

WHEN RECORDED MAIL TO:

Midpeninsula Regional
Open Space District
330 Distel Circle
Los Altos, CA 94022
Attn: Real Property Manager

NO TRANSFER TAX DUE
PUBLIC AGENCY ACQUIRING TITLE,
CALIFORNIA REVENUE AND TAXATION
CODE SECTION 11922

DULY RECORDED WITHOUT FEE
Pursuant to Government Code
Sections 6103, 27383

BY: _____

QUITCLAIM DEED OF CULTURAL CONSERVATION EASEMENT

WHEREAS, MIDPENINSULA REGIONAL OPEN SPACE DISTRICT (“District”), a California special district, was formed by voter initiative, with a mission to acquire and preserve a regional greenbelt of open space land in perpetuity, protect and restore the natural environment, and provide opportunities for ecologically sensitive public enjoyment and education; and

WHEREAS, District is the owner of certain real property on Mount Umunhum located within an unincorporated area of the County of Santa Clara, State of California, and consisting of approximately Thirty-six (36) acres identified as Santa Clara County Assessor’s Parcel Number 562-08-003, as more particularly described in “Exhibit A” and depicted in the map attached hereto as “Exhibit B,” incorporated by this reference (hereafter “Easement Property”); and

WHEREAS, THE AMAH MUTSUN TRIBAL BAND (“AMTB”), is a non-federally recognized California Native American Tribe that is on the contact list maintained by the Native American Heritage Commission and that wishes to protect, preserve, and steward Mount Umunhum, a California Native American cultural, spiritual, prehistoric and ceremonial place, and is qualified to hold conservation easements under California Civil Code section 815.3; and

WHEREAS, the District and AMTB (“the parties”) share a strong interest in, and history of working collaboratively on, Mount Umunhum to identify, document, conserve, interpret, and restore open space, natural and cultural resources; reestablish Native American traditions and resource stewardship such that they thrive on Mount Umunhum; and, to educate and share these values and resources with the public; and

WHEREAS, AMTB brings a unique and valuable perspective to, and knowledge of, the Mount Umunhum Property, and it is in the District’s and the public’s interest to establish a long-term partnership with AMTB that provides cultural and natural resource stewardship and interpretation services, and helps the District identify, conserve, preserve, interpret, and restore Native American cultural resources and associated natural resources; and

WHEREAS, District desires to grant to AMTB, and AMTB desires to accept, a Cultural Conservation Easement over the Easement Property, and relevant features of the Easement Property are depicted on the map attached hereto as “Exhibit B” and incorporated herein by this reference; and

WHEREAS, the parties will enter into a Memorandum of Agreement (“MOA”) to further define the processes for implementing this Easement;

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 AMTB a Cultural Conservation Easement (“Easement”) in perpetuity over the Easement Property subject to the following terms and conditions:

1. Conservation Values. The Mount Umunhum Property possesses significant cultural, historic, educational, natural resource, scenic and open space values (collectively, the “Conservation Values”) of great importance to the District, AMTB, the people of Santa Clara County, and the people of the State of California.

a. Cultural and Historic Values.

- i. The Easement Property is located on Mount Umunhum, whose name comes from the Ohlone word for hummingbird, a central figure in the Amah Mutsun creation story. Mount Umunhum is central to this creation story and revered by many Native Americans, including the Ohlone and Mutsun peoples who originally inhabited these lands, and is of significant cultural importance to the indigenous peoples who have used, visited and occupied the Easement Property since time immemorial for cultural and ceremonial purposes. Because of its importance to the AMTB, the Easement Property is considered to be a significant prehistoric, cultural, spiritual, and ceremonial landscape;
- ii. The Easement Property contains a radar tower structure (“Tower”) that was used for radar surveillance at the Almaden Air Force Station between 1958 and 1980. The County of Santa Clara has included the Tower in its Heritage Resource Inventory. The location of the Tower is depicted on Exhibit B and described further in the Baseline Documentation Report referenced in section 5 below.

b. Educational Values. The Easement Property provides opportunities for traditional planting and gathering of native plants and ceremonial practices in certain mutually agreed-upon areas, including the application of traditional resource and environmental management techniques to promote productive, biodiverse and resilient landscapes. The public’s access to, and use of, the Mount Umunhum Property will provide educational and interpretive opportunities for the general public to learn about traditional ecological knowledge and stewardship practices to preserve and promote biodiversity and a resilient cultural landscape on Mount Umunhum.

c. Natural Resource Values. The Easement Property supports a wide variety of plant and animal life, some unique and rare to the region. The Easement Property is located at the top of the Guadalupe Creek, Los Gatos Creek and Alamos Creek watersheds whose headwaters are largely protected from development, and support healthy riparian and upland vegetation communities. The health of these ecosystems and watersheds is necessary for the preservation of the native flora and fauna, as well as the integrity of Mount Umunhum as a venerated place for Amah Mutsun ceremonies and other cultural, traditional, educational, and recreational activities.

d. Scenic and Open Space Values. The Easement Property is visible from the Santa Clara Valley, the Peninsula, the Santa Cruz and Mount Hamilton mountain ranges. The Easement Property is visible from the District’s surrounding Sierra Azul Open Space Preserve and Almaden Quicksilver County Park. These expansive views are an integral part of this majestic landscape and affirm the beauty of Mount Umunhum cherished by the Amah Mutsun.

2. Purpose. The purpose of this Easement is to ensure that: i) the Easement Property will be protected to prevent any use of the Property that would significantly impair or interfere with its Conservation Values; and, ii) to allow restoration, conservation, stewardship and related ceremonial, traditional, cultural resource and educational activities to occur, consistent with the Conservation Values (hereafter, “purpose of the Easement”)

or “Easement purpose”). This Easement restricts the use of the Easement Property to activities that are consistent with the Conservation Values, including but not limited to: public access, conservation, stewardship, restoration, education, protection and enjoyment of cultural resources, views, open space, natural habitat, environmental protection; and, the construction, maintenance and use of related trails, parking, roads, shelters, and related visitor service infrastructure, gardens, cultural improvements, ceremonial areas, property management, and additional natural resource protection and stewardship uses which are consistent with the Conservation Values, as further outlined below in Sections 3(d)(“Authorized Activities”) and 7 (“Reserved Rights and Permitted Uses”).

3. Rights and Interests Conveyed. To accomplish the purposes of this Easement, District conveys to AMTB the following rights and interests:
 - a. Preservation and Protection. To preserve and protect the Conservation Values of the Easement Property.
 - b. Monitoring. To enter upon the Easement Property at reasonable times during regular hours when the property is open to the public, or at other times by prior arrangement with District, in order to protect Conservation Values and monitor District’s compliance with the terms of this Easement and, if necessary, to enforce such terms.
 - c. Enforcement. Pursuant to Section 9 hereof (“Disputes and Remedies”) and to the extent and in the manner provided by state law, to prevent any activity on, or use of, the Easement Property by the District that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Property that may be damaged by any such inconsistent activity or use.
 - d. Authorized Activities. The following activities are authorized, but not required, and are deemed to be consistent with the Conservation Values, subject to the terms and conditions of this Easement and any Memorandum of Agreement (“MOA”) entered into by the parties.
 - i. Restore, conserve and steward natural and cultural resources.
 - ii. Promote indigenous land and cultural stewardship through the application and sharing of traditional ecological knowledge related to traditional conservation and sustainable resource management practices, including for example: plant gathering; collection of seeds; digging bulbs/roots; cutting and pruning vegetation; tending of plants; planting; and, dispersing seed and bulbs.
 - iii. Provide educational services about traditional cultural and ecological knowledge, including traditional land management principles and resource management methods that reflect Amah Mutsun values.
 - iv. Plant and maintain a native plant education garden in the former recreational and housing area of the decommissioned Almaden Air Force Station for Tribal use and educational purposes identified as Tribal Garden on Exhibit B.
 - v. Host Tribal ceremonies in the Ceremonial Circle (identified as Ceremonial Space on Exhibit B), some of which shall be open to non-tribal public participants and some of which may be reserved for AMTB exclusive use. AMTB may not require fees from participants for these uses; however, voluntary or suggested donations are authorized.
 - vi. Perform a cultural resources survey of the Mount Umunhum Property to identify and determine whether additional cultural resources or archaeological sites are in need of protection, including ongoing documentation and monitoring of any such cultural resources.

- vii. Perform research on how the Guadalupe, Los Gatos and Alamitos River headwaters impacts watersheds and the cultural and natural resources of Mount Umunhum.
- viii. Install cultural improvements, subject to District review and approval in the District's Board of Directors' sole discretion, provided such improvements are consistent with the Conservation Values.
- ix. Engage in traditional recreational, cultural, and educational activities, including without limitation: ceremonies, dances, games and knowledge sharing workshops.
- x. Any of the above Authorized Activities that are, or may become, inconsistent with Regulations for the Use of Midpeninsula Open Space District Lands ("District Regulations") as are now in existence or as may be amended from time-to-time (including, but not limited to, the use of fire for any purpose, after hours activities, seed harvesting, etc.) are prohibited unless authorized by permit, advance mutual written agreement, or in accordance with the MOA, which will be developed collaboratively and adaptively by the Parties.

4. Affirmative Obligations of AMTB. To support the purposes of this Easement, and as partial consideration for the granting of this Easement, and in furtherance of the ongoing partnership described in the preamble, AMTB agrees to provide at least 50 volunteer hours per year, on average over the next ten years, of Native American and cultural educational services to the District for public benefit, as well as any ongoing cultural conservation consultation and interpretive services to the District under relevant parameters to be determined in a subsequent MOA to be developed and entered into in good faith between the parties.

5. Baseline Data. In order to establish the present condition of the Conservation Values, AMTB has examined the Easement Property and "Baseline Documentation Report" prepared by the District, which contains an inventory of the Easement Property's relevant features and conditions, its improvements and its natural resources (the "Baseline Data") reflecting the current conditions of, and plans regarding construction underway for, improvements on the Mount Umunhum Property. The Baseline Documentation Report shall be updated upon completion of the District's public access improvement projects to the Mount Umunhum Property. A copy of the Baseline Documentation Report has been provided to AMTB, and another shall be placed and remain on file with District. The Baseline Documentation Report has been signed by the District and AMTB, and thus acknowledged accurately to represent the condition of the Easement Property at the date of the conveyance of this Easement. The parties intend that the Baseline Documentation Report shall be used by AMTB to monitor District's future uses of the Easement Property, condition thereof, and practices thereon. The parties further agree that, in the event a controversy arises with respect to the condition of the Easement Property or a particular resource thereof, the parties shall not be foreclosed from utilizing any other relevant document, survey, or report to assist in the resolution of the controversy.

6. Prohibited Uses. Any activity on, or use of, the Easement Property that is inconsistent with the purpose of the Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. Subdivision. The legal or *de-facto* subdivision of the Easement Property for any purposes is prohibited, with the exception of lot line adjustments under 100 square feet, or lot line adjustments in excess of 100 square feet with the written approval of AMTB. Any land transferred by lot line adjustment shall remain subject to the terms of this Easement, and shall not carry with it any rights to development density. The term subdivision shall include, but not be limited to, the creation of a life or future estate in a portion of the Easement Property, the conveyance of a portion of the Easement Property, or any subdivision as defined by the Subdivision Map Act, California Government Code Section 66000 *et seq.*
- b. Permanent Commercial, Industrial or Other Use. Any permanent (lasting more than 30 days)

commercial or industrial development, use or occupancy of any building, or activity on the Easement Property is prohibited as inconsistent with these Conservation Values.

- c. Building. The placement, expansion, improvement, or construction of any existing or new permanent (lasting more than 30 days) buildings, structures or other improvements for occupied use of any kind on the Easement Property is prohibited, excepting, however, the existing improvements and those improvements that the District determines necessary and appropriate for employee use and/or residence for land management purposes and/or cultural improvements, including native gardens, or are otherwise permitted in paragraph 7, below.
- d. 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 AMTB, is prohibited. All excavation plans shall be reviewed by an archeologist, selected in consultation with the AMTB, prior to the start of, and during, the excavation. The District retains the authority to determine appropriate curation and disposition of what is found as a result of the investigation, consistent with applicable state and federal law, in consultation with the AMTB.

7. Reserved Rights and Permitted Uses. The District may use the Easement Property for any purpose not prohibited by Section 6 and which is consistent with the purpose of this Easement and its Conservation Values. The following uses and practices, though not an exhaustive recital of consistent uses, are consistent with the purpose and intent of this Easement and are not precluded by it:

- a. To construct, install, maintain, repair and use improvements and facilities to support public access, property management, and enforcement activities; including but not limited to parking/staging areas, trails, access roads, signage, shelters, viewing platforms, interpretive features, ceremonial spaces, cultural improvements, gardens, greenhouses, fencing, employee residences, special events, facilities for irrigation, and communications and utility systems, including for alternative energy, *except* within the Tribal Garden and Ceremonial Space, as shown on Exhibit B, which shall require prior consultation with the AMTB. Any alteration of the Ceremonial Space, or any construction, installation, repair, use or other alteration of the Tribal Garden shall be done in consultation with AMTB, and shall be consistent with the Conservation Values.
- b. To conduct vegetation management consistent with District policies and natural resource management objectives.
- c. To repair and maintain the Tower, consistent with the District's approved Retain and Seal option and to any degree required by the County of Santa Clara, based on its general health and safety regulatory authority, or based on the structure's status on the County's Heritage Resource Inventory, or as needed in the District's discretion for natural resource management, health and safety purposes, provided in all cases that the Tower is not expanded in footprint or height or use. Partial or full demolition of the Tower is also authorized as consistent with this easement, if authorized by the County.
- d. To provide public access for recreational uses in all areas except for i) within the Tribal Garden Area, except as provided for in the MOA; and, ii) during specific Tribal ceremonial events authorized in accordance with the applicable requirements of the MOA, permit, or advance mutual written agreement of the parties.
- e. To take any action required or deemed prudent by the District to enforce or comply with any applicable law, statute, regulation, code or rule of any lawful authority including but not limited to District Regulations as they exist or may be amended in the future.
- f. To continue restoration work across the Easement Property intended to abate the remaining effects of the prior development.

- g. To assess, document, preserve, protect, and restore, at the District's discretion, any and all natural and cultural resources, including the removal of non-native species. Any work involving archaeological or Native American cultural resources shall be done in consultation with the AMTB.
- h. To hold and use all existing water rights on the Easement Property for the benefit of the Easement Property, to apply for additional riparian or appropriative rights, and to obtain water supplies from any source permitted by applicable law.
- i. To manage and grant easements, permits, or temporary access agreements to adjacent property owners, members of the public, public agencies, the AMTB, or other non-profit organizations to enter and conduct activities on the Easement Property, as long as such activities are consistent with the Conservation Values.
- j. All rights to install or maintain improvements as set forth above also includes the right to decide the frequency and extent of repair and replacement, according to District property management and budgetary needs and applicable laws and regulations.

8. Compliance with the California Environmental Quality Act. Any activities by either the District or the AMTB under this Easement or the MOA that may have a significant effect on the environment, as defined by California Environmental Quality Act (CEQA), shall be analyzed under the CEQA and may not commence until compliance with CEQA is determined by the District. Any CEQA analysis concerning activities by the AMTB, or District uses potentially affecting the Conservation Values, shall be done in consultation with the AMTB.

9. Disputes and Remedies. If either party determines that the other party, its successor in interest, 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 this Easement, or that a violation is threatened, the party shall promptly give written notice 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 this Easement, to restore the portion of the Easement Property so injured.

- a. Consultation, Duty to Investigate Required. When any disagreement, conflict, need for interpretation, request for information, 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 through a good faith consultation process without resorting to legal action. Either party may request consultation in writing to address any conflict or issue arising between the parties at any time. The parties agree to make a good faith effort to promptly investigate the issue or conflict and engage in the consultation process.
- b. Notice of Violation; Corrective Action. If a party determines that a violation of the terms of this Easement has occurred or is threatened, that party shall give prompt written notice to the other party of such violation and request corrective action sufficient to cure the violation. Where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with the purpose of this Easement, that party may in its discretion request restoration of the portion of the Easement Property so injured to its prior condition. Written notice is not required in the event of any actual or imminent physical harm to the Easement Property, and the parties shall each have the right to immediately enter the Property where it is determined that urgent action is necessary to prevent, terminate, or mitigate a significant impairment of the Conservation Values.
- c. Mediation of Disputes. If the attempts at informal resolution of any dispute set out above are unsuccessful, the parties agree to enter into non-binding mediation with the assistance of a mutually agreeable third-party, which may include the use of any available mediation resources in the Northern California Intertribal Court System ("NCICS") or other Tribal Court System, Indian

Dispute Resolution Services, Inc. (“IDRS”), or the Judicial Arbitration and Mediation Services (“JAMS”). Such use of the Intertribal or Tribal Court System, IDRS or JAMS shall not be construed as an agreement by any Party to be subject to the jurisdiction of such court or dispute resolution entity for any legally binding outcome, ruling or order. The parties agree to promptly select a mutually agreeable entity to perform such mediation in good faith.

- d. Injunctive Relief; Remedies at Law Inadequate. If a party fails to cure the violation within thirty (30) days after receipt of notice in accordance with this section, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, and the attempts at informal resolution and mediation are unsuccessful, that party may bring an action at law or in equity in a court of competent jurisdiction which seeks to enforce the terms of this Easement, to enjoin the violation by injunction, and seek to require the restoration of the Easement Property to the condition that existed prior to any such injury. The parties shall not be authorized to bring such an action unless the good faith effort to resolve the dispute by engaging in consultation and mediation have concluded unsuccessfully, or because of an imminent threat of, or actual physical harm, to the property. The parties agree that remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-breaching party shall be entitled to the injunctive relief described in this section, in addition to such other relief to which it 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, provided the other legal requirements for injunctive relief are met.
- e. Damages. In addition to injunctive relief, the parties are empowered to recover damages for violation of the terms of this Easement or injury to this Easement or the interests protected by this Easement, as provided by Civil Code Section 815.7, as well as any other remedies provided for under that statute; provided that the pre-claim informal consultation, notice and mediation efforts are pursued in good faith, and the results of those efforts are inadequate to address the alleged violation(s).
- f. Forbearance. Enforcement of the terms of this Easement shall be at the discretion of the non-breaching party, and any forbearance by the non-breaching party to exercise its rights under this Easement in the event of any breach of any term of this Easement by the breaching party shall not be deemed or construed to be a waiver of such term, subsequent breach, any other term of this Easement, or of any of non-breaching party’s rights under this Easement. No delay or omission by the non-breaching party in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.
- g. Acts Beyond a Party’s Control. Nothing contained in this Easement shall be construed to entitle the parties to bring an action for any injury to or change in the Easement Property resulting from causes not involving any affirmative acts by a party; involving causes beyond a party’s control, including without limitation, state, federal or local legal mandate, trespassers, fire, flood, storm, and earth movement; or arising from any prudent action taken by a party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes.

10. Legal Responsibility. District shall have the sole responsibility for the ownership, liability, operation, upkeep, and maintenance of the Easement Property, except within the footprint of any area affirmatively managed by AMTB per mutual written agreement of the Parties and in accordance with the terms and conditions of the MOA and any future Land Management Plan, *except* as further outlined below in paragraph 11 (“Insurance Requirements”) and section 12 (“Hazardous Materials Liability”).

11. Insurance Requirements. District shall procure, carry and maintain at all times the following insurance coverage and shall furnish AMTB with certificates of insurance upon request:

- a. Workers' Compensation and Employers' Liability insurance.
- b. Commercial General Liability of at least one million dollars each occurrence and two million dollars in the aggregate for bodily injury, property damage, and personal injury. District shall add AMTB as an additional insured, including its directors, officers, employees and volunteers, with respect to liability arising out of work performed by AMTB, and coverage shall be endorsed to specify that District's insurance is primary.
- c. Business Automobile coverage of at least one million dollars per occurrence for bodily injury and property damage.

The AMTB shall procure, carry and maintain at all times such insurance coverages and certificates of insurance as may be required in the MOA and the permits issued thereunder.

12. Hazardous Materials Liability. District hereby releases and agrees to indemnify, protect and hold harmless AMTB from and against any and all claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, the Easement Property at any time, *except* any Hazardous Materials placed, disposed or released by AMTB or its employees, officers, agents, volunteers or representatives. This voluntary and knowing release and indemnification includes, without limitation, claims for injury to or death of any person or physical damage to any property; the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below); and unknown claims related to Hazardous Materials in accordance with California Civil Code Section 1542. If any action or proceeding is brought against AMTB by reason of any such claim, District shall, at the election of and upon written notice from AMTB, defend such action or proceeding by counsel reasonably acceptable to AMTB or reimburse AMTB for all reasonable charges incurred for services of the California Attorney General or other legal counsel in defending the action or proceeding.

The parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed to create in or give to AMTB any of the following:

- a. The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (as defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601, *et seq.*; hereinafter, "CERCLA"); or
- b. The obligations or liabilities of a person described in 42 U.S.C. section 9607(a)(3) or (4);
- c. The obligations of a responsible person under any applicable Environmental Laws (as defined below); or
- d. The right or duty to investigate and remediate any Hazardous Materials associated with the Property; or
- e. Any control over District's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901, *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. section 6901, *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (Health & Saf. Code section 25100, *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Safety Code section 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted pursuant to them, or any other applicable Environmental Laws that define Hazardous Materials now in effect or enacted after the Effective Date.

The term “Environmental Laws” includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, or local statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. District represents, warrants and covenants to AMTB that all activities on and use of the Property by District, its agents, employees, invitees and contractors will comply with all applicable Environmental Laws.

Should the AMTB, its employees, officers, agents, volunteers or representatives encounter any hazardous materials or other environmental hazard within the Tribal Garden area, or any other area in which the AMTB conducts activities, the AMTB shall provide notification of the encounter to the District’s Visitor Services Manager at (650) 968-4411 immediately, but in no event later than 48 hours after the discovery.

13. Hold Harmless; Indemnification. Each party shall be responsible for, indemnify, and hold harmless the other party, its officers, directors, agents, contractors, and employees from any and all liabilities, claims, demands, damages, or costs caused by that party’s acts or omissions directly causing: injury to, or death of, any person, or physical damage to the Easement Property, unless due solely to the gross negligence or intentional misconduct of the other party, its officers, agents, contractors or employees. The duty of one party to indemnify and hold harmless the other party includes the duty to defend as set forth in Civil Code Section 2778, with counsel reasonably acceptable to the indemnified party, or to reimburse the indemnified party for all legal costs incurred by such indemnified party directly arising from defense of gross negligence or intentional misconduct. Each party waives any and all rights to any type of express or implied indemnity or right of contribution from the other party for any liability resulting from, arising out of, or in any way connected with or incident to the Easement Property or this Easement, except to the extent attributable to the gross negligence or intentional misconduct of the other party, its officers, agents, contractors or employees.

14. Subsequent Conveyance of the Cultural Conservation Easement Property; Transfer. District shall incorporate by reference hereto the terms of this Easement into any deed or other legal instrument by which District divests itself of any interest in all or a portion of the Easement Property, including, without limitation, a leasehold interest. Any such conveyance must be consistent with this Easement including Section 6(a) herein. District shall give written notice to AMTB of the transfer of any interest in the Easement Property at least 30 days prior to the date of such transfer. District shall provide a complete copy of this Easement to its transferee prior to any such transfer. The failure of District to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

15. Extinguishment; Entitlement to Proceeds.

- a. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible or impracticable to accomplish, this Easement may be terminated or extinguished (as provided for in Treasury Regulations Section 1.170A-14(g)(6)(i)) only by judicial proceedings in a court of competent jurisdiction. After satisfaction of any prior claims, the amount of compensation to which AMTB shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Easement Property, subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with the valuation provisions in Section 15(b) below. AMTB shall use any such proceeds in a manner consistent with the purpose of this Easement.
- b. Compensation Value. The Easement constitutes a real property interest immediately vested in AMTB. The value of the respective interests of the District and AMTB shall be assessed separately according to the fair market value of the respective interests at the time of the valuation.

16. Eminent Domain and Condemnation. Pursuant to Sections 1240.670 and 1240.680 of the California Code of Civil Procedure, notwithstanding any other provision of law, the Easement Property is presumed to have been appropriated for the best and most necessary public use, and this Easement is “property appropriated for public use” within the meaning of the California Code of Civil Procedure section 1240.055. If the District or AMTB is notified that the Easement Property may be acquired for public use by eminent domain, the party receiving such notice shall notify the other party of the potential acquisition no later than

fifteen (15) days after first receiving such notice. Prior to the inspection of the Easement Property by the appraiser pursuant to Section 7267.1 of the Government Code or any other provision of law, District shall notify AMTB that it or its designated representative may accompany the appraiser during his or her inspection. Within seven (7) days of receiving any notice of the hearing on the resolution of necessity pursuant to Section 1245.235 of the Code of Civil Procedure, District shall provide AMTB a copy of the notice of the hearing. As provided in Sections 1250.220 and 1250.230 of the Code of Civil Procedure, in any eminent domain proceeding to acquire all or a portion of the Easement Property, AMTB is required to be named as a defendant and may appear in the proceedings. District and AMTB shall be entitled to any incidental or direct damages resulting from such taking or condemnation, in proportion to their interest in the rights that are taken or condemned and for which such damages are awarded or paid. Any expense incurred by AMTB or District in any such action shall be first reimbursed out of the recovered proceeds. The remainder of such proceeds shall be divided between AMTB or District in proportion to their interests in the Easement Property, or portion thereof, as set forth in Section 15(b).

17. Miscellaneous Provisions.

- a. Choice of Law. The internal laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Easement, the construction of its terms and the interpretation of the rights and duties of the parties.
- b. Amendment. No subsequent change, amendment, or addition to this Easement shall be binding unless in writing and signed by AMTB and District. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, District and AMTB may jointly amend this Easement, provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of AMTB under any applicable laws, including Sections 815 *et seq.* of the California Civil Code, and any amendment shall be consistent with the purpose 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 Santa Clara County, California.
- c. Rights Cumulative. Each and all of the various rights, powers and remedies of the parties shall be considered to be cumulative with and in addition to any other rights, powers and remedies which the parties may have at law or in equity in the event of the breach of any of the terms of this Easement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.
- d. Notice. Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Easement (or any Exhibit hereto), each such communication shall be in writing and shall be deemed to have been validly served, given or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or if delivered by Federal Express or other private messenger, courier or other delivery service, facsimile transmission or other similar electronic medium and addressed as indicated as follows:

Grantor/District: Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022-1404
Attn: General Manager
TEL: (650) 691-1200
FAX: (650) 691-0485

Grantee/AMTB: Amah Mutsun Tribal Band
P.O. Box 5272
Galt, CA 95632
Attn: Tribal Chair
TEL: (508) 254-0746
(916) 743--5833
EMAIL: vjltestingcenter@aol.com

If sent by facsimile or email, a confirmed copy of such facsimile or emailed notice shall promptly be sent by mail (in the manner provided above) to the addressee. Service of any such communication made only by mail shall be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing served upon the other, designate a different mailing address or a different person to which such notices or demands are thereafter to be addressed or delivered. Nothing contained in this Easement shall excuse either party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirements provided in this Section.

- e. Severability. If any of the provisions of this Easement are held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the parties, the parties agree that such determination shall not result in the nullity or unenforceability of the remaining portions of this Easement. The parties further agree to replace such void or unenforceable provisions, which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.
- f. Waiver. No waiver of any term, provision or condition of this Easement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Easement.
- g. Entire Agreement. This Easement is intended by the parties to be the final expression of their agreement; it embodies the entire agreement and understanding between the parties hereto; it constitutes a complete and exclusive statement of the terms and conditions thereof, and it supersedes any and all prior correspondence, conversations, negotiations, agreements or understandings relating to the same subject matter.
- h. Time of the Essence. Time is of the essence of each provision of this Easement in which time is an element.
- i. Assignment; Transfer. Except as expressly permitted herein, neither party to this Easement shall assign its rights or obligations under this Easement to any third party without the prior written approval of the other party. This Conservation Easement may only be transferred by the AMTB upon written approval of the District, which approval shall not be unreasonably withheld or delayed. AMTB shall give the District at least sixty (60) days prior written notice of the proposed transfer. AMTB may transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the District. The parties shall cause any assignment or transfer to be recorded in Santa Clara County.
- j. Further Documents and Acts. Each of the parties agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions described and contemplated under this

Easement.

- k. Captions. Captions are provided herein for convenience only and they form no part of this Easement and are not to serve as a basis for interpretation or construction of this Easement, nor as evidence of the intention of the parties hereto.
 - l. Pronouns and Gender. In this Easement, if it be appropriate, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.
 - m. Authority. District and AMTB both represent and warrant that each has the full right, power and authority to enter into this Easement and to perform the transactions contemplated hereunder.
 - n. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of AMTB to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. This instrument shall be construed in accordance with its fair meaning, and it shall not be construed against either party on the basis that such party prepared this instrument.
 - o. No Third Party Rights. This instrument is made and entered into for the sole benefit and protection of District and AMTB and their respective heirs, AMTBs, successors, and assigns. No person or entity other than the parties hereto and their respective heirs, AMTBs, successors, and assigns shall have any right of action under this Easement or any right to enforce the terms and provisions hereof.
 - p. 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 to the Easement Property subject to this Easement, subject to the terms and conditions of the Easement.
 - q. 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 heirs, AMTBs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Easement Property.
 - r. Counterparts. District 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.
 - s. Subordination. If District encumbers the Real Property or any portion thereof prior to conveyance of this Easement to AMTB, District shall deliver an executed consent of lienholder in which any lienholder or mortgagor agrees to subordinate its rights in the Real Property or any portions thereof to prevent any modification or extinguishment of the Easement by the exercise of any rights by any mortgage holder or lienholder. District shall also obtain any consent, release or reconveyance of deed of trust required from any mortgagor or lienholder so that the Easement is conveyed to AMTB free and clear of any such liens and encumbrances.
18. Recordation. This instrument shall be recorded by the parties in the Official Records of the County of Santa Clara, California. The parties may re-record this Easement whenever re-recording is required to preserve the rights of any party to this Easement.

IN WITNESS WHEREOF, the Parties hereto have executed this Easement as of the date written below.

DISTRICT (“GRANTOR”):

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

AMTB (“GRANTEE”):

AMAH MUTSUN TRIBAL BAND , a California Native American Tribe qualified to hold this Conservation Easement under California law

By: _____
Stephen E. Abbors, General Manager

By: _____
Valentin Lopez, Tribal Chair

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Sheryl Schaffner, General Counsel

ATTEST:

Jennifer Woodworth, District Clerk

Date: _____

List of Attachments

- A Legal Description
- B Aerial Map

Add Notary

Exhibit A

Legal Description of Property
(Mount Umunhum)

Exhibit B

Aerial Map depicting the easement overlay