THE BOARD OF DIRECTORS OF BROAD BEACH GEOLOGIC HAZARD ABATEMENT DISTRICT

Adopted this Resolution on December 11, 2011, by the following vote:

AYES: **Karno, Grossman, Lotman, and Marquis.**

NOES: **None.**

ABSENT: **Levitan**

ABSTAIN: **None.**

RESOLUTION NO. 2011/04

RESOLUTION APPROVING THE ACQUISITION OF THE ASSETS, RESPONSIBILITIES AND POSITION OF THE BROAD BEACH PROJECT BY THE BROAD BEACH GHAD FROM THE TRANCAS PROPERTY OWNERS ASSOCIATION

WHEREAS, on September 12, 2011, the Malibu City Council adopted Resolution No. 11-41, approving and ordering the formation of the Broad Beach Geologic Hazard Abatement District (GHAD), as a distinct and separate legal entity from the City, and appointing five landowners from within the GHAD boundaries to serve as the initial Board of Directors;

WHEREAS, the GHAD Board recognizes that the GHAD is a political subdivision of the State of California, governed in accordance with GHAD Law (Pub. Res. Code §§ 26500 *et seq.*) and a legal entity that is separate and distinct from the City of Malibu and that the GHAD operations are independent of the City functions;

WHEREAS, on October 9, 2011 the GHAD Board conducted its first meeting and at its meeting on November 6, 2011, the GHAD Board adopted the Plan of Control which sets forth the duties and responsibilities of the GHAD;

WHEREAS, the GHAD has been formed to devise and implement beach protective and repair improvements at Board Beach, including beach nourishment and rehabilitation measures, in addition to other improvements (Project), as set forth in the Plan of Control and as allowed by GHAD Law (Public Resources Code §§ 26500 *et seq.*);

WHEREAS, the Trancas Property Owners Association (TPOA) is the current applicant on the applications for certain beach protective, repair, nourishment and other related improvements (Broad Beach Project) with the United States Army Corps of Engineers (USACE), California State Lands Commission (SLC), California Coastal Commission (CCC), California Department of Fish & Game (CDFG), and the Regional Water Quality Control Board (RWQCB);

WHEREAS, in order to carry out the obligations in the Plan of Control and under GHAD law, the GHAD desires to become the applicant on the pending applications where the TPOA currently serves as the applicant and all other applications necessary to carry out its obligations, including possible applications with the California Coastal Commission, Caltrans, the County of Los Angeles, and other agencies;

WHEREAS, TPOA in a letter to the GHAD Board Chair dated November 2, 2011, offered to transfer for adequate consideration all of the written material, files, electronic data, unwritten materials (if any), work product, privileged materials, goodwill, ideas, and all other work on the Project to the GHAD (TPOA Letter); the TPOA Letter named the total amount of fees and costs incurred on the Project from its inception until September 12, 2011 at $2,153,239;

WHEREAS, in order to carry out its obligations in the Plan of Control and obligations under GHAD law, the GHAD wishes to acquire the work product articulated in the TPOA Letter, including but not limited to: Phase 1 Preliminary Engineering; San Source Investigation Report; Phase 1 Offshore Sand Investigation Study; Phase 2 Offshore Sand Investigation Study; Sampling and Analysis Plan Results Report; Appendix B to the Sampling Analysis Plan Results Report; Addendum to the Sampling and Analysis Plan; Beach and Nearshore Biological Study; Offshore Borrow Sites Biological Study; Sand Dune Habitat Biology Study; Shoreline Morphology Study, Beach Profile Report; Cultural Resources Study for the Beach and Borrow Sites; Essential Fish Habitat Assessment; Coastal Development Permit Application Form and Project Description Attachment; Project Description Attachment to the Coastal Development Permit; CADD Versions of Report and Drawing Figures: As Built Revetment Survey, 30% Design Plan Set, Historic MHTL, Phase 1 Report, SAP Results Report, SAP Addendum, Dune and Special Plan Survey (GIS); and Special Plant and Natural Communities Survey;

WHEREAS, on November 6, 2011, the GHAD Board at its meeting, reviewed and discussed the TPOA Letter and requested additional documentation to be presented to the GHAD Clerk/Treasurer substantiating the Project costs through November 5, 2011 (Total Project Costs); at this meeting, the GHAD Board stated its intent to acquire the assets, responsibilities and position of TPOA in connection with the Project and, moving into the future, serve as the applicant or permitee on the Project;

WHEREAS, on December 11, 2011, the GHAD Board at its meeting, confirmed receipt by the GHAD Clerk/Treasurer of additional documentation substantiating the Total Project Costs of $2,332,211 that TPOA incurred from its inception through December 11, 2011 on the Project; the GHAD Board requested confirmation from TPOA that the Total Project Costs were not only incurred but also paid by TPOA; a letter from TPOA's Treasurer substantiating that TPOA incurred and paid the Total Project Costs was obtained and is attached as Exhibit 1;

WHEREAS, the GHAD and its actions are exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code §§ 21000 *et seq.*) in accordance with Public Resources Code sections 21080(b)(4) and 26559; and

WHEREAS, the GHAD law permits the GHAD to borrow or otherwise incur debt, obtain funding from any public or private source, and repay any financial assistance accepted pursuant to Pub. Res. Code §§ 26591, 26593, 26594.

The Board of Directors of the GHAD HEREBY RESOLVES THAT:

1. Based upon these facts and circumstances, the Board finds that pursuant to the Plan of Control, the GHAD shall assume all responsibilities as the applicant of all applications, permits or other documents it determines is necessary to carry out its obligations in the Plan of Control in order to continue with the implementation of the Project, including all permit application drafts, survey work, title work, studies, and investigative work initiated or contemplated to support any and all permits that have been generated by or on behalf of TPOA.

2. Based upon these facts and circumstances, the Board further finds that the GHAD shall acquire the necessary work product in all reports and studies requested or drafted for the Project by TPOA, including those articulated herein and all other work and work-product related to the Project so that the Project can continue to be implemented by the GHAD;

3. Based upon these facts and circumstances, and subject to receipt in writing from the TPOA Treasurer that the amount incurred by the TPOA is accurate, the Board further finds that TPOA incurred and paid a total of $2,332,211 in Total Project Costs as of December 11, 2011 and the documentation for these costs and indebtedness are in the possession of the GHAD Clerk/Treasurer. The Board further determines that the Total Project Costs were necessary and reasonable to pursue the Project and determines it is necessary to purchase TPOA's interest as set forth herein to insure that implementation of the Project continues in a consistent manner and without duplicating costs, services and work product;

4. Based on these facts and circumstances, the Board shall acquire, assume responsibility for and pay TPOA for the Total Project Costs in the amount of $2,332,211, provided that the TPOA Treasurer certifies that this is an accurate amount, as GHAD funds become available; however, not to the detriment of the GHAD's ability to implement the Plan of Control. GHAD funds can be derived from property related assessments that are contemplated to be levied on property within the GHAD boundaries or other financial sources as allowed under GHAD law. The terms of this repayment shall be determined at a later date when GHAD funds become available.

5. Based upon these facts and circumstances, the Board further finds that the GHAD shall be the applicant on all necessary permits and applications moving forward to implement the Broad Beach Project as the GHAD determines necessary in its sole discretion.

6. This Resolution shall become effective immediately upon its passage and adoption.

ATTEST: [redacted]

Clerk of the GHAD Board

TRANCAS PROPERTY OWNERS ASSOCIATION
c/o Real Property Mgmt. Co.
28990 Pacific Coast Highway, #107
Malibu, CA 90265

December 15, 2011

VIA E-MAIL (PCURTIN@WENDEL.COM) & U.S. MAIL

Norton Karno, Broad Beach GHAD Board
Chair
c/o Patricia E. Curtin
Wendel Rosen Black & Dean
1111 Broadway, 24th Floor
Oakland, CA 94607

Re: Broad Beach Restoration Project

Dear Chair Karno:

I am the Treasurer of the Trancas Property Owners Association ("TPOA"). I attended the meeting of the Board of Directors of the Broad Beach Geological Hazard Abatement District ("GHAD Board") on December 11, 2011 and am generally familiar with GHAD Board Resolution No. 2011/04 regarding the transfer of, among other things, work product and pending agency applications from the TPOA to the GHAD. I have reviewed the TPOA's books and records regarding the amounts incurred and paid by the TPOA for the pending Broad Beach sand nourishment and dune restoration project ("Project"). I certify that, to the best of my knowledge based on the documents reviewed, the TPOA incurred and paid $2,332,211 for the Project.

Sincerely,

Zan Marquis
Treasurer, Trancas Property Owners Association

bcc: (VIA MAIL ONLY)
Wini Lumsden
Norton Karno
Marshall Grossman