

AFTER RECORDING RETURN TO:



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KISSING TREE
SAN MARCOS ✦ TEXAS

**COMMUNITY ENHANCEMENT
COVENANT**

EFFECTIVE DATE: OCTOBER 25, 2016

*A Master Planned Community in
Hays County, Texas*

NOTE: NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" TO THE MASTER COVENANT (AS SUCH TERM IS DEFINED HEREIN) IS SUBJECT THE TERMS OF THIS COMMUNITY ENHANCEMENT COVENANT UNLESS A NOTICE OF ANNEXATION DESCRIBING SUCH PORTION OF THE PROPERTY HAS BEEN RECORDED IN THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS IN ACCORDANCE WITH SECTION 11.05 OF THE MASTER COVENANT AS FURTHER DESCRIBED BELOW.

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

Cross reference to Kissing Tree Master Covenant, recorded under Document No. 16036339 in the Official Public Records of Hays County, Texas.

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KISSING TREE

SAN MARCOS ★ TEXAS

COMMUNITY ENHANCEMENT COVENANT

This Kissing Tree Community Enhancement Covenant (the “**Community Enhancement Covenant**”), is made by **CARMA PASO ROBLES, LLC**, a Texas limited liability company (“**Declarant**”), and is as follows:

RECITALS

A. Declarant has caused to be Recorded that certain Kissing Tree Master Covenant, recorded as Document No. 16036339 in the Official Public Records of Hays County, Texas (the “**Master Covenant**”).

B. Certain real property owned by the Declarant and described on Exhibit “A” to the Master Covenant (the “**Property**”) shall be made subject to the terms and conditions of the Master Covenant from time to time pursuant to the Recording of one or more Notices of Annexation under *Section 11.05* of the Master Covenant.

C. Upon the Recordation of a Notice of Annexation in the Official Public Records of Hays County, Texas: (a) the portions of the Property described therein shall be governed by and fully subject to this Community Enhancement Covenant; and (b) the portions of the Property described therein and any additional property made subject to this Community Enhancement Covenant in the future shall constitute the “**Development**” for the purposes set forth herein.

No portion of the Property is subject to the terms and provisions of this Community Enhancement Covenant until a Notice of Annexation (as defined in Section 11.05 of the Master Covenant) is Recorded in the Official Public Records of Hays County, Texas. A Notice of Annexation may only be Recorded by Declarant.

D. Upon Recordation by Declarant, and as further set forth below, this Community Enhancement Covenant creates a vehicle and a process through which all stakeholders in the Development (*i.e.*, Declarant, the Association, Owners, Occupants, etc.) can uphold the Development vision through the establishment of an administrative and funding structure with the mission and authority to enhance overall quality of life and promote individual and collective creativity and interests within the Development, through the levy and collection of a Community Enhancement Fee (as defined below).

| Property versus Community | |
|---------------------------|---|
| "Property" - | Land described in <i>Exhibit "A"</i> to the Master Covenant. This is the land that <u>may be made</u> subject to this Community Enhancement Covenant, from time to time, by the Recording of one or more Notices of Annexation pursuant to <i>Section 11.05</i> of the Master Covenant. |
| "Community" - | This is the portion of the land described in <i>Exhibit "A"</i> to the Master Covenant that <u>has been made</u> subject to this Community Enhancement Covenant through the Recordation of a Notice of Annexation. |

E. Declarant now desires to impose upon the Property the terms and provisions of this Community Enhancement Covenant.

NOW, THEREFORE, it is hereby declared that upon the Recordation of a Notice of Annexation pursuant to *Section 11.05* of the Master Covenant: (1) such portions of the Property described in the Notice of Annexation will be held, sold, conveyed, and occupied subject to the following covenants, conditions, and restrictions which shall run with such Property and shall be binding upon all parties having right, title, or interest in or to such Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit and burden of each owner thereof; and (2) that each contract or deed which may hereafter be executed with regard to such Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

ARTICLE I **DEFINITIONS**

In addition to the terms defined elsewhere herein, the following terms shall have the meanings specified below. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Master Covenant.

"Association" shall mean Kissing Tree Master Community, Inc., a Texas nonprofit corporation, which was created under the Master Covenant by the Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in the Master Covenant.

"Board" shall mean the Board of Directors of the Association.

"Community Enhancement Fee" means a fee equal to the Transfer Price (as further defined herein) multiplied by one half of one percent (0.5%), which is payable to the Association upon the non-excluded Transfer of a Lot or Condominium Unit within the Development for the purpose of organizing, funding and administering such community-building activities, services, programs and capital Improvements and other infrastructure as the Board deems necessary, desirable and appropriate, as further set forth in this Community Enhancement Covenant.

"Community Investment Fund" means the account designated pursuant to this Community Enhancement Covenant to receive the Community Enhancement Fee.

"Condominium Unit" shall have the meaning set forth in the Master Covenant.

"Development" shall have the meaning set forth in the Master Covenant.

"District" shall have the meaning set forth in the Master Covenant.

“Improvements” shall have the meaning set forth in the Master Covenant.

“Lot” shall have the meaning set forth in the Master Covenant.

“Majority” means more than half.

“Transfer” means, for the purposes of the Community Enhancement Fee, any conveyance, assignment, lease, or other grant or conveyance of beneficial ownership of a Lot or Condominium Unit, whether occurring in one transaction or a series of related transactions, including but not limited to: (a) the conveyance of fee simple title to any Lot or Condominium Unit; (b) the transfer of more than fifty percent (50%) of the outstanding shares of the voting stock of a corporation which, directly, or indirectly, owns one or more Lots or Condominium Units; and (c) the transfer of more than fifty percent (50%) of the interests in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns one or more Lots or Condominium Units; but “Transfer” shall not mean or include grants or conveyances expressly excluded under this Community Enhancement Covenant. Certain Transfers shall be excluded from the Community Enhancement Fee, as set forth in *Section 2.04(h)*.

“Transfer Price” means the greater of: (a) the sales price paid by the Transferee for the Lot or Condominium Unit; or (b) the value of the Lot or Condominium Unit, including any Improvements or betterments constructed thereon, as determined by the Hays County Appraisal District in their most recent valuation of such Lot or Condominium Unit for *ad valorem* tax purposes. For purposes of clause (b) of the immediately preceding sentence, “valuation” means the appraised value without giving effect to any applicable tax exemptions.

“Transferee” means all parties to whom any interest passes by a Transfer, and each party included in the term “Transferee” shall have joint and several liability for all obligations of the Transferee under this Community Enhancement Covenant.

“Transferor” means all parties who pass or convey any interest by a Transfer, and each party included in the term “Transferor” shall have joint and several liability for all obligations of the Transferor under this Community Enhancement Covenant.

ARTICLE II

COMMUNITY ENHANCEMENT FEE

2.01 Community Enhancement Fee. The Board, acting on behalf of the Association shall have the authority to levy and collect the Community Enhancement Fee, as further set forth below.

2.02 Community Activities, Services, Programs and Capital Improvements. Through the collection and administration of the Community Enhancement Fee, the Board may organize, fund, and administer such community-building activities, services, programs and capital Improvements and other infrastructure as the Board deems necessary, desirable, and appropriate to serve as a means to: (a) enhance and promote the advancement of the Development; (b) encourage, support and fund programs, activities, services, interests or construction of Improvements or other infrastructure benefiting, affecting or of interest to the Development; (c) fund the provision of electronic access to Development documents and documents pertaining to the Development; and (d) fund charitable, educational, social, cultural, recreational, environmental, political and/or physical activities, capital

Improvements or other infrastructure, services or programs benefiting, affecting or of interest to the Development and the Property, which may include, but are not limited to, the following:

- (a) other services, activities, and programs which enhance the sense of community within the Development;
- (b) primary and adult formal or informal education programs;
- (c) training and orientation programs;
- (d) learning centers, computer centers, activity centers and/or business centers;
- (e) coordinated activities and recreational and social programs (e.g., book clubs, hikes, cooking classes, scavenger hunts, etc.);
- (f) environmental programs (e.g., community-wide recycling, community gardens);
- (g) activities designed to promote compliance with community regulations through education, communication, and grass roots support;
- (h) promotional and public relations activities on behalf of the Development;
- (i) cultural, artistic, environmental, and wellness programs;
- (j) community services for the benefit of the Development's residents (e.g., caretaker services, childcare, personal shopping services, etc.);
- (k) developing, hosting or maintaining Development internet or intranet sites;
- (l) capital Improvements consisting of charitable, educational, cultural, social, recreational, environmental, political, physical fitness and/or wellness facilities or other infrastructure;
- (m) community-wide audio, video and technology;
- (n) charter clubs and other volunteer organizations and activities; and
- (o) other services, activities, and programs which enhance the sense of community within the Development.

Nothing in this Section shall be construed as a representation by Declarant, the Board or the Association of what, if any, activities, services, programs or Improvements shall be provided or facilitated.

2.03 Contributions to Districts, Tax Exempt Organizations or Reserves. On behalf of the Association, the Board may contribute money, real or personal property, or services to any District or any nonprofit, tax-exempt organization, the operation of which confers some benefit upon the Development, the Association, its members, or residents. The Board may also approve additional funds to be contributed to any reserves established by the Association for the benefit of the Development, the Association, its members or residents. Any funds contributed to such District, a tax-exempt organization

or the Association's reserves may be paid from the Community Investment Fund. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code (the "**Code**"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

2.04 Community Enhancement Fee Obligations. The covenants, conditions and restrictions set forth below are hereby impressed upon the Property.

(a) Obligation to Pay Community Enhancement Fee. Upon the Transfer of any Lot or Condominium Unit within the Development, the Transferee thereof shall be obligated to pay the Community Enhancement Fee to the Association equal to the **Transfer Price multiplied by one half of one percent (0.5%)**, unless the Transfer in question is excluded under this Community Enhancement Covenant. The Community Enhancement Fee is neither imposed as a penalty nor as a tax, but rather is imposed as a means to provide additional funding to fulfill the goals set forth in the Master Covenant and this Community Enhancement Covenant for the betterment of the Development. As such, the Community Enhancement Fee shall be deemed an Assessment imposed by and subject to all rights, obligations and provisions set forth in *Article 6* of the Master Covenant.

(b) Liability for the Community Enhancement Fee. If the Transferee does not pay the Community Enhancement Fee as required by this Section, the Community Enhancement Fee payment shall become the personal obligation of the Transferee under the Transfer in question and there shall be a lien against the applicable Lot or Condominium Unit for the amount of the Community Enhancement Fee and any fees or sums associated with collection of same, and, if unpaid, shall be handled in accordance with *Article 6* of the Master Covenant.

(c) Deposit of Community Enhancement Fee Into Community Investment Fund. On behalf of the Association, the Board will establish a Community Investment Fund with a reputable financial institution for purposes of depositing, receiving and distributing the proceeds of the Community Enhancement Fee. The Community Enhancement Fee shall be collected from the Transferee at Closing and held in escrow in the Community Enhancement Fund. No other funds will be deposited or held in the Community Investment Fund other than the proceeds of the Community Enhancement Fee and any interest earned thereon. Within sixty (60) days after the end of each calendar year, the Board shall cause to be prepared a Community Enhancement Fee receipts and disbursements schedule which may be in form which may be reviewed, on an annual basis, by a Certified Public Accountant.

(d) Due on Closing and Method for Payment. Payment of the Community Enhancement Fee shall be made upon the closing of the Transfer in cash or cash equivalent funds to the Association, at the address and account number specified by the Board from time to time. With such payment, the Transferee shall provide a written report in a form approved by the Board (the "**Community Enhancement Fee Report**") which: (a) describes the Transfer and the Lot or Condominium Unit; (b) sets forth the Transfer Price for the Transfer and the names and addresses of Transferor and Transferee; and (c) provides such other information as the Board may reasonably require. The Board, at its own expense, shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of

any owner or Transferee which are reasonably related to the payment of the Community Enhancement Fee.

(e) Disbursements. Upon Majority vote, the Board may, from time to time, make disbursements from the Community Investment Fund to achieve the objectives set forth in this Community Enhancement Covenant or to pay costs to administer this Community Enhancement Covenant and the Community Investment Fund.

(f) Community Enhancement Fee Lien and Foreclosure. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay the Community Enhancement Fee to the Association. Each Community Enhancement Fee is a charge on the Lot or Condominium Unit and is secured by a continuing lien on the Lot or Condominium Unit in the same manner as an Assessment lien arising under *Article 6* of the Master Covenant. Each Owner, and each prospective Owner, is placed on notice that the Owner's title may be subject to the continuing lien for the Community Enhancement Fee attributable to a period prior to the date that the Owner purchased a Lot or Condominium Unit. An express lien on each Lot or Condominium Unit is hereby granted and conveyed by Declarant to the Association to secure the payment of the Community Enhancement Fee which shall be enforced as an Assessment lien in accordance with the terms and provisions set forth in *Article 6* of the Master Covenant. The Community Enhancement Fee lien is superior to all other liens and encumbrances on a Lot or Condominium Unit, except only for: (a) tax and governmental assessment liens; (b) all sums secured by a first mortgage Recorded lien or Recorded first deed of trust lien, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in questions; and (c) home equity loans or home equity lines of credit which are secured by a Recorded second mortgage lien or Recorded second deed of trust lien; provided that, in the case of subparagraphs (b) and (c) above, such Mortgage was Recorded, before the Community Enhancement Fee lien. The Community Enhancement Fee lien is superior to a lien arising from the construction of improvements to the Lot or Condominium Unit regardless of when recorded or perfected. It is also superior to any recorded assignment of the right to insurance proceeds on the Lot unless the assignment is part of a superior deed of trust lien. Foreclosure of a superior lien extinguishes the Association's claim against the Lot or Condominium Unit for an unpaid Community Enhancement Fee that became due before the sale, but does not extinguish the Association's claim against the former Owner personally for the payment of such Community Enhancement Fee. The Association's lien for the Community Enhancement Fee is created by recordation of this Community Enhancement Covenant, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association may record a notice of the lien in the Official Public Records for Hays County, Texas. If the debt is cured after a notice has been recorded, the Association will record a release of the notice of lien at the expense of the curing Owner and may require reimbursement of its costs of preparing and recording the notice of lien before granting the release. By accepting an interest in or title to a Lot or Condominium Unit, each Owner grants to the Association a power of sale in connection with the Community Enhancement Fee lien, which may be exercised in the same manner as all other Assessment liens as further set forth in *Article 6* of the Master Covenant.

(g) Reporting on Exclusions from Community Enhancement Fee. In the event that a Transferee is involved in a Transfer that it believes to be excluded from the requirement to pay

the Community Enhancement Fee under this Section, the Transferee shall provide written notice (the “**Notice of Claim of Exclusion**”) to the Board within five (5) days prior to the Transfer in question, explaining the Transfer and the reason the Transferee believes such Transfer should be excluded. If, after review of the Notice of Claim of Exclusion, the Board does not concur that the Transfer in question should be excluded from the Community Enhancement Fee, the Board will notify the Transferee or the Transferee’s title company of its obligation to pay the Community Enhancement Fee to the Association and the Transferee shall pay the applicable Community Enhancement Fee. Prior to its decision on any Notice of Claim of Exclusion, the Board may request additional information or clarification from the Transferee submitting such Notice of Claim of Exclusion, and the Transferee shall promptly provide the Board with such additional information. Copies of all notices and correspondence between the Transferee and the Board under this Section shall be provided to the Transferor of the subject Transfer by the party initiating such notice or correspondence. Notwithstanding the foregoing, Transferees involved in the excluded Transfers as set forth in subparagraphs (h)(iii), (h)(iv), (h)(v), and (h)(vi) below shall not be required to submit a Notice of Claim of Exclusion, and such Transfers shall automatically be excluded from the Community Enhancement Fee.

(h) Exclusions from the Community Enhancement Fee. The Community Enhancement Fee shall not apply to any of the Transfers set forth in subparagraphs (i) – (xiv) below, except to the extent that any of such Transfers are used for the purpose of avoiding the Community Enhancement Fee.

(i) Transfers to Certain Governmental Agencies. Any Transfer to the United States, or any agency or instrumentality thereof, the State of Texas, or any county, city, municipality, district or other political subdivision of such state.

(ii) Transfer to the Association. Any Transfer to the Association created pursuant to the Master Covenant, or its respective successors or assignees.

(iii) Transfer to Declarant. Any Transfer to Declarant, any affiliate of Declarant or their successors or assignees.

(iv) Transfer from Declarant. Unless waived in writing by Declarant, any Transfer from or by Declarant or its successor, assignee or affiliate.

(v) Exempt Family or Related Transfers. Any Transfer, whether outright or in trust that is for the benefit of the Transferor or his or her relatives, but only if there is no more than nominal consideration for the Transfer. For the purposes of this exclusion, the relatives of a Transferor shall include all lineal descendants of any grandparent of the Transferor, and the spouses of the descendants. Any person’s stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion.

(vi) Exemption for Transfers on Death. Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution.

(vii) Exempt Technical Transfers. Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements,

rights-of-way or licenses.

(viii) Exempt Court Ordered Transfers. Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a divorce or condemnation proceeding.

(ix) Exempt Transfers On Conveyance To Satisfy Certain Debts. Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including Transfers in connection with foreclosure of a deed of trust or mortgage or Transfers in connection with a deed given in lieu of foreclosure.

(x) Holding Company Exemption. Any Transfer made by a corporation or other entity, for consideration (a) to any other corporation or entity which owns one-hundred percent (100%) of its equity securities (a "**Holding Company**"), or (b) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, one-hundred percent (100%) by such Holding Company.

(xi) Subsidiary Conveyance Exemption. Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where consideration is paid for, or in connection with, such Transfer.

(xii) Exemption for Certain Conveyances of Convenience. The consecutive Transfer of a Lot or Condominium Unit wherein the interim owner acquires such Lot or Condominium Unit for the sole purpose of immediately re-conveying such Lot or Condominium Unit to the ultimate owner and such interim owner receives no right to use or enjoyment of such Lot or Condominium Unit, provided the Board specifically approves such exemption in each particular case.

ARTICLE III
MISCELLANEOUS

3.01 Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Community Enhancement Covenant shall entitle Declarant or the owner of any portion of the Property to cancel, rescind or otherwise terminate this Community Enhancement Covenant.

3.02 Amendment. This Community Enhancement Covenant may be amended: (a) unilaterally by the Declarant during the Development Period; or (b) by a Majority vote by the Board, and, for a period of thirty (30) years following the date of initial Recording of this Community Enhancement Covenant, the written consent of Declarant, or its express successors or assignees, unless Declarant's right to consent is terminated in writing.

3.03 Enforcement. The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, and covenants imposed by the provisions of this Community Enhancement Covenant.

3.04 Inurement. This Community Enhancement Covenant and the restrictions created hereby are binding upon the Owners of all or any portion of the Property.

3.05 Severability; Governing Law. The provisions of this Community Enhancement Covenant shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision. This Community Enhancement Covenant and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Community Enhancement Covenant is performable in Hays County, Texas.

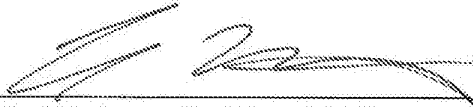
3.06 Notices. Any notice to any owner of the Property shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as FedEx) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the intended recipient's last known mailing address. All notices under this Community Enhancement Covenant shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on the date this instrument is Recorded.

DECLARANT:

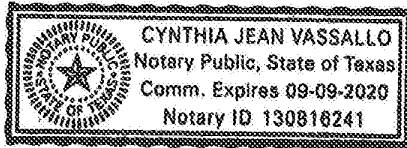
CARMA PASO ROBLES, LLC,
a Texas limited liability company

By: 
Chad Matheson, 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

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KISSING TREE
COMMUNITY ENHANCEMENT COVENANT

