



# Coastal Conservancy

July 6, 2005

Adam Salis, Esq.  
Buchalter, Nemer, Fields & Younger  
18400 Von Karman Avenue  
Suite 800  
Irvine, California 92612

Re: Bertinelli Agreement

Dear Mr. Salis:

Enclosed please find 4 original agreements, signed by the Conservancy's Executive Officer, Samuel Schuchat and notarized for his signature.

Upon recordation, please return an original to the Conservancy at my attention.

Please also confirm the date of recordation of the agreement either by voicemail at 510-286-4089 or email [eeger@scc.ca.gov](mailto:eeger@scc.ca.gov).

Thanks.

Sincerely,

Elena Eger  
Sr. Staff Counsel

1330 Broadway, 11th Floor  
Oakland, California 94612-2530  
510-286-1015 Fax: 510-286-0470



**RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:**  
Buchalter Nemer Fields & Younger  
18400 Von Karman Avenue  
Suite 800  
Irvine, California 92612  
Attn: Adam R. Salis, Esq.

SPACE ABOVE LINE FOR RECORDER'S USE ONLY

## AGREEMENT

THIS AGREEMENT is made as of June 30, 2005, by and among BARBARA J. PAGE, AS TRUSTEE OF THE CARVIN TRUST DATED MAY 10, 2002 ("Owner"), CALIFORNIA STATE COASTAL CONSERVANCY ("CSCC"), and MOUNTAINS RECREATION & CONSERVATION AUTHORITY, a public entity of the State of California ("MRCA").

### Recitals

A. Owner is the fee simple owner of certain real property located in Malibu, California, commonly known as 31736 Broad Beach Road and legally described in Exhibit A attached hereto ("Property"). The Property is currently burdened with an irrevocable offer to dedicate ("Existing OTD") executed by and between W. Huston Lillard III (Owner's predecessor in interest) and the California Coastal Commission ("CCC") and recorded on July 25, 1980 as Instrument No. 80-709137 in the Official Records of Los Angeles County, California ("Official Records").

B. MRCA is the fee simple owner of certain real property immediately to the east of the Property, legally described in Exhibit B attached hereto ("Lot I").

C. Substantially concurrently with the execution of this Agreement, Owner and CCC are entering into that certain Irrevocable Offer to Dedicate Easement for Vertical Public Access and Declaration of Restrictions ("New OTD"), pursuant to which (among other things) Owner will be making a new offer to dedicate ("New Offer") an easement for public access over a portion of the Property located along its eastern boundary (immediately adjacent to the property line between the Property and Lot I), which New Offer shall replace and supersede the Existing OTD. The vertical access easement to be created by acceptance of the New Offer is referred to herein as the "Easement."

D. MRCA, CSCC and Owner have agreed to enter into this Agreement to balance Owner's private use of the Property with MRCA and CSCC's responsibilities and duties to provide public use of the Easement.

## Agreement

NOW, THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties, the parties hereby agree as follows:

1. Acceptance of Offer to Dedicate. CSCC represents and warrants to Owner that it has the power and authority to accept the New Offer and to become the "Grantee" under the New OTD. Within ten (10) business days following the date of recordation of this Agreement, CSCC shall execute and deliver to Owner for recordation a Certificate of Acceptance in the form attached to the New OTD as Exhibit C ("Certificate"). CSCC authorizes and directs Owner to record the Certificate in the Official Records following Owners' receipt thereof from CSCC and Owner's receipt of an acknowledgement thereof duly executed by CCC as provided in the New OTD.

2. Erection of Fence. Within one hundred eighty (180) days following the Fence Trigger Date (defined below), subject to force majeure delays, MRCA shall cause the existing fence along the eastern boundary of the Property to be removed and, substantially concurrently with such removal, MRCA shall cause to be installed along the western boundary of the Easement a fence of approximately the same height as such existing fence. Such new fence shall be A-Omega fencing and covered with opaque black fence fabric to prevent pedestrians utilizing Lot I and the Easement from looking into the Property. MRCA shall take all reasonable measures to ensure that access to the Property from Lot I is restricted at all times during such construction and shall repair any damage to the Property occasioned by such fence removal and erection of new fencing. MRCA shall plant vines or other vegetation reasonably acceptable to Owner on the new fence. At such time as such vegetation grows to a sufficient extent to cover such fencing and block views to the Property, MRCA shall cause such fence fabric to be removed. CSCC and MRCA agree that they will not remove the existing fence unless and until they are prepared to construct the new fence. As used herein, the term "Fence Trigger Date" means the date on which all of the following shall have occurred: (i) Owner shall have recorded the New OTD and Certificate in the Official Records, (ii) MRCA and CSCC shall have obtained a Coastal permit (if same is required) to remove the existing fence and construct a new fence, and (iii) the period for challenge to the issuance of such permit shall have expired without a challenge being filed or any challenge which has timely been filed has been finally resolved. MRCA and CSCC agree to apply for a Coastal permit for said work (if required) within one hundred eighty (180) days after the date of recordation of the Certificate.

3. Retaining Wall. Within one hundred eighty (180) days following the Wall Trigger Date (defined below), subject to force majeure delays, MRCA shall cause a new retaining wall to be installed at or near the location designated on Exhibit C attached hereto, the exact location and specifications of which shall be based upon the recommendations of MRCA's engineer. Such location and specifications shall be subject to the prior written approval of Owner, which approval shall not be unreasonably withheld or delayed. As used herein, the term "Wall Trigger Date" means the date on which all of the following shall have occurred: (i) Owner shall have recorded the New OTD and Certificate in the Official Records, (ii) MRCA and CSCC shall have obtained a Coastal permit (if same is required) to construct said retaining wall (which permit may also encompass construction of new stairs within Lot I and the Easement), and (iii) the period for challenge to the issuance of such permit shall have expired without a challenge

being filed or any challenge which has timely been filed has been finally resolved. MRCA and CSCC agree to apply for a Coastal permit for said work (if required) within one hundred eighty (180) days after the date of recordation of the Certificate.

4. Porta Potties. MRCA and CSCC covenant and agree that no "porta potties" or other bathroom facilities shall be located within Lot I or within the Easement so long as Lot I and the Easement are used for pedestrian access to the beach.

5. Runs with Land. The rights and obligations of the parties created in this Agreement shall run with the land and shall inure to the benefit of and be binding upon Owner, CSCC, MRCA and their respective successors and assigns.

6. Injunctive and Declaratory Relief. In the event of any violation or threatened violation by CSCC or MRCA of any of the terms contained herein contained, in addition to any other remedies available to Owner at law, Owner shall have the right to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Agreement, or restrain or enjoin a violation or breach of any provision hereof.

7. Notices. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered or sent by United States registered mail, return receipt requested, or sent by nationally recognized courier service such as Federal Express. Any notice shall be duly addressed to the parties as follows:

To Owner: Carvin Trust  
c/o Page and Associates  
3500 W. Olive Avenue, Suite 300  
Burbank, California 91505  
Attention: Barbara J. Page, Trustee

To CSCC: California State Coastal Conservancy  
1330 Broadway, 11th Floor  
Oakland, California 94612-2530  
Attn: Mr. Steve Horn, Deputy Executive Officer

To MRCA: Mountains Recreation & Conservation Authority  
c/o Santa Monica Mountains Conservancy  
570 West Avenue 26, Suite 100  
Los Angeles, California 90065  
Attn: Laurie C. Collins, Staff Counsel

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery thereof to the address of the addressee, if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

8. Governing Law. This Agreement shall be governed by the laws of the State of California.

9. Attorneys' Fees. In the event that any party brings an action to interpret or enforce any of the obligations created hereunder, or which otherwise arises out of this Agreement, whether sounding in contract or in tort, the party prevailing in said action shall be entitled to recover, in addition to such other relief as may be granted, its reasonable costs and expenses, including without limitation, attorneys' fees and costs.

10. Time of Essence. Time is of the essence with respect to the performance of each of the covenants contained in this Agreement.

11. Authority. Each of the individuals executing this Agreement on behalf of CSCC and MRCA, respectively, hereby represents and warrants to Owner that he or she has the authority to execute this Agreement on behalf of such entity and that, once executed by him or her, this Agreement shall be binding upon and enforceable against the party for whom he or she executed this Agreement.

12. Counterparts. This Assignment may be executed in counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been made and executed as of the date first above written.

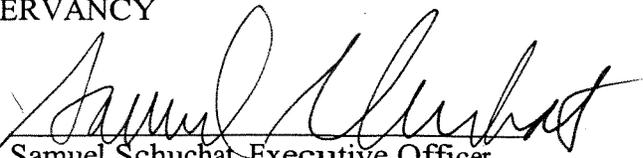
“Owner”:

\_\_\_\_\_  
BARBARA J. PAGE, AS TRUSTEE OF THE  
CARVIN TRUST DATED MAY 10, 2002

“CSCC”:

CALIFORNIA STATE COASTAL  
CONSERVANCY

By:

  
Samuel Schuchat, Executive Officer

“MRCA”:

MOUNTAINS RECREATION &  
CONSERVATION AUTHORITY, a public entity  
of the State of California

By: \_\_\_\_\_

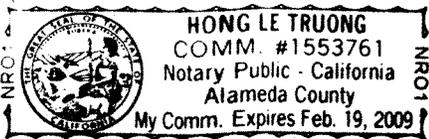
Its: \_\_\_\_\_

[Printed Name and Title]

STATE OF California )  
 )ss  
COUNTY OF Alameda )

On July 6<sup>th</sup>, 2005, before me, the undersigned, a Notary Public in and for said County and State, personally appeared SAMUEL SCHUCHAT, personally known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the person(s) whose Name(s) ~~is~~ are subscribed to the within instrument, and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*HongLeTruong*

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose Name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose Name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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NOTARY PUBLIC

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose Name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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NOTARY PUBLIC

## EXHIBIT A

### Legal Description of Property

Real property in the City of Malibu, County of Los Angeles, State of California, described as follows:

#### Parcel 1:

Parcel 3 of Parcel Map No. 4358, Lots 82, 83, Lot H, Vacated State Highway adjoining Lot H and portions of Lots 21, 22, 85 and Vacated State Highway Adjoining Lot 21 of Tract No. 10630, in the City of Malibu, as per map filed in Book 101 Page 34 of Parcel Maps and recorded in Book 181 Pages 6 to 11, inclusive of Maps, respectively, in the office of the county recorder of said county, lying westerly and southerly of the following described line:

Beginning at the intersection of a line parallel with and 61.15 feet distant westerly, measured at right angles to the easterly line of said Lots 21, 22, 85 and their northerly prolongation with the northerly line of said vacated state highway, 20 feet wide, said line being parallel with and 20 feet northerly, measured at right angles to the northerly line of said Lot 21; thence along said parallel line south 10° 05' 30" west 120.00 feet; thence parallel with the northerly line of said vacated state highway south 79° 54' 30" east 61.15 feet to the easterly line of said Lot 85.

As shown as Parcel 1 on a Lot Line Adjustment recorded January 17, 1996 as Instrument No. 96-89720.

Except all metals and minerals, and all petroleum, natural gas and other hydrocarbon substances, and all surface deposits and subsoil products of any nature or character whatsoever, in, under or upon said land, and every part thereof, as contained in the deed from the Marblehead Land Company, a corporation, recorded September 18, 1940 in Book 17800 Page 273, Official Records. Except therefrom all metals and minerals, and all petroleum, natural gas and other hydrocarbon substances, and all surface deposits and subsoil products of any nature or character whatsoever, in, under or upon said land without, however, the right of surface entry, as reserved in the deed from Marblehead Land Company, recorded February 6, 1939 in Book 16402 page 95, Official Records.

Except all metals and minerals and all petroleum, natural gas and other hydrocarbon substances and all surface deposits and sub-soil products of any nature or character whatsoever, in, under or upon said land and every part thereof, but without the right of entry, as reserved in the deed from Marblehead Land Company, a corporation, recorded in Book 13337 Page 253, Official Records.

#### Parcel 2:

Those portions of Lots 21, 22, 85 and vacated state highway adjoining Lot 21 of Tract No. 10630, in the city of Malibu, as per map recorded in Book 181 Pages 6 to 11, inclusive of Maps, in the office of the county recorder of said county, lying easterly and northerly of the following described line:

Beginning at the intersection of a line parallel with and 61.15 feet distant westerly, measured at right angles to the easterly line of said Lots 21, 22 and 85 and their northerly prolongation with the northerly line of said vacated state highway, 20 feet wide, said line being parallel with and 20 feet northerly, measured at right angles to the northerly line of said Lot 21; thence along said Order Number: NCS-162859-SA1 Page Number: 9 parallel line South 10° 05' 30" west 120 feet; thence parallel with the northerly line of said vacated state highway south 79° 54' 30" east 61.15 feet to the easterly line of said Lot 85.

As shown as Parcel 2 on a Lot Line Adjustment recorded January 17, 1996 as Instrument No. 96-89720.

Except therefrom all metals and minerals, and all petroleum, natural gas and other hydrocarbon substances, and all surface deposits and subsoil products of any nature or character whatsoever, in, under or upon said land without, however, the right of surface entry, as reserved in the deed from Marblehead Land Company, recorded February 6, 1939 in Book 16402 page 95, Official Records.

Except therefrom all metals and minerals, and all petroleum, natural gas and other hydrocarbon substances, and all surface deposits and subsoil products of any nature or character whatsoever, in, under or upon said land without, however, the right of surface entry, as reserved in the deed from Marblehead Land Company, recorded August 31, 1938 in Book 15957 Page 342, Official Records.

APN: 4470-024-061 and 4470-024-062

EXHIBIT B

Legal Description of Lot I

Real property in the City of Malibu, County of Los Angeles, State of California,  
described as follows:

Lot I of Tract No. 10630, in the City of Malibu, as per map filed in Book 101 Page 34 of  
Parcel Maps and recorded in Book 181 Pages 6 to 11, inclusive of Maps, respectively, in the  
office of the county recorder of said county.

EXHIBIT C

Depiction of Location of New Retaining Wall

[Attached]

# LECHUZA BEACH

## REDEDICATION CONCEPT FOR LOT 1

- SITE ELEMENTS**
- 1 BROAD BEACH ROAD PEDESTRIAN ACCESS
  - 2 WIDENED AND REDIRECTED STAIRS TO BEACH
  - 3 BROADED CABLE VINE SUPPORTS
  - 4 RELOCATED EASEMENT
  - 5 NEW RETAINING WALL
  - 6 NAUTICAL TRELLIS
  - 7 NEW FENCE

