

Recorded at the request  
Of and when recorded  
Return to:

Peninsula Open Space Trust  
3000 Sand Hill Road, 4-135  
Menlo Park, CA 94025

---

## CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is granted this \_\_\_ day of May, 2003, by Wicklow House, a California General Partnership ("Grantor") to the County of San Mateo, California ("Grantee").

### RECITALS

- A. Grantor is the owner in fee simple of certain real property in San Mateo County, California, consisting of approximately 20.61 acres as shown on Exhibit A and more particularly described in Exhibit B ("Residence Property").
- B. Grantor is granting a conservation easement under the terms of this Grant over approximately 15.61 acres as shown on Exhibit A and more particularly described in Exhibit C (the "Conservation Property").
- C. The Conservation Property possesses natural, scenic and open space values.
- D. The specific Conservation Values of the Conservation Property are that it is entirely undeveloped except for small trails, the possibility that a small part of the Conservation Property is included in a drain field for the Residence Property, a paved driveway road, and gates at the entrance to the driveway road from El Granada Blvd.
- E. Grantor intends, as owner of Conservation Property, to convey a conservation easement to Grantee over the Conservation Property including the right to preserve and protect in perpetuity the natural, scenic, open space and other Conservation Values of the Conservation Property, subject to the restrictions contained herein.

- F. Grantee is authorized to acquire and hold title to interests in real property and to implement a program of natural area conservation and protection.
- G. Grantee intends in accepting this grant, to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Conservation Property for the benefit of this generation and generations to come.

## AGREEMENT

NOW THEREFORE, in consideration of the above and for a valuable consideration, and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of California (in particular, Section 815 through 816 of the California Civil Code), Grantor hereby grants to Grantee a Conservation Easement (the "Easement") in perpetuity over the Conservation Property as follows:

1. Definitions.
  - (a) Conservation Property is the approximately 15.61 acres as shown on Exhibit A and more particularly described in Exhibit C.
  - (b) Conservation Values are the natural, scenic and open space values of the Conservation Property.
  - (c) Grantee is the County of San Mateo, California.
  - (d) Grantee's Approval. Whenever Grantee's Approval is required in accordance with this Easement, the Board of Supervisors or any authorized representative of the Grantee shall grant or withhold its approval in writing within 60 days after receipt of Grantor's written request therefor. The request shall describe the nature, scope, design, location, timetable and other material aspects of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Easement. Notification of Grantee shall be by personal delivery, or by certified or registered mail, return receipt requested. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement.
  - (e) Grantor is Wicklow House, a California general partnership.
2. Purpose. The purpose of this Easement is to assure that the Conservation Property will be retained in perpetuity in its natural, scenic and open space condition and that it will not be developed with residential uses or any non-agricultural or non-open space development.

3. Rights of Grantee. To accomplish the purposes of this Easement, Grantor conveys to Grantee the right:
- (a) To preserve and protect the Conservation Values of the Conservation Property.
  - (b) To enter upon the Conservation Property at reasonable times in order to monitor Grantor's compliance with the terms of this Easement and to enforce such terms, provided that such entry shall be upon reasonable prior notice to Grantor and occupants of the Conservation Property and that Grantee shall not unreasonably interfere with the use and quiet enjoyment of the Conservation Property by the Grantor or its successors in interest or by any occupants of the Conservation Property.
  - (c) Pursuant to paragraph 7 hereof ("Disputes and Remedies"), to prevent any activity on or use of the Conservation Property which is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Conservation Property that may be damaged by any inconsistent activity or use.
4. Prohibited Uses. Any activity on or use of the Conservation Property which is inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- (a) Subdivision. The legal or defacto subdivision of the Conservation Property for any purpose. Neither owning the Conservation Property as undivided interests, nor the creation of a life or future estate, nor ownership all or in part by any corporation, partnership, trust or other entity is a subdivision under the terms of this Easement.
  - (b) Non Agricultural Development. Non agricultural development is prohibited and non open space development is prohibited.
  - (c) Greenhouses. The placement or construction of greenhouses.
  - (d) Soil Erosion or Degradation. Any use or activity which causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters. It is understood that there is a road over a portion of the Conservation Property, and this does not prohibit the maintenance and construction on the road to leave it passable and in good condition.
  - (e) Signs and Billboards. The placement of any signs or billboards on the Conservation Property, except by the Grantor to control unauthorized entry or use.

- (f) Mineral Rights. The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method, or any other method that would impair or interfere with the Conservation Values of the Conservation Property.
  - (g) Excavation. Major alteration of land forms by grading or excavation of topsoil, earth, or rock. No commercial quarrying is permitted.
  - (h) Scenic and Natural Character. Any use or activity such as clearing, grading or storage of materials that degrades or is likely to degrade the scenic and natural character or Conservation Values of the Conservation Property.
5. Development Rights. A “density credit” or “development credit” under applicable law, land use policies, and regulations of the County of San Mateo is equivalent to the right to build one single family dwelling or its equivalent in recreational and other uses. Under certain circumstances density credits may be transferred to and utilized on other property or properties. In addition to and including the existing density credits, there are other existing and future rights (the “development rights”) to develop the Conservation Property in a variety of ways. The parties agree as follows with respect to the density credits and development rights relating to the Conservation Property:
- (a) Remaining Rights and Transfer. There are no remaining rights in any present or future density credits or development rights associated with the Conservation Property. No density credits shall be transferred by Grantor to the Conservation Property from any other property. All other development rights associated with the Conservation Property are hereby conveyed by Grantor to Grantee.
  - (b) Future Increases. Any increase in allowable development rights or density credits associated with the Conservation Property and resulting from any cause, including, but not limited to, future changes in policies, laws, or regulations shall accrue only to Grantee.
6. Reserved Rights. Grantor reserves to itself and to its successors and assigns all rights accruing from its ownership of the Conservation Property which are not transferred and conveyed hereby, or which are not expressly granted to Grantee or prohibited herein and which are not inconsistent with the purposes of this Easement, including the right to engage in or permit or invite others to engage in all uses of the Conservation Property which are not expressly prohibited herein and which are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, the following rights relating to the Conservation Property are expressly reserved by Grantor, and its successors in interest:

- (a) Road. To maintain and improve the existing road on the Conservation Property. It is acknowledged that culverts need repair and may require a slight widening of the road and its support., provided that adequate drainage is provided to prevent erosion.
- (b) Recreational Uses. To engage in and permit others to engage in recreational uses of the Conservation Property which require no surface alteration or other development of the land.
- (c) Easements. To honor existing easements for utilities (including telecommunications, electrical, gas, water and cable), any geological or other stations and to grant new easements for such purposes.
- (d) Fencing. To construct, repair, and maintain fencing and gates along the perimeter of the Conservation Property.
- (e) General. To maintain and repair all other improvements now existing on the Conservation Property, all of which are specifically approved, all in accordance with reasonable practices.

7. Disputes and Remedies. If Grantee determines that Grantor, or Grantor's successors in interest or any occupant of the Conservation Property is conducting or allowing a use, activity, or condition on the Conservation Property which is prohibited by the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and, where the violation involves injury to the Conservation Property resulting from any use or activity inconsistent with the purposes of this Easement, to restore the portion of the Conservation Property so injured.

(a) Consultations Regarding Interpretation and Enforcement of Easement. 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 arbitration or legal action.

(b) Grantee's other Remedies. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot be cured within the thirty (30) day period or Grantor fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Conservation Property to the condition that existed prior to injury. Without

limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Conservation Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conservation Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. 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. Grantee's remedies described in this paragraph 7 shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity.

(c) 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.

(d) Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription in any action or proceeding brought by Grantee to enforce or to interpret the provisions of this Easement.

(e) 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 Conservation Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Property resulting from such causes.

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

9. Costs and Responsibilities. Grantor retains the responsibility for ownership, operation, upkeep, and maintenance of the Conservation Property. Grantor shall keep the Conservation Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

(a) Taxes. Grantor shall pay or cause to be paid before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Property by competent authority (collectively "taxes"), including any such taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

(b) Liability. Grantor, its successors and assigns, shall be responsible for, indemnify and save harmless the Grantee, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs resulting from, growing out of, or in any way connected with or incident to that portion of the Conservation Property, except for active negligence of the Grantee, its officers, agents, or employees. The duty of Grantor to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. Grantor waives any and all rights to any type of express or implied indemnity or right of contribution from the Grantee, its officers, agents or employees, from any liability resulting from, growing out of, or in any way connected with or incident to this Easement, except for active negligence of Grantee.

10. Extinguishment. If circumstances arise in the future which render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. After satisfaction of prior claims from any sale, exchange, involuntary conversion, or condemnation to a governmental body under the threat of condemnation of all or any portion of the Conservation Property, Grantee shall be entitled to the reasonable sum attributable to the taking of Grantee's interest in this Easement and the Grantor shall be entitled to the remainder of such compensation and proceeds. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Grantee.

11. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 815 et. seq. of the California Civil Code, or Section 170(h) of the Internal Revenue Code, as amended, and any amendment shall be consistent with the purposes of this Easement. Any such amendment shall be in writing, shall refer to this Easement by reference to its recordation data, and shall be recorded in the Official Records of San Mateo County, California.

12. Conveyance. Grantee may convey this Easement in whole or in part but only to an entity that is a qualified entity at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Section 815.3 of the California Civil Code (or any successor provision then applicable). As a condition of such transfer, Grantee shall

require the transferee to expressly agree in writing to assume Grantee's obligations hereunder in order that the purposes of this Easement will continue to be carried out.

(a) Executory Limitation. If a subsequent transferee (other than the state) of Grantee shall cease to exist or to be qualified to hold conservation easements under California Civil Code Sections 815.3, then the Easement shall vest in the State of California upon the State's acceptance, or in a qualified entity then designated by the Grantee with due regard to the requirements of this paragraph.

13. Estoppel Certificates. Upon request by Grantor, Grantee shall within 21 days after receipt of such request execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be reasonably requested by Grantor.

14. Notices. Unless otherwise specified in this Easement, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:                   Wicklow House  
                                      c/o Mike O'Neill & Sons  
                                      828 Franklin St.  
                                      San Francisco, CA 94102

To Grantee:                    Director of Environmental Services  
                                      County of San Mateo  
                                      455 County Center  
                                      Redwood City, CA 94063

or to such other address as either party from time to time shall designate by written notice to the other.

15. Recordation. This instrument shall be recorded by Grantee in the Official Records of San Mateo County, California. Grantee may rerecord this Easement whenever rerecording is required to preserve Grantee's rights in this Easement.

16. 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 Grantee to effect the purposes of this Easement and the policy and purpose of Section 815 et. seq. of the



California Civil Code. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. This instrument shall be construed in accordance with its fair meaning and it shall not be construed against either party on the basis that that party prepared this instrument.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby so long as the purposes of this Easement can still be carried out.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) No Third Party Rights. This instrument is made and entered into for the sole benefit and protection of Grantor and Grantee and their respective successors and assigns. No person or entity other than the parties hereto and their respective successors and assigns shall have any right of action under this Easement or any right to enforce the terms and provisions hereof.

(f) No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's fee title in any respect. Grantor specifically reserves the right to convey fee title to the Conservation Property subject to this Easement.

(g) 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 successors and assigns, and shall continue as a servitude running in perpetuity with the Conservation Property.

(h) Termination of Rights and Obligations. Except as expressly provided otherwise in this instrument, a party's rights and obligations under this Easement shall terminate upon the transfer of the party's interest in this Easement or the fee title to the Conservation Property, as the case may be, except that rights, obligations, and liability relating to acts or omissions occurring prior to transfer shall survive transfer.

(i) 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.

(j) Counterparts. Grantor may execute this instrument in two or more counterparts; each counterpart shall be deemed an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) Exhibits. All Exhibits referred to in this Easement are attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, each party has set their hand on the day and year first written above.

GRANTOR  
WICKLOW HOUSE

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

GRANTEE  
County of San Mateo

By \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

ACKNOWLEDGMENTS

SCHEDULE OF EXHIBITS

- A. Map of Conservation Property
- B. Legal Description of Conservation Property