

**FLAT CREEK CASTROVILLE PROPERTY OWNERS' ASSOCIATION, INC.**

**PUBLIC IMPROVEMENT MAINTENANCE AGREEMENT**

This Public Improvement Maintenance Agreement (this *Agreement*) is made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_\_, by and between **City of Castroville, Texas** (the *City*), a Type A general law municipality, and **Flat Creek Castroville Property Owners' Association** (the *Association*), a Texas property owners association organized and existing under laws of the State of Texas and having the powers and limitations provided under Title 11 of the Texas Property Code, for the purpose for providing the terms for the Association's maintenance of public parkland and storm drainage improvements within the hereinafter-defined District. The City and the Association are herein referred to individually as a *Party* and, together, as the *Parties*.

**WITNESSETH**

**WHEREAS**, the City has, pursuant to applicable law, created the **Castroville East Side Public Improvement District No. 2** (the *District*) on approximately 254.69 acres of land located within the City (such land, as more particularly described on Exhibit "A" attached hereto and made a part hereof, the *Land*) to facilitate its development for use as mixed use residential and commercial master planned community (the such development, the *Project*); and

**WHEREAS**, through the District, the City will provide, by revenues resultant from assessments levied and imposed on certain property within the District, a mechanism for payment of a portion of the costs of certain public improvements within the District that are necessary and incidental to Project development; and

**WHEREAS**, as a condition to its creation of the District and provision of the aforementioned mechanism to finance a portion of the costs of public improvements within the District, the City requires that the ongoing maintenance obligations of the hereinafter-defined Public Improvements be assumed by a non-City entity associated with the Project or the related costs be paid by or from District-associated resources to prevent these costs resultant from Project development, which the City has facilitated, from becoming a burden on the general revenues of the City and its residents and property owners that do not reside within or directly enjoy the benefits resultant from the District; and

**WHEREAS**, the Developer has created the Association to provide services related to the developed Project as specified in its bylaws, including the ongoing maintenance of the Public Improvements in accordance with the provisions of this Agreement and payment of the associated costs from its fees collected from property owners within the District and subject to the Association's jurisdiction; and

**WHEREAS**, entry into this Agreement satisfies the City's condition to the District creation and utilization of its available powers to provide a mechanism for financing a portion of the costs of certain public improvements within the District, as described above; and

**WHEREAS**, the Parties, for the mutual consideration hereinafter stated, desire to enter into this Agreement, pursuant to which the Association assumes responsibility for maintaining the Public Improvements (which includes payment of the associated costs of such maintenance); and

**NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:**

**SECTION 1. Definition of Certain Terms.** For purposes of this Agreement, the following terms shall have the ascribed meanings:

*a. Consultant's Plan* has the meaning ascribed thereto in the Development Agreement, dated as [REDACTED], between the City and the Developer pertaining to the Project.

*b. Developer* shall mean [REDACTED], a Texas [REDACTED].

*c. Engineer* shall mean [REDACTED].

*d. Parkland* shall mean common areas and other land within the District dedicated to the City by the Developer and established as property available to the general public for recreational use (to specifically include promenades, plazas, and bridges over permanent water features).

*e. Public Improvements* shall mean, collectively, the Parkland and the Storm Drainage Improvements.

*f. Storm Drainage Improvements* shall mean trench excavation and embedment, trench safety, concrete box culverts, reinforced concrete pipe, manholes, junction boxes, drainage inlets, headwall and wingwall structures, related earthwork, excavation, erosion control, detention ponds, and all other necessary appurtenances required to capture storm water runoff generated within the District.

**SECTION 2. Association Agreement to Maintain Public Improvements.**

*a. General.* The Association hereby exclusively agrees, at its sole cost and expense, to maintain the Public Improvements.

*b. Storm Drainage Improvements.* Maintaining Storm Drainage Improvements shall mean keeping in good structural condition all Storm Drainage Improvements and repairing and addressing any defects in or to the Storm Drainage Improvements that, if left unrepaired or unaddressed, might impair their hydraulic capacity or structural soundness, to include:

- i. Maintaining access to the Storm Drainage Improvements for maintenance and inspection;
- ii. Repairing defects in the storm drainage piping system, including leaking pipe joints, deflection of flexible pipe diameter in excess of 5%, pipe structural failure, or other defects;
- iii. Removing obstructions from any inlet and outlet structures;
- iv. Repairing concrete channel lining, pilot channels, rock rip-rap (including replacement, as needed, to maintain rock layer thickness, as designed), gabions or any other channel lining material and to repair any defects in the channel lining material including undermining, excessive cracking and settlement, structural failure, or other defects;

v. Repairing channels, ditches and detention or retention ponds and to repair erosion in same by backfilling the eroded area and re-establishing protective vegetation or by armoring the eroded area with gabions, rock rip-rap, concrete or other material approved by the Engineer;

vi. At least annually, removing willows, cottonwoods or other “woody” vegetation from channels, ditches, detention ponds and retention ponds;

vii. As frequently as required to prevent grassy vegetation from exceeding a height of more than one foot, mowing ditches, earthen channels and detention or retention ponds;

viii. Removing, as needed, accumulated debris, trash or sediment (with sediment accumulations in detention ponds not to exceed 18-inches before removal is required); and

ix. Maintaining minimum water levels in Storm Drainage Improvements intended upon construction to permanently hold water (as indicated in the Consultant’s Plan).

The Association shall periodically (as needed based on weather conditions, but no less frequently than every 90 days) inspect or cause the inspection of all Storm Drainage Improvements to determine the necessity of action to address needed maintenance or repair. Remedial action shall be taken within 30 days of the Association’s awareness of an issue (meaning that the Association shall commence necessary maintenance or repairs within 30 days of such awareness and diligently work toward their completion). At least annually, the Association shall commission the Engineer to complete a written inspection report concerning the condition and functionality of the Storm Drainage Improvements, deliver a copy of such report to the City, and take action, as described above, within 30 days of delivery of such report to address any identified deficiencies in, or recommendations concerning functionality or performance of, the Storm Drainage Improvements.

c. *Parkland.* Maintaining the Parkland shall mean at all times keeping and maintaining, or causing to be kept and maintained, the Parkland (including any improvements thereon and all other buildings and improvements erected therein) in a good state of appearance and repair (except for reasonable wear and tear), to include:

i. Maintening grass height according to species and variety of grass;

ii. Regularly mowing, aerating, fertilizing, seeding or reseeded, resodding and controlling weeds in areas that are seeded or sodded;

iii. Pruning all trees and shrubs, as needed;

iv. Maintaining an adequate number of trash cans (based on frequency of use and in plentiful quantity to hold all trash usually generated between servicing without overflowing) and emptying the same on at least a daily basis;

v. Sweeping the area on daily basis to remove and keep the area free of trash;

vi. Removing graffiti on any surface withing 24 hours of the incident;

vii. Remediating, upon discovery, insect, rodent, and invasive species infestations;

viii. Cleaning sidewalks and pavilions so that at no time is there an accumulation of sand, dirt, or leaves;

ix. Maintaining playground equipment, play areas, fields, sports courts, lighting systems, and flagpoles to ensure the equipment and spaces are in safe, clean, operating condition and free and clear of hazards and hazardous conditions;

x. Cleaning and sanitizing all restrooms and drinking fountains on a daily basis or more frequently, as and when required;

- xi. Stocking all restrooms at a minimum of once per day or more frequently as needs arise;
- xii. Providing and maintaining adequate security lighting and signage (to include wayfinding and mile markers on trail systems) free of loose rivets, missing text, graffiti, and other conditions that makes interpretation difficult or impossible;
- xiii. Maintaining in good repair any trail system, to include elimination of all trip hazards, remediating impacts of erosion, periodic resurfacing, elimination of buildup of soil or debris that prevents water flow, and maintenance of an 8' vertical clearance; and
- xiv. Upon discovery, eliminating user created "trails".

The Association shall, as frequently as necessary to maintain a safe and sanitary environment, inspect or cause the inspection of all Parkland to determine the necessity of action to address needed maintenance or repair. Remedial action shall be taken as and when needed and shall be diligently continued through satisfactory conclusion to address matters requiring attention with respect to Parkland maintenance.

**SECTION 3. Annual Budget.** The Association shall annually budget for the anticipated costs of maintaining the Public Improvements, which shall include (i) the costs of any necessary repair plan herein described coming due in the reporting period covered by such annual budget and (ii) adequate annual reserves to provide sufficient available sources of periodic major maintenance and capital repair and replacement of Public Improvements. Until such time as the Association has obtained sufficient experience to formulate the anticipated Public Improvements maintenance costs unassisted (herein determined to mean preparation of at least three annual budgets after the warranties for dedicated Public Improvements have expired), the Association shall enlist the Engineer's assistance in preparing the Public Improvements maintenance cost component of its annual budget.

**SECTION 4. Payment of Public Improvements Maintenance Costs.** To pay the costs of maintaining the Public Improvements, the Association shall either (i) charge an annual fee to its property owners or (ii) collect funds from the Developer in an amount at least equal to such budgeted annual maintenance costs. In determining the annual fee, the Association may take into account other funds then-available to the Association to pay such annual Public Improvements maintenance costs including funds collected from the Developer. In the event that unforeseen circumstances shall arise during the course of a financial reporting that necessitate additional funding to pay the costs of maintaining Public Improvements (including reimbursement of the City for costs of emergency repairs made pursuant to Section 5 below), the Association shall either (i) impose upon its property owners a special assessment (which is a charge on such property owners separate and distinct from any assessment thereon levied by the City pursuant to Chapter 372, as amended, Texas Local Government Code) or (ii) collect funds from the Developer in an aggregate amount sufficient to pay such unanticipated and unbudgeted Public Improvements maintenance costs.

**SECTION 5. City Inspection of Public Improvements; Emergency Repairs.** The City may, from time to time, but not more frequently than every 12 months, review the state of repair, condition, and cleanliness of the Public Improvements and provide a written report of its findings to the Association. If the City, in its review, finds the condition of the Public Improvements to not meet its standards for other similar public improvements owned and maintained by the City or in accordance with their original specifications applicable at the time of their respective construction, then the City shall detail and deliver in writing to the Association the specific instances of failure. The Association shall have 30 days from

receipt of this written notice to address or object to the specific failures in Public Improvements maintenance identified by the City.

If the City is made aware of emergency safety conditions relative to a Public Improvement, the City will notify the Association and request that the necessary repairs to mitigate the identified safety condition(s) be completed. Upon notification, the Association shall have 3 days to mitigate the identified safety condition(s). If, however the Association is unable to or fails to begin addressing the identified safety condition(s) within a reasonable time after notification, then the City may make repairs to Public Improvements as needed and without further notification to the Association or the owners of property within the District to address the conditions of emergency or safety. Within 30 days of completion of emergency repairs to Public Improvements, the City shall notify the Association of the reasons for its making the repairs and the costs thereof.

**SECTION 6. City Funding of Public Improvements Maintenance Costs.** The Parties intend that Association revenues realized in accordance with Section 4 hereof shall be sufficient to cover the costs of the Public Improvements. The Parties acknowledge, however, that the City may include as a component of its “maintenance assessment” levied and imposed on assessable property within the District pursuant to the District’s Service and Assessment Plan, prepared and updated from time to time by the City Council of the City in accordance with applicable Texas law, the costs of maintaining the Public Improvements in the event the Association is unable or unwilling to fulfill its duties and obligations pursuant to the terms of this Agreement.

**SECTION 7. Power and Authority.** Each Party represents to the other that it has full power and authority to execute, deliver and perform its obligations hereunder and that the respective governing body of each Party has taken all necessary action on its part required to authorize the execution and delivery hereof and its performance hereunder.

**SECTION 8. Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, demand, authorization, direction, consent, waiver or other paper required or permitted by this Agreement to be made, given or furnished to or filed with the following persons, if the same shall be delivered in person or duly mailed by first-class mail, postage prepaid or duly transmitted by electronic mail, at the following physical or email addresses:

(a) **To Association at:**

Flat Creek Castroville Property Owners’ Association, Inc.,  
a Texas non-profit corporation  
2611 N Loop 1604 W, Suite 100  
San Antonio, Texas 78258

*with a copy to:*

KF Flat Creek, LP,  
a Texas limited partnership  
2722 West Bitters Road, Suite 106  
San Antonio, Texas 78248

*with a copy to:*

Melissa Killen  
Killen, Griffin & Farrimond, PLLC  
10101 Reunion Place, Suite 250  
San Antonio, Texas 78216  
Email: [melissa@kgftx.com](mailto:melissa@kgftx.com)

(b) **To City at:**

City of Castroville, Texas  
Attn: City Administrator  
1209 Fiorella Street  
Castroville, Texas 78009

*with a copy to:*

Clay Binford  
McCall, Parkhurst & Horton L.L.P.  
112 E. Pecan Street, Suite 1310  
San Antonio, Texas 78205  
Phone: 210-225-2819  
Email: [cbinford@mphlegal.com](mailto:cbinford@mphlegal.com)

If, because of the temporary or permanent suspension of mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such delivery of notice in lieu thereof as shall be made with the approval of the City shall constitute a sufficient notice.

**SECTION 9. Severability.** If any terms or provisions of this Agreement or the application of any terms or provisions of this Agreement to a particular situation, are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of such terms or provisions of this Agreement to other situations, will remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or unenforceability would deprive either Party of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the Parties will meet and confer and will make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the Parties.

**SECTION 10. Amendment.** No amendment, modification, or alteration of the terms of this Agreement will be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties.

**SECTION 11. Binding Agreement; Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of each of the Parties and their respective successors and permitted assigns.

**SECTION 12. Correction of Technical Errors.** If, by reason of inadvertence, and contrary to the intention of the Parties, errors are herein made in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the Parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

**SECTION 13. Governing Law and Venue.** The laws of the State and the rules and regulations issued pursuant thereto shall govern the validity, construction, enforcement, and interpretation of this Agreement, without regard to conflict of law provisions. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, shall be decided by proceedings instituted and litigated in a State court of competent jurisdiction sitting in Medina County, Texas, and the Parties hereto expressly consent to the venue and jurisdiction of such court. Any provision included or incorporated herein by reference that conflicts with said laws, rules and regulations shall be null and void and shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise.

**SECTION 14. No Waiver of Sovereign Immunity.** NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO WAIVE THE SOVEREIGN IMMUNITY OF THE CITY. THE CITY IS ENTERING INTO THIS AGREEMENT IN ITS GOVERNMENTAL FUNCTION AND CAPACITY AND THIS AGREEMENT DOES NOT CONSTITUTE AN EXERCISE OF THE CITY'S REGULATORY POWERS (E.G., REGULATORY APPROVALS OR IN ANY OTHER REGULATORY CAPACITY). THE ASSOCIATION ACKNOWLEDGES THAT THE CITY CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE, AND NOTHING CONTAINED HEREIN CONSTITUTES THE CITY'S EXERCISE, OF ITS REGULATORY POWERS OR A WAIVER OF ITS SOVEREIGN IMMUNITY PROTECTIONS.

**SECTION 15. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed original and all of which, when taken together, shall constitute one and the same document.

**SECTION 16. No Personal Liability.** None of the members of the City Council, the Association's governing body, or any officer, agent, or employee of either Party shall be charged personally by the other Party with any liability, or be held liable to the other Party under any term or provision of this Agreement, or because of execution or attempted execution, or because of any breach or attempted or alleged breach, of this Agreement.

**SECTION 17. Recordation.** This Agreement, upon execution by both Parties, shall be recorded in the real property records maintained by the City Clerk of Medina County.

**SECTION 18. Effective Term.** This Agreement shall be effective as of its date, shall be perpetual and shall encumber and run with the Land.

**[SIGNATURES ON FOLLOWING PAGES]**



**IN WITNESS WHEREOF**, this Public Improvement Maintenance Agreement has been duly executed as of the date of the acknowledgement below, to be effective on the date first above written.

**BY:**

**Flat Creek Castroville Property Owners' Association, Inc.,**

a Texas nonprofit corporation

**By: Approval of Initial Directors:**

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

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

Title: President

**ACKNOWLEDGEMENT**

**STATE OF TEXAS** §

**COUNTY OF \_\_\_\_\_** §

**BEFORE ME**, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the Flat Creek Castroville Property Owners' Association, Inc., a Texas nonprofit corporation, on behalf of said corporation.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_ day of \_\_\_\_\_, 20\_\_

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**DECLARANT CONSENT**

(in accordance with the Declaration and Bylaws for the Flat Creek Castroville Property Owners' Association)

**If the Declarant Control Period or Development Period are in effect, the Declarant expressly consents to the adoption of this document, as evidenced by its signature below.**

**IN WITNESS WHEREOF**, the undersigned hereunto expressly consents to this **Public Improvement Maintenance Agreement**, effective as of this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

**BY:**

**KF Flat Creek, LP,**  
a Texas limited partnership

**BY:**

**King Fish Development, LLC,**  
a Texas limited liability company,  
its General Partner

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

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

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

Date: \_\_\_\_\_

**ACKNOWLEDGEMENT**

**STATE OF TEXAS**            §  
   §  
**COUNTY OF** \_\_\_\_\_ §

**BEFORE ME**, the undersigned authority, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of King Fish Development, LLC, a Texas limited liability company, the general partner of KF Flat Creek, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_ day of \_\_\_\_\_ 202\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

LAND DESCRIPTION  
(Metes and Bounds)

**AFTER RECORDING, RETURN TO:**

Declarant:

KF Flat Creek, LP,  
a Texas limited partnership  
2722 West Bitters Road, Suite 106  
San Antonio, Texas 78248

Association:

Flat Creek Castroville Property Owners' Association, Inc.,  
a Texas non-profit corporation  
2611 N Loop 1604 W, Suite 100  
San Antonio, Texas 78258

*with a copy to:*

Melissa Killen  
Killen, Griffin & Farrimond, PLLC  
10101 Reunion Place, Suite 250  
San Antonio, Texas 78216  
Email: [melissa@kgftx.com](mailto:melissa@kgftx.com)