

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("**Agreement**") is entered into as of January 21, 2010 (the "**Effective Date**"), by and between ACCESS FOR ALL, a California Public Benefit Corporation ("**AFA**") and the CALIFORNIA COASTAL CONSERVANCY, an agency of the State of California ("**Conservancy**"). Collectively, the Conservancy and AFA are referred to in the Agreement as "**the Parties**."

RECITALS

A. On December 17, 2003, AFA became the holder of a vertical public access easement (the "**Easement**") over the property at 22466 Pacific Coast Highway Malibu, California, through the recording of the Certificate of Acceptance (the "**Acceptance**") in the official records of Los Angeles County. By recording the Acceptance, AFA accepted an Offer to Dedicate that the California Coastal Commission ("**Commission**") had imposed in 1985 in issuing a coastal development permit to the owner ("**Ackerberg**") of the property on which the Easement is located.

B. By the terms of the Acceptance, AFA agreed to manage the Easement for the purpose of allowing public pedestrian access to the shoreline. More precisely, the Acceptance required AFA to carry out this obligation through compliance with a "Public Vertical Access Easement Management Plan" dated July 28, 2003 ("**Management Plan**"). Under the Acceptance, AFA became the holder of the Easement, subject to the vesting of the Easement interest vesting in the Conservancy (or a designee of the Conservancy) if AFA ceased to exist or failed to carry out its responsibilities under the Acceptance and the Management Plan.

C. There exist on the Ackerberg property certain encroachments that prevent the use of the Easement for public access. The Commission initiated administrative enforcement proceedings against Ackerberg to remove those encroachments, eventually resulting in an administrative "cease and desist order" requiring their removal. On August 4, 2009, Ackerberg initiated litigation against the Commission, also naming AFA and the Conservancy as "Real Parties in Interest" (*Lisette Ackerberg et al v. California Coastal Commission, et al.*, Los Angeles Superior Court Case No. BS122006, hereafter the "**Ackerberg Lawsuit**"), challenging the Commission's cease and desist order

D. On or about January 6, 2009, prior to the Commission cease and desist order, AFA initiated litigation against Ackerberg (*Access for All v. Lisette Ackerberg Trust, et al.*, Los Angeles Superior Court Case No. BC405058 (the "**AFA Lawsuit**"), also seeking the removal of the encroachments that prevent the use of the Easement for public access. The AFA lawsuit and the Ackerberg Lawsuit will be referred to collectively in this Agreement as the "**Litigation**".

E. On or about June 19, 2009, AFA and Ackerberg entered into a settlement agreement (the "**Settlement Agreement**") that purported to fully resolve all issues in the AFA Lawsuit. On the same day, based on the Settlement Agreement, a Judgment Pursuant to Stipulation (the "**Judgment**") was entered in the AFA Lawsuit.

F. The Conservancy believes that by entering into the Settlement Agreement and permitting the entry of the Judgment in the AFA Lawsuit AFA has violated its obligations to properly manage the Easement as required by the Acceptance and the Management Plan. AFA believes that its Settlement Agreement resolving the AFA Lawsuit ensured Ackerberg's compliance with the public access provisions of the Coastal Act and AFA's compliance with the Acceptance and Management Plan for the site, and was designed to provide maximum public access to the coast as required by Article X, Section 4 of the California Constitution.

G. The Conservancy has initiated proceedings (the "**Public Hearing**") to divest AFA of its right and interest in the Easement, has prepared a staff recommendation and has provided it, along with a notice of hearing, to AFA and has set a date for the Public Hearing on February 4, 2010, at the regular meeting of the Conservancy

The Parties now desire to resolve all disputes that exist among them relating to the subject of this Agreement, and therefore, in consideration of the respective promises in this Agreement, agree as follows:

AGREEMENT

Section 1 Conditional Agreement to Transfer Title and Interest in Easement

- 1.1 AFA agrees to participate and negotiate in good faith in any settlement discussions related to the Litigation and to agree to any settlement by which AFA and its directors, officers, agents, and representatives are released from any and all obligations, claims or demands under the Judgment or Settlement Agreement and relating to or arising out of the Litigation or AFA's acceptance or management of the Easement.
- 1.2 In the event that the Parties, the Commission, and Ackerberg reach a settlement as described in Section 1.1 above, AFA shall convey to the State of California, by and through the Conservancy, all right, title, and interest in the Easement. The conveyance shall be accomplished by a quitclaim deed in the form to be provided to AFA by the Conservancy and, on request of the Conservancy, to be executed and acknowledged by AFA and to be promptly returned to Conservancy for recording as permitted by this section.

Section 2 Continuance of the Public Hearing and Stand-still Agreement

- 2.1 Upon execution of this Agreement by the Parties, the Conservancy agrees to continue the Public Hearing from the February 4, 2010 meeting of the Conservancy to a subsequent regular, special or other duly noticed public meeting of the Conservancy.
- 2.2 If the agenda for the February 4, 2010 Conservancy meeting has not been posted or mailed (anticipated to occur no later than January 25, 2010) as of the date of execution of this Agreement by the Parties, the Conservancy shall remove the Public Hearing from the Agenda prior to posting and mailing of the agenda. If the agenda for the February 4,

2010 Conservancy meeting has been mailed or posted prior to the date of execution, the Conservancy shall post a revised agenda from which the Public Hearing has been removed and shall utilize the revised agenda at the Conservancy meeting of February 4, 2010.

- 2.3 The Public Hearing shall be continued indefinitely to allow for settlement of the Litigation. The Conservancy may place the Public Hearing on the agenda of any subsequent regular, special or other duly noticed public meeting of the Conservancy if: 1) the Conservancy, in its sole discretion, determines that a settlement of the Litigation is unlikely or that that AFA is not participating or negotiating in good faith in the settlement discussions, as set forth in section 1, above; and 2) the Conservancy has mailed written notification, including a copy of the staff recommendation for the Public Hearing, to AFA 10 days prior to the date of the meeting at which the Public Hearing will occur. AFA specifically and expressly waives any right to any additional notice.
- 2.4 Any statute of limitation or other time-related limitation or defense affecting the right or ability of the Conservancy to pursue the divestment of AFA's right, title and interest in the Easement shall be tolled, commencing on the date of execution of this Agreement by the Parties. AFA agrees that the continuance of the Public Hearing under this Agreement shall not be used by AFA as a defense to the Public Hearing or to any determination made in connection with the Public Hearing or in any subsequent challenge to the Public Hearing or such determination, including any defense based on laches, estoppel, limitation period, or any other legal theory.

Section 3 Approval of the Conservancy

The Conservancy shall consider and, if necessary, ratify this Agreement in closed session at its February 4, 2010 meeting. The agenda for the February 4, 2010 meeting will continue to include reference to a closed session for that purpose.

Section 4 Miscellaneous Provisions

4.1 Entire Agreement,

This Agreement, including all exhibits, contains the entire understanding and agreement of the Parties. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to in this Agreement.

4.2 Captions

The headings used in this Agreement are for convenience only and will not affect the interpretation of this Agreement.

4.3 Construction

The provisions of this Agreement and the attached exhibits will be construed as a whole according to their common meaning and not strictly for or against any Party, and in a manner that will achieve the purpose and objectives of this Agreement.

4.4 Notices

Any notice required under this Agreement will be in writing and may be mailed by first class mail or sent by email to the Parties as follows:

State Coastal Conservancy
1300 Broadway, 13th Floor
Oakland, CA 94612
Attn: Jack Judkins
Senior Staff Counsel
Email: jjudkins@scc.ca.gov.

Access For All
P.O. Box 1704
Topanga, CA 90290
Attn: Steve Hoyer
Executive Director
Email: sierrasteve@earthlink.net

Any party may change its mailing or email address at any time by giving written notice of such change to the other party.

4.5 No Admission of Liability

This Agreement is a compromise of disputed claims and shall not in any way be construed as an admission by either party.

4.6 Admissibility of Agreement

In any action to enforce its terms, this Agreement shall be fully admissible.

4.7 Severability

If any provision of this Agreement becomes invalid, void or unenforceable for any reason or is determined by a court of competent jurisdiction to be invalid, void or unenforceable, then the remaining provisions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated by such determination, the provisions of this Agreement being severable in such instance.

4.8 Effectiveness

This Agreement will be effective as of the Effective Date.

4.9 Time is of the Essence

Time is of the essence of this Agreement and of each and every provision in this Agreement.

4.10 Binding Upon Successors

This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns, and representatives of the Parties.

4.11 Modifications

This Agreement may be modified from time to time only by express written consent of the Parties to this Agreement.

4.12 Applicable Law

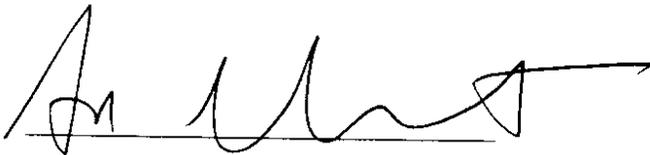
This Agreement will be governed by California law.

4.13 Future Attorneys' Fees and Costs

If a suit or motion is brought or a claim is made to enforce this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the Parties have executed this agreement to take effect as of the Effective Date:

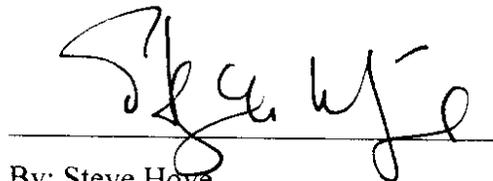
STATE COASTAL COSERVANCY



By: Sam Schuchat
Its: Executive Officer

Dated: 7/21/10

ACCESS FOR ALL



By: Steve Hoye
Its: Executive Director

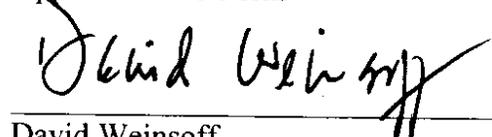
Dated: January 20, 2010

Approved as to Form



Jack Judkins
Senior Staff Counsel

Approved as to Form



David Weinsoff
Law Office of David Weinsoff