

AFTER RECORDING RETURN TO:



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# KISSING TREE

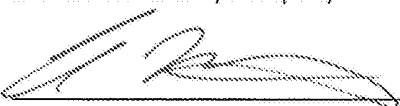
SAN MARCOS \* TEXAS

## POLICY MANUAL

EFFECTIVE DATE: OCTOBER 25, 2016

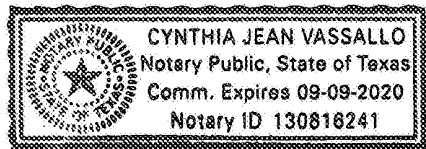
CARMA PASO ROBLES, LLC, a Texas limited liability company, as the Declarant under that certain Kissing Tree Master Covenant recorded under Document No. 16036339, Official Public Records of Hays County, Texas, and the initial and sole member of Kissing Tree Master Community, Inc., a Texas nonprofit corporation (the "**Association**"), hereby certifies that this Policy Manual was adopted as part of the initial project documentation this 25 day of October, 2016 by:

CARMA PASO ROBLES, LLC,  
a Texas limited liability company

By:   
Name: Chad Matheson  
Title: Chief Financial Officer

THE STATE OF TEXAS           §  
   §  
COUNTY OF Travis           §

This instrument was acknowledged before me on this 19 day of October, 2016, by Chad Matheson, Chief Financial Officer of Carma Paso Robles, LLC, a Texas limited liability company, on behalf of such company.

(seal) 

  
Notary Public, State of Texas

Cross-reference to Kissing Tree Master Covenant recorded under Document No. 16036339 Official Public Records of Hays County, Texas, as the same may be amended from time to time.

**KISSING TREE**  
SAN MARCOS \* TEXAS

**POLICY MANUAL**

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**POLICY MANUAL**  
*for*  
**KISSING TREE**  
**SAN MARCOS ★ TEXAS**

*A Master Planned Community in  
Hays County, Texas*

**I. INTRODUCTION**

More than a spot on the map or your destination at the end of the day, a community is a sense of place and belonging – it is your home. A community consists of people who share the same goals and interests as you and your family to make your home an extraordinary place to live, recreate and thrive. **Kissing Tree is your community.**

**CARMA PASO ROBLES, LLC**, a Texas limited liability company, is the developer of Kissing Tree. The guiding principles for Kissing Tree have been set forth in the governing documents for Kissing Tree, which include the Development Documents and the Association Documents (both as defined below) and collectively referred to herein as the “**Documents**”. The Documents include such instruments as the Kissing Tree Master Covenant (the “**Master Covenant**”), any applicable Notice of Annexation, any applicable Development Area Declaration, the Community Enhancement Covenant, the Design Guidelines, if any, and this Policy Manual (collectively referred to as the “**Development Documents**”), all of which are recorded in the property records by the developer generally prior to the time that you purchased your property. The Development Documents contain covenants, conditions and restrictions which not only encumber your property, but also have a legal and binding effect on all Owners and Occupants of property in Kissing Tree, now or in the future.

Under the Development Documents, the developer is the “**Declarant**” who has reserved certain rights to facilitate the development, construction, sales, and marketing of Kissing Tree, including its size, shape and composition, while Kissing Tree is being built-out (the “**Development Period**”). Furthermore, the Development Documents identify and set forth the obligations of Kissing Tree Master Community, Inc., the nonprofit corporation created by the Declarant to exercise the authority and assume the powers described in the Master Covenant (the “**Association**”). Integral to the functioning of Kissing Tree, the Association’s roles include owning, operating and maintaining various Common Areas and amenities, as well as administering and enforcing all of the Documents.

Other specific Documents include such instruments as the Certificate of Formation and Bylaws which set forth the corporate governance structure of the Association as well as the various Rules, which include rules, regulations, policies and procedures outlining the operation of the Association and required standards for use of property, activities and conduct (the “**Association Documents**”). It is the Association Documents which are included within this Policy Manual, as further set forth herein.

## II. PURPOSE

A successful community evolves when all community stakeholders work together to uphold the vision for Kissing Tree through the application and enforcement of the guiding principles and the standards set forth in all of the Documents. Declarant and the Association, as well as builders, owners, residents and visitors all have a role in ensuring the application and enforcement of the guiding principles and the standards of Kissing Tree. A reasonable balance must be achieved to uphold not only individual preferences in Kissing Tree, but also lend credence to those issues and concerns which have been determined to be in the best interests of Kissing Tree as a whole.

With these issues in mind and in furtherance of its obligation under Texas law to record all defined dedicatory instruments, the Declarant has developed this Policy Manual as a compilation of all of the Association Documents currently in effect for Kissing Tree. The Policy Manual does not include the Development Documents, which nonetheless bind you and all other Owners and Occupants of Kissing Tree. Rather, since all of the Association Documents must now be recorded in the property records as dedicatory instruments, this Policy Manual allows you to access all of such documents in one place rather than as separately recorded instruments.

## III. CONTENTS AND PROCESS

The initially-recorded Policy Manual contains the following Association Documents, the terms and provisions of each of which are applicable to or may be enforced against the Owners and Occupants within Kissing Tree as set forth therein: (1) the Certificate of Formation; (2) the Bylaws; (3) the Fine and Enforcement Policy; (4) the Assessment Collection Policy; (5) the Records Inspection, Copying and Retention Policy; (6) the Statutory Notice of Posting and Recordation of Association Governance Documents; (7) the Email Registration Policy; (8) Security Policy; (9) the Community Rules and Regulations; (10) the Club Facilities Rules and Regulations; and (11) Housing for Older Persons Policy.

As the Association Documents are changed from time to time as determined by Declarant or the Board, as applicable, or new Rules or other dedicatory instruments are adopted which require recordation in the property records, a Majority of the Board upon approval by the Declarant may adopt a Supplement to the Policy Manual to include the documents being changed or added to the Policy Manual and cause such Supplement to be recorded in the property records. If, for any reason, a document is added to the Policy Manual pursuant to a Supplement which has previously been recorded in the property records, the effective date of such document shall be the original date of recordation in the Official Public Records of Hays County, unless otherwise provided in the Supplement.

Capitalized terms used but not defined in this Policy Manual shall have the meaning subscribed to such terms in the Master Covenant.

This Policy Manual becomes effective when Recorded.

**ATTACHMENT 1**

**CERTIFICATE OF FORMATION**  
**KISSING TREE MASTER COMMUNITY, INC.**

FILED  
In the Office of the  
Secretary of State of Texas  
APR 12 2016

CERTIFICATE OF FORMATION  
OF  
KISSING TREE MASTER COMMUNITY, INC.

Corporations Section

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as incorporator of a nonprofit corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

ARTICLE I  
NAME

The name of the corporation is: Kissing Tree Master Community, Inc. (hereinafter called the "Association").

ARTICLE II  
NONPROFIT CORPORATION

The Association is a nonprofit corporation.

ARTICLE III  
DURATION

The Association shall exist perpetually.

ARTICLE IV  
PURPOSE AND POWERS OF THE ASSOCIATION

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by this Certificate of Formation, that certain Kissing Tree Master Covenant, recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time (the "Master Covenant"), the Bylaws, or Applicable Law, may be exercised by the Board of Directors:

- (a) all rights and powers conferred upon nonprofit corporations by Applicable Law;
- (b) all rights and powers conferred upon property associations by Applicable Law, in effect from time to time, provided, however, that the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner or Member; and
- (c) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in this Certificate of Formation, the Bylaws, the Master Covenant, or Applicable Law.

Notwithstanding any provision in *Article XIV* to the contrary, any proposed amendment to the provisions of this *Article IV* shall be adopted: (i) until expiration or termination of the Development

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Period by the Declarant and a Majority of the Board; and (ii) after expiration or termination of the Development Period only upon an affirmative vote of Members holding one-hundred percent (100%) of the total number of votes of the Association and the Declarant.

Terms used but not defined in this Certificate of Formation, shall have the meaning subscribed to such terms in the Master Covenant.

**ARTICLE V  
REGISTERED OFFICE; REGISTERED AGENT**

The street address of the initial registered office of the Association is 300 West 6<sup>th</sup> Street, Suite 2050, Austin, Texas 78701. The name of its initial registered agent at such address is Carey Gunn Venditti, Esq.

**ARTICLE VI  
MEMBERSHIP**

Membership in the Association shall be dependent upon ownership of a qualifying property interest as defined and set forth in the Master Covenant. Any person or entity acquiring such a qualifying property interest shall automatically become a member of the Association, and such membership shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding an interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to said property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void.

**ARTICLE VII  
VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Master Covenant.

**ARTICLE VIII  
INCORPORATOR**

The name and street address of the incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
Carey Gunn Venditti	300 West 6 <sup>th</sup> Street, Suite 2050 Austin, Texas 78701

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KISSING TREE MASTER COMMUNITY, INC.  
CERTIFICATE OF FORMATION

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KISSING TREE POLICY MANUAL  
CERTIFICATE OF FORMATION

**ARTICLE IX  
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be members of the Association. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Scott Turner	11501 Alterra Parkway, Suite 100 Austin, Texas 78758
Dirk Gosda	11501 Alterra Parkway, Suite 100 Austin, Texas 78758
Shawn Jeffcoat	11501 Alterra Parkway, Suite 100 Austin, Texas 78758

All of the powers and prerogatives of the Association shall be exercised by the Board of Directors named above until their successors are elected or appointed in accordance with the Master Covenant.

**ARTICLE X  
LIMITATION OF DIRECTOR LIABILITY**

A member of the Board of Directors of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a board member, except to the extent otherwise expressly provided by Applicable Law. Any repeal or modification of this *Article X* shall be prospective only, and shall not adversely affect any limitation of the personal liability of a member of the Board of Directors existing at the time of the repeal or modification.

**ARTICLE XI  
INDEMNIFICATION**

Each person who acts as a member of the Board of Directors, officer or committee member of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him or her in connection with any civil or criminal action, suit or proceeding in which he or she may be named as a party defendant or in which he or she may be a witness by reason of his being or having been a member of the Board of Directors, officer, or committee member of the Association, or by reason of any action alleged to have been taken or omitted by him or her in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in *Section 3.10* of the Master Covenant.

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KISSING TREE MASTER COMMUNITY, INC.  
CERTIFICATE OF FORMATION

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CERTIFICATE OF FORMATION

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**ARTICLE XII  
DISSOLUTION**

The Association may be dissolved with the written and signed assent of not less than ninety percent (90%) of the total number of votes of the Association, as determined under the Master Covenant. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

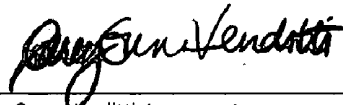
**ARTICLE XIII  
ACTION WITHOUT MEETING**

Any action required or permitted by Applicable Law to be taken at a meeting of the Members or Village Delegates may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by the Members or Village Delegates holding at least the minimum number of votes necessary to authorize such action at a meeting if all the Members or Village Delegates entitled to vote thereon were present. If the action is proposed by the Association, the Board of Directors shall provide each Member or Village Delegate, as applicable, written notice at least ten (10) days in advance of the date the Board proposes to initiate securing consent as contemplated by this *Article XIII*. Consents obtained pursuant to this *Article XIII* shall be dated and signed within sixty (60) days after receipt of the earliest dated consent and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members or Village Delegates, as applicable, at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members or Village Delegates entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

**ARTICLE XIV  
AMENDMENT**

Except as otherwise provided by the terms and provisions of *Article IV* of this Certificate of Formation, this Certificate of Formation may only be amended by a Majority of the Board of Directors; provided, however, that any amendment to this Certificate of Formation must be approved in advance and in writing by the Declarant during the Development Period.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand, this 12<sup>th</sup> day of April, 2016.



Carey Gunn Venditti, Incorporator

**ATTACHMENT 2**

**BYLAWS**  
**OF**  
**KISSING TREE MASTER COMMUNITY, INC.**

*Adopted October 19, 2016*

**ARTICLE I**  
**INTRODUCTION**

The name of the corporation is Kissing Tree Master Community, Inc., a Texas nonprofit corporation, hereinafter referred to as the “**Association.**” The principal office of the Association shall be located initially in Hays County, Texas, but meetings of Members and Directors may be held at such places within the State of Texas as may be designated by the Board of Directors as provided in these Bylaws.

The Association is organized to be a nonprofit corporation.

**Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant’s reservations in that certain Kissing Tree Master Covenant, recorded in the Official Public Records of Hays County, Texas (the “Master Covenant”), including the number, qualification, appointment, removal, and replacement of Directors. No Member shall rely on the Bylaws in effect at the time he or she became a Member of the Association; rather, the Bylaws as amended from time to time shall control.**

**ARTICLE II**  
**DEFINITIONS**

Capitalized terms used but not defined in these Bylaws shall have the meaning subscribed to such terms in the Master Covenant.

**ARTICLE III**  
**MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES**

**Section 3.1. Membership.** Each Owner of a Lot or Condominium Unit is a mandatory Member of the Association, as more fully set forth in the Master Covenant.

**Section 3.2. Place of Meetings.** Meetings of the Association shall be held where designated by the Board, either within the Development or as convenient as possible and practical.

**Section 3.3. Annual Meetings.** There shall be an annual meeting of the Members or Village Delegates, as applicable, of the Association for the purposes of Association-wide elections or votes and for such other Association business at such reasonable place, date and time as set by the Board.

**Section 3.4. Special Meetings.** Special meetings of Members or Village Delegates may be called in accordance with Section 22.155 of the Texas Business Organizations Code or any successor statute.

**Section 3.5. Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Members or Village Delegates shall be delivered, either personally or by mail, to each Member or Village Delegate entitled to vote at such meeting or by publication in a newspaper of general circulation, not less than ten (10) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member or Village Delegate at his address as it appears on the records of the Association, with postage prepaid. If an election or vote of the Members will occur outside of a meeting of the Members (*i.e.*, absentee or electronic ballot), then the Association shall provide notice to each Member no later than the 20th day before the latest date on which a ballot may be submitted to be counted.

**Section 3.6. Waiver of Notice.** Waiver of notice of a meeting of the Members or Village Delegates shall be deemed the equivalent of proper notice. Any Member or Village Delegate may, in writing, waive notice of any meeting of the Members or Village Delegates, either before or after such meeting. Attendance at a meeting by a Member or Village Delegate shall be deemed waiver by such Member or Village Delegate of notice of the time, date, and place thereof, unless such Member or Village Delegate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting by a Member or Village Delegate shall be deemed a waiver of notice of all business transacted at such meeting unless an objection by a Member or Village Delegate on the basis of lack of proper notice is raised before the business is put to a vote.

**Section 3.7. Quorum.** Except as provided in these Bylaws or in the Master Covenant, the presence of the Members or Village Delegates, as applicable, representing ten percent (10%) of the total votes in the Association shall constitute a quorum at all Association meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum, provided that Members representing at least five percent (5%) of the total votes in the Association remain in attendance, and provided that any action taken is approved by at least a Majority of the votes present at such adjourned meeting, unless otherwise provided in the Master Covenant.

**Section 3.8. Conduct of Meetings.** The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary's designee, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

**Section 3.9. Voting.** The voting rights of the Members and Village Delegates shall be as set forth in the Master Covenant, and such voting rights provisions are specifically incorporated by reference. Except as otherwise provided in the Master Covenant, action may be taken at any legally convened meeting of the Members or Village Delegates upon the affirmative vote of the Members or Village Delegates having a Majority of the total votes present at such meeting in person or proxy or by absentee ballot or electronic ballot, if such votes are considered present at the meeting as further set forth herein. Cumulative voting shall not be allowed. The person holding legal title to a Lot or Condominium Unit shall be entitled to cast the vote allocated to such Lot or Condominium Unit and not the person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing. Other than representative voting by Village Delegates, any

provision in the Association's governing documents that would disqualify an Owner from voting in an Association election of Board Members or on any matter concerning the rights or responsibilities of the Owner is void.

**Section 3.10. Methods of Voting: In Person; Proxies; Absentee Ballots; Electronically.** On any matter as to which a Member is entitled individually to cast the vote for his Lot or Condominium Unit such vote may be cast or given: (a) in person or by proxy at a meeting of the Association; (b) by absentee ballot; (c) by electronic ballot; or (d) by such other means as may be permitted by law and as adopted by the Board. Any vote cast in an election or vote by a Member of the Association must be in writing and signed by the Member. Electronic votes constitute written and signed ballots. In an Association election, written and signed ballots are not required for uncontested races. Notwithstanding anything to the contrary in the Documents, Village Delegates may not vote by proxy but only in person or through their designated alternates; provided, any Village Delegate who is only entitled to cast the vote(s) for his own Lot(s) or Condominium Unit(s) pursuant to *Section 3.05* of the Master Covenant may cast such vote as provided herein until such time as the Board first calls for election of a Village Delegate to represent the Village where the Lot or Condominium Unit is located. Votes shall be cast as provided in this Section:

(a) Proxies. Any Member may give a revocable written proxy in the form as prescribed by the Board from time to time to any person authorizing such person to cast the Member's vote on any matter. A Member's vote by proxy is subject to any limitations of Applicable Law relating to the use of general proxies and subject to any specific provision to the contrary in the Master Covenant or these Bylaws. No proxy shall be valid unless signed by the Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall a proxy be valid more than eleven (11) months after the effective date of the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Lot or Condominium Unit for which it was given.

(b) Absentee and Electronic Ballots. An absentee or electronic ballot: (i) may be counted as a Member or Village Delegate, as applicable, present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (ii) may not be counted, even if properly delivered, if the Member or Village Delegate, as applicable, attends any meeting to vote in person, so that any vote cast at a meeting by a Member or Village Delegate supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and (iii) may not be counted on the final vote of a proposal if the proposal was amended at the meeting to be different from the exact language on the absentee or electronic ballot. For the purposes of this Section, a nomination taken from the floor in a Board member election is not considered an amendment to the proposal for the election.

(1) Absentee Ballots. No absentee ballot shall be valid unless it is in writing, signed by the Village Delegate or Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Absentee ballots shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall an absentee ballot be valid after the specific meeting or lawful adjournment of such meeting at which such ballot is counted or upon conveyance of the Lot or Condominium Unit for which it was given. Any solicitation for votes by absentee ballot must include:

- i. an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;
- ii. instructions for delivery of the completed absentee ballot, including the delivery location; and
- iii. the following language: ***“By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail.”***

(2) *Electronic Ballots.* “Electronic ballot” means a ballot: (a) given by email, facsimile or posting on a website; (b) for which the identity of the Village Delegate or Member submitting the ballot can be confirmed; and (c) for which the Village Delegate or Member may receive a receipt of the electronic transmission and receipt of the Village Delegate or Member’s ballot. If an electronic ballot is posted on a website, a notice of the posting shall be sent to each Village Delegate or Member that contains instructions on obtaining access to the posting on the website.

**Section 3.11. Tabulation of and Access to Ballots.** A person who is a candidate in an Association election or who is otherwise the subject of an Association vote, or a person related to that person within the third degree by consanguinity or affinity may not tabulate or otherwise be given access to the ballots cast in that election or vote except such person may be given access to the ballots cast in the election or vote as part of a recount process. A person tabulating votes in an Association election or vote or who performs a recount pursuant to *Section 3.12* may not disclose to any other person how an individual voted. Notwithstanding any provision of these Bylaws to the contrary, only a person who tabulates votes pursuant to this Section or performs a recount pursuant to *Section 3.12* shall be given access to any Association ballots.

**Section 3.12. Recount of Votes.** Any Member (the “**Recount Requesting Member**”) may, not later than the fifteenth (15<sup>th</sup>) day after the later of the date of any meeting of Members at which an election or vote was held, or the date of the announcement of the results of the election or vote, require a recount of the votes (the “**Recount Request**”). A Recount Request must be submitted in writing either: (i) by any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier, with signature confirmation service to the Association’s mailing address as reflected on the latest management certificate; or (ii) in person to the Association’s managing agent as reflected on the latest management certificate or to the address to which absentee and proxy ballots are mailed. The Recount Requesting Member shall be required to pay, in advance, expenses associated with the recount as estimated by the Association, pursuant to subsection (a) below.

(a) **Cost of Recount.** The Association shall estimate the costs for performing the recount by a person qualified to tabulate votes under subsection (b), and no later than the 20th day after the date the Association receives the Recount Request, shall send an invoice for the estimated costs (the “**Initial Recount Invoice**”) to the Recount Requesting Member at the Recount Requesting Member’s last known

address according to the Association's records. The Recount Requesting Member must pay the Initial Recount Invoice in full to the Association on or before the 30th day after the date the Initial Recount Invoice was delivered to the Recount Requesting Member (the "**Deadline**"). If the Initial Recount Invoice is not paid by the Recount Requesting Member by the Deadline, the Recount Requesting Member's Recount Request shall be considered withdrawn and the Association shall not be required to perform a recount. If the Initial Recount Invoice is paid by the Recount Requesting Member by the Deadline, then on or before the 30th day after the date of receipt of payment of the Invoice, the recount must be completed and the Association must provide each Recount Requesting Member with notice of the results of the recount. If the recount changes the results of the election, the Association shall reimburse the Recount Requesting Member for the cost of the recount not later than the 30<sup>th</sup> day after the date the results of the recount are provided. If the recount does not change the results of the election, and the estimated costs included on the Initial Recount Invoice are either lesser or greater than the actual costs of the recount, the Association shall send a final invoice (the "**Final Recount Invoice**") to the Recount Requesting Member on or before the 30th business day after the date the results of the recount are provided. If the Final Recount Invoice reflects that additional amounts are owed by the Recount Requesting Member, the Recount Requesting Member shall remit such additional amounts to the Association immediately. Any additional amounts not paid to the Association by the Recount Requesting Member before the 30th business day after the date the Final Recount Invoice is sent may be charged as an Individual Assessment against the Recount Requesting Member. If the costs estimated in the Initial Recount Invoice costs exceed the amount reflected in the Final Recount Invoice, then the Recount Requesting Member shall be entitled to a refund, which such refund shall be paid at the time the Final Recount Invoice is delivered pursuant to this Section.

(b) Vote Tabulator. Following receipt of payment of the Initial Recount Invoice, the Association shall retain for the purpose of performing the recount, the services of a person qualified to tabulate votes. The Association shall enter into a contract for the services of a person who: (i) is not a Member of the Association or related to a Member of the Association Board within the third degree by consanguinity or affinity; and (ii) is either a person agreed on by the Association and each person requesting a recount or is a current or former county judge, county elections administrator, justice of the peace or county voter registrar.

(c) Board Action. Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

**Section 3.13. Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members or Village Delegates, as applicable, may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by Members or Village Delegates, as applicable, holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members or Village Delegates entitled to vote thereon were present. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated, and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members or Village Delegates at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members or Village Delegates entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

**ARTICLE IV  
BOARD OF DIRECTORS**

**Section 4.1. Authority; Number of Directors.**

(a) The affairs of the Association shall be governed by a Board of Directors. The number of Directors shall be fixed by the Board of Directors from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Certificate, and those thereafter appointed by Declarant during the Development Period, or elected as further set forth below.

(b) In accordance with *Section 3.04* of the Master Covenant, within one hundred and twenty (120) days after seventy-five percent (75%) of the maximum number of Lots that may be subjected to the terms and provisions of the Master Covenant have been conveyed to Owners other than Declarant or a Homebuilder, the President of the Association will thereupon call a meeting of the Members of the Association (the "**Initial Member Election Meeting**") where the Members or Village Delegates, as applicable, will elect at least one-third of the Board, which Director(s) shall serve for a one (1) year term ("**Initial Member Elected Director**"). The Declarant may appoint and remove two-thirds of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period. The individuals elected to the Board at the Initial Member Election Meeting shall be elected for a one (1) years term and shall serve until his or her successor is elected or he or she is replaced in accordance with these Bylaws.

(c) At the expiration or termination of the Development Period, the Declarant will thereupon call a meeting of the Members of the Association where the Declarant appointed Directors will resign and the Members or Village Delegates, as applicable, will elect three (3) new directors (to replace all Declarant appointed Directors and the Initial Member Elected Director) (the "**Member Election Meeting**"), one (1) Director for a three (3) year term, one (1) Director for a two (2) year term, and one (1) Director for a one (1) year term (with the individual receiving the highest number of votes to serve the three (3) year term, the individual receiving the next highest number of votes to serve the two (2) year term, and the individual receiving the third highest number of votes to serve a one (1) year term). Notwithstanding the foregoing provision, if a Voting Group Designation is filed in accordance with the Master Covenant such designation may establish a different number of Board members to be elected at the Member Election Meeting provided that in any event the number of Board members shall be no less than three (3) in number. The Voting Group Designation may also assign an initial term to each Board member position. A Voting Group Designation which establishes a different number of Board members and the initial terms of such Board members shall be deemed an amendment to the Bylaws. Upon expiration of the term of a Director elected by the Members or Village Delegates pursuant to this *Section 4.1(c)*, his or her successor will be elected for a term of two (2) years.

(d) A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

(e) Each Director, other than Directors appointed by Declarant, shall be a Member and resident, or in the case of corporation, partnership or other entity ownership of a Lot or Condominium Unit, a duly authorized agent or representative of the corporation, the partnership, or other entity which owns a Lot or Condominium Unit. The corporation, partnership, or other entity Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the

Directors. Other than as set forth in this subparagraph (e), the Association may not restrict an Owner's right to run for a position on the Board.

**Section 4.2. Compensation.** The Directors shall serve without compensation for such service.

**Section 4.3. Designation of Voting Groups by Declarant.** Declarant may (but is not obligated to) designate Voting Groups consisting of one or more Villages for the purpose of electing directors to the Board. If Village Delegates are elected, such Village Delegates within each Voting Group shall vote on a separate slate of candidates for election to the Board. The Declarant shall establish Voting Groups, if at all, not later than the date of expiration or termination of the Development Period by Recording a written instrument identifying each Voting Group by legal description or other means such that the Lots and Condominium Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the Board will have the right by Recording an appropriate written instrument to amend any existing designation of Voting Groups, or to designate new Voting Groups, upon the vote of a Majority of the Board and approval of Village Delegates representing a Majority of the Villages. Until such time as Voting Groups are established, all of the Development shall constitute a single Voting Group. After a written instrument establishing Voting Groups has been Recorded, any and all portions of the Development which are not assigned to a specific Voting Group shall constitute a single Voting Group.

**Section 4.4. Nominations to Board of Directors.** Members may be nominated for election to the Board of Directors in either of the following ways:

(a) A Member who is not a Director and who desires to run for election to that position shall be deemed to have been nominated for election upon his filing with the Board of Directors a written petition of nomination; or

(b) A Director who is eligible to be re-elected shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek reelection in a writing addressed to the Board of Directors.

**Section 4.5. Vacancies on Board of Directors.** Except with respect to Directors appointed by the Declarant, if the office of any elected Director shall become vacant by reason of death, resignation, or disability, the remaining Directors, at a special meeting duly called for this purpose, shall choose a successor who shall fill the unexpired term of the directorship being vacated. If there is a deadlock in the voting for a successor by the remaining Directors, the one Director with the longest continuous term on the Board shall select the successor. At the expiration of the term of his position on the Board of Directors, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws. Except with respect to Directors appointed by the Declarant, any Board Member whose term has expired or who has been removed from the Board must be elected by the Members or the Village Delegates, as applicable.

**Section 4.6. Removal of Directors.** Subject to the right of Declarant to nominate and appoint Directors as set forth in *Section 4.1* of these Bylaws, an elected Director may be removed, with or without cause, by the Majority of the Members or Village Delegates, as applicable, which elected such Director. In the event Voting Groups are established pursuant to the Master Covenant, only the



Village Delegates within the Voting Group may vote to remove the Director elected from such Voting Group.

**Section 4.7. Solicitation of Candidate for Election to the Board.** At least thirty (30) days before the date an Association disseminates absentee ballots or other ballots to Members for the purpose of voting in a Board election, the Association shall provide notice (the "Solicitation Notice") of the election to the Members. The Solicitation Notice shall: (a) solicit candidates that are eligible under *Section 4.1(e)* and interested in running for a position on the Board; (b) state that an eligible candidate has fifteen (15) days to respond to the Solicitation Notice and request to be placed on the ballot; and (c) must be: (1) mailed to each Member; (2) e-mailed to each Member that has registered their e-mail address with the Association; or (3) posted in a conspicuous manner reasonably designed to provide notice to Members, such as: (i) within the Common Area or, with the Member's consent, on other conspicuously located privately owned property within the subdivision; or (ii) on any website maintained by the Association or other internet media.

## ARTICLE V MEETINGS OF DIRECTORS

**Section 5.1. Development Period.** The provisions of this *Article V* do not apply to Board meetings during the Development Period (as defined in the Master Covenant) during which period the Board may take action by unanimous written consent in lieu of a meeting pursuant to *Section 5.12*, except with respect to a meeting conducted for the purpose of: (a) adopting or amending the Documents (*i.e.*, declarations, bylaws, rules, and regulations); (b) increasing the amount of Regular Assessments of the Association or adopting or increasing a Special Assessment; (c) electing non-Declarant Board members or establishing a process by which those members are elected; or (d) changing the voting rights of Members.

**Section 5.2. Definition of Board Meetings.** A meeting of the Board means a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action.

**Section 5.3. Regular Meetings.** Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board.

**Section 5.4. Special Meetings.** Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

**Section 5.5. Quorum.** A Majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a Majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

**Section 5.6. Open Board Meetings.** All regular and special Board meetings must be open to Owners. However, the Board has the right to adjourn a meeting and reconvene in closed executive session to consider actions involving: (a) personnel; (b) pending or threatened litigation; (c) contract negotiations; (d) enforcement actions; (e) confidential communications with the Association's attorney; (f) matters involving the invasion of privacy of individual Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive

session, any decision made by the Board in executive session must be summarized orally in general terms and placed in the minutes. The oral summary must include a general explanation of expenditures approved in executive session.

**Section 5.7. Location.** Except if otherwise held by electronic or telephonic means, a Board meeting must be held in the county in which the Development is located or in a county adjacent to that county, as determined in the discretion of the Board.

**Section 5.8. Record; Minutes.** The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

**Section 5.9. Notices.** Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be: (a) mailed to each Member not later than the tenth (10<sup>th</sup>) day or earlier than the sixtieth (60<sup>th</sup>) day before the date of the meeting; or (b) provided at least seventy-two (72) hours before the start of the meeting by: (i) posting the notice in a conspicuous manner reasonably designed to provide notice to Members in a place located on the Association's common area or on any website maintained by the Association; and (ii) sending the notice by e-mail to each Member who has registered an e-mail address with the Association. It is the Member's duty to keep an updated e-mail address registered with the Association. The Board may establish a procedure for registration of email addresses, which procedure may be required for the purpose of receiving notice of Board meetings. If the Board recesses a regular or special Board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this Section. If a regular or special Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner as set forth above within two (2) hours after adjourning the meeting being continued.

**Section 5.10. Unanimous Consent.** During the Development Period, Directors may vote by unanimous written consent. Unanimous written consent occurs if all Directors individually or collectively consent in writing to a Board action. The written consent must be filed with the minutes of Board meetings. Action by written consent shall be in lieu of a meeting and has the same force and effect as a unanimous vote of the Directors. As set forth in *Section 5.1*, Directors may not vote by unanimous consent if the Directors are considering any of the following actions: (a) adopting or amending the Documents (*i.e.*, declarations, bylaws, rules, and regulations); (b) increasing the amount of Regular Assessments of the Association or adopting or increasing a Special Assessment; (c) electing non-Declarant Board members or establishing a process by which those members are elected; or (d) changing the voting rights of Members.

**Section 5.11. Meeting Without Prior Notice.** The Board may take action outside a meeting, including voting by electronic or telephonic means, without prior notice to the Members if each Board member is given a reasonable opportunity (i) to express his or her opinions to all other Board members and (ii) to vote. Any action taken without notice to Members must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting. The Board may not, unless done in an open

meeting for which prior notice was given to the Members pursuant to *Section 5.9* above consider or vote on: (a) fines; (b) damage assessments; (c) the initiation of foreclosure actions; (d) the initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (e) increases in assessments; (f) levying of special assessments; (g) appeals from a denial of architectural control approval; (h) a suspension of a right of a particular Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue; (i) the lending or borrowing of money; (j) the adoption of any amendment of a dedicatory instrument; (k) the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent (10%); (l) the sale or purchase of real property; (m) the filling of a vacancy on the Board; (n) the construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or (o) the election of an officer.

**Section 5.12. Telephone and Electronic Meetings.** A meeting of the Board may be held by electronic or telephonic means provided that: (1) each Board member may hear and be heard by every other Board member; (2) except for any portion of the meeting conducted in executive session: (i) all Members in attendance at the meeting may hear all Board members; and (ii) any Members are allowed to listen using any electronic or telephonic communication method used or expected to be used by a participating Board member at the same meeting; and (3) the notice of the Board meeting provides instructions to the Members on how to access the electronic or telephonic communication method used in the meeting. Participation in such a meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## ARTICLE VI POWERS AND DUTIES OF THE BOARD

The Board shall have power and duty to undertake those actions to which the Association is authorized to take in accordance with the Master Covenant and Applicable Law.

## ARTICLE VII OFFICERS AND THEIR DUTIES

**Section 7.1. Enumeration of Offices.** The officers of the Association shall be a President and a Vice-President, who shall at all times be members of the Board, a Secretary and a Treasurer, and such other offices as may be created by the Declarant during the Development Period, and the Board by resolution thereafter, setting forth the term, authority and duties thereof.

**Section 7.2. Appointment; Election of Officers.** Until the expiration or termination of the Development Period, officers shall be appointed and removed by Declarant, and elected by the Board thereafter at the first meeting of the Board following each annual meeting of the Members.

**Section 7.3. Term.** The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he resigns sooner, or shall be removed or otherwise disqualified to serve.

**Section 7.4. Resignation and Removal.** During the Development Period, any officer may be removed from office with or without cause by Declarant, and the Board thereafter. Any officer may resign at any time by giving oral or written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein,

and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 7.5. Vacancies.** During the Development Period, any officer may be removed from office with or without cause by Declarant, and the Board thereafter. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

**Section 7.6. Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to *Section 7.1*.

**Section 7.7. Duties.** The duties of the officers are as follows:

(a) **President.** The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) **Vice President.** The Vice President, if any, shall generally assist the President and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him by the President or the Board.

(c) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account in appropriate form such that they could be audited by a public accountant whenever ordered by the Board or the membership; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the Members.

**Section 7.8. Execution of Instruments.** Except when the Documents require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association, including without limitation checks from the Association's bank account. In the absence of Board designation, and unless otherwise provided herein, the President and the Secretary are the only persons authorized to execute instruments on behalf of the Association.

## ARTICLE VIII OTHER COMMITTEES OF THE BOARD OF DIRECTORS

The Board may, by resolution adopted by affirmative vote of a Majority of the number of Directors fixed by these Bylaws, designate two (2) or more Members, which may include Declarant and/or one or more Board members (with such alternates, if any, as may be deemed desirable), to a committee for any purpose; provided, that any such other committee or committees shall serve in an advisory capacity only with the sole powers of: (i) recommending action to the Board; and (ii) carrying out and implementing any instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

**ARTICLE IX  
BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Documents shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

**ARTICLE X  
ASSESSMENTS**

As more fully provided in the Master Covenant, each Member is obligated to pay to the Association Assessments which are secured by a continuing lien upon the property against which the Assessments are made. Assessments shall be due and payable in accordance with the Master Covenant.

**ARTICLE XI  
CORPORATE SEAL**

The Association may, but shall have no obligation to, have a seal in a form adopted by the Board.

**ARTICLE XII  
AMENDMENTS**

These Bylaws may be amended by: (i) the Declarant until expiration or termination of the Development Period; or (ii) a Majority vote of the Board of Directors with the advance written consent of the Declarant until expiration or termination of the Development Period.

**ARTICLE XIII  
INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The Association shall indemnify every Director, Officer or Committee Member against, and reimburse and advance to every Director, Officer or Committee Member for, all liabilities, costs and expenses' incurred in connection with such directorship or office and any actions taken or omitted in such capacity to the greatest extent permitted under the Texas Business Organizations Code and all other Applicable Law at the time of such indemnification, reimbursement or advance payment; provided, however, no Director, Officer or Committee Member shall be indemnified for: (a) a breach of duty of loyalty to the Association or its Members; (b) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which such Director, Officer or Committee Member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (d) an act or omission for which the liability of such Director, Officer or Committee Member is expressly provided for by statute.

**ARTICLE XIV  
MISCELLANEOUS**

**Section 14.1.** The fiscal year of the Association shall begin on the first day of July and end on the 30<sup>th</sup> day of June of every year, except that the first fiscal year shall begin on the date of incorporation.

**Section 14.2.** Users of these Bylaws should also review statutes and court rulings that may modify or nullify provisions of this document or its enforcement, or may create rights or duties not anticipated by these Bylaws.

**Section 14.3.** In the case of any conflict between the Certificate and these Bylaws, the Certificate shall control; and in the case of any conflict between the Master Covenant and these Bylaws, the Master Covenant shall control. In the case of any conflict between these Bylaws and any provision of Applicable Law, the conflicting aspect of the Bylaws provision is null and void, but all other provisions of these Bylaws remain in full force and effect.

**Section 14.4.** The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions or articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

**Section 14.5.** No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

**ATTACHMENT 3**

**KISSING TREE MASTER COMMUNITY, INC.**  
**FINE AND ENFORCEMENT POLICY**

1. **Background.** Kissing Tree is subject to that certain Kissing Tree Master Covenant recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time (the “**Master Covenant**”). In accordance with the Master Covenant, Kissing Tree Master Community, Inc., a Texas nonprofit corporation (the “**Association**”) was created to administer the terms and provisions of the Master Covenant. Unless the Master Covenant or Applicable Law expressly provides otherwise, the Association acts through a Majority of its Board of Directors (the “**Board**”). The Association is empowered to enforce the covenants, conditions and restrictions of the Master Covenant, Certificate, Bylaws, Policy Manual, the Design Guidelines (if adopted), any applicable Development Area Declaration, any applicable Notice of Annexation, as each may be amended from time to time, and any rules and regulations promulgated by the Association pursuant to the Master Covenant or any Development Area Declaration, as each may be adopted and amended from time to time (collectively, the “**Documents**”), including the obligation of Owners to pay Assessments pursuant to the terms and provisions of the Master Covenant and the obligations of the Owners to compensate the Association for costs incurred by the Association for enforcing violations of the Documents.

The Board hereby adopts this Fine and Enforcement Policy to establish equitable policies and procedures for the levy of fines within the Association in compliance with the Chapter 209 of the Texas Property Code, titled the “Texas Residential Property Owners Protection Act,” as it may be amended (the “**Act**”). To the extent any provision within this policy is in conflict the Act or any other applicable law, such provision shall be modified to comply with the applicable law.

Terms used in this policy, but not defined, shall have the meaning subscribed to such term in the Documents

2. **Policy.** The Association uses fines to discourage violations of the Documents, and to encourage compliance when a violation occurs – not to punish violators or generate revenue for the Association. Although a fine may be an effective and efficient remedy for certain types of violations or violators, it is only one of several methods available to the Association for enforcing the Documents. The Association’s use of fines does not interfere with its exercise of other rights and remedies for the same violation.
3. **Owner’s Liability.** An Owner is liable for fines levied by the Association for violations of the Documents by the Owner and the relatives, guests, employees, and agents of the Owner and Occupants. Regardless of who commits the violation, the Association may direct all communications regarding the violation to the Owner.
4. **Amount.** The Association may set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effects of the violation. The Association may establish a schedule of fines for certain types of violations. The amount and cumulative total of a fine must be reasonable in comparison to the violation, and should be uniform for similar violations of the same provision of the Documents. If the Association allows fines to

accumulate, the Association may establish a maximum amount for a particular fine, at which point the total fine will be capped.

5. Violation Notice. Except as set forth in *Section 5(C)* below, before levying a fine, the Association will give (i) a written violation notice via certified mail to the Owner (at the Owner's last known address as shown in the Association records)(the "**Violation Notice**") and (ii) an opportunity to be heard, if requested by the Owner. The Association's Violation Notice will contain the following items: (1) the date the Violation Notice is prepared or mailed; (2) a description of the violation or property damage that is the basis for the Individual Assessment, suspension action, or other charge; (3) a reference to the rule or provision that is being violated; (4) a description of the action required to cure the violation and a reasonable timeframe in which the violation is required to be cured to avoid the fine or suspension; (5) the amount of the possible fine; (6) a statement that no later than the thirtieth (30<sup>th</sup>) day after the date the notice was mailed, the Owner may request a hearing pursuant to Section 209.007 of the Texas Property Code, and further, if the hearing held pursuant to Section 209.007 of the Texas Property Code is to be held by a committee appointed by the Board, a statement notifying the Owner that he or she has the right to appeal the committee's decision to the Board by written notice to the Board; and (7) a statement that the Owner may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. app. section *et seq.*), if the Owner is serving on active military duty. The Violation Notice sent out pursuant to this paragraph is further subject to the following:
  - A. First Violation. If the Owner has not been given notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months, the Violation Notice will state those items set out in (1) – (7) above, along with a reasonable timeframe by which the violation must be cured to avoid the fine. The Violation Notice must state that any future violation of the same rule may result in the levy of a fine. A fine pursuant to the *Schedule of Fines* may be levied if an Owner does not cure the violation within the timeframe set forth in the notice.
  - B. Uncurable Violation/Violation of Public Health or Safety. If the violation is of an uncurable nature or poses a threat to public health or safety (as exemplified in Section 209.006 of the Texas Property Code), then the Violation Notice shall state those items set out in (1), (2), (3), (5), (6), and (7) above, and the Association shall have the right to exercise any enforcement remedy afforded to it under the Documents, including but not limited to the right to levy a fine pursuant to the *Schedule of Fines*.
  - C. Repeat Violation without Attempt to Cure. If the Owner has been given a Violation Notice and a reasonable opportunity to cure the same or similar violation within the preceding six (6) months but commits the violation again, then the Owner shall not be entitled to an additional Violation Notice or a hearing pursuant to Section 209.007 of the Texas Property Code, and the Association shall have the right to exercise any enforcement remedy afforded to it under the Documents, including but not limited to the right to levy a fine pursuant to the *Schedule of Fines*. After an Owner has been provided a Violation Notice as set forth herein and assessed fines in the amounts set forth



in the *Schedule of Fines*, if the Owner has never cured the violation in response to any Violation Notices sent or any fines levied, then the Board, in its sole discretion, may determine that such a circumstance is a continuous violation which warrants a levy of a fine based upon a daily, monthly, or quarterly amount as determined by the Board.

6. Violation Hearing. Except as set forth in *Section 5(C)* above, the Owner has the right to submit a written request to the Association for a hearing before the Board or a committee appointed by the Board to discuss and verify the facts and resolve the matter. To request a hearing, the Owner must submit a written request (the “**Request**”) to the Association’s manager (or the Board if there is no manager) within thirty (30) days after receiving the violation notice. The Association must then hold the hearing requested no later than thirty (30) days after the Board receives the Request. The Board must notify the Owner of the date, time, and place of the hearing at least (10) days before the date of the hearing. The hearing will be scheduled to provide a reasonable opportunity for both the Board and the Owner to attend. The Board or the Owner may request a postponement, and if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. Notwithstanding the foregoing, the Association may exercise its other rights and remedies as set forth in Section 209.007(d) and (e) of the Texas Property Code. Any hearing before the Board will be held in a closed or executive session of the Board. At the hearing, the Board will consider the facts and circumstances surrounding the violation. The Owner shall attend the hearing in person, but may be represented by another person (*i.e.*, attorney) during the hearing, upon advance written notice to the Board. If an Owner intends to make an audio recording of the hearing, such Owner’s request for hearing shall include a statement noticing the Owner’s intent to make an audio recording of the hearing, otherwise, no audio or video recording of the hearing may be made, unless otherwise approved by the Board. The minutes of the hearing must contain a statement of the results of the hearing and the fine, if any, imposed. A copy of the violation notice and request for hearing should be placed in the minutes of the hearing. If the Owner appears at the meeting, the notice requirements will be deemed satisfied. Unless otherwise agreed by the Board, each hearing shall be conducted in accordance with the agenda attached hereto as Exhibit A.
7. Due Date. Fine and/or damage charges are due immediately if the violation is incurable or poses a threat to public health or safety. If the violation is curable, the fine and/or damage charges are due immediately after the later of: (1) the date that the cure period set out in the First Violation notice ends and the Owner does not attempt to cure the violation or the attempted cure is unacceptable to Association, or (2) if a hearing is requested by the Owner, such fines or damage charges will be due immediately after the Board’s final decision on the matter, assuming that a fine or damage charge of some amount is confirmed by the Board at such hearing.
8. Lien Created. The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot is, together with interest as provided in *Section 6.12* of the Master Covenant and all costs of collection, including attorney’s fees as herein provided, secured by the lien granted to the Association pursuant to *Section 6.01(b)* of the Master Covenant. Unless otherwise provided in *Section 6.15* of the Master Covenant, the fine and/or damage charge will be considered an Assessment for the purpose of this Article and will be enforced in accordance

with the terms and provisions governing the enforcement of assessments pursuant to *Article 6* of the Master Covenant.

9. Levy of Fine. Any fine levied shall be reflected on the Owner's periodic statements of account or delinquency notices.
10. Foreclosure. The Association may not foreclose its assessment lien on a debt consisting solely of fines.
11. Amendment of Policy. This policy may be revoked or amended from time to time by the Board. This policy will remain effective until the Association records an amendment to this policy in the county's official public records.

**Schedule of Fines**

The Board has adopted the following general schedule of fines. The number of notices set forth below does not mean that the Board is required to provide each notice prior to exercising additional remedies as set forth in the Documents. The Board may elect to pursue such additional remedies at any time in accordance with applicable law. The Board also reserves the right to set fine amounts on a case by case basis, provided the fine is reasonable in light of the nature, frequency, and effect of the violation:

**FINES‡:**

<p><b>New Violation: Notice of Violation</b></p>	<p><b>Fine Amount: \$25.00 per day (if a curable violation, may be avoided if Owner cures the violation by the time specified in the notice)</b></p>
<p><b>Repeat Violation (No Right to Cure or Uncurable Violation):</b></p>	<p><b>Fine Amount:</b>                  1st Notice    \$50.00                  2nd Notice    \$75.00                  3rd Notice    \$100.00                  4th Notice    \$125.00</p>
<p><b>Continuous Violation: Continuous Violation Notice</b></p>	<p><b>Amount TBD</b></p>

‡ The Board reserves the right to adjust these fine amounts based on the severity and/or frequency of the violation.

**CONSTRUCTION FINES:**

Pursuant to the Documents, any construction activities within Kissing Tree are subject to fines\* which may be assessed pursuant to the schedule of fines as follows:

Construction Without Kissing Tree Reviewer Approval	\$500
Inadequate Construction Entry	\$250
Inadequate/Removed Silt Fence for Storm Water	\$300
Excessive Mud/Debris on Street	\$250 plus \$50/day
Excessive Construction Debris or Debris in Development	\$250 plus \$50/day
No Dumpster Provided	\$150 plus \$50/day
No Chemical Toilet Provided	\$150 plus \$25/day
Violation of designated Construction Times	\$100
Causing a Nuisance	\$100
Unauthorized Signage	\$100
Excessive Noise	\$250
Speeding	\$100 minimum
Illegal Parking	\$100 minimum
Encroachment on Adjacent Properties	\$500 plus repair cost
Damage to Streets, Curbs, Infrastructure	Cost plus \$500
Starting Construction without Kissing Tree Reviewer Approval	\$1000
Failure to Obtain Inspection from Kissing Tree Reviewer upon Completion of Construction	\$500 minimum
Miscellaneous Violation of Construction Rules	TBD by Kissing Tree Reviewer
Other Violation not Listed (as determined by Board)	\$100
Additional Violation	\$150 plus original fine
Third Violation	\$500 plus original fines

Construction Fines are subject to the same provisions regarding General Fines.

**EXHIBIT A  
HEARING BEFORE THE BOARD**

**Note:** An individual will act as the presiding hearing officer. The hearing officer will provide introductory remarks and administer the hearing agenda.

**I. Introduction:**

**Hearing Officer.** The Board has convened for the purpose of providing [Owner] an opportunity to be heard regarding a notice of violation of the Documents sent by the Association.

The hearing is being conducted as required by Section 209.007(a) of the Texas Property Code, and is an opportunity for [Owner] to discuss, verify facts, and attempt to resolve the matter at issue. The Board may be able to resolve the dispute at the hearing or the Board may elect to take the matter under advisement and conclude the hearing. If the matter is taken under advisement, a final decision will be communicated in writing within fifteen (15) days.

**II. Presentation of Facts:**

**Hearing Officer.** This portion of the hearing is to permit a representative of the Association the opportunity to describe the violation and to present photographs or other material relevant to the violation, fines or penalties. After the Association's representative has finished his presentation, the Owner or its representative will be given the opportunity to present photographs or other material relevant to the violation, fines or penalties. The Board may ask questions during either party's presentation. It is requested that questions by [Owner] be held until completion of the presentation by the Association's representative.

**[Presentations]**

**III. Discussion:**

**Hearing Officer.** This portion of the hearing is to permit the Board and [Owner] to discuss factual disputes relevant to the violation. Discussion regarding any fine or penalty is also appropriate. Discussion should be productive and designed to seek, if possible, a mutually agreed upon resolution of the dispute. The Hearing Officer retains the right to conclude this portion of the hearing at any time.

**IV. Resolution:**

**Hearing Officer.** This portion of the hearing is to permit discussion between the Board and [Owner] regarding the final terms of a mutually agreed upon resolution, if such resolution was agreed upon during the discussion phase of the hearing. If no mutually agreed upon resolution was reached, the Hearing Officer may: (i) request that the Board enter into executive session to discuss the matter; (ii) request that the Board take the matter under advisement and adjourn the hearing; or (iii) adjourn the hearing.

**ATTACHMENT 4**

**KISSING TREE MASTER COMMUNITY, INC.**  
**ASSESSMENT COLLECTION POLICY**

Kissing Tree is subject to the Kissing Tree Master Covenant recorded in the Official Public Records of Hays County, Texas, and any amendments or supplements thereto (the “**Master Covenant**”). The operation of Kissing Tree is vested in the Kissing Tree Master Community, Inc., a Texas nonprofit corporation (the “**Association**”), acting through its board of directors (the “**Board**”). The Association is empowered to enforce the covenants, conditions and restrictions of the Master Covenant, Certificate, Bylaws, Policy Manual, the Design Guidelines (if adopted), any applicable Development Area Declaration, any applicable Notice of Annexation, and any rules and regulations promulgated by the Association pursuant to the Master Covenant or any Development Area Declaration, as adopted and amended from time to time (collectively, the “**Documents**”), including the obligation of Owners to pay Assessments pursuant to the terms and provisions of the Documents.

The Board hereby adopts this Assessment Collection Policy to establish equitable policies and procedures for the collection of Assessments levied pursuant to the Documents. Terms used in this policy, but not defined, shall have the meaning subscribed to such term in the Documents.

**SECTION 1. DELINQUENCIES, LATE CHARGES & INTEREST**

- 1-A. Due Date. An Owner will timely and fully pay Assessments. Regular Assessments are assessed annually and are due and payable on the first calendar day of the month at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.
- 1-B. Delinquent. Any Assessment that is not fully paid when due is delinquent. When the account of an Owner becomes delinquent, it remains delinquent until paid in full — including collection costs, interest and late fees.
- 1-C. Late Fees & Interest. If the Association does not receive full payment of an Assessment by 5:00 p.m. on the due date established by the Board, the Association may levy a late fee of \$25 per month and/or interest at the highest rate allowed by Applicable Law then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1 and 1/2% per month) until paid in full.
- 1-D. Liability for Collection Costs. The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, court costs, filing fees, and other reasonable costs and attorney’s fees incurred by the Association in collecting the delinquency.
- 1-E. Insufficient Funds. The Association may levy a charge of \$25 for any check returned to the Association marked “not sufficient funds” or the equivalent.
- 1-F. Waiver. Properly levied collection costs, late fees, and interest may only be waived by a Majority of the Board.

## SECTION 2. INSTALLMENTS & ACCELERATION

If an Assessment, other than a Regular Assessment, is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire Assessment in default and accelerate the due date on all remaining installments of the Assessment. An Assessment, other than a Regular Assessment, payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

## SECTION 3. PAYMENTS

- 3-A. Application of Payments. After the Association notifies the Owner of a delinquency and the Owner's liability for late fees or interest, and collection costs, any payment received by the Association shall be applied in the following order, starting with the oldest charge in each category, until that category is fully paid, regardless of the amount of payment, notations on checks, and the date the obligations arose:
- (1) Delinquent assessments
  - (2) Current assessments
  - (3) Attorney fees and costs associated with delinquent assessments
  - (4) Other attorney's fees
  - (5) Fines
  - (6) Any other amount
- 3-B. Payment Plans. The Association shall offer a payment plan to a delinquent Owner with a minimum term of at least three (3) months from the date the payment plan is requested for which the Owner may be charged reasonable administrative costs and interest. The Association will determine the actual term of each payment plan offered to an Owner in their sole and absolute discretion. An Owner is not entitled to a payment plan if the Owner has defaulted on a previous payment plan in the last two (2) years. The Association is not required to make a payment plan available to a Member after the Delinquency Cure Period allowed under Paragraph 5-B expires. If an Owner is in default at the time the Owner submits a payment, the Association is not required to follow the application of payments schedule set forth in Paragraph 3-A.
- 3-C. Form of Payment. The Association may require that payment of delinquent Assessments be made only in the form of cash, cashier's check, or certified funds.
- 3-D. Partial and Conditioned Payment. The Association may refuse to accept partial payment (*i.e.*, less than the full amount due and payable) and payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's endorsement and deposit of a payment does not constitute acceptance. Instead, acceptance by the Association occurs when the Association posts the payment to the Owner's account. If the Association does not accept the payment at that time, it will promptly refund the payment to the payer. A payment that is not refunded to the payer within thirty (30) days after being deposited by the Association may be deemed accepted as to payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of

partial payment of delinquent Assessments does not waive the Association's right to pursue or to continue pursuing its remedies for payment in full of all outstanding obligations.

- 3-E. Notice of Payment. If the Association receives full payment of the delinquency after Recording a notice of lien, the Association will cause a release of notice of lien to be publicly Recorded, a copy of which will be sent to the Owner. The Association may require the Owner to prepay the cost of preparing and Recording the release.
- 3-F. Correction of Credit Report. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

#### **SECTION 4. LIABILITY FOR COLLECTION COSTS**

- 4-A. Collection Costs. The defaulting Owner may be liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, filing fees, and other reasonable costs and attorney's fees incurred in the collection of the delinquency.

#### **SECTION 5. COLLECTION PROCEDURES**

- 5-A. Delegation of Collection Procedures. From time to time, the Association may delegate some or all of the collection procedures, as the Board in its sole discretion deems appropriate, to the Association's Manager, an attorney, or a debt collector.
- 5-B. Delinquency Notices. If the Association has not received full payment of an Assessment by the due date, the Association may send written notice of nonpayment to the defaulting Owner, by certified mail, stating: (a) the amount delinquent and the total amount of the payment required to make the account current, (b) the options the Owner has to avoid having the account turned over to a collection agent, as such term is defined in Texas Property Code Section 209.0064, including information regarding availability of a payment plan through the Association, and (c) that the Owner has thirty (30) days for the Owner to cure the delinquency before further collection action is taken (the "**Delinquency Cure Period**"). The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner.
- 5-C. Verification of Owner Information. The Association may obtain a title report to determine the names of the Owners and the identity of other lien-holders, including the mortgage company.
- 5-D. Collection Agency. The Board may employ or assign the debt to one or more collection agencies.
- 5-E. Notification of Mortgage Lender. The Association may notify the Mortgage lender of the default obligations.
- 5-F. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services.



- 5-G. Collection by Attorney. If the Owner's account remains delinquent for a period of ninety (90) days, the Manager of the Association or the Board of the Association shall refer the delinquent account to the Association's attorney for collection. In the event an account is referred to the Association's attorney, the Owner will be liable to the Association for its legal fees and expenses. Upon referral of a delinquent account to the Association's attorney, the Association's attorney will provide the following notices and take the following actions unless otherwise directed by the Board:
- (1) Initial Notice: Preparation of the Initial Notice of Demand for Payment Letter. If the account is not paid in full within 30 days (unless such notice has previously been provided by the Association), then
  - (2) Lien Notice: Preparation of the Lien Notice and Demand for Payment Letter and Record a Notice of Unpaid Assessment Lien. If the account is not paid in full within 30 days, then
  - (3) Final Notice: Preparation of the Final Notice of Demand for Payment Letter and Intent to Foreclose and Notice of Intent to Foreclose to Lender. If the account is not paid in full within 30 days, then
  - (4) Foreclosure of Lien: Only upon specific approval by a Majority of the Board.
- 5-H. Notice of Lien. The Association's attorney may cause a notice of the Association's Assessment lien against the Owner's home to be publicly Recorded. In that event, a copy of the notice will be sent to the defaulting Owner and may also be sent to the Owner's Mortgagee.
- 5-I. Cancellation of Debt. If the Board deems the debt to be uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.
- 5-J. Suspension of Use of Certain Facilities or Services. The Board may suspend the use of the Common Area amenities by an Owner, or his Occupant, whose account with the Association is delinquent for at least thirty (30) days.

## SECTION 6. GENERAL PROVISIONS

- 6-A. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, Manager, and attorney of the Association may exercise their independent, collective, and respective judgment in applying this policy.
- 6-B. Other Rights. This policy is in addition to and does not detract from the rights of the Association to collect Assessments under the Documents and Applicable Law.
- 6-C. Limitations of Interest. The Association, and its officers, directors, Managers, and attorneys, intend to conform strictly to Applicable Law. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with this policy, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances

whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Assessments, or reimbursed to the Owner if those Assessments are paid in full.

- 6-D. Notices. Unless the Documents, applicable law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed delivered to the Owner upon depositing same with the U.S. Postal Service, addressed to the Owner at the most recent address shown on the Association's records, or on personal delivery to the Owner. If the Association's records show that an Owner's property is owned by two (2) or more persons, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one Occupant is deemed notice to all Occupants. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent, or attorney.
- 6-E. Amendment of Policy. This policy may be amended from time to time by the Board.

**ATTACHMENT 5**

**KISSING TREE MASTER COMMUNITY, INC.**  
**RECORDS INSPECTION, COPYING AND RETENTION POLICY**

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Kissing Tree Master Covenant recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time.

Note: Texas statutes presently render null and void any restriction in the Master Covenant which restricts or prohibits the inspection, copying and/or retention of association records and files in violation of the controlling provisions of the Texas Property Code or any other applicable state law. The Board has adopted this policy in lieu of any express prohibition or any provision regulating such matters which conflict with Texas law, as set forth in the Master Covenant.

1. **Written Form.** The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

2. **Request in Writing; Pay Estimated Costs In Advance.** An Owner (or an individual identified as an Owner's agent, attorney or certified public accountant, provided the designation is in writing and delivered to the Association) may submit a written request via certified mail to the Association's mailing address or authorized representative listed in the management certificate to access the Association's records. The written request must include sufficient detail describing the books and records requested and whether the Owner desires to inspect or copy the records. Upon receipt of a written request, the Association may estimate the costs associated with responding to each request, which costs may not exceed the costs allowed pursuant to Texas Administrative Code Section 70.3, as may be amended from time to time (a current copy of which is attached hereto). Before providing the requested records, the Association will require that the Owner remit such estimated amount to the Association. The Association will provide a final invoice to the Owner on or before the 30th business day after the records are provided by the Association. If the final invoice includes additional amounts due from the requesting party, the additional amounts, if not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Owner, may be added to the Owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the Owner is entitled to a refund, and the refund shall be issued to the Owner not later than the 30th business day after the date the final invoice is sent to the Owner.

3. **Period of Inspection.** Within ten (10) business days from receipt of the written request, the Association must either: (1) provide the copies to the Owner; (2) provide available inspection dates; or (3) provide written notice that the Association cannot produce the documents within the ten (10) business days along with either: (i) another date within an additional fifteen (15) business days on which the records may either be inspected or by which the copies will be sent to the Owner; or (ii) a notice that after a diligent search, the requested records are missing and cannot be located.

4. **Records Retention.** The Association shall keep the following records for at least the time periods stated below:

- a. **PERMANENT:** The Articles of Incorporation or the Certificate of Formation, the Bylaws and the Master Covenant, any and all other governing documents, guidelines, rules, regulations and policies and all amendments thereto Recorded

in the property records to be effective against any Owner and/or Member of the Association.

- b. **FOUR (4) YEARS:** Contracts with a term of more than one (1) year between the Association and a third party. The four (4) year retention term begins upon expiration of the contract term.
- c. **FIVE (5) YEARS:** Account records of each Owner. Account records include debit and credit entries associated with amounts due and payable by the Owner to the Association and written or electronic records related to the Owner and produced by the Association in the ordinary course of business.
- d. **SEVEN (7) YEARS:** Minutes of all meetings of the Board and the Owners.
- e. **SEVEN (7) YEARS:** Financial books and records produced in the ordinary course of business, tax returns and audits of the Association.
- f. **GENERAL RETENTION INSTRUCTIONS:** “Permanent” means records which are not to be destroyed. Except for contracts with a term of one (1) year or more (See item 4.b. above), a retention period starts on the last day of the year in which the record is created and ends on the last day of the year of the retention period. For example, if a record is created on June 14, 2016, and the retention period is five (5) years, the retention period begins on December 31, 2016 and ends on December 31, 2021. If the retention period for a record has elapsed and the record will be destroyed, the record should be shredded or otherwise safely and completely destroyed. Electronic files should be destroyed to ensure that data cannot be reconstructed from the storage mechanism on which the record resides.

5. **Confidential Records.** As determined in the discretion of the Board, certain Association records may be kept confidential such as personnel files, Owner account or other personal information (except addresses) unless the Owner requesting the records provides a court order or written authorization from the person whose records are sought.

6. **Attorney Files.** Attorney’s files and records relating to the Association (excluding invoices requested by an Owner pursuant to Texas Property Code Section 209.008(d)), are not records of the Association and are not: (a) subject to inspection by the Owner; or (b) subject to production in a legal proceeding. If a document in an attorney’s files and records relating to the Association would be responsive to a legally authorized request to inspect or copy Association documents, the document shall be produced by using the copy from the attorney’s files and records if the Association has not maintained a separate copy of the document. The Association is not required under any circumstance to produce a document for inspection or copying that constitutes attorney work product or that is privileged as an attorney-client communication.

7. **Presence of Board Member or Manager; No Removal.** At the discretion of the Board or the Association’s Manager, certain records may only be inspected in the presence of a Board member or employee of the Association’s Manager. No original records may be removed from the office without the express written consent of the Board.

**TEXAS ADMINISTRATIVE CODE**  
**TITLE 1, PART 3, CHAPTER 70**  
**RULE §70.3 - CHARGES FOR PROVIDING COPIES OF PUBLIC INFORMATION**

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §70.4 of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

- (A) Diskette--\$1.00;
- (B) Magnetic tape--actual cost;
- (C) Data cartridge--actual cost;
- (D) Tape cartridge--actual cost;
- (E) Rewritable CD (CD-RW)--\$1.00;
- (F) Non-rewritable CD (CD-R)--\$1.00;
- (G) Digital video disc (DVD)--\$3.00;
- (H) JAZ drive--actual cost;
- (I) Other electronic media--actual cost;
- (J) VHS video cassette--\$2.50;
- (K) Audio cassette--\$1.00;
- (L) Oversize paper copy (*e.g.*: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §70.9 of this title)--\$.50;
- (M) Specialty paper (*e.g.*: Mylar, blueprint, blueline, map, photographic--actual cost.

(c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is \$28.50 an hour. Only programming services shall be charged at this hourly rate.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Texas Government Code.

(3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of §552.261(b) of the Texas Government Code.

(d) Labor charge for locating, compiling, manipulating data, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.

(2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) Two or more separate buildings that are not physically connected with each other; or

(B) A remote storage facility.

(3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or

(B) To research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Texas Government Code.

(4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, §552.261(b).

(6) For purposes of paragraph (2)(A) of this subsection, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.

(e) Overhead charge.

(1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing,  $\$15.00 \times .20 = \$3.00$ ; or Programming labor charge,  $\$28.50 \times .20 = \$5.70$ . If a request requires one hour of labor charge for locating, compiling, and reproducing information ( $\$15.00$  per hour); and one hour of programming labor charge ( $\$28.50$  per hour), the combined overhead would be:  $\$15.00 + \$28.50 = \$43.50 \times .20 = \$8.70$ .

(f) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the capacity to reproduce microfiche and microfilm for governmental bodies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before having the reproduction made commercially.

(2) If only a master copy of information in microfilm is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable labor and overhead charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the

retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.

(2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the governmental body, the boxes must still be searched for records that are responsive to the request, a labor charge is allowed according to subsection (d)(1) of this section.

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System--Rate: mainframe--\$10 per CPU minute; Midsize--\$1.50 per CPU minute; Client/Server--\$2.20 per clock hour; PC or LAN--\$1.00 per clock hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows:  $\$10 / 3 = \$3.33$ ; or  $\$10 / 60 \times 20 = \$3.33$ .

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the §552.231 of the Texas Government Code.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.



(k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O, §3.341 and §3.342).

(l) Miscellaneous charges: A governmental body that accepts payment by credit card for copies of public information and that is charged a "transaction fee" by the credit card company may recover that fee.

(m) These charges are subject to periodic reevaluation and update.

**Source Note:** The provisions of this §70.3 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective February 20, 1997, 22 TexReg 1625; amended to be effective December 3, 1997, 22 TexReg 11651; amended to be effective December 21, 1999, 24 TexReg 11255; amended to be effective January 16, 2003, 28 TexReg 439; amended to be effective February 11, 2004, 29 TexReg 1189; transferred effective September 1, 2005, as published in the Texas Register September 29, 2006, 31 TexReg 8251; amended to be effective February 22, 2007, 32 TexReg 614.

**ATTACHMENT 6**

**KISSING TREE MASTER COMMUNITY, INC.**  
**STATUTORY NOTICE OF POSTING AND RECORDATION OF**  
**ASSOCIATION GOVERNING DOCUMENTS**

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Kissing Tree Master Covenant recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time (the "Master Covenant").

1. **Dedicatory Instruments.** As set forth in Texas Property Code Section 202.001, "dedicatory instrument" means each document governing the establishment, maintenance or operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes the Master Covenant, any Development Area Declaration, or any similar instrument subjecting real property to: (a) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association; (b) properly adopted rules and regulations of the property owners' association; or (c) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations. The term "dedicatory instrument" is referred to in this notice and the Master Covenant as the "Documents."

2. **Recordation of All Documents.** The Association shall file all of the Documents in the real property records of each county in which the property to which the Documents relate is located. Any dedicatory instrument comprising one of the Documents of the Association has no effect until the instrument is filed in accordance with this provision, as set forth in Texas Property Code Section 202.006.

3. **Online Posting of Documents.** The Association shall make all of the Recorded Documents relating to the Association or Development available on a website if the Association or a management company, on behalf of the Association, maintains a publicly accessible website.

**ATTACHMENT 7**

**KISSING TREE MASTER COMMUNITY, INC.**  
**EMAIL REGISTRATION POLICY**

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Kissing Tree Master Covenant recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time.

1. **Purpose.** The purpose of this Email Registration Policy is to facilitate proper notice of annual and special meetings of members of the Association pursuant to Section 209.0051(e) of the Texas Property Code.
2. **Email Registration.** Should the owner wish to receive any and all email notifications of annual and special meetings of members of the Association, it is the owner's sole responsibility to register his/her email address with the Association and to continue to keep the registered email address updated and current with the Association. In order to register an email address, the owner must provide their name, address, phone number and email address through the method provided on the Association's website, if any, and/or to the official contact information provided by the Association for the community manager.
3. **Failure to Register.** An owner may not receive email notification or communication of annual or special meetings of members of the Association should the owner fail to register his/her email address with the Association and/or properly and timely maintain an accurate email address with the Association. Correspondence to the Association and/or Association manager from an email address or by any method, other than the method described in Paragraph No. 2 above, will not be considered sufficient to register such email address with the Association.
4. **Amendment.** The Association may, from time to time, modify, amend, or supplement this Policy or any other rules regarding email registration.

**ATTACHMENT 8**

**KISSING TREE MASTER COMMUNITY, INC.**  
**SECURITY POLICY**

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Kissing Tree Master Covenant recorded in the Official Public Records of Hays County, Texas, as the same may be amended from time to time.

1. **Purpose.** The purpose of this Security Policy is to facilitate proper identification of residents and guests of Kissing Tree and within the Kissing Tree community. Unless otherwise specified, each Owner and Occupant within Kissing Tree must be issued and maintain a Security ID (as defined below). Use of any Kissing Tree amenity is limited to Owners, Occupants, and their guests. This Security Policy regulates the use of Kissing Tree amenities and limits use by non-Owners and Occupants.

2. **Identification Cards.** Proper identification is required to use any Kissing Tree amenities other than facilities open to the public, which are excluded from the requirements of this Security Policy. There are three types of Kissing Tree Security IDs:

(a) **Owner Security IDs.** The Association shall issue a Kissing Tree access card, fob, or device (the "**Security ID**") to each Owner or Occupant within Kissing Tree. An Owner shall receive the number of Security IDs for each Owner and for each resident over the age of 19 residing with Owner. Any tenant of an Owner shall receive an Security ID upon registering the lease with the Association and the Security ID shall only be valid for the term of the initial lease term and may be renewed upon renewal of the lease. Any Owner or Occupant within Kissing Tree must have the Security ID in their possession in order to use any of the Kissing Tree amenities.

(b) **Overnight or Extended Stay Guests.** All guests of Owners or Occupants over the age of 19 must obtain and have in their possession a guest Security ID to use any Kissing Tree amenities, except as otherwise authorized by the Board. An Owner or Occupant must procure such Security ID for its guests from the Association and may be secured in advance of the guests' visit. A maximum of six (6) guest Security IDs at any one time shall be permitted for each Kissing Tree residence at one time. The Security ID shall only be valid for the period of visitation.

(c) **Day Pass.** A day pass Security ID may be issued for a specific guest for a specific date only, and can be obtained from the Association. A maximum of six (6) guest Security IDs may be issued per day (unless otherwise permitted pursuant to any reserved facility or amenity policy by which Owners or Occupants have secured an amenity facility to host a party, meeting or other permitted group activity). The Board may establish a schedule of use fees for these passes, and may allow each Owner or Occupant a specific number of free passes per year. The pass fee, if any, must be paid at the time of procurement.

3. **Guests under 19 Years of Age.** An Owner or Occupant (so long as such Occupant is over the age of 19) must accompany all visitors under the age of 19 who uses any Kissing Tree amenity.

4. **Owner and Occupant Responsibility.** Owners and Occupants shall be held accountable and responsible under the Documents for the actions and conduct of or any damage caused by their guests.

5. **Verification.** Employees or other authorized representatives of the Association are authorized to require all users of any amenities to show their Security ID upon request.

6. **Unauthorized Persons.** Owners, Occupants and their guests are encouraged to bring to the attention of any security services personnel, employees or other authorized representatives of the Association any unauthorized person using or within or on the Kissing Tree amenities. Should the unauthorized person refuse to leave, the unauthorized person will be considered a trespasser on Association property and appropriate legal steps will be taken to involve law enforcement personnel to assist in the removal of the unauthorized person. Any Owner or Occupant assisting in the unauthorized use of facilities may be subject to suspension of such Owner's or Occupant's rights to use the Kissing Tree amenities, as further set forth in the Fine and Enforcement Policy.

**ATTACHMENT 9**

**KISSING TREE MASTER COMMUNITY, INC.**  
**COMMUNITY RULES AND REGULATIONS**

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## COMMUNITY RULES AND REGULATIONS

These Community Rules and Regulations (these “**Rules**”) have been adopted for the benefit of the Kissing Tree Master Community, Inc., a Texas nonprofit corporation (the “**Association**”) which governs that certain master planned community more commonly known as Kissing Tree in Hays County, Texas (the “**Community**”). These Rules are in addition to the provisions of the Kissing Tree Master Covenant, recorded under Document No. \_\_\_\_\_ in the Official Public Records of Hays County, Texas (the “**Master Covenant**”) and the Certificate, Bylaws, Policy Manual, Community Enhancement Covenant, Design Guidelines, any applicable Development Area Declaration, any applicable Notice of Annexation as each may be amended from time to time, and any other Rules promulgated by the Association pursuant to the Master Covenant or any Development Area Declaration, as adopted and amended from time to time (collectively referred to as the “**Documents**”). By owning a Residential Lot or Condominium Unit (as defined in the Master Covenant), each Owner and Occupant agrees to abide by these Rules and to comply with the obligations of Owners and Occupants under the Documents.

Words and phrases defined in the Master Covenant have the same meaning when used in these Rules. For the purposes of these Rules, the “**Area of Common Responsibility**” includes all of the Common Area and Special Common Area, and may also include Lots or portions of Lots, Condominium Units or portions of Condominium Units, and property dedicated to the public or other District (such as a municipal utility district), such as parkland, access roads or rights-of-way. The Area of Common Responsibility may include, but is not limited to:

(a) all Common Area and related facilities including but not limited to all landscaping and other flora, parks, ponds, signage, structures, monumentation and other Improvements, including any private streets, and bike and pedestrian pathways/trails, situated upon the Common Area;

(b) landscaping within parkland, access roads or rights-of-way within or adjacent to the Kissing Tree Development;

(c) such portions of any additional property as may be included within the Area of Common Responsibility as Designated by the Board or the Declarant (during the Development Period) or any easement or agreement for maintenance entered into by, or otherwise binding on the Association; and

(d) any property and facilities that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and some or all of its Members. Any such property or facilities shall be identified by Declarant by written notice to the Association, and they shall remain part of the Area of Common Responsibility and be maintained by the Association until the Declarant revokes such privilege of use and enjoyment by written notice to the Association.

### A. COMPLIANCE

A-1. Compliance. Each Owner will comply with the provisions of these Rules, the other Documents, and policies adopted by the Board to supplement these Rules, as any of these may be revised from time to time. Each Owner, additionally, is responsible for compliance with all of the Documents by the Occupants of the Owner’s Residential Lot, and any respective relatives, invitees, tenants, agents, employees, or contractors. If a Rule requires or prohibits conduct by an “**Owner**” or “**Occupant**”, each of those terms are deemed to include the other, and applies to all persons for whom an Owner or Occupant is responsible. Any question regarding these Rules

should be referred to the Association. The Association has the right to enforce these Rules against any person. All Owners are subject to the Association's Fine and Enforcement Policy set forth in the Policy Manual in regard to enforcement of these Rules and all Documents of the Association.

- A-2. Additional Rules. Each Owner and Occupant must comply with any rules and signs posted from time to time by the Association. Each Owner and Occupant must comply with notices communicated by the Association, from time to time, which may include seasonal or temporary rules, or notice of a change affecting Kissing Tree. Posted and temporary rules are incorporated in these Rules by reference.
- A-3. Limits. It is understood that individuals may have different interpretations of and tolerances for these Rules. On lifestyle-related rules, such as the "Community Etiquette" rules below, the Association may refrain from acting on a perceived violation unless the Board determines the violation to be significant or a Community-wide problem. The Association may not be compelled by one Owner or Occupant to enforce these Rules against another Owner or Occupant. The Association encourages cooperation and civility among all Owners and Occupants.

#### **B. OBLIGATIONS OF OWNERS AND OCCUPANTS**

- B-1. Damage. An Owner or Occupant is responsible for any loss or damage he or she causes within Kissing Tree. Additional information related to insurance, risk management, and reimbursement requirements is set forth in the Master Covenant.
- B-2. Garage Sales, Estate Sales, Vehicle Sales, Open Houses and Bankruptcy Sales. Without the Association's prior written permission, no person may conduct on his or her Residential Lot or an Area of Common Responsibility a sale or activity that is advertised or attractive to the public, bankruptcy sales or "going out of business" sales. Vehicles that are "For Sale" are not allowed to be stored within view of any Area of Common Responsibility or public right of ways. Notwithstanding the foregoing, each Residential Lot shall be permitted to have up to two (2) garage sales or estate sales within any twelve (12) month period. This Section does not apply to marketing the sale or rental of a Residential Lot, unless combined with a prohibited activity.

#### **C. OCCUPANCY STANDARDS**

- C-1. Numbers. The maximum number of persons who may occupy a Residential Lot is (a) two (2) persons per bedroom for those Owners or Occupants who have familial status among the other Occupants (as such familial status is defined under the Fair Housing Act) or (b) one (1) more person than the number of bedrooms in the Residence when such familial status does not exist. For purposes of these Rules, occupancy means residing in the completed residence on such Residential Lot in excess of thirty (30) continuous days or sixty (60) days total in any 12-month period.
- C-2. Leases. Leases must be made subject to all of the Documents, including these Rules, and an Owner is responsible for providing his or her tenant (an Occupant) with copies of all of the Documents and these Rules and notifying him or her of any changes thereto. Each Occupant is subject to and must comply with all provisions of the Documents, these Rules, federal and state



laws, and local ordinances. Notice of any lease must be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease.

- C-3. Minors. No person under the age of nineteen (19) years may occupy a Residential Lot unless he lives with an Owner or Occupant who is his or her parent, legal guardian, or a designee of his or her parent or legal guardian. Upon request by the Association, an Owner will provide satisfactory proof of the ages and guardian status of any minor occupant.

#### **D. FIRE AND SAFETY**

- D-1. Safety. Each Owner and Occupant is solely responsible for his or her own safety and for the safety, well-being, and supervision of his or her guests and any person to whom the Owner or Occupant has a duty of care, control, or custody.
- D-2. Fires. Except for barbecue fires as permitted by these Rules, there may not be any exterior fires on an Area of Common Responsibility.
- D-3. Grills, Fire pits and Chimeneas. The Board reserves the right to prohibit or restrict the existence and/or use of all or certain outdoor cooking grills if, in the Board's discretion, a grill constitutes a fire hazard or is unattractive or oversized for the area in which it is kept. On permitted grills, fire pits and chimeneas, (a) open fires must be supervised at all times; (b) gas tanks must be properly used and maintained; (c) no flames may be higher than the cooking surface; and (d) a grill may not be used near flammable or combustible materials.
- D-4. Safety Equipment. No person may use, tamper with, or modify the fire and safety equipment, if any, in an Area of Common Responsibility, such as alarms, extinguishers, monitors, and self-closing gates or doors. This Section may not be construed to require the installation or use of such equipment.
- D-5. Security. The Association may, but is not obligated to, maintain or support certain activities within an Area of Common Responsibility designed to make the Area of Common Responsibility less attractive to intruders than it otherwise might be. The Association, its directors, committees, Members, agents, and employees will not in any way be considered an insurer or guarantor of security within an Area of Common Responsibility, and may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Owner, Occupant, guest, and invitee on an Area of Common Responsibility assumes all risk for loss or damage to his or her person, to his or her residence, to the contents of his or her residence, and to any other of his or her property. The Association expressly disclaims and disavows any and all representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any security systems, equipment, or measures recommended, installed, or undertaken.

#### **E. GENERAL USE AND MAINTENANCE OF RESIDENTIAL LOT**

- E-1. Residential Use. Each Residential Lot must be used solely for private single family residential purposes. No professional, business, or commercial activity to which the general public is invited shall be conducted on any Residential Lot, except an Owner or Occupant may conduct business activities within a residence so long as:

- a. such activity complies with all the applicable zoning ordinances (if any);
- b. the business activity is conducted without the employment of persons other than the Owner or Occupants of the home constructed on the Residential Lot;
- c. the existence or operation of the business activity is not apparent or detectable by sight, *i.e.*, no sign may be erected advertising the business on any Residential Lot, sound, or smell from outside the home;
- d. the business activity does not involve door-to-door solicitation of Owners or Occupants within Kissing Tree;
- e. the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within Kissing Tree which is noticeably greater than that which is typical of homes in which no business activity is being conducted;
- f. the business activity is consistent with the residential character of Kissing Tree and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners or Occupants of Kissing Tree as may be determined in the sole discretion of the Board; and
- g. the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration.

Notwithstanding the foregoing, different standards of permitted business activities within a Residence may be established for specific types of residences, or in certain designated areas as may be determined from time to time by the Declarant (during the Development Period) or the Board thereafter.

- E-2. Maintenance. The Owners and/or Occupants of each Residential Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their entire Residential 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 Residential Lot upon which a subdivision perimeter fence has been constructed, or any portion of such Residential Lot between such subdivision perimeter fence and any boundary line of such Lot. Declarant has reserved the right under the Master Covenant to designate a portion of any Residential Lot as a "Service Area". A Service Area designation may provide that the Association will assume responsibility for certain maintenance tasks otherwise allocated to an Owner (*e.g.*, yard maintenance). Nothing in this *Section E-2* will be construed to limit the Declarant's or the Association's ability to designate Service Areas or provide the maintenance services which would be the responsibility of an Owner. The Kissing Tree Reviewer, in its sole discretion, shall determine whether a violation of the maintenance obligations set forth in this *Section E-2* has occurred. Such maintenance includes, but is not

limited to the following, which shall be performed in a timely manner, as determined by the Kissing Tree Reviewer, 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 government, health and police requirements.
  - j. Repainting of Improvements.
  - k. Repair of exterior damage, and wear and tear to Improvements.
- E-3. Maintenance of Right of Way. Each Owner or Occupant will be responsible, at such Owner's or Occupant's sole cost and expense, for maintaining, mowing, replacing, pruning, and irrigating the landscaping, including trees, in good order and repair and in a safe, clean and attractive condition, and maintaining, repairing and replacing the irrigation system, in good order and repair and in a safe, clean and attractive condition, between the boundary of such Owner's Residential Lot and the curb or property line of any adjacent public space, right-of-way, street or alley (the "**ST Landscape Area**") unless the responsibility for maintaining the ST Landscape Area is undertaken by the Association by written resolution executed by a Majority of the Board or the ST Landscape Area is designated as a Service Area.
- E-4. Combustibles. An Owner or Occupant may not store or maintain, anywhere within a Residential Lot explosives or materials capable of spontaneous combustion. Notwithstanding the foregoing, gasoline containers 5 gallons and under and propane tanks for barbecue grills are permitted.
- E-5. Report Malfunctions. An Owner or Occupant will immediately report to the Board his or her discovery of any leak, break, or malfunction in any portion of an Area of Common Responsibility which the Association has a duty to maintain.
- E-6. Cable. An Owner or Occupant who subscribes directly to cable service is solely responsible for maintaining that subscription and the appurtenant equipment. An Owner or Occupant who obtains cable service through the Association is responsible for the proper use, maintenance, and return of cable connections or equipment, if any.

- E-7. Reception Interference. Each Owner or Occupant will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, or electronic reception on Kissing Tree.
- E-8. Compliance with Laws. EACH OWNER OR OCCUPANT SHALL PROMPTLY AND FULLY COMPLY WITH ANY AND ALL APPLICABLE LAWS, RULES, ORDINANCES, STATUTES, REGULATIONS, OR REQUIREMENTS OF ANY GOVERNMENTAL AGENCY OR AUTHORITY WITH RESPECT TO THE OCCUPANCY AND USE OF A RESIDENTIAL LOT.
- E-9. Signs. All signage which is externally visible on any portion of the Residential Lot must be approved by the Kissing Tree Reviewer and is subject to those limitations as set forth in the Design Guidelines.
- E-10. Maintenance of Walls. The Development Area Declaration contains maintenance responsibilities for Walls (as defined in the Development Area Declaration) within the Development. These additional maintenance requirements apply to every Lot or Area of Common Responsibility in the Development on which a Wall is located or which has a Wall on or along one or more of its boundaries:
- a. If the Wall includes a drainage system, the Owner, Occupant, or the Association, as applicable, shall periodically inspect and repair the drainage system to ensure it is not clogged and that there are no leaks. The Owner, Occupant or the Association, as applicable, shall maintain the grade at the top and sides of the Wall to ensure that water is diverted away from the Wall and that drainage system is not impaired.
  - b. The Owner, Occupant or the Association, as applicable, shall periodically inspect the base of the Wall to ensure that the ground on which the Wall stands is not eroding or moving, and to backfill or otherwise repair any erosion promptly.
  - c. The Owner, Occupant or the Association, as applicable, shall monitor increases in weight on the top of the Wall, as well as inspect the vertical face of the Wall for bowing which may occur as a result of pressure on the Wall. The Owner, Occupant or the Association, as applicable, shall promptly remove any damaging weight to the Wall and otherwise repair any damage resulting therefrom.
  - d. The Owner, Occupant or the Association, as applicable, shall monitor trees and other plantings above and around the Wall that may adversely affect moisture levels behind or below the Wall or whose root systems may damage the Wall. Any trees and other plantings that are damaging the Wall shall be pruned or, if necessary, removed promptly and any damage therefore shall be repaired promptly.
  - e. The Owner, Occupant or the Association, as applicable, shall monitor the Wall for cracks and professionally repair any cracks that are 1/4 inch in width or greater. The Owner, Occupant or the Association, as applicable, shall also periodically inspect the Wall for missing or deteriorated joint fillers, joint sealant, and mortar joints, particularly after severe freeze and thaw cycles, or after severe wet and dry cycles. The Owner, Occupant or the Association, as applicable, shall periodically inspect the Wall for signs of distress, such as breakage in the mortar, severe cracking, tilting or bulging, or dislodged rocks and stones used to construct the Wall, and repair any such damage promptly.

- f. The Owner, Occupant or the Association, as applicable, shall protect the Wall from excavation, trenching, and burrowing animals, and have any such animals promptly relocated.
- g. Any Owner desiring to have stain on any exterior Wall located on an Owner's Lot shall either: (i) contact the Association's office to arrange to have the Wall stained by the Association with costs to be payable to the Owner as an Individual Assessment; or (ii) perform the staining himself or herself utilizing the required stain and stain color as set forth below; and (iii) in either case, the only stain and stain color permitted on an Owner's exterior Wall is as set forth in the Design Guidelines.
- h. Any part of the Wall that is visible from any street shall be routinely re-stained (no less than every four years) in the approved stain color, and the Kissing Tree Reviewer and/or the Association shall have the right to re-stain such visible portion of the fence which has not been re-stained or has not been re-stained in the approved stain color and charge the expense to the Owner pursuant to the terms and provisions of the Master Covenant and other provisions of the Documents. The Association expressly disclaims any liability for damage to property on which the Association exercises this remedy as further set forth in the Master Covenant.

**F. GENERAL USE AND**  
**MAINTENANCE OF AREAS OF COMMON RESPONSIBILITY**

- F-1. Grounds. The landscaped areas, lawns, beds, plant materials, parks, neighborhood parks, trails, greenbelts and open spaces in an Area of Common Responsibility, including but not limited to neighborhood parks and amenity centers, are collectively referred to as the "**Grounds.**" The Grounds are subject to the following Rules, which may change at any time and from time to time as determined by the Board.
- a. Owners and Occupants may not abuse or misuse any portion of the Grounds – stepping or trampling on or in landscaped areas, beds or plant materials is strictly prohibited. Any conduct deemed by the Association to be dangerous or unwarranted is grounds for a word of caution, a reprimand, or suspension from the Grounds. Use of the Grounds may be denied if Association fees or other due amounts remain unpaid. Use of the Grounds is AT YOUR OWN RISK.
  - b. Access to any portion of the Grounds, may be limited from time to time due to occupancy limits, weather, the condition of the Grounds or maintenance or other appropriate reason. Any portion of the Grounds is closed when an official "CLOSED" sign is posted. Use or access to areas within the Grounds posted as "RESTRICTED" is not permitted.
  - c. Each Owner or Occupant is responsible for cleaning up all trash and other debris occasioned by his or her use. Trash and debris must be deposited in appropriate trash receptacles. Littering or dumping of any type of debris, trash, waste is prohibited
  - d. There shall be no rough play permitted on or about the Grounds. Rowdiness, boisterous behavior, excessive noise or interference with others using the Grounds is specifically prohibited.

- e. No glass objects or glass containers of any kind are allowed or permitted on or about the Grounds.
  - f. No weapons of any kind are permitted on property owned by the Association. The discharge of firearms, pellet guns, bow and arrows, slingshots and other hazardous items is prohibited.
  - g. Radios, televisions and the like may be listened to only if played at a sound level which is not offensive to others on or about the Grounds, or shall be operated with headphones. Nuisances, such as loud music and inappropriate behavior, are prohibited.
  - h. Children under the age of nineteen (19) must have adult supervision at all times while on the Grounds.
  - i. At the discretion of the Association, certain periods of the normal Grounds hours may be set aside for specialized activities (*e.g.*, community fun run or similar activity). To the extent these activities are sponsored by the Association, these activities will be open to all interested Owners or Occupants. Scheduled times for these activities will be posted.
  - j. Horses and motorized vehicles are prohibited.
  - k. No construction of any kind is permitted in the Grounds.
  - l. Feeding wildlife is strictly prohibited.
  - m. No hunting, camping, or loitering of any kind whatsoever is allowed.
  - n. No cooking or fire of any nature is allowed, except in designated picnic areas.
  - o. Disturbing the bedding of landscaped areas is prohibited - be cautious of plants and wildlife in their native habitat. Notwithstanding the foregoing, walking through certain landscaped areas that have paths or designated areas for pedestrian use is permitted.
  - p. Report any damage to or concerns about the Grounds to the Association.
  - q. Damages to the Grounds may result in the assessment of repair and replacement costs, or other penalties.
  - r. No sign, banner, decoration, or displays of any kind will be allowed within the Grounds other than signs related to their use as approved by the Board of Directors of the Association.
  - s. Use of Grounds may be denied if Association fees or other due amounts remain unpaid.
- F-1. Private Functions. Owners or Occupants interested in using portions of an Area of Common Responsibility for social, personal, charitable or political parties or events should contact the Association's office for requirements and reservation forms and shall be subject to the Association's Reservation and Rental Policies and Procedures as set forth in the Association's Policy Manual.

- F-2. Abandoned Items. No item or object of any type may be stored, placed, or maintained anywhere on an Area of Common Responsibility, except by the Board or with the Board's prior written consent. Items of personal property found on an Area of Common Responsibility are deemed abandoned and may be disposed of by the Board.

#### G. COMMUNITY ETIQUETTE

- G-1. Courtesy. Each Owner and Occupant will endeavor to use his or her Residential Lot and the Areas of Common Responsibility in a manner calculated to respect the rights and privileges of other Owners or Occupants.
- G-2. Noise and Odors. Each Owner or Occupant must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb Owners or Occupants of other Residential Lots. Loud vocalizations and boisterous conduct on the Areas of Common Responsibility is expressly prohibited.
- G-3. Community Activities. In planning community activities on an Area of Common Responsibility or at an Owner's or Occupant's Residential Lot, an Owner or Occupant should be aware of the potential consequences of the parking resources and the sensibilities of other Owners and Occupants. For any such activity that an Owner or Occupant expects to produce a higher-than-customary level or duration of noise or other disturbance, the Owner or Occupant will make a diligent effort to give Owners/Occupants of adjoining Residential Lots timely prior notice of the event, as a courtesy. If an event on a Residential Lot is expected to attract twenty (20) or more guests, the Owner or Occupant shall give the Association timely prior written notice of the event.
- G-4. Drones. For purposes of these Rules, a "drone" is defined as any unmanned aerial vehicle. Other than commercial deliveries by drone, the delivery areas for which (if any at all) may be designated from time to time by the Board, the use of any drones, by an Owner or Occupant in Kissing Tree is strictly prohibited.

#### H. VEHICLE RESTRICTIONS

- H-1. Vehicles. A vehicle must be operable, and must display a current license tag and inspection sticker. For purposes of these Rules, vehicles include automobiles, motorcycles, motorized bikes, passenger trucks, small vans, and similar passenger vehicles. The following are not permitted within Kissing Tree without the Board's consent: trailers, boats, buses, large commercial trucks, industrial vehicles. Recreational vehicles are not permitted within Kissing Tree for a period of more than twenty-four (24) consecutive hours without the Board's consent. Motorcycles, motorbikes, or other motorized vehicles may not be operated except to provide transportation to and from a Residential Lot.
- H-2. Repairs. Repairs, restoration, or maintenance (including oil changes) of vehicles is prohibited in driveways except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility. Repairs, restoration, or maintenance (including oil changes) of vehicles is permitted to occur inside the Owner or Occupant's garage.
- H-3. Obstructions. No vehicle may obstruct the flow of traffic, constitute a nuisance, or otherwise create a safety hazard.

- H-4. Violations. A vehicle in violation of these Rules may be stickered, wheel-locked, towed, or otherwise removed from the Residential Lot by the Board, at the expense of the vehicle's owner. The Association expressly disclaims any liability for damage to vehicles on which the Association exercises these remedies for Rules violations.

I. TRASH DISPOSAL

- I-1. General Duty. Owners or Occupants will endeavor to keep their Residential Lot clean and will dispose of all refuse using the receptacles designated specifically by the Association or by the City for that purpose. Owners and Occupants may NOT litter in the Areas of Common Responsibility.
- I-2. Hazards. Owners and Occupants may NOT store trash within his or her Residential Lot in a manner that may permit the spread of fire, odors, seepage, or encouragement of vermin. Before discarding coals, ashes, logs, or other materials used in barbecue grills or fireplaces, an Owner or Occupant will ensure that the debris is thoroughly cold.
- I-3. Excess Trash. Owners and Occupants must arrange privately for removal of discarded furnishings or any unusually large volume of debris.

J. PETS

- J-1. Disturbance. Pets must be kept in a manner that does not disturb another Owner's or Occupant's rest or peaceful enjoyment of his or her Residential Lot or the Areas of Common Responsibility. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for unreasonable or repeated periods of time.
- J-2. Damage. Each Owner or Occupant is responsible for any property damage, injury, or disturbance his or her pet may cause or inflict. A Owner or Occupant who keeps a pet on his or her Residential Lot is deemed to indemnify and agrees to hold harmless the Board, the Association, and other Owners and Occupants, from any loss, claim, or liability of any kind or character whatever resulting from any action of his or her pet or arising by reason of keeping or maintaining the pet on his or her Residential Lot.
- J-3. Pet Waste Removal. Each Owner or Occupant is responsible for the removal of his or her pet's wastes from the Areas of Common Responsibility. The Board may levy a fine against a Residential Lot and its Owner each time feces are discovered on the Areas of Common Responsibility and attributed to an animal in the custody of that Residential Lot's Owner or Occupant.
- J-4. Removal. Owners or Occupants who believe that another Owner or Occupant or his or her pet is in violation of these rules should notify the Association directly. If an Owner or Occupant or his or her pet violates these Rules, or if a pet creates a noise, odor, or other disturbance or nuisance, the Owner, Occupant or other person having control of the animal may be given a written notice by the Board, in the Board's sole discretion, to correct the problem. If the problem is not corrected within the time specified in the notice (not less than ten (10) days), the Owner or Occupant, upon written notice from the Board, may be required to remove the animal. Each Owner or Occupant agrees to permanently remove his or her violating animal from Kissing Tree within ten (10) days after receipt of a removal notice from the Board.



**K. MISCELLANEOUS**

- K-1. Parties. In accordance with the terms and provisions of the Documents, any Owner at such Owner's own expense, the Declarant and the Association will have the right to enforce the provisions of these Rules.
- K-2. Interpretation. In the event of any dispute regarding the effect or application of these Rules, the interpretation of the Board will be final. Neither the Board nor the Association will be responsible for mediating a dispute among Owners or Occupants.
- K-3. Enforcement and Fines. The Association may enforce these Rules and impose fines for any violation pursuant to the provisions of the Association's Fine and Enforcement Policy, as the same may be set forth in the Policy Manual and amended from time to time.
- K-4. Legal Action. The Association may initiate, defend or intervene in any action or lawsuit brought to enforce any provision of these Rules, and may seek recovery for damages for and injunctive relief against the breach of any provision hereof, and may recover attorney's fees and costs associated with such action or lawsuit.
- K-5. Mailing Address. An Owner who receives mail at any address other than the address of his or her Residential Lot must maintain with the Association his or her current mailing address. Notifications of change of name or change of address should be clearly marked as such. All notices required to be sent to Owners by the Documents may be sent to an Owner's most recent address as shown on the records of the Association. If an Owner fails to provide a forwarding address, the address of that Owner's Residential Lot is deemed effective for purposes of delivery. Any Owner desirous of utilizing email for the purposes of receiving or sending formal notices and correspondence with the Association shall first register such Owner's email address with and shall thereafter be subject to the procedures set forth in the Email Registration Policy contained in the Policy Manual.
- K-6. Revision. These Rules are subject to being revised, replaced, or supplemented, and Owners and Occupants are urged to contact the Association to verify the rules currently in effect on any matter of interest which may be regulated by these Rules or by such other rules or policies adopted by the Association from time to time. These Rules will remain effective until ten (10) days after an Owner of each Residential Lot has been given a notice of the amendment or revocation of these Rules.
- K-7. Other Rights. These Rules are in addition to and in no way whatsoever detract from the rights of the Association under the other Documents and Applicable Law.

**ATTACHMENT 10**

**KISSING TREE MASTER COMMUNITY, INC.**  
**CLUB FACILITIES RULES AND REGULATIONS**

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**PREAMBLE**

These Club Facilities Rules and Regulations are intended to be a guide to the use of the Club Facilities. They are not intended to deal with all conceivable issues that may be presented for governance. These Rules and Regulations are established by Declarant to protect the Club Facilities and to promote the health, safety, welfare and enjoyment of the Owners, Occupants, and all other persons using the Club Facilities. References to the "Club" herein shall refer to Declarant, the Board, or the Club Manager, as applicable. To uphold these standards, Owners, Occupants, and all other persons using the Club Facilities are expected to act in a manner consistent with good taste. The Club may amend these Rules and Regulations from time to time without notice as it determines appropriate in its sole discretion. Capitalized terms used but not defined herein shall have the meanings set forth in that certain Kissing Tree Master Covenant.

**GENERAL CLUB RULES**

1. Owners, Occupants, and all other persons using the Club Facilities shall abide by all rules and regulations of the Club as they may be amended from time to time, whether such rules and regulations are set forth in these Rules and Regulations or are otherwise promulgated by the Club, whether written or oral.
2. The Club Facilities shall be open on the days and during the hours as may be established by the Club. Areas of the Club may also be periodically closed for maintenance and repairs. The Club shall have the right to close the Club Facilities from time to time at its discretion.
3. Alcoholic beverages will not be served or sold, nor permitted to be consumed, at the Club in any manner prohibited by state or local law. The Club reserves the right, in its sole discretion, to refuse service to any person that appears to be intoxicated. The Club policy is not to sell alcoholic beverages of any kind to any individuals, except to individuals age twenty-one (21) years old and over. Individuals twenty-one (21) years of age and over may only be permitted to purchase alcoholic beverages for others who are each twenty-one (21) years of age and over. The Club shall refuse to serve alcoholic beverages to any individual who does not provide proof of age upon request.
4. The Club reserves the right, at its discretion, to implement policy regarding the ability for bottled wine to be brought on property for consumption, so long as this policy is compliant with all Applicable Law.
5. All food and beverages consumed on the Club Facilities must be furnished by the Club unless otherwise permitted. If outside food and beverage is discovered, the Club has the right to immediately seize such items. Exceptions may be made on a case-by-case basis (e.g., medically-required food or infant formula).
6. Employees are permitted to deliver food or alcoholic beverages to locations away from the immediate area of the Club Facilities only with the permission of the Club.
7. Commercial advertisements and promotional materials of any kind shall not be posted or circulated on Club Facilities, nor shall solicitations of any kind be made on the Club Facilities without the prior approval of the Club. Other than as permitted in writing by the Club, no petition shall be originated, solicited, circulated or posted on Club Facilities.

8. Performance by entertainers will be permitted on the Club Facilities only with the permission of the Club.

9. Dining room activities for groups will be permitted only with the permission of the Club.

10. No person shall use the roster or list of members of the Club for solicitation or commercial purposes or distribute the roster to anyone other than an Owner or Occupant.

11. It is contrary to the Club's policy to have its facilities used for functions or fundraising efforts for the benefit of a political cause, except as specifically permitted by the Club. The Club Facilities shall not be used in connection with organized religious services or other activities except as may be approved by the Club.

12. Dogs or other pets (with the exception of those assisting persons with disabilities) are not permitted on the Club Facilities, except with the permission of the Club. Permitted dogs must be on a leash. Owners and Occupants are responsible for damage caused by an animal owned by such Owner or Occupant or under such Owner's or Occupant's control.

13. Self-parking is permitted in areas identified as such. No parking will be allowed on grassed areas. "No Parking" signs must be observed. Vehicles parked in violation of "No Parking" signs may be towed at the vehicle owner's expense.

14. Smoking is not permitted indoors in any of the Club Facilities. Smoking is permitted only in designated areas. Additional restrictions may apply in areas where food is served.

15. Please use proper mobile phone and communications device etiquette so as not to interfere with another person's use and enjoyment of the Club Facilities. All mobile phones should be kept in silent mode while using Club Facilities. The use of mobile telephones and other communication devices may be prohibited in certain areas. In dining areas, guests are asked to excuse themselves from the room when having phone conversations. In the event that emergency situations may necessitate mobile phone availability, please exercise proper mobile phone etiquette so as not to interfere with another person's use and enjoyment of the Club Facilities.

16. No fireworks are permitted anywhere on the Club Facilities or adjacent areas unless part of a fireworks exhibit organized and conducted or otherwise approved by the Club.

17. Firearms and all other weapons of any kind are not permitted on the Club Facilities at any time.

18. No person should request special personal services from employees of the Club who are on duty or the personal use of the Club's furnishings or equipment which are not ordinarily available for use by Owners, Occupants or guests.

19. All complaints, criticisms or suggestions of any kind relating to any of the operations of the Club or its employees must be in writing, signed and addressed to the Club Manager.

20. No person may abuse any of the Club's employees, verbally or otherwise. All service employees of the Club are under the supervision of the Club Manager, and no person shall reprimand

or discipline any employee, nor shall a person request an employee to leave the Club Facilities for any reason. Any employee not rendering courteous and prompt service should be reported to the Club Manager immediately.

21. Violation of any of these rules or conduct in a manner prejudicial to the best interests of the Club will subject the person in violation to disciplinary action by the Club in accordance with these Rules and Regulations.

22. The personnel of the Club will have full authority to enforce these Rules and Regulations, and any infractions will be reported to the Club Manager.

#### **GRATUITIES**

1. A minimum gratuity percentage, as determined from time to time by the Club, may be added to all food and beverage sales. A guest may increase the gratuity percentage by signing the ticket invoice and changing the amount of the gratuity as deemed appropriate.

2. If a guest fails to sign a food and beverage sale, an automatic gratuity of 20% will be added to the total sale.

3. Cash tipping is permitted at the Club.

4. Parties of ten or more in any food and beverage area will be automatically charged a 20% gratuity. A guest may increase the gratuity percentage by signing the ticket invoice and changing the amount of the gratuity as deemed appropriate.

#### **CLUB SERVICES AND ACTIVITIES**

1. The Club may provide a variety of social, cultural and recreational events in which all Owners and Occupants are encouraged to participate.

2. The Club desires to encourage the use of the Club Facilities for private functions on any day or evening, provided it does not interfere with the normal operation of the Club, or with the services regularly available to Owners, Occupants, and guests. Private functions are permitted at the Club only with prior permission of the Club. The individual sponsoring the function shall assume full responsibility for the conduct of guests and the removal of any decor. The sponsor of the function shall be responsible for any damage to the Club Facilities and for the payment of any charges not paid by individuals attending the private function.

#### **DISCIPLINE**

1. Owners, Occupants, and guests of the Club are responsible for their own conduct and for the conduct of their guests. Any person whose conduct or whose family's or guest's conduct is deemed by the Club to be likely to endanger the welfare, safety, harmony or good reputation of the Club or its guests, or is otherwise improper, may be reprimanded, fined, suspended or expelled from the Club and have all privileges associated with the Club suspended or terminated. The Club shall be the sole judge of what constitutes improper conduct, but improper conduct will include, without limitation: (i) allowing any Association security ID to be used by another person, (ii) failing to pay any amount owed to the Club in a proper and timely manner, (iii) failing to abide by the rules and

regulations as set forth herein and as established by the Club from time to time, (iv) abusing Club personnel or employees, or (v) acting in a manner incompatible with the standard of conduct of the Club or which would likely injure the reputation of the Club.

2. Any person who himself/herself is accused of improper conduct, or whose guests are accused of improper conduct, shall be notified of the Club's proposed disciplinary action and shall be given an opportunity to be heard by the Club to show cause why he or she should not be disciplined. Notwithstanding the foregoing, the Club may, without notice and without a hearing, immediately suspend some or all privileges associated with the Club and/or, after notice, terminate or suspend an Owner or Occupant for failure to pay in a proper and timely manner any amounts owed to the Club.

#### **LOSS OR DESTRUCTION OF PROPERTY OR INSTANCES OF PERSONAL INJURY**

1. Each Owner, Occupant, and guest of the Club assumes sole responsibility for his or her property. The Club shall not be responsible for any loss or damage to any personal property used, left or stored on the Club Facilities, whether in lockers or elsewhere. Any such personal property found by the Club which may have been left in or on the Club Facilities for six months or more may be sold by the Club, with or without notice, at a public or private sale, or may be otherwise disposed of, and the proceeds, if any, may be retained by the Club.

2. No person shall remove any property or furniture belonging to the Club without proper written authorization.

3. Every guest of the Club shall be liable for any property damage caused by such guest.

#### **CHILDREN**

1. Unless permitted by the Club, children 12 years of age and younger are not allowed at the Club Facilities, including the golf course, unless accompanied and supervised by an adult.

2. Children under the lawful drinking age are not permitted in any lounge unless accompanied by an adult.

3. Parents are responsible for the conduct and safety of their children when present on, in, or about the Club Facilities.

#### **ATTIRE**

**General Attire** – It is expected that individuals utilizing the Club Facilities will choose to dress in a fashion befitting the surroundings and atmosphere provided in the setting of the Club. To preserve the value of the Club, all patrons are encouraged to wear proper golf attire, and all golf players must wear soft spike golf shoes. Shirts and shoes are required inside the clubhouse. Please make note of the attire that is **not permitted**:

- Cut-off, frayed or torn clothing of any kind
- Cotton t-shirts or any clothing with verbiage or symbols that the Club deems offensive
- Swimwear that is not covered with appropriate attire

- Midriff-bearing or risqué clothing
- Tank tops for gentlemen
- Bare feet (shoes must be worn at all times in Club Facilities, including the golf course)
- Shorts/skirts shorter than the LPGA allows

Attire for special occasions will be designated for each event.

#### GENERAL GOLF RULES AND GOLF ETIQUETTE

1. Proper golf etiquette makes the game of golf more enjoyable for all players. All players are encouraged to use proper golf etiquette out of respect for fellow golfers. The Rules of Golf as adopted by the USGA together with the Rules of Etiquette as adopted by the USGA shall be the rules of the Club, except when in conflict with local rules or with any of the rules herein.

2. "Cutting-in" is not permitted at any time. All players must check in with the Golf Shop. Under no circumstances are players permitted to start play from residences.

3. Tee times are required and subject to availability.

4. Players must check in with the Golf Shop at least 15 minutes prior to tee time. The entire foursome must check in by first and last name with the Starter prior to teeing off.

5. Practice is not allowed on the golf course. Practice facilities should be used for all practice.

6. All play will begin on hole #1 and run consecutively, unless the Golf Shop grants permission to begin elsewhere on the course.

7. The course should be played in **4 hours and 20 minutes**. If a group falls behind this time frame, the staff will assist the group in speeding up the pace of play. The staff is available to assist players in having enjoyable rounds without delaying the pace of play for other players. Please respect the staff as they are trying to take care of all golfers on the course.

8. If a player is repeatedly warned for slow play, the Club may take such action as it deems appropriate, including without limitation, restricting the person's use of the golf course during certain times of the day.

9. All tournament play must be approved in advance by the Golf Shop professionals. Tournament play or activities and events scheduled by the Club will take precedence over regular play.

10. **Course conditions are a vital part to the success of the Club. Please properly fix ball marks on greens using the appropriate repair tools. Replace fairway divots with appropriate seed that is provided with each golf cart. Remember not to take your frustration with the game of golf out on the golf course, equipment or playing partners.**

11. Proper golf attire is required for all players, as previously described.

12. If lightning is in the area, all play shall cease. Although the Golf Shop staff may warn players about lightning in the area, of which it is aware, the Club does not assume any duty to detect lightning and warn them. If Club personnel warn players about potential lightning in the area, players must stop play immediately. Players assume the risk of playing in adverse weather conditions.

13. Jogging, bicycling, fishing or recreational walking is not permitted on the golf course at any time.

14. The use of mobile phones is allowed on the golf course so long as it does not interfere with the peaceful enjoyment of the golf course by others. The Club has the sole right to make this determination. The Club recommends that guests put all mobile devices on a silent setting while on the golf course, and also that they refrain from excessive use while on-site.

15. No beverage coolers are permitted on the course unless provided by the Club.

16. Twosomes may play at the discretion of the Golf Shop. Twosomes should not expect to play through foursomes and should not exert any pressure on the groups ahead. Foursomes shall have the right of way.

17. Twosomes and singles shall be grouped with other players, if available, at the discretion of the Golf Shop.

18. Singles shall have no priority on the golf course and shall be permitted to play only at the discretion of the Golf Shop. Singles should not expect to play through other groups and should not exert any pressure on groups ahead.

19. Groups of five or more players shall only be permitted on the golf course with the permission of the Golf Shop.

#### **GENERAL GOLF CART RULES**

1. Golf carts shall not be used without proper assignment and registration in the Golf Shop.

2. Golf carts may only be used on the golf course when the course is open for play.

3. Golf carts used on the golf course and throughout Kissing Tree may only be operated by persons at least 16 years of age having a valid automobile driver's license.

4. Only 2 persons and 2 sets of golf clubs are permitted per golf cart.

5. Obey all golf cart traffic signs.

6. Always use golf cart paths where provided.

7. Be careful to avoid soft areas on fairways, especially after rains.

8. Never drive a golf cart through a hazard.



9. A maximum of two golf carts per tee time shall be permitted, with fines assessed for non-compliance.

10. Operation of a golf cart is at the risk of the operator and passenger. Persons who are or appear to be legally intoxicated may not operate a golf cart. Guests shall be held fully responsible for any and all costs to repair damage to golf carts and shall reimburse the Club and/or any operator of the Club for any and all damages the Club may sustain by reason of a golf cart's misuse.

11. Each guest accepts and assumes all responsibility for liability connected with operation of the golf cart. Guests also expressly indemnifies and agrees to hold harmless the Club Parties for, from and against any and all damages, whether direct or consequential, arising from or related to such guest's use and operation of a golf cart.

12. "Course closed" or "Hole closed" signs are to be adhered to without exception.

13. Violations of the golf cart rules may result in loss of golf cart privileges and/or playing privileges.

#### **PRIVATE GOLF CART RULES**

The following rules and regulations apply to the operation of privately-owned golf carts within Kissing Tree:

1. Private golf carts may be used only by Owners and Occupants.

2. Owners or Occupants using private golf carts must pay an annual trail fee to use the golf course. Such trail fee may be changed, from time to time and without notice, at the discretion of the Club.

3. Private golf carts must comply with the appearance and other standards set forth herein and as may be determined from time to time by the Club. Private golf carts used anywhere within the Kissing Tree community must be inspected annually and approved by the Club, and an approved Kissing Tree registration decal will be affixed to all approved golf carts. Golf carts without registration decals shall not be permitted on the golf course. The Club may require routine maintenance to be performed on privately-owned golf carts.

4. The Club may establish from time to time safety specifications that all privately-owned golf carts must meet in addition to meeting all safety requirements imposed by law. All privately-owned golf carts must include a rearview mirror, reflective warning devices in both the front and rear of the golf cart, and any other safety equipment required by the Club from time to time.

5. The personalization of private golf carts, such as names or logos, shall not be permitted by the Club. All private golf carts shall be four-wheeled, electrically powered, and must conform with the Club's specifications, including:

- design;
- color;
- model; and
- manufacturer

6. All golf cart owners agree to comply with the rules and regulations established by the Club as they may be amended from time to time.

7. Each year a golf cart owner using a private golf cart shall be required to provide the Club with a certificate of insurance stating that the operation of the golf cart is covered by a liability insurance policy of the resident with policy limits in such amounts determined by the Club from time to time. The golf cart owner shall name as an additional insured on such policy those parties requested by the Club from time to time and shall require that such policy provide that it can only be cancelled upon 30 days prior written notice to the Club.

8. Private golf cart owners will be held fully responsible for any and all damages caused by the misuse of the golf cart by any person, and shall reimburse the Club for any and all damages the Club may sustain by reason of misuse, including without limitation, damage to other golf carts, any persons and any property of the Club.

9. In the event a golf cart operator is involved in an accident resulting in an injury or property damage, the operator must immediately notify the appropriate law enforcement agency.

10. Owners or Occupants using a private golf cart are required to ensure that their private carts are restricted to licensed drivers who will operate the cart in a safe, prudent manner and in accordance with all governmental regulations.

11. Violations of these Rules and Regulations may result in the revocation of private golf cart privileges.

12. Coolers are not permitted on private golf carts, unless provided by the Club.

#### **GENERAL POOL RULES**

1. As there is no lifeguard on duty, use of the pool facilities at any time is at the swimmer's own risk. Any injuries or accidents should be reported to the Club immediately.

2. Please do not enter the pool with a cold, skin or other body infection, open wound, diarrhea or other contagious condition.

3. Any person who is incontinent or who is not toilet trained must wear protective swim attire, such as tight fitting rubber or plastic pants or a swim diaper at all times.

4. Children younger than 19 must be accompanied by an adult.

5. Swimming is permitted only during designated hours.

6. Showers are required before entering the pool.

7. Bottles, glass objects, drinking glasses and sharp objects are not permitted in the pool area. Trash should be placed in the proper receptacles located throughout the pool area.

8. Food is allowed only in designated areas of the pool facilities; absolutely no food or beverage allowed in the pool, on pool ledges, or on column support beams.

9. All swimmers must wear bonafide swimming attire. Cut-offs, dungarees and Bermuda shorts are not considered appropriate swimwear.
10. Radios, televisions and the like are permitted only when played at a sound level which is not offensive to other guests.
11. Pets (with the exception of service animals), bicycles, skateboards, play balls of any type and coolers are not permitted in the pool area.
12. Lifesaving and pool cleaning equipment should be used only for the purposes intended.
13. Running, ball playing, dunking, pushing, and hazardous activities are not permitted in the pool area.
14. Diving is not permitted unless otherwise indicated at the pool. Jumping from any ornamental fixture (i.e. fire pits, rock walls, etc.) is strictly prohibited.
15. Fishing, spear fishing and snorkeling equipment, other than a mask and snorkel, are not to be used in the pool area except as part of an organized course of instruction.
16. Throwing footballs, flying discs, tennis balls or other objects, spitting or spouting water and tag games are not allowed in the pool area.
17. Guests may be allowed to bring food, drinks, or personal coolers into the pool area so long as it is approved in advance by the Club.
18. Guests are prohibited from bringing alcoholic beverages to any Club Facilities.
19. Guests are prohibited from bringing firearms to any Club Facilities.
20. All persons using the pool furniture are required to cover the furniture with a towel.
21. All persons using the pool area are urged to cooperate in keeping the area clean by properly disposing of towels, cans, and all other trash in the proper receptacles.
22. Smoking is prohibited in the pool area.
23. Lounge chairs, umbrellas and other personal property belonging to the Club are to remain out of the water to protect the item from water damage.
24. Persons who leave the pool area for over 30 minutes must relinquish lounges and chairs by removing all towels and personal belongings. Saving chairs for persons absent from the pool area is prohibited.
25. The Club has the authority to expel from the pool area anyone who does not follow rules established by the Club.

## ATTACHMENT 11

### HOUSING FOR OLDER PERSONS ACT POLICY

Terms used but not defined in this policy shall have the meaning subscribed to such terms in that certain Kissing Tree Master Covenant or that certain Kissing Tree Development Area Declaration [Age-Restricted], as applicable, both as recorded in the Official Public Records of Hays County, Texas, and as the same may be amended from time to time.

Restrictions regulating the sales and occupancy of the Lots at Kissing Tree are contained in that certain Development Area Declaration [Age-Restricted], as amended from time to time. The Board hereby adopts this Housing for Older Persons Act Policy to supplement such restrictions and establish policies and procedures to comply with the Fair Housing Act and specifically, the Housing for Older Persons Act of 1995, as it may be amended (“HOPA”). To the extent any provision within this policy is in conflict with HOPA or any Applicable Law, such provision shall be modified to comply with Applicable Law.

**1. Age Verification Procedure.** Pursuant to *Section 2.05* of the Development Area Declaration [Age-Restricted], the Association will comply with the following procedures for maintaining age records within Kissing Tree and ensuring compliance with HOPA:

- i) Upon closing of the sale of each Lot, the Owner shall be required to produce copies of birth certificates, driver’s licenses, passports, immigration cards, military identifications or other official documents of comparable reliability to verify birth date and age.
- ii) Upon the lease of a Lot to a new Occupant, the Occupant shall be required to produce copies of birth certificates, driver’s licenses, passports, immigration cards, military identifications or other official documents of comparable reliability to verify birth date and age.
- iii) On a monthly basis, the Manager will conduct surveys of Owners and Occupants who have resided within Kissing Tree for a period of two (2) years to verify compliance with HOPA and the Documents.
- iv) The Board and/or Manager shall maintain age records of Owners and Occupants with the records of the Association.

**2. Use of Amenities.** The Board may designate specific amenities, Common Areas, or Special Common Areas within the Development for use only by Age Qualified Occupants. Additionally, the Board may specify certain locations and limited time periods for use of such amenities, Common Areas, or Special Common Areas by non-Age Qualified Occupants.

