



**Declaration of Covenants, Conditions and  
Restrictions for  
The Portside**

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## EXHIBITS

A Initial Property

B Expansion Property

C Initial Rules

D By-Laws of The Portside Community Association, Inc.

E Initial Design Guidelines



## Declaration of Covenants, Conditions and Restrictions for

# The Portside

The Portside is a planned community located in Nueces County, Texas. This Declaration of Covenants, Conditions and Restrictions ("**Declaration**") constitutes the instrument commonly known as a declaration establishing The Portside as a planned community. This Declaration creates a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of various residential properties and common areas within The Portside.

An integral part of the plan for operation and administration of The Portside is The Portside Community Association, Inc., which has been incorporated pursuant to the Texas Nonprofit Corporation Law to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document does not, and is not intended to, create a condominium under Texas law.

### DECLARATION

Mc J's & Associates, LLC, a Texas Limited Liability Company, its successors and assigns (the "**Declarant**"), by executing and recording this Declaration, declares that the property described in Exhibit "A", and any additional property made subject to this Declaration by supplement or amendment, shall constitute the planned community of The Portside ("**The Portside**"). This Declaration shall encumber the title to such property, shall govern the development and use of such property, and shall be binding upon the Declarant and the future owners of any portion of such property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of such property. This Declaration shall also be binding upon The Portside Community Association, Inc., its successors and assigns (the "**Association**").



# Chapter 1

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## Governing Documents

### 1.1. Scope and Applicability.

The Portside has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Portside, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Portside. Such documents, referred to in this Declaration as the "**Governing Documents**," include this Declaration and the other documents they may be amended. All owners and occupants of property in the Community, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

### 1.1. Governing Documents

- **Portside Declaration:** which creates obligations that are binding upon the Association and all present and future owners of property in The Portside.
- **Certificate of Formation:** (filed with Secretary of State) the Certificate of Formation of The Portside Community Association, Inc. as they may be amended, which establish the Association as a nonprofit corporation under Texas law.
- **By-Laws:** the By-Laws of The Portside Community Association, Inc., adopted by its board of directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
- **Design Guidelines:** the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to property within the Community, including structures, landscaping, and other items
- **Rules:** the rules of the Association adopted pursuant to Chapter 7, which regulate use of property, activities and conduct within The Portside.
- **Board Resolutions:** the resolutions which the Association's board of directors adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property which the Association owns or controls

### 1.2. Additional Covenants and Restrictions.

The owner of any property within the Portside may impose covenants on such property in addition to those set forth in the Governing Documents, with such approval as may be required pursuant to Chapter 17. If the provisions of any such additional covenants are more restrictive than the provisions of this Declaration, the more restrictive provisions shall control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

### 1.3. Conflicts and Ambiguities.

If there are conflicts between any of the Governing Documents and Texas law, Texas law shall control. If there are conflicts between or among any of the Governing Documents, then the Declaration, the Certificate of Formation, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Portside (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

The Association's board of directors ("**Board**") may, by resolution, resolve any ambiguities in the Governing Documents, and the Board's reasonable interpretation of an ambiguous provision shall be determinative.

### 1.4. Definitions.

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found immediately following the Table of Contents for this Declaration. All other terms used in the Governing Documents have their usual, commonly accepted definitions.

### 1.5. Interpretation of Certain References.

**Consent or Approval.** All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the person or entity whose consent or approval is required.

**Discretion and Determination.** All references in the Governing Documents to "**discretion**" or to the right to "determine" any matter shall mean the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

**Person.** References in the Governing Documents to a "**Person**" or "**Persons**" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

**Recording.** All references in the Governing Documents to a "**recorded**" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or recorded, or the filing or recording of a legal instrument, in the Office of the County Clerk of Nueces County, Texas, or such other place designated as the official location for filing documents affecting title to real estate in Nueces County in order to make them a matter of public record.

## Chapter 2

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### Administration

#### 2.1. The Declarant.

The Declarant has established the vision for the Portside and, through the Governing Documents, has set forth the founding principles that will guide the Portside during the initial period of development and sale and thereafter. The Declarant's proposed plan for development of the Portside is described in the plan for The Portside approved by the City of Corpus Christi, Texas, as it may be amended, which encompasses all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B" of this Declaration (the "**Development Plan**"). However, the Declarant is not obligated to submit property shown on the Development Plan to this Declaration. In addition, the Declarant may submit property to this Declaration that is not shown on the Development Plan.

The Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Portside. The Declarant may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Declarant or any "Declarant Affiliate" owns real property in the Portside primarily for development or sale or has an unexpired option to expand the Portside pursuant to Chapter 16. A "**Declarant Affiliate**" is any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, joint venturer, or a shareholder of the Declarant.

The Declarant has reserved other rights that may be exercised during the "**Declarant Control Period**," which is the period of time that the Declarant is entitled to appoint a majority of the members of the Association's Board. It begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) when 75% of the total number of Units (as defined in Chapter 3) permitted by applicable zoning for the property specifically described on Exhibits "A" and "B" to the Declaration have been conveyed to Owners other than the Declarant, Declarant Affiliates, or builders holding title for purposes of construction and resale are improved with a dwelling that is substantially complete and a certificate of occupancy has been issued by the applicable governmental entity;

(b) December 31, 2030; or

(c) when, in its discretion, the Declarant voluntarily and expressly surrenders such right in a recorded instrument.

The Declarant has certain approval rights for a limited period as provided in the By-Laws after the termination of the Declarant Control Period.

The Declarant may assign its status and rights as the Declarant under the Governing Documents to any Declarant Affiliate or any Person who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

## **2.2. The Association and its Board.**

The Declarant has established the Association as the primary entity responsible for administering The Portside in accordance with the Governing Documents. On most matters, the Association acts through the Board, which is selected as provided in Section 2.1 and the By- Laws. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Texas law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers that the Governing Documents and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

## **2.3. The Owners.**

Each Person that holds record title to a Unit, as defined in Chapter 3, is referred to in the Governing Documents as an "**Owner.**" However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Chapters 5, 6, and 7 of this Declaration. Each Owner also has an opportunity to participate in the administration of the Portside through membership in the Association and through service to the Portside in various committee and leadership roles, as described in Chapters 3 and 4 and in the By- Laws.

## 2.4. Sub Associations

Portions of the Portside may be developed under a condominium form of ownership or may have special requirements that lead to the establishment of a separate homeowners association to administer additional covenants applicable to that particular area ("**Sub Association**"). However, nothing in this Declaration requires the creation of a Sub Association, and the jurisdiction of any Sub Association shall be subordinate to that of the Association.

Sub Associations, if any, are responsible for administering the additional covenants applicable to the property within their jurisdiction and for maintaining, in accordance with the Governing Documents, any property which they own or which their respective covenants designate as being for the common benefit of their members.

## 2.5. Mortgagees.

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Portside. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 15.

# Chapter 3

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## Structure and Organization

### 3.1. Designations of Properties Comprising the Community.

**Units.** The Governing Documents refer to the homes and home sites in The Portside as "**Units**." A Unit is a portion of the Community which is depicted as a separately identified lot or parcel on a recorded subdivision plat and which is zoned or otherwise intended for development, use, and occupancy as an attached or detached residence for a single family. The term "Unit" refers to the land which is part of the Unit, as well as to any structures and other improvements on such land. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land under single ownership and intended for construction of more than one residence is considered a single Unit until a subdivision map or plat is recorded subdividing it into more than one Unit. The subdivision and combination of Units is subject to the provisions of Section 7.1(d). The term does not include Common Areas, as defined below, common property of any Neighborhood Association, or property dedicated to the public.

**Common Area.** Any property and facilities (including boat slips/dock area) that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "**Common Area**." The Common Area also includes any property that the Association holds under a lease and any easements in favor of the Association. The Declarant and others may establish and convey Common Area to the Association as provided in Section 9.1. The Common Areas shall remain undivided and no

owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property.

**Limited Common Area.** Certain portions of the Common Area may be designated as "**Limited Common Area**" and assigned for the exclusive use or primary benefit of less than all Units, or Units in specified portions of Portside. Limited Common Areas might include such things as entry features, private streets, and recreational facilities, among other things, that benefit only a portion of Portside.

The Declarant may designate property as Limited Common Area and assign it to particular Units on Exhibit "A" to this Declaration, or in the Supplement by which the property is submitted to the terms of this Declaration, or in the deed conveying such property to the Association.

**Area of Common Responsibility.** All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "**Area of Common Responsibility**," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Chapter 9.

**Mix-Use Areas.** Some areas of The Portside may be designated by the Declarant as Mix-Use Areas. This Mix-Use Areas may include, but are not limited to: sidewalk restaurant, coffee shop or any other commercial business allowed by the area zoning.

## Chapter 4

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### Association Membership and Voting Rights

#### 4.1. Membership.

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners and the Declarant membership, which consists solely of the Declarant. All persons holding a membership in the Association are referred to in this Declaration as "**Members**."

**(a) Owner Membership.** Every Owner is automatically a Member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may

be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit may use any Common Area recreational facilities available for use by Owners.

**(b) Declarant Membership.** The Declarant holds the sole Declarant membership. The Declarant membership shall terminate upon expiration of the Declarant Control Period, or on such earlier date as the Declarant determines and declares in a recorded instrument.

The Declarant may, by Supplement, create additional classes of membership comprised of the Owners of Units within any portion of the additional property submitted to this Declaration. The Declarant shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

#### **4.2. Voting.**

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit or consent to any action requiring approval of the Owners on behalf of all co-Owners of the Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently. No more than one vote shall be cast for any Unit.

## **Chapter 5**

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### **Architecture, Landscaping and Aesthetic Standards**

#### **5.1. General.**

All site work, landscaping, structures, improvements, and other items placed on a Unit or Common Area in a manner or location visible from outside of existing structures ("**Improvements**") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this Chapter ("**Design Guidelines**") and the approval procedures set forth in this Chapter, except as this Chapter or the Design Guidelines may otherwise specify.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however,

modifications to the interior of screened porches, patios, and other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and build in accordance with the plans and specifications of a licensed architect or professional building designer unless the Declarant or its designee otherwise approves in its sole discretion.

Approval under this Chapter is not a substitute for any approvals or reviews required by the City of Corpus Christi, Padre Island Property Owners Association or any municipality or governmental agency or other entity having jurisdiction over architectural or construction matters.

This Chapter shall not apply to structures existing on any portion of the Portside prior to submitting it to this Declaration, or to the Declarant's or any Declarant Affiliate's design and construction activities, or to the Association's design and construction activities during the Declarant Control Period.

## **5.2. Design Review Authority.**

Until the **Declarant** gives up such right, it will review applications for proposed Improvements and determine whether they should be approved. Once the Declarant gives up such review right, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Declarant or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

**(a) Declarant.** The Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings that are substantially complete and occupied or ready for occupancy. The Declarant may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Declarant and its designee act solely in the Declarant's interest and owe no duty to any other Person.

From time to time, the Declarant may delegate any or all of its rights under this Chapter to other Persons or committees, including any committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Declarant's right to revoke such delegation at any time and reassume its prior control, and (ii) the Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Declarant has any rights under this Chapter, the jurisdiction of others shall be limited to such matters as the Declarant specifically delegates.

**(b) Design Review Committee.** Upon the Declarant's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Declarant's rights under this Chapter, the Board shall appoint a Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or this Chapter, respectively. The DRC shall consist of at least three, but not more than seven,



persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Declarant's rights under this Chapter, the DRC shall notify the Declarant in writing within 3 business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this Chapter. A copy of the application and any additional information the Declarant may require shall accompany the notice. The Declarant shall have 10 business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

Unless and until such time as the Declarant delegates all or a portion of its reserved rights to the DRC or the Declarant's rights under this Chapter terminate, the Association shall have no jurisdiction over architectural matters.

**(c) Reviewer.** For purposes of this Chapter, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer**."

**(d) Fees; Assistance.** The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

### **5.3. Guidelines and Procedures.**

The purpose of the Design Guidelines is to maintain a consistent character and quality of appearance for the Improvements within the Portside and to ensure that Improvements are constructed in an orderly manner. The Design Guidelines may describe what types of building materials and design elements are preferred and others that are discouraged. The Design Guidelines also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been received.

**(a) Design Guidelines.** The initial Design Guidelines are attached as Exhibit "E", but are subject to amendment as provided in this section. The Design Guidelines may contain general provisions applicable to all of The Portside as well as specific provisions that vary based on the type of structure, use, or location within the Portside. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer.

The Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Declarant also delegates the power to amend to the DRC. Upon termination or delegation of the Declarant's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive. Any amendment to the Design Guidelines shall be effective upon recording.

The Reviewer shall make the Design Guidelines, as they may be amended, available to Owners and their contractors upon request.

**(b) Procedures.** Unless the Design Guidelines provide otherwise, no activities within the scope of this Chapter (as described in Section 5.1) may begin on any property within The Portside until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines may require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Chapter 18 or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Declarant's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days (30 plus 10 for exercise of veto) after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond within the time period required above, the applicant may notify the Reviewer of its failure to respond by certified mail. If the Reviewer fails to respond within 10 days of its receipt of the certified mail, approval shall be deemed given. However,

no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

A complete set of Plans and Specifications for the proposed residence shall be submitted to the Reviewer within 6 months and construction of the proposed improvements be completed within 18 months from the date title to the Unit is first conveyed by the Declarant to a third party. Any subsequent conveyance does not restart this construction deadline. If plan submission or construction is not completed within the required period, 1) the approval shall expire and the Owner must reapply for approval before commencing any activities, and 2) Owner shall be assessed a fine payable to Declarant and equal to ten percent (10%) of the sales price paid by Owner to Declarant and the ten percent (10%) fine shall be reassessed on each anniversary date of the violation. The fine shall be secured by a lien against the Unit in the same way that special assessments are secured by the lien created in Chapter 12 herein. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 18 months as provided above unless otherwise specified in the notice of approval or unless the Reviewer, in its sole discretion, grants an extension in writing due to circumstances beyond the control of Owner which prevents Owner's ability to timely perform.

#### **5.4. No Waiver of Future Approvals.**

The people reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **5.5. Variances.**

When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances justify a variance, but no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

#### **5.6. Limitation of Liability.**

This Declaration establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of The Portside; they do not create any duty to any Person. Review and approval of any application pursuant to this Declaration may be based purely on

aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for materials used, for compliance with building codes and other governmental requirements, or for ensuring that structures are fit for their intended purpose, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners. Neither the Reviewer nor any member of the DRC shall have any liability for approving plans that are inconsistent with the Design Guidelines provided that such person acted in good faith in approving such plans.

The Declarant, Declarant Affiliates, the Association, its officers, the Board, any committee, and any member of any of the foregoing, shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Declarant has approved or featured such contractor; (d) view preservation; or (e) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

## **Chapter 6**

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### **Maintenance, Repair, and Replacement**

#### **6.1. Maintenance by Owners.**

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Sub Association pursuant to this Declaration, any Supplement, or by law. In the event such entity fails to maintain a Unit, the Owner of the unit shall be responsible for such maintenance.

Each Owner whose Unit abuts Common Area or the right-of-way of any public street shall also be responsible for maintaining the landscaping (a) between the Unit boundary and the nearest curb of such public street, except where there is a fence easement in favor of the Association pursuant to Section 13.6; and (b) between the Unit boundary and any wall or fence located on adjacent Common Area or right-of-way within 10 feet of the Unit boundary. However, Owners may not install irrigation lines in these areas or remove trees, shrubs, or similar vegetation from these areas without prior approval pursuant to Chapter 5. Owners shall have no responsibility for maintaining neighborhood entry features or landscaping associated with such features.

## **6.2. Maintenance of Sub Association Property**

A Sub Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, , and all applicable covenants.

The Association may assume maintenance responsibility for property in any Sub Association, or upon the Board's determination, pursuant to Chapter 8, that the level and quality of maintenance then being provided is not consistent with the Governing Documents Such maintenance shall be assessable against all Units in the benefited Sub Association as a Sub Association Area Assessment, as provided in Section 12.2(c). The Association need not treat all similarly situated Sub Associations the same.

## **6.3. Responsibility for Repair and Replacement.**

Responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Governing Documents.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Sub Association (if any) or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit pursuant to this Declaration or any applicable Supplement, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Units and the Owners thereof.

Within 90 days after damage to or destruction of a structure on a Unit which the Owner is responsible for insuring, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Sub Association or may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This Section shall apply to a Sub Association with respect to common property within the Neighborhood Association in the same manner as if the Sub Association was an Owner and the common property was a Unit.

## **6.4. Maintenance and Repair of Party Walls and Similar Structures.**

Except as may otherwise be provided by state law, a written agreement between Owners, or other recorded documents applicable to affected Units:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Any Owner's right to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 18.

## Chapter 7

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### Use and Conduct

#### 7.1. Use, Occupancy, and Transfer of Interests in Units.

(a) **Short Term Rental (STR), Residential and Related Uses.** The Portside a development that promotes and encourages the use of the Units for short term rentals which is leasing a Unit for not less than one (1) overnight stay ("Short Term Rentals" "STR"). Units may be used only for residential and related purposes, except as the Declarant may otherwise authorize with respect to construction, marketing and sale activities and as otherwise authorized in this section. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Portside; and

(iv) is consistent with the residential character of that portion of the Portside in which the Unit is located and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Provision of child care on a limited basis for a fee shall not be considered a "business" within the meaning of this subsection so long as the child care provider (i) resides in the home where the child care is provided; (ii) does not employ other persons to assist in the provision of child care; and (iii) does not provide child care to more than two children at a time who do not reside in the home where the child care is provided, or more than four children total, including the children of the child care provider.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners to whom such Owner is related or with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

**(b) Leasing.** For purposes of this Declaration, the terms "**Lease**" and "**Leasing**" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit; including as Short Term Rentals. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with, this subsection, the Association or the Board may adopt Rules governing leasing and subleasing.

All Short Term Rentals are obligated to pay the Occupancy tax, Owners are obligated to report and submit all the occupancy taxes and any other related taxes to any governmental entity.

If the Owners use a third party reservation service like AirBnb, , the Owners are obligated to pay any STR commissions or reservation service fees directly to the third party service provider.

**(c) Transfer of Title; Resale and Compliance Certificates.** Any Owner other than the Declarant desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

No Owner shall transfer title to a Unit unless and until (i) it has requested and obtained a resale certificate signed by a representative of the Association pursuant to Section 207.003(b) of the Texas Property Code ("**Resale Certificate**") indicating, in addition to the other matters described in Section 207.003(b) of the Texas Property Code, that (A) all assessments (or installments thereof) and other charges against the Unit due and payable through the date of the certificate have been paid; and (B) there are no violations of the Governing Documents of which the Board has actual knowledge that have not either been cured or waived in writing by the Association. The Association shall deliver a Resale Certificate, along with a current copy of the Governing Documents within 10 days after the Association's receipt of a written request from an Owner, an Owner's agent, or a title insurance company or its agent acting on behalf of the Owner. If the Resale Certificate indicates that there are known conditions on the Unit which violate the Governing Documents, or that there are amounts due and unpaid to the Association on account of the Unit, the Owner shall cure any such violations and pay any such unpaid amounts prior to transfer of title and, upon doing so, may request an update to the Resale Certificate to reflect such action.

The Association may charge a reasonable fee to assemble, copy, and deliver copies of the Governing Documents and the Resale Certificate and to prepare and deliver any update to a Resale Certificate. In addition, upon acceptance of title to a Unit, the new Owner of the Unit shall pay to the Association an administrative transfer fee to cover the administrative expenses associated with updating the Association's records. Such fee shall be in such amount as the Board, by resolution, may reasonably determine necessary to cover its costs, including, but not limited to, any fees charged by a management company retained by the Association for updating its records.

**(d) Subdivision and Combination of Units.** No Person other than the Declarant shall subdivide or change the boundary lines of any Unit or combine Units without the Declarant's prior written approval during the Development and Sale Period and the Board's prior written approval thereafter. Any subdivision shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). Unless a revised or amended plat reflecting a boundary change has been approved and recorded pursuant to this subsection, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling; therefore, the Owner of such adjacent Units shall be responsible for separate assessments for each such Unit.



**(e) Timesharing.** No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

## **7.2. Rulemaking Authority and Procedures.**

Since it is impossible to foresee all potential situations and problems that may arise within the Portside, the Association has the authority to adopt and modify rules as needed to address these changing circumstances.

The Governing Documents establish a framework of covenants and conditions that govern the Portside. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Portside. Therefore, the Board and the Owners are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

**(a) Declarant Authority.** So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Section 20.2, the Declarant may unilaterally amend Exhibit "C" to add new Rules or to modify or rescind existing Rules.

**(b) Board Authority.** Subject to the notice requirements in subsection (d) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Owners, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

**(c) Owner Authority.** Subject to the notice requirements in subsection (d), the Owners entitled to cast a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

**(d) Notice.** The Board shall send notice to all Owners or publish notice concerning any Rule change proposed under subsections (b) or (c) above at least five business days prior to the meeting of the Board or the Owners at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

**(e) Effective Date.** A Rules change adopted under this Section 7.2 shall be reflected in an amendment to Exhibit "C" executed by the Declarant or the Association, or both, as applicable, and recorded. Any such amendment shall take effect upon recording or 30 days

after the date on which written notice of the Rules change is given to the Owners, whichever is later.

**(f) Administrative and Operating Policies.** The procedures set forth in this section do not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, safety regulations, or the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

**(f) Conflicts.** No action taken under this Section 7.2 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Declaration other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control.

### **7.3. Protection of Owners and Others.**

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C", all Rules shall comply with the following provisions:

**(a) Similar Treatment.** Similarly situated Units shall be treated similarly; however, the Rules may vary by Sub Association.

**(b) Displays.** No Rule shall prohibit an Owner or occupant from displaying religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods so long as not visible from outside the Unit. Owners may also display on the exterior of their residences and on their Units seasonal, religious and holiday signs, symbols, and decorations normally displayed in single-family residential neighborhoods, that are consistent with the Governing Documents, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Permitted decorations may be displayed for such periods as are normal and customary for comparable single-family residential neighborhoods, as determined in the Board's discretion.

Signs of any size or form, banners, posters, placards, billboards, advertisements, bulletins, announcements, symbols, displays, or any other manifestation of a message, slogan, or symbol of any kind shall not be displayed upon or visible from the outside of a Unit or placed or displayed anywhere within the Portside; provided those signs installed during the initial construction of the Portside by Declarant or with the prior approval of the Declarant, those signs required by Texas law, and those signs permitted under Section 17.2 shall be permitted.

No Rule shall regulate the display of political signs except in accordance with Texas law and no Rule shall regulate the content of political signs. However, Rules may prohibit signs containing profanity or derogatory or offensive language, graphics, or markings, as the Board may determine in its sole discretion, and the Association may adopt time, place, and manner restrictions consistent with Texas law with respect to signs, symbols, and displays visible from

outside structures on the Unit, including reasonable limitations on size, number, and duration.

Notwithstanding the preceding, no "for sale" or "for rent" signs may be placed on any Unit within the Portside. The Association shall establish and maintain a central location where all notices of Unit's for sale or for rent may be advertised and displayed.

**(c) Household Composition.** No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

**(d) Activities Within Dwellings.** No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

**(e) Allocation of Burdens and Benefits.**

No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area set forth in this Declaration to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

**(f) Leasing and Transfer of Units.** No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; The Rules shall not provide for minimum lease terms for any Unit so long as any lease term includes at least one (1) overnight stay. The Rules may require that Owners use Board approved lease forms (or include specific lease terms) and may impose a reasonable administrative fee in connection with the Board's review of a lease.

**(g) Abridging Existing Rights.** No Rule shall require that an Owner or occupant dispose of personal property kept in or on the Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

**(h) Reasonable Rights to Develop.** No Rule may unreasonably interfere with the ability of the Declarant or any Declarant Affiliate to develop, market, and sell property in The Portside.

**(i) Interference with Easements.** No Rule may unreasonably interfere with the exercise of any easement.

#### **7.4. Owners' Acknowledgment and Notice to Purchasers.**

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

## **Chapter 8**

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### **Compliance and Enforcement**

#### **8.1. Compliance.**

All Owners and occupants of Units, as well as their tenants, guests, and other visitors, must abide by the Governing Documents. If any of them fail or refuse to comply with the Governing Documents, they may be subject to various penalties, including fines and the loss of the right to use the Common Areas. No such suspension, however, shall prohibit the Owner of any Unit from using the Common Areas to the extent necessary for such Owner to have access to and from his Unit.

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants of or visitors to their Units and for any damage to the Area of Common Responsibility that such occupants or visitors cause.

In addition to and not in limitation of all other rights it may have, the Association, shall have the full right and authority to enforce the architectural control provisions, use restrictions and all other provisions of the Declaration and Bylaws and the rules and regulations promulgated there under by the imposition of reasonable monetary fines, suspension of use and voting privileges, suspension of water, cable or other utility service provided by or through the Association, and the exercise of self-help, including but not limited to the towing or booting of vehicles, boats, golf carts or any other type of vehicles that are in violation of the parking rules and regulations. Any suspension of use and voting privileges shall not affect such Owner's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Owner's Unit in favor of the Association.

## **8.2. Remedies for Non-Compliance.**

The Association, the Declarant, any Declarant Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

**(a) Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation; however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iii) suspend services the Association provides;

(iv) exercise self-help or take action to abate any violation of the Governing Documents or to bring any Unit into compliance with the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(v) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5 and the Design Guidelines from continuing or performing any further activities in The Portside;

(vi) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(vii) record a notice of violation with respect to any Unit on which a violation exists.

To the extent allowed by Texas law, if, after notice and an opportunity for a hearing, the violation continues or recurs within 12 months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

### **(b) Other Sanctions.**

The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or a Sub Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Sub Association's property, respectively, that is in violation of the Governing Documents or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Sub Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

**(c) Additional Powers Relating to Sub Associations.** In addition to the foregoing sanctions, the Association shall have the power to veto any action that a Sub Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Association or its members. The Association also shall have the power to require specific action to be taken by any Sub Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Sub Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Sub Association fails to comply, the Association shall have the right to effect such action on behalf of the Sub Association and levy Sub Association Assessments to cover the costs, as well as an administrative charge and sanctions.

### **8.3. Board Decision to Pursue Enforcement Action.**

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

#### **8.4. Attorneys Fees and Costs.**

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs reasonably incurred in such action.

#### **8.5. Enforcement of Ordinances.**

The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the City of Corpus Christi may enforce ordinances within The Portside.

## **Chapter 9**

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### **Property Management**

#### **9.1. Acceptance and Control of Association Property.**

**Transfers and Conveyances by Declarant.** The Declarant, its designees, or any Declarant Affiliate, and with the Declarant's written consent, may transfer or convey to the Association interests in real or personal property within or for the benefit of the Portside, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Declarant's written request, the Association shall reconvey to the Declarant, or any Declarant Affiliate, any unimproved real property that the Declarant originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

The Declarant shall have the right to convey any property to the Association as Common Area subject to easements permitting persons who are not members of the Association to use and enjoy such Common Area upon payment to the Association of reasonable use fees. Without limiting the foregoing, it is specifically contemplated that the Association shall operate the boat slip area as rentals for the benefit of the Owners, their tenants and guests (if approved by the Association) that enter into the rental agreement with the Association. All rental proceeds received by the Association shall be deposited in the general fund for any use designated by the Board.

The Declarant may also transfer and assign to the Association any continuing obligations and responsibilities under development agreements or conditions of development approvals relating to the Portside, including any obligation to post or maintain maintenance bonds on improvements within public rights-of-way or other portions of the Area of Common Responsibility. The Association shall accept, assume, and fulfill all such obligations and responsibilities as the Declarant shall assign to it.

The Declarant may, at any time, prior to ten (10) years from the date hereof, subject all or part of Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the County Clerk an amendment to this Declaration describing the property being annexed. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not limited to the Declarant to convey property to any governmental entity as deemed desirable in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not the Declarant. If the property is part of the Common Area, the Association shall consent to such withdrawal.

**(b) Management and Control.** The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

#### **9.2. Maintenance of Area of Common Responsibility.**

The Association shall maintain the Area of Common Responsibility in accordance with the Governing Documents. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area, including, but not limited to, all landscaping and other flora, natural formations, bulkheads, mooring areas, docks, boat slips, fences, if any, parks, structures, entry gates and other improvements, private streetlights, any private streets shown as such on a recorded plat, biking, walking, and hiking path- ways/trails, situated upon the Common Area, a Unit, or abutting the Portside;



- (b) community signage, monumentation, and landscaping installed by the Declarant at entrances to the Portside, whether located on Common Area or in public rights-of-way;
- (c) decorative walls or fencing within easements running generally parallel to public rights-of-way within or adjacent to The Portside, and landscaping between such walls or fencing and the back-of-curb of the street within such public rights-of-way;
- (d) stormwater detention and retention ponds and other stormwater drainage facilities serving more than one Unit or any Unit and the Common Area;
- (e) such portions of any additional property as may be dictated by the Declarant, this Declaration, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on, the Association; and
- (f) any property and facilities that the Declarant or any Declarant Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Owners. The Declarant shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Declarant or Declarant Affiliate revokes such privilege of use and enjoyment by written notice to the Association;
- (g) the private street maintenance referenced in 9.2 (a) includes the perpetual maintenance of the private streets by the Association to the same standards as connecting public streets for the safe use of persons using streets and state that the City of Corpus Christi has no obligation or intention to ever accept such streets as public right-of-way and this Section 9.2 (g) cannot be altered by Declarant, the Association or the Members without consent and approval of the City.

Declarant and the Association may maintain other property it does not own, including, without limitation, Units and property dedicated to the public, or property owned or maintained by a Sub Association, if the Board determines that such maintenance is necessary or desirable. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

### **9.3. Discontinuation of Operation.**

The Association shall maintain the Common Area facilities in operation during such regular or seasonal operating hours as the Board may adopt, unless the Declarant, during the Development and Sale Period, and thereafter, the Board by resolution and the Owners entitled to cast 75% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, then in addition to the preceding approvals, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to restrict temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

#### **9.4. Restoring Damaged Improvements.**

This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible *not* to repair or rebuild if the Owners who benefit from the Common Area do not want it anymore.

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements within 60 days after the loss unless:

- (a) this Declaration is terminated pursuant to Section 20.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety;
- (c) a decision not to repair or reconstruct is approved by the Declarant, during the Development and Sale Period, and thereafter by Owners entitled to cast at least 67% of the total votes in the Association, or in the case of a Limited Common Area, by Owners of at least 67% of the Units to which the Limited Common Area is assigned.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. Except as provided above, no Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Governing Documents.

The insurance proceeds attributable to any Units or Limited Common Areas that are not rebuilt shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or to their respective lienholders, as their interests may appear, in proportion to their relative liability for Association expenses. The Association shall retain and place in a capital improvements account for the benefit of all Owners or the Owners of Units to which such Limited Common Areas were assigned, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

#### **9.5. Relationships with Other Properties.**

The Association may contract with the owner of any neighboring property or recreational amenity to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

## **Chapter 10**

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### **Provision of Services**

#### **10.1. Provision of Services to Units.**

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, community technology, utilities, fire protection, security, trash collection, landscape maintenance, pest control, and caretaker services.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

## **10.2. Community Technology.**

**(a) Community Systems.** The Declarant may provide or may enter into and assign to the Association or cause the Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (*e.g.*, cable television, high speed data/Internet/intranet services, telephone, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems as the Declarant determines appropriate.

The Association may enter into a bulk rate service agreement providing access to any such Community System for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a Specific Assessment pursuant to Chapter 12 and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

**(b) Opportunities for Community Interaction.** The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor to create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

## **Chapter 11**

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### **Association Insurance**

#### **11.1. Required Coverages.**

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "all risks of direct physical loss" on a replacement cost basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Sub Association Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Owners for property damage or personal injury caused by the negligence of the Association or any of its Owners, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage with a limit of at least \$1,000,000.00; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments (as defined in Section 12.2) on all Units, plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Nueces County, Texas area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

#### **11.2. Deductibles.**

The Board may hold any Persons who cause damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the

requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or as a Sub Association Area Expense in the same manner as the premiums for the applicable insurance coverage under Section 11.4. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

### **11.3. Policy Requirements.**

Subrogation is a legal concept which means the substitution of one person in the place of another with respect to a certain lawful claim, demand, or right so that the person who is substituted stands in the place and receives the rights of the other person in relation to the claim, demand, or right. For example, insurance companies generally have the right to step into the shoes of the party whom they compensate and sue any party whom the compensated party could have sued.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

- (a) be written with a company authorized to do business in Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;
- (c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (d) contain an inflation guard endorsement;
- (e) include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;
- (f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;
- (g) provide a waiver of subrogation against any Owner or household member of an Owner; and
- (h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting

on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that provide:

- (a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;
- (b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;
- (c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (d) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (e) a cross liability provision; and
- (f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

#### **11.4. Insurance Premiums.**

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Limited Common Areas assigned to a particular Service Area shall be a Sub Association Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

## **Chapter 12**

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### **Association Finances**

#### **12.1. Association Expenses.**

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, improvement, and operation of the Area of Common Responsibility, in performing its responsibilities and exercising its authority under the Governing Documents, and otherwise for the general benefit of the Owners, are considered "**Common Expenses**." Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless the Declarant and Owners entitled to cast a majority of the total votes in the Association approve such expenditure. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Declaration, any Supplement, or any other recorded covenants or agreements.

**(b) Sub Association Area Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance, and operation of benefits and services to a Sub Association Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Sub Association Area, are considered "**Sub Association Area Expenses.**" Sub Association Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Sub Association Areas receiving the same service.

#### **12.2. Budgeting for and Allocating Association Expenses.**

**(a) Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Sub Association Area reflecting the estimated Sub Association Area Expenses that the Association expects to incur for the benefit of such Sub Association Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Sub Association Area Expense of the Sub Association Area for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Sub Association Area Assessments pursuant to subsections (b) and (c).

**(b) Calculation of Base Assessments.** The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated among all Units subject to assessment under Section 12.5 and levied as a "**Base Assessment.**" Base Assessments shall



be levied at a uniform rate per Unit subject to assessment under Section 12.5, except that Units which the Declarant owns shall not be assessed any portion of the Base Assessment levied to fund contributions to reserve funds and shall not be assessed at all during any period that the Declarant has elected to fund deficits pursuant to Section 12.6(b).

**(c) Calculation of Sub Association Area Assessments.** Any expenses incurred by the Association in accordance with Section 6.2, shall be allocated among all Units in the benefitted **Sub Association** Area that are subject to assessment and levied as a " **Sub Association Area Assessment**."

**(d) Notice of Budget and Assessment; Right to Disapprove.** At least 30 days prior to the effective date of any budget the Board adopts, the Board shall send a summary of the budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budget, to the Owner of each Unit responsible for a share of the expenses covered by such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Owners entitled to cast at least 75% of the total votes in the Association and by the Declarant, during the Development and Sale Period. Each **Sub Association** Area budget shall automatically become effective unless disapproved at a meeting by Owners of at least 67% of the Units within the Service Area, except that the right to disapprove a **Sub Association** Area budget shall apply only to those line items that are attributable to services or benefits requested by the **Sub Association** Area and shall not apply to any item that the Governing Documents require to be assessed as a **Sub Association** Area Expense.

There shall be no obligation to call a meeting to consider the budget except, in the case of the Common Expense budget, on petition of the membership for a special meeting pursuant to the By-Laws, and in the case of a **Sub Association** Area budget, on petition of Owners of at least 2/3 of the Units within the **Sub Association** Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is ratified. The Board shall have no obligation to fund budgeted reserves and no liability for failure to fund other obligations of the Association under the Governing Documents, to the extent that its proposed budget is vetoed and the budget in effect is inadequate to cover all Common Expenses, including reserves.

**(e) Budget Revisions.** The Board may revise the budget and adjust the Base Assessment or **Sub Association** Area Assessments any time during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (e) above.

**(f) Surplus Funds.** Any surplus funds of the Association remaining after payment of or provision for all Association expenses and any prepayment of or provision for reserves shall be taken into account in the income portion of the budget pursuant to which the funds were collected, in order to reduce the assessments that would otherwise be levied pursuant to that budget in the succeeding year. In the event that the surplus funds cover the budget of the succeeding year, the Declarant and Association will determine the use or refund to the Owners.

### 12.3. Special Assessments.

The Association may levy "**Special Assessments**" to cover Common Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Owners entitled to cast more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. Any Special Assessment for **Sub Association** Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited **Sub Association** Area and shall be allocated in the same manner as **Sub Association** Area Assessments under Section 12.2(c). In addition, during the Development and Sale Period, any Special Assessment shall also be subject to the Declarant's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### 12.4. Specific Assessments.

The Association may levy **Specific Assessments** against a particular Unit as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service; and
- (b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection (b);
- (c) to cover the Unit's pro rata share of any costs that the Association incurs in bringing the **Sub Association** Area of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give written notice to the Owners of Units in the **Sub Association** Area and an opportunity for such Owners to be heard before levying any such assessment; and
- (d) to cover any deductible assessed against the Unit pursuant to Section 11.2 or any premium for insurance on Limited Common Areas assessed against the Unit pursuant to Section 11.4; and
- (e) to cover any other amounts that the Governing Documents authorize the Association to charge to a particular Owner or levy against any particular Unit.

### **12.5. Authority to Assess Owners; Time of Payment.**

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. Except as otherwise provided in Section 12.2 and Section 12.6 with respect to Units owned by the Declarant, the obligation to pay assessments shall commence as to each Unit on the first day of the month following the date on which the Unit is made subject to this Declaration or the effective date of the Association's first budget, whichever is later. The Base Assessment and **Sub Association** Area Assessment, if any, levied on each Unit for the year in which the Unit is made subject to this Declaration shall be prorated according to the number of months remaining in the fiscal year at the time the Unit becomes subject to the Declaration.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any **Sub Association** Area Assessment shall be due and payable in advance on the first day of each fiscal year.

If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board shall offer the Owner an opportunity to enter into the Payment Plan as adopted by the Association pursuant to Section 209.0062 of the Texas Property Code and, if no plan is entered into, the Association shall demand the outstanding balance on all assessments to be paid in full immediately.

### **12.6. Obligation for Assessments.**

By buying a Unit in The Portside each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association.

**(a) Personal Obligation.** By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and **Sub Association** Area Assessments at the rate of assessment established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the **Sub Association** Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

During the Declarant Control Period, the Declarant may choose to pay the difference between the Association's budgeted and actual expenses, rather than paying assessments on the Units it owns.

**(b) Declarant's Financial Obligations to Association.** Subject to Section 12.2, the Declarant shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Development and Sale Period, the Declarant may satisfy its obligation to pay Base Assessments and Special Assessments for Common Expenses on Units it owns either (i) by paying such assessments (exclusive of any portion levied to fund contributions to reserve funds) in the same manner as any other Owner, or (ii) by paying any shortfall in actual expenses (excluding contributions to reserve funds) under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments, the amount of any such shortfall determined after allocating to reserves that portion of the assessments actually collected from other Owners for purposes of funding reserve accounts.

Regardless of the Declarant's election under this section, any of the Declarant's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

**(c) Assessment Statement.** Within seven days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent or designee, the Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested, or by such other means as may be stated in the request.

The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith.

#### **12.7. Lien for Assessments.**

To insure that each Owner pays his or her assessments, the Association has a lien against the Units when assessments are not paid in a timely fashion. This means that if an Owner does not pay his or her assessments on time, the Association could foreclose the lien, thus causing

the Owner's Unit to be sold to pay the past due assessments. Alternatively, the Association may sue an Owner in court to recover past due assessments.

**(a) Existence of Lien.** The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Texas law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (i) liens and encumbrances recorded prior to this Declaration and which the Association has assumed or taken subject to; (ii) the liens of all real estate taxes and other governmental assessments or charges, and (iii) the lien or charge of any Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit and recorded prior to the assessment becoming delinquent.

The Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien. **The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Tex. Prop. Code Section 51.002, as it may be amended, in like manner of any deed of trust on real property. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Section 51.002, as it may be amended.**

**(b) Enforcement of Lien.** The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit, subject to the Owner's right of redemption, if any, under Texas law. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

**(c) Effect of Sale or Transfer.** Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage having priority over the Association's lien pursuant to Section 12.7(a) shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

## **12.8. Exempt Property.**

The following property shall be exempt from payment of Base Assessments and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant or a Declarant Affiliate as are included in the Area of Common Responsibility;

(b) Any property dedicated to and accepted by any governmental authority or public utility; and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members or owned by the members of a Neighborhood Association as tenants-in-common.

### **12.9 Capitalization of Association**

Upon acquisition of record title to a Unit by any Person other than the Declarant, the Owner shall make a contribution to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Sub Association Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title, for its use in covering initial startup expenses, operating expenses and other expenses which it incurs pursuant to this Declaration and the By-Laws.

### **12.10. Use and Consumption Fees.**

The Board may charge use, consumption, or activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

## **Chapter 13**

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### **Easements**

#### **13.1. Easements in Common Area.**

An easement is one person's right to go onto the property of another.

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents and any other applicable covenants;

(b) any restrictions or limitations contained in any deed conveying such property to the Association;

(c) certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area," if any;

(d) the Board's right to:

(i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;

(ii) suspend an Owner's right to use Common Area facilities;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) rent any portion of any Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

(vi) permit use of any recreational facilities situated on the Common Area by persons who do not own property subject to this Declaration or reside in the Portside, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

(vii) permit any Person to use Common Areas, at such charge or no charge as the Board may determine, for the purpose of offering and conducting classes or similar activities for the benefit of interested Owners and residents and such other individuals as the Board may specify, whether offered on a fee basis for profit or otherwise;

(viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(e) the right of the Declarant and its designees to use the Common Area pursuant to Section 17.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her entire Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

### **13.2. Easements of Encroachment.**

An encroachment occurs when a person's home, fence, or structure of any kind is placed on his or her neighbor's property. This section provides that minor, inadvertent encroachments are permitted.

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### **13.3. Easements for Utilities, Etc.**

**(a) Installation and Maintenance.** The Declarant reserves for itself, its successors, assigns, and designees, perpetual exclusive easements throughout The Portside (but not through a structure) for the purpose of:

- (i) installing utilities and infrastructure, Community Systems, security and similar systems, and drainage systems to serve The Portside;
- (ii) installing walkways, pathways and trails, streetlights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;
- (iii) inspecting, maintaining, repairing, and replace the utilities, infrastructure, and other improvements described above; and
- (iv) access to read, maintain, and repair utility meters.

Notwithstanding the above, the Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, and to condition such access on negotiated terms.

**(b) Specific Easements.** The Declarant also reserves the non-exclusive right and power to grant and record such specific easements, consistent with Section 13.3(a), as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

**(c) Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.



#### **13.4. Easements to Serve Additional Property.**

The Declarant reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property which is not submitted to this Declaration, the Declarant, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

#### **13.5. Easements for Maintenance, Emergency, and Enforcement.**

The Association may come onto the exterior portions of your Unit to do maintenance or to address violations of the covenants. This section describes the extent of the Association's right in this regard.

By this Declaration, the Declarant grants to the Association easements over The Portside as necessary to enable the Association to perform maintenance under Section 9.2 and exercise its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

The City of Corpus Christi and other governmental authorities shall have access at any time without liability when on official business; and

The City of Corpus Christi is permitted to remove obstructions if necessary for emergency vehicle access and to assess the cost of removal to the owner of the obstruction.

#### **13.6. Easement for Fence and Landscape Maintenance.**

The Declarant or the Association may construct and install decorative fencing and landscaping along public thoroughfares through the Portside to enhance the overall aesthetics of the Portside. Such fencing and landscaping may be installed within public rights-of-way, on Common Area, or in easements established over Units that are situated adjacent to such thoroughfares or separated from such thoroughfares only by Common Area. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement over each Unit which lies adjacent to a public or private

street, road, or thoroughfare, or which is separated from such street, road, or thoroughfare only by Common Area, for purposes of installation, maintenance, repair and replacement of decorative fencing and landscaping within a strip of land 10 feet wide, as measured from the edge of the nearest right-of-way for such public street, road, or thoroughfare, and running parallel to such right-of-way, and within such other easements reserved for such purposes on a recorded subdivision plat. Nothing in this section shall obligate the Declarant or the Association to install decorative fencing or landscaping, the installation of such items being in the sole discretion of the Declarant and the Association.

### **13.7. Easements for Navigation Channel Maintenance and Flood Water.**

The Declarant and the Association have the right to access property adjacent to the channel for maintenance purposes.

The Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of the canal within The Portside, in order to perform such maintenance and repair as the Board may deem appropriate, which may include removing dead or diseased trees, shrubs, and plants; and taking action to control any condition or remove any thing that constitutes a potential health or safety hazard. All persons entitled to exercise this easement shall use reasonable care in and repair any damage resulting from the intentional exercise of such easement. Nothing in this section shall be construed to make the Declarant or any other person liable for damage resulting from flooding due to weather events or other natural occurrences or any other damage derive from debris or material from docks, piers resulting from flooding due to weather events or other natural occurrences.

### **13.8. Easements Over Private Roadways**

(a) Declarant hereby grants to the Association and to the Owner of each Unit a non-exclusive right and easement of use and access over the private roadways within the Portside ("**Roadways**"). Any Owner may extend his or her right of use and access over the Roadways to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation.

(b) Not later than the expiration of the Development and Sale Period, the Declarant will transfer the Roadways to the Association as Common Area, subject to the easements for access described in this Declaration, easements previously created for the benefit of property adjacent to the property described on Exhibits "A" and "B," and such additional easements as the Declarant deems appropriate. Use of such Roadways shall be subject to and in accordance with any rights and easements shown on the plat or plans of the Portside and such reasonable Rules as the Association may adopt from time to time consistent with this Declaration, the plat or plans, and any law, ordinance, or regulation governing the Portside.

(c) The Declarant hereby reserves for itself, its agents, employees, successors, assigns, and other persons it may designate, an easement over the Roadways for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Portside and for performing any other work within the Portside which

the Declarant deems reasonably necessary, in its discretion, or which the Declarant is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Portside. The Declarant hereby authorizes the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any Unit to exercise this easement for access to such Unit, subject to such rules as the Association may adopt; however, during the Development and Sale Period, the Declarant shall have the right to restrict use of all or portions of the Roadways and designate alternate access for such Persons, and to revoke such authorization and prohibit the use of the Roadways by Persons who violate the Governing Documents or any agreement with the Declarant.

(d) The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the Roadways for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; utility providers, and for vehicles, equipment, and personnel providing garbage collection service to the Portside; however, such easement shall not authorize any such Persons to enter the Portside except while acting in their official capacities. The Association shall have the right to limit access for garbage collection purposes to such days of the week as the Board may specify.

(e) Declarant reserves for itself and any Declarant Affiliate, a perpetual, non-exclusive easement of access to and use of the Roadways and Common Areas in connection with the marketing and sale of other communities which Declarant or a Declarant Affiliate may be developing and marketing, in order to show the Portside as an example of the Declarant's developments.

(f) The existence of the easements described in this Section shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Portside, provided that the Association at all times maintains systems and/or procedures to permit entry of Persons authorized to exercise the easements granted in this subsection without unreasonable interference or delay.

## Chapter 14

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### Disclosures and Waivers

#### 14.1. Safety and Security.

**EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE PORTSIDE. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PORTSIDE DESIGNED TO PROMOTE OR ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR HIMSELF OR HERSELF**

AND HIS OR HER PROPERTY. HOWEVER, THE ASSOCIATION, THE DECLARANT, AND DECLARANT AFFILIATES SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PORTSIDE, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY INJURY, LOSS, OR DAMAGE BY REASON OF FAILURE TO WARN OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING SECURITY MONITORING SYSTEMS OR ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO PORTIONS OF THE PORTSIDE, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ANY TENANTS AND OTHER OCCUPANTS OF SUCH OWNER'S UNIT THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, AND THE DECLARANT AND DECLARANT AFFILIATES ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PORTSIDE ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

#### **14.2. Changes in Community Plan.**

Each Owner acknowledges that The Portside is a planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any **Sub Association** shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to changes in uses or density of property within The Portside, or changes in the Development Plan as it relates to property outside The Portside, without the Declarant's prior written consent.

#### **14.3. View Impairment.**

Neither the Declarant, any Declarant Affiliate, nor the Association, guarantee or represent that any view over and across the Units, Common Areas, or open space within the Portside, will be preserved without impairment. The Declarant, Declarant Affiliates, and the Association shall have no obligation to relocate, prune, or thin trees or shrubs on the Common Area. The Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

#### **14.4. Notices and Disclaimers as to Community Systems and Services.**

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Declarant, Declarant Affiliates, Association, and their respective successors or assigns, shall not be liable for, and shall not be obligated to refund, rebate, discount, or offset any applicable fees as a result of any

interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

#### **14.5. Radio and Telecommunication Towers.**

Every Owner and occupant of a Unit is hereby advised that radio and telecommunication towers and related equipment may not now or hereafter be located within or in the vicinity of The Portside without written approval from the Association. The Declarant, any Declarant Affiliate, the Association, and their respective members, partners, affiliates, officers, directors, agents, and employees, shall not be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance, or operation of, or proximity to, radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of The Portside.

#### **14.6. Stormwater Facilities.**

Some Units are located adjacent to a navigation channel or stormwater retention facilities that may contain water. Owners and occupants of such Units have no right to erect fences, or landscape, clear, or otherwise disturb vegetation within natural areas located within the Common Area between the boundary of the Unit and the stormwater facilities.

#### **14.7. Utility Easements.**

Portions of the Portside may be subject to easements for power transmission lines and natural gas pipelines. The Association shall have no responsibility for providing maintenance to such areas or improving them.

## **Chapter 15**

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### **Rights of Lenders**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in The Portside.

#### **15.1. Notices of Action.**

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of The Portside or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

#### **15.2. No Priority.**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the The Portside.

#### **15.3. Notice to Association.**

Upon request, each Owner shall furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

#### **15.4. Failure of Mortgagee to Respond.**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## **Chapter 16**

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### **Expansion of the Community**

#### **16.1. Expansion by Declarant.**

The Declarant may, from time to time, submit to the terms of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

The Declarant's right to expand The Portside under this section expires when all property described in Exhibit "B" has been submitted to this Declaration or 10 years after this Declaration is recorded, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Declarant Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

Nothing in this Declaration shall require the Declarant or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Declarant may submit different parcels of property to this Declaration at different times. The Declarant gives no assurances as to the boundaries of the parcels that may be submitted to this Declaration, or as to the order in which the Declarant may submit different parcels of property to this Declaration, as to whether buildings erected on any additional property submitted to this Declaration will be compatible with other buildings in the Portside in terms of architectural style, quality of construction, principal materials employed in construction, or size.

#### **16.2. Expansion by the Association.**

The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Owners entitled to cast more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplement.

#### **16.3. Additional Covenants and Easements.**

Any Supplement that the Declarant records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

#### **16.4. Effect of Filing a Supplement.**

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to his Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

## Chapter 17

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### **Additional Rights Reserved to the Declarant**

#### **17.1. Special Development Rights.**

In addition the rights specifically reserved to the Declarant under Chapter 16 with respect to expanding the Portside, the Declarant reserves the right, during the Development and Sale Period, to:

- (a) create Units, Common Areas, and Limited Common Areas, and to designate Roadways, within any portion of the Portside which it owns;
- (b) subdivide or combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;
- (c) convert any Unit which it owns into Common Area, Limited Common Area, or Roadways;
- (d) adjust the boundaries of any Units that it owns and any Common Area or Limited Common Area; and
- (e) amend this Declaration or any Supplement to withdraw property from the Portside and the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

#### **17.2. Marketing and Sales Activities.**

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may construct, use, and maintain such facilities and conduct such activities upon portions of the Common Area and other property they own as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, construction offices, sales offices, parking facilities, exterior lighting features or displays, and special events, any or all of which may be located in permanent or temporary structures or outside of any structure. Declarant and authorized builders whom the Declarant may designate shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of the Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge and to restrict use or access to such facilities by the Association, its members and others as long as they are being used for any



such purpose. There shall be no limit on the number or location of such facilities, except as otherwise restricted by state law or local ordinance or regulations.

### **17.3. Access for Development Purposes.**

During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and roadways within the Community for the purpose of:

- (a) exercising any rights reserved to the Declarant pursuant to this Declaration, including the rights set forth in Sections 17.1 and 17.2; and
- (b) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats or plans of the Portside and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate; and
- (c) making repairs or correcting any condition on the Common Area or any Unit.

### **17.4. Right to Approve Changes in Community Standards.**

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Declarant.

### **17.5. Additional Covenants and Restrictions.**

During the Development and Sale Period, no one other than the Declarant or a Declarant Affiliate may record any additional covenants or restrictions affecting any portion of the Portside without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

### **17.6. Exclusive Rights to Use Name of Development.**

No Person other than the Declarant or a Declarant Affiliate shall use the name "The Portside" or any derivative of such name or in any logo or depiction associated with The Portside in any printed or promotional material or on any Internet website without the Declarant's prior written consent. However, Owners may use the name "The Portside" in printed or promotional matter where such term is used solely to specify that particular property is located within The Portside, and the Association shall be entitled to use the word "The Portside" in its name.

### **17.7. Community Systems.**

The Declarant reserves for itself, Declarant Affiliates, and their respective successors and assigns, a perpetual right and easement over all of the property in The Portside to install and operate such Systems as the Declarant, in its discretion, deems appropriate to serve any portion of the Portside. Such right shall include, without limitation, the Declarant's right to

select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the area. The Declarant also has the right to charge or authorize any provider to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service, as defined from time to time by the laws, rules, and regulations of any government authority having jurisdiction.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

#### **17.8. Easement to Inspect and Right to Correct.**

In the event of an emergency, the Declarant, or someone it designates, may enter onto any Unit to inspect and correct problems with the Unit. The Declarant, if entering an enclosed structure on the Unit, must obtain the Owner's prior consent unless it is an emergency.

The Declarant reserves for itself, builders, and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within The Portside, including Units, and a perpetual nonexclusive easement of access throughout The Portside to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

#### **17.9. Right to Notice of Design or Construction Claims.**

Neither the Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Chapter 18, , unless the party against whom the claim or demand would be made ("**Respondent**") has been first notified in writing, by certified mail, and given an opportunity to meet with the Association and the Owner of any affected Unit to discuss the concerns, conduct its own inspection, and take action to remedy any problem in accordance with this section. Any notice under this section shall include a description of the nature and location of the alleged defect in design or construction ("**Defect**"), a description of any damage suffered as the result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Respondent may meet with the Owner of the affected Unit or a representative of the Association to conduct an inspection.

Nothing in this section obligates the Respondent to inspect, repair, replace, or cure any Defect. However, if the Respondent elects to repair any Defect, it will so notify the Association (if the Defect involves Common Area) or the Owner of the affected Unit (if the Defect is in a Unit) within 30 days after conducting such inspection and the Association or Owner shall permit the Respondent, its contractors, subcontractors, and agents access as needed during ordinary business hours to make such repairs which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances and events. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this section, not to exceed the earlier of (i) 120 days after the date the Respondent receives written notice of the Defect in accordance with this section; or (ii)

Respondent's delivery to the claimant of written notice that the Respondent does not intend to take any further action to remedy the Defect.

Any dispute as to the adequacy of the proposed repairs to resolve the problem or as to whether repairs that have been made have remedied the Defect, the Declarant may appoint an independent third-party inspector who is knowledgeable and experienced in residential home construction to inspect the Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied. The Association, the Respondent, and the Owner of any affected Unit agree to accept and abide by the decision of the inspector.

If the Association or any Owner fails to comply with this section, the Respondent shall not be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had the Respondent been given the notice and opportunity to repair described in this section.

#### **17.10. Right to Transfer or Assign the Declarant's Rights.**

The Declarant may transfer any or all of the Declarant's special rights and obligations set forth in this Declaration or the By-Laws in whole or in part, temporarily or permanently, to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the By- Laws. No transfer or assignment of the Declarant's status as the Declarant or as the Declarant member shall be effective unless it is in a recorded instrument which the Declarant has signed. The Declarant may permit other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless desired to evidence the Declarant's consent to such exercise.

#### **17.11. Termination of Rights.**

Except as otherwise specified above, the rights reserved to the Declarant in this Chapter shall terminate on the earlier of (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity has ceased.

## **Chapter 18**

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### **Dispute Resolution and Limitation on Litigation**

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#### **18.1. Agreement to Encourage Resolution of Disputes Without Litigation.**

(a) **Bound Parties.** The Declarant, the Association and its officers, directors, and committee members, all Owners, their invitees, and other Persons subject to this Declaration, and any

Person not otherwise subject to this Declaration who agrees to submit to this Chapter (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Portside without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

**(b) Claims.** As used in this Chapter, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;  
or
- (iii) the design or construction of improvements within the Portside, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Chapter 5 through Chapter 8 of this Declaration (relating to creation and maintenance of community standards);
- (iii) any suit that does not include the Declarant, a Declarant Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 18.2;
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter; and
- (vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit.

## **18.2. Dispute Resolution Procedures.**

**(a) Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

**(b) Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

**(c) Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the metropolitan Nueces County, Texas area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, except as otherwise provided in Section 18.3.

Each Bound Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall pay an equal share of the mediator's fees.

**(d) Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures

set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

### **18.3. Initiation of Litigation by Association.**

**(a) Owner Approval.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners entitled to cast at least 51% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (i) initiated during the Declarant Control Period;
- (ii) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;
- (iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (iv) initiated against any contractor, vendor, or supplier of goods or services, other than the Declarant, arising out of a contract for services or supplies; or
- (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This subsection (a) shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

**(b) Mandatory and Binding Arbitration.** Notwithstanding any other provision of this Declaration, any Claim by the Association or any Owner or group of Owners arising out of alleged defects in the Common Areas or other portions of the Area of Common Responsibility that is not resolved by mediation shall be submitted to final and binding arbitration in accordance with this subsection (b). The Claimant shall have 30 days following termination of mediation pursuant to 18.2(c) to submit the Claim to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, or the Claim shall be deemed abandoned and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; however, nothing in this section shall release or discharge the Respondent from any liability to Persons not a Party to the foregoing proceedings. Unless the parties agree otherwise, there shall be one arbitrator. The arbitrator may grant any remedy or relief that the arbitrator considers just and equitable. The decision of the arbitrator shall be final, and judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

**Each Owner, by accepting a deed to a Unit, waives any right to have a Claim within the scope of this subsection (b) resolved by judicial proceedings, including any right to trial by jury. Each Owner, by accepting a deed to a Unit, waives any right to have a**

**Claim within the scope of this subsection (b) resolved by judicial proceedings, including any right to trial by jury.**

If any party commences litigation in violation of this section, then upon the other party's written objection, the party commencing litigation shall immediately stipulate to the dismissal of that litigation without prejudice. If the party commencing the litigation fails to make that stipulation within five days after the filing of such written objection, that party shall reimburse the other parties for their costs and expenses, including reasonable attorneys fees, incurred in seeking a dismissal or stay of that litigation if such dismissal or stay is obtained.

**(c) Good Faith; Fees.** The parties shall participate in good faith in all mediation and arbitration proceedings. The venue of the mediation or arbitration proceeding shall be determined by the mediator or arbitrator, as the case may be. The fees and expenses of the mediation or arbitration proceeding (including the fee of the mediator and arbitrator) shall be shared equally by the parties. Each party shall pay its own expenses (including without limitation attorneys fees and costs and expenses of preparation and presentation of proofs), except that the prevailing party in any arbitration proceeding shall be entitled to an award of reasonable attorneys fees and costs.

## Chapter 19

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### Changes in the Common Area

#### 19.1. Assignment and Reassignment of Limited Common Area.

**(a) Assignment.** The Board may assign any portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and Owners representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Declarant's written consent.

**(b) Use by Others.** Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

#### 19.2. Condemnation.

A governmental entity such as a town, county, or state has the power to condemn property for its own uses but generally has to pay the value of the property to do so.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 19.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, during the Development and Sale Period, and Owners entitled to cast at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring damaged improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.4.

### **19.3. Partition.**

Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 19.4.

### **19.4. Transfer, Mortgaging, or Dedication of Common Area.**

The Association may transfer or dedicate portions of the Common Area to Nueces County, Texas, any local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Owners entitled to cast at least 67% of the total votes in the Association and, during the Development and Sale Period, the written consent of the Declarant; or

(b) if Limited Common Area, upon written approval of Owners of at least 67% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines, unless otherwise



directed by the Owners at the time such sale or mortgage is authorized pursuant to Section 19.4(a). The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner directed by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized pursuant to Section 19.4(b).

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

## Chapter 20

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### Termination and Amendment of Declaration

#### 20.1. Term and Termination.

This Declaration shall be effective for a minimum of 30 years from the date it is recorded. After 30 years, this Declaration shall be renewed and extended automatically for successive 10-year periods unless at least 67% of the then Owners sign a document stating that the Portside Declaration is terminated, and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.

This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### 20.2. Amendment.

**(a) By the Declarant.** In addition to the specific amendment rights granted elsewhere in this Declaration, during the Declarant Control Period, the Declarant may unilaterally amend this Declaration for any purpose.

**(b) By Owners.** Except as otherwise specifically provided above or elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of Owners of not less than two-thirds of the Units or Owners entitled to cast not less than 67% of the total votes in the Association. During the Development and Sale Period, the Declarant's written consent shall also be required.

Any amendment pursuant to this section shall be prepared, executed, certified and recorded on behalf of the Association by any officer designated for such purpose or, in the absence of such designation, by the Association's President.

**(c) Validity and Effective Date.** Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant, any Declarant Affiliate, or the Declarant Member without the written consent of the Declarant, Declarant Affiliate, or the Declarant Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment.

No action to challenge the validity of an amendment may be brought more than two years after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**(d) Exhibits.** Exhibits "A" and "B" are incorporated by this reference and this Chapter shall govern amendment of those exhibits. Exhibit "C" is attached for informational purposes only and may be amended as provided in Chapter 7 or pursuant to Section 20.2. Exhibit "D" is attached for informational purposes only and may be amended as provided in that exhibit. Exhibit "E" is attached for informational purposes only and may be amended as provided in Chapter 5 or pursuant to Section 20.2.

Dated: \_\_\_\_\_, 2022

McJ's and Associates, LLC, a Texas limited liability company

By: \_\_\_\_\_  
Juan Carlos Calvi, Member

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
by **Juan Carlos Calvi, Member of McJ's and Associates, LLC, a Texas limited liability company**, in said capacity and on behalf of said Company.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires: \_\_\_\_\_