

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (the "Agreement") is dated as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is by and between Selective Paradise NV, LLC. ("Selective") and \_\_\_\_\_ ("Disclosee").

### WITNESSETH:

WHEREAS, Disclosee has requested an/or is expected to request certain confidential information concerning Selective Paradise NV, LLC and/or one or more entities controlled by Selective Paradise NV, LLC (hereinafter individually and collectively referred to as "Selective") for purposes relating to the purchase of the real property located at 1501 Auto Center Drive, Oxnard, CA between Selective and Disclosee (the "Project"); and

WHEREAS, as a condition to Disclosee being furnished with such information, it has agreed to treat any confidential information concerning Selective furnished to it by Selective in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE I - DEFINITIONS

1.01 *Definitions.* For the purposes of this Agreement, the following terms shall have the meanings hereinafter assigned to them:

(a) The term "Confidential Information" means all information in whatever form relating to the past, present or future business affairs, including without limitation, research, development or business plans, operations or systems, of Selective or a person not a party to this Agreement whose information Selective has in its possession under obligations of confidentiality, which is (i) disclosed by Selective to Disclosee or to any of its officers, directors, employees or agents, including without limitation by allowing access to Selective's plants or other facilities, or (ii) produced or developed during the working relationship between the parties. The nature and existence of the Project shall also be considered Confidential Information.

(b) In limitation of the definition of the term "Confidential Information" set forth at Section 1.01(a) above, such term shall not include any information of Selective which is (i) already known to Disclosee at the time of its disclosure, (ii) becomes publicly known through no wrongful act of Disclosee, (iii) received from a person not a party to this Agreement who is free to disclose it to Disclosee, (iv) independently developed by Disclosee, (v) communicated to a person not a party to this Agreement with the express written consent of Selective, or (vi) lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law, subpoena or court order but only to the extent of such requirement, provided that before making such disclosure Disclosee shall give Selective an adequate opportunity to interpose an objection or take action to assure confidential handling of such information.

## **ARTICLE II - CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

2.01 *Use and Treatment of Confidential Information.* Disclosee hereby agrees that any Confidential Information received by it shall be used solely for the purpose of the Project, and that Disclosee shall keep confidential and shall not disclose, divulge, publish, communicate, publicize, disseminate or otherwise reveal, either directly or indirectly, any Confidential Information it receives from Selective to any person, natural or legal, except to (a) the officers, directors, partners, tax consultants, lenders, legal and financial advisors, employees or agents of Disclosee who have a need to know such Confidential Information for the purpose of the Project who have been informed of the confidential nature of such Confidential Information and Disclosee's obligations under this Confidentiality Agreement, and who shall have been directed to treat such Confidential Information confidentially, or (b) any other person but only if Selective has provided to Disclosee its written consent to such disclosure. In addition, Disclosee shall use not less than the same degree of care to avoid disclosure of Confidential Information as Selective uses.

2.02 *Ownership and Return of Confidential Information.* All Confidential Information disclosed by Selective to Disclosee under this Agreement in tangible form (including, without limitation, information incorporated in computer software or held in electronic storage media) shall be and remain the property of Selective. Any or all of such Confidential Information shall be returned to Selective promptly upon written request or upon any termination of the Project. Upon the return of any such Confidential Information, Disclosee shall not thereafter retain any such Confidential Information in any form, in whole or in part. All documents, memoranda, notes and other writing whatsoever prepared by or for Disclosee based on the Confidential Information required to be returned shall be destroyed immediately by Disclosee.

2.03 *No Representations or Warranties.* Each party understands and acknowledges that any and all Confidential Information which may be provided by Selective to Disclosee shall be provided without any representation or warranty, expressed or implied, as to the accuracy or completeness of such Confidential Information. Selective shall not have any liability or responsibility for errors or omissions in, or any business decisions made by Disclosee in reliance on, any Confidential Information disclosed under this Confidentiality Agreement.

2.04 *Remedies upon Breach.* The parties acknowledge that Confidential Information is valuable and unique and that disclosure in breach of this Confidentiality Agreement will result in irreparable and substantial injury to Selective for which it will not have an adequate remedy at law. In the event of Disclosee's breach or threatened breach of the terms of this Confidentiality Agreement, Selective party shall be entitled to obtain from any court having jurisdiction pursuant to Section 3.04 below, with respect to Disclosee, temporary, preliminary and permanent injunctive relief prohibiting any such breach. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages and equitable accounting of all earnings, profits and other benefits arising from such violation, which rights shall be cumulative and in addition to any other rights or remedies to which Selective may be entitled. Disclosee does hereby waive any requirement for Selective to post a bond for any injunction. If, however, a court nevertheless requires a bond to be posted, Disclosee agrees that such bond shall be in a nominal amount.

2.05 *Survival.* Notwithstanding any termination of the Project or the return of Confidential Information, all rights, remedies and obligations under this Confidentiality Agreement shall survive with respect to Confidential Information disclosed prior to such termination. This agreement shall expire one year from the date executed below.

### **ARTICLE III - GENERAL PROVISIONS**

3.01 *Notices.* All notices, requests, demands and other communications between any of the parties shall be in writing and shall be deemed to have been duly given if (a) personally delivered and a receipt obtained therefor, (b) mailed by certified or registered mail, postage prepaid, return receipt requested, (c) by overnight courier, or (d) transmitted by fax (but only if the sending fax machine produces a confirmation that the fax machine to which the notice was sent received the fax), to the respective party at the addresses or fax numbers (or such other addresses or fax numbers which shall be given in writing by either party to the other) which each party has heretofore provided to the other.

3.02 *Burden and Benefit; Final Agreement.* This Agreement represents the final and complete contract of the parties hereto concerning the subject matter hereof and supersedes any prior agreements between the parties the subject matter of which in any way relates to the protection of confidential information. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns. Neither party shall assign any of its respective rights or obligations hereunder without the prior written consent of the other party, which consent may be withheld in the sole discretion of the party from whom consent is requested. Any such assumption shall not relieve the assigning party of the obligations assumed without the prior written consent of the party from whom consent is requested.

3.03 *Modification and Waiver.* No alterations or variations of the terms and provisions of this Agreement shall be valid unless made in writing and signed by all of the parties hereto or their permitted assigns. No failure or delay by a party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

3.04 *Governing Law.* This Agreement shall be construed and governed by the laws of the Commonwealth of Virginia without regard to its conflict of law rules. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of the other provisions of this Agreement, the other provisions of this Agreement shall be enforced as fully as possible, and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed herein. With respect to actions for specific performance or other equitable relief, each party irrevocably submits itself to the jurisdiction of the local courts of California (Oxnard) or if not available, County of Los Angeles. Furthermore, each party hereby irrevocably waives and agrees not to assert by way of motion, as a defense or otherwise in any such action or proceeding, any claim that such party is not personally subject to the jurisdiction of said courts, that such action or proceeding is brought in an inconvenient forum, that the venue of such action or proceeding is improper or that this Agreement may not be enforced in or by such courts.

3.05 *Counterparts.* This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

3.06 *Article and Section Headings.* Article and section headings inserted in this Agreement are for convenience only and shall not be deemed to have any legal effect whatsoever in the interpretation of this Agreement.

3.07 *Execution of Additional Documents.* The parties hereto agree that they will promptly execute any and all further documents necessary and/or appropriate for the consummation of this Agreement according to its terms and conditions.

3.08 *Expenses.* Each party shall bear the fees, costs and expenses of its legal counsel, accountants and other advisors in connection with the negotiation, execution and interpretation of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned, the corporate parties acting through their respective duly authorized officers, as of the date and year first above written.

**"SELECTIVE"**

SELECTIVE PARADISE NV, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**"DISCLOSEE"**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_