

AMENDED (01/15/2011)
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION
OF
FRANCISCO BAY PHASE II

STATE OF TEXAS

COUNTY OF NAVARRO

D.L. Apostolo, Trustee, hereinafter call “Declarant” is the owner of certain real property located in Navarro County, Texas; said property being fully described in Exhibit “A” hereto attached for all purposes of this instrument the same as if it were written herein.

Subject property is now or will be divided into smaller parts ir tract, the total of which will be hereinafter be referred to as “Project” or as Francisco Bay, Section II.

For the purpose of enhancing and protecting the value, utility, attractiveness and desirability of the tracts constituting such project, Declarant hereby declares that all the real property described above and each part thereof shall be held, sold and conveyed only subject to the following easements, authority, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right title, or interest in the above described property or any thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.

ARTICLE I.
DEFINITIONS

Section 1. “**Association**” shall mean and refer to the Francisco Bay Property Owners Association, its successors and assigns, or corporate entity of similar name as created by developer.

Section 2. “**Declarant**” shall mean Francisco Bay, Incorporated, and its successors and assigns, provided such an assign acquired the project in total, or the remainder in total for purposes of development and sale. Declarant may be referred to as “Developer.”

Section 3. “**Tract**” shall mean any plot of land divided or re-divided within project.

Section 4. “**Maintenance**” shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, drainage, irrigation systems, commons, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear expected.

Section 5. “**Member**” shall mean every person or entity who holds membership in the Association, each purchaser of property in the project becomes a member of the Association upon such purchase.

Section 6. “**Mortgagee**” shall mean a holder of a bonafide mortgage or a beneficiary under a holder of a Deed of Trust.

Section 7. **“Mortgage”** shall mean a holder of a bonafide mortgage, a Deed of Trust, or a Vendor’s Lien,

Section 8. **“Authority”** shall mean that Authority as created herein and vested in the Declaration.

Section 9. **“Board”** shall mean the Board of Directors of the Association.

Section 10. **“Drives”** shall mean any common reserved for use by all Owners for vehicular traffic.

Section 11. **“Commons”** shall mean any property reserved for or dedicated to the common use of the property Owners

Section 12. **“Owner”** shall mean the record Owner, including Declarant, whether one or more persons or entities, of fee simple title to any tract which is a part of the project, and shall include purchasers under contract for deed, but shall not include those holding title merely as security for performance of an obligation.

Section 13. **“Project”** shall mean only the record property herein described in Exhibit “A” and such additions thereto as may be brought within the jurisdiction of the Association as hereinafter provided.

Section 14. **“Good Standing”** shall mean all assessments, Association dues, fines, and other fees due and payable to Association are current on or before the time of voting. Except any assessments, Association dues, fines, and other fees due and payable to Association an Owner has appealed in writing to the Board of Directors and for which the Board of Directors has not issued in writing a final ruling, prior to voting.

Section 15. **“NOTICE”** shall mean written correspondence sent to record Owner(s), and shall be deemed received when sent to the last known address of record provided by Owner(s) or Declarant to the Association Treasurer and Secretary, and said notice is sent by US mail Certified return receipt requested, Federal Express or like carrier, electronic transmission, such as but not limited to, e-mail or facsimile but shall not include notice to those holding title merely as security for performance of an obligation.

ARTICLE II.

EASEMENTS, DRIVES, ROADS, AND PRIVATE ROADS

Section 1. **Private roads:** Private roads, drives, or access easements and easements for installation and maintenance of utilities, irrigation and drainage, are established by separate instrument or instruments of record or to be placed of record in the office of the county clerk, and as hereinafter set forth. Within such easements and roads, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of service or utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities on the easements or which may interfere with passage along such private road easements. The easement area of each tract and all improvements therein shall be continuously maintained by the Owner of such tract, except for improvements for maintenance of which a public, private, or quasi-public Authority or utility company is responsible.

Section 2. **Easements:** Perpetual easements are reserved over and across the tract for electrical power, water, sewerage, gas, telephone, television cable, and similar utility facilities along with the easements, shown on the recorded plat and all said easements are adopted as part of these restrictions. There is also reserved and dedicated hereby for all the use of the developer and any public or private utility company an unobstructed aerial easement five(5) feet wide from any plane twenty (20) feet above ground upward, located

adjacent to and above all dedicated utility easements. The easements reserved and dedicated under the terms and provisions hereof shall be for the general benefit of the subdivision and shall also ensure to the benefits of and may be used by any public or private utility company entering into and upon said property for the purposes aforesaid, without the necessity of any further grant of such easement right to such utility companies. NO utility company, political subdivisions, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, or flowers, or to other property of the owner situated within any such easement.

No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation or right of way, and such easements reservations, and right of ways shall at all times be open and accessible to representatives of the Authority, to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, or under, and above such locations to carry out any of the purposes for which such easement, reservations, and right of ways are reserved.

Section 3. **The private drive** or roadway easements as set forth by separate instruments are for the private use and benefit of the Owners of the tracts within the project as therein prescribed, and under the conditions as therein set forth, and are not dedicated to the general public.

Section 4. **It is understood** and agreed the easements granted herein and to be granted hereafter are reserved as permanent easements for the purpose set forth and are not subject to the time limit applicable to other restrictions.

Section 5. **There is hereby reserved** and established a utility easement adjacent and parallel to all roadway easements. Said utility easement is twenty (20) feet wide upon the ground and twenty (20) feet wide above the ground and extends from the outside boundary of the roadway easement into and upon the adjoining property on each side thereof. There is further reserved an easement into all property adjacent thereto for the purpose of installation of guy wires where necessary for securing utility poles.

Section 6. **There is hereby reserved** and established an easement for purposes of drainage and/or service of utilities upon and in addition to the purposes of any existing easement of record and bring still valid, such easement now made subject to all the stipulations as herein otherwise set forth pertaining to utility and/or drainage easements.

ARTICLE III. **ARCHITECTURAL CONTROL**

Section 1. **No building** shall be erected, placed, or altered on the surface of any tract until the construction plans, specifications and a plan showing the location of the structure, and prior to construction the complete plan of septic system showing relation to tract line, have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to the location with respect to topography and finish grade elevation. Approval shall be as provided herein within a reasonable time and shall not be withheld unreasonably.

Section 2. **The Architectural Control Committee** is hereby authorized to enforce any building or fire codes, or any rules, restrictions or requirements concerning the construction of buildings on the surface of any tract in this project. Said requirements

having been made by an authority, local, county, state, or otherwise, having legal authority to make such requirements. It is further stipulated herein that the Architectural Control Committee is empowered to require firewalls to be constructed as wall sections in contiguous housing, should such type housing in the future be allowed. Such requirements would be made based on the requirements of municipalities of the area or some other standard code ordinarily pertaining to the construction industry. **All building on the surface of any tract in this project must be permitted through the appropriate governing entity or agency, including but not limited to Navarro County Planning and Zoning Commission, Tarrant Regional Water District, or other controlling authority and must comply with all zoning regulations, if any.**

ARTICLE IV.
ARCHITECTURAL CONTROL COMMITTEE

Section 1. **ARCHITECTURAL CONTROL COMMITTEE:** The Architectural Control Committee is composed of D.L. Apostolo and Valorie Price. In the event of a death or resignation of either member, the remaining member shall have full Authority to designate a successor. The Committee shall delegate this Authority to the Association, who will then appoint a committee of three (3) members in good standing, which shall consist of at least one director, one unimproved lot owner and one improved property owner, to protect the owners or lots hereunder against improper use of lots, to preserve, so far as practicable, the natural beauty of said property, to guard against the erection on the surface of any tract in this project thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials, to obtain harmonious scheme, to ensure the highest and best development of said property, to encourage and secure the erection of attractive homes thereof, with appropriate locations thereof on lots; to secure and maintain property setbacks from street and adequate free spaces between structures, and, in general, to provide adequately for a high quality of improvement(s) on said property, and hereby to enhance the value of the investments made by the purchasers of lots therein. If, for any reason, a member or members of said Architectural Control Committee becomes unable or unwilling to serve, then a replacement member or members shall be selected by a majority of the elected Directors of the Association. All house plans shall be approved by a majority of the Architectural Control Committee, which shall not be unreasonably withheld. All boat docks and landings must be approved by the Architectural Control Committee prior to submission to Tarrant Regional Water District, which approval shall not be unreasonably withheld. Neither Association nor the Architectural Control Committee, nor the members of said Committee, shall have any liability or responsibility at law nor in equity on account of the enforcement of, nor on account of the failure to enforce these restrictions, unless such enforcement or failure to approve is malicious or without merit or contrary to prior Architectural Control Committee approvals or acts.

Section 2. **PROCEDURE:** The Committee's approval or disapprovals required in these covenants shall be in writing and disapprovals shall be clearly stated in writing of the required amendments, changes or modifications needed to receive approval from Committee. In the event the Committee, or its designated representative fail to approve or disapprove within thirty (30) calendar days after plans and specifications have been submitted to it, or in any event, if no suit by the Association to enjoin the construction has been commenced prior to completion thereof, approval shall not be required and the related covenants shall be

deemed to have been fully complied with and all requirements waived. Neither Association nor the Architectural Control Committee, nor the members of said Committee, shall have any liability or responsibility at law or in equity on account of the enforcement of, or on account of the failure to enforce, these restrictions, unless such enforcement or failure to approve is malicious or without merit or contrary to prior acts.

ARTICLE V. USE RESTRICTIONS

Section 1. **TYPE OF BUILDING PERMITTED:** All tracts shall be used for residential purpose only, and no building shall be erected, altered, placed or permitted to remain on any tract other than one detached single family dwelling not to exceed two stories in height and all homes must have a private attached garage and/or carport for not less than two (2) motor vehicles and not more than three (3) motor vehicles. Tract owner may apply to the Architectural Control Committee for an exception to construct a fourth garage to house a recreational vehicle. Motor vehicles as defined herein shall not be commercial vehicles. All homes must be site built. All mailboxes located on any tract shall be designed and constructed in a similar architectural style, color and material as the residential dwelling. Mailboxes shall meet the U.S. Postal standards for size, height, and location.

Section 2. **MINIMUM FLOOR AREA AND EXTERIOR WALLS:** Any residence on said lots in Block One (1) , Section One (1) must have a floor area of not less than eighteen-hundred (1,800) square feet, excluding patios, driveways, carports, and garages. Residences on all lots in Blocks Two (2) and Three (3), Section One (1) must have a floor area of not less than sixteen hundred (1,600) Square feet. Lot 13, Block 1, Section 1 shall be used for recreational facilities and is exempted from these covenants and restrictions.

Section 3. **SETBACKS:** No building shall be located on any tract nearer than thirty (30) feet on the ground to the front tract line. No building shall be located nearer than five (5) feet on the ground to the side tract line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided however, that this shall not be constructed to permit any portion of the building on any tract to encroach upon another tract. If two or more tracts or fractions thereof are consolidated into a building site in conformity with the provisions of Article V, Section 4, these building setback provisions shall be applied to such resultant site as if it were an original, plated tract.

Section 4. **RESUBDIVISION OR CONSOLIDATION:** None of said tracts shall be resubdivided in any fashion except upon the prior approval of the Architectural Control Committee and replatted through Navarro County Planning & Zoning. No tract or fraction thereof shall be granted approval to combine or replat any number of tracts or fractions unless the tract owner has applied for a construction permit approval by the Architectural Control Committee. Tract owners shall only be permitted to replat or combine a maximum of three (3) tracts or two and one-half (2 and 1/2) acres; whichever is less. The tract owner shall continue to pay the full annual Association dues, fees, and assessments for each tract for each calendar year after the replat was granted by the Architectural Control Committee and Navarro County Planning & Zoning until the residential construction is completed. The full annual Association dues, fees, and assessments for each tract for each calendar year shall continue until the first day of January of the first year after construction is final and tract owner occupies the residence. However, tract owner shall only have the right to one vote for

the replatted tracts or fractions thereof after the replat was granted by the Architectural Control Committee and Navarro County Planning & Zoning.

Section 5. **NOXIOUS OR OFFENSIVE ACTIVITIES PROHIBITED:** No noxious or offensive activity shall be carried on upon any tract.

Section 6. **PROHIBITED RESIDENTIAL USES:** No structure of any temporary character or other outbuilding constructed on the surface of any tract in this project shall be used on any tract at any time as a residence, either temporarily or permanently. No unsightly storage building constructed on the surface of any tract in this project shall be permitted that is visible from the street. No out buildings constructed on the surface of any tract in this project shall be permitted, that are visible from the street, unless constructed of the same materials and quality of the finished home. However, a 10' x 12' storage building may be used prior to the construction with Architectural Control Committee approval and permit from Navarro County Planning & Zoning, if applicable. Temporary storage buildings shall be removed upon completion of a permanent home; unless constructed of the same materials and quality of the finished home.

Section 7. **SIGNS:** No signs of any character shall be allowed on any tract except two (2) signs of not more than 30"x 18" advertising the property for sale or rent; provided, however, the Declarant and any other person or entity engaged in the construction and sale of residences within the subdivision shall have the right, during construction and sales period, to construct and maintain such facilities as may be reasonably necessary and convenient for such construction and sale, but not limited to, signs up to 4'x8', offices, storage areas, model units, and recreational vehicles for tract owner to reside in during and until construction is complete. All signs placed on any tract(s) must receive written approval by the Architectural Control Committee prior to installation on the tract. Realtor signs shall be maintained and all grass shall be edged around sign. Realtor signs not maintained may be removed by Architectural Control Committee.

Section 8. **OIL DEVELOPMENT PROHIBITED:** No oil well drilling, oil development operations, oil refining quarrying, or mining operations of any kind shall be permitted on any tract, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any tract. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any tract.

Section 9. **RUBBISH, TRASH, AND GARBAGE:** No tract shall be used or maintained as a dumping ground for rubbish, or junk; and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such material shall be kept in a clean and sanitary condition.

Section 10. **ANIMALS:** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any tract, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Tract Owner shall be responsible for any damage caused by their dog(s), cat(s), or other household pet(s) to any other tract Owner's property.

Section 11. **WALLS AND FENCES:** Walls and fences, if any, must be approved by the Architectural Control Committee. The erection of any wall, fence or other improvements on any easement is forbidden. Fences and walls will be constructed of ornamental iron, wood or masonry; however fences constructed of wood, masonry or other solid material shall not be constructed taller than four (4') feet above the ground. This restriction does not apply to landscaping or retention walls that shall require no approval unless otherwise restricted herein.

Section 12: **SIGHT AND DISTANCE AT INTERSECTIONS:** No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points ten (10) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sightline limitations shall apply on any lot within five (5) feet from the intersection of the street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sightlines.

Section 13. **BOATS, TRUCKS, BUSES, AND TRAILERS:** No motor vehicle, boat, bus, or trailer shall be left parked in the street in front of any tract except for construction and repair equipment while a residence or residences are being built or repaired in the immediate vicinity, and no commercial vehicle, bus, boat, or trailer shall be parked on the driveway or any portion of the tract in such a manner as to be visible from the street. Owner may park a recreational vehicle, motor home or travel trailer on the tract for temporary use only, which shall not exceed seven (7) contiguous calendar days unless as permitted in Section 7 hereinabove. However, tract owner may request in writing approval from the Architectural Control Committee for a variance for visiting guests for no more than fourteen (14) contiguous calendar days, which shall not be unreasonably withheld.

Section 14. **PROHIBITED ACTIVITIES:** No professional business or commercial activity to which the general public is invited shall be conducted on any tract.

All residences constructed upon the tracts herein described shall be connected with proper water and electrical at the expense of the Owner of said tract and all residences shall have a suitable, workable septic tank system as specified by the project engineers and to be approved by the Tarrant Regional Water District, at the expense of the Owner.

ARTICLE VI. **OWNER'S OBLIGATION TO REPAIR**

Each Owner shall, at his sole cost and expense, repair and maintain Owner's residence, and other buildings on Owner's tract, keeping the same condition comparable to the condition of such building at the time of its initial construction, excepting only normal wear and tear.

ARTICLE VII. **MEMBERSHIP IN ASSOCIATION: VOTING RIGHTS**

Every Owner of a tract shall be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of a tract.

For purpose of voting, Developer/Declarant will be construed as an Owner and member with the same voting privileges of one (1) vote per tract owned.

All Owners in good standing, shall be entitled to one vote for each full tract owned. When more than one person holds an interest in a given tract, all such persons shall be members and the vote for such tract shall be exercised as they may determine among themselves. Tract owner(s) who have replatted or combined tracts into one tract shall only

have one vote for the replatted or combined tracts. In no event, shall more than one (1) vote be cast with respect to any tract owned by such members.

Declarant shall, after seventy-five percent (75%) of the lots have been sold, appoint a three(3) member Board of Directors for the Association, who shall serve for one year, and on the same date of each following year, the members of the Association shall elect a Board of Directors for that year as set forth herein. Such Board of Directors shall have the full powers and duties as may be reasonably necessary to carry out the purposes and duties of the Association as provided herein. The above stated term and election date may vary fifteen (15) days before or after said date at the option of the Board of Directors.

ARTICLE VIII. ASSESSMENTS

Section 1. **Declarant hereby** covenants for each tract within the project and each Owner of a tract is hereby deemed to covenant by acceptance of his contract or deed for such tract. Whether or not it shall be so expressed in Owner's contract or deed, to pay to the Association, (1) annual assessment; and (2) special assessments for capital improvement or other expenses incurred on behalf of the Association. Such assessments and expenses (hereinafter referred to as "assessments") shall be established and collected by the Board of Directors as herein provided. The annual and special assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and a continuing lien on each tract against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person or persons who owned the tract at the time the assessment fell due, and such personal obligation shall pass to the successors in the title of such person or persons whether or not expressly assumed by them.

Section 2. **The annual assessments** levied by the Board of the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents of the project, improvement and maintenance of the drainage systems, or community facilities and private roadway easements within the project.

Section 3. **In addition** to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement to the project or any designated private roadway, or county roadway, within or giving access to the project. Any such assessment must be approved by a majority, fifty-one percent (51%), of votes cast by the members in good standing, in a manner of voting as herein prescribed.

Section 4: **The Association's Board of Directors** shall fix the amount of the annual assessment against each tract at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. The Board of Directors may allow assessments to be made payable monthly. Notice of the annual assessments shall be sent to every Owner subject thereto. The Association shall, upon written request, and for a reasonable charge set solely by the Board of Directors, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific tract has been paid, and shall on or before February 15th of each year, cause to be recorded in the office of the County Clerk of the County, a list of delinquent assessments as of that date setting forth and establishing the amount of the lien therefore.

Section 5. **Any assessment** (i.e. annual assessment) not paid within fifteen (15) calendar days after the due date shall be deemed in default and shall bear interest in the amount of 1.5 percent (1.5%) per month on the unpaid principle balance until principle and interest are paid in full. The Association acting through its Board of Directors, may bring an action at law against the tract Owner(s) personally and if more than one Owner, (jointly and severally), that is/are obligated to pay, and/or may foreclose the lien against the property. Tract Owner(s) shall personally and if more than one Owner, (jointly and severally,) be responsible for all costs incurred in the collection of past due assessments, including but not limited to certified mail, Federal Express, court costs, interest costs of litigation and reasonable legal fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas, community facilities, roadway easements, or abandonment of his tract(s).

Section 6: **The Assessment Lien** provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any tract shall not affect the assessment lien or any outstanding assessment(s). However, the sale or transfer of any tract pursuant to a mortgage foreclosure or any proceeding approved by the Board in lieu thereof shall extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such tract from liability for any assessment thereafter becoming due or from the lien thereof.

Section 7: **Any expenses of suit** brought by the Association and/or Declarant herein and any expenses of defense of any suit brought against the Association, its officers, or directors, and/or Declarant in regard to the functions thereof in the administration or enforcements of these covenants shall be borne by the Association and the Association shall have and hold any rights to recovery of such fees.

Section 8: **Each Owner** in the project agrees that should suit be brought by Declarant and/or the Association to enforce performance of the covenants the prevailing party shall be entitled to judgment for damages and all costs of suit, including but not limited to expert witnesses, attorneys, appraisers, surveyors, and court costs. The amount of any such judgment obtained for damages or cost shall become a judgment lien against defendant's property in this project and subject to the same stipulations and conditions of a lien for assessments.

Section 9: **It is specifically stipulated** that Developer and its successors or assigns are exempt from assessments of any nature, form or amount on all land or inventory held herein for sale and/or future development; except fines for mowing, cleanup or trash on tracts owned or controlled by Developer.

It is further stipulated that should Developer, its successors or assigns foreclose on any property sold under deed or contract such as property will revert to status of inventory free of obligation of any accrued and unpaid assessments or costs and/or lien therefore. Any such liens of record will be released by the appropriate officer or officers upon presentation of release thereto by Developer. Upon failure of such action by said Authority, or in lieu thereof, Developer may file a release executed on and by its own behalf which will be conclusive evidence to all persons that such lien is thereby released unless the Association acting with its Authority files a proper court action to invalidate said release within thirty (30) days after recordation. Furthermore, see Section 13. of Article IX. herein.

ARTICLE IX.
NOTICE OF AUTHORITY ASSESSMENT

Section 1. **Each interested party** or purchaser of a lot, tract or parcel of ground, hereinafter called lots, as platted in this subdivision, is hereby made aware of the fact that all streets herein are dedicated or will be dedicated to the use of property Owners herein and are dedicated or will be dedicated to the use of the property Owners herein and are not dedicated to the county of Navarro, any municipal body or public authority, nor to the public. Such purchaser or other interested party is hereby given notice that the maintenance of such streets and other designated areas and facilities, called common areas, and the payment for security guards, patrols, garbage pickup, and other conveniences deemed necessary and requisite to the pleasure, comfort, security and enjoyment of the property Owners in FRANCISCO BAY SUBDIVISION will be provided for through an assessment. Assessments, as the case may be, to be levied against each and every lot as is platted or to be platted in FRANCISCO BAY SUBDIVISION, and any other tract or parcel of land sold therein that will benefit from the use of common areas and common facilities to be maintained by assessment, such determination to be made by the Authority created herein.

Section 2. **AGREEMENT:** Each purchaser of a property in FRANCISCO BAY SUBDIVISION hereby agrees that the Declarant has the Authority, and in consideration of the necessity of an Authority to administer the funds and attend to the management and maintenance of all common areas, services and facilities in said Subdivision, does hereby grant and give unto the said Declarant, its successors and assigns the Authority to levy and collect assessments as necessary, subject to the requirements as hereinafter set forth, for the purpose of the maintenance of all facilities, areas, and services as hereinabove and hereinafter described.

The Declarant, its successors or assigns shall, after seventy-five percent (75%) of the lots have been sold, cause to be created a Property Owners Association with charter and bylaws approved by Declarant and members, being owners of property in FRANCISCO BAY, and Declarant shall assign the Authority created in this instrument to said Property Owners Association and convey into such Association, as trustee all the various common areas. Such conveyance would be subject to all the requirements, Authority and limitations as are imposed upon Declarant and property Owners in this and other instruments. Hereinafter, the title THE AUTHORITY for purposes of this instrument will mean any legal person or body holding the Authority granted in this instrument.

Section 3. **COMMONS:** It is herein stipulated that designated common areas may be used for any purpose required or deemed by the Authority advantageous to the property Owners in the project, such purpose to include, but not be limited to, the installation of any or all utilities, and dedication of such easements and right of ways as deemed necessary by said Authority, such dedications may be made upon a plat thereof or by separate instrument in writing and such dedication may be made at the discretion of the Authority at any time, present or future, or the Authority may allow the installation of any main or service extensions in said Commons by letter if formal agreement to the utility company, or may allow installation of service lines from main to dwelling or outlets or by oral approval. Any such installations made will be considered approved if the Authority has not ordered such installation halted prior to completion thereof.

Section 4. **EFFECTIVE DATE OF ASSESSMENTS:** Any or all levies for any or all purposes as herein set forth may be made and begun at an appropriate time as will be determined by the Authority. Said action may be made to affect, at different times, any

sections or tracts and levies for maintenance of general or specific areas may be made or begun at different dates, and are not required to be made simultaneously.

When such determination is made by the Authority, notice will be given to the owners of such properties as affected and all said Owners will then be required to pay said assessments to the Authority.

Section 5. **HANDLING OF ASSESSED FUNDS:** It is specified herein that all funds collected by the Authority for maintenance and services of commons will be kept in a special bank account or savings account or certificate of deposit or money market account to be used only for the purpose as herein stated, and an itemized account of all receipts and disbursements shall either be, at the sole discretion of the Board of Directors as to choice of the following method(s), posted on Association's web site, mailed, e-mailed or faxed quarterly to all property owners in said project.

If at any time the Owners of fifty-one percent (51%) or more of the tracts affected by an assessment desire that the funds so established and the books and records pertaining thereto be audited, then said Owners may, by affixing their signatures to a petition cause such audit to be made. Such petition will cite the account by its proper identification and shall stipulate the name of a certified public accountant who shall make such an audit and the date that such records shall be made available to said accountant. The Authority will then be compelled to make such records available to said accountant. The Authority will then be compelled to make such records available to the named certified public accountant, in the offices of the Authority or other place at the discretion of Authority and will be authorized to pay to such accountant, reasonable accounting fees for said audit from the funds of the account so audited.

Section 6. **ESTABLISHMENT OF AMOUNT OF ASSESSMENT:** The Authority in initially setting the monthly levy or assessment for any purpose stated herein, will do so on an estimated basis determined by an in-depth study of the requirements of said purposes. Said amount so levied may be charged from time to time as necessary, to pay the allowed expenses as herein set forth or should said assessment prove to be more than needed for such purposes, then the Authority will reduce said levy accordingly.

Section 7. **SPECIAL ASSESSMENTS:** The Authority will have the right, privilege and powers to levy special assessments as may become necessary for purposes as required and authorized herein. Such special assessments would be made on the same pro-rated basis as hereinabove set forth and paid to Authority as prescribed by said Authority. Upon the approval of the Owners of fifty-one percent (51%) percent of the tracts, subject to any special assessment, such special assessments could be made for the purpose of the construction or reconstruction of improvements for the use and benefit of such Owners in the Common areas.

Section 8. **COLLECTION OF ASSESSMENTS:** The Authority will have the sole responsibility and Authority to collect all assessments. Such assessments will be levied on a monthly basis and Authority will have the power to allow certain reasonable discounts to Owners paying said assessments semi-annually or annually in advance. Authority will have the power to add to such assessments appropriate and reasonable penalties against said Owners for delinquency in payment of assessment as well as other remedies set forth herein.

Section 9. **DELINQUENT ASSESSMENTS:** Any Owner being thirty (30) days delinquent in the payment of any assessment shall have filed against his property a lien for such assessment, plus any penalties and costs; including but not limited to interest, penalty(ies), collection cost, court cost, and reasonable legal fees. Such lien shall remain in

effect until past due assessments, penalties and costs have been paid or satisfied as otherwise set forth herein.

Section 10. **ENFORCEMENT OF LIENS:** Each lien established by the Authority pursuant to the provisions of this instrument, by recording with county Clerk of this county, a notice of delinquency and lien upon said property may be foreclosed, as and in the same manner as is provided for the foreclosure of a mortgage upon real property under the laws of the State of Texas, just as though said Authority had retained a vendor's lien and possessed a Deed of Trust and Note against said property. In any action to foreclose any such lien, the Authority shall be entitled to costs, including reasonable attorney's fees, and other allowed costs and penalties

Section 11. **RESERVATION OF LIENS:** The Authority does hereby reserve unto itself, establish and impose, a lien, thereby securing each assessment imposed, or in any way provided for herein, together with any cost, interest, or penalties against all the property covered in this instrument subject only to any limitations and/or provisions in this instrument.

Section 12. **SUBORDINATION TO MORTGAGE:** Each and every assessment and lien together with any cost, penalties to interest, established, reserved or imposed under this instrument and Authority shall be subordinate to any prior valid bonafide mortgage or trust deed (and the lien and/or title thereof) which has been or may hereafter be given in good faith and for value on any interest of any Owner covered by this instrument and Authority. Any subsequent Owner of any property so covered, purchased at foreclosure, shall be bound by restrictions, conditions, covenants, reservations, assessments and liens set out in his instrument, not including, however, any assessment or lien arising prior to the foreclosure sale.

Section 13. **EXCLUSION OF DEVELOPER:** The Developer of this project, its successors and assigns, hereinafter called Developer, will sell to purchaser's properties within said project. It is specifically stated and agreed that if one or more tracts or parcels of land are sold to any purchaser by Developer, by contract for deed, or deed with lien and note or other instrument, and purchaser defaults in payments of said lien in any manner, such as failure to pay principal, interest, taxes, insurance or assessments set out hereunder and said property be repossessed, or such contract cancelled by Developer, or any assignee of Developer's right title and interest in any such lien or contract, then Developer or said assignee will not be required to pay to the Authority any delinquent or past due assessments or penalties, and any liens for non-payment of same filed by said Authority will be released as regards such property, evidence of such cancellation, repossession for foreclosure will, in itself, be sufficient with no further release or action required by the Authority for this purpose; however, this stipulation does not by any means relieve the purchaser in default who failed to pay such assessments levied and/or penalties and cost, and from whom said property was repossessed, of his personal liability to pay such delinquent funds, though such delinquency will not be attached to such property as a lien in this instance.

Section 14. **RULES AND REGULATIONS GOVERNING USE OF COMMONS AND FACILITIES THEREIN:** Rules and regulations governing the use of all commons and facilities will be made and enforced by the Authority, to ensure the best and mutual enjoyment thereof of all the qualified property owners and their guests. Any Owner who fails to pay assessments levied or fails to comply with any requirements or rules and regulations governing the use of said commons and facilities will be denied the use thereof. Such rules and regulations to be made and enforced by the Authority will include, but not be limited to, rules concerning guest privileges to commons, recreation facilities, if any, speed limits on streets, type of

vehicles on streets and other commons, control of noise, use of irrigation water channels or canals.

Section 15. **DELEGATION OF USE OF FACILITIES:** The Owner may delegate his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 16. **MAINTENANCE OF TRACTS:** The Owners of a tract or tracts in the project shall be required to keep said property free of underbrush, weeds, tall grass, or any other unsightly or offensive growth or accumulation of trash, garbage, or unsightly deposits of any nature or kind from the date of purchase of said tract. Tall grass shall mean growth in excess of eighteen inches (18") in height. This requirement is effective on unoccupied and occupied tracts. The fifth (5th) business day after notice to Owner of such situation existing, which said notice may be by regular mail, e-mail, facsimile or Federal Express to owner(s), the Authority herein above created or its employees shall have the right and Authority to enter upon said premises and correct existing violation of the requirements so stated. Such Authority shall charge said Owner(s) the cost of such work accomplished and bill said Owner(s) for said cost plus an assessment of a fine set by the Board of Directors; said assessment fine not to exceed three (3) times the actual cost of work for each occurrence. Tract Owner(s) shall be solely responsible for the cost of maintaining the tract(s) in the project to the water's edge, middle of adjacent ditch, or adjacent fence line. On the fifth business (5) day (Monday-Friday) after receipt of notice of such condition to owner, and failure of Owner to begin and continue at a reasonable rate of progress to correct such condition the Authority may enter upon the premises to do or cause to be done any work necessary to correct said situation at Owner's sole expense.

Section 17. **EXTERIOR MAINTENANCE OF BUILDING:** In the event the Owner of any building on the project should allow such to fall into disrepair and become in need of paint, repair, or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Authority as herein established will give such Owner written notice of such conditions. Fifteen (15) calendar days after receipt of notice of such condition to Owner, and failure of Owner to begin and continue at a reasonable rate of progress to correct such condition, the Authority may enter upon the premises to do or cause to be done any work necessary to correct said situation. The Owner thereof shall be billed for cost plus ten percent (10%). All monies so owed the Authority will become a special assessment against the property Owner(s) and the tract(s).

Section 18. **The Authority** herein created is empowered to contract with the utility company for the owner of each tract or dwelling in the project to pay the amount of \$10.00 (ten dollars) to be paid in cash or added to such Owner's electric bill each month, as a contribution towards payment for the operation and maintenance of street lighting in this project. This fee may be adjusted up or down within reason in accord with the rates of the utility company. Authority may include funds for street lights in the general assessment.

Sections 19. **NOTICE:** In all instances herein where notice is required, notice will have been given upon placing in the United States mail, certified mail return receipt requested, or Federal Express or like delivery service (confirmation required), or e-mail (confirmation required), or facsimile (confirmation required) said notice to the last known address (residence or business), e-mail (business or personal), or facsimile (business or personal) of such person or party to whom notice is to be given. **IT SHALL BE THE SOLE RESPONSIBILITY OF THE TRACT OWNER(S) TO NOTIFY THE TREASURER AND**

SECRETARY OF THE ASSOCIATION IN WRITING OF ANY CHANGE IN CONTACT INFORMATION FOR OWNER(S). ASSOCIATION SHALL HAVE NO LIABILITY FOR ANY NOTICE ISSUED TO OWNER'S OUTDATED CONTACT INFORMATION.

Sections 20. It is specifically agreed by each purchaser and stipulated herein that the Developer, its successors, and assigns, will have the right of use of all commons. Such use will be allowed for the purposes of promotion and sale of property by said Developer and will include the right of Developer to issue passes and permits to guests or prospective purchasers of property and Developer's employees to issue passes and permits to guests or prospective purchasers of property and Developer's employees to use and enjoy for limited periods, such commons, facilities, and services. This right is reserved unto the Developer, its successors, and assigns, so long as said Developer owns lands in the project and is marketing same.

ARTICLE X.
LAW ENFORCEMENT AND STREET RIGHTS

Section 1. **TRAFFIC LAW:** Notwithstanding the fact that all or some roads and streets in this project are or may not be dedicated unto the public, but only to the property Owners in the project, as easements, it is hereby stipulated that the Commissioners Court will have the full Authority to establish speed limits or other traffic laws and rules, penalties for violation thereof upon the streets of this project, and the law enforcement officers of the County or of the State of Texas or any other official body having such Authority, may enter upon this project to enforce the speed limits as set by the county Commissioner's Court or other entity or Authority, just as though said roadways were public.

Section 2. **PUBLIC LAW:** Notwithstanding the fact that commons in the project are private and dedicated only unto the property owners within the project, it is hereby stipulated that any law enforcement officer, county, state, or federal, is hereby authorized to enter upon the premises of the project for all purposes just as though the project commons were dedicated unto the public, and every law enforcement officer will have the same rights, privileges and duties within the boundaries of this project as he would in any subdivision whereby the streets and other commons and facilities were dedicated to the public.

Section 3. **RIGHT OF ROAD DEDICATION:** Notwithstanding the fact that all roads within this project are dedicated to the property Owners and are not public roads and are not dedicated to the county or any other body politic, it is hereby stipulated that after five (5) years from date should the Owners or fifty-one percent (51%) of the total tracts in the project so desire and execute a petition to the County Commissioner's Court, petitioning such court to accept said roads as county roadways and should such court accept said roads and agree to maintain same, then said roads shall become County roadways and open unto the public and shall be maintained by the county and such roads shall cease to be private roadways. For the purpose of this section, any common, drive, access easement, or private road in portion or in total may be considered as roads if established for vehicular traffic.

ARTICLE XI.
GENERAL PROVISIONS

Section 1. **Declarant**, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges or of hereafter imposed by the provisions of this

declaration. Failure by Declarant, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter; unless waiver is otherwise stipulated hereinabove.

Section 2. **Invalidation of** any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. **No breach of** any of the conditions herein contained or re-entry by reason of such breach shall defeat or render invalid the lien of any mortgage made in good faith and for value as to the project or any tract therein; provided, however, that such conditions shall be binding on any Owner whose title is acquired by foreclosure, trustee's, sale, or otherwise.

Section 4. **The covenants and restrictions** of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any member thereof for a period of twenty five (25) years from the date hereof and thereafter shall continue automatically in effect for additional periods of ten (10) years, unless otherwise agreed to in writing by the then Owners of at least seventy-five percent (75%) of the tracts based upon one vote for each tract owned.

Section 5. **Declarant** shall have the right during the term of the constitution of this agreement to add to the real property within the project any contiguous tracts and the Owners of the tracts within such added portion shall become members of the Association on the same terms and conditions and subject to the same restrictions as apply to Owners of tracts within the original project.

ALL PRIOR AMENDMENTS FILED OF RECORD IN CORSICANA, NAVARRO COUNTY, TEXAS PRIOR TO JANUARY 15, 2011 SHALL BE AND ARE FULLY INCORPORATED HEREIN FOR ALL PURPOSES.

EXECUTED THIS ____ DAY OF _____, 20____ at Corsicana, Navarro County Texas.

BAYVIEW COUNTRY ESTATES, INC.

By: _____
D.L. Apostolo, President

STATE OF TEXAS }
COUNTY OF NAVARRO }

This instrument was acknowledged before me this ____ day of _____, 20____, by D.L. Apostolo, President of Bayview Country Estates.

Notary Public, State of Texas

EXHIBIT "A"

All those certain lots, tracts or parcels of land located and situated in Francisco Bay, a subdivision out of the F. Plocello Survey A-636, Navarro County, Texas, as shown by plat of said subdivision, recorded in Volume_____, pages_____, of the Plat records of Navarro County, Texas.