignment and shall continue through the termination dates of the Lease, as set forth therein.
4. Subsequent Assignment. This Consent does not constitute consent to any subsequent assignment of any right, title and/or interest in and to the Lease.
5. Notices.
 - a) ASSIGNORS's address for notices after the Effective Date will be:

Big Tree Nursery, Inc.
Attn: Charles Jancic
12450 Highland Valley Road
Escondido, CA 92025
 - b) ASSIGNEE'S address for notices after the Effective Date will be:

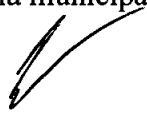
Environmental Design California, Inc.
Attn: Mark Merit
23544 Coons Road
Tomball, Texas 77375
Email: markmerit@treemover.com
6. Additional Consideration to CITY. Pursuant to Section 4.3 Equity Sharing of the Lease, ASSIGNOR agrees that as additional consideration for the Lease and in addition to all rent otherwise payable to CITY, CITY shall be entitled to participate in any "equity" taken out by the ASSIGNOR during the term of the Lease.
7. Fees. Prior to the Effective Date of this Consent, ASSIGNOR shall pay CITY any applicable processing and/or administrative fee(s) for processing this Consent. The fee owed CITY is the sum of: \$2,000.00 (Two Thousand Dollars).
8. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the granting of this Consent or the consummation of the assignment, which is the subject of this Consent. ASSIGNOR and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense,

including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.

IN WITNESS WHEREOF, this Consent to Assignment is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO,
a California municipal corporation

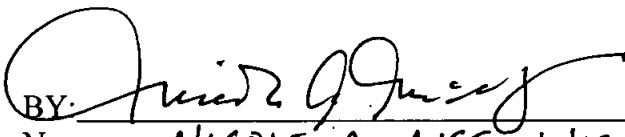
Date: 1/13/17

BY: 
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

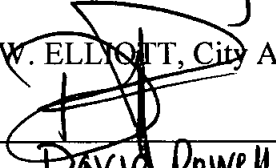
This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

Date: 1/13/17

BY: 
Name: NICOLE A. MCGINNIS
Title: SENIOR PLANNER

Approved as to form this
13th Day of January, 2017

MARA W. ELLIOTT, City Attorney

BY: 
Name: David Powell
Title: Deputy City Attorney

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is executed this ____ day of January, 2017 (the "Closing Date") to be effective as of 12:01 a.m. the 1st day of January, 2017 (the "Effective Date"), by and between Big Trees Nursery, Inc., a California corporation (hereinafter referred to as "Assignor") and Environmental Design California Inc., a California corporation (hereinafter referred to as "Assignee").

RECITALS

Assignor and Assignee have entered into that certain Asset Purchase Agreement dated as of even date herewith (the "Purchase Agreement"), pursuant to which Assignor will convey its entire right, title and interest in and to the Assets owned by Assignor in connection with the Business (other than the Excluded Assets). All capitalized terms contained herein and not otherwise defined shall have the same meanings as contained in the Purchase Agreement. In connection with the Purchase Agreement, Assignor desires to assign, transfer, convey and set over unto Assignee the entire interest in and to those certain Business Contracts subject to the consent of the City of San Diego, California (the "San Diego Consent").

COVENANTS

NOW, THEREFORE, as additional consideration to Assignee for the payment of the Purchase Price for the Business, Assignor and Assignee covenant and agree as follows:

1. Assignor hereby grants, sells, conveys, transfers and assigns to Assignee, free and clear of any and all Liens, as of the Effective Date, its entire right, title and interest as owner of the Business in and to the Assets, including but not limited to the Business Contracts.
2. Assignor warrants and represents that Assignor has not assigned or agreed to assign the Assets, including but not limited to the Business Contracts, to any other party.
3. Assignor warrants and represents that to Assignor's current actual knowledge, the Business Contracts are in full force and effect, and there exists no defaults thereunder (except as disclosed in certain estoppel certificates and previous disclosures regarding the Business Contracts); and, to the best of Assignor's current actual knowledge, no event has occurred which with notice or the passage of time, or both, would constitute a default by Assignor under the Business Contracts.
4. Assignor represents to Assignee and its successors and assigns that Exhibit A and Exhibit B attached to this Agreement contain a true, accurate and complete description of all existing Business Contracts.
5. Assignee, for itself, its successors and assigns, does hereby assume the rights, obligations and responsibilities from and after the Closing Date for the performance of all covenants required to be performed by Assignor as the owner of the Business under the Business

Contracts and that it will keep and perform all covenants, conditions and provision of the agreements which are applicable to the rights acquired.

6. This Agreement shall be binding upon and inure to the benefit of the personal representatives, heirs, successors and assigns. This Agreement may be amended or modified only by written instrument signed by each of the parties.

7. A facsimile or electronic transmission of this Agreement or any portion hereof, including the signature page of any party, shall be deemed and original for all purposes.

8. This Agreement shall become effective as of January 1, 2017 upon the receipt by the parties of the San Diego Consent and the occurrence of the Closing; provided that both occur on or before January 13, 2017.

Signature Page Follows:

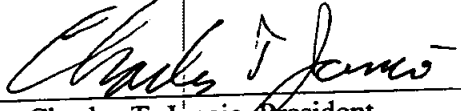
BOS

IN WITNESS WHEREOF, this Agreement has been executed by the Assignor and Assignee as of the day and year first above written.

ASSIGNOR:

Big Trees Nursery, Inc.,
a California corporation

By:


Charles T. Jancic, President

ASSIGNEE:

Environmental Design California Inc.
a California corporation

By:

Mark Merit, Chief Operating Officer

IN WITNESS WHEREOF, this Agreement has been executed by the Assignor and Assignee as of the day and year first above written.

ASSIGNOR:

Big Trees Nursery, Inc.,
a California corporation

By: _____
Charles T. Jancic, President

ASSIGNEE:

Environmental Design California Inc.
a California corporation

By: _____
Mark Merit, Chief Operating Officer

EXHIBIT A

Real Property Leases and San Diego Lease-Amended

	<u>NAME</u>	<u>ADDRESS</u>	<u>LANDLORD</u>
1	Borrego	1284 Henderson Canyon Borrego Springs	Ashly Bilyk
2	Cowan	1753 Potrero Rd Camarillo, Ca	James Cowan & Assoc
3	Deluz M	Deluz Rd	Pedro Martinez
4	Deluz- Warren	40724 Deluz rd	Warren Bryant
5	Deluz-Law	40139 Roxanne, Fallbrook	Robert Law
6	Dorothy	1652 Tierra Liberteria, Escondido 92026	Dorothy Elkins
7	Flat Rate Lease, filed in the Office of the San Diego City Clerk as Document No. RR-308889 on April 22, 2014	12450 Highland Valley Road, Escondido, CA 92025	City of San Diego
8	Horseshoe	22396 Horseshoe tr. Homeland	Mike Heikkila
9	Julian	2431 Farley	David Lewis
10	Laurel Ridge	31533 Laurel Ridge VC 92082	Brigido Gama
11	Lavine	30745 Mesa Crest VC	Tom Lavine
12	Mesa Verde	30740 Mesa Crest rd Valley Center	Mike Sanders
13	Mesita	123 Vista Merriam San Marcos	Bob Merriam
14	Rainbow	10201-10389 Rainbrook Dr Fallbrook	Peter Glusac
15	Rancho Trails	722 Rancho Trails Ramona	Larry Toler
16	Steves	31070 Mesa Crest Valley Center	Steve Turley
17	Yermo	37234 Yermo RD Yermo	Don Hanify
18	Anza	49100 Old Sage Rd Aguanaga 92536	Al Kranz

EXHIBIT B**Assumed Contracts**

That certain Service Agreement #CP20130429 dated January 14, 2014 by and among Apple Inc. and Big Trees Nursery, Inc.

Name	Date	Order #
A.J.J. Associates		
	12/30/2015	AJJA1109151
	10/10/2016	AJJA1230151
	12/28/2016	AJJA1228161
Apple		
	09/01/2016	APPL071415E
	10/27/2016	APPL050614E
Baldwin & Sons		
	11/17/2015	BALD1117151
	03/08/2016	BALD0307161
BrightView		
	11/04/2016	BRIG1104161
Calligari		
	08/09/2016	CALL0808161
	11/04/2016	CALL1109161
	11/08/2016	CALL1019161
	11/18/2016	CALL1115161
	12/14/2016	CALL0524161
	12/16/2016	CALL1005164
	12/16/2016	CALL1216161
	12/19/2016	CALL1216162
DL Cunningham		
	07/29/2016	DLC0622151
	10/12/2016	DLCU1012162
	10/12/2016	DLCU1012163
	11/08/2016	DLCU1017161
Kevin Johnson		
	12/20/2016	KJOH1220161
Marmol Radziner		
	11/22/2016	MARM1122162
Palm Valley Ranch		
	04/14/2016	PALM0414161
Park West Landscape Construction		
	11/09/2016	PARK1108161
	01/06/2017	PARK0325161
Richard Veyna/ Toscana Development Corp		
	04/21/2016	VEYN0413161
Valley Crest		
	03/17/2016	VALL0314161
	12/07/2016	VALL0111161

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is executed this ___ day of January, 2017, (the "Closing Date") to be effective as of 12:01 AM, the 1st day of January, 2017 (the "Effective Date"), by and between ENVIRONMENTAL DESIGN CALIFORNIA INC., a California corporation (the "Buyer"), BIG TREES NURSERY, INC., a California corporation (the "Seller"). Buyer and Seller may hereinafter sometimes be referred to together as the "Parties" or singularly as a "Party".

WITNESSETH:

WHEREAS, Seller owns certain assets in connection with its tree transplanting, preservation and tree nursery services and all ancillary services reasonably related thereto (the "Business");

WHEREAS, the Seller desires to sell and the Buyer desires to purchase all of the assets owned by Seller in connection with the Business, including but not limited to those set forth on Schedule 2.1, with the exception of Excluded Assets listed on Schedule 1.22 attached hereto ("Assets"); and

WHEREAS, in connection with the purchase and sale of such Assets, the Parties desire to provide for certain terms and conditions with respect to the transfer of such Assets.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, representations and warranties contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties hereby agree as follows:

ARTICLE I CERTAIN DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1 Accounts Receivable. The term "Accounts Receivable" means any accounts receivable generated by sales by the Seller prior to the Effective Date.

1.2 Accounts Payable. The term "Accounts Payable" means any accounts payable generated by the Seller's operation of the Business prior to the Effective Date.

1.3 Affiliate(s). The term "Affiliate" of a person shall mean, with respect to that person, a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, or is acting as agent on behalf of, or as an officer or director of that person. As used in the definition of Affiliate, the term "control" (including the terms "controlling," "controlled by," or "under common control with") means the possession, direct or indirect, of management and policies of a person whether through the ownership of voting securities, by contract, through the holding of a position as a director or officer of such person, or

otherwise. As used in this Agreement, the term “person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an incorporated organization, or a government or political subdivision thereof.

1.4 Ancillary Agreements. The term “Ancillary Agreements” shall mean the Bill of Sale, Noncompetition Agreement and the Standby Letter of Credit.

1.5 Asset Allocation Statement. The term “Asset Allocation Statement” shall have the meaning set forth in Section 6.6.

1.6 Assets. The term “Assets” shall have the meaning set forth in Section 2.1.

1.7 Assumed Contracts. The term “Assumed Contracts” shall include those contracts more specifically described on Schedule 1.7.

1.8 Bill of Sale. The term “Bill of Sale” shall mean that certain mutually agreed upon Bill of Sale, Assignment and Assumption Agreement to be executed at Closing.

1.9 Business. The term “Business” shall mean have the meaning set forth in the recitals.

1.10 Business Contracts. The term “Business Contracts” shall mean the Assumed Contracts, the Real Property Leases and the San Diego Lease – Amended.

1.11 Buyer. The term “Buyer” shall have the meaning as contained in the opening paragraph.

1.12 Buyer’s Accounts Receivable. The term “Buyer’s Accounts Receivable” means any accounts receivable generated by sales by the Seller or Buyer on or after the Effective Date.

1.13 Buyer Indemnified Parties. The term “Buyer Indemnified Parties” shall have the meaning set forth in Section 7.1(a).

1.14 Cash Purchase Price. The term “Cash Purchase Price” shall mean One Hundred Thousand Dollars (\$100,000).

1.15 Closing. The term “Closing” shall mean the consummation of the events and transactions for the sale and purchase of the Assets to take place on the Closing Date.

1.16 Closing Date. The term “Closing Date” shall have the meaning set forth in the opening paragraph.

1.17 Code. The term the “Code” means the Internal Revenue Code of 1986, as amended.

1.18 Customers. The term “Customers” means any customer that currently or has in the past purchased or rented products or services from Seller related to the Business.

1.19 Damages. The term “Damages” shall have the meaning set forth in Section 7.1(a).

1.20 Deposit. The term “Deposit” shall have the meaning set forth in Section 2.3.

1.21 Effective Date. The term “Effective Date” shall mean the date set forth in the opening paragraph.

1.22 Excluded Assets. The term “Excluded Assets” shall include all of Seller’s Accounts Payable, Accounts Receivable and cash, as well as those assets more specifically described on Schedule 1.22.

1.23 Financial Statements. The term “Financial Statements” shall have the meaning set forth in Section 3.13.

1.24 Fundamental Representations. The term “Fundamental Representations” shall have the meaning set forth in Section 7.2(a).

1.25 GAAP. The term “GAAP” shall mean United States generally accepted accounting principles, consistently applied.

1.26 Liabilities. The term “Liabilities” shall have the meaning set forth in Section 2.5.

1.27 Liens. The term “Liens” shall mean any mortgages, pledges, security interests, encumbrances, claims, liens or charges of any kind (including, without limitation, any conditional sale or other title retention agreements or leases in the nature thereof) or any agreements to file any of the foregoing, any sales of receivables with recourse, and any filings or agreements to file a financing statement as debtor under the Uniform Commercial Code or any similar statute.

1.28 Lienholders. The term “Lienholders” shall mean those Persons having Liens on any or all of the Assets as more specifically listed on Schedule 3.10.

1.29 Noncompetition Agreement. The term “Noncompetition Agreement” shall mean that certain five (5) year mutually agreed upon Noncompetition Agreement to be entered into at Closing between Buyer, Buyer’s Affiliates, and Seller.

1.30 Notice of Action. The term “Notice of Action” shall have the meaning set forth in Section 7.1(c).

1.31 Notice of Election. The term “Notice of Election” shall have the meaning set forth in Section 7.1(c).

1.32 Party or Parties. The terms “Party” or “Parties” shall have the meaning as contained in the opening paragraph.

1.33 Person. The term “Person” shall mean any natural person or any corporation, partnership, joint venture, association or other entity.

1.34 Post-Closing Payments. The term “Post-Closing Payments” shall have the meaning set forth in Section 2.4.

1.35 Purchase Price. The term “Purchase Price” shall mean the aggregate of the Cash Purchase Price and the Post-Closing Payments.

1.36 Real Property Leases. The term “Real Property Leases” shall mean those certain Real Property Leases listed on Schedule 1.36 with various landlords, and Seller, as tenant.

1.37 Retained Liabilities. The term “Retained Liabilities” shall have the meaning set forth in Section 2.5.

1.38 San Diego Lease - Original. The term “San Diego Lease - Original” shall mean that certain Real Property Lease by and between the City of San Diego, as landlord, and Seller, as tenant, dated as of June 18, 2014.

1.39 San Diego Lease -Amended. The term “San Diego Lease - Amended” shall mean that certain Amendment to Real Property Lease by and between the City of San Diego, California, as landlord, and Seller, as tenant, dated as of January, 2017.

1.40 San Diego Consent. The term “San Diego Consent” shall mean the consent of the City of San Diego, California to the assignment of the San Diego Lease – Amended from Seller to Buyer.

1.41 Seller. The term “Seller” shall have the meaning as contained in the opening paragraph.

1.42 Seller Indemnified Parties. The term “Seller's Indemnified Parties” shall have the meaning set forth in Section 7.1(b).

1.43 Standby Letter of Credit. The term “Standby Letter of Credit” shall have the meaning set forth in Section 2.4.

1.44 Suppliers. The term “Suppliers” means any supplier that currently or has in the past sold or rented products or services to Seller related to the Business.

1.45 Tax or Taxes. The term “Tax” or “Taxes” shall mean all (a) United States federal, state or local or non-United States Taxes, assessments, charges, duties, levies or other similar governmental charges of any nature, including all net or gross income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, stamp duty reserve, license, payroll, withholding, ad valorem, value added, alternative minimum, environmental, customs, social security (or similar), unemployment, sick pay, disability, registration and other Taxes, assessments, charges, duties, fees, levies or other similar governmental charges of any kind whatsoever, whether disputed or not, together with all estimated Taxes, deficiency assessments, additions to Tax, penalties and interest; (b) any liability for the payment of any amount of a type described in clause (a) arising as a result of being or having been a member of any consolidated, combined, unitary or other group or being or having been included or required to be included in any Tax Return related thereto; and (c) any liability for the payment of any amount of a type described in clause (a) or clause (b) as a result of any obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

1.46 Tax Return. The term "Tax Return" shall mean all returns, statements, reports, estimates, declarations of estimated Tax (including information returns, statements and reports) relating to, or required to be filed in connection with, any Taxes and any schedules attached to or amendments of (including refund claims with respect to) any of the foregoing.

1.47 Vendors. The term "Vendors" means those certain Suppliers more specifically identified on Schedule 3.14 attached hereto.

ARTICLE II

PURCHASE AND SALE OF ASSETS AND PURCHASE PRICE

2.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement and except with respect to the Excluded Assets, the Seller agrees to sell, convey, transfer, assign and deliver to the Buyer, and the Buyer agrees to purchase from the Seller on the Closing Date to be effective as of the Effective Date, all those assets owned by Seller in connection with the Business, including but not limited to those set forth on Schedule 2.1 (such assets to be referred to herein as the "Assets").

2.2 Cash Purchase Price. On the terms and subject to the conditions set forth in this Agreement, (a) on the Closing Date, Buyer shall purchase from Seller, and Seller shall sell, assign, convey and transfer to Buyer to be effective as of the Effective Date, all of the Assets, except for the Excluded Assets, free and clear of any Liens; and (b) in consideration of the sale of the Assets and the covenants and agreements of the Seller contained herein, the Buyer shall pay the Seller the Cash Purchase Price.

2.3 Accounts Payable. Seller shall pay all accounts payable proration incurred before the Effective Date and Buyer shall pay all accounts payable incurred or properly prorated to on and after the Effective Date. Seller shall promptly pay all of its accounts payable that are received after the Effective Date. Seller will provide Buyer with a list of accounts payable incurred before the Effective Date but received after the Closing. The following items will be prorated on a thirty (30) day basis, as of the Effective Closing Date:

- a. The rent due under the San Diego Lease -- Amended; and
- b. Water bills to the individual tree storage locations;

Utilities will be transferred the day of the Closing to Buyer. Seller shall be responsible for the cost of all utilities up until the Effective Date and Buyer shall be responsible for all utilities costs from the Effective Date and thereafter.

In the event any of the utility companies refund any deposits to Seller, Buyer shall pay the utility company the required amount of deposit to provide the service (the "Deposit"). Alternatively, if the utility company retains the Deposit, then Buyer shall pay the amount of each such Deposit to Seller at the Closing, in which event Buyer shall be deemed to be the owner of the Deposit.

2.4 Post-Closing Payments. In addition to the Cash Purchase Price, Buyer shall pay Seller additional payments in the amounts and at the times set forth below (collectively, the “Post-Closing Payments”):

- (a) One Hundred Twenty Five Thousand Dollars (\$125,000) twelve (12) months after the Closing Date;
- (b) One Hundred Twenty Five Thousand Dollars (\$125,000) twenty four (24) months after the Closing Date;
- (c) One Hundred Twenty Five Thousand Dollars (\$125,000) thirty six (36) months after the Closing Date; and
- (d) One Hundred Twenty Five Thousand Dollars (\$125,000) forty eight (48) months after the Closing Date.

At Closing, Buyer shall furnish to Seller a standby letter of credit from a financial institution reasonably acceptable to Seller guaranteeing payment of the Post-Closing Payments and shall provide a pro forma copy of the Standby Letter of Credit ten (10) days before the Closing Date (the “Standby Letter of Credit”). The failure of Buyer to make any Post Closing Payment either by direct payment or the partial draw down of the Standby Letter of Credit within five (5) business days after Buyer’s receipt of written notice from Seller of such default, shall cause all Post Closing Payments to become immediately due and payable.

2.5 Business Contracts; Retained Liabilities. As a condition precedent to Closing, Seller shall disclose all Liens, accounts payable, accrued liabilities, lawsuits, demands, debts owed to or alleged by third parties, and any and all obligations or liabilities of Seller of any kind (including those related to the Business) (“Liabilities”). Except as otherwise provided in this Agreement, Buyer shall assume and agrees to pay, perform and discharge when due obligations of Seller under the Business Contracts that are assigned to Buyer at Closing or thereafter otherwise assumed by Buyer pursuant to Section 5.2. Except for the Business Contracts, Buyer shall not assume by virtue of this Agreement or the transactions contemplated hereby, and shall have no liability for, any Liabilities of Seller of any kind, character or description whatsoever, contingent or otherwise (the “Retained Liabilities”).

2.6 Title to Assets and Risk of Loss. Title to the Assets and risk of loss or damage to the Assets by casualty (whether or not covered by insurance) will pass to the Buyer immediately upon completion of the Closing. The Parties agree to allocate all revenues and expenses for all tax, financial and accounting purposes incurred by the Business in the ordinary course of business to the Seller up until the Effective Date and to the Buyer commencing with the Effective Date and thereafter.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

The term “knowledge” as used in this Agreement shall mean the current awareness of a fact, or the current awareness of sufficient information and circumstances so as to cause one to believe that a certain situation or condition probably exists, or which a person associated with Seller should reasonably be expected to know based upon their involvement with the Seller, for which the Seller shall retain total liability. The phrase “Seller has no knowledge” or “to the best of Seller’s knowledge” or to Seller’s current actual knowledge” or any similar terminology does not impose any duty upon Seller to inspect the property, inspect the records and files of Seller or any government agency or to conduct any due diligence to refresh the Seller’s recollection or to provide a more complete response. As a material inducement to Buyer to enter into this Agreement, Seller represents and warrants as of the Effective Date that:

3.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of California and has all the necessary corporate powers to own the Assets and to carry on the Business as now owned and operated by Seller. The legal name of the Seller is exactly as set forth in the opening paragraph of this Agreement.

3.2 Authority. Seller has the right, power, legal capacity, and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party, and except for the Real Property Leases, the San Diego Lease – Amended and any other Assumed Contract requiring consent, all of which consents have been procured, no approvals or consents of any persons or other entities are necessary in connection herewith or therewith. The execution and delivery of this Agreement, the Ancillary Agreements to which Seller is a party to and the consummation of the transactions contemplated hereby and thereby have been duly authorized.

3.3 Valid and Binding Obligations. Upon execution and delivery hereof, this Agreement and each Ancillary Agreement to which it is a party will constitute the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms, except as limited by bankruptcy laws, insolvency laws, and other similar laws affecting the rights of creditors generally.

3.4 Title to and Condition of the Assets. Except as set forth on Schedule 3.4, Seller has good, marketable and indefeasible title to the Assets free and clear of Liens. The tangible personal property Assets are in reasonable operating condition, reasonable wear and tear accepted, but are delivered “as is”. Upon consummation of the Closing, Seller will convey good, marketable and indefeasible title to the Assets to Buyer.

3.5 Tax Compliance. Except as provided below, within the times and in the manner prescribed by law, including extensions permitted thereunder, Seller has filed and will file all federal, state and local Tax Returns required by law and has paid and will pay all Taxes, assessments and penalties due and payable that would or Seller might reasonably expect to encumber the Assets through and including the Effective Date. Seller has received no notice of any present disputes as to Taxes of any nature payable by Seller with respect to the Business. The Seller has an ongoing dispute regarding payroll taxes for which the Buyer shall have no liability.

3.6 Business Contracts. Except as set forth on Schedule 3.6, each of the Business Contracts is valid and in full force and effect, and there has not been any default by Seller or any event that would, by notice or lapse of time or both, constitute a default by Seller. There has not been any default by Seller or, to the best of Seller's knowledge, any other party to any of the Business Contracts, or any event that, by notice or lapse of time or both, would constitute a default by Seller or any other party due to the Business Contracts which might reasonably be expected to have a material adverse effect on such Business Contracts, any other Asset or the Business. To the best of Seller's knowledge, each of the Business Contracts is assignable to the Buyer as stated by its terms or in accordance with Section 5.1 hereof. Seller has not received notice that any party to any of the Business Contracts intends to cancel or terminate any of the Business Contracts or exercise or not exercise any options that they might have under any of the Business Contracts.

3.7 Compliance with Laws. To the best of Seller's knowledge, Seller has complied with, and is not in violation of, applicable federal, state or local statutes, laws, and regulations that affect, or are likely to materially adversely affect, directly or indirectly, any of the Assets or the Business. Seller has received no notice of any uncured violations of federal, state or municipal laws, ordinances, orders, regulations or requirements affecting any portion of the Assets or the Business.

3.8 Litigation. There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending, to the best of Seller's knowledge, or threatened against, or based on events known to Seller, which could reasonably be expected to affect the Assets.

3.9 Consents and Approvals. Except as set forth on Schedule 3.9 and as required by the terms of any Assumed Contract, the Real Property Leases or the San Diego Lease – Amended, or as otherwise stated herein, no consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, or any other Person or entity is required to be made or obtained by Seller in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

3.10 Liens on Assets. Schedule 3.10 contains a list of all Lienholders on any or all the Assets. On or before the Closing, Seller has furnished Buyer payoff letters from each of the Lienholders evidencing the entire principal amount and accrued interest due and owing by Seller to said Lienholders as of the Closing Date. All Liens or security interests of any third party as to all of the Assets shall be removed on or before the Closing Date, and Seller shall have furnished evidence thereof to Buyer.

3.11 Brokers. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Seller or its Affiliates.

3.12 Financial Statements. Seller has delivered to Buyer an unaudited balance sheet and income statement, and the related statements of operations, stockholders' equity and cash flows of the Business as of December 31, 2014 and December 31, 2015 (the "Financial Statements"). Except as disclosed on Schedule 3.12, each of the foregoing Financial Statements

(including in all cases the notes thereto, if any) is reasonably accurate and complete and prepared in accordance with customary and sound accounting procedures, consistently applied, and is consistent with the books and records of the Business. Each of the Financial Statements present fairly in all respects the financial condition and results of operations of the Business for the periods referred to therein.

3.13 Customers. Schedule 3.13 sets forth a true and correct list of all Customers of the Business since January 1, 2013, through the most recent month-end period prior to the Closing Date. Except as set forth on Schedule 3.13, Seller has no information, nor is Seller aware of any facts or circumstances, that might reasonably be expected to indicate that any of the Customers intend to cease or materially reduce doing business with Seller.

3.14 Vendors. Schedule 3.14 sets forth a true and correct list of all Suppliers including the Vendors of the Business since January 1, 2013, through the most recent month-end period prior to the Effective Date. Except as set forth on Schedule 3.14, Seller has not received any notice that any of its Suppliers has terminated or intends to terminate or materially reduce its business with Seller. Schedule 3.14 also sets forth the entire amount of principal and accrued interest due and owing to said Vendors by Seller as of the Effective Date.

3.15 Full Disclosure. To the best of Seller's knowledge, there are no facts or circumstances relating to the Assets which might reasonably be expected to adversely affect or might reasonably be expected to adversely affect the Assets or the Business, or the ability of Seller to perform this Agreement or any of its obligations hereunder.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

As a material inducement to Seller to enter into this Agreement, Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date that:

4.1 Organization. The Buyer is a corporation duly organized and validly existing and in good standing under the State of California and has all the necessary corporate powers to own its properties and to carry on its business as now owned and operated by it.

4.2 Authority. Buyer has the right, power, legal capacity, and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party, and no approvals or consents of any persons or other entities are necessary in connection herewith. The execution, delivery and performance of this Agreement and each Ancillary Agreement to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized.

4.3 Valid and Binding Obligations. Upon execution and delivery hereof, this Agreement and each Ancillary Agreement to which it is a party will constitute the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, except as limited by bankruptcy laws, insolvency laws, and other similar laws affecting the rights of creditors generally.

4.4 Consents and Approvals. No consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, or any other Person or entity, is required to be made or obtained by the Buyer in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

4.5 No Breach or Violation. The consummation of the transactions contemplated by this Agreement will not result in or constitute the following: (i) a breach or violation of any contract or agreements by which the Buyer is bound; or (ii) any term or provision of this Agreement.

4.6 Brokers. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer or its affiliates.

4.7 Ability to Perform. Buyer represents and warrants Buyer is creditworthy and has sufficient funds, or the ability to obtain sufficient funds, to purchase the business and perform all acts under the Agreement and each Ancillary Agreement.

ARTICLE V

COVENANTS OF THE PARTIES

The Parties covenant and agree as follows:

5.1 Assignment of Business Contracts. On or before the Closing, Seller shall have executed and delivered to Buyer assignments of the Business Contracts that are assignable. With respect to any Assumed Contract in which the consent of a governmental authority or third party is required, Seller shall, with Buyer's reasonable cooperation, use commercially reasonable efforts to procure the assignment of all such Business Contracts to Buyer. Prior to the successful procurement of any such consent or approval to the assignment of any Business Contracts in which same is required, Seller agrees that it shall perform all acts and execute any and all documents as may be reasonably requested by Buyer so that Buyer may realize the benefits of such Business Contracts, until such time as such Business Contracts are successfully assigned to Buyer. In the event any of the Business Contracts are, or are later determined to be, non-assignable, and the other party to any such Assumed Contract refuses to consent to the assignment of same, then if allowed under the terms of such non-assigned Assumed Contract(s): (i) the Seller shall subcontract to the Buyer or its designee, if the Buyer so desires, the Assumed Contract, and the Seller shall forward to the Buyer or its designee all proceeds of such Assumed Contract received by the Seller; provided, however, that Seller shall be reimbursed for any reasonable third party out-of-pocket expenses incurred by it. To the extent any such Assumed Contract cannot be subcontracted, Buyer agrees to cooperate with Seller and enter into such other commercially reasonable arrangements as will enable Seller to fulfill its remaining obligations under said Business Contracts to the extent possible. Buyer agrees to indemnify and hold harmless Seller and its Affiliates from all Damages incurred by them in connection with Buyer's performance of its obligations under this Section 5.1 and under the Business Contracts, provided that such Damages are not the result of Seller's default thereunder.

5.2 Further Assurances; Additional Cooperation.

(a) At the Closing, Seller, at the reasonable request of Buyer, shall promptly execute and deliver all such further assignments, bills of sale, endorsements, and other documents, in form and substance reasonably satisfactory to the other Party and its counsel, as such Party may reasonably request in order to (a) vest in Buyer title to and possession of the Assets and (b) otherwise carry out or evidence the terms of this Agreement. At or after the Closing, Seller shall promptly deliver to Buyer and Buyer shall promptly deliver to Seller the original of any mail or other communication received by it after the Closing Date pertaining to or belonging to the other and any moneys, checks or other instruments of payment to which the other is entitled.

(b) In addition to access and availability of records set forth in Section 5.3 below, so long as Seller or Buyer actively are contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against any Person, other than the other Party hereto in connection with (x) the transactions contemplated by this Agreement, or (y) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving any of the Assets or Business Contracts being assigned hereunder, Buyer and Seller will cooperate with each other and their respective counsel in the contest or defense, make available such personnel and provide such testimony and access to each party's books and records as shall be necessary in connection with the contest or defense. Buyer shall be solely responsible for the cost and expense of any assistance provided by Seller to Buyer under this Section 5.2(b) and Seller shall be solely responsible for the cost and expense of any assistance provided by Buyer to Seller under this Section 5.2(b).

5.3 Books and Records. For a period of eighteen (18) months after the Closing Date, Buyer and Seller agree to allow the other Party, it's or his representatives, attorneys, and accountants, at such other Party's own expense, access to the books and records relating to the Assets and the Business upon reasonable request and during normal business hours for the purpose of examination and copying to the extent reasonably required in connection with any tax procedure, any obligation or duty hereunder, or compliance with any other legal duty or obligation.

5.4 Further Obligations of Seller. Following the Closing, Seller shall use commercially reasonable best efforts to (a) assist in the orderly transition of the Assets and the Business from Seller to Buyer, and (b) cooperate with Buyer in the preparation of all press releases and other media contacts in a form mutually agreeable to the Parties; provided, however, that Seller's consent to the form of such press releases and other media contacts shall not be unreasonably withheld or delayed.

5.5 Accounts Receivable. Payments on Accounts Receivable and Buyer's Accounts Receivable shall be applied to the oldest accounts first, unless a debtor indicates the specific account it is paying in which event payment shall be applied to that account. No Party shall influence account specification pursuant to the preceding sentence. In the event the Seller collects any of Buyer's Accounts Receivable, Seller shall on a monthly basis forward any of such collections of Buyer's Accounts Receivable to Buyer. In the event the Buyer collects any Accounts Receivable, Buyer shall on a monthly basis forward any of such collections of Accounts Receivable to Seller.

5.6 Name. Commencing on the Closing Date, Seller and all of its Affiliates will discontinue use of the name "Big Trees Nursery, Inc." or any similar variation thereof, in connection with its Business or otherwise and file Articles of Amendment changing its name from "Big Trees Nursery, Inc.". In doing so Seller will cooperate with Buyer should Buyer elect to make a simultaneous filing adopting the name "Big Trees Nursery" or a substantially similar derivative thereof. Seller shall furthermore execute any and all documents reasonably necessary to convey the name "Big Trees Nursery" to Buyer.

ARTICLE VI **THE CLOSING**

6.1 Closing. Payment of the Cash Purchase Price required to be made by the Buyer to the Seller, the transfer of the Assets by the Seller and the other transactions contemplated hereby shall take place at the offices of the Seller located at 12450 Highland Valley Road, Escondido, California 92025, or by the electronic exchange of signed signature pages and the Cash Purchase Price on the Closing Date.

6.2 Seller and Owner's Deliveries. At the Closing, the Seller shall deliver or cause to be delivered to the Buyer, all executed by Seller or such other third parties under the Seller's control, as applicable:

- (a) this Agreement;
- (b) Ancillary Agreements;
- (c) the Asset Allocation Statement;
- (d) such other consents, waivers, estoppel letters or similar documentation as the Buyer shall reasonably request in connection with the transfer of the Assets;
- (e) a copy of the executed resolutions of the Board of Directors and the stockholders of Seller approving the sale and granting the Chief Executive Officer or the President or other duly authorized officers of Seller the authority to execute this Agreement, the Ancillary Agreements and any other transaction documents; and
- (f) All other items required to be delivered hereunder or as may be requested which are necessary or would reasonably facilitate consummation of the transactions contemplated hereby.

In addition, immediately upon Closing, the Seller will put the Buyer into full possession and enjoyment of all Assets, free and clear of all debts, liens, claims and encumbrances.

6.3 Buyer's Deliveries. At the Closing, the Buyer will deliver or cause to be delivered to the Seller, or other designated person, the following documents all executed by Buyer or such other third parties under the Buyer's control, as applicable:

- (a) Wire transfer to the Seller of the Cash Purchase Price;

- (b) this Agreement;
- (c) Ancillary Agreements;
- (d) The Asset Allocation Statement;

(e) A copy of the executed resolutions of the Board of Directors approving the sale and granting the Chief Executive Officer, Chief Operating Officer or the President or other duly authorized officers or directors of Buyer the authority to execute this Agreement, the Ancillary Agreements and any other transaction documents; and

(f) All other items required to be delivered hereunder or as may be requested or which are necessary or would reasonably facilitate consummation of the transactions contemplated hereby.

6.3.1 Buyer's Post-Closing Deliveries. After Closing, the Buyer will deliver the Post-Closing Payments in accordance with Section 2.4 of this Agreement.

6.4 Ad Valorem Taxes. With regard to ad valorem taxes on the Assets for the calendar tax year in which the Closing occurs, the Seller and the Buyer agree that the taxes to be paid shall be prorated to Seller prior to the Effective Date and Buyer on and after the Effective Date.

6.4.1 Transaction Taxes. Seller shall timely pay or cause to be paid all federal and state income, and franchise returns with respect to Seller, allocable to the time period before the Effective Date. Buyer shall pay all sales and/or use tax, if any, arising from consummation of the transactions contemplated herein.

6.4.2 Taxes. Seller shall be responsible for any business, income, withholding or similar Tax, or any Taxes of any kind of Seller in connection with the Assets being transferred hereunder, related to any period before the Effective Date. Commencing on and after the Effective Date, Buyer shall be responsible for any business, income, withholding or similar Tax, or any Taxes of any kind of Seller or the Buyer in connection with the Assets being transferred hereunder, related to any period on and after the Effective Date.

6.4.3 Tax Inquiries. The Buyer shall notify the Seller promptly, and in no event more than twenty (20) business days after the Buyer's receipt, of any Tax inquiries or notifications thereof which relate to any period prior to the Effective Date, and the Seller shall prepare and deliver responses to such inquiries as the Seller deems necessary or appropriate.

6.5 Confidential Information. After the Closing, except as otherwise specifically permitted in this Agreement, each Party agrees, on behalf of itself and its Affiliates, to use commercially reasonable best efforts not to divulge, communicate, use to the detriment of the other Party or its Affiliates or for the benefit of any other Person or persons, any confidential information or trade secrets of such Party, including personnel information, secret processes,

know-how, customer lists, formulae, or other technical data; provided, if either Party or its Affiliates are compelled to disclose such information to any tribunal, regulatory or governmental authority or agency or else stand liable for contempt or suffer other censure and penalty, such Party or its Affiliates may so disclose such information without any liability hereunder, upon furnishing the other Party at least ten (10) days prior written notice, if possible under the circumstances. The Parties acknowledge that a remedy at law for any breach or threatened breach of this Section 6.5 will be inadequate and that the Parties shall be entitled to specific performance, injunctive relief, and any other remedies available to it for such breach or threatened breach. If a bond is required to be posted in order for a nonbreaching Party to secure an injunction, then the Parties stipulate that a bond in the amount of \$1,000.00 will be sufficient and reasonable in all circumstances to protect the rights of the Parties with regard to this Section 6.5.

6.6 Asset Allocation. The Parties agree to allocate the Purchase Price, and other relevant items amongst the Assets pursuant to Section 1060 of the Code, and each will file Form 8594 ("Asset Allocation Statement") in the form attached hereto as Schedule 6.6 with the Internal Revenue Service, based on the allocation mutually agreed upon at the Closing. Following the Closing, Buyer and Seller in connection with their respective United States, federal, state and local income tax returns and other filings, shall not take any position inconsistent with such allocation unless otherwise required by law. Any adjustment to the Purchase Price shall be allocated as provided by Treas. Reg. Sections 1.1060-1(c)(2) and 1.338-7.

ARTICLE VII

INDEMNIFICATION

7.1 Indemnification.

(a) By the Seller. The Seller shall indemnify, save, defend and hold harmless the Buyer and Buyer's members, shareholders, managers, directors, officers, partners, agents and employees (collectively, the "Buyer Indemnified Parties") from and against any and all costs, lawsuits, losses, liabilities, deficiencies, claims and expenses, including interest, penalties, attorneys' fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively referred to herein as "Damages"), (i) incurred in connection with or arising out of or resulting from or incident to any breach of any covenant or warranty, or the inaccuracy of any representation, made by the Seller in or pursuant to this Agreement, the Ancillary Agreements or any other agreement contemplated hereby or in any schedule, certificate, or other instrument furnished or to be furnished by the Seller or its Affiliates under this Agreement, or (ii) based upon, arising out of, or otherwise in respect of any liability or obligation of the Business or relating to the Assets and to the Business Contracts, or to the conduct of Seller relating to any period prior to the Effective Date and with respect to any breach by Seller of the Business Contracts up until the Closing Date or operating the Business outside the ordinary course of business; provided, however, that the Seller shall not be liable for any such Damages to the extent, if any, such Damages result from or arise out of a breach or violation of this Agreement or the negligence, whether by action or inaction, or other conduct by any Buyer Indemnified Parties.

(b) By the Buyer. The Buyer shall indemnify, save, defend and hold harmless the Seller and its directors, officers, partners, agents and employees (collectively, the "Seller's Indemnified Parties") from and against any and all Damages (i) incurred in connection with or arising out of or resulting from or incident to any breach of any covenant or warranty, or the inaccuracy of any representation, made by the Buyer in or pursuant to this Agreement, the Ancillary Agreements or any other agreement contemplated hereby or in any schedule, certificate, or other instrument furnished or to be furnished by the Buyer under this Agreement, or (ii) based upon, arising out of or otherwise in respect of any liability or obligation of the Business or relating to the Assets and the Business Contracts or the conduct of Buyer, relating to any period after the Effective Date except to the extent of a breach in the Business Contracts caused by Seller or Seller's operation of the Business outside the ordinary course of business; and further provided, however, that the Buyer shall not be liable for any such Damages to the extent, if any, resulting from or arising out of a breach or violation of this Agreement or the negligence, whether by action or inaction, or other conduct by Seller's Indemnified Parties.

(c) Defense of Claims. If any lawsuit or enforcement action is filed against any Party entitled to the benefit of indemnity hereunder, written notice thereof describing such lawsuit or enforcement action in reasonable detail and indicating the amount (estimated, if necessary) or good faith estimate of the reasonably foreseeable estimated amount of Damages (which estimate shall in no way limit the amount of indemnification the indemnified Party is entitled to receive hereunder), shall be given to the indemnifying Party as promptly as practicable (and in any event within ten (10) days, after the service of the citation or summons) ("Notice of Action"); provided that the failure of any indemnified Party to give timely notice shall not affect its rights to indemnification hereunder to the extent that the indemnified Party demonstrates that the amount the indemnified Party is entitled to recover exceeds the actual damages to the indemnifying Party caused by such failure to so notify within ten (10) days. The indemnifying Party may elect to compromise or defend any such asserted liability and to assume all obligations contained in this Section 7.1 to indemnify the indemnified Party by a delivery of notice of such election ("Notice of Election") within ten (10) days after delivery of the Notice of Action. Upon delivery of the Notice of Election, the indemnifying Party shall be entitled to take control of the defense and investigation of such lawsuit or action and to employ and engage attorneys of its own choice to handle and defend the same, at the indemnifying Party's sole cost, risk and expense, and such indemnified Party shall cooperate in all reasonable respects, at the indemnifying Party's sole cost, risk and expense, with the indemnifying Party and such attorneys in the investigation, trial, and defense of such lawsuit or action and any appeal arising therefrom; provided, however, that the indemnified Party may, at its own cost, risk and expense, participate in such investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. If the Notice of Election is delivered to the indemnified Party, the indemnified Party shall not pay, settle or compromise such claim without the indemnifying Party's consent. If the indemnifying Party elects not to defend the claim of the indemnified Party or does not deliver to the indemnified Party a Notice of Election within ten (10) days after delivery of the Notice of Action, the indemnified Party may, but shall not be obligated to defend, or the indemnified Party may compromise or settle

(exercising reasonable business judgment) the claim or other matter on behalf, for the account, and at the risk, of the indemnifying Party.

(d) **Third Party Claims.** The provisions of this Section 7.1 are not limited to matters asserted by the Parties, but cover costs, losses, liabilities, damages, lawsuits, claims and expenses incurred in connection with third party claims. The indemnity hereunder is in addition to any and all rights and remedies of the Parties in connection herewith.

7.2 Duration of Indemnity

(a) Each Party's respective indemnity obligations as to the Assets purchased by Buyer hereunder shall survive for the following periods of time following the Closing Date:

(i) Seller's indemnity obligations for breaches by Seller of Sections 3.1 (Organization), 3.2 (Authority), 3.4 (Title), and 3.11 (Brokers); and Buyer's indemnity obligations for breaches by Buyer of Sections 4.1 (Organization), 4.2 (Authority) and 4.6 (Brokers) (collectively, the "Fundamental Representations") shall survive for four (4) years.

(b) All other representations and warranties made by the Parties, shall survive for a period of eighteen (18) months following the Closing Date.

7.3 Insurance. Notwithstanding anything to the contrary set forth in this Article VII, the Parties shall, to the extent insurance is available to cover a claim, look to either Parties' respective insurance policies to satisfy any indemnification claims and shall file claims in a timely manner with the appropriate insurance carrier and cooperate in all respects with the terms of any applicable insurance policy including selection of counsel, control of the trial and defense of any lawsuit and the compromise or settlement of any claim. The foregoing shall not preclude either Party from pursuing its rights to indemnification as provided herein.

ARTICLE VIII **MISCELLANEOUS**

8.1 Fees. Except as expressly set forth herein to the contrary, each Party shall be responsible for all costs, fees and expenses (including attorney and accountant fees and expenses) paid or incurred by such Party in connection with the preparation, negotiation, execution, delivery and performance of this Agreement, or otherwise in connection with the transaction contemplated hereby.

8.2 Modification of Agreement. This Agreement may be amended or modified only in writing signed by all of the Parties, and by the individuals joining in the execution hereof.

8.3 Notices. All notices, consents, demands or other communication required or permitted to be given pursuant to this Agreement shall be deemed sufficiently given when delivered personally, when delivered by email or telefaxed during regular business hours during a business day to the appropriate location described below, or three (3) business days after

posting thereof by United States first-class, registered or certified mail, return receipt requested, with postage and fees prepaid and addressed as follows:

IF TO SELLER: Big Trees Nursery, Inc.
Attention: Charlie T. Jancic, President
18950 Starvation Mountain Road
Escondido, CA 92025
Email: charliejancic@gmail.com

With Copy to: Clinton L. Blain, Esq.
3990 Old Town Avenue, Suite B-101
San Diego, California 92110
(619) 584-1600
Email: cb@blainlaw.com

IF TO BUYER: Environmental Design California Inc.
Attn: Mark Merit
23544 Coons Road
Tomball, Texas 77375
Email: markmerit@treemover.com

With copy to: Randolph Ewing
Ewing & Jones, PLLC
6363 Woodway, Suite 1000
Houston, Texas 77057
Email: rewing@ewingjones.com

Any Party at any time by furnishing notice to the other Party in the manner described above may designate additional or different addresses for subsequent notices or communications.

8.4 Severability. The invalidity or unenforceability of any provision of this Agreement shall not invalidate or affect the enforceability of any other provision of this Agreement.

8.5 Entire Agreement; Binding Effect. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

8.6 Integration. This Agreement and the Ancillary Agreements referenced herein constitute the entire understanding of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified or amended only in writing as provided for herein. Its terms are intended by the Parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The Parties further intend that this Agreement and the Ancillary Agreements referenced herein constitute the complete and exclusive statement of its

terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Agreement and the Ancillary Agreements referenced herein. ***EACH PARTY SIGNING BELOW WARRANTS THEY HAVE READ AND UNDERSTAND THIS AGREEMENT.***

8.7 Waiver. No delay in the exercise of any right under this Agreement shall waive such rights. Any waiver, to be enforceable, must be in writing.

8.8 Governing Law/Arbitration. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas without regard to the conflict of laws principals thereof. The Parties have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt in good faith to first resolve any dispute amicably through mediation conducted in San Diego, California. In the event such attempted resolution is unsuccessful, each Party agrees that upon the written demand of the other Party, whether made before or after the institution of any legal proceedings, but prior to the rendering of any judgment in that proceeding, all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Agreement, or any document, instrument, or agreement executed in connection herewith, including without limitation contract disputes and tort claims, shall be resolved by binding arbitration pursuant to the Arbitration Rules of the American Arbitration Association (“AAA”). The arbitration shall be conducted by one (1) arbitrator who shall be selected using a listing process whereby the AAA administrator shall provide each Party with a list of proposed arbitrators who are generally familiar with the underlying subject matter made the basis of the dispute. Thereafter, each Party shall be given ten (10) days to strike any unacceptable names from the list and number the remaining names in order of mutual preference. The arbitration shall be conducted in San Diego, California. The language of the arbitration shall be in English. This arbitration provision shall not limit the right of either Party during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting any rights of any Party, and any such action shall not be deemed an election of remedies. Such remedies include, without limitation, obtaining injunctive relief or a temporary restraining order, obtaining a writ of attachment or imposition of a receivership, or exercising any rights relating to personal property, in which event, the Party seeking such equitable relief can file an action in court notwithstanding this arbitration provision. In the event such a court action becomes necessary, each Party agrees to submit to the personal jurisdiction of the federal and state courts located in San Diego, California. Any disputes, claims or controversies concerning the lawfulness or reasonableness of an act, or exercise of any right or remedy, including any claim to rescind, reform, or otherwise modify this Agreement, shall also be arbitrated; provided, however, that no arbitrator shall have the right or the power to enjoin or restrain any act of either Party. It is understood and agreed that the arbitrator shall have no authority to award punitive or other damages not measured by the prevailing Party’s actual damages, except as may be required by statute. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a Party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of any action for these purposes. The Federal Arbitration Act (Title 9 of the United States Code) shall apply to the construction, interpretation, and enforcement of this arbitration provision. Each Party shall

bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. The arbitrator shall be neutral and unbiased. The arbitrator's decision shall be in compliance with the substantive laws of the State of Texas and to the extent applicable, with the laws of California but excluding the law exempting arbitrators from rendering a decision in compliance with the substantive law.

8.9 Assignment. Seller shall not assign this Agreement or any interest herein without the prior written consent of Buyer. Any attempted assignment by a Party of its rights or obligations without such consent shall be null and void except as otherwise permitted herein. Reference to any of the Parties in this Agreement shall be deemed to include the successors and assigns of such Party.

8.10 Headings. Headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

8.11 Schedules. All Schedules attached to this Agreement are and shall be hereby incorporated in and made a part of this Agreement.

8.12 Rights and Liabilities of Parties. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third Person any right of subrogation or action over against any Party to this Agreement.

8.13 Survival. Except as otherwise expressly provided herein, this Agreement, including but not limited to, all covenants, warranties, representations and indemnities contained herein, shall survive the Closing, as to and to the extent provided for herein, and all other documents, instruments or agreements relating to the Assets and the transactions contemplated herein, and shall not be deemed merged therein. Any action relating to any breach of this Agreement must be filed within four (4) years.

8.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall have the force and effect of an original, and all of which shall constitute one and the same agreement. A facsimile or electronic signature of this Agreement or any portion hereof, including the signature page of any party, shall be deemed an original for all purposes.

8.15 Attorneys' Fees. If any litigation is instituted to enforce or interpret the provisions of this Agreement or the transactions described herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees from the other Party hereto.

8.16 Drafting. The Parties hereto acknowledge that each Party was actively involved in the negotiation and drafting of this Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor or against any Party hereto because one is deemed to be the author thereof.

8.17 Counsel. Each of the Parties have engaged legal counsel.

8.18 San Diego Consent. This Agreement shall become effective as of January 1, 2017 upon the receipt by the Parties of the San Diego Consent and the occurrence of the Closing; provided that both occur on or before January 13, 2017.

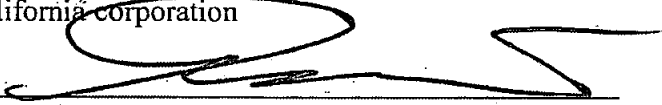
SIGNATURES APPEAR ON NEXT PAGE

EXECUTED AND DELIVERED effective as of the date first written above.

BUYER:

ENVIRONMENTAL DESIGN CALIFORNIA INC.

a California corporation

By: 

Mark Merit, Chief Operating Officer

SELLER:

BIG TREES NURSERY, INC.

By: _____

Charlie T. Jancic, President

Schedules

Schedule 1.7	Assumed Contracts
Schedule 1.22	Excluded Assets
Schedule 1.36	Real Property Leases
Schedule 2.1	Assets
Schedule 3.4	Title to and Condition of the Assets
Schedule 3.6	Business Contracts
Schedule 3.9	Consents and Approvals
Schedule 3.10	Lienholders
Schedule 3.12	Financial Statements
Schedule 3.13	Customers
Schedule 3.14	Vendors
Schedule 6.6	Asset Allocation

DISCLOSURE SCHEDULES

TO THAT CERTAIN

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

ENVIRONMENTAL DESIGN CALIFORNIA INC.

and

BIG TREES NURSERY, INC.

Dated as of January __, 2017

Schedule 1.7

Assumed Contracts

That certain Service Agreement #CP20130429 dated January 14, 2014 by and among Apple Inc. and Big Trees Nursery, Inc.

The following purchase orders:

Name	Date	Order #
A.J.J. Associates		
	12/30/2015	AJJA1109151
	10/10/2016	AJJA1230151
	12/28/2016	AJJA1228161
Apple		
	09/01/2016	APPL071415E
	10/27/2016	APPL050614E
Baldwin & Sons		
	11/17/2015	BALD1117151
	03/08/2016	BALD0307161
BrightView		
	11/04/2016	BRIG1104161
Calligari		
	08/09/2016	CALL0808161
	11/04/2016	CALL1109161
	11/08/2016	CALL1019161
	11/18/2016	CALL1115161
	12/14/2016	CALL0524161
	12/16/2016	CALL1005164
	12/16/2016	CALL1216161
	12/19/2016	CALL1216162
DL Cunningham		
	07/29/2016	DLC0622151
	10/12/2016	DLCU1012162
	10/12/2016	DLCU1012163
	11/08/2016	DLCU1017161
Kevin Johnson		
	12/20/2016	KJOH1220161
Marmol Radziner		
	11/22/2016	MARM1122162
Palm Valley Ranch		
	04/14/2016	PALM0414161
Park West Landscape Construction		
	11/09/2016	PARK1108161
	01/06/2017	PARK0325161
Richard Veyna/ Toscana Development Corp		
	04/21/2016	VEYN0413161
Valley Crest		
	03/17/2016	VALL0314161
	12/07/2016	VALL0111161

Schedule 1.22
Excluded Assets

2013 VW beetle-license # 7KGN064

2009 tundra 5TFBV54179X087250 Lic 31365E1

Schedule 1.36
Real Property Leases

	<u>NAME</u>	<u>ADDRESS</u>	<u>LANDLORD</u>
1	Borrego	1284 Henderson Canyon Borrego Springs	Ashly Bilyk
2	Cowan	1753 Potrero Rd Camarillo, Ca	James Cowan & Assoc
3	Deluz M	Deluz Rd	Pedro Marinez
4	Deluz- Warren	40724 Deluz rd	Warren Bryant
5	Deluz-Law	40139 Roxanne, Fallbrook	Robert Law
6	Dorothy	1652 Tierra Liberteria, Escondido 92026	Dorothy Elkins
7	Escondido	12450 Highland Valley Escondido, Ca 92025	City of San Diego
8	Horseshoe	22396 Horseshoe tr. Homeland	Mike Heikkila
9	Julian	2431 Farley	David Lewis
10	Laurel Ridge	31533 Laurel Ridge VC 92082	Brigido Gama
11	Lavine	30745 Mesa Crest VC	Tom Lavine
12	Mesa Verde	30740 Mesa Crest rd Valley Center	Mike Sanders
13	Mesita	123 Vista Merriam San Marcos	Bob Merriam
14	Rainbow	10201-10389 Rainbrook Dr Fallbrook	Peter Glusac
15	Rancho Trails	722 Rancho Trails Ramona	Larry Toler
16	Steves	31070 Mesa Crest Valley Center	Steve Turley
17	Yermo	37234 Yermo RD Yermo	Don Hanify
18	Anza	49100 Old Sage Rd Aguanaga 92536	Al Kranz

Schedule 2.1

Assets

Equipment

Kawasaki Loader 80z IV Serial l80c2-5039
Caterpillar 980c loader serial # 63x03333
Bobcat 1994 773 serial # 509640581
Kubota Excavator KX 121 Serial 404901
Kubota Excavator KX 121 serial # 34439
Boom Extension for Cat 980
3000 gal. Water tank.
500 gal water tank
Misc small tools

DMV Registered Trucks and trailers

water wagon vin # 1M9BTO8233L516887 LIC # SE 620915
cozad lowboy trailer lic # 4HZ7225 serial CC79265
Aztec 48' Flatbed Trailer Lic # 4EB9184 vin 1GVEX162141307651
Zieman equipment hauler vin # 1ZCE26S231ZP23443 lic # 4AW2252 t
Rears spray rig lic # SE 648375 vin L001205
2004 Big Tex Trailer 1GVEX162141307651 Lic # 4EW4988
6x10 single axle trailer Ameron Lic # 4HU6995 vin 1A9BU16104A577196
1999 f-450- LIC # 5W44924 VIN 1FDXF46F4XEA28456
1999 f-450 6a42251 vin 1FDXF46F3XED77995
2007 gmc sierra 2GTEC13V971105838 lic 8E82759 Eziquio
2004 tacoma 5TEVL52N44Z310161 LIC # 53120H1 Pedro
2001 chevy Felix lic 74902C1 vin 1gcec19t91z179247 re due 1-31
Chev 1500 2001 - lic 7R86249 vin 1GCEK19T11E135897 Berna
1997 Chevy s-10 Rigo 1gccs1440vk114294 lic 5N04551

Portable office Bldg. at 12450 Highland Valley Rd. Escondido
2 farm sheds at 12450 Highland Valley Rd. Escondido
Well , pump and irrigations systems at 12450 Highland Valley Rd. Escondido
Irrigation systems at 14 leased properties

Tools List

Berna Truck
Felix Truck
Eziquio Truck
Cargo Container

Supplies

1 ¼ banding- 10 rolls

¾ banding 3 rolls

5g pots one pallet 1530

24" assembled boxes- 26

36" assembled boxes -3

75, 24" boxes sides only

4-, 48" boxes

7. 60" boxes

6, 72" boxes

12 unopened skids of lumber

3 opened skids of lumber

Truckload- 23fbm lumber delivered to Yermo

12 rolls 1 ¼ banding

3 rolls ¾ banding

6 boxes nails

1 pallet water

Approx 80 yards soil mix

Tree Inventory- See attached.

Tree #	Location	BOX SIZE	In Ground TYPE	Form	Trk Diam	Ht x width	Sh-w	Sh-h	AVAILABLE	Client	Notes	\$
	Madera- Calligari Stone Pine											
tag #	shipping width	date shipped										
695	8.5											
696	8.5											
731	8.5	28-Nov										
733	8.5											
738	8.5											
740	12											
743	8.5											
744	8.5	28-Nov										
762	12											
764	8.5											
779	8.5											
812	8.5											
898	8.5											
942	8.5											
1098	8.5											
: It cypress 9 trees 60" in grd												
Winchester will take 200 for these												
34925 Washington Winchester, 92596												
	Al Kranz Barbara Trail-											
Trees Rob C tagged 11-30-16												
aleppo pine and he has some manzanita												
our #	his #	box	ht									
7	3211	132										
3	3212	96										
12	3213	108										
13	3214	108										
9	3215	108	36									
5	3216	96	31									
6	3217	108										
2	3218	120	35									
10	3219	108	36									
by propane	3220	120	36									
Pat & Diane Ralston		23585 pico ave.		92585								
1			108 aleppo			30x18				leaner		
2			108 aleppo			30x18						
3			108 aleppo			28x16						
4			108 aleppo			28x20						
5			96 aleppo			24x16						
6			96 aleppo			34x14						
7			108 aleppo			33x16						
Dorothy-Tierra Libertia Rd												
1			84 Cupressus			35' x 30"						
2			84 Cupressus			35' x 28"						
3			72 Cupressus			32'						
4			84 Cupressus			35' x 30"						
5			72 Cupressus			29'					Do not dig	
6			72 Cupressus			29'						
7			72 Cupressus			26'						
8			72 Cupressus			29'					Bad top	
9			72 Cupressus			30'						
10			84 Cupressus			40'						
11			84 Cupressus			36' x 42"						
12			84 Cupressus			38'						
13			84 Cupressus			36' x 34"						
14			84 Cupressus			39'						
15			84 Cupressus			36' x 40"						
16			84 Cupressus			41'						
17			84 Cupressus			39'						
18			72 Cupressus			27'						
19			72 Cupressus			28'						
20			72 Cupressus			29'						
21			72 Cupressus			30'						
22			72 Cupressus			29'						
23			72 Cupressus			25'						
24			72 Cupressus			31'						

25		84 Cupressus		35' x 36"					
26		84 Cupressus		38' x 38"					
27		84 Cupressus		25' x 17'-?					
21985 Twin Canyon nuevo									
1- 108 ap									
1- 108 sp									
Feb-96									
Escondido									
38		W robusta						8	
18		W robusta						9	
21		W robusta						9	
36		W robusta						9	
15		W robusta						10	
37		W robusta						10	
9		W robusta						11	
14		W robusta						11	
17		W robusta						11	
23		W robusta						11	
39		W robusta						11	
40		W robusta						11	
41		W robusta						11	
30		W robusta						12	
32		W robusta						12	
8		W robusta						13	
10		W robusta						13	
20		W robusta						13	
33		W robusta						13	
35		W robusta						13	
3		W robusta						14	
5		W robusta						14	
12		W robusta						14	
16		W robusta						15	
43		W robusta						15	
19		W robusta						16	
31		W robusta						16	
42		W robusta						16	
4		W robusta						17	
6		W robusta						17	
11		W robusta						17	
27		W robusta						17	
34		W robusta						17	
44		W robusta						17	
1		W robusta						19	
22		W robusta						19	
46		W robusta						19	
7		W robusta						20	
13		W robusta						22	
24		W robusta						22	
2		W robusta						25	
26		W robusta						15-bad	
45		W robusta						19-bad	
25		W robusta						24-bad	
28		W robusta						bad	
29		W robusta						bad	
Madera TV-ALW trees									
		in ground	as of feb 2013						
84" bloodgood in madera 4 trees 32"x20"									
72" bloodgood 4 trees 25-30x18' 6" diam									
60" bloodgood 80 trees 20-28x18' 5" diam									
84" p racemosa 84" 32x20 8" diam 6 trees									
72" P racemosa 72" 24-28x18 10 trees									
60" P racemosa 20-25x16-18 5" diam 80 trees									
60" Pistacia chinensis 18-24' x 12-15' 4-5" diam 50									
lots of raywood ash									
pink lagerstromia									
zelkova		60" 17x13 in feb 2013							
Aristocrat pear									
wilson olives		lots of fruit							
60" pinea		maybe 30-40 with straight trunks							
Q suber 50 nice 72 & 84s									
Quercus lobata nice 73-84" 100 avial.									
Anza-Temecula									
ANZ-1-96		96 Sycamore	std	39 x 25 x 25		12	14		
ANZ-2-96		96 Sycamore	std	37 x 25 x 20		12	14		
ANZ-3-96		96 Sycamore	std						

ANZ-4-96		96	Sycamore	std																
ANZ-5-108		108	Sycamore	std																
ANZ-6-108		108	Sycamore	std																
ANZ-7-108		108	Sycamore	std																
ANZ-8-120		120	Sycamore	std			44 x 29 x 28			14	15.5									
ANZ-9-96		96	Sycamore	std																
ANZ-10-96		96	Sycamore	std																
ANZ-11-96		96	Sycamore	std																
ANZ-12-96		96	Sycamore	std																
ANZ-13-120		120	Sycamore	std																
ANZ-14-96		96	Sycamore	std																
ANZ-15-108		108	Sycamore	std																
ANZ-16-108		108	Sycamore	std			36 x 25 x 23			14	14									
ANZ-17-108		108	Sycamore	std			34 x 28 x 28													
ANZ-18-108		108	Sycamore	std																
ANZ-19-96		96	Sycamore	std																
ANZ-20-96		96	Sycamore	std			34 x 25 x 25			14	12									
Rancho Trails-																				
r-1	Rancho trails	120	pine				36x22											measured these 7	measured	
r-2		108	pine				38x20													
r-3		108	pine				33x20													
r-4		132	pine	multi			36x29											maybe a 120?		
r-5		108	pine	5' std			23x24													
in driveway		120	pine	std			27x29											nice- almost a 120		
in front		120	aleppo				45x24											curves and leans	curve & leaner	
Yermo 12-2015 trees to sell, (not apple)							tagged 6 to box which are													
y-25	dig now		straps																	
y-24		84					26"12													
y-1		84					29"12													
x-1		96					35"11													
x-11		132					50"25"16													
x-11		132					46"24"11													
y-17		120					41"22"11													
y-16		132					44"22"11													
x-4		120					40"18"12													
y-15		84					35"10													
y-13		108					38"12													
x-7		120					32"18"12											leans		
y-10		108					35"12													
Apples trees- 12-2015																				
10 - X16	Yermo	120					P eklarica													
11 - X17	Yermo	144					P eklarica													
13 - X19	Yermo	144					P eklarica													
X-15	Yermo	120					P eklarica													
17 - Y5	Yermo	132					P eklarica													
18 - Y6	Yermo	120					P eklarica													
19 - Y7	Yermo	132					P eklarica													
22 - Y17	Yermo	120					P eklarica													
23 - Y20	Yermo	120					P eklarica													
25 - Y29	Yermo	120					P eklarica													
X-20a	Yermo	120					P eklarica													
28 - Y80	Yermo	108					P eklarica													
3 - X6	Yermo	120					P eklarica													
5 - X8	Yermo	120					P eklarica													
6 - X9	Yermo	144					P eklarica													
7 - X10	Yermo	132					P eklarica													
8 - X12	Yermo	132					P eklarica													
9 - X12A	Yermo	132					P eklarica													
Borrego																				
Aleppo																				
cost																				
total cost																				
W/s																				
Total W/S																				
60	9	400	3600	1700	15300															
72	20	600	12000	3500	70000															
84	42	800	33600	8000	252000															
96	16	1000	16000	9500	152000															
108	11	1200	1200	11000	11000															
	88		66400		500300															

[illegible]

[illegible]

Schedule 3.4
Title to and Condition of the Assets

None.

Schedule 3.6
Business Contracts

None.

Schedule 3.9
Consents and Approvals

None.

Schedule 3.10

Lienholders

None.

Schedule 3.12
Financial Statements

See attached.