

WHEN RECORDED RETURN TO:

Tri-Valley Conservancy
1457 First Street
Livermore, CA 94550

DEED OF PERPETUAL AGRICULTURAL CONSERVATION EASEMENT

This DEED OF AGRICULTURAL CONSERVATION EASEMENT (“Easement”) is entered into this ____ day of _____, 2011, by and between _____ (“Grantor”), and TRI-VALLEY CONSERVANCY, a California nonprofit public benefit corporation (“Grantee”).

A. Grantor is the sole owner of certain real property, located within the boundaries of the South Livermore Valley Area Plan, as adopted by the Board of Supervisors of the County of Alameda (“County”), California on February 23, 1993 (“SLVAP”). Said real property comprises 14.6 acres more or less and is more particularly described in Exhibit “A” attached hereto and incorporated herein (“Property”). A map depicting the location of the Property is set forth in Exhibit “B” attached hereto and incorporated herein.

B. The Property possesses significant agricultural, open space and scenic values (referred to collectively herein as “Conservation Values”) of great importance to the Grantor, the people of Alameda County, and the people of the State of California.

C. The Conservation Values of the Property, including the ability to support the agricultural use of the Property, are documented in an inventory of relevant features of the Property, which consists of reports, maps, photographs, a map of existing uses and other documentation that Grantor and Grantee agree provide collectively an accurate representation of the Property at the time of the execution of this deed, and which is intended to serve as an objective information baseline for purposes of monitoring

Initials _____

compliance with the express terms of this deed. This baseline documentation is identified in Exhibit "C", is on file at the offices of the Grantee, and is incorporated by reference herein.

D. In agreeing to accept the terms and conditions of this deed, Grantor hereby conveys a perpetual conservation and open space easement to insure that the Conservation Values of the Property be promoted, preserved and enhanced by engaging in land use practices permitted hereby, including those relating to farming, that will preserve and do not impair or interfere with those values.

E. Grantee is a publicly supported, tax-exempt nonprofit organization and a qualified organization under Sections 501(c)(3) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Internal Revenue Code"), whose primary purpose is the preservation, protection, or enhancement of land in its agricultural, open space and scenic condition.

F. Grantee agrees, by accepting this grant, to honor the intentions of Grantor stated herein to promote, preserve and enhance the agricultural potential and Conservation Values of the Property for the benefit of the people of the County of Alameda, and the people of the State of California, and agrees to accept the terms and conditions of this grant.

G. Grantor intends to develop the Property as permitted under the current SLVAP and the current County of Alameda Zoning Ordinance regulating the use of the Property (hereinafter referred to as the "Ordinance"). "Current" as used in this Recital G refers to the SLVAP and Ordinance in force and in effect on the date this Easement is recorded. Copies of the Ordinance are attached hereto and incorporated herein as Exhibit "G".

NOW, THEREFORE, in consideration of the facts recited above, and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of California, and in particular California Civil Code section 815 et seq., and any amendments or successor provisions thereto, Grantor hereby voluntarily grants and conveys to Grantee for valuable consideration, an agricultural conservation easement in perpetuity and in gross over the Property ("Easement"), of the nature and character hereinafter set forth.

1. Purpose. It is the purpose of this Easement to preserve forever the Conservation Values of the Property, as set forth in the foregoing recitals, and to prevent any use of the

Property that will impair or interfere with the Conservation Values. Grantor intends that this Easement will confine the use of the Property to those uses and activities which are consistent with the purpose and allowable by the terms and conditions of this Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee:

a. To preserve and protect the Conservation Values of the Property for the benefit of the general public in accordance with the SLVAP, which is on file in the offices of Grantee and is incorporated by reference herein.

b. To enjoin any activity or use of the Property that is inconsistent with the purpose and/or provisions of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

c. To enter upon the Property at reasonable times in order to (i) conduct annual monitoring inspections and tests and other reasonable activities as may be deemed appropriate by Grantee to monitor Grantor's compliance with the terms of this Easement, and (ii) enforce the terms of this Easement as may be authorized by paragraph 4 herein; provided, however, that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property subject to the terms hereof.

d. Subject to Grantor's consent, not to be unreasonably withheld or delayed, to erect and maintain a sign or other appropriate marker in a prominent location on the Property as determined by Grantee, visible from a public road, bearing information indicating that the Property is protected by Grantee. The wording of this information shall be determined by Grantee, but shall clearly indicate that the Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining such sign or marker.

3. Activities and Uses.

a. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited in perpetuity. Without limiting the generality of the foregoing, Exhibit "D", attached hereto and incorporated herein, sets forth activities and uses regarding the Property which are consistent with the conservation purpose of this Easement, and which are hereby expressly permitted and, subject to the provisions of paragraph 5 hereinbelow, any permitted use described in Exhibit D shall not require the prior approval of Grantee; and Exhibit "E", attached hereto and incorporated herein, sets forth activities and uses regarding the Property which are inconsistent with the conservation purpose of this Easement, and which are hereby expressly forbidden. The activities and uses set forth in both Exhibits D and E are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities and to provide guidance in determining the consistency of other activities and uses with the conservation purpose of this Easement, and Grantee expressly reserves the right to determine, on a case-by-case basis, whether a specific activity or use of the Property is permitted. Any activities and uses not specified in Exhibit D shall require prior approval of Grantee.

b. In cases where Grantee's approval or consent is required hereunder, such approval or consent shall be based upon compliance with the provisions of this Easement and the likely effect of the proposed activities and uses upon the Conservation Values protected by this Easement. Grantee's decision on a request for approval shall be based on the specific activities and uses in question without following or establishing precedent. Approval or disapproval shall be at the sole discretion of Grantee and may be granted upon conditions which further the purposes of this Easement. In exercising its sole discretion under the easement, Grantee shall consider at a minimum whether the proposed activity, use or facilities will diminish or impair the Conservation Values (including, but not limited to, the agricultural productive capacity and open space character of the Property), and shall not grant such consent unless Grantor demonstrates to Grantee's satisfaction that such diminution or impairment shall not occur.

c. In the event Grantor is required to solicit the approval or consent of Grantee pursuant to this Easement, Grantor shall submit to Grantee a written description of the proposed activities and uses, including information of its size, function, capacity, duration and location ("proposed use report") no later than sixty (60) days prior to the proposed commencement of the proposed activities and uses. If a permit is required from any governmental entity for the activities and uses, the Grantor shall submit the proposed use

report to the Grantee within five days of filing an application for said permit. Grantee shall issue its written approval, disapproval, consent, or refusal of consent, together with a written statement of explanation if Grantee has disapproved or refused to consent to the proposed use, within forty-five (45) days of the receipt of Grantor's written request. Grantee's failure to respond shall be deemed to be a refusal of consent but in such event Grantee shall, within twenty (20) days of Grantor's request, provide a written statement of explanation for Grantee's disapproval or refusal to consent. Upon the completion of the proposed activities and uses, Grantee shall, at the request of Grantor or Grantee, inspect the Property and, if the activities and uses were performed in accordance with the terms of this Easement and the approvals or consents issued by Grantee hereunder, issue a certificate to that effect, dated as of the time of inspection.

4. Grantee's Remedies.

a. If Grantee determines that Grantor is in violation of the terms of this Easement, or that a violation is threatened (hereinafter collectively "the violation"), the Grantee shall give written notice to the Grantor of such violation and demand reasonable corrective action sufficient to cure the violation. Where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, the Grantee may require reasonable corrective action to restore the portion of the Property so injured. If Grantor: (i) fails to cure the violation within thirty (30) days after receipt of notice thereof from the Grantee; (ii) under circumstances where the violation cannot reasonably be cured within thirty (30) days, fails to begin curing such violation within the thirty (30) day period; or (iii) fails to continue diligently to cure such violation until finally cured, then the Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary and pursuant to applicable statutes and rules of court, by temporary or permanent prohibitory or mandatory injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of

the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; Grantor further agrees that Grantee shall not be required to post any bond in excess of \$10,000 in any action or proceedings pursuant to this paragraph.

b. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph without the requirement of prior notice to Grantor or without waiting for the period provided for the cure to expire; provided, however, that Grantee shall attempt in good faith to provide such written or oral notice as Grantee may deem reasonable under the circumstances, but in no event later than ten (10) days after the date of entry onto the Property. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; Grantor further agrees that Grantee shall not be required to post any bond in excess of \$10,000 in any action or proceedings pursuant to this paragraph.

c. Grantee's remedies described in this paragraph 4 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

d. Any mortgagee of the Property which wishes to receive notices of violations from Grantee pursuant to subparagraph 4.a may provide written notice to Grantee in accordance with the provisions of paragraph 24 requesting such notice. Grantee shall provide to any such requesting mortgagee the same notice as provided to Grantor of any violations of the terms of this Easement, and shall provide to any such mortgagee the same opportunity to cure the specified violation as is provided to Grantee under this Easement. Failure to so notify any such mortgagee shall not give rise to any liability on the part of Grantee and shall not limit Grantee's rights to bring an action pursuant to subparagraph 4.a. Any such mortgagee of the Property shall not be required to cure the specified violation; nor shall such mortgagee be liable for any damages for any violation by Grantor, including any costs of enforcement as set forth in paragraph 23 herein. For the purpose of this paragraph, mortgagee shall be defined as any person,

corporation, trust, partnership or entity having a legal or beneficial interest in the Property.

5. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Notwithstanding any other provision of law, all waivers must be express and in writing.

6. Reserved Rights. Grantor reserves for itself, and its personal representatives, heirs, successors, transferees and assigns, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are consistent with the purpose, provisions and restrictions of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. The permitted activities and uses contained in Exhibit D herein;
- b. All interest in, and right and title to all tributary and non-tributary water, water rights, and related interest in, on, under or appurtenant to the Property provided that such rights shall not be severed, sold or encumbered separately from title to the Property, and subject further to the limitations contained in paragraph 6 of Exhibit E herein;
- c. All interest in, and right and title to subsurface oil, gas and minerals, subject to the limitations contained in Exhibit E herein;
- d. The right to exclude trespassers from the Property and the right to lease an interest in the Property to others or to sell the Property (but not the right to create or suffer a legal or de facto subdivision of, or otherwise sell, transfer, or convey portions of the Property), subject to the restrictions set forth in this Easement and any and all applicable provisions of law;
- e. The right to plant, raise and harvest agricultural crops, and grazing and raising livestock, by the use of sound, generally acceptable agricultural practices, subject to the limitations contained in Exhibit E herein;

f. The right to utilize the Property for noncommercial and nonprofit recreational, educational, and other nonagricultural purposes, so long as such uses (such as hunting, fishing, hiking and equestrian trail riding) do not disturb or alter the current physical characteristics of the Property or require surface disturbance or alteration or other development of the Property, except as may otherwise (i) be expressly permitted pursuant to the provisions of this Easement or (ii) be approved by Grantee which approval shall not be unreasonably withheld.

g. All remaining rights associated with the Property (including any present or future density credits or development rights or the right to install or operate solar energy systems on the Property) other than those expressly reserved by Grantor in this Easement, are hereby conveyed by Grantor to Grantee and shall not be applied to or utilized by Grantee for development on the Conservation Property unless expressly authorized in this Easement.

h. Subject to the provisions of this Easement, Grantor shall have the rights and remedies available to it under the law.

7. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, prescription, unclean hands or the doctrine of changed circumstances.

8. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and/or earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property and structures on the Property resulting from such causes; provided, however, that nothing in this paragraph shall be construed to waive Grantor's obligation to maintain the Property in a safe and habitable condition consistent with the terms of this Easement.

9. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

10. Condition of Title. Except for the exceptions to title insurance set forth in the policy of title insurance issued to Grantee at the time of execution and recordation of this Easement, Grantor covenants that the Property is, at the time of execution and recordation

of this Easement, free and clear of all liens, encumbrances, assessments, easements, leases (recorded and unrecorded), and taxes.

11. Subordination. Any financing lien or encumbrance on the Property shall be subordinate to this Easement.

12. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs related to the ownership, operation, upkeep, and maintenance of adequate comprehensive general liability insurance coverage. Without limiting the foregoing, for a period of at least five (5) years commencing upon the recordation of this Easement, Grantor shall keep the Property free of any mechanics' liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor which may result in a mechanics' lien or lis pendens being recorded against the Property.

13. Real Property and Possessory Interest Taxes. Grantor shall pay before delinquency all real property and possessory interest taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement (collectively referred to herein as "Taxes"). Upon request by Grantee, Grantor shall furnish that Grantee with evidence satisfactory to it that such Taxes have been paid.

14. Hold Harmless. Grantor shall hold harmless, indemnify and defend Grantee and its respective officers, directors, governing members, employees, contractors, partners, insurers, attorneys, agents, personal and legal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, orders, liens, charges, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with:

- a. Injury to or the death of any person or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, and including any liability for any active or passive negligence of any of the Indemnified Parties arising out of or related to the administration of this Easement, unless due to the sole negligence or willful misconduct of any of the Indemnified Parties
- b. The obligations specified in paragraphs 12 and 13 herein; and
- c. Any claim based on the existence or good faith administration of this Easement.

15. Hazardous Materials

a. Grantor warrants and represents to Grantee, which warranties and representations shall survive the termination of this Easement, that to the best of Grantor's knowledge, and except as disclosed by Grantor to Grantee in writing prior to the date hereof, (i) no material (hereinafter collectively "Hazardous Materials") regulated under any applicable environmental, hazardous waste, and/or health and safety laws, statutes or regulations, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100-25600), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.), and any and all amendments, modifications, successor and related statutes, regulations, rules and ordinances thereto (hereinafter collectively "Applicable Laws"), has been used, generated, manufactured, placed, stored, treated, released, disposed, or discharged on the Property in violation of any of the Applicable Laws; (ii) none of Grantor's operations on or at the Property are the subject of any federal, state, county, municipal or other governmental or quasi-governmental investigation evaluating whether any remedial action involving a material expenditure is needed to respond to a release of any toxic or hazardous waste or substance into the environment; and (iii) Grantor has no material contingent liability in connection with any release of any toxic or hazardous material or substance into the environment. Notwithstanding any other provision of this Easement, the term "Hazardous Materials" shall not include any material customarily used and legally permitted for agricultural or residential purposes, which material is used in customary quantities and in accordance with label instructions and Applicable Laws.

b. Grantor further warrants and represents to Grantee, which warranties and representations shall survive the termination of this Easement, that neither Grantor, nor any of its successors or assigns (including, by way of example but not limitation, lessees, subleases, occupants, or, subject to the provisions of paragraph 26.g of this Easement, purchasers of all or a portion of or interest in the Property) shall in violation of any of the

Applicable Laws use, generate, manufacture, place, store, treat, release, dispose or discharge any Hazardous Materials on the Property, or cause or suffer any such activity to occur, in violation of any of the Applicable Laws.

c. Grantor hereby releases and agrees to defend, indemnify and hold Grantee and its respective officers, directors, governing members, employees, contractors, partners, insurers, attorneys, agents, personal and legal representatives, successors and assigns, harmless from and against any and all liabilities, losses, claims, costs, demands, penalties, orders, charges, liens and expenses (including reasonable attorneys' fees and costs) whatsoever, unless due to the sole negligence, wilful misconduct, or affirmative acts of Grantee, regardless of by whom or when asserted, arising out of, connected with or relating to (i) any such use, generation, manufacture, placement, storage, treatment, release, disposal, discharge, or contamination in violation of the foregoing warranties and representations; (ii) any violation or alleged violation of, or other failure or alleged failure to comply with any of the Applicable Laws; or (iii) any investigation and/or remediation of any Hazardous Material; which agreement includes the obligation to provide upon demand a defense for Grantee, against any demand, claim, liability, litigation, claim, investigation, and/or order for remediation, with counsel reasonably satisfactory to Grantee. The obligations of Grantor hereunder shall include, but not be limited to, investigation and remediation activities with respect to any known or suspected Hazardous Materials, liabilities arising out of any investigation or remediation with respect to Hazardous Materials and any damages claimed by any third party or parties, including claims for personal injury and/or property damage, arising from or relating to any Hazardous Materials, the violation by Grantor of any of the warranties and representations set forth above, or from the investigation, remediation, or other actions of Grantor.

16. Amendment. If circumstances arise under which an amendment to or modification of this Easement is appropriate, Grantor and Grantee may jointly amend this Easement. Any such amendment shall be consistent with the purposes of this Easement and with the Grantee's Easement Amendment Policy; provided that no amendment shall be allowed that will affect the qualification of this Easement under any applicable laws, including, but not limited to, California Civil Code Section 815.1 and Internal Revenue Code sections 501(c)(3) and 170(h) and any amendments or successor provisions thereto, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the County Recorder for the County of Alameda, California at the expense of the party requesting the amendment.

17. Termination of Easement. The parties agree that it is the intent of this Easement to run with the land in perpetuity. If, however, circumstances arise in the future such as to render the purposes of this Easement impossible to accomplish, this Easement may be terminated, in whole or in part, only by judicial proceedings in a Court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from such sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment shall be determined, unless otherwise provided by California law at the time, in accordance with paragraph 18. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Easement. However, Grantor and Grantee intend that this Easement shall not be terminated as a result of circumstances such as a change in the surrounding land uses, changed agricultural practices, the non-availability of water, or any combination thereof, or any such other change in conditions relating to the Property or the property surrounding or adjacent to the Property.

18. Compensation. This Easement constitutes a real property interest immediately vested in Grantee. For the purpose of paragraph 17 (concerning termination of Easement) the parties stipulate that this Easement has a fair market value determined by multiplying (i) the fair market value of the Property unencumbered by this Easement (minus any value attributable to improvements) by (ii) the ratio, expressed as a percentage, of the value of this Easement at the time of this grant to the value of the Property (minus any value attributable to improvements) unencumbered by this Easement at the time of this grant. For the purposes of this paragraph 18, Grantor and Grantee agree that the ratio of the value of the Easement to the value of the Property (minus any value attributable to improvements) unencumbered by this Easement is 67% (sixty-seven percent). This ratio shall remain constant for twenty (20) years from the date this Easement is recorded after which date all values shall be determined by appraisal.

19. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantee shall be entitled to compensation in accordance with the ratio set forth in paragraph 18. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered.

20. Transfer of Easement.

This Easement may only be assigned or transferred to a private nonprofit organization that, at the time of transfer, is a “qualified organization” under section 170(h) of the U.S. Internal Revenue Code and under section 815.3(a) of the California Civil Code and has similar purposes as Grantee to preserve agricultural lands and open space. If no such private nonprofit organization exists or is willing to assume the responsibilities imposed by this Easement, then this Easement may be transferred to any public agency authorized to hold interests in real property as provided in section 815.3(b) of the California Civil Code. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibilities imposed on the Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the purpose for which it was created. All transfers shall be duly recorded.

If the Grantee should desire to transfer this Easement, the Grantee must obtain written permission from the Grantor which permission shall not be unreasonably withheld.

If the Grantee or its successors ever ceases to exist or no longer qualifies under section 170(h) of the U.S. Internal Revenue Code, or applicable state law, the California Department of Conservation, in consultation with Grantor, shall identify and select an appropriate private or public entity to whom this Easement shall be transferred.

21. Subsequent Transfers. Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, but not limited to leasehold interests. Grantor further agrees to give written notice to Grantee, in accordance with the provisions of paragraph 24, of the transfer of any interest in all or any portion of the Property within thirty (30) days after the transfer. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. This Easement shall be recorded, and any transferee of title to all or any portion of the Property shall take title subject to the terms of this Easement, whether or not the Easement is specifically referred to in the deed or other instrument of conveyance.

22. Estoppel Certificates. Upon request by any Party, the others shall execute and deliver an estoppel certificate which certifies the requesting party’s compliance with any obligation contained in this Easement and otherwise evidences the status of this Easement.

23. Costs of Enforcement. Any costs incurred in enforcing the terms of this deed including costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement (including costs of routine monitoring compliance) from such time as the violation was first identified through completion, to the satisfaction of Grantee, of any required restoration, shall be borne by Grantor.

24. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other party shall be in writing and may be served in any one of the following ways: personally, by certified mail, return receipt requested, or by overnight delivery, such as Federal Express, addressed as follows:

To Grantor:

Name
Street Address
City, State Zip Code

To Grantee:

Tri-Valley Conservancy
1457 First Street
Livermore, CA 94550

with a copy to:
(which copy shall not
constitute notice)

TAMARA GALANTER
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102

or to such other address as any party from time to time shall designate by written notice to all other parties, and to the addresses of Grantor's bona fide lenders as Grantor shall designate by written notice to Grantee. Such notice shall be deemed to be effective when received if served personally or sent via Federal Express, and seven days after being deposited in the mail.

25. Recordation. Grantee and Grantor shall work together to ensure that this instrument is recorded in a timely fashion in the official records of the County Recorder

for the County of Alameda, California. The instrument may be re-recorded at any time as may be required to preserve rights in this Easement.

26. Dispute Resolution.

a. When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to this Easement, each party shall first consult with the other party in good faith about the issue and attempt to resolve the issue without resorting to mediation or legal action.

b. Grantor and Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation. Mediation is therefore the parties' preferred dispute resolution procedure when circumstances do not require Grantor or Grantee to seek immediate injunctive relief from the courts. In the event of any dispute between Grantor and Grantee over the meaning, requirements, interpretation, or implementation of the Easement, Grantor or Grantee may refer the dispute to mediation by written request served upon the other party. The non-requesting party shall have ten (10) days after receipt of a mediation request to consent thereto or refuse to mediate the dispute. Within ten (10) days after Grantor and Grantee agree to mediation of a dispute, the parties shall mutually select a mediator. Mediation hearings shall remain informal, with each party being permitted to present such facts and evidence as it may reasonably believe supports that party's position. Costs and expenses of mediation shall be divided equally between Grantor and Grantee; provided, however, that each party shall pay its own attorneys' fees.

27. General Provisions.

a. Controlling law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

b. Liberal construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of California Civil Code Section 815. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to any person or circumstance other than those as to which it has been found to be invalid, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior understandings, discussions, negotiations, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 16 herein.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal heirs, representatives, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. All such heirs, representatives, successors and assigns shall be bound to every provision in this Easement, whether or not this Easement is referred to in the instrument by which such heirs, representatives, successors or assigns acquire an interest in the Property.

g. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. Cooperation. The parties agree to cooperate in good faith with each other in the administration of this Easement. Each party hereto will, upon the reasonable request of the other party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Easement.

j. Warranty of Authority. Each person executing this Easement on behalf of a party represents and warrants that such person is duly and validly authorized to do so, has full right and authority to enter into this Easement and all of its obligations hereunder.

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SAMPLE

IN WITNESS WHEREOF, Grantor and Grantee have executed this agreement effective as of the date first above written.

GRANTOR:

NAME

Date

Signature

NAME

Date

Signature

GRANTEE:

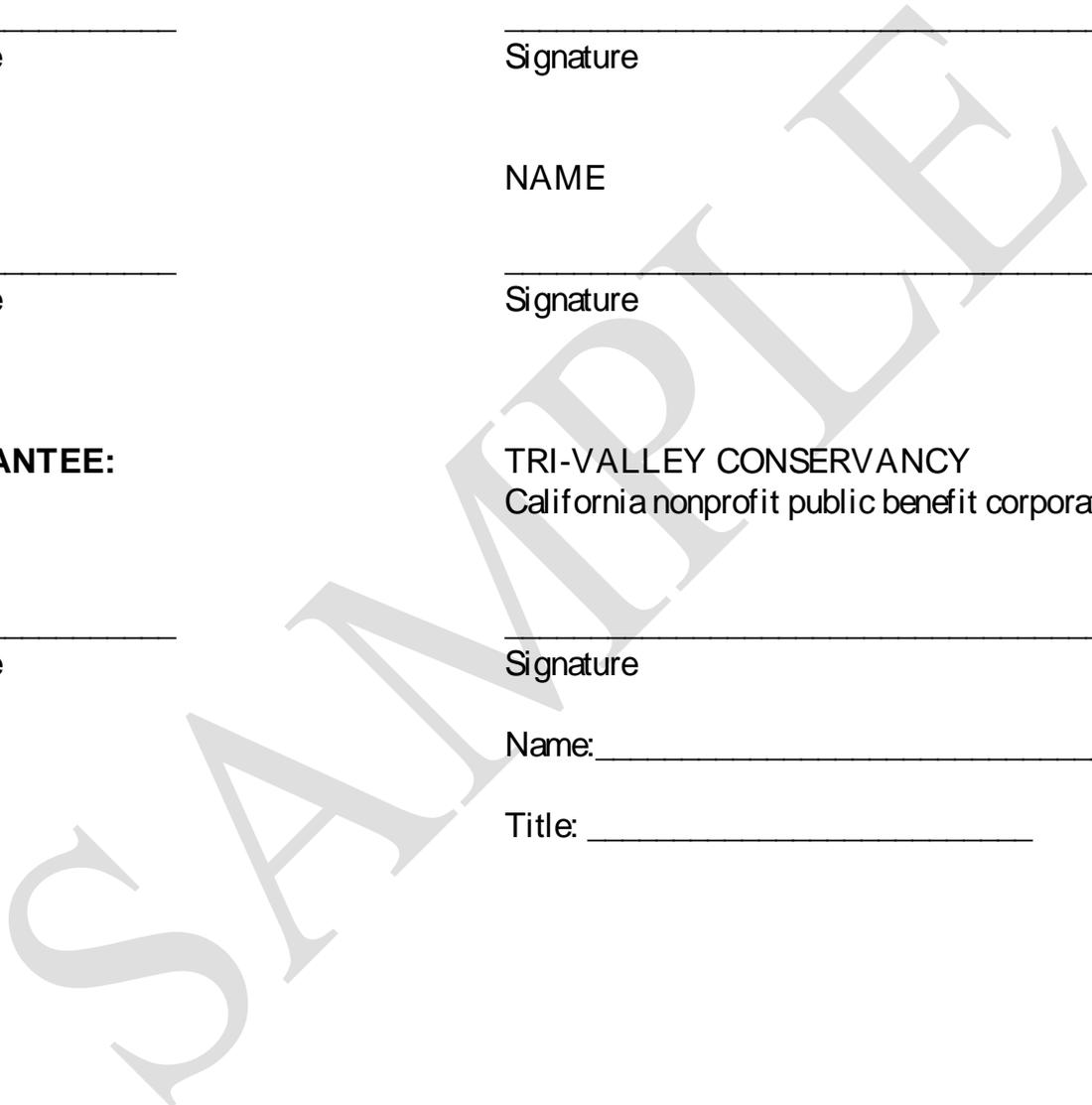
TRI-VALLEY CONSERVANCY
California nonprofit public benefit corporation

Date

Signature

Name: _____

Title: _____



EXHIBITS

Exhibit A: Legal Description and Map of Property

Exhibit B: Location and Area Map

Exhibit C: Baseline Conditions

Exhibit D: Permitted Activities and Uses

Exhibit E: Prohibited Activities and Uses

Exhibit F: Legal Description and Map of Building Envelope.

Exhibit G: County of Alameda Zoning Ordinance in effect at time of recordation of Easement

SAMPLE

Exhibit A

Legal Description and Map of Property

SAMPLE

Exhibit B

Location and Area Map

SAMPLE

Exhibit C

Baseline Report

Copy available at the Tri-Valley Conservancy office

SAMPLE

Exhibit D

Permitted Activities and Uses

SAMPLE

EXHIBIT D
Page 1 of 3

PERMITTED ACTIVITIES AND USES

The following activities and uses are expressly permitted under this Easement, and they are not to be precluded, prevented, or limited by this Easement.

1. To reside on the Property, including all uses ancillary to residing on the Property, within the building site envelope identified in Exhibit F of this Easement and consistent with the provisions of paragraph 4 below.
2. To engage in uses or activities directly relating to the agricultural use of the Property. For purposes of this Easement, uses or activities directly relating to the agricultural use of the Property must involve or be necessary for planting, raising, irrigating, harvesting, or producing agricultural, viticultural, aquacultural, and horticultural or forestry crops and products, including fallowing of land for such purposes. Such uses or activities may not include (a) the establishment or maintenance of any commercial feedlot which is defined for the purposes of this Easement as a confined area or facility within which land is not grazed or cropped at least annually and which is used to receive and feed livestock that have been raised off the Property or (b) uses that are prohibited pursuant to Exhibit E.
3. To maintain and repair existing fences, roads, ditches, and other improvements on the Property in substantially their present location and size.

Exhibit D
Page 2 of 3

4. To construct additional improvements, with the approval of appropriate governmental agencies, provided that all such improvements are located within the building site envelope identified in Exhibit F of this Easement and are consistent with the purpose of this Easement and in compliance with the policies of the SLVAP and with the Ordinance regulating the use of the Property at the time of recordation of this Easement, attached hereto and incorporated herein as Exhibit G. The building site shall contain (a) all residential structures and appurtenant uses, including but not limited to: homes, garages, gazebos, swimming pools, patios and driveways; (b) structures intended for the primary processing, storage, sale, including direct retail sale to the public, of crops and products harvested or produced on the Property, including but not limited to wineries, tasting rooms, olive oil mills or access roads from a public right-of-way to such structures; and (c) any structures necessary for any other permitted use. Grantor shall maintain the ground markers documenting the boundaries of the building site envelope. Grantor shall provide notice to Grantee of its intent to construct additional improvements not less than five days after filing an application for any permit required from any governmental entity for the proposed improvements or not less than 60 days prior to the commencement of construction, whichever comes first. Such notice shall demonstrate that the location of all additional improvements is within the building site envelope.

5. Additional structures, facilities and roads directly related and reasonably necessary to the agricultural uses of the Property, with the exception of those improvements listed in the preceding Paragraph 4 herein, may be constructed outside of the building site envelope identified in Exhibit F, provided that Grantor obtains the express written approval of Grantee, in accordance with paragraph 3.b and 3.c of this Easement, for the construction of such additional structures, which consent shall not be unreasonably withheld. Under no circumstances shall any prohibited activity or use listed in Exhibit E be approved. The purpose of requiring written approval is to afford the Grantee an opportunity to ensure that any construction outside of the building site envelope identified in Exhibit F does not have a significant adverse impact upon the Conservation Values. Additional fencing deemed by Grantor to be reasonably necessary for agricultural activities may be constructed without Grantee's consent. In the event of destruction, deterioration or obsolescence of any improvements, structures, housing, fences, roads or ditches, whether existing at the date of this Easement or constructed subsequently pursuant to the provisions of this paragraph, Grantor may replace the same with improvements or structures of similar size, function, capacity and location in a manner

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that is not inconsistent with the Conservation Values of this Easement.

6. To develop and maintain such water resources on the Property as are necessary or convenient for agricultural, irrigation, and residential uses in a manner consistent with the purpose of this Easement.

7. To use agrichemicals, including, but not limited to, fertilizer and biocides in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes and subject to paragraph 15 of this Easement concerning Hazardous Materials.

8. To control predatory and problem animals by the use of selective control techniques and subject to paragraph 15 of this Easement concerning Hazardous Materials.

9. To utilize the Property for noncommercial and nonprofit, recreational, educational, and other nonagricultural purposes, so long as such uses (such as hunting, fishing, hiking, and equestrian trail riding) do not disturb or alter the current physical characteristics of the Property, require surface alteration or other development of the Property, except as may otherwise be (a) expressly permitted pursuant to the provisions of this Easement or (b) approved by Grantee, which approval shall not be unreasonably withheld.

Exhibit E

Prohibited Activities and Uses

SAMPLE

EXHIBIT E
Page 1 of 2

PROHIBITED ACTIVITIES AND USES

Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited in perpetuity. Without limiting the generality of the foregoing, the following activities and uses are inconsistent with the purposes of this Easement and are expressly prohibited in perpetuity:

1. The legal or de facto subdivision, or other transfer or sale of any portion thereof or interest therein, of the Property for any purpose; provided, however, that the following shall not be prohibited by this paragraph: (a) a lease of a portion of the Property for agricultural use; or (b) the transfer or sale of all of the Property.
2. The construction, reconstruction, or replacement of any structure, facility or road, except as provided in Paragraphs 3, 4 and 5 of Exhibit D of this Easement.
3. The establishment of residential, commercial or industrial uses outside of the building site envelope described in Exhibit F of this Easement; provided, however, that agricultural uses, as contemplated by the provisions of Exhibit D, shall not be considered commercial or industrial uses.
4. The filling, dumping, excavating, draining, dredging, mining, drilling, removing, or the exploring for or extracting of minerals, hydrocarbons, soils, sands, gravel, rock or any other material on or below the surface of the Property that is not directly related to accepted agricultural practices, except the extracting of water on or below the surface of the Property.
5. The dumping or other disposal of wastes, refuse, or debris on the Property, except for organic material generated or used for permitted agricultural uses on the Property.
6. Any uses or activities which would pollute or degrade the surface or sub-surface waters on or underlying the Property, except such uses or activities consistent with generally accepted, sound agricultural practices or otherwise permitted pursuant to this Easement.
7. Any use or activity that causes substantial degradation of topsoil quality.
8. Any commercial or for-profit recreational, educational or other nonagricultural use

that disturbs or alters the current physical characteristics of the Property or requires surface alteration or other development of the Property, except as may otherwise be expressly permitted pursuant to the provisions of this Easement.

9. Any activity or use that would be detrimental to the trees located on the Property identified on the reference map in Exhibit C to this Easement. Such uses and activities include but are not limited to the future planting of agricultural crops within four feet of the leaf canopy edge of any such tree, and soil compaction and summer watering within four feet of the leaf canopy edge of any such tree, except as necessary for the maintenance of agricultural crops existing at the time of recordation of this Easement as shown in Exhibit C. Notwithstanding the foregoing, any such trees may be removed or cut only with the prior review and approval of Grantee where (a) Grantor has provided documentation from a qualified arborist finding that the tree is no longer viable and cannot be restored; or (b) Grantor demonstrates the tree threatens human life or property. Where Grantee approves removal of the tree, Grantor shall replace the removed tree with a native tree, provided however the replacement of the tree shall not impair the agricultural value of the Property. All restrictions identified in this paragraph shall also apply to any and all replacement trees.

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Exhibit F

Legal Description and Plat Map of Building Envelope

SAMPLE

Exhibit G

COUNTY OF ALAMEDA ZONING ORDINANCE IN
EFFECT AT TIME OF RECORDATION OF EASEMENT

SAMPLED

Exhibit G

**COUNTY OF ALAMEDA ZONING ORDINANCE PROVISIONS
REGULATING USES ON THE PROPERTY AT TIME OF RECORDATION OF
EASEMENT**

In addition to the other limits specified in Exhibit D of this Easement, improvements permitted within the building site envelope identified in Exhibit F are limited to those specified in the following portions of Chapter 17.06 of the County of Alameda Zoning Code, subject to the provisions of Section 17.30.170.F of the County of Alameda Zoning Code's CA combining district, also set forth below:

Chapter 17.06 A Districts

Section 17.06.030 Permitted uses.

The following principle uses are permitted in an A district:

- A. On a building site, one one-family dwelling or one-family mobile home either constructed after September 15, 1971, and issued an insignia of approval by the California Department of Housing and Community Development and permanently located on a permanent foundation system, or constructed after July 15, 1976, and issued an insignia of approval by the U.S. Department of Housing and Urban Development and permanently located on a foundation system;
- B. Crop, vine or tree farm, truck garden, plant nursery, greenhouse apiary, aviary, hatchery, horticulture;
- C. Raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals;
- D. Grazing, breeding or training of horses or cattle;
- E. Winery or olive oil mill;
- F. Fish hatcheries and rearing ponds;
- G. Public or private riding or hiking trails;
- H. One secondary dwelling unit per building site on parcels twenty-five (25) acres in size or larger that are zoned for not more than one dwelling and have one but no more than one dwelling unit on the parcel subject to the following requirements:
 - 1. The secondary dwelling unit shall be on the same building envelope as the primary unit;
 - 2. On parcels less than one hundred (100) acres, the secondary dwelling unit shall be no larger than two thousand (2,000) square feet in area; on parcels one hundred (100) acres or larger the secondary dwelling unit shall be no larger than two thousand five hundred (2,500) square feet in area;
 - 3. The secondary dwelling unit shall be subject to site development review pursuant to Section 17.54.210 et seq.; and
 - 4. The secondary dwelling unit shall be subject to and consistent with the provisions of the county policy on secondary dwelling units in agricultural and rural residential areas.

Notwithstanding the requirements of Section 17.54.220, for secondary units on parcels that are less than one hundred (100) acres in size, the planning commission shall decide applications for site development review under this section, and a public hearing is required. (Ord. 99-2 § 1; Ord. 93-33 § 2 (part); prior gen. code § 8-25.2)

Section 17.06.035 Conditional uses--Planning commission.

The following are conditional uses and shall be permitted in an A district only if approved by the planning commission, sitting as a board of zoning adjustments, as provided in Sections 17.54.135 and 17.06.010.

- A. Sanitary landfill not to include processing salvaged material;
- B. Flight strip;
- C. Cemetery;
- D. Composting facility. (Ord. 2000-53 § 1 (part); Ord. 99-26 § 1 (part))

Section 17.06.040 Conditional uses--Board of zoning adjustments.

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses and shall be permitted in an A district only if approved by the board of zoning adjustments, as provided in Sections 17.54.130 and 17.06.010:

- A. Additional dwellings for persons employed in the agricultural use of subject property and the families of those persons, and/or living quarters for farm laborers, when found by the board of zoning adjustments to be necessary to the farming operation;
- B. Outdoor recreation facility;
- C. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;
- D. Public or private hunting of wildlife or fishing, and public or private hunting clubs and accessory structures;
- E. Packing house for fruit or vegetables, but not including a cannery, or a plant for food processing or freezing;
- F. Flight strip when accessory or incidental to a permitted or conditional use;
- G. Hog ranch;
- H. Drilling for and removal of oil, gas or other hydrocarbon substances;
- I. Radio and television transmission facilities;
- J. Public utility building or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard;
- K. Boarding stables and riding ac
- L. Administrative offices accessory to the principal use on the premises including activities by the same occupancy which are not related to the principal use providing such activities not so related are accessory to the administrative office activity;
- M. Occupancy of one mobile home by persons directly related to an on-site agricultural pursuit on a parcel containing a minimum of one hundred (100) acres where there is no single-family dwelling or on a parcel containing a minimum of two hundred (200) acres where it can be demonstrated that security cannot be obtained by existing single-family dwelling occupancy; provided, however, that no such

conditional use permit shall be issued for a period to exceed three years;

- N. Administrative support and service facilities of a public regional recreation district;
- O. Privately owned wind-electric generators;
- P. Remote testing facility;
- Q. Winery or olive oil mill related uses. (Ord. 2002-60 § 1 (part); Ord. 2000-53 § 1 (part); Ord. 99-26 § 1 (part); Ord. 94-40 § 1; Ord. 3-33 § 2 (part); prior gen. code § 8-25.3)

Section 17.06.050 Accessory uses.

When located in an A district, and subordinate to a lawful use, the following accessory uses, in addition to those normally accessory to a dwelling are permitted:

- A. Farm buildings, including stable, barn, pen, corral, or coop;
- B. Building or room for packing or handling products raised on the premises;
- C. Killing and dressing of poultry, rabbits and other small livestock raised on the premises, but not including an abattoir for sheep, cattle or hogs;
- D. Stand for the sale at retail of items produced or raised on the premises having a ground coverage not in excess of four hundred (400) square feet;
- E. Accessory business signs not exceeding an aggregate area of twenty (20) square feet; having no moving parts or illumination;
- F. Administrative office, maintenance building, when accessory to a principal use permitted by Section 17.06.0400. (Prior gen. code § 8-25.4)

Section 17.30.170 CA combining district-- Regulations.

In a CA combining district, the regulations shall remain the same as the regulations in the A (agricultural) district with which it is combined, except as follows:

- F. CA District--Conditional Uses.
 - 1. The following uses, otherwise conditionally allowed by the A (agricultural) district, are neither permitted nor conditional uses where the A district is combined with the CA district:
 - a. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;
 - b. Flight strip when accessory or incidental to a permitted or conditional use, unless such a conditional use permit has been previously approved on subject property for such use;
 - c. Cemetery, crematory, or other facility for the disposal of human or animal dead, pet cemetery;
 - d. Hog ranch;
 - e. Radio and television transmitters, when a conditional use permit has been previously approved on subject property for such use;
 - f. Sanitary landfill or composting facility;
 - g. Privately owned wind-electric generators, except as an accessory use.
 - 2. In addition to the conditional uses in the A (agricultural) district with which it is combined, the following are conditional uses in the CA combining district and shall be permitted only if approved by the board of zoning adjustments as provided in Section 17.54.130:

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- a. Bed and breakfast establishment, if conducted within an existing or permitted dwelling: maximum of fourteen (14) rooms available for guests;
- b. Restaurant, with seated service only, and a maximum of forty-nine (49) permanent indoor seats, that features agricultural products of the South Livermore Valley Area;
- c. Bicycle rental;
- d. Other small scale recreational uses found by the board of zoning adjustments to be consistent with the intent of the South Livermore Valley Area Plan.

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SAMPLE