

**RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:**

HARBOR LIGHTS HOA  
c/o Berding & Weil LLP  
3240 Stone Valley Road West  
Alamo, CA 94507

**WITH A COPY TO:**

City of Pittsburg  
Attn: City Engineer  
65 Civic Avenue  
Pittsburg, CA 94565

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**FLOOD WALL MAINTENANCE AGREEMENT**

This FLOOD WALL MAINTENANCE AGREEMENT (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and between HARBOR LIGHTS HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("ASSOCIATION") and the CITY OF PITTSBURG, a California municipal corporation ("CITY"). ASSOCIATION and CITY are individually referred to herein as a "PARTY" and jointly referred to herein as the "PARTIES." This Agreement outlines the rights and responsibilities of the PARTIES to this Agreement, and their successors in interest, with respect to the subject matter contained herein.

**Recitals**

**A.** ASSOCIATION is the association created to generally manage the Harbor Lights planned development, located in the City of Pittsburg, County of Contra Costa, State of California. The Development is made up of single-family home lots separately owned by members of ASSOCIATION and common area parcels owned by ASSOCIATION for the common use and enjoyment of ASSOCIATION members (the "Development"). The Development is more particularly described in Exhibit A attached hereto.

**B.** Several residences within the Development are situated on lots within a Special Flood Hazard Area as shown on the relevant Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Map (the "Affected Lots"); and, where the lot is encumbered with one or more mortgages from federally regulated or insured lenders, the owner of the lot is required by federal law to obtain and maintain flood insurance to protect the lot (and related improvements) from the risks associated with flooding.

**C.** A concrete wall, approximately 451 feet in length, and a reinforced concrete box culvert beneath Cape May Drive (jointly, the "Flood Wall"), is situated within a common area parcel of

the Development, more particularly described in Exhibit B attached hereto (the "Subject Property"), the purpose of which is, amongst other things, to protect adjacent residences within the Development from flood waters. ASSOCIATION maintains the common areas of the Development.

**D.** The PARTIES have been advised that FEMA will, assuming certain requirements are met to assure acceptable maintenance of the Flood Wall, issue a Letter of Map Revision which would change the designation of the Affected Lots on the Flood Insurance Rate Map so that the Affected Lots are no longer situated within a Special Flood Hazard Area (the "LOMR"). The PARTIES understand that the effect of such change is that the owners of the Affected Lots would no longer be required by federal law to maintain flood insurance. One such requirement is that all operations and maintenance activities for the Flood Wall be under the jurisdiction of an agency of a community participating in the National Flood Insurance Program, and that the agency assumes ultimate responsibility for maintenance of the Flood Wall (the "Responsible Agency").

**E.** Neither the United States Government nor any of its agencies, including FEMA (collectively "USA") is a party to this Agreement. The PARTIES do not control nor make warranties or representations on behalf of USA and nothing in this Agreement is intended to bind or require USA to do anything and is not a promise or guarantee that it will do anything with respect to the matters stated herein.

**F.** ASSOCIATION desires and CITY agrees, subject to the conditions and promises set forth herein, that CITY shall be the Responsible Agency.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

### **Agreement**

**1. Statement of Purpose.** The purpose of this Agreement is to (a) provide for the respective obligations of ASSOCIATION and CITY with respect to monitoring, maintenance, repair, and replacement of the Flood Wall; (b) allocate the cost of such obligations between the PARTIES; (c) provide for the enforcement of the obligations required hereunder; and, (d) limit the liability of CITY with respect to the monitoring, maintenance, repair, replacement and funding of the Flood Wall.

**2. Property Subject to Agreement.** ASSOCIATION hereby acknowledges and covenants, on behalf of ASSOCIATION and its successors in interest, that the Subject Property, as described in Exhibit B, shall be and is hereby made subject to this Agreement and that all provisions hereof shall run with the land.

**3. Term.** This Agreement shall be effective upon the Effective Date and shall remain in full force and effect for a period of ten years, or less than ten years if the Agreement is terminated as provided in section seventeen of this Agreement by the PARTIES, or their successors in interest.

#### 4. ASSOCIATION's Obligations.

a. Maintenance. At all times, ASSOCIATION shall take reasonable steps to diligently inspect, maintain, repair, and replace the FLOOD WALL in good condition and repair, in accordance with the Maintenance and Operations Plan, attached as Exhibit C hereto, and shall timely investigate and respond to any notice of requested work provided by CITY with respect to any inspection, monitoring, maintenance, repair, replacement, or reporting that CITY deems necessary and prudent (collectively, the "Work").

b. Covenant to Contribute and Maintain Funds. ASSOCIATION hereby agrees that from the Effective Date of this Agreement, ASSOCIATION and its successors shall contribute to and maintain a fund to fully and satisfactorily pay for the Work as more particularly described and set forth below.

c. Funding Plan.

i. Replacement Funds. The current estimated cost to maintain and replace the entire Flood Wall for a period of ten years is Twenty Five Thousand Dollars (\$25,000.), (the "Replacement Funds"). ASSOCIATION collected these Replacement Funds by levying assessments on its members.

ii. Replacement Funds Account. The Replacement Funds shall be deposited into and maintained in an escrow account (or a segregated fund maintained by the City) designated solely for use in performing the Work required by this Agreement (the "Replacement Funds Account"). Any fees and/or costs associated with the maintenance of this account shall solely be ASSOCIATION'S responsibility. Any interest which may accumulate on the amounts held in this account shall solely be the property of ASSOCIATION. CITY shall be provided with access to the account number, balance, and transaction history of the Replacement Funds Account. City and Association shall have access to funds in the Replacement Funds Account in accordance with section 4.c.v. of this Agreement.

iii. Obligation to Maintain Funds. ASSOCIATION shall be obligated to monitor, manage, and maintain the Replacement Funds in the Replacement Funds Account and such funds shall not be used for any other purpose except to perform the Work required hereunder, including the obligation to accumulate and maintain additional funds to provide for future monitoring, maintenance, repairs, and replacements. This obligation to contribute and maintain funds shall run with the land. CITY shall have no obligation hereunder to contribute to or maintain funds to perform any portion of the Work required hereunder or for any other purpose. ASSOCIATION shall, at CITY's request, provide CITY with reasonably satisfactory written proof that ASSOCIATION is levying, collecting, and maintaining appropriate funds to perform its obligations hereunder. Such proof shall be provided within thirty (30) days of CITY's written request.

iv. Restoration of Funds. In the event ASSOCIATION or CITY uses fifty percent or more of the Replacement Funds for Work required hereunder, ASSOCIATION shall deposit funds necessary in to the Replacement Funds Account to restore the balance of the Replacement Funds to Twenty Five Thousand Dollars (\$25,000) within 60 days.

v. Rights to Access Funds.

1. Upon the written consent of CITY, such consent not to be unreasonably withheld, ASSOCIATION shall have the right to access and utilize the funds in the Replacement Funds Account to perform the Work required hereunder including any action required by the Maintenance and Operations Plan.
2. CITY shall have the right to access the funds in the Replacement Funds Account to perform Work in accordance with section five of this Agreement. Prior to accessing such funds in accordance with section five of this Agreement, CITY shall provide ASSOCIATION at least seven (7) days written notice of its intent to do so. CITY shall not have access to or utilize the Replacement Funds Account for any other purpose except as expressly provided herein.
3. CITY shall have the right to access funds in the Replacement Funds Account to perform Work in accordance with section seven of this Agreement. CITY shall not have access to or utilize the Replacement Funds Account for any other purpose except as expressly provided herein.

**5. Notice and Performance of Requested Work.** If CITY reasonably determines that monitoring, maintenance, repair, replacement, or other Work is necessary in accordance with the Maintenance and Operations Plan, notice thereof shall be given in writing to ASSOCIATION and ASSOCIATION shall undertake such Work within thirty (30) days. In the event ASSOCIATION refuses to undertake such Work as provided herein or as reasonably requested by CITY, CITY may, but is not obligated to, withdraw funds from Replacement Funds Account in accordance with Paragraph 4.c.v. above and cause the Work to be performed.

**6. Limitation on Liability of CITY.** Notwithstanding any other provision to the contrary contained in this Agreement, the liability or exposure of CITY shall not be increased by virtue of its role as the Responsible Agency; and, except as otherwise provided herein, neither CITY nor any of its officers, officials, employees, agents, or volunteers shall be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the Flood Wall or other improvement on the Subject Property or within the Development, except for the gross negligence or willful misconduct of CITY. All such risks shall be the responsibility of and are hereby assumed by ASSOCIATION.

**7. Emergencies.** In the event of an emergency, where there is not enough time to properly notify ASSOCIATION of necessary Work, CITY may withdraw funds from Replacement Funds Account in accordance with Paragraph 4.c.v.3 above and undertake emergency monitoring, maintenance, repair, or replacement, but only to the extent that such emergency is present. An "emergency" means any situation causing a serious and imminent threat to the health or safety of persons or to the preservation and protection of the Flood Wall which requires immediate action to preserve and protect the health and safety of persons or the Flood

Wall. CITY shall promptly provide written notice of the nature of the emergency, the actions taken, and the cost thereof to ASSOCIATION as soon as is reasonably practicable. CITY will use its reasonable best efforts to contain the costs of any emergency monitoring, maintenance, repair, and/or replacement of the Flood Wall and, at the earliest possible time, to notify ASSOCIATION of any emergency situation. The cost of such emergency work shall be borne by ASSOCIATION, unless otherwise agreed to in writing by the PARTIES.

**8. Indemnification.** ASSOCIATION agrees to indemnify, defend and hold CITY, its officers, officials, employees, agents, and volunteers harmless from and against any claim, liability, cost, expense, or penalty for any and all injuries or damages resulting from or arising out of any monitoring, maintenance, repairs, or replacement of the Flood Wall, except to the extent that such injury or damage results from the willful misconduct or gross negligence of CITY, or a third party engaged by CITY to perform monitoring, maintenance, repair, or replacement of the Flood Wall.

**9. Insurance Requirements.** ASSOCIATION shall procure, at its sole expense, and maintain in full force and effect during the Term, Comprehensive General Liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the CITY's role as responsible agency with a policy limit of at least One Million Dollars (\$1,000,000) per occurrence, naming the CITY as additional insured and/or loss payee.

Upon Agency's request, Tenant shall furnish City with endorsements and certificates of insurance evidencing the required insurance coverage. ASSOCIATION shall notify City of any cancellation, termination or nonrenewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or nonrenewal.

**10. Enforcement.** CITY shall have the right to enforce against ASSOCIATION the obligations required hereunder, including but not limited to submitting the dispute to binding arbitration as set forth below. In the event CITY takes any action to enforce ASSOCIATION's obligations hereunder and prevails, CITY shall, to the fullest extent permitted by law, be entitled to recover the full amount of all costs, including attorneys' fees, actually incurred in good faith. An enforcement action shall not be taken against ASSOCIATION until written notice has been provided to ASSOCIATION, and ASSOCIATION is provided a reasonable opportunity to be heard by CITY and an opportunity to cure the default.

**11. Successors/Binding Effect.** The provisions of this Agreement are intended to and shall be construed to be covenants running with the land. This Agreement is for the mutual benefit of the PARTIES hereto and their successors, and the Subject Property and shall be binding on and shall inure to the benefit of the PARTIES hereto, and their successors.

**12. No Third Party Beneficiary.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under, or by reason of, this Agreement on any persons other than the PARTIES to it and their respective successors, or relieve or discharge the obligation or liability of any third party to any PARTY to this Agreement.

13. **Ownership of Property/Authority.** ASSOCIATION acknowledges that it has fee title to the Subject Property and has full legal power and authority to enter into this Agreement.

14. **Recordation.** The PARTIES shall cause this Agreement to be recorded in the Office of the Recorder of the County of Contra Costa, against the Subject Property, within fourteen (14) calendar days after the date of full execution hereof. The cost of recordation shall be borne by ASSOCIATION.

15. **Agreement Contingent on FEMA Action.** The effect of this Agreement is contingent on FEMA's issuance of the LOMR. Should FEMA fail to issue the LOMR, or otherwise revoke the LOMR, this Agreement shall be of no force and effect.

16. **Amendment.** No provision of this Agreement may be amended except by written agreement executed by all of the PARTIES hereto (or their successors). To be effective, any amendment to this Agreement shall be recorded in the Office of the Recorder of the County of Contra Costa.

17. **Termination.** Either Party shall have the right at any time, with or without cause, to terminate further performance of this Agreement upon ninety (90) days written notice delivered to the other PARTY, or sooner if agreed to in writing by the PARTIES. The terminating PARTY shall provide notification of the termination of this Agreement to FEMA.

18. **Dispute Resolution.**

a. **Mediation.** The resolution of any disputes, issues, claims, or controversies, arising out of or relating to this Agreement, shall first be attempted through a process of mediation, using a neutral third party. The PARTY demanding mediation shall first submit to the receiving PARTY a written demand for mediation. The receiving PARTY shall provide written notice of receipt of such demand to demanding PARTY within fourteen (14) days of receiving such demand, and the mediation shall take place within thirty (30) days thereafter, or as reasonably practicable. In the event the PARTIES cannot agree on a mediator, Judicial Arbitration and Mediation Services ("JAMS") shall appoint a mediator. A PARTY's refusal to participate in mediation may be considered in awarding attorneys' fees in any subsequent action or proceeding.

b. **Arbitration.** If any controversy or claim arising out of or relating to this Agreement or the making, performance, or interpretation hereof, cannot be resolved through mediation as required hereunder, it shall be settled by binding arbitration before a single, neutral arbitrator selected by the PARTIES, or, if the PARTIES cannot agree, selected by the Presiding Judge of the Superior Court of the County of Contra Costa. The arbitration shall be conducted in the County of Contra Costa, and shall comply with and be resolved in accordance with the JAMS Streamlined Arbitration Rules and Procedures (the "JAMS Procedure"). The prevailing PARTY shall be entitled to an award of reasonable attorneys' fees in addition to all recoverable costs, expenses, and damages, or any other relief to which the PARTY may be entitled.

19. **Notices/Contact Information.** Unless otherwise specified in this Agreement, all notices provided for herein shall be deemed validly given, made and served, if delivered (i) personally

by a nationally recognized overnight courier, (ii) by facsimile, or (iii) by certified or registered mail, to the address set forth below, or other such address as may be noticed hereunder.

ASSOCIATION: Harbor Lights Homeowners Association  
c/o Common Interest Management Services  
315 Diablo Road, Suite 221  
Danville, CA 94526  
T: 925/743-3080; F: 925/743-3084

CITY: City of Pittsburg  
Attn: City Engineer  
65 Civic Avenue  
Pittsburg, CA 94565  
T: 925/252-4930; F: 925/252-4851

**20. Miscellaneous Provisions.**

a. Governing Law. This Agreement is governed by, and shall be construed in accordance with, the laws of the State of California. The venue of any litigation pertaining to this Agreement will be Contra Costa County, California.

b. Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity, partial invalidity or unenforceability of any provision hereof, for any reason whatsoever, shall not invalidate any other provision hereof.

c. Recitals and Exhibits Incorporated. All recitals hereto and all exhibits attached to this Agreement are incorporated herein as if set forth in full.

d. Authority. Each person executing this Agreement represents that (i) his or her execution thereof has been duly authorized by the PARTY on whose behalf that person is executing the Agreement; (ii) no consent of any other person or entity is required for such person to enter into this Agreement; and, (iii) he or she has the legal power and authority to bind ASSOCIATION to the terms and conditions in this Agreement and to carry out the obligations set forth in this Agreement to the full extent stated.

e. No PARTY Deemed Drafter. If any provision hereof is construed by a court of law or equity or by an arbitrator, such provision shall not be construed more harshly against any PARTY as drafter of such provision.

f. Remedies for Breach. In the event of a material breach of this Agreement, the aggrieved PARTY(IES) may seek its rescission, modification, and/or damages for such breach in accordance with the terms of this Agreement.

g. Entire Agreement. This Agreement constitutes the entire agreement of the PARTIES hereto with respect to the subject matter contained herein, and it supersedes all prior covenants and agreements, whether written or oral, of the PARTIES hereto.

h. Necessary Acts. All PARTIES to this Agreement agree to perform all acts reasonably required to carry out the intent of this Agreement.

i. No Waiver. The PARTIES agree that a failure to exercise or a delay in exercising any right, power, or privilege under this Agreement on the part of any PARTY shall not operate as a waiver of any right, power or privilege hereunder.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement in his or her capacity as set forth below.

**HARBOR LIGHTS HOMEOWNERS ASSOCIATION,  
a California nonprofit mutual benefit corporation:**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its President

Its Secretary

Dated: \_\_\_\_\_, 2012

Dated: \_\_\_\_\_, 2012

**CITY OF PITTSBURG,  
a California municipal corporation:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2012

6541-01/563604

**Exhibit A**  
**Being a Description of the Development**

**Tract 7514, Harbor Lights I HOA**

**Exhibit B**  
**Being a Description of the Subject Property**

APN

- 096-160-154
- 096-160-150

**Exhibit C, C1, and C2**  
**Being the Maintenance and Operations Plan and Attachments**

## Exhibit C

### Maintenance and Operations Plan

For the Concrete Floodwall and Reinforced Concrete Box Culvert beneath Cape May Drive

#### **A. Statement of Purpose:**

Certain homes within the Harbor Lights development are situated within a Special Flood Hazard Area (“SFHA”) as indicated on the applicable Flood Rate Insurance Map. A flood wall and culvert, which are described in greater detail below, under Cape May Drive are the primary improvements installed to protect these homes from damage that might result from a “one hundred year storm.” In order for those homes to be removed from the SFHA, FEMA requires that the Association provide it with assurance that the protective improvements will continue to be properly maintained, repaired, and replaced.

#### **B. Description of Floodwall and Culvert**

The concrete floodwall consists of approximately 451 linear feet of a concrete retaining wall whose purpose is to provide flooding protection for a portion of the properties lying within the Harbor Lights development (also known as Subdivision 7514). The approximate location of said concrete floodwall begins on the western edge of the headwall (of the reinforced concrete box culvert beneath Cape May Drive), on the south side of Cape May Drive, proceeds easterly toward the rear lot line of Lot 76, and then southerly along the rear lot lines of Lots 76 through 82. The floodwall and culvert are shown on the plan “Proposed Flood Wall, East Side of Reach Four, Cape May Drive South to Off Site Railroad” dated October 17, 2003, attached here as Exhibit C-1. (This is the As-Built Record Drawing and is identified as Appendix IV in the Addendum Report entitled “Federal Insurance Rate Map Revision Study Addendum #1, dated March 4, 2003.)

#### **C. Maintenance, Repair, and Replacement**

Maintenance, repair, and replacement of the concrete floodwall and culvert shall include, but be not limited to:

1. Replacement of portions of the wall that would fail to serve the purpose of holding back flood waters, with sufficient freeboard, to the “minimum top of levee with freeboard” elevations shown on Exhibit C-1; and
2. Keeping vegetation along the water side of the concrete floodwall trimmed to no higher than 6” to allow easy visibility of the wall condition, ensuring proper maintenance and trimming of larger plants, shrubs, and trees located nearby the floodwall and culvert to prevent debris from accumulating or affecting the floodwall and/or culvert, and prompt removal of any and all vegetation cuttings; and

3. After every major storm event, the existing concrete box culvert beneath Cape May Drive shall be cleared of any debris that may inhibit the free flow of drainage waters through the culvert; and

4. Removal of any sediment that accumulates to more than 12" in height above the culvert bottom; and

5. Performing necessary repairs to prevent or correct erosion likely to compromise the floodwall or culvert which repairs may include the placement of riprap or other soil protection methods; and

6. Performing any other repairs necessary to the flood wall and/or culvert to maintain the integrity of those improvements; and

7. Replacement of the flood wall as required herein.

#### **D. Inspections**

Inspection of the concrete floodwall and culvert shall include, but be not limited to:

1. The concrete floodwall shall be inspected annually for stability and integrity, such inspection to include the following:

a) Within sixty (60) days after the recordation of the Flood Wall Maintenance Agreement, a base line "As Built" field survey, prepared under the direction of a registered civil engineer or land surveyor, licensed by the State of California, shall be performed locating the flood wall, both horizontally and vertically. This base line survey shall serve to establish a basis for future annual survey comparisons. Vertical movement (indicating possible wall subsidence) or horizontal movement (indicating possible wall creep) can be more easily identified by comparing future annual surveys to this initial base line survey. For this reason, and for ease of future comparisons, a plan of the flood wall shall be prepared having a horizontal scale of 1"=10' and a vertical scale of 1"=1'. The basis of horizontal and vertical datum shall be clearly marked on said plan. Adjacent property lines or road right of way lines shall be clearly indicated. Inside top of wall and inside bottom of wall locations, no more than 25 feet apart, and at obvious angle points, shall be clearly marked on said plan. Horizontal coordinates and vertical elevations shall be clearly denoted at each location. Also, at each inside top of wall location, the minimum freeboard elevation shall be noted

b) After the initial wall survey is made, each year thereafter a new survey shall be performed locating all of the base line locations mentioned in item 1a) above. A comparison shall then be made identifying any wall movement.

c) After each field survey, the ground surface in front of and behind the flood wall shall be examined for: (i) signs of erosion (such as rill lines) immediately adjacent to the wall or the adjacent creek bank, (ii) holes indicating the presence of insects, or burrowing animals (e.g. yellow jacket nests, snake or gopher holes, etc.), that could adversely affect the wall and/or the stability of the top of the creek bank if left unchecked; (iii) cracks in the earth, or

other ground openings, indicating possible foundation movement or settling; and (iv) vegetation in excess of 6" that needs to be removed.

d) The rock slope protection near the upstream entrance of the box culvert shall also be checked for stability (i.e. ensuring the rocks are in place and have not become dislodged or tumbled down into the creek bottom).

e) The flood wall shall be examined, front and back sides, for the presence of: (i) cracks; (ii) spalling (chunks of concrete breaking loose from the wall); (iii) reinforcement steel exposure; and (iv) reinforcement steel deterioration (rusting).

and

2. After every major storm event, the concrete box culvert beneath Cape May Drive, including the upstream and downstream ends of said box culvert, shall be inspected for the presence of materials or vegetation (such as trash, construction debris, abandoned shopping carts, tree branches, bushes, etc.) that act as a deterrent, or could possibly become a deterrent, to the free passage of drainage flow through the box culvert.; and

3. The concrete wall and culvert shall be inspected at least quarterly to ensure that vegetation along the water side of the concrete floodwall is trimmed to no higher than 6" to allow easy visibility of the wall condition and that any sediment that accumulates to more than 12" in height above the culvert bottom is removed; and

4. A mid-service life inspection for the purpose of (a) evaluating the need and timing for future repairs and replacement and (b) adjusting the repair and replacement schedule accordingly, such inspection to be performed on or within sixty (60) days of January 1, 2025.

5. All inspections shall be documented in the Maintenance and Operations Plan Log Book (as described below under **Reporting and Record-Keeping**) and such documentation shall include photographs.

#### **E. Expected Replacement of Flood Wall and Adjustments**

The service life of the floodwall is anticipated to be fifty (50) years. The floodwall is expected to be replaced at the end of the anticipated service life, subject to reasonable adjustments per the inspections provided for above.

#### **F. Reporting and Record-Keeping**

##### 1. Maintenance of a Log Book

Association shall maintain a log book for the purposes recording the performance of all activities required by this Maintenance and Operations Plan. Association shall ensure that all activities performed be promptly recorded in the log book upon performance of the activity. Such log book shall at least include: the dates of inspections, vegetation removal, and other maintenance; a reasonably detailed description of the work performed; and the name, title, and contact information for the person that performed the work. The log book may be kept in

electronic format. Association shall use the form attached here as Exhibit C-2 for these record-keeping purposes. Association shall submit the log book to the City Engineer of the City of Pittsburg two times per year on or about March 25th and September 25th (in conjunction with the submission of its annual written report described below), and at any other time upon 15 days written notice by the City Engineer.

2. Annual Written Report

Association shall prepare a written report summarizing the condition of the wall. Such report shall be accompanied by photographs of the entire length of the wall (front and back sides) to give a general impression of the wall in its then-current condition. Additional pictures shall be taken to identify any items of concern. A key map showing where each picture was taken and from which direction it was taken shall be submitted with the pictures. Said report shall be submitted to the City Engineer of the City of Pittsburg, on or about September 25th of each year. Said report shall include the estimated depth of sediment within the box culvert beneath Cape May Drive along with a photograph of the upstream and downstream face of said box culvert. Said report shall be prepared by a professional qualified to perform such inspections and provide such opinions.

## Exhibit C-1

[Being the “Proposed Flood Wall, East Side of Reach Four,  
Cape May Drive to offsite Railroad” dated October 17, 2003]

## Exhibit C-2

[Being the form to be used for Association's record-keeping responsibilities]

### Flood Wall Maintenance and Operations Plan Log Book Form

Date of Activity: \_\_\_\_\_, 20\_\_\_\_

Description of Activity (inspection, repair, etc.): \_\_\_\_\_

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If Annual Inspection, the following items were inspected/performed (check those that apply):

erosion;  evaluation of impacts by plants and/or animals;  settlement;  wall deterioration.

Activity Performed By (include name, title, contact information): \_\_\_\_\_

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Date of Report: \_\_\_\_\_

Report Prepared By (include name, title, contact information): \_\_\_\_\_

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\* Include with the completed Form copies of any relevant invoices, reports, photographs or the like.  
Note that all inspections and the annual written report require that photographs be taken and submitted with the Form/report.

**CERTIFICATE OF ACKNOWLEDGMENT**

State of California )  
 ) ss  
County of Contra Costa )

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**CERTIFICATE OF ACKNOWLEDGMENT**

State of California )  
 ) ss  
County of Contra Costa )

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**CERTIFICATE OF ACKNOWLEDGMENT**

State of California            )  
  ) ss  
County of Contra Costa        )

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)