LAND CONSERVATION CONTRACT NO. 71-47-1
AMENDMENT TO LAND CONSERVATION CONTRACT No. 71-47

THIS CONTRACT is made and entered into as of the last date opposite the respective signatures, or October 18, 2011, whichever date occurs first, by and between the COUNTY OF MONTEREY, a political subdivision of the State of California, hereinafter called "County" and JACK BARBIERI, DANIELLE BARBIERI and DAVID C. BARBIERI, hereinafter called "Owner."

WITNESSETH:

WHEREAS, Owner possesses certain real property located within the County of Monterey, State of California, which is presently devoted to the production of food and fiber and is described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the property is located in an Agricultural Preserve (No. 71-47) heretofore established by County by Resolution No. 71-14-47; and

WHEREAS, Agricultural Preserve No. 71-47 and LAND CONSERVATION CONTRACT NO. 71-47 are hereby amended pursuant to Board of Supervisors Resolution No. 2011- adopted by the Board of Supervisors on October 18, 2011 as applicable to the real property described in Exhibit "A"; and

WHEREAS, pursuant to Application No. PLN110238 on file with the Monterey County Planning Department, Owner has submitted a request to shorten the term of LAND CONSERVATION CONTRACT NO. 71-47 from a twenty (20) year term to a ten (10) year term and to revise the corresponding Owner Initiated Notices of Non-Renewal on file with the County Recorder to provide for a ten (10) year non-renewal period and to relate back to the original recording date of the Owner Initiated NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 recorded with the County Recorder on August 30, 2002; and

WHEREAS, the property is subject to an Owner Initiated NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 on file with the County Recorder as DOCUMENT NO. 2002080670 recorded with the County Recorder on August 30, 2002 (Original Notice of Non-Renewal); and,

WHEREAS, the property is subject to an Owner Initiated AMENDED NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 on file with the County Recorder as DOCUMENT 2004137145 recorded with the County Recorder on December 28, 2004 (collectively referred to as "Notices of Non-Renewal"); and

WHEREAS, Owner and County desire to shorten the term of LAND CONSERVATION CONTRACT NO. 71-47 from twenty (20) years to ten (10) years, as it applies to the real property described in the Legal Description, attached hereto as Exhibit "A" commonly known as the "Barbieri" property, Assessor’s Parcel Number 137-161-015-000, +/- 11.8 acres; and

WHEREAS, Owner and County desire to shorten the term of the corresponding Notices of Non-Renewal for Land Conservation Contract No. 71-47 to relate back to the original recording date of the Owner Initiated NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 on file with the County Recorder as DOCUMENT NO. 2002080670 recorded with the County Recorder on August 30, 2002 as it applies to the real property described in Exhibit "A"; and
WHEREAS, the property was the subject of a Lot Line Adjustment of Williamson Act lands approved by the Board of Supervisors pursuant to Resolution No. 05-303 passed and adopted by the Board of Supervisors on November 1, 2005, which required a new or amended Contract or Contracts which shall incorporate current Agricultural Preserve Policies or Procedures per Condition No. 7 of said Resolution; and

WHEREAS, current County Agricultural Preserve Policies or Procedures provide for an initial term of twenty (20) years which renew annually on each succeeding January 1; and

WHEREAS, the subject real property is not presently used for commercial agricultural production of food or fiber and the property is taxed at the factored base year value; and, therefore, Owner does not presently derive any property tax benefit from Williamson Act restrictions as applicable to the real property described in Exhibit "A"; and

WHEREAS, there is no agricultural use on the subject real property to preserve and protect and County does not receive State Subventions for said property; and, therefore, County does not derive any benefit from Williamson Act restrictions as applicable to the real property described in Exhibit "A"; and

WHEREAS, Condition No. 7 of Resolution No. 05-303 is hereby amended consistent with the terms of this AMENDMENT TO LAND CONSERVATION CONTRACT NO. 71-47 as said Condition No. 7 of Resolution No. 05-303 applies to the real property described in Exhibit "A"; and

WHEREAS, both Owner and County desire to limit the use of the property to agricultural and compatible uses;

NOW, THEREFORE, County and Owner agree as follows:

1 CONTRACT SUBJECT TO CALIFORNIA LAND CONSERVATION ACT OF 1965, AS AMENDED.

This contract is entered into pursuant to Chapter 7 (commencing with Section 51200) as Part 1, Division 1, Title 5 of the Government Code, which is known as the California Land Conservation Act of 1965, or as the Williamson Act. This contract is subject to all of the provisions of this act including any amendments thereto which may be enacted from time to time.

2 RESTRICTION ON USE OF PROPERTY.

During the term of this contract, and any and all renewals thereof, the property described in Exhibit A shall not be used by Owner, or Owner's successors in interest, for any purpose other than the production of food and fiber for commercial purposes and uses compatible thereto. A list of all such compatible uses is set forth in Exhibit B, attached hereto and by this reference incorporated herein. County, by uniform rule adopted by the Board of Supervisors of County, may from time to time during the term of this contract and all renewals thereof, add to the list of compatible uses which shall be uniform throughout the agricultural preserve in which the property in Exhibit A is located; provided, however, County may not during the term of this contract or any renewal thereof, without the prior written consent of Owner, remove any of the compatible uses for the subject property which are set forth in Exhibit B. The provisions of this contract and any uniform rule supplementing the list of compatible uses are not intended to limit or supersede the planning and zoning powers of County.
3. **TERM OF CONTRACT.**

This contract shall become effective on the last date opposite the respective signatures, or October 18, 2011, whichever date occurs first, and shall be recorded on or before the 31st day of October 2011, in order to meet the November 1 recording date for County initiated Notice of Non-Renewal, and the January 1 property tax lien date, and shall remain in full force and effect from October 18, 2011 through and including December 31, 2012.

4. **NOTICE OF NONRENEWAL AND INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.**

(a) **NOTICE OF NON-RENEWAL TO RELATE BACK TO ORIGINAL RECORDING DATE OF AUGUST 30, 2002.** The parties understand and agree that an Owner Initiated NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 is on file with the County Recorder as DOCUMENT NO. 2002080670 recorded with the County Recorder on August 30, 2002; and, the property is subject to an Owner Initiated AMENDED NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 on file with the County Recorder as DOCUMENT 2004137145 recorded with the County Recorder on December 28, 2004; and Owner and County desire to shorten the term of LAND CONSERVATION CONTRACT NO. 71-47 from twenty (20) years to ten (10) years, as it applies to the real property described in the Legal Description, attached hereto as Exhibit “A” commonly known as the “Barbieri” property, Assessor’s Parcel Number 137-161-015-000, +/- 11.8 acres; and Owner and County desire to shorten the term of the corresponding Notices of Non-Renewal for LAND CONSERVATION CONTRACT NO. 71-47 to relate back to the original recording date of the Owner Initiated NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 on file with the County Recorder as DOCUMENT NO. 2002080670 recorded with the County Recorder on August 30, 2002 and; the parties further understand and agree that Condition No. 7 of Resolution No. 05-303 passed and adopted by the Board of Supervisors on November 1, 2005 is amended accordingly as it applies to the property described in Exhibit “A”; and

(b) **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** Owner agrees as a condition and in consideration of the approval of Owner/Applicants’ request pursuant to the amended Development Application, amended and submitted to the Planning Department on October 4, 2011, in Planning file No. PLN PLN110238, on file with the Monterey County Planning Department, to shorten the term of LAND CONSERVATION CONTRACT NO. 71-47 from a twenty (20) year term to a ten (10) year term and to revise the corresponding Owner Initiated Notices of Non-Renewal on file with the County Recorder to provide for a ten (10) year non-renewal period to relate back to the original recording date of the Owner Initiated NOTICE OF NON-RENEWAL OF PORTION OF LAND CONSERVATION CONTRACT NO. 71-47 recorded with the County Recorder on August 30, 2002 that it will, pursuant to this AMENDMENT TO LAND CONSERVATION CONTRACT NO. 71-47 and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37 as applicable. Owner will reimburse County for any court costs and attorney’s fees which County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve Owner of his/her/its obligations under this AMENDMENT TO LAND CONSERVATION CONTRACT NO. 71-47. County shall promptly notify Owner of any such claim, action or proceeding and County shall cooperate fully in the defense thereof. If County fails to promptly notify Owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof; Owner shall not thereafter be responsible to defend, indemnify or hold County harmless.
5. **NO COMPENSATION.**

Owner shall not receive any payment from County in consideration of the obligations imposed under this contract, it being recognized and agreed that the consideration for the execution of this contract is the substantial benefit to be derived therefrom, and the advantage that may accrue to Owner as a result of the effect upon the assessed value of the property on account of the restrictions on the use of the property contained herein.

6. **SUCCESSORS IN INTEREST.**

This contract and the restrictions imposed hereunder shall run with the property described in Exhibit A and shall be binding upon the heirs, executors, administrators, trustees, successors, and assigns of Owner. This contract shall also be transferred from County to any succeeding city or county acquiring jurisdiction over the property described in Exhibit A. On the completion of annexation proceedings by a city, that city shall succeed to all rights, duties and powers of the County under this contract for that portion of the property described in Exhibit A annexed to the city.

Nonetheless, each new Owner who succeeds to ownership of the aforesaid property shall be obliged to execute a new contract identical to or more restrictive than this contract in order to perfect his rights under the Land Conservation Act.

7. **DIVISION OF LAND.**

The property described in Exhibit A shall not be divided without the written approval of the County first had and obtained. This contract is divisible in the event the property described in Exhibit A is divided. Owner agrees to submit any proposed division to County for its approval and County, if it approves said division, shall, as a condition of its approval of the division, require the execution by Owner of contract identical to this contract on each parcel created by the division. Owner agrees to execute such contract. The division of land under contract within an agricultural preserve will not be approved unless it can be reasonably established that there will be no loss in the production of food and fiber within the agricultural preserve from said division.

8. **EMINENT DOMAIN OR OTHER ACQUISITION.**

(a) When any action in eminent domain for the condemnation of the fee title of any land described in Exhibit A is filed or when such land is acquired in lieu of eminent domain for a public improvement, as defined in Government Code Section 51290.5, by a public agency or person, or whenever there is any such action or acquisition by the federal government, or any person, instrumentality or agency acting under authority or power of the federal government, this contract becomes null and void as to the land actually being condemned or so acquired as of the date the action is filed or so acquired.

(b) Eminent domain or other acquisition proceedings shall be governed by the provisions of Article 6 (commencing with Government Code Section 51290 et seq). Notice of intent to consider land in agricultural preserve pursuant to this contract for condemnation or acquisition, shall be provided by the public agency, or person, or authorized agent, to the Director of Conservation and to the local governing body responsible for the administration of the preserve in accordance with Government Code Sections 51291 and 51291.5. The Director of Conservation shall provide a copy of any material received from the public agency, or person, or authorized agent, relating to the proposed acquisition, to the Secretary of Food and Agriculture in accordance with Section 51291(b). When land in an agricultural preserve pursuant to this contract is acquired by a public agency, the public agency shall notify the Director of Conservation within 10 working days in accordance with Government Code Section 51291(c).
(c) If after giving notice required under Government Code Sections 51291(b) and 51291 (c) and before the project is completed within the preserve, the public agency, person or agent proposes any significant change in the public improvement, it shall give notice of the changes to the Director and the local governing body responsible for administration of the preserve. Within 30 days thereafter, the Director or local governing body may forward to the public agency, person or agent their comments with respect to the effect of the change to the public improvement and the compliance of the changed public improvement with Article 6. Any action or proceeding regarding notices or findings required by Article 6 filed by the Director of Conservation or local governing body administering the preserve shall be governed by Government Code Section 51294 (Government Code Section 51291(e)).

9. CANCELLATION.

This contract may be canceled by the mutual agreement of the parties hereto in the manner provided in this paragraph. It is understood by the parties hereto that the existence of an opportunity for another use of the property shall not be sufficient reason for the cancellation of this contract. A potential alternative use of the property may be considered only if there is no proximate non-contracted land suitable for the use to which it is proposed that this property be put. The parties further understand that the uneconomic character of an existing agricultural use shall not be sufficient reason for cancellation of this contract, but may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(a) Upon the written request of Owner to cancel this contract, the Board of Supervisors of the County of Monterey may adopt a resolution consenting to such request. When Owner petitions the Board for tentative cancellation of this contract pursuant to Government Code Section 51281 et seq, and when the Board accepts the application as complete pursuant to Government Code Section 65943, the Board shall immediately mail notice to the Director of Conservation pursuant to Government Code Section 51284.1. The notice shall include a copy of the petition, this contract, a general description in text or diagram, of the land that is subject to the proposed cancellation, the deadline for submitting comments regarding the proposed cancellation (consistent with the Permit Streamlining Act commencing with Government Code Section 65920), but in no case less than 30 days prior to the scheduled action by the Board. The Director shall review the proposed cancellation and submit comments by the deadline specified by the Board. Any comments submitted shall advise the Board on the findings required by Section 51282 with respect to the proposed cancellation. Prior to acting on the proposed cancellation, the Board shall consider the comments by the Director of Conservation, if submitted (Government Code Section 51284.1).

(b) Prior to the adoption of a resolution consenting to the request of the landowner to cancel this contract, the Board of Supervisors of County shall hold a public hearing on the matter. Notice of the hearing shall be mailed to each and every owner of property under contract within the agricultural preserve in which the property described in Exhibit A is located, and shall be published pursuant to Government Code Section 6061. In addition, at least 10 working days prior to the hearing, a notice of hearing and a copy of the landowner’s petition shall be mailed to the Director of Conservation pursuant to Government Code Section 51284. At the hearing, or prior thereto, the owner of any property in which this agricultural preserve is situated may protest such cancellation to the Board of Supervisors.

(c) The Board of Supervisors may adopt a resolution consenting to the request of Owner to cancel this contract only if they find: (1) The cancellation is consistent with the purposes of the California Land Conservation Act of 1965 as amended; and (2) the cancellation is in the public interest (Government Code Section 51282).

(d) Within 30 days of the tentative cancellation of this contract, the Board shall publish notice of its decision, including the date, time and place of the public hearing, a general explanation of the
10. **LIABILITY OF OWNER UPON CANCELLATION.**

   (a) Prior to any action by the Board of Supervisors giving tentative approval to the cancellation of this contract, the County Assessor shall, pursuant to Revenue and Taxation Code Section 401, determine the full cash value of the land as though it were free of the contractual restrictions imposed by this contract. The Assessor shall certify to the Board of Supervisors the cancellation valuation of the land for the purpose of determining the cancellation fee.

   (b) The Board of Supervisors shall thereafter and prior to giving tentative approval to the cancellation of this contract determine and certify to the County Auditor the amount of the cancellation fee which the Owner must pay the County Treasurer as deferred taxes upon cancellation. That fee shall be an amount equal to 12 1/2 percent of the cancellation valuation of the property.

   (c) If the Board of Supervisors recommends that it is in the public interest to do so, and the Secretary of the Resources Agency so finds, the Board may waive any such payment or any portion thereof, or may make such payment or portion thereof, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the property and its economic return to Owner for a period of time not to exceed the unexpired term of the contract had it not been canceled, provided: (1) the cancellation is caused by an involuntary transfer or change in the use which may be made of the property and the property is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to Owner; and (2) the Board of Supervisors has determined it is in the best interests of the program to conserve agricultural land use that such payment be either deferred or is not required; and (3) the waiver or extension of time is approved by the Secretary of the Resources Agency pursuant to Government Code Section 51283.

   (d) Owner shall make payment of the cancellation fee in full prior to the cancellation becoming effective.

11. **NOTICES.**

    All notices required or permitted by this contract shall be given in writing and may be mailed or delivered in person. If mailed, the address of Owner shall be the last known address on the assessment records of County, and County's address shall be In Care of Clerk of the Board of Supervisors, Government Center, 168 W. Alisal Street, First Floor, Salinas, California 93901, and deposit in the mail, postage prepaid, shall be deemed receipt thereof.

12. **COSTS OF LITIGATION.**

    In case County shall, without any fault on its part, be made a party to any litigation commenced by or against Owner, then Owner shall and will pay all costs and reasonable attorneys' fees incurred by or imposed upon County by or in connection with such litigation, and Owner shall and will pay all costs and reasonable attorneys' fees which may be incurred or paid by County in enforcing the covenants and agreements of this contract.
13. **ENFORCEMENT.**

In the event of breach of this contract, including but not limited to: (1) incompatible use, or (2) failure of successors in interest to sign a contract similar to this one, or (3) failure to obtain the approval of the Board of Supervisors for a division of the land under contract, all the affected property under contract shall be reassessed at full cash value pursuant to Revenue and Taxation Code Section 110.1.

However, such reassessment for the period encompassed by the breach shall not terminate the contract. Reassessment shall be in addition to the other remedies available to the County including, but not limited to, an action to enforce the contract by specific enforcement or injunction under Government Code Section 51251.

If incompatible uses during the period of breach have diminished the ability of the property to contribute to the production of food and fiber on the lien date, the property shall be reassessed at full cash value.

The period of breach is the period commencing upon breach as set forth above, and ending upon cure of the breach. If the lien or assessment date falls within the period of the breach, all the property under this contract will be reassessed at full cash value pursuant to Revenue and Taxation Code Section 110.1.

14. **INCORPORATION OF RECITALS.**

The parties understand and agree that the recitals to this AMENDMENT TO LAND CONSERVATION CONTRACT NO. 71-47 are incorporated into this LAND CONSERVATION CONTRACT NO. 71-47-1 as applicable to the real property described in Exhibit "A."

**IN WITNESS WHEREOF** the parties have caused this contract to be executed by Owner on the date affixed next to the signature of each, and by County on the date affixed next to the signature of the Chair of the Board of Supervisors.

**COUNTY OF MONTEREY**

Dated: ____________________________  By: ____________________________

[Signature]
Chair, Board of Supervisors
ACKNOWLEDGMENT

State of California       
County of Monterey       

On ____________________, 2011, before me, __________________________________

Clerk of the Board of Supervisors, 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 capacity(ies), 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.

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors of
Monterey County, State of California

By: __________________________________

Legal Reference for Acknowledgment by County Official:
Civil Code Sections 1181, 1184, 1185, 1188, 1189
Code of Civil Procedure Section 2012

[COUNTY SEAL]:

Page 8
OWNER:
JACK BARBIERI, DANIELLE BARBIERI and
DAVID C. BARBIERI

Dated:________________

JACK BARBIERI

Dated:________________

DANIELLE BARBIERI

Dated:________________

DAVID C. BARBIERI
STATE OF CALIFORNIA
COUNTY OF MONTEREY

On ______________, 2011, 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 within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), 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

[SEAL]

STATE OF CALIFORNIA
COUNTY OF MONTEREY

On ______________, 2011, 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 within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/ 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

[SEAL]
STATE OF CALIFORNIA
COUNTY OF MONTEREY

On ________________, 2011, 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 within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), 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

______________________________

[SEAL]
LAND CONSERVATION CONTRACT NO 71-47-1

AMENDMENT TO LAND CONSERVATION (CONTRACT NO. 71-47)

EXHIBIT “A” – LEGAL DESCRIPTION

PARCEL “A” AS DESCRIBED IN VOLUME 28 SURVEY MAPS PAGE 140.

(11.80 ACRES)

DOCUMENT NO. 2006075420

APN 137-161-015-000
EXHIBIT B
LAND CONSERVATION CONTRACT
COMPATIBLE USES

The following is a list of land uses determined to be compatible with the agricultural use of the
land subject to this agreement and planning and zoning restrictions:

1. The drying, packing or other processing of an agricultural commodity usually
performed on the premises where it is produced.

2. Structures necessary and incidental to the agricultural use of the land.

3. Single family dwellings incidental to the agricultural use of the land for the
residence of the owner, and the family of the owner. Single family dwellings incidental to the
agricultural use of the land for the residence of the lessee of the land and the family of the lessee.

4. Dwelling for persons employed by owner or lessee and the family of employee or
lessee incidental to the agricultural use of the land.

5. An aircraft landing strip incidental to the agricultural use of the land.

6. The erection, construction, alteration or maintenance of gas, electric, water or
communication utility facilities.

7. The erection, construction, alteration or maintenance of radio, television or
microwave antennas, transmitters and related facilities.

8. Public or private hunting of wildlife or fishing.

9. Public or private hunting clubs and accessory structures.

10. Public or private rifle and pistol practice range, trap or skeet field, archery range or
other similar use.

11. Public or private riding or hiking trails.


13. Disposal site for oil field wastes, provided that any such use shall be made only in
accordance with the use permit and other permits issued by the County of Monterey and the
California Regional Water Quality Board and such other governmental authority as may have
jurisdiction over this use. “Wastes received (discharged) at the site have been, and will continue
to be, limited to petroleum and oil field wastes, such as muds, oily water, tank bottom wastes, and
brine waters.”