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KISSING TREE®

SAN MARCOS ★ TEXAS

DEVELOPMENT AREA DECLARATION [BERCLAIR AGE-RESTRICTED]

*A Master Planned Community in
Hays County, Texas*

Declarant: CARMA PASO ROBLES LLC, a Texas limited liability company

NOTE: THE PROPERTY SUBJECT HERETO IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THAT CERTAIN: (I) KISSING TREE MASTER COVENANT, RECORDED AS DOCUMENT NO. 16036339 IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AS AMENDED. THIS DECLARATION WILL CONSTITUTE A DEVELOPMENT AREA DECLARATION UNDER THE MASTER DOCUMENTS.

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KISSING TREE

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DEVELOPMENT AREA DECLARATION [BERCLAIR AGE-RESTRICTED]

This Development Area Declaration for Kissing Tree [*Berclair Age-Restricted*] (the “**Development Area Declaration**”) is made by **CARMA PASO ROBLES LLC**, a Texas limited liability company (the “**Declarant**”), and is as follows:

RECITALS:

A. Declarant previously Recorded that certain Kissing Tree Master Covenant, recorded as Document No. 16036339 in the Official Public Records of Hays County, Texas, as amended by that certain Kissing Tree First Amendment to Master Covenant, recorded as Document No. 19007296 in the Official Public Records of Hays County, Texas, and as further amended by the certain Kissing Tree Second Amendment to Master Covenant, recorded as Document No. 20002310 in the Official Public Records of Hays County, Texas (collectively the “**Master Covenant**”).

B. Pursuant to the Master Covenant, Declarant served notice that portions of the Property may be made subject to one or more Development Area Declarations upon the Recording of one or more Notices of Annexation in accordance with *Section 11.05* of the Master Covenant, and once such Notices of Annexation have been Recorded, the portions of the Property described therein will constitute the Development Area and will be governed by and fully subject to this Development Area Declaration in addition to the Master Covenant.

A Development Area is a portion of Kissing Tree which is subject to the terms and provisions of the Master Covenant. A Development Area Declaration includes specific restrictions which apply to the Development Area, in addition to the terms and provisions of the Master Covenant.

C. Upon the further Recording of one or more Notices of Annexation, portions of the Property identified in such notice or notices will be subject to the terms and provisions of this Development Area Declaration. Property made subject to the terms and provisions of this Development Area Declaration will be referred to herein as the “**Development Area**.”

NOW, THEREFORE, it is hereby declared: (a) those portions of the Property as and when made subject to this Development Area Declaration by the Recording of a Notice of Annexation in accordance with *Section 11.05* of the Master Covenant will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; and (b) each contract or deed conveying those portions of the Property which are made subject to this Development Area Declaration will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (c) that this Development Area Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Master Covenant.

ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Development Area Declaration will have the meanings hereinafter specified:

“Age Qualified Occupant” means a person of not less than fifty-five (55) years of age.

“Disregarded Resident” means any Owner or Occupant who is either: (a) an employee of the Association, provided that such person performs substantial duties related to the management of Association or maintenance of any Common Area; or (b) necessary to provide reasonable accommodation to disabled Occupants.

“Dwelling” means any building on a Lot designed and intended for use and occupancy as a single-family residence. Only one (1) Dwelling per Lot shall be permitted.

“Standby Electric Generator” means a device that converts mechanical energy to electrical energy and is (a) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen; (b) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure; (c) connected to the main electrical panel of a Dwelling by a manual or automatic transfer switch; and (d) rated for a generating capacity of not less than seven (7) kilowatts.

Any other capitalized terms used but not defined in this Development Area Declaration shall have the meaning subscribed to such terms in the Master Covenant.

ARTICLE 2 AGE RESTRICTIONS

2.01 Generally. Each Dwelling may be occupied by either: (a) Disregarded Residents; or (b) no more than four (4) persons, at least one (1) of whom shall be an Age Qualified Occupant.

2.02 Exceptions. Notwithstanding the provisions of *Section 2.01* to the contrary, a Dwelling may be occupied by any of the persons set forth below:

(a) Persons nineteen (19) years of age or under, provided that any such persons do not occupy the Dwelling for more than a maximum period of forty-five (45) days within any twelve (12) month period or thirty (30) consecutive days within one visit;

(b) Any person who takes title to a Lot through a conveyance or change of interest by reason of death of the prior Owner of the Lot, whether provided for in a will, trust or decree of distribution; and/or

(c) Any person granted an exception by the Board, in its sole discretion.

For purposes of calculating the number of occupied Dwellings, Dwellings occupied solely by Disregarded Residents shall be excluded from such calculation. In no event shall any person occupy a Dwelling if occupancy by such person would result in fewer than eighty percent (80%) of all occupied Dwellings being occupied by at least one (1) Age Qualified Occupant.

2.03 Sale or Transfer. Each Owner shall be responsible for including the statement that Dwellings are intended for occupancy by Age Qualified Occupants, as set forth above, in conspicuous type in any purchase and sale agreement or transfer documents relating to such Owner's Lot and/or Dwelling, which agreements or contracts shall be in writing and signed by the purchaser.

2.04 Notice of Transfer. In the event of any proposed change in occupancy of any Dwelling, as a result of transfer, sale, gift, assignment, death, birth, marriage, separation, divorce or otherwise, the Owner of such Lot shall immediately notify the Board in writing and provide to the Board the names and ages of all current and proposed Occupants of the Dwelling and such other information as the Board may reasonably require to verify the age of each Occupant. No voluntary change in occupancy shall occur unless such change complies with the provisions of this *Article 2*, i.e., the resale of any Lot from an Owner other than Declarant must be in compliance with this Article. Persons purporting to acquire title or a right of possession to a Dwelling by sale, gift or other transfer that do not comply with the restrictions set forth in this *Article 2* shall not be entitled to occupy the Dwelling in question without the approval of the Board, in its sole and absolute discretion. The Board shall be entitled to bring an action to evict any disapproved Occupant and such person shall be liable for the Board's legal fees and costs, at trial and upon appeal, in connection with any and all legal action taken to enforce the provisions of this *Article 2*.

2.05 Maintaining Age Records. The Board will maintain age records of all Occupants. The Board shall publish and adhere to policies, procedures and rules to monitor and maintain compliance with *Section 2.01* and *Section 2.02* and Applicable Law, including policies regarding verification of compliance with Applicable Law. The Association shall develop procedures for determining the occupancy of each Dwelling. The Association may require Occupants to produce copies of birth certificates, driver's licenses, passports, immigration cards, military identifications and other official documents containing birth date of comparable reliability. In furtherance of the foregoing, at least once each two (2) years, the Association shall conduct a survey of the Occupants of all Dwellings to determine whether the community is in compliance with the provisions of *Section 2.01* and *Section 2.02* and Applicable Law.

ARTICLE 3 RESTRICTIONS

All of the Development Area will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

3.01 Trash Containers. Trash containers and recycling bins must be stored at all times either: (a) inside the garage of the Dwelling; or (b) behind the Dwelling or fence constructed on the Lot in such a manner that the trash container and recycling bin are not visible from Ordinary Public View. The Kissing Tree Reviewer shall have the right to specify additional locations in which trash containers or recycling bins must be stored.

3.02 Rubbish and Debris. As determined by the Kissing Tree Reviewer, no rubbish or debris of any kind may be placed or permitted to accumulate on or within the Development Area, and no odors will be permitted to arise therefrom so as to render all or any portion of the Development Area unsanitary, unsightly, offensive, or detrimental to any other property or to its Owners or Occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

3.03 Maintenance. Each Owner of a Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep the Owner's entire Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. An Owner's "entire Lot" shall include, without limitation, any portion of such Lot upon which a subdivision perimeter fence has been constructed, or any portion of such Lot between such subdivision perimeter fence and any boundary line of such Lot. The Board shall determine whether a violation of the maintenance obligations set forth in this *Section 3.03* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner as determined by the Board in its sole discretion:

- (a) Prompt removal of all litter, trash, refuse, and wastes;
- (b) Lawn mowing;
- (c) Tree and shrub pruning;
- (d) Watering;
- (e) Keeping exterior lighting and mechanical facilities in working order;
- (f) Keeping lawn and garden areas alive, free of weeds, and attractive;
- (g) Keeping planting beds free from turf grass;
- (h) Keeping sidewalks and driveways in good repair;
- (i) Complying with all Applicable Law;
- (j) Repainting of Improvements; and
- (k) Repair of exterior damage, and wear and tear to Improvements.

3.04 Walls and Fence Maintenance. Retaining walls and screening walls as well or other fences located wholly within an individual Lot constitute a "**Non-Party Wall.**" A wall or fence along the dividing line between two (2) Lots or between a Lot and Common Area, Special Common Area, or any other portion of the Development Area and intended to benefit both Lots or both the Lot and the Common Area, Special Common Area, or any other portion of the Development Area constitutes a "**Party Wall.**" A fence or wall located on or along the boundary between a Common Area, Special Common Area or Lot, as applicable, and either a public street or a parcel of land that is not subject to the Master Covenant constitutes a "**Perimeter Wall.**" Non-Party Walls, Party Walls, and Perimeter Walls may be referred to, collectively or individually, as "**Walls.**" Declarant shall be responsible for maintaining any portion of any wall designated as Special Common Area or Common Area pursuant to the Master Covenant or that otherwise abuts the Common Area or Special Common Area until such time as the Declarant conveys such walls to the Association for maintenance (an "**Association-Maintained Wall**"). To the extent not inconsistent with the provisions of this *Section 3.04*, Party Walls, Non-Party Walls, and Perimeter Walls are subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions, and are also subject to the following:

(a) Easement. Each Lot is subject to a reciprocal easement of five feet (5') on either side of any Wall over and across any adjacent Lot, or adjacent Common Area or Special Common Area for the maintenance, repair, replacement or reconstruction of Walls.

(b) Party Walls.

(i) Encroachments and Easement. If the Party Wall is on one Lot due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this *Section 3.04*. Each Lot sharing a Party Wall is subject to an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands.

(ii) Right to Repair. If the Party Wall is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the Party Wall to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. No Party Wall may be constructed, repaired, or rebuilt without the advance written approval of the Kissing Tree Reviewer in accordance with *Article 7* of the Master Covenant.

(iii) Maintenance. In the event that an Owner shares a Party Wall with the Association or the Declarant, the Owner will be solely responsible for the costs to repair, reconstruct, or replace the Party Wall. In the event that an Owner shares a Party Wall with the Owner of another adjoining Lot, the Owners shall each maintain the inward-facing portion of the Party Wall. The Owners shall be responsible for determining the division of the costs to repair, reconstruct or replace the Party Wall. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Hays County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this *Section 3.04* is appurtenant to the Lot and passes to the Owner's successors in title.

(iv) Costs. The Owners of the adjoining Lots shall share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the Party Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Public Records of Hays County, Texas, and has the right to foreclose such lien in the same manner as a mechanic's lien. The right of an Owner to require contribution from another Owner under this Section is appurtenant to the Lot and passes to the Owner's successors in title.

(c) Non-Party Wall. An Owner of a Lot shall be solely responsible for the costs to repair, reconstruct or replace the Non-Party Wall.

(d) Perimeter Wall. Unless the Perimeter Wall is an Association-Maintained Wall, the Owner of a Lot abutting a segment of the Perimeter Wall shall be responsible for the costs to repair, reconstruct or replace that segment of the Perimeter Wall.

(e) Damages. If an Owner is responsible for damage to or destruction of the Party Wall, Non-Party Wall or Perimeter Wall, that Owner will bear the entire cost of repair, reconstruction, or replacement for such Party Wall, Non-Party Wall or Perimeter Wall. If an Owner fails or refuses to pay his share of costs of repair or replacement of a Party Wall, Non-Party Wall or Perimeter Wall for which such Owner is responsible, the Association has the right to maintain and repair the Party Wall, Non-Party Wall or Perimeter Wall, and the costs incurred by the Association for such purpose shall be charged back to the Owner as an Individual Assessment.

(f) Alterations. The Owner of a Lot sharing a Party Wall or Perimeter Wall may not cut openings in the Party Wall or Perimeter Wall or alter or change the Party Wall or Perimeter Wall in any manner that affects the use, condition, or appearance of the Party Wall or the Perimeter Wall. The Party Wall or Perimeter Wall will always remain in the same location as when erected unless otherwise approved by the Kissing Tree Reviewer or the Owners of each Lot sharing the Party Wall, if applicable.

3.05 Outside Burning. There will be no exterior fires, except that barbecues, outside fires in fireplaces and braziers or other fires contained within designed facilities or receptacles and in areas designated and approved by the Kissing Tree Reviewer shall be permitted. No Owner will permit any condition upon its portion of the Development Area which creates a fire hazard or violates Applicable Law.

3.06 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Kissing Tree Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Kissing Tree Reviewer.

3.07 Construction of Improvements. No Improvements of any kind shall hereafter be placed, maintained, erected, constructed or modified upon any portion of the Development Area unless approved in advance and in writing by the Kissing Tree Reviewer in accordance with the Master Covenant. Pursuant to *Section 7.04(b)* of the Master Covenant, the Kissing Tree Reviewer has adopted Modification Guidelines applicable to the Development Area. All Improvements must strictly comply with the requirements of the Modification Guidelines unless a variance is obtained pursuant to the Master Covenant. The Modification Guidelines may be supplemented, modified, amended, or restated by the Kissing Tree Reviewer as authorized by the Master Covenant.

3.08 Utility Lines. Unless otherwise approved by the Kissing Tree Reviewer, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Development Area other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground, concealed in or under buildings or other structures.

3.09 Garages; Minimum Parking Spaces. Each Dwelling within the Development Area must contain a private, enclosed garage capable at all times of housing at least one (1) automobile, and including such garage parking, each Lot must include a minimum of two (2) off-street parking spaces

capable at all times of accommodating the parking of vehicles therein. All garages, carports and other open automobile storage units shall be approved in advance of construction by the Kissing Tree Reviewer. No garage may be permanently enclosed or otherwise used for habitation. The garage requirements for each Dwelling are set forth in the Modification Guidelines.

3.10 Accessory Dwelling Units. Any secondary dwelling structure which may be constructed upon a Lot in addition to the principal or primary Dwelling constructed thereon as an accessory thereto ("**Accessory Dwelling Units**") shall be allowed on any Lot(s) as approved by the Kissing Tree Reviewer. Subject to approval by the Kissing Tree Reviewer, all Accessory Dwelling Units shall be constructed in accordance with the Documents.

3.11 Recreational Courts and Playscapes. No recreational courts, *e.g.*, "sport courts", shall be constructed on any Lot unless expressly approved by the Kissing Tree Reviewer. The Kissing Tree Reviewer may prohibit the installation of a recreational court on any Lot. Playscapes or any similar recreational facilities may not be constructed on any Lot without the advance written approval of the Kissing Tree Reviewer. The Kissing Tree Reviewer may prohibit the installation of recreational courts, playscapes or similar recreational facilities on any Lot. Tennis courts may not be constructed on any Residential Lot.

3.12 Basketball Goals; Permanent and Portable. Upon prior written approval by the Kissing Tree Reviewer, basketball goals may be permanently installed on a Lot and must be maintained in good condition and repair, including but not limited to the condition of the basketball net. Portable basketball goals may be used in unfenced yards and on private driveways during periods of active play, if the portable goals are removed from sight when not in use. Portable basketball goals shall not be placed in any public right-of-way or in any private right-of-way other than the private driveway of such Owner or Occupant using the portable basketball goal, and must be maintained in good condition and repair, including but not limited to the condition of the basketball net. If determined unsightly by the Kissing Tree Reviewer or placed in the public right-of-way or a private right-of-way other than the private driveway of such Owner or Occupant using the portable basketball goal, the Association may cause any such basketball goal to be removed without liability for damage to said equipment.

3.13 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure may be placed upon the Development Area without the prior written approval of the Kissing Tree Reviewer. Temporary portable canopies or event tents may be installed by an Owner or Occupant so long as they are removed within forty-eight (48) hours from the time of installation. Temporary sales trailers, construction or office trailers or other structures necessary for storage of tools and equipment for use by Homebuilders, architects, and contractors during actual construction may be maintained with the prior approval of Declarant.

3.14 Driveways. The design, construction material, and location of: (a) all driveways, and (b) culverts incorporated into driveways for ditch or drainage crossings, must be approved by the Kissing Tree Reviewer. The driveway requirements for each Lot are set forth in the Modification Guidelines.

3.15 Fences. No fence may be constructed on the Development Area without the prior written consent of the Kissing Tree Reviewer. The fencing requirements for each Dwelling constructed on a Lot are set forth in the Modification Guidelines.

3.16 HVAC Location. No air-conditioning apparatus may be installed on the ground in front of a Dwelling or on the roof of any Dwelling, unless otherwise approved in advance by the Kissing Tree Reviewer. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall

or front window of a Dwelling or at any other location where it would be visible from Ordinary Public View on an adjacent Lot.

3.17 Landscaping. Landscaping will be required to be installed and maintained on each Lot in accordance with the Modification Guidelines.

If the Board causes such landscaping to be done pursuant to the requirements in the Modification Guidelines, the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association for effecting such work. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest on such costs and expenses from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot as an Individual Assessment. EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

3.18 Foundation Shielding. Certain exposed portions of the foundation on the elevations of any Dwelling on each Lot shall be required to be shielded in accordance with the Modification Guidelines.

3.19 Concrete Truck Clean-Out Site. Each Owner who is a Homebuilder may designate a portion of the Development Area owned by such Owner, which must be approved in advance by the Kissing Tree Reviewer (the "Clean-Out Site") for the cleaning of concrete trucks used by such Owner or its subcontractors during the construction of Improvements on any Lot. Each such Owner or its subcontractors shall restrict its cleaning of concrete trucks to the Clean-Out Site, and shall immediately remove all debris and trash deposited by any concrete truck from property and streets adjacent to the Clean-Out Site. Each Owner shall be obligated to restore any vegetation located within the Clean-Out Site which is removed or damaged as a result of the use of the Clean-Out Site by such Owner or its subcontractors. In the event such Owner fails to comply with the terms of this Section, Declarant may, at its option, remove any trash or debris and restore any vegetation removed or damaged, and the Owner shall be responsible for reimbursing Declarant for any costs it incurs for such actions. If such Owner fails to pay such costs and expenses upon demand by the Declarant, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot. Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the Master Covenant for Assessments and may be collected by any means provided in the Master Covenant for the collection of Assessments.

3.20 Tanks. Unless otherwise approved in writing by the Kissing Tree Reviewer, no tanks for any purpose other than swimming pools and residential gas grills may be erected, placed or permitted on any Lot without the advance written approval of the Kissing Tree Reviewer. All tanks must be screened so not to be visible from Ordinary Public View.

3.21 Standby Electric Generators. The installation, operation and maintenance of all Standby Electric Generators must comply with the following:

- (a) The installation and maintenance of any Standby Electric Generator must be in compliance with manufacturer's specifications and all Applicable Law;
- (b) The installation of all electrical, plumbing and fuel line connections must be performed only by licensed contractors;
- (c) The installation of all electrical connections must be performed in accordance with Applicable Law;
- (d) The installation of all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections must be performed in accordance with Applicable Law;
- (e) The installation of all liquefied petroleum gas fuel line connections must be performed in accordance with the rules and standards promulgated and adopted by the Railroad Commission of Texas and other Applicable Law;
- (f) The installation and maintenance of non-integral Standby Electric Generator fuel tanks must comply with applicable municipal zoning ordinances and other Applicable Law;
- (g) All Standby Electric Generators and associated electrical lines and fuel lines must be maintained in good condition. In addition, the repair, replacement and removal of any deteriorated or unsafe component of the Standby Electric Generator, including electrical or fuel lines, is required;
- (h) Owners must screen the Standby Electric Generator if it is:
 - (i) Visible from the street faced by a Dwelling; or
 - (ii) Located in unfenced side yard of a Dwelling and is visible either from an adjoining Lot or from adjoining Common Area; or
 - (iii) Located in a fenced side yard and is visible either from an adjoining Lot or from adjoining Common Area (i.e. through wrought iron or aluminum fencing);
- (i) Any periodic testing of the Standby Electric Generator consistent with the manufacturer's recommendation must only be performed during the hours of 9:00 a.m. to 5:00 p.m., Monday through Saturday;
- (j) Use of a Standby Electric Generator to generate all or substantially all of the electrical power to a Lot is strictly prohibited, except when utility-generated electrical power is not available or is intermittent due to causes other than nonpayment for utility service;
- (k) No Standby Electric Generator shall be located on Common Area; and
- (l) No Standby Electric Generator may be installed prior to obtaining written approval pursuant to *Article 7* of the Master Covenant.

3.22 Owner's Obligation to Maintain Street Landscape Area. Each Owner will be responsible, at such Owner's sole cost and expense, for maintaining mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner's Lot and the edge of the pavement of any adjacent public right-of-way, street or alley (the "**ST Landscape Area**") in accordance with the Modification Guidelines, unless the responsibility for maintaining the ST Landscape Area has been assumed by the Association in a Recorded written instrument. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) maintain the Owner's ST Landscape Area in accordance with the Modification Guidelines, such failure will constitute a violation of the Documents and the Board may cause such landscaping, including trees, to be mowed, replaced, pruned and/or irrigated in a manner determined by the Board, in its sole and absolute discretion. If the Board causes such landscaping, including trees, to be mowed, replaced, pruned and irrigated, the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association for effecting such work. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the Master Covenant for Assessments and may be collected by any means provided in the Master Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH OWNER AND OCCUPANT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.22 INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

3.23 Construction Activities. This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Development Area. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Kissing Tree Reviewer in its sole good faith judgment, the Kissing Tree Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development Area, then the Board may contract for or cause such debris to be removed, and the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association for effecting such work, including an administrative fee of fifteen percent (15%) of the total cost or removal. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the

Declaration for Assessments and may be collected by any means provided in the Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH OWNER AND OCCUPANT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.23 INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

ARTICLE 4 DEVELOPMENT

4.01 Notice of Annexation. Upon Recording, this Development Area Declaration serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Development Area Declaration. This Development Area Declaration will apply to and burden a portion or portions of the Property upon the filing of a Notice of Annexation in accordance with *Section 11.05* of the Master Covenant describing such Property by a legally sufficient description and expressly providing that such Property will be subject to the terms, covenants conditions, restrictions and obligations of this Development Area Declaration. To add land to the Development Area, Declarant will be required only to Record a Notice of Annexation filed pursuant to *Section 11.05* of the Master Covenant containing the following provisions:

- (a) A reference to this Development Area Declaration, which will include the recordation information thereof;
- (b) A statement that such land will be considered a part of the Development Area for purposes of this Development Area Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Development Area Declaration will apply to the added land; and
- (c) A legal description of the added land.

4.02 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Development Area and remove and exclude from the burden of this Development Area Declaration any portion of the Development Area. Upon any such withdrawal this Development Area Declaration and the covenants, conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development Area withdrawn. To withdraw lands from the Development Area hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

- (a) A reference to this Development Area Declaration, which will include the recordation information thereof;
- (b) A statement that the provisions of this Development Area Declaration will no longer apply to the withdrawn land; and

- (c) A legal description of the withdrawn land.

4.03 Assignment of Declarant's Rights. Notwithstanding any provision in this Development Area Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Development Area Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

ARTICLE 5 GENERAL PROVISIONS

5.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Development Area Declaration will run with and bind the portion of the Development Area described in such notice, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Development Area Declaration is Recorded, and continuing through and including January 1, 2092, after which time this Development Area Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this *Section 5.01*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. Notwithstanding any provision in this *Section 5.01* to the contrary, if any provision of this Development Area Declaration would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

5.02 Amendment. This Development Area Declaration may be amended or terminated by the Recording of an instrument setting forth the amendment executed and acknowledged by (a) the Declarant, acting alone; or (b) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this *Section 5.02*, it being understood and agreed that any such amendment must be approved by a vote of the Members, with each Member casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period.

5.03 Notices. Any notice permitted or required to be given by this Development Area Declaration must be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States

mail, postage prepaid, addressed to the person at the address given by such person in writing to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

5.04 Interpretation. The provisions of this Development Area Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area, provided, however, that the provisions of this Development Area Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Development Area. This Development Area Declaration will be construed and governed under the laws of the State of Texas.

5.05 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

5.06 Enforcement and Nonwaiver. Except as otherwise provided herein, Declarant and the Association will have the right to enforce all of the provisions of this Development Area Declaration. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of this Development Area Declaration against any Owner, at such Owner's own expense. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Development Area is hereby declared to be a violation of this Development Area Declaration and subject to all of the enforcement procedures set forth herein. The failure to enforce any provision of the Documents at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Documents.

5.07 Construction. The provisions of this Development Area Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Development Area Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGE FOLLOWS]

**THE STATE OF TEXAS
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the date and the time stamped hereon by me and was duly RECORDED in the Records of Hays County, Texas.

22042734 DECLARATION
09/07/2022 02:36:31 PM Total Fees: \$90.00

Elaine H. Cárdenas, MBA, PhD, County Clerk
Hays County, Texas

