



time, provided however, the formation of a sub-association is permitted. The Association has jurisdiction over all property located within the Subdivision, as same may be amended from time to time as additional property is annexed into the Subdivision as allowed under this Declaration. For purposes of clarity, when "Association" is used herein, the term includes the authority, rights, remedies, and obligations of the nonprofit corporation, and the authority of the Board of Directors, as defined herein, to carry out the authority, rights, remedies, and obligations of the Association,

- 1.4 "Board of Directors" or "Board" means the governing body of the Association, selected as provided in the Bylaws.
- 1.5 "Builder" means any person or entity which purchases one or more Lots within the Subdivision for the purpose of constructing single-family residences and related improvements thereon for later sale to consumers, development, or resale in the ordinary course of such person or entity's business and may include the Declarant or Declarant's assignee.
- 1.6 "Bylaws" means the Bylaws of BLUE JAY'S LANDING Homeowners' Association, Inc., as they may be amended from time to time.
- 1.7 "Certificate" means the Certificate of Formation of BLUE JAY'S LANDING Homeowners' Association, Inc., as filed in the Office of the Secretary of State of the State of Texas, as it may be amended from time to time.
- 1.8 "Class 'B' Control Period" means the period of time during which the Declarant is entitled to appoint a majority of the members of the Board of Directors, as provided in the Bylaws.
- 1.9 "Common Property" means any and all real and personal property, easements, and other interests therein, together with the facilities and improvements located thereon, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- 1.10 "Community-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing throughout the Subdivision. Such standard may be more specifically determined by the Board and the Architectural Control Committee.
- 1.11 "County" means the County of Fort Bend, Texas.
- 1.12 "Declarant" means J.C. Hernandez Construction, Inc., a Texas for-profit corporation and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire such interest for the purpose of development or sale of all or any portion of the remaining undeveloped or unsold portions of the Subdivision and is designated as the "Declarant" hereunder in a recorded instrument executed by the immediately preceding "Declarant". Upon designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that there shall be only one "Declarant" hereunder at any given time.
- 1.13 "Declaration" means an instrument filed in the real property records of Fort Bend County that includes restrictive covenants governing a residential subdivision.

- 1.14 "Development Period" means the 10-year period beginning the date this Declaration is recorded, during which Declarant has certain rights hereto, including rights relating to development, construction, expansion, and marketing of the subdivision and additional land, or a right to direct the size, shape, and composition of the subdivision.
- 1.15 "Guidelines" means general, architectural, or builder guidelines, and application and review procedures, if any, that may set forth various standards relating to exterior harmony of any and all improvements placed upon or constructed on any Lot or construction types and aesthetics which Guidelines may be promulgated and amended by the Board. There shall be no limitation on the scope of amendments to the Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Guidelines less restrictive.
- 1.16 "Improvements" means every structure and all appurtenances thereto of every type and kind, including but not limited to the dwelling, buildings, outbuildings, storage sheds, patios, swimming pools, garages, landscaping, poles, signs, exterior air condition, water softener fixtures or equipment, pumps, walls, tanks, reservoirs, pipes, meters, antennae towers, and or other facilities used in connection with water, sewer, gas electric, telephone, cable, satellite, antennas, and other utilities.
- 1.17 "Lot" means any designated parcel of land located in a residential subdivision, including any improvements on the designated parcel shown on a plat as recorded in the land records of the County.
- 1.18 "Member" means a person entitled to membership in the Association.
- 1.19 "Mortgage" means any mortgage, security deed, deed of trust, and any and all other similar instruments used for the purpose of encumbering real property in the Subdivision as security for the payment or satisfaction of an obligation.
- 1.20 "Occupant" means any Person occupying all or any portion of a Lot for any period of time, regardless of whether such Person is a tenant of the Owner of such property.
- 1.21 "Owner" means a person who holds record title to property in a residential subdivision, and includes the personal representative of a person who holds record title to property in a residential subdivision.
- 1.22 "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, limited liability company, or other legal entity.
- 1.23 "Regular Assessment" means an assessment, a charge, a fee, or dues that each Owner of property within the subdivision is required to pay to the Association on a regular basis and that is designated for use by the Association for the benefit of the Subdivision.
- 1.24 "Residence" means a residential dwelling structure constructed on a Lot and which is intended to be used and occupied as a residence for a single-family only as opposed to business or commercial purposes.
- 1.25 "Special Assessment" means an assessment, a charge, a fee, or dues other than a regular

assessment, that each Owner of property located in the subdivision is required to pay to the Association, according to procedures required by the dedicatory instrument.

- 1.26 "Subdivision" means that certain real property described in Exhibit "A" to this Declaration and named BLUE JAY'S LANDING.

## ARTICLE II

### ASSOCIATION FUNCTION, MEMBERSHIP, AND VOTING RIGHTS

2.1 Function of Association. The Association may manage, maintain, operate, and control the Common Property. The Association may, but is not required, to be responsible for enforcement of this Declaration and such reasonable rules regulating use of the Lots and Common Property as the Board may adopt. The Association may be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Architectural Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Certificate of Formation, Architectural Guidelines, other documents promulgated by the Association, and Texas law.

2.2 Mandatory Membership. Each Owner shall be a Member of the Association. There shall be only one membership per Lot. Membership shall be mandatory.

2.3 Owner legal entity. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

2.4 Termination of Membership. A change in the ownership of a lot, due to sale, foreclosure, or repossession for any reason shall terminate membership, whereupon all rights and obligations of membership shall vest in the new Owner of the lot; provided, however, that termination of membership shall not relieve or release a former Owner from any personal liability or obligation to pay past or present assessments or other charges which remain unpaid, nor shall termination of membership impair any rights or remedies which the Association or others may have against the former Owner in connection therewith.

2.5 Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership. In any situation where a Member is entitled personally to exercise the vote for his Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member is entitled to three (3) votes for each Lot in which it holds the interest required for membership. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of,

actions proposed under this Declaration and the Bylaws, or are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period as specified in the Bylaws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of (i) the expiration of the Class "B" Control Period specified in the Bylaws; or (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

2.6 Irrevocable Proxy. Each Member, by acceptance of a deed to any Lot, constitutes and appoints the Declarant as its duly authorized attorney-in-fact, with full power of substitution, to provide any necessary approval of the exercise of all rights and powers of the Declarant set forth in this Declaration and in the Bylaws, including the right to select the members of the Board of Directors until upon the earlier of (i) the expiration of the Class "B" Control Period specified in the Bylaws; or (ii) when, in its discretion, the Declarant determines and declares in a recorded instrument. This proxy is coupled with an interest and is irrevocable.

### **ARTICLE III**

#### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

3.1 Common Property. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Property and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas), and shall keep it in good, clean, attractive and sanitary order and repair, consistent with this Declaration and the Community-Wide Standard.

3.2 Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Subdivision, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Property by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed and accepted pursuant to this Section.

3.3 Authority to Promulgate Rules, Regulations and Policies. The Association, through its Board, has the authority, without the obligation, to promulgate, amend, cancel, limit, create exceptions to, and enforce reasonable rules, regulations and policies, including but not limited to rules, regulations and policies concerning the administration of the Property, the enforcement of the Dedicatory Instruments, the use and enjoyment of the Property, limitations on the use of the Common Area, establishing and setting the amount of fines for violations of the Dedicatory Instruments and all fees and costs generated in the enforcement of the Dedicatory Instruments. Such rules, regulations and policies shall be binding upon Members, Owners and Occupants, if any. The rights and remedies contained in this Article are cumulative and supplement all other rights of enforcement under applicable law.

3.4 Enforcement. To the extent allowed by law, the Association, through its Board, may impose sanctions for violations of this Declaration, the Bylaws or rules in accordance with procedures adopted by the Board, including reasonable monetary fines and suspensions of the right to vote and to

use recreational facilities, if any, within the Common Property. In addition, the Association may exercise self-help to cure violations (including, without limitation, the towing of vehicles and the removal of personal property); and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall also be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

3.5 Occupants Bound. Each Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations of the Association, and shall be responsible for all violations and all losses or damages resulting from violations by such Occupants. In the event that an Occupant violates the Declaration, Bylaws or a rule or regulation for which a fine is imposed, such fine shall be assessed against the Owner. Unpaid fines shall constitute a lien against the Lot.

3.6 Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Membership.

3.7 Indemnification. **THE ASSOCIATION SHALL INDEMNIFY EVERY OFFICER, DIRECTOR AND COMMITTEE MEMBER AGAINST ALL EXPENSES, INCLUDING LEGAL FEES, REASONABLY INCURRED IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING (INCLUDING SETTLEMENT OF ANY SUIT OR PROCEEDING, IF APPROVED BY THE CURRENT BOARD) TO WHICH HE OR SHE MAY BE A PARTY BY REASON OF BEING OR HAVING BEEN AN OFFICER, DIRECTOR OR COMMITTEE MEMBER.**

**THE OFFICERS, DIRECTORS AND COMMITTEE MEMBERS SHALL NOT BE LIABLE FOR ANY MISTAKE OF JUDGMENT, NEGLIGENT OR OTHERWISE, EXCEPT FOR THEIR OWN INDIVIDUAL WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT OR BAD FAITH. THE OFFICERS AND DIRECTORS SHALL HAVE NO PERSONAL LIABILITY WITH RESPECT TO ANY CONTRACT OR OTHER COMMITMENT MADE OR ACTION TAKEN IN GOOD FAITH ON BEHALF OF THE ASSOCIATION (EXCEPT TO THE EXTENT THAT SUCH OFFICERS OR DIRECTORS MAY ALSO BE MEMBERS OF THE ASSOCIATION). THE ASSOCIATION SHALL INDEMNIFY AND FOREVER HOLD EACH SUCH OFFICER, DIRECTOR AND COMMITTEE MEMBER HARMLESS FROM ANY AND ALL LIABILITY TO OTHERS ON ACCOUNT OF ANY SUCH CONTRACT, COMMITMENT OR ACTION. ANY RIGHT TO INDEMNIFICATION PROVIDED FOR HEREIN**

SHALL NOT BE EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH ANY PRESENT OR FORMER OFFICER, DIRECTOR OR COMMITTEE MEMBER MAY BE ENTITLED. THE ASSOCIATION SHALL, AS A COMMON EXPENSE, MAINTAIN ADEQUATE GENERAL LIABILITY AND OFFICERS' AND DIRECTORS' LIABILITY INSURANCE TO FUND THIS OBLIGATION, IF SUCH INSURANCE IS REASONABLY AVAILABLE.

3.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Subdivision designed to enhance the security of the Subdivision. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE SUBDIVISION, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE SUBDIVISION, 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 COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES AND DECLARANT, AND ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY WITHIN THE SUBDIVISION ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF RESIDENCES ON LOTS RESULTING FROM ACTS OF THIRD PARTIES.

3.9 Construction Activities. All Owners are hereby placed on notice that Declarant, any affiliate of Declarant and/or its agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Subdivision. By the acceptance of a deed or other conveyance or Mortgage, leasehold, license, easement or other interest, and by using any portion of the Subdivision, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Subdivision where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours), (c) Declarant, any affiliate of Declarant-and all of their agents, contractors, subcontractors,

knowledge  
of the foregoing.

3.10 Provision of Services. The Association may provide for services and facilities for the

Members and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use and service fees for any services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Annual Assessment. By way of example, such services and facilities might include landscape maintenance, pest control service, security, and similar services. Nothing herein shall be construed as a representation by Declarant or the Association as to what, if any, services or facilities shall be provided. In addition, the Board shall be permitted to modify or cancel existing services or facilities, unless otherwise required by the Declaration.

#### ARTICLE IV MAINTENANCE

4.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property including, without limitation, any recreational facilities situated thereon. The Association shall also maintain, repair, and replace, if any: (a) all entry features and monuments for the Subdivision including the expenses for water and electricity, if any, provided to all such entry features, and (b) all landscaping (including sprinkler systems) located on the Common Property or public right-of-way within the Subdivision.

In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association, whether within or outside the Subdivision including, without limitation, publicly-owned property and property dedicated to public use, where the Board has determined that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

In the event that the Association determines that the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the family, guests, lessees, occupant, or invitees of an Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the lot of such Owner pursuant to these Declaration, Covenant, Conditions and Restrictions herein.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

4.2 Owner's Responsibility. Except as provided in Section 4.1 of this Article, all maintenance of the Lot and all structures, foundations, roofs, parking areas, landscaping and other improvements thereon, including any screening fences, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Additionally, a Builder shall maintain any Lot for which it has contracted to purchase from the Declarant in a manner consistent with the Community-Wide Standard and this Declaration, which maintenance shall include the regular mowing, weeding, irrigating, fertilizing, pruning and trimming of such Lot.

In addition to its other enforcement rights, in the event that the Board determines that any Owner



or Builder has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Board may cause such maintenance to be performed at the Owner's sole cost and expense, subject to the following procedures. Except in an emergency situation, the Board shall give the Owner prior written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If the Owner fails to do so, the Association may provide any such maintenance, repair or replacement without further notice, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot pursuant to the Declarations, Covenants, Conditions and Restrictions herein.

## ARTICLE V INSURANCE AND CASUALTY LOSSES

5.1 Association Insurance. The Association shall have the authority to and shall obtain or cause to be obtained insurance for all insurable improvements that the Association is obligated to maintain, whether or not located on the Common Property. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and intentional acts, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

In addition, to the extent it is reasonably available the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

The Association also shall obtain a public liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on behalf of the Association and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least \$1,000,000.00.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of

the policy in determining whether the insurance at least equals the full replacement cost. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board determines, in its sole discretion, that the loss is the result of the negligence of willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Lot of such Owner or occupant, pursuant to these Declarations, Covenants, Conditions and Restrictions herein.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association and shall be governed by the following provisions:

- (a) All policies shall be written with a company authorized to do business in Texas with a Best's rating of A or better.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (d) All property insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if reasonably available, and shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the County.
- (e) The Board shall make every reasonable effort to secure insurance policies that will provide for the following:
  - i. a waiver of subrogation by the insurer as to any claims against the Board of Directors, the manager, the Owners and Occupants and their respective tenants, servants, agents and guests;
  - ii. a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - iii. that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any curable defect or the conduct of any Owner or Occupant, or any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
  - iv. that any "other insurance" clause in any policy exclude individual Owners'

policies from consideration; and

- v. that no policy may be canceled, subject to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment and, if reasonably available, shall at least equal three months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

The Association shall also obtain construction code endorsements, steam and boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs or the U.S. Department of Housing and Urban Development. It is the intent of this Section that the Association maintain insurance in effect meeting the requirements of the above-named entities as applicable, and as said requirements may change from time to time.

5.2 Individual Insurance. By virtue of taking title to a Lot, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of any Lot, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry property insurance on his Lot on the dwelling and all structures and improvements constructed thereon in an amount sufficient to repair or reconstruct all structures and improvements in the event of damage or destruction from any hazard for which property Owners customarily obtain insurance.

5.3 Damage and Destruction - Insured by Association.

(a) General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed as soon as reasonably practicable.

(c) No vote for special assessment for damage or destruction. If the damage or destruction for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to cover the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against each Lot and the Owner thereof for the deficiency.

Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall be restored to its natural state and maintained as an undeveloped portion of the Subdivision by the Association in a neat and attractive condition.

5.4 Damage and Destruction -- Insured by Owners. Following damage or destruction by fire or other casualty loss, a property Owner must restore, rebuild, or repair the damaged or lost improvements to the property, or clear the property completely, removing all damaged improvements and all debris within one hundred and eighty days (180) after such damage or destruction or, Owner may request for an extension to complete within a reasonable time thereafter.

## **ARTICLE VI**

### **ASSESSMENTS OR MAINTENANCE CHARGES**

6.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance and insurance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

6.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) regular annual assessments or charges; (b) special assessments; (c) monthly assessments, (d) maintenance charges and (e) other specific assessments, (herein referred to as "assessments") as applicable, including, but not limited to, reasonable fines imposed in accordance with the terms of this Declaration and the Bylaws. Such assessments shall be established and collected as hereinafter provided.

All such assessments, together with late charges, interest (not to exceed the lesser of the maximum rate permitted by law or ten percent (10%) per annum on the principal amount due), and costs of collection (including, without limitation, reasonable attorney's fees), shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid, as more particularly provided in Article 6 hereof. Each such assessment, together with late charges, interest and costs of collection, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges against the Lot due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any First Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

No Owner may exempt himself from liability for assessments, by non-use of Common Property, abandonment of his Lot, or for any other reason. 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.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination thereof with the Declarant or other entities for payment of all or a portion of assessments due therefrom.

6.3 Estoppel Certificates. The Association shall, within ten (10) days after receiving a written request therefore and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

6.4 Computation of Regular Assessments. It shall be the duty of the Board annually to prepare a budget covering the estimated costs of operating the Association during the coming fiscal year which shall include a contribution to a capital reserve for repair and replacement of capital items, if any, in accordance with a capital budget separately prepared. The regular assessment to be levied against each Lot shall be set at a level which is reasonably expected to produce total income to the Association at least equal to the total budgeted expenses, including reserves. The Board shall cause a copy of the budget and notice of the regular assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year.

The budget and the assessment shall automatically be effective upon adoption by the Board unless disapproved at a meeting by Members representing at least seventy-five percent (75%) of the total Class "A" Members, and the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering the budget except upon petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the budget and notice of the assessment. In the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the immediately preceding year shall continue in effect for the current year.

Regular assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so provides by resolution, the regular assessment may be paid in two or more installments. If any Owner is delinquent in paying any assessment or installment thereof, the Board may, upon ten (10) days' prior written notice, accelerate the regular assessment and require all unpaid installments to be paid in full immediately, unless a payment plan is submitted and approved. Unless otherwise provided by the Board, the assessment shall be due and payable in full on the first day of each fiscal year.

6.5 Exempt Property. The following property subject to this Declaration shall be exempt from all assessments and maintenance charges and all other charges created herein: (a) all properties dedicated to and accepted by a local public authority; (b) Common Area owned by the Association; and (c) all properties owned by the Declarant, Developer or the Association.

6.6 Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unanticipated or unbudgeted

expenses, including defraying in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, unexpected repair, or replacement of capital improvements upon the common area(s) including the necessary fixtures and personal property related to common areas. Except as otherwise provided in Section 5.3 (c) hereof, any special assessment shall require approval by the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total Class "A" Members, and the Class "B" Member, if any. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

6.7 Other Specific Assessments. The Board shall have the power to levy other specific assessments against a particular Lot or Lots constituting less than all Lots within the Subdivision as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to any Lot or the Occupants thereof upon request of the Owner or Occupants, which benefits, items or services the Board may (but shall not be obligated to) offer from time to time; such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred;

(b) to cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or rules of the Association, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their licensees, invitees or guests;

(c) for fines and fees levied pursuant to this Declaration, Bylaws, or Guidelines, or other resolution of the Board; and

(d) for any other costs or expenses specifically authorized by this Declaration to be levied against a particular Owner or his or her Lot(s).

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

6.8 Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Lot on the first day of the month following the month in which the Lot is made subject to this Declaration.

6.9 Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest and costs of collection as set forth in Article 6 hereof, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes, or (b) liens for all sums unpaid on a First Mortgage duly recorded in the land records of the County (and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument).

All other Persons acquiring liens or encumbrances on any Lot after the recording of the original

Declaration shall be deemed to consent that such liens or encumbrances are inferior to the lien provided herein to secure the payment of future assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot 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, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or non-judicial foreclosure proceedings in accordance with Texas law, as it may be amended, in like manner for any deed of trust on real property. In connection with the lien created herein, each Owner of a Lot hereby grant to the Association, whether or not it is so expressed in the deed or other conveyance to such Owner, a power of sale to be exercised in accordance with Texas law.

The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. The Association may sue for unpaid assessments and other charges without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the First Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the First Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be common expenses collectible from Owners of all Lots subject to assessment under this Declaration, including such acquirer, its successors and assigns.

6.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or installments thereof that are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than fifteen (15) days may incur a late charge in such amount as the Board may from time to time determine. In the event that the assessment remains unpaid after sixty (60) days, the Association may offer a payment plan, or commence non-judicial foreclosure proceedings and/or institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, or to enforce the lien by suit, judgment and judicial or non-judicial foreclosure in the same manner as other liens for the improvement of real property.

All payments may be applied in the following order or any other lawful order as determined by the Board: any delinquent assessment (regular or special), then to any current assessment, then to any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or other charge that could provide the basis for foreclosure; then to any other attorney's fees incurred by the Association; then to any fines assessed by the Association; then to any other amount owed to the Association.

6.11 Failure to Assess. Failure of the Board to fix the annual assessment amount or rate or to

deliver or mail each Owner a notice of annual assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay such assessments. In such event, each Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may, without limitation, retroactively assess any shortfalls in collections or reimburse any excess in collections.

## ARTICLE VII ARCHITECTURAL STANDARDS

7.1 Architectural control during the development period. During the Development Period, neither the Association, the Board of Directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new homes on vacant lots. During the Development Period, the Architectural Reviewer for new homes on vacant lots is the Declarant or its delegates.

7.2 Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a subdivision developer and do not impair Declarant's ability to market its property or the ability of Builders to sell homes in the Property. Accordingly, each Owner agree that during the Development Period, no improvements will be started or progressed on Owner's lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretions. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

7.3 Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (i) an Architectural Control Committee appointed by the Board, (ii) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association, or (iii) a developer or builder of a portion of BLUE JAY'S LANDING. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (2) veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

7.4 Architectural Review and Regulation by Association. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the ACC), or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC, will assume jurisdiction over ACC.

7.5 General. No structure shall be placed, erected or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements and planting or removal of landscaping materials) shall take place except in



compliance with this Article and the Guidelines and upon approval of the ACC as required herein.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval unless modifications are visible from outside the structures. Approval is required to rebuild even if rebuild is in accordance with originally approved plans and specifications.

This Article shall not apply to activities of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns a Lot or owns any land subject to annexation to this Declaration.

7.6 Architectural Control Committee. Responsibility for administration of the Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by an ACC consisting of not less than three (3) nor more than five (5) persons.

So long as the Declarant owns any property for development and/or sale in the Subdivision, the Declarant shall have the right to appoint all members of the ACC. Upon the expiration of this right, the Board shall appoint the members of the ACC. Members of ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board or a committee of the Board may act as the ACC, in which case all references in the Documents to the ACC are construed to mean the Board. Members of ACC may, but need not be Owners or residents, and may but need not include architects, engineers, and design professional whose compensation, if any, may be established from time to time by the Board.

7.7 Guidelines and Procedures. The Board may prepare, adopt and amend design and development guidelines and application and review procedures (the "Guidelines") which shall apply to all construction activities within the Subdivision. Any amendments to the Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The Board shall make the Guidelines available to Owners, Builders, and contractors who seek to engage in construction within the Subdivision and all such Persons shall conduct their activities in accordance with such Guidelines.

7.8 Submission of Plans and Specifications.

(a) No construction or improvements shall be commenced, erected, placed or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, screening and estimated time schedules for commencement and completion of construction have been submitted to and approved in writing by the ACC or appropriate subcommittee.

(b) In reviewing each submission, the ACC may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony

of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life, among other things.

7.9 No Waiver of Future Approvals. Each Owner acknowledges that the members of the ACC will change from time to time and that interpretation, application, and enforcement of the Guidelines may vary accordingly. Approval of proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans, and specifications, drawings or other matters subsequently or additionally submitted for approval.

7.10 Variance. The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

7.11 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and not for engineering, structural design, or quality of materials. Neither the ACC nor the Declarant shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for reviewing drainage plans or ensuring the effectiveness thereof, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ACC, any committee, nor any member of any of the foregoing shall be held liable for any injury, death, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot, nor for any defect in any structure constructed from approved Plans.

Neither the Declarant, the Association, the ACC, the Board, and committee, nor the officers, directors, members, employees, agents, or representatives of the foregoing, shall be liable in damages to anyone submitting plans and specifications to any of the foregoing for approval, or to any Owner of property affected by these restrictions, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits Plans and every Owner agrees that he will not bring any action or suit against the Declarant, the Association, the ACC, the Board, committee, or the officers, directors, members, employees, agents, or representatives of any of the foregoing, to recover any such damages and hereby releases, promises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

7.12 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right, in addition to any other remedy provided herein for the enforcement of this Declaration, to enter the property, remove the

violation and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment in accordance with Article 6 of this Declaration.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Guidelines may be excluded by the Board from further construction activity within the Subdivision. In such event, neither the Declarant, the Association, its officers, nor its directors shall be held liable to any Person for exercising the rights granted by this Section.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

7.13 Notice of Violation. To evidence any violation of this Declaration, the Bylaws, rules or Guidelines by any Owner or Occupant, the Board of Directors may file, but is not required to file, in the deed records of the County, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot, and (iii) a sufficient legal description of the Lot. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association. The cost of preparing and recording such notice shall be assessed as a Specific Assessment against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing pursuant to Article 6 hereof.

## ARTICLE VIII RESTRICTIONS

### 8.1 General.

(a) In addition to the restrictions set forth herein, the Board may, from time to time, without consent of the Members, promulgate, modify or delete rules and regulations applicable to the Subdivision.

(b) Occupants bound. All provisions of the Declaration and of any rules promulgated by the Board that govern the conduct of Owners within the Properties and provide for sanctions against Owners shall also apply to all Occupants, tenants, lessees, guests, and invitees of any Lot. Any lease on any Lot shall be deemed to provide that the lessee and all Occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws, all dedicatory instruments, and rule or regulation of the Association.

8.2 Restricted Activities. The following activities are restrictions within the Subdivision unless expressly authorized, and then subject to such conditions as may be imposed by, the Board of Directors:

1. Minimum square feet. Each Lot in the Subdivision shall have at least 2,000 square feet of living area, excluding porches, and garages and be built with new construction materials and include an automobile garage, which garage shall be capable of storing at least two (2) conventional size automobiles.

2. Driveways. Each Owner of a single-family residence shall construct and maintain at their own expense a concrete driveway from the garage of their residence to the abutting street, including their portion the driveway in the street easement, and the Owner shall repair at their expense any damage to the driveway.
3. Parking. Parking vehicles on grass or lawn is prohibited. Parking of vehicles shall only be allowed on driveways or streets, where authorized.
4. Subdivision of Lots. Right to Replat or Re-subdivide. Declarant reserves the right to replat or re-subdivide any or all of the Subdivision, subject to compliance with any State, City, and County subdivision standards and subsequent to filing of the Declaration. Except as to the Declarant, any amending or replat of a Lot shall be approved by the ACC and in compliance with Texas law and Fort Bend County platting procedures.
5. Structures not Permitted. No structure shall be placed or constructed on a Lot without prior approval of the ACC. However, during construction, Declarant or a Builder may erect and maintain such structures as are customary in connection with the construction and sale of the Lot, including but not limited to storage facilities, portable sanitary facilities, signs, and construction trailers.
6. Permitted Structures. One (1) single-family residential dwelling shall be permitted and constructed on a Lot. All dwellings will be constructed of new materials on the Lot from the ground up.
7. Maximum Height. Each residence shall not exceed two stories. The height of the residence shall not exceed 35 feet measured from the slab of the residence to the highest point of the residence roof top.
8. Minimum Masonry. All single-family residence shall be constructed with masonry pursuant to ACC guidelines and approval.
9. Recreational and other Vehicles. No commercial vehicles, mobile homes, trailer(s), recreational vehicle(s), tent(s), boat(s), and other watercraft, or broken down, wrecked, junked, or otherwise inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the driveway or front of the single-family residence on any Lot. Any such vehicles shall be kept, parked, stored, or maintained on other portions of a Lot only with an enclosed structure or a screened area that prevents the view thereof from adjacent Lots or streets which said enclosure shall be approved by the ACC. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard. For purposes of this paragraph, an "inoperable" vehicle is a vehicle that does not have a current license tag or current registration sticker, or is obviously inoperable. A vehicle shall be considered kept, parked, stored, or maintained if it remains on the property for three (3) days or longer in any twelve (12) month period without prior approval of the Board.
10. Lot Maintenance and Care. Owners shall not permit the accumulation of trash, rubbish, garbage, weeds, debris, or other unsightly matter or objects on their Lots or on the

easements, or the streets abutting the same. Each Owners shall be responsible for proper disposition of their trash, rubbish, garbage, debris, or vegetation. Owners shall keep the drainage easements free of obstructions. Each Lot must be maintained in an aesthetically pleasing fashion and mowed and edged such that grass does not exceed 10 inches in height. If a Lot is not in compliance with this regulation, the Association, at its sole and absolute discretion, may abate any nuisance and invoice the Owner for the cost thereof. Owner shall pay such invoice as set forth by the Board.

11. Diligent Construction. After commencement of any dwelling, structure, or improvement, the work thereon shall be diligently constructed so as to be completed as soon as reasonably practicable but no later than 180 days after the date the ACC approves an application.
12. Signs. Displaying any sign of any kind to the public view on any Lot except (i) one (1) sign of not more than 48 square inches advertising a Lot for rent or sale; (ii) signs used by the Declarant or by a Builder to advertise the Subdivision during the development, construction and sales periods, including entry, directional, and advertising signs; (iii) political signs advocating the election of one or more political candidates or the sponsorship of a political party, issue, or proposal; (iv) personal signs indicating school affiliations, birth announcements, etc.; (v) contractors' signs used for advertising work performed on a Lot provided that such signs shall not be erected more than ninety (90) days following completion of the work; and (vi) signs indicating that a residence is monitored by a security company.
13. Dumping. Dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream or elsewhere within the Subdivision, is prohibited except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.
14. Rubbish. Trash and Garbage. Accumulation of rubbish, trash, or garbage is prohibited except within a reasonable time prior to regular garbage pick-ups, and shall be in approved refuse containers.
15. Drainage. Altering the general grading, slope and drainage plan of a Lot after the Lot has been graded by the Declarant or a Builder is prohibited without (i) written permission of the ACC and (ii) any approvals of the City or County and other appropriate agencies having authority to grant such approval which may be required. No person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, ponds, storm sewers, or storm drains. The Declarant hereby reserves for itself and the Association perpetual easement across the Community for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any adjacent property without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Subdivision. Neither Declarant nor the Association shall have any liability for damage or injury caused by flooding or surface runoff resulting from rainfall or other natural occurrences.

16. Single-Family. Residences within the Subdivision shall be used exclusively for single-family residential purposes. The term "single-family" as used herein shall refer not only to the architectural design of the residence but also to the permitted number of inhabitants, which shall be limited to a single family. Single-family shall mean the use of and improvement to a Lot with no more than one building designed for and containing facilities for living, sleeping, cooking, and eating therein. In no case may a Lot contain more than one Residence. No multi-family residences may be constructed on any Lot. No building, outbuilding, or portion thereof shall be constructed for income property, such that occupants would occupy less than the entire Lot and/or residence.
17. Dangerous Conditions. Introduction of any plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Subdivision is prohibited.
18. Business Use. Any business, trade, manufacturing, commercial or similar activity, is prohibited, except that an Owner or Occupant residing on a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Subdivision; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Subdivision; (d) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board; and (e) the single-family residence is used primarily as a residence with any business or commercial use being incidental.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time, such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection.

This subsection shall not apply to any activity conducted by the Declarant or a Builder with respect to their development, construction, and sale of Lots in the Subdivision or their use of any Lots within the Subdivision.

- 8.3 Prohibited Conditions. The following shall be prohibited within the Subdivision:
1. Disrepair items. Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated, or otherwise fallen into disrepair;

2. Visible Items. Clotheslines, garbage cans, above-ground storage tanks, mechanical equipment, and other similar items, unless located or screened so as to be concealed from view of adjacent Lots and streets;
3. Traffic Obstruction. Any fence, wall, hedge, shrub, tree, vegetation or object located so as to obstruct the view of oncoming traffic;
4. No Tractor Trailers. No Eighteen (18) Wheel Tractor Trailer Trucks shall be allowed to park in the Subdivision or on any driveway or Lot;
5. Odors. Any activity that emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace or threaten the safety of the Occupants of other Lots;
6. No Dumping. No part of the Subdivision shall be used or maintained as dumping grounds for rubbish, trash, garbage, debris, or any potential environmental contaminant;
7. Noxious or Offensive Activity. Any noxious or offensive activity that in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Property or to the Occupants of other Lots;
8. Burning of Trash. Outside burning of trash, leaves, debris or other materials;
9. Noises. Use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to Occupants of other Lots, is prohibited except alarm devices used exclusively for security purposes;
10. Firearms. Use and discharge of any gun, pistol, or firearms of any kind. The term "firearms" includes "BB" guns, pellet guns, air guns and small firearms of all types.
11. Fireworks. Use and discharge of fireworks. For the purpose of this section fireworks shall mean any combustible or explosive composition or any substance or combination of substances or any article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, including: blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used; the type of balloons which require fire underneath to propel the same; firecrackers, torpedoes, sky rockets, roman candles, sparklers, or other devised of like construction and any devices that contains any explosive substances.
12. Detention Pond Use. Recreational use of the Detention Pond is prohibited. The Detention Pond is to be used for storm water detention and drainage purposes only. Pumping water from the Detention Pond is specifically prohibited, or any other conduct which could result in an adverse effect upon the water quality, embankment, and adjacent property, drainage or any other general condition of the Detention Pond.

## ARTICLE IX

## AMENDMENTS TO DECLARATION

9.1 Amendments to Documents Declarant. During the Development Period, this declaration may be amended by declarant unilaterally at any time.

9.2 Amendments to Documents Members. After the expiration of the Development Period the consent of Members representing at least sixty-seven percent (67%) of the total votes allocated to property Owners entitled to vote on the amendment of the Declaration, in addition to any governmental approval required by law, shall be required to amend and any provisions of the Declaration.

## ARTICLE X EASEMENTS

10.1 Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

### 10.2 Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

i. the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Subdivision (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Subdivision). No such Mortgage shall be effective unless an instrument agreeing to such Mortgage has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Subdivision) and two-thirds (2/3)



of the Class "A" Members;

ii. the right of the Association to dedicate or grant licenses, permits, or easements over, under and through the Common Property to governmental entities for public purposes; and

iii. the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication, transfer, or conveyance shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Subdivision) and two-thirds (2/3) of the Class "A" Members.

(b) Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.

10.3 Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Subdivision for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Subdivision or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, cable, internet, fiber, and electricity, as well as storm drainage, and storm water retention/detention ponds, and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which Declarant or the Association might decide to have installed to serve the Subdivision. It shall be expressly permissible for the Declarant or Association to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Association shall have the right to grant such easement.

10.4 Easement for Entry. In addition to the right of the Board to exercise self-help as provided in this Declaration, the Association shall have the right, but shall not be obligated, to enter upon any property within the Subdivision for emergency, security, and safety reasons, which right may be exercised by the manager and all peace officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall not be responsible for any damage caused. This right of entry shall include the right of the Association to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

10.5 Easement for Maintenance. The Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Subdivision, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under the Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

10.6 Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features and similar streetscapes for the Subdivision, over and upon each Lot as more fully described on the recorded subdivision plats for the Subdivision. The easement and right herein reserved shall include the right to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such entry features and the right to grade the land under and around such entry features.

10.7 Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Certificate of Formation, rules, Guidelines and any amendments thereto, so long as Declarant owns any property in the Subdivision for development and/or sale, Declarant reserves an easement across the Subdivision for Declarant and any Builder to maintain and carry on, upon such portion of the Subdivision as Declarant may reasonably deem necessary, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots including, but not limited to, business offices, signs, and sales offices.

10.8 Easements to Serve Additional Property. The Declarant and Association hereby reserves for itself and its duly authorized agents, representatives, employees, successor, assigns, licensees, and mortgages, an easement over the Common Property for the purposes of enjoyment, use, access and development of the property described in Exhibit "A", 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 Property for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Property as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors and assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

## ARTICLE XI GENERAL PROVISIONS

11.1 Duration. This Declaration shall run with and bind the Subdivision, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, perpetually to the extent provided by law; provided, however, so long as, and to the extent that, Texas law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of ten (10) years, unless a written instrument reflecting disapproval of the extensions signed by the then Owners of at least two-thirds (2/3) of the Lots and the Declarant (so long as Declarant owns any property for development and/or sale in the Subdivision) has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period agreeing to terminate the same, in which case this Declaration shall be terminated; or (b) extended as otherwise provided by law.

Every purchaser or grantee of any interest (including, without limitation, a security interest) in

any real property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

11.2 Partition. The Common Property shall remain undivided, and no Owner or any other Person 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 located within the Subdivision and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots.

11.3 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

11.4 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

11.5 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

11.6 Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Subdivision), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors and assigns and others having an interest in the Subdivision or the privilege of possession and enjoyment of any part of the Subdivision.

11.7 Litigation. No judicial or administrative proceeding (including, without limitation, arbitration proceedings) shall be commenced or prosecuted by the Association unless approved by Class "A" Members representing at least seventy-five percent (75%) of the total Class "A" votes and the Class "B" Member, if any. This Section shall not apply, however, to (a) actions or proceedings brought by the Association to enforce the provisions of this Declaration (including, without limitation, the judicial or non-judicial foreclosure of liens), (b) the imposition and collection of regular, special, and other specific assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by Class "A" Members representing at least seventy-five percent (75%) of the total Class "A" votes and the Class "B" Member, if any.

11.8 Use of the Words "BLUE JAY'S LANDING". No Person shall use the words "BLUE JAY'S LANDING" or any derivative or any other term which Declarant may select as the name of the development or any component thereof in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "BLUE JAY'S LANDING" in printed or

promotional matter solely to specify that particular property is located within the Subdivision, and the Association shall be entitled to use the words "BLUE JAY'S LANDING" in its name.

IN WITNESS WHEREOF, the Declarant hereby executes this instrument this 6<sup>th</sup> day of April, 2022.

DECLARANT:



Name: Juan C. Hernandez

Title: member

J.C. Hernandez Construction, Inc.

ACKNOWLEDGMENT

STATE OF TEXAS §  
COUNTY OF FORT BEND §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on the 15<sup>th</sup> day of April, 2022, personally appeared Juan Carlos Hernandez in his capacity as President of J.C. Hernandez Construction, Inc., a Texas for-profit corporation and acknowledged that he executed the foregoing document on behalf of said entity.

*[Handwritten Signature]*

Notary Public, State of Texas

AFTER RECORDING RETURN TO:  
J.C. Hernandez Construction, Inc.  
1108 FM 2977  
Richmond, Texas 77469

