

CONDITIONAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This CONDITIONAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE is made and entered into by and among:

- Timothy Hctor and Rod Lake, as Trustees for 3282 Beach Club Drive Family Trust (“Beach Club”); and
- County of Santa Barbara (“County”).

Beach Club and County are sometimes referred to herein individually as “Party” and collectively as “the Parties.”

County is a political subdivision of the State of California. Since County may not properly contract away either its police power or its legislative authority, the County will retain full discretion after a properly noticed action, including a public hearing of the Board of Supervisors, to approve or reject Beach Club’s application for a Revised Project, discussed below.

This CONDITIONAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is entered into by the Parties with reference to the following facts:

1.0 RECITALS

WHEREAS, on February 9, 2011, Beach Club applied for a Coastal Development Permit (11CDH-00000-00006) to permit (1) as built grading, (2) modifications to a previously approved Habitat Restoration Plan, (3) removal of a single family dwelling; (4) removal of an accessory structure; (5) removal of a retaining wall; (6) removal of a play structure; (7) abandonment of an existing well; (8) grading for sensitive resource capping; and (9) installation of a split-rail safety fence; and

WHEREAS, on November 30, 2011, Beach Club applied for a Coastal Development Permit (11CDH-00000-00054) to permit (1) construction of a new single family residence, (2) construction of retaining walls for the residence, (3) associated landscaping, (4) installation of a storm drain, and (5) tree removal and relocation; and

WHEREAS, on July 19, 2012, Beach Club applied for a Tentative Parcel Map (12TPM-00000-00006) to subdivide the 10.25-acre subject parcel into two resultant parcels; and

WHEREAS, the applications for 11CDH-00000-00006, 11CDH-00000-00054, and 12TPM-00000-00006 are referred to herein collectively as the “Proposed Project”; and

WHEREAS, on December 4, 2013, the County Planning Commission conducted a hearing and approved the Proposed Project; and

WHEREAS, on December 16, 2013, the Summerland Community Association, Reeve Woolpert, and Tom Evans appealed the County Planning Commission’s approval of the Proposed Project to the County Board of Supervisors; and

WHEREAS, on July 8, 2014, the Board of Supervisors held a hearing on the appeal of the Planning Commission’s approval of the Proposed Project; and

WHEREAS, at the July 8, 2014 hearing, the Board of Supervisors determined that a Focused Environmental Impact Report was required for the Proposed Project to analyze potential impacts to recreational resources and related policy inconsistencies; and

WHEREAS, on August 1, 2014, Beach Club filed litigation against the County concerning the Proposed Project, *Timothy Hoctor and Rod Lake, Trustees for 3282 Beach Club Drive Family Trust v. County of Santa Barbara*, Case No. 1468216 (“Lawsuit”);

NOW, THEREFORE, in light of the foregoing and in consideration of the releases, agreements, representations, warranties and undertakings set forth in this Agreement, the Parties hereby agree as follows:

2.0 AGREEMENTS AND UNDERTAKINGS

2.1 Because the County may not properly contract away either its police power or its legislative authority, the County will retain the final authority after a properly noticed action, including through a public hearing of the Board of Supervisors, to approve or reject an application by Beach Club to revise the Proposed Project (“Revised Project”). The Revised Project does not include the application for a Tentative Parcel Map (12TPM-00000-00006) or the application for a Coastal Development Permit for a single family residence (11CDH-00000-00054). The Revised Project consists of an application for the Coastal Development Permit (11CDH-00000-00006), submitted February 9, 2011, as revised by letter dated February 19, 2015.

County will retain the final authority after a properly noticed action to impose any conditions of approval that are appropriate for the Revised Project, including, without limitation, incorporating standard indemnification language in the form set forth below:

“The applicant shall defend, indemnify and hold harmless the County or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County’s approval of the Land Use Permit. In the event that the County fails promptly to notify the applicant of any such claim, act or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.”

2.2 Except as provided in Section 2.3 of this Agreement, if the County approves Beach Club’s application for a Revised Project (11CDH-00000-00006, as revised by letter dated February 19, 2015) and adopts the Mitigated Negative Declaration for the Revised Project by March 24, 2015, then:

2.2.1 Beach Club agrees (a) to not sue in accordance with Section 3.2 below, (b) to dismiss the Lawsuit with prejudice, and (c) to withdraw its applications for a Tentative Parcel Map (12TPM-00000-00006) and for a Coastal Development Permit for a single

family residence (11CDH-00000-00054) within ten (10) days of the effective date of final approval by the County Board of Supervisors.

2.3 This Agreement shall be deemed voided without further action by Beach Club or County if any of the following events occur:

2.3.1 The County does not approve the Revised Project and adopt the Mitigated Negative Declaration for the Revised Project on or before March 24, 2015, or such later date as the Parties may agree to in writing.

2.3.2 The County approves the Revised Project on terms and conditions that Beach Club determines are unacceptable and Beach Club states on the record at the public hearing at which the Board approves the Revised Project that the terms and conditions are unacceptable.

2.4 Miscellaneous Terms/Exclusions

2.4.1 The Parties shall, at all times act in good faith to timely satisfy their respective obligations under the terms of this Agreement.

2.4.2 Each Party shall bear its own costs, expenses, expert and consultant fees, and attorneys' fees related to or arising out of the Revised Project and the negotiation and drafting of this Agreement.

2.4.3 The Parties hereto each expressly recognize and agree that the terms in this Agreement constitute an accord and satisfaction of contested matters and neither the offer nor the acceptance of the terms and conditions hereof, represent an admission of liability or responsibility on the part of any party; each party hereto expressly disclaiming any such liability.

2.4.4 Because the County is prohibited from delegating its police power and from binding the actions of future Boards of Supervisors, nothing in this Agreement shall prohibit Beach Club from applying to the County in the future for any permits or changes, amendments or revisions to Beach Club's Revised Project (11CDH-00000-00006), subject to the required County processes.

3.0 RELEASES

3.1 It is the intention of the Parties in executing this Agreement and in giving and receiving the consideration called for by this Agreement that this Agreement shall be effective as a full and final accord and satisfaction of and from any and all claims that were or could have been alleged or that have arisen between the Parties in connection with Beach Club's Proposed Project (11CDH-00000-00006, 11CDH-00000-00054, and 12TPM-00000-00006).

3.2 In consideration of County's Agreements and Undertakings under this Agreement, and with the exception of the rights, duties and obligations created by this Agreement, Beach Club will and hereby does release, discharge and covenant not to sue County, its agents,

affiliates, officers, employees, insurers, attorneys, assigns, servants, directors, principals, partners, members, and subsidiary departments, for any and all costs, claims, damages, fees, expenses, demands, liabilities, causes of action and lawsuits, of whatever nature, type, kind, description or character, whether known or unknown, which Beach Club does, did, or might have, own or hold, in connection with the Proposed Project (11CDH-00000-00006, 11CDH-00000-00054, and 12TPM-00000-00006) and the Revised Project (11CDH-00000-00006, as revised by letter dated February 19, 2015).

3.3 In consideration of the Agreements and Undertakings by Beach Club under the Agreement, and with the exception of the rights, duties and obligations created by this Agreement, County will and hereby does release, discharge and covenant not to sue Beach Club, itsr agents, affiliates, officers, employees, insurers, attorneys, assigns, servants, directors, principals, shareholders, partners, members, owners, and subsidiary companies, for any and all costs, claims, damages, fees, expenses, demands, liabilities, causes of action and lawsuits, of whatever nature, type, kind, description or character, whether known or unknown, which County does, did, or might have, own, or hold, in connection with Beach Club's application for the Proposed Project (11CDH-00000-00006, 11CDH-00000-00054, and 12TPM-00000-00006)) and the Revised Project (11CDH-00000-00006, as revised by letter dated February 19, 2015).

3.4 Nothing contained within this Agreement shall require County to take or refrain from taking any regulatory action with respect to the subject parcel for potential violations occurring, or which are made known to the County, after the effective date of this Agreement.

3 WAIVER OF RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542

4.1 The Parties acknowledge that each has read this Agreement and knows and understands its contents and effect. The Parties further declare that they understand the nature, extent and import of Section 1542 of the California Civil Code, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

4.2 Each of the Parties hereby waives any right which said Party may have under Section 1542 of the California Civil Code or any similar provision of the statutory or non-statutory law to the full extent that it may lawfully waive such rights and benefits. In connection with such waiver and relinquishment, each of the Parties acknowledges that it is aware that it or its attorneys, consultants or accountants may hereafter discover claims, damages or facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement. Fully recognizing these possibilities, it is the Parties' intention to fully, finally and forever settle and release all disputes and differences, known or

unknown, suspected or unsuspected, that now exist, may exist, or heretofore have existed with respect to these matters. In furtherance of this intention, the releases given in the Agreement, once effective, shall be and shall remain in effect as a full and complete general release of the released matters notwithstanding the discovery or existence of such additional or different facts or damages. The Parties agree that this Agreement shall not be subject to termination or rescission by virtue of any such difference in facts.

4 REPRESENTATIONS AND WARRANTIES

- 5.1 Each of the Parties to this Agreement warrants that said Party has full authority to enter into this Agreement, to make the releases set forth in the Agreement, and to enter into the undertakings and obligations set forth in this Agreement. The Parties hereby warrant that they have not assigned or transferred their respective claims to any other party or person, and that no other consents, approvals, authorizations, releases or settlement are necessary from any other person or entity to release and discharge completely the other Parties from the claims specified above.
- 5.2 In entering into this Agreement, each of the Parties acknowledges that said Party has been represented by independent legal counsel of his or its own choice throughout the negotiations that preceded the execution of this Agreement, that this Agreement was negotiated at arms-length, and that said Party has freely, knowingly and voluntarily executed this Agreement with the consent and upon the advice of such independent legal counsel.
- 5.3 Each Party represents and warrants that it has made such investigation of the facts pertaining to this settlement and this Agreement as it deems necessary.

5 ADDITIONAL PROVISIONS, AGREEMENTS AND REPRESENTATIONS

- 6.1 Successors in Interest. This Agreement, including the releases contained herein, shall be binding upon and shall inure to the benefit of each of the Parties hereto and each of their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, shareholders, partners, members, owners, and successors in interest, including heirs, assigns, and beneficiaries.
- 6.2 Construction. Each of the Parties hereto has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Agreement. Accordingly, the Parties agree that the rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Agreement.
- 6.3 Governing Law. All questions with respect to the construction of this Agreement, and the rights and liabilities of the Parties hereto, shall be governed by the laws of the State of California without reference to conflicts of law principles or rules.
- 6.4 Integrated Agreement. This Agreement is a fully integrated agreement and constitutes the sole and entire agreement and understanding between the Parties with respect to the subject matters addressed herein and may not be modified or amended except by a further document

in writing and signed by the Parties. In executing this Agreement and making the settlement contained herein, none of the parties is relying upon any promise, representation or statement not contained within this Agreement.

6.5 Severability. The terms of this Agreement are severable. If any provision in this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall remain in full force and effect.

6.6 Waiver. No provision of this Agreement may be waived, and no waiver shall be binding, unless explicitly executed in writing by the Party making the waiver. No waiver of any one provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver.

6.7 Headings. Section headings are for convenience only and are not part of the Agreement.

6.8 Notices. All notices under this Agreement shall be in writing and shall be sent to the following:

Beach Club:

Steven A. Amerikaner
Brownstein Hyatt Farber Schreck
1020 State Street
Santa Barbara, CA 93101-2711

The County of Santa Barbara:

Rachel Van Mullem
Chief Assistant County Counsel
County of Santa Barbara
105 East Anapamu Street, Suite 201
Santa Barbara, CA 93101-2000

6.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to constitute a single agreement, notwithstanding the fact that the original signatures of the Parties do not appear on the same page. Signatures by facsimile or photocopier shall be binding upon the Parties. The Parties shall exchange original signatures on the Agreement following execution.

6.10 Effective Date. This Agreement shall become effective on the date that the final signature is made, below.

IN WITNESS WHEREOF, the parties have agreed to and executed this Agreement as of the date and year set forth adjacent to their respective signatures.

Dated: _____, 2015

By: _____

Timothy Hoctor
Trustee,
BEACH CLUB FAMILY TRUST

Dated: _____, 2015

By: _____

Rod Lake
Trustee,
BEACH CLUB FAMILY TRUST

Date: 3/3/15, 2015

By: Janet Wolf

JANET WOLF
Chair, Santa Barbara County Board of Supervisors
On behalf of County
THE COUNTY OF SANTA BARBARA

APPROVED AS TO FORM:

Date: 3/3/15, 2015

By: Rachel Van Mullem

RACHEL VAN MULLEM
Chief Assistant County Counsel
Counsel for County
THE COUNTY OF SANTA BARBARA

Dated: _____, 2015

By: _____

MATTHEW D. HINKS
Jeffer Mangels Butler & Mitchell LLP
Counsel for Beach Club
BEACH CLUB FAMILY TRUST

017919\0001\11898496.3

Dated: _____, 2015

By: _____

Timothy Hoctor
Trustee,
BEACH CLUB FAMILY TRUST

Dated: _____, 2015

By: _____

Rod Lake
Trustee,
BEACH CLUB FAMILY TRUST

Date: _____, 2015

By: _____

JANET WOLF
Chair, Santa Barbara County Board of Supervisors
On behalf of County
THE COUNTY OF SANTA BARBARA

APPROVED AS TO FORM:

Date: _____, 2015

By: _____

RACHEL VAN MULLEM
Chief Assistant County Counsel
Counsel for County
THE COUNTY OF SANTA BARBARA

Dated: 5/35, 2015

By: _____

MATTHEW D. HINKS
Jeffer Mangels Butler & Mitchell LLP
Counsel for Beach Club
BEACH CLUB FAMILY TRUST

017919\0001\11898496.3

Dated: 3/3/15, 2015

By: _____

Timothy Hctor, Trustee

Timothy Hctor
Trustee,
BEACH CLUB FAMILY TRUST

Dated: 3/3/15, 2015

By: _____

Rod Lake

Rod Lake
Trustee,
BEACH CLUB FAMILY TRUST

Date: _____, 2015

By: _____

JANET WOLF
Chair, Santa Barbara County Board of Supervisors
On behalf of County
THE COUNTY OF SANTA BARBARA

APPROVED AS TO FORM:

Date: _____, 2015

By: _____

RACHEL VAN MULLEM
Chief Assistant County Counsel
Counsel for County
THE COUNTY OF SANTA BARBARA

Dated: _____, 2015

By: _____

MATTHEW D. HINKS
Jeffer Mangels Butler & Mitchell LLP
Counsel for Beach Club
BEACH CLUB FAMILY TRUST

017919\0001\11898496.3