

DUE DILIGENCE AND CONFIDENTIALITY AGREEMENT

This DUE DILIGENCE AND CONFIDENTIALITY AGREEMENT (“Agreement”) is made by the undersigned (“Recipient”) for the benefit of WESTERN COMMERCIAL BANK, a California banking corporation (“Bank”), AGUA DULCE VINEYARDS LLC, a California limited liability company (“ADV”), DONAL J. MACADAM, an individual (“D. MacAdam”), CATHERINE P. MACADAM, an individual (“C. MacAdam”), SWEETWATER VINEYARDS, LLC, a California limited liability company (“Sweetwater”), and KENNEDY WILSON AUCTION GROUP INC., a California corporation (“KW” and together with Bank, ADV, D. MacAdam, C. MacAdam, and Sweetwater, individually and collectively “Disclosing Party”), on the following terms and conditions:

1. Background. Recipient desires to receive certain confidential information (the “Confidential Information”) from Disclosing Party, and to make certain site visits, investigations, and inspections (the “Due Diligence”) of that certain real property and assets located at or near 9830 Sierra Highway, Agua Dulce, California (the “Auctioned Property”), for the sole purpose of determining whether to make an offer to purchase the Auctioned Property. Disclosing Party is willing to disclose such Confidential Information and permit Recipient to conduct the Due Diligence pursuant to the terms and conditions of this Agreement.

2. Confidential Information.

2.1 Defined. As used in this Agreement, the term “Confidential Information” shall mean and include all information, whether written or verbal, disclosed or made available, by any of the Disclosing Party about the condition of the Auctioned Property, the operations of the Auctioned Property, and any and all other aspects of the Auctioned Property, other than such Confidential Information that (a) becomes generally available to the public other than, directly or indirectly, by Recipient’s or Recipient’s representatives’ unauthorized disclosure of Confidential Information or breach of this Agreement, (b) is known to Recipient prior to disclosure by Disclosing Party, or (c) becomes available to Recipient on a non-confidential basis from a source other than Disclosing Party, which is entitled to disclose such Confidential Information.

2.2 Permitted Use; No Disclosure.

(a) Recipient agrees that the Confidential Information is disclosed by Disclosing Party, hereunder, solely for its use in determining whether to make an offer to purchase the Auctioned Property and no other purpose. Any unauthorized use of the Confidential Information by Recipient or any of Recipient’s representatives is strictly prohibited.

(b) Recipient, on behalf of itself and each of its officers, employees, consultants, agents, directors, managers, and representatives, agrees not to disclose any of the Confidential Information to any person other than to Recipient’s representatives who have a need to know such Confidential Information for purposes of assisting Recipient in the

performance of the evaluation and analysis of the Auctioned Property, and provided that such representatives agree to be bound by the terms of this Agreement.

(c) Recipient and its representatives shall use appropriate precautions (at least as great as precautions as Recipient takes to protect Recipient’s own confidential information) in handling the Confidential Information and, in accordance with safe and sound procedures, shall keep the Confidential Information confidential.

(d) Recipient shall notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Recipient, or Recipient’s employees, consultants, or representatives, and Recipient will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and to prevent its further unauthorized disclosure or use.

(e) Recipient will return or destroy all tangible materials embodying Confidential Information (in any form, and including, without limitation, all summaries, copies, and excerpts of Confidential Information) promptly following the termination of this Agreement (for whatever cause) and/or upon Disclosing Party’s written request, unless retention of such Confidential Information is required by a governmental entity having jurisdiction over Recipient, or is otherwise required by law or regulation.

(f) If Recipient or any of Recipient’s representatives, officers, directors, employees, or agents, are requested or required in a legal proceeding, or pursuant to any legal process to disclose any Confidential Information, then Recipient shall notify Disclosing Party within five (5) days of receipt of any such request, so that Disclosing Party may seek a protective order and/or take any other mutually agreed action to protect the confidential nature of the Confidential Information. If, in the absence of a protective order or the receipt of a waiver hereunder, Recipient is nonetheless, in the judgment of Recipient’s counsel, compelled to disclose such Confidential Information, Recipient shall use all reasonable efforts to inform Disclosing Party as far in advance of such disclosure as practicable.

(g) Indemnity. Recipient hereby agrees to indemnify, defend with counsel selected by Disclosing Party, and hold Disclosing Party harmless from and against any and all claims, liabilities, costs, and expenses, including attorneys’ fees and court costs, and other damages arising out of, or in any way relating to, Recipient’s use and/or possession of the Confidential Information, the unauthorized disclosure of Confidential Information, or any breach of this Agreement by Recipient or Recipient’s representatives.

2.3 AS-IS Disclosure. Recipient acknowledges that any Confidential Information provided, or to be provided, by Disclosing Party was obtained from a variety of sources, and Disclosing Party has not

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made any independent investigation or verification of such Confidential Information. Accordingly, Disclosing Party makes no, and hereby disclaims all, representations as to the accuracy, truthfulness, or completeness of such information, which includes, without limitation, all verbal and written communications, agreements, instruments, documents, reports, and other matters. All Confidential Information is provided hereunder on an **“AS IS, WHERE IS, WITH ALL FAULTS, LIABILITIES, DEFICIENCIES, AND DEFECTS, LATENT OR OTHERWISE, KNOWN OR UNKNOWN”** basis.

3. Due Diligence.

3.1 Property Investigations. Recipient, and its employees, consultants, and agents, shall not enter the Auctioned Property without the prior approval of Disclosing Party, which approval may be permitted or denied by Disclosing Party in its sole opinion and judgment. In connection with its entry onto the Auctioned Property and its Due Diligence, Recipient shall not cause any adverse impact to the Auctioned Property and will restore the Auctioned Property in a timely manner at Recipient's sole cost to the condition that existed immediately prior to Recipient's entry onto the Auctioned Property. Without limiting the generality of the foregoing sentence, Recipient shall keep the Auctioned Property free and clear of all mechanics' and/or materialmen's liens arising from or related to the inspections, investigations, or review of the Auctioned Property by Recipient, and shall take all necessary actions, at Recipient's sole cost and expense, to remove any such liens that encumber the Auctioned Property. Recipient shall not disturb the physical condition of the Auctioned Property or conduct any soil testing, removal, or borings upon or within the Auctioned Property, including, without limitation, conducting any Phase II environmental site assessment.

3.2 Indemnity; Insurance. Recipient shall indemnify, defend, and hold harmless Disclosing Party, and each of its and their shareholder, directors, officers, employees, consultants, and agents (the “Additional Parties”), from and against any and all liens, claims, liabilities, costs, and expenses, including attorneys' fees and court costs, and other damages arising out of, or in any way relating to, the entry and performance of any such inspection, investigations, and review by Recipient of the Auctioned Property, or by any other person or entity acting on behalf of, or at the request of, Recipient. Recipient shall carry, or Recipient shall require anyone acting on Recipient's behalf to carry, policies of liability, worker's compensation, and other applicable insurance defending and protecting Disclosing Party from liability for any injuries to persons or property occurring during any work done on the Auctioned Property at Recipient's direction.

3.3 No Commitments. Unless and until Recipient becomes the owner of the Auctioned Property, Recipient shall not enter into, or make any commitments with, any Public Agency (defined below), and shall expressly disclaim to any Public Agency the right to enter into or make

commitments, in respect to the Auctioned Property that are or could be binding on the Auctioned Property or any of the Disclosing Parties (“Commitments”). As used in this Agreement, “Public Agency” shall mean any officer, employee, supervisor, consultant, council member, agent, or other representative of any public agency or governmental authority with jurisdiction over the Property. Recipient shall, and hereby does, indemnify, defend, protect, and hold harmless Disclosing Party and each of the Additional Parties from and against any and all claims, demands, losses, damages, obligations, liabilities, causes of action, liens, costs, and expenses (including, without limitation, attorneys' fees and expenses) arising from any acts or omissions by Recipient, or its employees, agents, consultants, or representatives, related to, or in connection with, any Commitments or any discussions or meetings by Recipient with any Public Agency that are made in violation of the foregoing provisions.

3.4 Confidentiality. Recipient agrees to keep confidential, and not disclose, the results of its investigations, inspections, and review of the Auctioned Property, or the contents of any analyses, reports, surveys, or other documents made with respect there to, to any third party other than Recipient's employees, attorneys, consultants, and lenders in connection with Recipient's offer to purchase the Auctioned Property or as may be required by applicable law; provided that Recipient shall ensure that each such employee, attorney, and consultant is advised of and agrees to the confidentiality requirements in this Agreement. If Recipient determines that Recipient is required by applicable law to notify a federal, state, or local governmental agency or authority, or any other party, with respect to any condition of the Auctioned Property, Recipient shall immediately notify Disclosing Party, and Disclosing Party shall make such disclosure as Disclosing Party determines appropriate.

4. Miscellaneous.

4.1 Survival. The obligations of Recipient under this Agreement shall survive until the date that is the earlier of (a) the date that Recipient becomes the owner of the Auctioned Property, or (b) twenty-four (24) months following the date hereof; provided, however, that the indemnification, defense, and hold harmless obligations of Recipient under this Agreement shall survive for twenty-four (24) months following the date hereof regardless of whether Recipient becomes the owner of the Auctioned Property.

4.2 Injunctive Relief. Recipient acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to Disclosing Party for which monetary damages may be difficult to ascertain or be an inadequate remedy. Recipient, therefore, agrees that Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement. Disclosing Party shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

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4.3 Binding Effect. Recipient acknowledges and agrees that this Agreement shall be binding upon and inure to the benefit of Disclosing Party and Recipient, and its and their respective parent entities, if any, subsidiaries and affiliates, and their respective successors and assignees; provided, however, that Recipient shall not assign Recipient's obligations, rights, or privileges hereunder to any other parties without the prior written consent of Disclosing Party.

4.4 Governing Law. The interpretation of the enforcement of this Agreement shall be governed by the laws of the State of California without reference to the conflict of law principles thereof.

4.5 No Commitment. This Agreement does not create any commitment on the part of Disclosing Party to sell the Auctioned Property to Recipient. Consequently, Recipient understands that any other opportunities Recipient may forego and any expenses Recipient incurs, on account of Recipient's decision to evaluate whether to purchase the Auctioned Property, are incurred at Recipient's own risk.

4.6 Entire Agreement. Recipient acknowledges and agrees that this Agreement expresses the entire agreement and understanding of Disclosing Party and Recipient with respect to the subject matter hereof, and supersedes any and all prior oral or written agreements, commitments, and understandings pertaining to the subject matter hereof. This Agreement shall not be modified or changed in any manner except in writing signed by Disclosing Party and Recipient.

4.7 Attorneys' Fees. The prevailing party, in any action or proceeding to interpret or enforce this Agreement, or any of its terms, shall be entitled, in addition to any judgment or award upon such action or proceeding, to an award for all costs and expenses (including costs of all legal or administrative proceedings or hearings and attorneys' fees) incurred by such prevailing party or parties, including, without limitation, all attorneys' fees and related costs of enforcement of any such judgment or award and upon any appeal relating thereto.

4.8 Effectiveness of Agreement. This Agreement shall be effective upon the execution hereof by Recipient, without regard to the fact that this Agreement has not been executed by any of Disclosing Party.

IN WITNESS WHEREOF, Disclosing Party executes this Agreement as of the day and year specified below:

RECIPIENT:

Business Name (if applicable) _____

a _____

Signature: _____

Name: _____

Title: _____

Date: _____

Address:

