

Attachment 1

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RECORDING REQUESTED BY:
Michael P. Groom, Esq.

AFTER RECORDING, RETURN TO:
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1570 The Alameda, Suite 100
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**FIRST AMENDMENT TO AND COMPLETE RESTATEMENT OF
REAL PROPERTY MANAGEMENT AGREEMENT**

This First Amendment to and Complete Restatement of Real Property Management Agreement (the “*First Amendment and Restatement*”), is made and entered into effective as of _____, 2019, by and between Arlin Ranches, LLC, a California limited liability company (“*Owner*”) and the County of Monterey (“*County*”) and is made with reference to, and in consideration of, the following facts and objectives. Owner and County are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties.”

RECITALS

A. **WHEREAS**, Owner is the owner of Rana Creek Ranch (the “*Ranch*”) consisting of a total of 14,142.70 acres located near the 19-Mile marker in Carmel Valley, Monterey County, CA, that is currently comprised of twelve (12) separate legal parcels (the “*Lots*”), of which Lots 5 through 10, as more particularly described in Exhibit A attached hereto, are the subject of this First Amendment and Restatement; and

B. **WHEREAS**, two (2) of the twelve (12) Lots are located to the north of Carmel Valley Road (Lot 11 of 731 acres and Lot 12 of 11,691.50 acres) and ten (10) of the Lots are located to the south of Carmel Valley Road totaling 1,720.20 acres, each of which average approximately 172 acres; and,

C. **WHEREAS**, on February 9, 1993, that certain Real Property Management Agreement was filed and recorded as Document 09612, in the Official Records of the County of Monterey, at Reel 2906, Page 1188 (the “*Management Agreement*”), that affected certain parcels of real property situated in the County of Monterey, State of California, therein described as Parcels A, B and C (the “*Property*”), as shown on that certain Record of Survey filed for record on June 19, 1991, in the Office of the Recorder, County of Monterey, at Volume 17 of Surveys, at Page 7, which Property totals approximately 929.14 acres; and,

D. **WHEREAS**, the afore-referenced Record of Survey was based on the approval of a Tentative Parcel Map on August 29, 1990, by the County of Monterey (Monterey County Planning Commission Resolution No. 90-252) (the “*Holt Subdivision*”); and,

E. **WHEREAS**, Condition 11 of the approval for the Holt Subdivision required the execution and recordation of an agricultural management agreement to provide for the continued

grazing of the Property as a unit to preserve the agricultural viability of the Property, so long as the Property remains subject to the Williamson Act; and,

F. **WHEREAS**, the Management Agreement, that was recorded in fulfillment of Condition 11, does require the Property to be managed as one unit so long as the Property remains subject to Williamson Act contracts; and,

G. **WHEREAS**, subsequent to the recordation of the Management Agreement, the Owner purchased the Property and thereafter applied to the County of Monterey for a Tentative Map to re-subdivide all of the Ranch into the currently existing twelve (12) Lots, that included the Property (former Parcels A, B and C) and several other contiguous parcels, all of which are now the ten (10) Lots located south of Carmel Valley Road (the “**2010 Subdivision**”); and,

H. **WHEREAS**, the County approved the tentative map for the 2010 Subdivision on July 29, 2010 (Minor Subdivision Committee Resolution No. 10-008 (Markkula/PLN090117)); and,

I. **WHEREAS**, on December 22, 2011, pursuant to that certain Parcel Map, filed and recorded on December 22, 2011, in Book 23, Page 19 of Parcel Maps (the “**2011 Parcel Map**”), that portion of the Ranch consisting of the Property became a portion of Lot 5 and all of Lots 6-10, as shown on the 2011 Parcel Map; and,

J. **WHEREAS**, Paragraph 3 of the Management Agreement imposed certain obligations and conditions on the owners of the Property (then Lots A, B and C), including the obligation to manage the Property as a unit for agricultural purposes and conditioning the means by which the owners of the Property obtained access to water for irrigation of the approximately 80-acre alluvial plain located on the Property (hereinafter the “**Obligations**”); and,

K. **WHEREAS**, in order to preserve the agricultural viability of the Lots, the 2010 Subdivision approval required a note on the 2011 Parcel Map (hereinafter the “**Note on the 2011 Parcel Map**”) and recordation of deed restrictions to require that any future single family dwellings be located in areas that minimize the removal of agricultural production and maintain the agricultural viability of portions of Lots which are designated as Prime Farmland; and

L. **WHEREAS**, Land Conservation Contract 69.7.7 PLN090117/Markkula, dated December 22, 2011 (the “**Williamson Act Contract**”) now applies to Lots 5-10; and

M. **WHEREAS**, the Property (former Lots A, B and C) now consists of a portion of Lot 5 and all of Lots 6-10, and the Parties hereto desire to (i) extend the Obligations to cover all of Lots 5-10, as shown on the 2011 Parcel Map and (ii) amend the Management Agreement to eliminate the requirement that Lots 5-10 be managed as a unit for agricultural purposes and instead provide that the owners of Lots 5-10 shall be obligated to manage their respective parcels for agricultural purposes in ways consistent with the provisions of the Williamson Act Contract affecting each such Lot and consistent with the requirements of the Note on the 2011 Parcel Map; and,

N. **WHEREAS**, in order to clarify that the Obligations set forth in Paragraph 3 of the Management Agreement now affect Lots 5-10, as shown on the 2011 Parcel Map, in order to continue to accomplish the purposes of the Management Agreement of preserving the agricultural viability of the Property, and in order to better define the exact nature of the Obligations, the Parties desire to amend and completely restate the Management Agreement as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

1. Incorporation of Recitals. Each of Recitals A through K above are by this reference incorporated herein and made of part of the First Amendment and Restatement.

2. Restated Management Agreement. Paragraphs 1 through 6 of the Management Agreement are hereby deleted in their entirety and the following paragraphs are substituted in replacement thereof:

1. The Agricultural Preserve Contract: In accordance with the provisions of California Government Code section 51230.1, the Parties hereto acknowledge and agree that so long as Lots 5-10 or any of them remain subject to a Williamson Act Contract, each of those Lots shall be subject to the terms and provisions of this First Amendment and Restatement, from and after the date of recordation of this First Amendment and Restatement. Each of the owners of Lots 5-10 shall retain the right to file a Notice of Non-Renewal as provided in the Williamson Act Contract, but so long as such Lot remains subject to the Williamson Act Contract, such owner shall continue to manage their respective Lot for agricultural purposes in ways consistent with the provisions of the Williamson Act Contract affecting each such Lot, and additionally, each of those Lots shall be configured consistent with the requirements of the Note on the 2011 Parcel Map.

2. Rights with Respect to Water and Irrigation System: The Parties acknowledge that (i) the well located on Lot 5, designated as H8 on the Site Map attached hereto as **Exhibit B**, is the sole source of water available for irrigation of the approximate 80-acre alluvial (the "*Alluvial Plain*"), located adjacent to Tularcitos Creek and situated on Lots 5-10 as shown on the 2011 Parcel Map (formerly Parcels A, B and C), and (ii) access to Well H8 and the water produced from time to time by Well H8 and the irrigation system and any water storage system located on Lots 5-10 (hereinafter, the "*Irrigation System*"), is essential for the continuance of agricultural uses on Lots 5-10, including the continued irrigation of some or all of the Alluvial Plain. Consequently, so long as a Lot among Lots 5-10 remains subject to the Williamson Act Contract (hereinafter, an "*Agricultural Lot*"), the owner of such Agricultural Lot shall have access to the Irrigation System located on Lots 5-10, as shown on the 2011 Parcel Map, in order to provide the owner of such Agricultural Lot access to the Irrigation System to irrigate that portion of the Alluvial Plain located on such owner's Agricultural Lot and for other agricultural uses authorized by the Williamson Act Contract affecting such Agricultural Lot.

a. Rights to Reimbursement: Nothing in this Agreement shall be construed to preclude the owner of any one or more of Lots 5-10, from being reimbursed for the reasonable cost of providing water and water related facilities and equipment to any other Lot.

3. General Purpose: The general purpose and intent of this First Amendment and Restatement is to ensure that the owners of the Agricultural Lots are able to continue the agricultural use and operation of the Agricultural Lots, in conformance with the uses authorized by the Williamson Act Contract pertaining to such Agricultural Lot.

4. Term of Management Agreement: This First Amendment and Restatement shall remain in full force and effect so long a particular Agricultural Lot remains subject to the terms and provisions of the Williamson Act Contract and shall be binding on

Owner and the Owners' heirs, assigns and successors in interest.

5. Transfers to Immediate Family Members: Nothing contained herein shall be construed to preclude any owner of an Agricultural Lot from exercising the right to transfer interests in the Agricultural Lot to immediate family members in accordance with the provisions of Government Code section 51230.1 or any successor statute thereto.

6. Miscellaneous Provisions:

a. Successors and Assigns: This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

b. Exhibits: All Exhibits referred to are attached hereto and incorporated herein by this reference.

c. Governing Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

d. Severability: The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

e. Amendments: This Agreement may be amended only by a writing signed by the parties and recorded in the Office of the Recorder for the County of Monterey, California

IN WITNESS WHEREOF, Owner and the County have executed this First Amendment to and Complete Restatement of Real Property Management Agreement effective as of the Effective Date set forth above.

OWNER:

Arlin Ranches, LLC

By: _____

Name: Armas Clifford Markkula

Title: Manager

COUNTY:

County of Monterey

By: _____

Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

: ss.

COUNTY OF SAN MATEO)

On _____, 2019, before me, _____, Notary Public, personally appeared A. C. Markkula, Jr., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

: ss.

COUNTY OF MONTEREY)

On _____, 2019, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacities, and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

First Amendment to and Complete Restatement of Real Property Management Agreement

Legal Description of Lots 5-10

THAT CERTAIN REAL PROPERTY situate in Rancho Los Tularcitos, County of Monterey, State of California, consisting of Lots 5-10, as said lots are shown and so designated on that certain map filed for record December 22, 2011, in Volume 23 of Parcel Maps, Page 19, Records of Monterey County.

EXHIBIT "B"

First Amendment to and Complete Restatement of Real Property Management Agreement

Site Map

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