

DRAFT

**Recording Requested by
and**

When Recorded Return to:

Opal Cliff West Homeowners Association
c/o Shoreline Property Management
1100 Water Street, Suite 1A Santa Cruz, C. 95062

The undersigned hereby declares
DOCUMENTARY TRANSFER TAX \$0
R&T Code Section 11911 (no consideration)

APN: 034-462-05

**AGREEMENT
HEREIN REFERRED TO AS
MONITORING AND MAINTENANCE PROGRAM AGREEMENT**

PURSUANT Conditional Use Permit and Coastal Permit #2021-0011 (Permit), this Monitoring and Maintenance Program ("Program") is a requirement of the Permit approved by the City of Capitola (City) on 06/02/2022, and this Program has been reviewed and accepted by the City for purposes of a) achieving compliance with a permit Condition of Approval, and (b) for record at City of Capitola in the Official Records of City of Capitola and on title to the subject property to establish procedures for ongoing maintenance and repair of the existing reinforced shotcrete tied back retaining wall. This Program has been developed by Opal Cliff West Homeowners Association, a California nonprofit mutual benefit corporation under the Davis Sterling Common Interest Development Act (Civil Code Section 4000 et seq.) ("Owner"), as duly approved by the Owner's Board of Governors, with reference to the following facts and circumstances:

Owner owns, manages, and operates that certain real property located in the City of Capitola, defined as "Common Area" in Owner's Declaration of Covenants, Conditions and Restrictions dated July 30, 1974, and recorded September 11, 1974 in Book 2441 at Page 461 in the Official Records or the Santa Cruz County Recorder's Office, which is commonly known as 4800 Opal Cliffs Dr., Capitola, California, Assessor's Parcel Number 034-462-05, and as more particularly described in that legal description attached as Exhibit "A" hereto and incorporated herein by reference ("Property"). Their currently exists on the Common Area of the Property a reinforced shotcrete tied back retaining wall and seawall. The vertical seawall at the bluff toe is not included in this monitoring and maintenance program agreement.

- The Permit was subject to the terms and conditions imposed on the Property by the City upon approval of the Permits ("Approval Conditions"), which required "that a monitoring, reporting and maintenance program statement must be recorded before the final building permit inspection".
- In the future, the retaining wall will need ongoing maintenance and repair to ensure the stability of the wall.
- The Permit requires that the applicant/owner shall:
 - Submit proof that a Maintenance and Monitoring Program has been recorded in the official records of the County of Santa Cruz (Office of the County Recorder).

- Full-sized copies of the Blufftop Retaining Wall Plans prepared by Soil Engineering Construction with final revision dated 10/20/20 with most recent revision date 01/06/22 are on file with the City. The City has reviewed and approved the Plans dated 10/20/20 revision 01/06/22 as consistent with the Permit, and upon City review of and issuance of a Building Permit the maintenance and repair activities would be able to occur, consistent with this Program.
- To the extent practicable, vegetation removal and maintenance activities shall be performed from September 1 through January 31 to avoid the general nesting period for birds. If maintenance or vegetation removal cannot be performed during this period, pre-maintenance surveys will be performed no more than two days prior to beginning work activities to locate any active nests as follows: The owner/applicant shall be responsible for the retention of a qualified biologist to conduct a survey of the project site and surrounding 500' for active nests—with particular emphasis on nests of migratory birds—if maintenance (including site preparation) will begin during the bird nesting season, from February 1 through August 31. If active nests are observed on either the project site or the surrounding area, the project owner/applicant, in coordination with the appropriate City staff, shall establish no-disturbance buffer zones around the nests, with the size to be determined in consultation with the California Department of Fish and Wildlife (usually 300' for perching birds and 500' for raptors). The no-disturbance buffer will remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more and then resumes during the nesting season, an additional survey will be necessary to avoid impacts on active bird nests that may be present.

Owner and the City desire and intend by this Program to ensure compliance with the Conditions of the Permit, and to ensure that ongoing monitoring and maintenance of the Blufftop retaining wall on the Property will occur in the future consistent with the Approval Conditions, this Program, and specifications of future years' maintenance plans as may be authorized through future issuance of building/grading permits, to ensure the protection of the public health and safety NOW, THEREFORE, in consideration of the foregoing facts and circumstances, the Owner, for themselves, their heirs, assigns, and successors in interest, hereby covenants, declares, and agrees as follows:

1. Future Maintenance Plans

The Owner shall implement any future maintenance plans only after City review and issuance of a building/grading permit for the proposed repair and maintenance activities. Prior to the commencement of work in future years, the Owner shall obtain any necessary permits or approvals from the City and complete a preconstruction meeting. In implementing any Maintenance Plan, Owner shall comply with all applicable operational and construction Approval Conditions, as those conditions may apply to the Maintenance Plan. Although implementation of Maintenance Plan work may constitute development as defined under the California Coastal Act and related applicable regulations, such maintenance and repair work is covered by the City-issued Permit, is mandated by the Approval Conditions, including but not limited to the City Permit Condition requiring this Program, constitutes ordinary maintenance and repair, and therefore shall not require a separate coastal development permit. However, should any future proposed work exceed a level that qualifies as

maintenance and repair, as determined by the City of Capitola's Community Development Director, then such proposed work may require application(s) for and approval of new coastal development permit(s) if required by then-existing regulations.

2. Monitoring and Reporting

Following implementation of any future maintenance plan and final inspection thereof by the City, the Owner shall ensure that the condition and performance of the permitted blufftop retaining wall and related development are regularly monitored, with inspections by qualified registered civil engineer with experience in coastal structures and processes. Monitoring inspections shall occur at least once every five (5) years, as well as after prolonged rain events of significant intensity (i.e. El Nino). Such monitoring shall at a minimum address whether any significant weathering or damage has occurred that would adversely impact future performance, and identify any structural damage requiring repair in order to maintain the approved shotcrete tieback retaining wall in its approved state. Monitoring reports prepared by a qualified registered civil engineer with experience in coastal structures and processes, and covering the above-described evaluations, shall be submitted to the Planning Director and/or City Geologist for review and acceptance as they are prepared, as a minimum at five-year intervals, by January 1st of each fifth year (with the first report due by January 1, 2028, and subsequent reports due by January 1 of 2033, 2038, and so on) for as long as the blufftop retaining wall and related development exist at the Property.

Retaining Wall Inspection

- a) Inspection every 5 years by a licensed C.E. starting 1 January 2028 while using climbing gear.
- b) Repel face of slope and look for exposed:
 1. Large cracks or visible damage of concrete;
 2. Exposed Rebar, dowels or tie backs;
 3. Evidence of corrosion;
 4. Outflanking along the edges of the walls and undermining along the wall base;
 5. Weep holes are clear of obstructions (buried in sand is ok).
- c) The licensed C.E. should prepare inspection report and submit it to City.

Repair Options for retaining Wall

- a) Where rebar, dowels or tiebacks are exposed, cover with reinforced concrete fascia. Fascia must be designed by a civil engineer with plans prepared.
- b) If erosion occurs along edges outflanking concrete remove the affected section of concrete.

3. Construction Plans

- Repair plans should be designed by a Professional Civil Engineer and reviewed by the engineer that performed the maintenance inspection.
- Prior to commencement of any work pursuant to this Maintenance Program, the owner shall submit two sets of a Construction Plans for proposed maintenance and repair work to the Community Development Director, who shall determine whether or not the proposed work requires issuance of a building/grading permit, and/or whether the proposed work is at a level that exceeds maintenance and repair to a degree that a new coastal development and/or other City permits is required pursuant to then-existing applicable regulations.

- Any Construction Plan that is submitted for City review and/or as an application for a building/grading permit, will, at a minimum, include the following specifications:

(a) Construction Areas. The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access corridors (to the construction site and staging areas), and all public pedestrian access corridors. All such areas within which construction activities and/or staging are to take place shall be minimized in order to minimize construction encroachment on all publicly available pathways, park areas, beach and beach access points, to have the least impact on public access and other coastal resources overall.

(b) Construction Methods and Timing. The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from public recreational use areas (including using the space available on the project site for staging, storage, and construction activities to the maximum extent feasible provided it does not significantly adversely affect public access, and including using unobtrusive fencing (or equivalent measures) to delineate construction areas), and including all methods to be used to protect Monterey Bay. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted.

(c) Construction Requirements. The Construction Plan shall include the following construction requirements specified by written notes on the Construction Plan. Minor adjustments to the following construction requirements may be allowed by the Community Development Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

- Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- Equipment washing, servicing, and refueling shall not take place on the project site, and shall only be allowed at a designated inland location as noted on the Plan. Appropriate best management practices shall be used to ensure that no spills of petroleum products or other chemicals take place during these activities.
- The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain, including covering exposed piles of soil and wastes; dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).
- All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday. At a minimum, silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from leaving the site.
- All public recreational use areas and all beach access points impacted by construction activities shall be restored to their preconstruction condition or better within three days of completion of construction. Any native materials impacted shall be filtered as necessary to remove all construction debris.
- After issuance of Building Permits, the Owner shall notify the City of Capitola planning staff at least three working days in advance of commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this permit. The Owner shall undertake development in accordance with this condition and the approved Construction Plan. Minor adjustments to these requirements may be allowed by the Community

Development Director if such adjustments: (1) are deemed reasonable and necessary; and (2) do not adversely impact coastal resources.

4. Construction Site Documents & Construction Coordinator

DURING ALL CONSTRUCTION:

(a) Construction Site Documents. Copies of the signed Building Permit and the approved Construction Plan shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be

briefed on the content and meaning of the Building Permit and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

(b) Construction Coordinator. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the coordinator's contact information (i.e., address, email, phone numbers, etc.)

including, at a minimum, a telephone number and email address that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with an indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both

regular inquiries and emergencies). The construction coordinator shall record the contact information (e.g., name, address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

5. Future Maintenance Authorized

Permit #2021-0011 authorizes future maintenance to the blufftop shotcrete wall at 4800 Opal Cliffs Drive subject to the following:

(a) Maintenance. "Maintenance" as it is understood in this agreement, means development that would otherwise require a Coast Development Permit whose purpose is:

- To maintain the approved blufftop shotcrete wall and all related components in their approved state and is consistent Government Code Section 30610.

(b) Other Agency Approvals. The Owner acknowledges that this maintenance condition does not obviate the need to obtain authorization from other agencies for any future maintenance and/or repair episodes.

(c) Maintenance Notification. At least 30 days prior to submittal of a Building Permit Application for any maintenance event, the Owner shall notify, in writing, planning staff of the City of Capitola Planning Department. The notification shall include: a detailed description of the maintenance event proposed; any plans, engineering and/or geology reports describing the event; a construction plan that complies with all aspects of the approved construction plan as described in Section 3 above; identification of a construction coordinator and his/her contact information (i.e., address, email, phone numbers, etc.) as described in Section 4 above; other agency authorizations; and any other supporting documentation (as necessary) describing the maintenance event. The maintenance event shall not commence until the Owner has been informed by staff of the City of Capitola Planning Department that the maintenance event complies with this Permit. In the event of an emergency requiring immediate maintenance, the notification of such emergency episode shall be made as soon as possible and shall (in addition to the foregoing information) clearly describe the nature of the emergency.

(d) Maintenance Coordination. Maintenance events shall, to the degree feasible, be coordinated with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the

beach and bluff area, and beach and surf access points. As such, the Owner shall make reasonable efforts to coordinate the Owner's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the City of Capitola Planning Department.

(e) Restoration. The Owner shall restore original slope vegetation impacted by maintenance activities to their pre-construction condition or better at the conclusion of any maintenance event if applicable. Any native materials impacted shall be filtered as necessary to remove all construction debris from the area within three days of completion of construction. The Owner shall notify City of Capitola Planning Department upon completion of restoration activities to arrange for a site visit to verify that all restoration activities are complete. If the City staff identifies additional reasonable measures necessary to restore the affected area, such measures shall be implemented as quickly as reasonably possible.

(f) Noncompliance with Building Permit. If the Owner is not in compliance with the terms and conditions of approval that apply to the project area at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition shall not be allowed by this condition until the Owner is in full compliance with those terms and conditions.

(g) Emergency. In addition to the emergency provisions set forth in subsection (c) above, nothing in this condition shall serve to waive any Owner rights that may exist in cases of emergency pursuant to California Code of Regulations (Permits for Approval of Emergency Work).

(h) Duration of Covered Maintenance. Future maintenance under this PERMIT is allowed subject to the above terms throughout the length of the shotcrete wall approval.

(i) Noncompliance Provision. If the Owner is not in compliance with the terms and conditions of this Program, the Permit, or other permit agency authorizations that apply to the Property at the time that a maintenance/repair activity is proposed, then the maintenance/repair activity that might otherwise

be allowed by the terms of this Program shall not be allowed until the Owner is in full compliance with those terms and conditions.

IN WITNESS WHEREOF, Owner has executed this Program on the day and year set out opposite their respective signatures and agrees to abide by its terms.

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OWNER:

OPAL CLIFF WEST HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation

By: _____

Dated:

Name: David Mewes

Its: President

By: _____

Dated:

Name: Andrea Vitz

Its: Secretary

REVIEWED AND ACCEPTED

The City of Capitola has reviewed and hereby accepts this Monitoring and Maintenance Program as in fulfillment of the Conditions of Permit No. and directs that Owner record the Program consistent with those Conditions; provided, the City expressly disclaims any liability for the condition or maintenance of the Property or any improvements thereon or relating thereto.

City of Capitola

By: _____

Position: _____

Dated: _____

PLACEHOLDER - Notary to Provide

Appendix A

PROPERTY LEGAL DESCRIPTION

Placeholder: Others to Provide

Appendix B

City of Capitola Conditions of Approved Conditional Use Permit and Coastal Permit No.2021-0011

Appendix C

Approved Blufftop Retaining Wall Maintenance Plans