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## ORCHARD VENTURE AGREEMENT

THIS AGREEMENT made this 28<sup>th</sup> day of 2016, by and between TALBOTT'S MOUNTAIN GOLD, LLLP, a Colorado Limited Liability Limited Partnership (hereinafter "OPERATOR"), and \_\_\_\_\_, as Joint Tenants, (hereinafter "OWNER").

### WITNESSETH

WHEREAS, OPERATOR has been in the business of Orchard establishment, production and management for many years and has extensive experience, equipment, know-how and other resources for providing for the establishment, management and production of orchards, and

WHEREAS, OWNER, who has land with an orchard, irrigation water sufficient to water the orchard, and desires to take advantage of the expertise of OPERATOR in establishing and producing orchards, will offer as part consideration, 2 acres of such land which is located at \_\_\_\_\_ Palisade, CO 81526 (hereinafter referred to as the "property"), to be used for the management of such an orchard.

NOW, THEREFORE, in consideration of the premises and mutual covenants of this agreement, the parties hereto have agreed as follows:

### TERMS

1. The duration of this agreement is from the date that this agreement is executed by all the parties hereto and continues indefinitely until either party gives notice of termination to the other party. Notice of termination must be given after completion of a cropping cycle and prior to the beginning of new investment in the next season's crop or specifically from November 1<sup>st</sup> through January 1<sup>st</sup>. The agreement can be terminated by mutual consent of both parties at any time.

2. OWNER agrees to furnish the Property and associated irrigation water and to pay all expenses pertaining to the purchase and maintenance of title to said Property and water including, but not limited to, taxes, water operating and maintenance costs and any associated special assessments.

3. OWNER agrees to purchase all necessary trees or vines required to replant portions of the property if and when OWNER and OPERATOR mutually agree to move forward on replanting. OWNER agrees to pay any taxes or other assessments resulting from any planting or replanting of such orchard, and OWNER further agrees that OPERATOR will have decision-making authority as to any horticultural or agricultural decisions relative to the orchard. OWNER further agrees to irrigate the grape portion of the property and to inform OPERATOR anytime he is not in a position to do so and needs OPERATOR to cover irrigation.

4. OWNER agrees that capital improvement costs to the venture such as irrigation improvements, tree protection equipment, trellises, fences or any such capital items which will remain with the Property after the base term of this agreement, will be paid for by OWNER and any installation procedures related to such capital improvements and not performed by OPERATOR will be paid for by OWNER. If OWNER does not provide capital improvements which are necessary to the maximum return from the venture, then OPERATOR may elect to provide such improvements, and in such event the parties agree to make any necessary adjustments to profit splits in order to compensate OPERATOR for additional costs associated with such capital improvements.

5. OPERATOR agrees to provide and be responsible for all horticulture and management practices concerning the development and maintenance of this venture, including all aspects involved with the establishment and year-round caring for an orchard such as, but not limited to, planting, watering, spraying, fertilization, weed control, thinning, harvesting, and pruning.

In addition, OPERATOR will be responsible for all phases of marketing including, but not limited to, picking, sorting, packing, selling, shipping, and collecting. The venture will subscribe to the custom packing, marketing and shipping services of OPERATOR and the grower returns derived from the packing house will constitute gross revenue to the project. The OPERATOR's packing house will accept the venture as a grower-subscriber and will treat the venture in a manner consistent with all other grower-subscribers.

6. OPERATOR will provide all operating expenses of the venture associated with the responsibilities of Paragraph 5 above, including, but not limited to, farm labor, professional services, supplies and chemicals which expenses will be applied against the gross revenues of the venture.

OPERATOR further agrees to provide equipment which it owns and which is available, to the venture, such as, but not limited to, tractors, trailers, farm implements, sprayers, and mowers. Such equipment will be maintained and furnished to the venture at no capital cost to the venture. Any additional equipment which is leased or purchased for use only for this venture will be charged to establishment/production expenses.

7. OPERATOR shall be solely responsible for compliance with all labor, immigration, environmental and other laws applicable to the activities of this venture and OPERATOR agrees to indemnify and hold OWNER harmless from liability therefore including, but not limited to damages, costs, attorney fees and fines.

8. All costs of the venture which are borne by the parties and properly chargeable to the venture will be charged to the establishment/production costs of the venture and will be charged against the gross revenues of the venture before venture revenues are split between the parties according to the provisions of this agreement. Such costs shall be repaid from gross revenues in proportion to costs advanced by each party. Such costs will be carried forward from year to year until a net profit is realized. OWNER'S costs will include, but not be limited to, cost of utilities and any other expenses (other than expenses considered as capital improvements or associated with purchase of the property) associated with the venture. OPERATOR'S costs will be those before referred to and any other costs which OPERATOR pays that are directly concerned with this venture.

9. The parties agree to split the net profits of the venture on a 60/40 basis, with OPERATOR receiving 60 percent and OWNER receiving 40 percent. In the event of an operating loss, each party will carry forward their respective input costs into the next production year. If the contract expires with a loss, OPERATOR and OWNER each agree to a 50/50 split of the combined loss.

10. If either party should fail for any reason to recognize his own financial, legal or contractual obligations under this agreement or obligations which would affect the venture Property or its operation, then the other party hereto may fulfill such obligation in behalf of the failing party, and any costs attributed to such fulfilled obligation shall be deducted from the percent of profit to be paid to the failing party or carried forward as a deduction until such time as a net profit is realized. This provision in no way shall impair the fulfilling parties right to collect from the failing party any costs or expenses associated with such fulfilled obligation in any manner provided by law, subject to the provisions of Section 19 herein pertaining to mediation and arbitration.

11. Should the assets of OWNER or OPERATOR which are the subject of this agreement be affected by third party intervention, legal procedures or the like, such as divorce, foreclosure, bankruptcy, then it is the intention of the parties to this agreement that the terms of this agreement shall be binding on any such other third party, and that the benefits and obligations of this venture shall pass to such other third party. In this respect, it shall be OPERATOR'S obligation to have this instrument filed of record in the public records of Mesa County.

12. This Agreement shall be binding on the licensee, lessee, purchaser assigns, devisees, heirs, executors, administrators or personal representatives of all the parties to this agreement.

13. This contract shall not be construed as nor is it intended to be a partnership,

and neither party shall be liable for the debts or obligations incurred by the other party without written consent.

14. OWNER has the right to assign this agreement to another party without the consent of OPERATOR, and OPERATOR may only assign this agreement upon the written consent of OWNER.

15. OPERATOR agrees to maintain appropriate insurance and to furnish upon request to OWNER, a certificate of insurance with not less than \$1,000,000 coverage for liability associated with this venture and the use of the above described property.

16. This agreement may be terminated upon the mutual written consent of both parties.

17. OPERATOR agrees to keep regular books of account and to render a statement at the end of each calendar year setting forth all income and expenses in sufficient detail to enable OWNER to fully understand the financial condition of the venture upon which a determination of profits is to be based and further agrees that OWNER shall be permitted to inspect such books and records from time to time during business hours, as contain any data material to the computation of profits, and to make copies thereof.

18. While OPERATOR is acknowledged to be considered an expert in the establishment and operation of orchards, it is understood by both parties that the success of such an operation is dependent on many factors both in and out of the control of the parties, and that OWNER is entering into this agreement in reliance on his own personal knowledge of the reputation of OPERATOR and not upon any information or promises of OPERATOR as to the expected performance of this venture. OWNER and OPERATOR acknowledge that the raising of fruit is a business which is controlled by outside forces. Therefore, neither party shall hold the other responsible for weather, labor or market problems. If either party shall claim the damages under this Agreement, the only cause of action against the other party is willful and wanton breach of the Agreement.

19. Failure of either party to comply with the agreement shall make him liable for damages to the other party. Any such claim by either party for such damages shall be presented in writing to the other party within 60 days after the non-compliance occurs. If satisfactory settlement regarding such a claim or any other dispute between the parties cannot be made by the parties, then the parties agree that they will arrange to have the dispute mediated by a competent mediator, and that if the parties are unable to mediate any such dispute or claim, then the parties further agree to submit all matters of dispute to a board of arbitrators comprised of three disinterested persons, one of whom shall be appointed by the OWNER, one by the OPERATOR, and the third by the two thus appointed. The decision of this board shall be binding on both parties to this agreement unless a matter of law or a sum exceeding \$50,000 is involved. Any costs for such arbitration or mediation shall be shared equally between

the two parties.

20. OWNER will grant OPERATOR first right of purchase requiring response within two weeks for the purchase of the PROPERTY in the event OWNER decides to sell the property during the contract period.

Talbott's Mountain Gold LLLP.  
(A Colorado Limited Liability Limited Partnership)

by \_\_\_\_\_  
OPERATOR

Date \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OWNER