

WHEN RECORDED MAIL TO:

County of San Mateo
Department Of Parks
455 County Center, 4th Flr
Redwood City, CA 94063
Attn: Parks Director

**OPEN SPACE EASEMENT AGREEMENT
HARRINGTON CREEK WATERSHED**

This “Agreement”, dated for reference purposes only, this ___ day of _____, 2007, is made by and between the COUNTY OF SAN MATEO (“County”) and the MIDPENINSULA REGIONAL OPEN SPACE DISTRICT (“District”).

RECITALS

- A. The District acquired certain real property located within the unincorporated area of the County of San Mateo, State of California consisting of 3,681 acres and commonly known as “Driscoll Ranch” as an addition to the La Honda Creek Open Space Preserve. The Driscoll Ranch property encompasses a majority of the Harrington Creek watershed. The District acquired Driscoll Ranch for parks and recreation, agricultural preservation and open space purposes including public trail opportunities. The District purchased the property at a bargain sale purchase price of \$9 million. District general funds were used for the entire \$9 million purchase price.
- B. The County wishes to enhance the park, open space, and regional trail opportunities within the San Mateo County coastside area by contributing funding to the District’s purchase of Driscoll Ranch. The County was awarded two grants from the State of California 2000 Parks Bond Act to help fund the District’s purchase of Driscoll Ranch: \$80,320.00 from the Per Capita Grant Program under Contract Number C2003612, and \$34,045.00 from the Roberti-Z’ Berg-Harris Urban Open Space and Recreation Grant Program under Contract Number C2009358, for a total grant amount of \$114,365.00 (“State Grants”).
- C. The award of the State Grants to the County and the County’s desire to use the State Grants to contribute funding toward the District’s purchase of Driscoll Ranch is conditioned upon the County, as grantee of the State Grants, meeting certain site control and land tenure requirements contained in the Grant Agreements between County and the State of California for the two above-referenced grants (“Grant Agreements”) incorporated herein by this reference. The State has approved the County’s use of the State Grants as a contribution toward the District’s purchase of Driscoll Ranch, subject to the County acquiring from the District an open space easement over 23 acres of Driscoll

- Ranch, as more particularly described in "Exhibit A" attached hereto.
- D. County's obligation to contribute the State Grant funding to District is expressly conditioned upon County receiving disbursement of the above-described State Grants from the State of California.

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and in particular, inter alia, Sections 815 through 816 of the California Civil Code, District hereby grants to County an Open Space Easement ("Easement") over a portion of Driscoll Ranch more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference ("Easement Property"), subject to the following terms and conditions.

1. Purpose. The purpose of the Easement is to assure that the Easement Property will be retained in its scenic, agricultural and open space condition, to promote compatible low-intensity recreational use (including public trails), and to prevent any use of the Easement Property that will significantly impair or interfere with these conservation values. Accordingly, the Easement restricts the use of the Easement Property to allow only activities involving agricultural grazing, low-intensity public recreational use, open space, resource management, natural habitat and environmental protection, and related uses that are consistent with the Easement and all state grant limitations and requirements as contained in the Grant Agreements.
2. Term. This Easement shall run for a period of ten (10) years and shall expire on the tenth anniversary of the date this Easement is accepted by County. Upon the expiration of this Easement, County agrees to prepare and record a quitclaim of this Easement as more particularly set forth in Section 11 hereunder.
3. Rights of County. To accomplish the purposes of the Easement, District conveys to County the right:
 - (a) To preserve and protect the open space values of the Easement Property consistent with this Easement and the Grant Agreements.
 - (b) To enter upon the Easement Property in order to monitor District's compliance with the terms of the Easement and to enforce such terms, provided that such entry shall be upon reasonable prior notice to District.
 - (c) Pursuant to Section 7 hereof ("Disputes and Remedies"), to prevent any activity on or use of the Easement Property which is inconsistent with the terms of the Easement or the Grant Agreements and to require the restoration of such areas or features of the Easement Property that may be damaged by any inconsistent activity or use.
4. Prohibited Uses. Any activity on or use of the Easement Property that is inconsistent with the terms of the Easement or State Grant Agreements is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Subdivision. The subdivision of the Easement Property for any purpose is expressly prohibited without the prior consent of County. The term “subdivision” shall not include a lot line adjustment. Any land transferred by lot line adjustment shall remain subject to the terms of the Easement and State Grant Agreements.
- (b) Commercial or Industrial Use. Any commercial or industrial development, use of, or activity on the Easement Property is prohibited. This provision excludes agricultural use and the use of the Easement Property by District’s agricultural tenant under the terms of the Lease Agreement as referenced in Section 5 hereunder.
- (c) Building. The placement or construction of any new buildings, structures or other improvements on the Easement Property is prohibited other than the public open space and recreational improvements permitted in Section 5 hereunder. This provision also excludes any improvements authorized by the Lease Agreement and Springwater Easement referenced in Section 5 hereunder.
- (d) Soil Erosion or Degradation. Any use or activity that causes, or is likely to cause, significant soil degradation or erosion or significant pollution of any surface or subsurface waters is prohibited. This prohibition shall not apply to the use of agrochemicals such as fertilizers, pesticides, herbicides, and fungicides, which are used in accordance with law and USDA, manufacturer's, and the County Agricultural Commissioner's regulations, directions, and policies, or those of their successors.
- (e) Dumping. The dumping or disposal of hazardous wastes or refuse on the Easement Property is prohibited.
- (f) New Utilities. The installation of new above-ground utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities is prohibited. This provision excludes the installation of underground utilities serving existing agricultural improvements and facilities located on Driscoll Ranch, or that may be necessary to serve future public recreation or access, and excludes any utilities authorized by the Lease Agreement and Springwater Easement referenced in Section 5 hereunder.
- (g) Mineral Rights. The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method is prohibited.
- (h) Off Road Vehicles. Use of off-road or all-terrain vehicles or motorcycles is prohibited except by District’s personnel and contractors for resource management, patrol, maintenance or construction purposes permitted under the terms of this Easement, or by District’s agricultural tenant under the terms of the Lease Agreement and Springwater Easement referenced

in Section 5 hereunder.

- (i) Hunting or Shooting. Hunting or trapping of wildlife or the shooting of guns is prohibited, except by District's personnel or contractors for pest species.
 - (j) Noise Limits. No activities such as concerts shall be permitted on the Easement Property that produce noise levels in excess of 65 decibels as measured on trails surrounding the Easement Property. Agricultural, construction, maintenance and landscaping equipment such as tractors, chainsaws, and leaf blowers are specifically excluded from this provision.
 - (k) Junk Yards. Storage or disassembly of inoperable automobiles and trucks for purposes of sale or rental of space for that purpose is expressly prohibited.
 - (l) Excavation. Alteration of landforms by grading or excavation of topsoil, earth, or rock is prohibited except for the construction, installation, repair, and maintenance of public trails or patrol roads, staging areas, or associated accessory facilities such as signs, gates, and fencing, or for erosion control purposes or other resource management purposes.
 - (m) Scenic and Natural Character. Activities such as clearing, stripping of native vegetation, grading, or storage of materials that would clearly degrade the scenic and natural character of the Easement Property is prohibited.
 - (n) Archeological Resources. The excavation, removal, destruction, or sale of any archeological artifacts or remains found on the Easement Property, except as part of an archeological investigation approved by District, is prohibited.
5. Permitted Uses. District may use the Easement Property for any purpose not prohibited by Section 4 herein, and which is consistent with the terms of the Easement and the State Grant Agreements. The following uses and practices, though not an exhaustive recital of consistent uses, are consistent with the terms and purpose of the Easement and are not precluded by it, to the extent consistent with the State Grant Agreements:
- (a) To use and operate the Easement Property for public open space, agricultural, and recreational purposes including, but not limited to, natural resource management activities, environmental education, occasional special events, and low-intensity public recreation and trail uses. All uses and improvements shall be constructed and operated in accordance with all applicable laws, including but not limited to, the Americans with Disabilities Act ("ADA"). Compliance with the ADA shall be the sole responsibility of District.

- (b) To plan, design and construct recreational trails, trail staging areas, parking areas, restrooms and related improvements to create opportunities for low-intensity public use of the Easement Property.
- (c) To install gates and appropriate signage and fencing.
- (d) To take reasonable measures necessary and appropriate for fire safety and erosion control as approved by the County of San Mateo Fire Marshal.
- (e) To remove exotic non-native invasive vegetation and restore the area with native vegetation.
- (f) To maintain existing roads to a year-round unsurfaced standard for vehicle access.
- (g) To permit cattle grazing and all other permitted activities by District's tenant under the terms of that certain Lease Agreement between Driscoll Ranches, LLC and Peninsula Open Space Trust ("POST") dated January 17, 2002, as amended by that certain Lease Amendment between Driscoll Ranches, LLC and District, as successor interest to POST, dated July 25, 2007.
- (h) All rights, uses, and improvements set out in the Springwater Easement – Driscoll Residence between District and Driscoll Ranches, LLC executed on July 25, 2007.

6. Cooperation Between County and District on Developing Public Trail Access.

County and District acknowledge that the primary purpose and intended use of the State Grants is to provide acquisition of potential sites for potential public trail access opportunities through projects funded in whole or part by the State Grants.

Accordingly, both parties agree to cooperate on efforts to identify and develop public trail facilities that will provide appropriate public access opportunities within the Easement Property and throughout the District's Driscoll Ranch property. District will work cooperatively with County to facilitate the fulfillment of any conditions of the State Grants applicable to the Easement. Upon request of County, District will provide such documentation, information or other material as is necessary for County to satisfy the general contract provisions of the State Grants.

7. Disputes and Remedies. If County determines that District or any occupant of the Easement Property is conducting or allowing a use, activity, or condition on the Easement Property which is prohibited by the terms of the Easement or State Grant Agreements, or that a violation is threatened, County shall give written notice to District of such violation and request corrective action sufficient to cure the violation, and, where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the purposes of the Easement or State Grant Agreements, to restore the portion of the Easement Property so injured, promptly and at District's sole cost and expense.

- (a) Consultations Regarding Interpretation and Enforcement of Easement. When any disagreement, conflict, need for interpretation, or need for enforcement arises between the parties to the 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 legal action.
- (b) Notice of Violation; Corrective Action. If County determines that a violation of the terms of the Easement has occurred or is threatened, County shall give written notice to District of such violation and request corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the terms of the Easement, to request restoration of the portion of the Easement Property so injured to its prior condition. Such written notice is not required in the event of any actual or imminent physical harm to the Easement Property.
- (c) Injunctive Relief. If District fails to cure the violation within ninety (90) days after receipt of notice thereof from County, or under circumstances where the violation cannot reasonably be cured within a ninety (90) day period, fails to begin curing such violation within the ninety (90) day period, or fails to continue diligently to cure such violation until finally cured, County may bring an action at law or in equity in a court of competent jurisdiction which seeks to enforce the terms of the Easement, to enjoin the violation, by temporary or permanent injunction, and seeks to require the restoration of the Easement Property to the condition that existed prior to any such injury.
- (d) Forbearance. Enforcement of the terms of the Easement shall be at the discretion of the County, and any forbearance by County to exercise its rights under the Easement in the event of any breach of any term of the Easement by District shall not be deemed or construed to be a waiver by County of such term or of any subsequent breach of the same or any other term of the Easement or of any of County's rights under the Easement. No delay or omission by County in the exercise of any right or remedy upon any breach by District shall impair such right or remedy or be construed as a waiver.
- (e) Acts Beyond the District's Control. Nothing contained in the Easement shall be construed to entitle County to bring any action against District for any injury to or change in the Easement Property resulting from causes not involving any affirmative acts by District or its tenants, or causes beyond District's or its tenants' control, including without limitation, trespassers, fire, flood, storm, and earth movement or other Acts of God, or from any prudent action taken by District under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes.

8. Indemnity, Costs and Responsibilities. District and/or its designees and/or authorized lessees shall have the sole responsibility for the ownership, liability, operation, upkeep, and maintenance of the Easement Property. District shall be responsible for compliance with any State Grant Agreement conditions or requirements applicable to the grant funds used to acquire the Property covered by the Easement, including but not limited to limitations and requirements regarding the use or condition of the Easement Property. District shall be responsible for, indemnify, defend, and save harmless County, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs whatsoever, including but not limited to claims by any person for property damage, personal injury or death of any person, whether public or private, resulting from, growing out of, or in any way connected with or incident to the Easement or the condition, use, installation, construction, operation, maintenance, or lack of maintenance by any person of the Easement Property, except for the sole or active negligence or willful misconduct of County, its officers, agents, or employees. This indemnity shall extend to any claims against County due to the release or existence of any hazardous materials (as defined by any applicable local, state or federal law) on, under or in the Easement Property. This indemnity shall also extend to any claims against County concerning any failure by County to comply with the Americans with Disabilities Act in any way connected with the Easement Property. The duty of District to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778.
9. Insurance. Throughout the term of this Easement, the District shall at its sole cost maintain in full force and effect either self-insurance through a government risk pool or a policy of general commercial liability insurance with a company licensed to do business in the State of California insuring the District against claims for personal injury, death, or property damage occurring in, on or about the Easement Property with a coverage limit of not less than Two Million Dollars (\$2,000,000) aggregate limit for bodily injury or death or to property damage. All such policies of insurance shall name the County as an additional insured.
10. Notices. 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 District: Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404
Attn: General Manager
(650) 691-1200 (Telephone)
(650) 691-0485 (Fax)

To County: County of San Mateo
Department Of Parks
455 County Center, 4th Flr
Redwood City, CA 94063

Attn: Parks Director
(650) 363-4020 (Telephone)
(650) 599-1721 (Fax)

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

11. Recordation. This instrument shall be recorded by County in the Official Records of the County of San Mateo, California. County may re-record this Agreement whenever re-recording is required to preserve County's rights under the Easement. County agrees to prepare a quitclaim of the Easement in substantially the same form set out in "Exhibit B", attached hereto and incorporated herein by reference, or such other form as is acceptable to District, quitclaiming all of County's rights and interests in the Easement, and to cause the quitclaim to record within 30 days of the ten (10) year anniversary of the execution of this Agreement by both parties.
12. General Provisions.
 - (a) Controlling Law. The interpretation and performance of the Easement shall be governed by the laws of the State of California. Venue shall be the Superior Courts of San Mateo County.
 - (b) Severability. If any provision of the Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of the 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 the Easement can still be carried out.
 - (c) No Third-Party Rights. This instrument is made and entered into for the sole benefit and protection of District and County and their respective heirs, grantees, successors, and assigns. No person or entity other than the parties hereto and their respective heirs, grantees, successors, and assigns shall have any right of action under the Easement or any right to enforce the terms and provisions hereof.
 - (d) No Forfeiture. Nothing contained herein is intended to result in a forfeiture or reversion of District's fee title in any respect. District specifically reserves the right to convey fee title, or to lease, or to grant easements pertaining to the Easement Property, subject to the terms of this Easement and State Grant Agreements.
 - (e) 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.
 - (f) Consent not to be Unreasonably Withheld. In the event District, as

required by the terms hereof, seeks consent of County, County agrees in all such circumstances not to unreasonably withhold its consent, regardless whether the paragraph hereunder requiring County's consent so provides.

- (g) Authority to Sign. The parties executing this Agreement represent that they have authority and power to sign this Agreement on behalf of the Midpeninsula Regional Open Space District and the County of San Mateo, respectively.

IN WITNESS WHEREOF, District and County have executed this Open Space Easement Agreement on the day and year shown with their signature hereon.

**MIDPENINSULA REGIONAL
OPEN SPACE DISTRICT**

COUNTY OF SAN MATEO

By: _____
Kenneth C. Nitz, President
Board of Directors

By: _____
_____, President
Board of Supervisors

Date: _____

Date: _____

Attest:

Attest:

By: _____
Gregory Sam,
District Clerk

By: _____
_____,
Clerk of the Board of Supervisors

Approved as to form and legality:

By: _____
Susan M. Schectman,
General Counsel