

RECORDING REQUESTED BY
AND WHEN RECORDED RETURNED TO:

Parcel No. 050-470-090 (Portion of)

Real Property Services
County of San Mateo
555 County Center, 4th Floor
Redwood City, CA 94063

Space above this line for recorder's use only

SUBSURFACE EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made as of _____, (the "Effective Date"), by and between MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, a Public District formed pursuant to Article 3 of Chapter 3 of Division 5 of the California Public Resources Code ("District") and the County of San Mateo, a political subdivision of the State of California ("Grantee"). Grantee and District are sometimes referred to in this Agreement singularly as a "Party" and together as "Parties".

RECITALS

A. District is the owner of certain real property situated in the County of San Mateo, State of California, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference, Santa Mateo County Assessor's Parcel Numbers 050-470-090 (the "District Property").

B. Grantee is the owner of certain real property situated in the County of San Mateo, State of California, and more particularly described in Exhibit B attached hereto and incorporated herein by this reference, Santa Mateo County Assessor's Parcel Numbers 050-470-050 (the "Grantee Property").

C. The Grantee desires to obtain a perpetual non-exclusive subsurface easement to install, repair and maintain tiebacks, soil nails and underpinnings that will provide erosion control along the boundary line of the District Property and Grantee Property as more particularly described in this Agreement.

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

1. Grant of Easement

(a) Easement Scope and Description. District hereby grants to Grantee a perpetual, non-exclusive subsurface easement as appurtenant to the Grantee Property, for the installation, operation, repair and maintenance of a tiebacks, soil nails and underpinnings in, on, and over a portion of District Property (the "Subsurface Easement"). A legal description and plat

map of the Subsurface Easement is included in Exhibit C attached hereto and incorporated by this reference.

(b) Term. The term of Subsurface Easement shall commence on the Effective Date and shall be perpetual.

(c) Use Restrictions. Use of the Subsurface Easement by Grantee shall be limited to installation of underground tiebacks, soil nails and underpinning, repair and maintenance of the subsurface improvements and for use by Grantee and Grantee's contractors for construction, operation, maintenance, repair, and emergency access. The improvements shall range from six (6) feet in depth and shall not penetrate a depth of more than forty-five (45) feet from the ground in the Subsurface Easement.

(d) Repair and Maintenance. Grantee shall be solely responsible, at its sole cost and expense, for operating, repairing and maintaining the subsurface improvements in good condition and for implementing, maintaining, repairing (and replacing when necessary) erosion protection including, without limitation, all drainage and erosion control structures, facilities and grading constructed by Grantee for erosion control purposes. In addition, Grantee shall, at its sole cost and expense, maintain the subsurface improvements in a safe condition and free of hazardous conditions including, without limitation, vegetation overgrowth and downed trees. Any maintenance activities shall be conducted by Grantee so as to minimize impact on the watershed.

(e) Removal for Non-Use. If the subsurface improvements is not utilized or maintained for a period of three years, the District may remove and restore the area and the Grantee shall quitclaim the subsurface Easement to the District.

(f) Non-Exclusive Use. The Subsurface Easement shall be non-exclusive, and District may make use of the Subsurface Easement provided that such use does not unreasonably interfere with Grantee's use of the Subsurface Easement or its intended purposes as permitted under this Agreement.

2. Representation and Warranties. District represents and warrants to Grantee that District has good and marketable title to the District Property, and there are no matters affecting title to the District Property that adversely affect the Subsurface Easement or the rights granted under this Agreement.

3. Requirements of Law. Grantee shall comply with all present and future laws, rules, orders, ordinances, regulations, statutes, requirements, codes, and executive orders (collectively, "Laws") of all governmental authorities now existing or hereafter created affecting the Subsurface Easement granted herein, or uses thereof.

4. Mechanic's Liens. Grantee shall hold harmless, indemnify and defend District from and against any mechanic's or other liens arising from Grantee's work, including any liabilities, costs, losses, damages, expenses, causes of action, claims or judgments (including court costs and reasonable attorneys' fees) on account of such mechanic's or other liens.

5. As-Is Conveyance. Grantee agrees and acknowledges that District makes no representations or warranties as to the condition of the area contained within the Subsurface Easement or its suitability for Grantee's purposes. Neither District nor anyone acting for or on behalf of District has made any representation, statement, warranty or promise to Grantee concerning the physical aspects or condition of the Subsurface Easement including, without limitation, conditions of the soil, land use restrictions, permits for the Subsurface Easement or its use, existence or non-existence of "Hazardous Materials" or suitability for the purpose for which Grantee plans on using the Subsurface Easement. Grantee specifically acknowledges that it is entering into this Agreement with respect to the "As-Is" physical condition and "As-Is" state of repair of the Subsurface Easement. For purposes of this Agreement, "Hazardous Materials" includes, without limitation, any flammable materials, explosive, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereafter amended (42 U.S.C. Section 9601, *et seq.*), the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Sections 9601, *et seq.*), and in the regulations promulgated pursuant thereto, or any other similar federal, state or local government law, ordinance, rule or regulation. However, District shall be solely and completely responsible for responding to and complying with any administrative notice, order, request or demand, or third party claim or demand, relating to potential or actual Hazardous Materials contamination on, in, or under the Subsurface Easement, including all costs of remediation and clean up, except to the extent such contamination was caused by Grantee or Grantee's invitees.

6. Insurance. Grantee shall maintain, or cause to be maintained, throughout the term hereof a policy of general liability insurance against claims for bodily injury, personal injury, death and/or property damage occurring upon, in or about the Subsurface Easement with limits which shall not be less than Two Million Dollars (\$2,000,000.00) per occurrence. District shall be named as an additional insured on such policy. Upon District's request, Grantee shall promptly furnish to District an endorsement evidencing such insurance coverage.

7. Indemnity. Grantee will protect, indemnify, defend, and hold District and District's officers, directors, employees, agents, successors, assigns, members, and partners (each, an "Indemnified Party") harmless from and against any and all loss, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and all costs, disbursements and expense of legal counsel) imposed upon or incurred by or asserted against District or any other Indemnified Party by reason of the occurrence or existence of any of the following (except to the extent such losses, liabilities, obligations, claims, damages, penalties, causes of action costs and expenses arise from the gross negligence or willful misconduct of the District): (a) any accident, injury or death of person(s) or losses of or damage to property occurring on or about the Subsurface Easement; or (b) arising out of or in any way connected with any use, possession, occupation, operation, maintenance, management or condition of the Subsurface Easement.

8. No Liability. District shall not be liable for any loss, damage, or injury whatsoever to the person or property of any person or entity whatsoever, including but not limited to, any employee, invitees, agents or contractors of District resulting from or arising out of any act or omission by Grantee, or the use or occupancy of the Subsurface Easement by Grantee, or directly

or indirectly from any state or condition of the Subsurface Easement, except a state or condition caused solely by the gross negligence or willful misconduct of the District.

9. Notice. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as “notice”) that any Party hereto gives to any other Party shall be in writing and shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to Grantee: Real Property Division
 Real Property Manager
 555 County Center, 4th Floor
 Redwood City, CA 94063
 Telephone: (650) 363-4047

If to District: Midpeninsula Regional Open Space District
 Attn: Real Property Manager
 330 Distel Circle
 Los Altos, CA 94022-1404
 Telephone: (650) 691-1200
 Facsimile: (650) 691-0485

10. Subordination. The Subsurface Easement shall be superior to any and all deeds of trusts, mortgages, liens, ground leases, licenses, covenants or encumbrances recorded after the recordation of this Agreement that affect the District’s Property, and this Agreement shall survive the foreclosure or termination of any such instrument or interest.

11. Authority. The District and Grantee, respectfully, represent and warrant that each has the power and authority to execute and carry out the terms and provisions of this agreement.

12. No Partnership. Nothing contained in this Agreement shall be construed as making District and Grantee joint venturers or partners.

13. Miscellaneous

(a) Mediation of Disputes.

(i) Consultation and Resolution Process. In the event either party believes the other party to this Agreement has failed to comply with its terms, or wishes to propose an amendment to this Agreement to address any term or condition herein, or to discuss any operational issues concerning the Subsurface Easement, the parties agree to meet and confer within thirty (30) days of receipt of a written request for consultation delivered to the other party as set out in Section 10 herein.

(ii) If the consultation process set out in Subsection 14 (a) (i) fails to resolve any dispute arising out of or relating to this Agreement or the performance or breach thereof, the parties agree to participate in good faith in non-binding mediation in order to resolve their dispute prior to pursuing any available legal remedies.

(b) Captions. The captions of this Agreement are inserted only as a matter of convenience and for reference. They do not define, limit or describe the scope or intent of this Agreement and they shall not affect the interpretation hereof.

(c) Exhibits. Each of the Exhibits referenced in this Agreement is attached hereto and incorporated herein.

(d) Amendment. This Agreement may be amended only by an instrument in writing executed by the Parties hereto or by their successors and assigns.

(e) Time. Time is of the essence of this Agreement.

(f) Written Consent Required. Whenever a Party is requested to consent or to approve of any matter with respect to which its consent or approval is required by this Agreement, such consent or approval shall be given in writing.

(g) Further Assurances. The Parties shall execute such further documents and instruments as may reasonably be required from time to time by the other Party to effectuate and carry out the provisions hereof and to take such further actions as may reasonably be required to give the terms hereof full force and effect for the benefit of the Parties.

(h) Terms Run with the Land. The easements, terms, covenants and conditions contained herein shall run with the land and be binding upon and inure to the benefit of the successors and assigns of the Parties hereto pursuant to California Civil Code Section 1468.

(i) Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

(j) Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

(k) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

GRANTEE:

County of San Mateo,
a political subdivision of the State of
California

By: _____
Michael P. Callagy, County Manager

Date: _____

DISTRICT:

MIDPENINSULA REGIONAL OPEN SPACE
DISTRICT, a Public District formed pursuant to
Section 3 of Chapter 3 of Division 5 of the
California Public Resources Code

By: _____
Ana Ruiz, Acting General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Hilary Stevenson, General Counsel

ATTEST:

By: _____
Jennifer Woodworth, District Clerk

ACKNOWLEDGMENT

Exhibit A
District Property

Exhibit B

County Property

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of San Mateo, State of California, described as follows:

PARCEL ONE:

COMMENCING AT A POINT ON THE LINE DIVIDING THE LAND OF ALLIS - CHALMERS MANUFACTURING CO. AND THE LANDS BELONGING TO LIBBY A. SCHEIER, SAID POINT BEING DISTANT SOUTH 62° 06' WEST 312.2 FEET FROM THE MOST NORTHERLY CORNER THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED FROM RALPH B. SCHEIER TO LIBBY A. SCHEIER, RECORDED IN [BOOK 247 OF DEEDS AT PAGE 437](#), RECORDS OF SAN MATEO COUNTY, CALIFORNIA; THENCE FROM SAID POINT OF BEGINNING ALONG SAID DIVIDING LINE SOUTH 73° 55' WEST 98.00 FEET; THENCE SOUTH 49° 10' WEST 180.90 FEET; THENCE SOUTH 32° 54' WEST 100.00 FEET; THENCE SOUTH 39° 13' WEST 233.18 FEET; THENCE LEAVING SAID DIVIDING LINE AND ACROSS THE LANDS THENCE OF ALLIS-CHALMERS MANUFACTURING CO. NORTH 53° 19' WEST 628.55 FEET; THENCE AT RIGHT ANGLES NORTH 36° 41' EAST 677.75 FEET; THENCE AT RIGHT ANGLES SOUTH 53° 19' EAST 724.31 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A 2" X 2" STAKE MARKED "J" & "S" STANDING ON THE SOUTHEASTERLY BANK OF CORDILLERAS CREEK, SAID POINT OF BEGINNING BEING AT THE INTERSECTION OF THE CENTER LINE OF THE OLD WHIPPLE MILL ROAD, AS SAME EXISTED ON OCTOBER 23, 1889, THE DATE OF THAT CERTAIN DEED FROM JAMES B. RANDOL TO JACOB KREISS RECORDED IN [BOOK 47 OF DEEDS AT PAGE 369](#), WITH THE NORTHWESTERLY LINE OF WHIPPLE MILL ROAD AS NOW TRAVELED; THENCE ON AND ALONG THE CENTER LINE OF THE SAID OLD WHIPPLE MILL ROAD AS SAME EXISTED IN 1889 SOUTH 68° 50' WEST 2.15 CHAINS; THENCE SOUTH 48° WEST 2.00 CHAINS; SOUTH 58° 50' WEST 1.24 CHAINS; SOUTH 72° 15' WEST 1.80 CHAINS; SOUTH 50° 50' WEST 0.50 CHAINS, SOUTH 30° 15' WEST 5.00 CHAIN; SOUTH 64° 35' WEST 2.00 CHAINS; SOUTH 80° WEST 0.60 CHAINS; SOUTH 29° 45' WEST 7.00 CHAINS; SOUTH 22° 45' WEST 1.00 CHAINS; SOUTH 46° 45' WEST 2.00 CHAINS; SOUTH 62° 25' WEST 4.25 CHAINS; SOUTH 41° WEST 2.00 CHAINS; SOUTH 60° 10' WEST 3.00 CHAINS; SOUTH 55° 15' WEST 6.02 CHAINS TO THE POINT WHERE THE SAID CENTER LINE OF THE OLD WHIPPLE MILL ROAD INTERSECTS THE NORTHWESTERLY LINE OF THE WHIPPLE ROAD AS NOW TRAVELED; THENCE SOUTH 17° EAST 30 CHAINS TO A POINT IN THE CENTER OF THE PRESENT TRAVELED ROAD; THENCE ON AND ALONG THE CENTER LINE OF THE SAID LAST MENTIONED ROAD AS FOLLOWS: NORTH 73° EAST 4.65 CHAINS; SOUTH 85° EAST 1.50 CHAINS; NORTH 46° EAST 4.30 CHAINS; SOUTH 77° EAST 4.00 CHAINS; NORTH 33° EAST 0.35 CHAINS; NORTH 11° WEST 3.00 CHAINS AND NORTH 20° 15' EAST 4.00 CHAINS; THENCE LEAVING SAID CENTER LINE OF SAID ROAD AND RUNNING NORTH 54° 45' EAST 21.90 CHAINS TO CORNER; THENCE NORTH 38° 45' WEST 3.49 CHAINS TO A POINT IN THE CENTER OF THE WHIPPLE ROAD AS NOW TRAVELED; THENCE NORTH 33° WEST 0.30 CHAINS TO THE POINT OF BEGINNING.

PARCEL THREE:

AN EASEMENT TO CONSTRUCT, RECONSTRUCT, MAINTAIN, ETC. WATER TANKS AND PIPE LINES IN AND UPON THE FOLLOWING DESCRIBED REAL PROPERTY SITUATE IN THE RANCHO DE LAS PULGAS, AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY AND COUNTY OF SAN FRANCISCO, BY DEED RECORDED MARCH 27, 1924 IN [BOOK 110 OF OFFICIAL RECORDS AT PAGE 143](#), RECORDS OF SAN MATEO COUNTY, CALIFORNIA.

APN: 050-470-050-1

EXHIBIT C

Subsurface Easement

All that certain real property situated in the Unincorporated Area of San Mateo County, State of California, being the property described in the deed conveyed June 9, 1983 from City and County of San Francisco to Midpeninsula Regional Open Space District, a public district, in Deed Series Number 83057476, San Mateo County Records, being more particularly described as **Parcel 1** and **Parcel 2** as follows:

Parcel 1:

Commencing at the westerly end of the line described as South 62°06' West 213.20 feet in said deed conveyed June 9, 1983 in Deed Series Number 83057476, San Mateo County Records, thence leaving said point, northwesterly along said deed line, North 53°19'00" West a distance of 79.81 feet to the Point of Beginning; Thence leaving said deed line, through said parcel the following six (6) courses:

1. North 34°12'17" East a distance of 14.34 feet,
2. North 46°33'00" West a distance of 25.45 feet,
3. North 48°31'08" West a distance of 35.94 feet,
4. North 66°43'00" West a distance of 19.73 feet,
5. North 72°17'04" West a distance of 19.26 feet, and
6. Thence South 66°56'19" West a distance of 10.99 feet, to said deed line;

Thence along said deed line, South 53°19'00" West 104.63 feet to the Point of Beginning.

Contains 1,681 square feet, more or less.

Parcel 2:

Commencing at the westerly end of the line described as South 62°06' West 213.20 feet in said deed conveyed June 9, 1983 in Deed Series Number 83057476, San Mateo County Records, thence leaving said point, northwesterly along said deed line, North 53°19'00" West a distance of 250.54 feet to the True Point of Beginning; Thence leaving said deed line, through said parcel the following five (5) courses:

1. North 36°41'00" East a distance of 20.52 feet to the beginning of a non-tangent curve to the left,
2. Thence along said curve to the left, having a radius of 75.16 feet, a radial point which bears North 80°20'07" west, through a central angle of 60°25'46", an arc length of 79.27 feet,
3. North 55°13'41" West a distance of 57.12 feet to the beginning of a non-tangent curve to the left,
4. Thence along said non-tangent curve, having a radius of 80.37 feet, a radial point which bears South 35°12'10" West, through a central angle of 52°07'55", an arc length of 73.13 feet, and
5. Thence South 53°51'21" West, a distance of 28.15 feet to said deed line;

Thence along said deed line, South 53°19'00" West 191.63 feet to the Point of Beginning.

Contains 9,791 square feet, more or less.

Over a portion of APN: 050-470-090

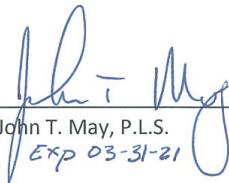
See EXHIBIT "B" (1 Sheet), attached hereto and made a part thereof.

END OF DESCRIPTION

Bearings and distances used in above description are based on the deed conveyed June 9, 1983 in Deed Series Number 83057476, San Mateo County Records.

This land description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors' Act.

Prepared By:

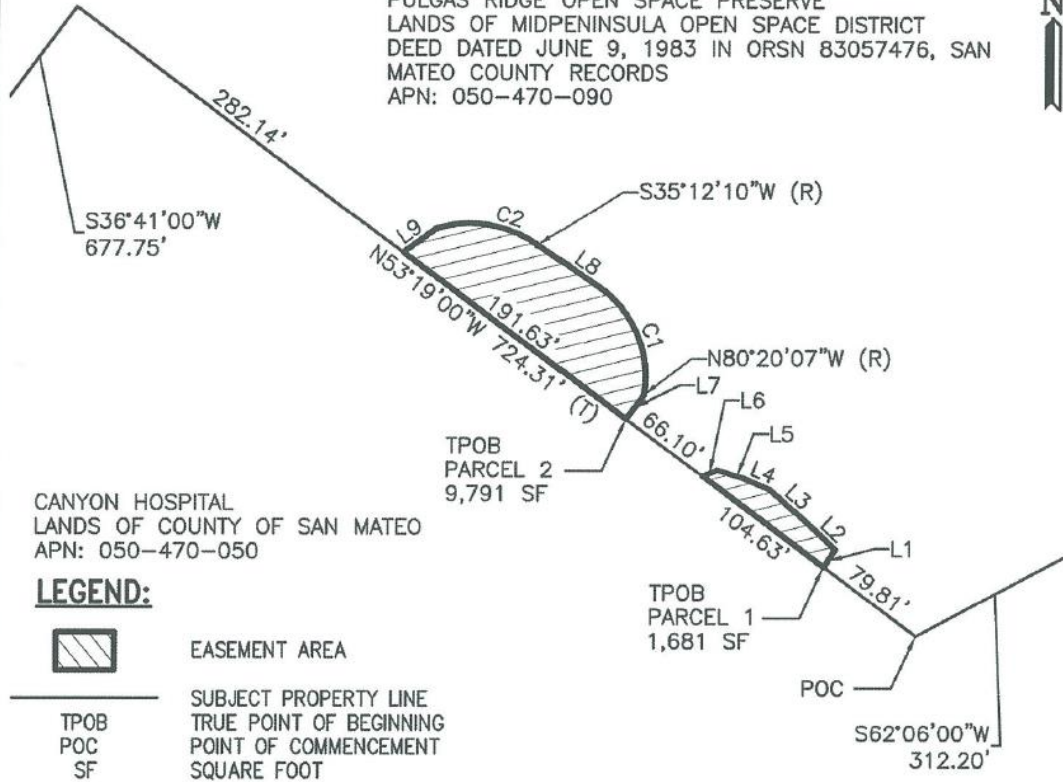

John T. May, P.L.S.
Exp 03-31-21



June 1st, 2020
Date

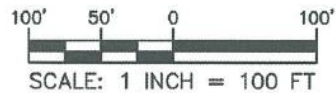
EXHIBIT "B"

PULGAS RIDGE OPEN SPACE PRESERVE
LANDS OF MIDPENINSULA OPEN SPACE DISTRICT
DEED DATED JUNE 9, 1983 IN ORSN 83057476, SAN
MATEO COUNTY RECORDS
APN: 050-470-090



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N34°12'17"E	14.34'
L2	N46°33'00"W	25.45'
L3	N48°31'08"W	35.94'
L4	N66°43'00"W	19.73'
L5	N72°17'04"W	19.26'
L6	S66°56'19"W	10.99'
L7	N36°41'00"E	20.52'
L8	N55°13'41"W	57.12'
L9	S53°51'21"W	28.15'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	60°25'46"	75.16'	79.27'
C2	52°07'55"	80.37'	73.13'



SHEET 1 OF 1

TOWILL | Surveying, Mapping
and GIS Services
2300 Clayton Road, Suite 1200
Concord, CA 94520-2176

COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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