

## NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Agreement Date”), by and between Berenda Ranch, LLC, a California limited liability company ("Seller") and \_\_\_\_\_ ("Potential Buyer").

### **RECITALS**

- A. Seller has offered for sale certain real property consisting of approximately one thousand five hundred thirty-four acres (the “Property”).
- B. Potential Buyer has expressed interest in purchasing the Property.
- C. In consideration of Seller, its agents and representatives furnishing Potential Buyer with Confidential Information (defined below) regarding the Property, Potential Buyer agrees to make certain agreements regarding such Confidential Information.
- D. This Agreement is being entered into to set forth the terms under which any such Confidential Information may be disclosed.

THEREFORE, in exchange for good and valuable consideration acknowledged to have been received by the parties, the parties agree as follows:

### **AGREEMENT**

1. Definition of “Confidential Information.” For purposes of this Agreement, “Confidential Information” shall mean (i) information, documents and/or records received by Potential Buyer or anyone on behalf of Potential Buyer (“Potential Buyer Affiliates”) relating to the Property, (ii) any other information, documents and/or records that are labeled “Confidential” or about which Potential Buyer is notified that the information is confidential, non-public or proprietary in nature, and (iii) all notes, analyses, compilations, studies, or other documents, whether prepared by Potential Buyer or others, which contain or otherwise reflect such information.

Confidential Information shall not include information that (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of Potential Buyer or Potential Buyer Affiliates; (b) Potential Buyer can demonstrate to have had rightfully in Potential Buyer’s possession prior to the Agreement Date and is not subject to another confidentiality agreement between the parties; (c) is independently developed by Potential Buyer without the use of any Confidential Information; or (d) Potential Buyer rightfully obtained from a third party who has the right to transfer or disclose that information.

2. Non-disclosure and Nonuse of Confidential Information. Potential Buyer shall not, without the prior written approval of Seller, use for its own benefit, publish or otherwise

disclose to others, or permit the use by others for their benefit or to the detriment of Seller, any Confidential Information. Potential Buyer may disclose Confidential Information if required by any judicial or governmental request, requirement or order, provided that Potential Buyer shall take reasonable steps to give Seller sufficient prior notice of that request for Seller to contest that request, requirement or order.

3. Ownership of Confidential Information. All Confidential Information shall remain the property of Seller, and no license or other right to Confidential Information is granted or implied herein.

4. Term. This Agreement shall terminate upon notice by Seller to Potential Buyer, except that Potential Buyer's obligations and liability under this Agreement shall survive termination of this Agreement.

5. Equitable Remedies. Potential Buyer understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause Seller irreparable harm, the amount of which may be difficult to ascertain and, therefore, Potential Buyer agrees that Seller shall have the right to apply to a court of competent jurisdiction for specific performance of this Agreement and/or an order restraining any further disclosure or misappropriation, and for such other relief as Seller shall deem appropriate. These equitable rights of Seller shall be in addition to all other remedies available to Seller at law or in equity.

6. Return of Confidential Information. Potential Buyer shall immediately return to Seller all written Confidential Information upon receipt of a written request from Seller.

7. Attorney's Fees. Should Potential Buyer be found to have breached this Agreement, Potential Buyer shall pay all reasonable attorney fees and costs incurred by Seller arising from any such breach.

8. Binding on Successors. This Agreement and Potential Buyer's obligations hereunder shall be binding upon the representatives and successors of Potential Buyer and shall inure to the benefit of the assigns and successors of Seller.

9. Governing Law. This Agreement shall be governed by and construed in accordance with California law.

10. Jurisdiction. Any action or dispute arising out of or related to this Agreement shall be brought exclusively under the jurisdiction and venue of the appropriate state or federal court in San Joaquin County, California.

11. Entire Agreement. This Agreement constitutes the whole understanding of the parties with respect to the subject matter of the Agreement, and may not be amended or modified except in writing signed by both of the parties.

12. No Waiver. Failure to demand compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power be deemed a waiver or relinquishment of the right or power.

13. Partial Invalidity. The invalidity or unenforceability of any term or provision or any clause of this Agreement shall in no way impair or affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

14. Incorporation of Recitals. The Recitals are not merely perfunctory. They are incorporated into this Agreement in their entirety as substantive provisions of this Agreement.

15. No Agreement to Purchase Seller or Enter into Any Transaction or Venture. This Agreement is not an agreement to enter into any transaction, sale, partnership or venture. Potential Buyer may decide not to purchase the Property from Seller. Likewise, Seller may decide not to sell the Property to Potential Buyer. However, Potential Buyer's liability and obligations under this Agreement shall survive any such decision by Potential Buyer or Seller.

Executed on \_\_\_\_\_, 2018, at \_\_\_\_\_,  
California.

SELLER:

POTENTIAL BUYER:

Berenda Ranch, LLC, a California limited liability company

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_