



City of La Porte Planning and Zoning Commission Agenda

Notice is hereby given of a **Regular Meeting** of the La Porte Planning and Zoning Commission to be held on **Thursday, July 16, 2015 at 6:00 p.m.** at City Hall Council Chambers, 604 West Fairmont Parkway, La Porte, Texas, regarding the items of business according to the agenda listed below:

1. Call to order.
2. Roll call of members.
3. Consider approval of meeting minutes: May 27, 2015 Meeting and June 18, 2015 Meeting.
4. Consider approval or other action regarding a request by Bayway Homes for approval of a Preliminary Plat for the Replat of Lots 1 thru 5, Block 14, Sylvan Beach, 1st Addition.
5. Consider recommendation to the La Porte City Council on a proposed amendment to the Future Land Use Map component of the La Porte Comprehensive Plan by amending a 6.9547 acre tract of land further described as Tracts 718B, 719, and 719A, La Porte Outlots, situated in the Enoch Brinson Survey, A-5, City of La Porte, Harris County, Texas, from "Neighborhood Commercial" to "Mid- to High- Density Residential."
6. Open public hearing to receive input on an application for Special Conditional Use Permit #15-91000003, a request by Brownstone Ventures, LLC to allow for construction of a multifamily luxury apartment complex at the southwest corner of Underwood Road and Caniff Road.
 - a. Staff Presentation
 - b. Applicant Presentation
 - c. Public Comments (for, against, or questions)
 - d. Question and Answer
7. Close public hearing.
8. Consider recommendation to the La Porte City Council on Special Conditional Use Permit request #15-91000003.
9. Consider recommendation to the La Porte City Council on a proposed amendment to the Future Land Use Map component of the La Porte Comprehensive Plan by amending the designation for those tracts of land located between State Highway 146 and S. 16th Street, and between W. M Street and McCabe Road, and identified as 1.) Tracts 1B-3, Johnson Hunter Survey, Abstract 35; Reserve D and Reserve G, Block 4; Reserve I, Block 3; and Reserve K, Block 2, of the Port Crossing Amending Plat, from "Business Industrial" to "Light Industrial"; 2) Reserve E, Block 4, of the Port Crossing Amending Plat, from "Park and Open Space" to "Business Industrial"; and 3) Reserve M, Block 2, of the Port Crossing Amending Plat, from "Business Industrial" to "Park and Open Space."
10. Consider approval or other action regarding a request by Port Crossing LP for approval of the proposed Port Crossing Amending Plat.
11. Open public hearing to receive input on an application for Special Conditional Use Permit #15-91000004, a request by Port Crossing LP, Port Crossing A3 LP, Port Crossing A4 LP, and Port Crossing B4 LP to replace the Port Crossing SCUP #06-006 (previously approved by the La Porte City Council in 2006) for the 313 acre Port Crossing Business Park generally located west of State Highway 146 between W. M Street and McCabe Road.
 - a. Staff Presentation

- b. Applicant Presentation
 - c. Public Comments (for, against, or questions)
 - d. Question and Answer
12. Close public hearing.
 13. Consider recommendation to the La Porte City Council on Special Conditional Use Permit request #15-91000004.
 14. Consider approval or other action regarding a request by Port Crossing LP for approval of the proposed Port Crossing General Plan (previously approved as the Texas Import Export General Plan) for the 313 acre Port Crossing Business Park generally located west of State Highway 146 between W. M Street and McCabe Road.
 15. Consider recommendation to the La Porte City Council regarding proposed Amended Development Agreement between the City of La Porte and Port Crossing LP, for the purpose of amending the Development Agreement approved by the La Porte City Council in 2006.
 16. Administrative reports.
 17. Commission comments on matters appearing on the agenda or inquiry of staff regarding specific factual information or existing policy.
 18. Adjourn.

A quorum of City Council members may be present and participate in discussions during this meeting; however, no action will be taken by the Council.

In compliance with the Americans with Disabilities Act, The City of La Porte will provide for reasonable accommodations for persons attending public meetings. To better serve attendees, requests should be received 24 hours prior to the meetings. Please contact Patrice Fogarty, City Secretary, at 281-470-5019.

CERTIFICATION

I certify that a copy of the Thursday, July 16, 2015, agenda of items to be considered by the Planning and Zoning Commission was posted on the City Hall bulletin board on the ____ day of _____, 2015.

_____ Title: _____

**Planning and Zoning Commission
Minutes of May 27, 2015**

Commissioners Present: Richard Warren, Helen LaCour, Nick Barrera, Lou Ann Martin, Mark Follis, and Hal Lawler

Commissioners Absent: Trey Kendrick, Wyatt Smith, and Les Bird

City Staff Present: Planning and Development Director Tim Tietjens, City Planner Eric Ensey, Assistant City Attorney Clark Askins, and Office Coordinator Peggy Lee

1. Call to order.

Chairman Hal Lawler called the meeting to order at 6:04 p.m.

2. Roll Call of Members.

Commissioners Warren, LaCour, Barrera, Martin, Follis, and Lawler were present for roll call.

3. Consider approval of a Major Development Site Plan #15-83000001; a request by La Porte Independent School District to allow construction of a building addition and other improvements to the La Porte Junior High School facility located at 401 S. Broadway Street.

City Planner Eric Ensey presented a request by the La Porte Independent School District for approval of a Major Development Site Plan for construction of a 35,818 square foot building addition and parking lot improvements for the La Porte Junior High School located at 401 S. Broadway. Staff recommended approval of the site plan with the conditions outlined in the staff report.

Motion by Commissioner LaCour to approve the Major Development Site Plan for La Porte Independent School District to allow construction of a building addition and other improvements to the La Porte Junior High School facility located at 401 S. Broadway Street with the following conditions:

1. The applicant shall submit application for and receive approval of the vacation of any unimproved right-of-way and include reference on the site plan noting the City Council approved ordinance number vacating such rights-of-way.
2. Reference to "West E Street" and "West F Street" on the site plan shall be revised to "West D Street" and "West E Street" respectively from north to south.

Second by Commissioner Barrera. **Motion carried.**

Ayes: Commissioners Warren, LaCour, Barrera, Martin, and Lawler
Nays: None
Abstain: Commissioner Follis

4. Consider a request by La Porte Lodging Hospitality LLC for consideration of a waiver to the city's Design Guidelines (Exterior Façade Materials) as outlined in Section 106-928 of the Code of Ordinances for the proposed Fairfield Inn & Suites located at 711 Highway 146 South.

City Planner Eric Ensey presented a request by La Porte Lodging Hospitality LLC for a waiver to the city's exterior façade materials design guidelines for construction of a new Fairfield Inn & Suites located at 711 Highway 146. The applicant proposes 60% of the façade in brick/stone contrary to code requirements of 80% coverage of the façade in brick/stone.

Staff was concerned that a deviation from the requirements would have the potential to set an expectation for other development and therefore, did not support the waiver request. Commissioners discussed the request and elected to table the request until such time the applicant could be present for discussion.

Motion by Commissioner Warren to table a request by La Porte Lodging Hospitality LLC for consideration of a waiver to the city's Design Guidelines (Exterior Façade Materials) as outlined in Section 106-928 of the Code of Ordinances for the proposed Fairfield Inn & Suites located at 711 Highway 146 South.

Second by Commissioner LaCour. **Motion carried.**

Ayes: Commissioners Warren, LaCour, Barrera, Martin, Follis, and Lawler

Nays: None

5. Administrative reports.

City Planner Eric Ensey spoke about problems several members have been experiencing with untimely mail delivery of their packets. Staff proposed to continue sending the packets out to members electronically, but no longer mailing a printed packet. Commissioners concurred; however, Commissioners Barrera and Warren opted to continue receiving a printed copy of the packet and will pick theirs up prior to the meeting. Printed packets will be available at the meeting for all other members who may want one.

6. Commission comments on matters appearing on the agenda or inquiry of staff regarding specific factual information or existing policy.

Commissioner Martin inquired about city requirements for replacing manufactured housing.

7. Adjourn

Motion by Commissioner Warren to adjourn.

Second by Commissioner Martin.

Chairman Lawler adjourned the meeting at 6:50 p.m.

Respectfully submitted,

Peggy Lee
Secretary, Planning and Zoning Commission

Passed and Approved on _____, 2015.

Hal Lawler
Chairman, Planning and Zoning Commission

**Planning and Zoning Commission
Minutes of June 18, 2015**

Commissioners Present: Trey Kendrick, Richard Warren, Helen LaCour, Nick Barrera, Mark Follis, Wyatt Smith, and Hal Lawler

Commissioners Absent: Lou Ann Martin and Les Bird

City Staff Present: City Planner Eric Ensey, City Attorney Knox Askins, and Office Coordinator Peggy Lee

1. Call to order.

Chairman Hal Lawler called the meeting to order at 6:00 p.m.

2. Roll Call of Members.

Commissioners Kendrick, Warren, LaCour, Barrera, Follis, Smith, and Lawler were present for roll call.

3. Consider approval of meeting minutes: April 16, 2015; April 22, 2015.

Motion by Commissioner Kendrick to approve the meeting minutes of April 16, 2015, and April 22, 2015.

Second by Commissioner Warren. **Motion carried.**

Ayes: Commissioners Kendrick, Warren, LaCour, Barrera, Follis, Smith, and Lawler

Nays: None

4. Open public hearing to receive input on an ordinance amending Chapter 106 “Zoning” of the Code of Ordinances of the City of La Porte by adding a new definition, and revising regulations related to exterior storage, tree preservation, and temporary signs.

Chairman Lawler opened the public hearing at 6:01 p.m.

a. Staff Presentation

City Planner Eric Ensey presented the staff report. Upon the recent adoption of amendments to Chapter 106 (Zoning) of the Code of Ordinances, there were three items the City Council requested the Commission further consider. Based on discussion of these items and direction provided by the Commission, staff has drafted an ordinance that would amend Chapter 106 (Zoning) with regard to the following three items:

1.) Tree Preservation (Section 106-801, 802, 803)

An exclusion was added for individual single-family lots (Section 106-801).

[No modification was made to the requirement for a tree survey or tree disposition plan (Section 106-802). No change was made to the cost of tree replacement, which is \$50 per inch,

with a cap of \$100,000 (Section 106-803)].

2.) Outdoor Storage in Main Street District (Section 106-511(c))

Staff added a definition of “outdoor storage” to the Section 106-1 (Definitions). As drafted, this definition only relates to non-residential properties. No modifications are proposed for the prohibition of outdoor storage in the Main Street Overlay between Highway 146 and Virginia Street (Section 106-511). This will remain and is clarified with the new definition of “outdoor storage.”

The language in Section 106-773 (Exterior storage) addresses residential properties. The only proposed modification to this section is to add a reference to requiring screening from any public right-of-way.

3.) Temporary Signage (106-877)

Language was added to allow for sandwich board signs in the Main Street District Overlay only, provided that such signs be located in a safe manner and removed at the close of business each day.

An exclusion was added for governmental signs.

b. Public Comments (for, against, or questions)

There were no public comments.

c. Question and Answer

There were no questions.

5. Close public hearing.

Chairman Lawler closed the public hearing at 7:03 p.m.

6. Consider recommendation to City Council on an ordinance amending various provisions of Chapter 106 “Zoning.”

Motion by Commissioner Warren to recommend to City Council, an ordinance amending various provisions of Chapter 106 “Zoning.”

Second by Commissioner Kendrick. **Motion carried.**

Ayes: Commissioners Kendrick, Warren, LaCour, Barrera, Follis, Smith, and Lawler

Nays: None

7. Administrative reports.

City Planner Eric Ensey reported he would be trying to organize a kick-off meeting of the Bylaws Subcommittee within the next 2 to 3 weeks.

8. Commission comments on matters appearing on the agenda or inquiry of staff regarding specific factual information or existing policy.

Commissioner Warren thanked the group for their attendance.

9. Adjourn

Motion by Commissioner Warren to adjourn.

Second by Commissioner LaCour.

Chairman Lawler adjourned the meeting at 6:06 p.m.

Respectfully submitted,

Peggy Lee
Secretary, Planning and Zoning Commission

Passed and Approved on _____, 2015.

Hal Lawler
Chairman, Planning and Zoning Commission

**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEM 4

Consider approval of a Preliminary Plat (#15-97000002)
for the Replat of Lots 1 thru 6, Block 14, of Sylvan Beach, 1st Addition.

Applicant: Bayway Homes

*Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas*

Planning and Development Department Staff Report

ISSUE

Should the Planning and Zoning Commission approve the Preliminary Plat for Lots 1-6, Block 14, Sylvan Beach, 1st Addition?

RECOMMENDATION

Staff recommends approval of the proposed Preliminary Plat, allowing the applicant to submit application for a Final Plat for consideration.

DISCUSSION

Applicant's Request:

The applicant, Bayway Homes, Inc., is requesting approval for a Preliminary Plat for Lots 1-6, Block 14, Sylvan Beach, 1st Addition as presented in the attached Exhibit A. The proposed Preliminary Plat will consist of 6 single family residential lots ranging in size from 7,500 square feet to 8,250 square feet in area.

The 1.0675 acre tract was already platted as six lots in the original Sylvan Beach, 1st Addition Plat. However those six lots all fronted.

Background Information:

The subject site is 1.0675 acres in area and is zoned R-3, High Density Residential.

The attached Exhibit B is an Area Vicinity Map with Zoning that shows the location of the proposed subdivision.

The site is already platted as Lots 1-6, Block 14, of Sylvan Beach, 1st Addition. As currently platted, all six lots front on unimproved Sylvan Avenue right-of-way. The city has no plans to improve Sylvan Avenue in this location, so the replat in this case proposes to front three lots on Oregon Avenue and three lots on Park Drive, which are already improved.

Discussion:

Residential requirements.

Section 106-333(a) includes the various zoning requirements for residential development (see the attached Exhibit C).

1. Single family detached development requires a minimum lot area of 6,000 square feet. All proposed lots exceed such requirement.
2. The code requires a minimum 50 foot lot width. In this case all lots comply with this requirement.

3. Yard setbacks are as follows: front-25 feet, sides-5 feet, rear-15 feet. There is also a 10' side setback adjacent to the north property line which also is a 10-foot utility easement. All setbacks have been called out on the preliminary plat document. All setbacks will be verified at the time building permits are issued for each house.
4. The maximum height allowed for a single family detached structure is 35 feet and will be verified with the issuance a of building permit for each house.
5. The minimum site area and density will not change from what was approved in the original plat for these lots – they were platted as six lots and are being replatted as six lots in a slightly different configuration. The proposed replat is in compliance with these code requirements.
6. The maximum lot coverage is 40% and will be verified at the time building permits are issued for each house.

Staff finds that the proposed preliminary plat is in compliance with the residential requirements set forth in Section 106-33(a) of the City's Code of Ordinances.

Utilities.

Sanitary Sewer: There is an existing 15" sanitary sewer line adjacent to the Sylvan Avenue right-of-way and another 8" line in the Block 14 alley. The applicant will be tying into the 8" line and will submit the required construction drawings to the City Engineer and Public Utilities Division for review prior to issuance of any building permits.

Water: There is an existing 6" water line in the Oregon Avenue right of way that Lots 1-3 will tap into. The applicant will be required to extend a public line from N. Forest Avenue to provide water to Lots 4-6. Additionally, the Fire Marshal will require installation of a hydrant at the Park/Sylvan intersection for fire protection.

Dry Utilities: 10' utility easements have been provided adjacent to the front and rear property lines for each lot to accommodate gas, electricity, cable and phone utilities.

Park Development Fees.

The developer will be responsible for paying the required park development fees at the time of building permit for each house. The Land Development Ordinance requires payment of a \$318 fee per dwelling unit for park development and \$490 for cash payment in lieu of land dedication. As a result, at the time of building permit issuance for each lot the applicant will be responsible for payment of $\$490 + \$318 = \$808$ to cover the cash payment in lieu of land dedication and park development fee.

ATTACHMENTS

- Exhibit A: Application and Preliminary Plat
Exhibit B: Zoning and Area Vicinity Map
Exhibit C: Section 106-333(a) of the City's Code of Ordinances

Owner/Developer
BAYWAY HOMES, INC.
 P.O. BOX 1234
 Frisco, Texas 75034
 Tel: (214) 440-3425

SURVEYOR
ELIAS, 2504 Avenue North
 Texas City, TX 77590
 Tel: (409) 938-5700 Fax: (409) 938-8706

GRAPHIC SCALE
 (IN FEET)
 1 inch = 20 ft.



BEING a 1.0675 acre tract (46,500 Sq. Ft.) of land being all of Lots 1 thru 6, of Block 14, of Sylvan Beach, 1st Addition, a subdivision in Harris County, Texas, according to the map or plat being on file in the public records of Harris County, Texas, as described in H.C.M.R., Vol. 20180048741, BEING a subdivision of the land being more particularly identified by notes and bounds as follows:

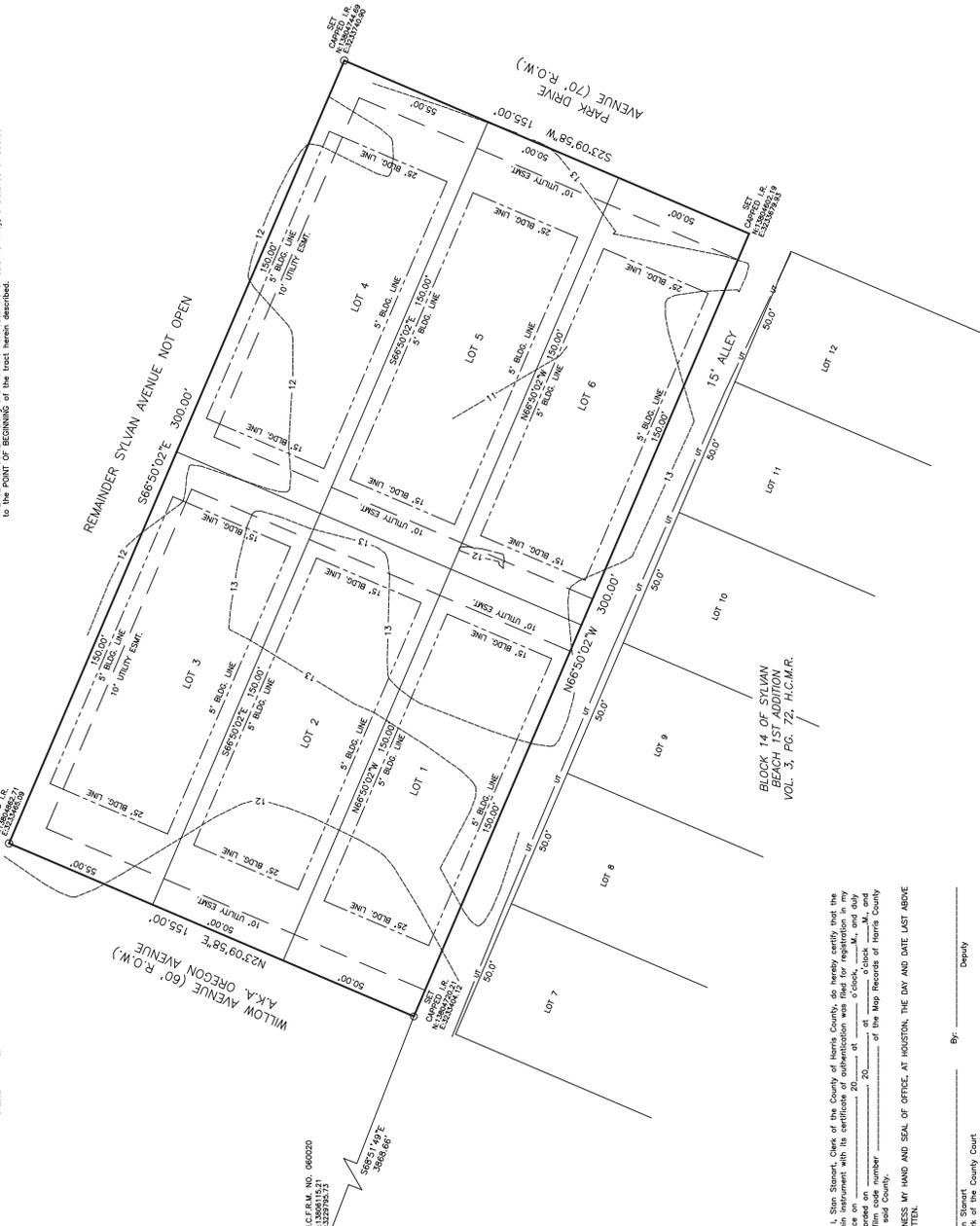
BEGINNING at the southeast corner of said Lot 1, and being in the southeast right of way of Oregon Avenue (60' R.O.W.);

THENCE N23°09'58"E, along the southeast right of way line of said Oregon Avenue, a distance of 155.00' to a point for the most easterly corner of the tract herein described;

THENCE S66°50'02"E, a distance of 300.00' to a point for the most easterly corner of the tract herein described, and being in the northeast right of way line of Park Drive (70' R.O.W.);

THENCE S23°09'58"W, along the northeast right of way line of said Park Drive, a distance of 155.00' to a point for the most northerly corner of the tract herein described, and being in the most southerly corner of said Lot 6, and being in the north line of the 15' Alley (not open) in said Block 14;

THENCE N69°50'02"E, along the northeast line of said 15' Alley, a distance of 300.00' to the POINT OF BEGINNING of the tract herein described.



STATE OF TEXAS
 COUNTY OF HARRIS
 We, Bayway Homes, Inc., acting by and through, Charles Anders, Development Coordinator of Bayway Homes, Inc., do hereby certify that the above and foregoing map of the Block 14, of Sylvan Beach, 1st Addition, is a true and correct copy of the original record map of said subdivision, and that the same has been filed for record in the public records, all streets (except those streets designated as private streets), alleys, parks, and other public places shown thereon, and do hereby bind ourselves, our heirs, successors and assigns to maintain and forever defend the title to the land so dedicated.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes, all easements, rights and interests shown on the map or plat in which public utility easements shown hereon.

FURTHER, Owners do hereby declare that all parcels of land designated on this plat as this plat are originally intended for the construction of Residential Homes thereon and shall be restricted for same under the terms and conditions of such restrictions filed separately.

FURTHER, the Owners certify that this report does not attempt to alter, amend or remove any covenants or restrictions.

IN WITNESS WHEREOF, Bayway Homes, Inc. has caused these presents to be signed by its duly authorized officer, Charles Anders, Development Coordinator, and its common seal hereunto affixed this _____ day of _____, 20____.

Bayway Homes, Inc.
 By: Charles Anders, Development Coordinator
 Attest:
 (Signature of Secretary or authorized trust officer)

THE STATE OF TEXAS
 COUNTY OF GALVESTON
 BEFORE ME, the undersigned authority, on this day personally appeared Charles Anders, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. My commission expires _____ day of _____, 20____.

Hobby Public in and for
 My Commission Expires _____

This is to certify that the City Planning and Zoning Commission of the City of La Porte, Texas, has approved this map or plat of Block 14, of Sylvan Beach, 1st Addition, in conformity with the laws of the State of Texas, and the City of La Porte, and authorized the recording of this plat this _____ day of _____, 20____.

Attest:
 By: _____
 Director, Planning Department
 By: _____
 La Porte City Engineer
 By: _____
 Chairman, La Porte Planning and Zoning Commission
 Attest:
 By: _____
 Secretary, La Porte Planning and Zoning Commission

This is to certify that Bayway Homes, Inc., owner or authorized agent of the same of land being platted or recorded as Block 14, of Sylvan Beach, 1st Addition, approved by the La Porte City Planning and Zoning Commission of Harris County, Texas, and the authorized Deputy to return the original record map of Block 14, of Sylvan Beach, 1st Addition, to the City of La Porte, Texas, for recording in the public records of that Department, or to the authorized representative, who shall file the same for record in the public records of that Department.

Signature: _____
 Charles Anders, Development Coordinator

PRELIMINARY
 REPLAT OF
 LOTS 1 THRU 6, BLOCK 14, OF SYLVAN
 BEACH, 1ST ADDITION

1.0675 ACRE RESIDENTIAL TRACT
 CONTAINING
 6 LOTS, 1 BLOCK
 AND
 BEING OUT OF LOTS 1 THRU 6, BLOCK 14, OF SYLVAN
 BEACH, 1ST ADDITION. A SUBDIVISION ACCORDING TO
 THE MAP OR PLAT THEREOF RECORDED IN VOLUME 3,
 PAGE 72, OF THE MAP RECORDS OF HARRIS COUNTY,
 TEXAS

PRELIMINARY NOT FOR RECORDING
 Bayway Homes, Inc.
 H. Reg. No. 4008

It is to certify that I, Robert D. Ellis, a registered professional land surveyor of the State of Texas, have plotted the above and foregoing map or plat of Block 14, of Sylvan Beach, 1st Addition, in conformity with the laws of the State of Texas, and that this plat correctly represents that survey made by me.

Signature of Landholder
 Name to be printed

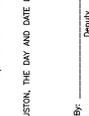
It is to certify that I, _____, owner and holder of a lien on Record of Lots 1 thru 6, Block 14, of Sylvan Beach, 1st Addition, approved by the La Porte City Planning and Zoning Commission of Harris County, Texas, and the authorized Deputy to return the original record map of Block 14, of Sylvan Beach, 1st Addition, to the City of La Porte, Texas, for recording in the public records of that Department, or to the authorized representative, who shall file the same for record in the public records of that Department.

Signature: _____
 Name to be printed

STATE OF TEXAS
 COUNTY OF HARRIS
 I, Stan Stewart, Clerk of the County of Harris County, do hereby certify that the within and foregoing map or plat of Block 14, of Sylvan Beach, 1st Addition, was recorded in the public records of Harris County, Texas, on this _____ day of _____, 20____, at _____ o'clock _____ M., and duly recorded in Volume _____ of the Map Records of Harris County for said County.

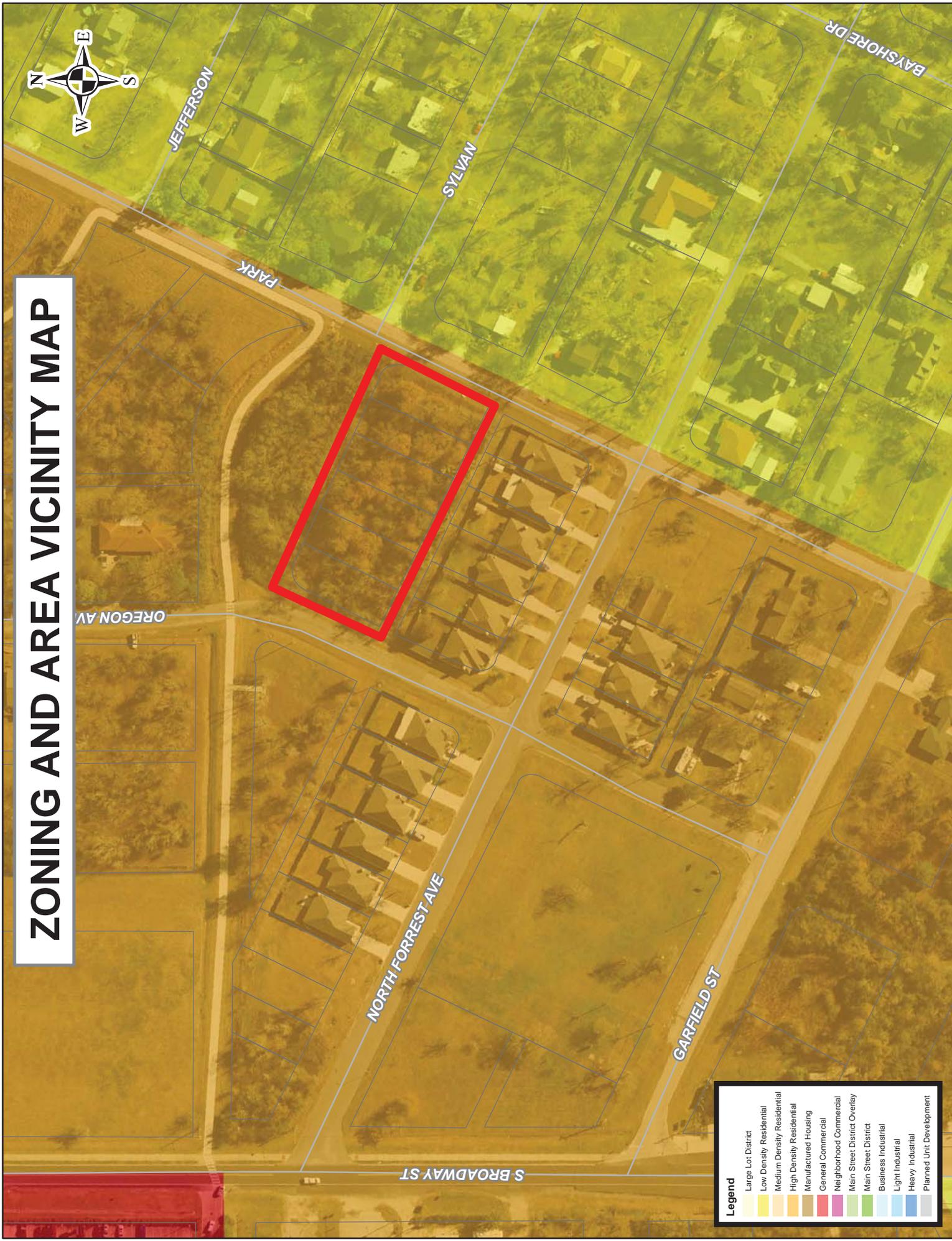
WITNESS MY HAND AND SEAL OF OFFICE, AT HOUSTON, THE DAY AND DATE LAST ABOVE WRITTEN.

Stan Stewart
 Clerk of the County Court
 Harris County, Texas



CITY OF LA PORTE, HARRIS COUNTY, TEXAS
 JULY, 2015

ZONING AND AREA VICINITY MAP



Legend	
[Light Green]	Large Lot District
[Yellow]	Low Density Residential
[Light Orange]	Medium Density Residential
[Orange]	High Density Residential
[Brown]	Manufactured Housing
[Pink]	General Commercial
[Light Purple]	Neighborhood Commercial
[Light Green]	Main Street District Overlay
[Light Green]	Main Street District
[Light Blue]	Business Industrial
[Light Blue]	Light Industrial
[Blue]	Heavy Industrial
[Grey]	Planned Unit Development

EXHIBIT C

Sec. 106-333. - Table B, residential area requirements.

(a) Table B, residential area requirements.

Uses ⁸	Minimum Lot Area/D.U. S.F.	Minimum Lot Width L.F.	Minimum Yard Setbacks L.F., F.R.S. ^{2,3,4} S.F., 10, 15, 12, 13, 14	Maximum Height ¹⁵	Minimum Site Area/Unit S.F. ^{7, 16}	Minimum Development Open Space/ Unit S.F. ¹⁷	Maximum Lot Coverage/ Minimum Landscaping Required ^{9, 18, 19}	
Single-family detached	6000	50	25-15-5	35 Ft.	9100 4.8 DU/A	—	40%/N/A	
Single-family large lot	43560	90	25-15-5	45 Ft.	43560 1.0 DU/A	—	40%/N/A	
Single-family special lot line, 0 lot line	4500	40	20-10-0	35 Ft.	7300 6.0 DU/A	Footnote # 1	60%/N/A	
Duplexes	6000	60	25-20-20	45 Ft.	8.0 DU/A	Footnote # 1	60%/N/A	
Single-family converted to multifamily	6000	50	20-10-5	35 Ft.	N/A	N/A	50%/N/A	
Townhouses, quadraplexes (10,000 s.f of site area 100 ft. wide)	2000	20	25-20-20	45 Ft.	4400 10.0 DU/A	Footnote # 1	75%/25%	
Multifamily	20000	100	25-20-20	45 Ft.	1600 14 DU/A	Footnote # 1	60%/25%	
Manufactured housing	4500	40	20-10-5	25 Ft.	7300 6.0 DU/A	Footnote # 1	60%	
Manufactured housing subdivision or parks (5 acre min.)		100 of front road frontage	N/A	N/A	N/A	N/A	N/A/N/A	
State Licensed & Registered Child-care homes (Max. 12 in private home; per TX Dept. of Family & Protective Services, Ch. 747)	6000	50	25-15-5	35 Ft.	9100 4.8 DU/A	N/A	40% / N/A	
Group care facilities—3 or less persons	6000	50	25-15-5	35 Ft.	9100 4.8 DU/A	N/A	40% / N/A	
Public or private educational and religious institutions, large group care facilities, daycare centers, recreational buildings, boarding, and nursing homes			30-20-10	45 Ft.	N/A	N/A	N/A	
Freestanding on-premises signs	See article VII of this chapter							
Large lot district where tract is one acre in size or greater (without existing principal structure) Accessory structure/domestic livestock	See <u>section 106-416</u> (Special regulations)							

TABLE B FOOTNOTES

EXHIBIT C

Lot Size	Required Developed Open Space/Lot
5000—6000 Sq. Ft.	200 Sq. Ft.
4000—4999 Sq. Ft.	300 Sq. Ft.
3000—3999 Sq. Ft.	400 Sq. Ft.
2000—2999 Sq. Ft.	500 Sq. Ft.
<p>a. Minimum size of developed open space: One-half acre for every 80 units or fraction thereof.</p> <p>(i) For multi-family residential developments: Minimum of 25 percent of the total development regardless of size of development.</p> <p>(ii) For townhouse/quadruplex developments: One-half acre for every 80 units or fraction thereof.</p> <p>b. All required developed open spaces must be operated and maintained by a homeowners association, subject to the conditions established in sections 106-676 (Property controls), 106-677 (Public services), 106-678 (Building height), and 106-679 (Roadways), with all documentation required to be submitted for filing in conjunction with the final plat. (See also the City Development Ordinance Number 1444, section 4.04 which is on file in the city secretary's office.)</p> <p>2 A minimum landscape setback of 20 feet will be required adjacent to all conservation areas. Buildings, parking areas, and refuse containers will not be allowed in such setback area. These areas are to be landscaped with trees, shrubs, and groundcover, with a planting plan required to be submitted and approved by the enforcement officer.</p> <p>3 The minimum setback adjacent to any utility easement located in a rear yard shall be three feet. No portion of any building including projections of any nature shall encroach into any utility easement or vertical projection of the easement boundary.</p> <p>4 Where adjacent structures within the same block have front yard setbacks different from those required, the front yard minimum setback shall be the average of the adjacent structures. If there is only one adjacent structure, the front yard minimum setback shall be the average of the required setback and the setback of only one adjacent structure. In no case shall the minimum front yard setback exceed 30 feet.</p> <p>5 All side yards adjacent to public R.O.W.'s not classified as freeway, arterial or collector must be five feet except accessory building (see Section 106-741). All side yards adjacent to public R.O.W's classified as freeway, arterial or collector must be 10 feet.</p> <p>6 In the case of zero lot line housing, the side setback opposite the zero lot line must be ten feet.</p> <p>7 D.U.A. is an abbreviation for dwelling units per acre, or the maximum density permitted.</p> <p>8 All structures except slab on grade, shall be placed on a foundation system described as: An assembly of materials constructed below or partially below grade, not intended to be removed from its installation site, which is designed to support the structure and engineered to resist the imposition of external forces as defined by the City's Code of Ordinances or in the case of industrialized housing, the requirements of the TDLS. Such foundation system shall be skirted or enclosed with wood or masonry to give the appearance of a solid foundation, if one is not provided, compatible with the appearance of adjacent housing, and subject to the requirements of the City's Code of Ordinances.</p> <p>9 See article V, division 4 of this chapter for additional requirements.</p> <p>10 In the case of multi-family residential developments with 50 or more units, said complexes must be located at least 1,000 feet from other multi-family residential developments of 20 or more units.</p> <p>11 Within the building setback, there must be a ten-foot opaque screen consisting of shrubs and fencing. (See section 106-334(i) (Additional multi-family regulations) for screening and fencing requirements.)</p> <p>12 Residential developments that are townhouses, quadruplexes, or multi-family dwelling units must have a minimum of 25 percent landscaping.</p> <p>13 Multi-family residential developments adjacent to single-family residential developments must establish a 25-foot buffer between the two developments. This buffer is in addition to the setback as established by this table.</p> <p>14 In the case of multi-family residential developments, no off-street parking shall be placed within the required setback, or within the required additional 25-foot buffer when the development is situated adjacent to a single-family residential development. The space needed to meet the required parking spaces shall be exclusive of the required setback and the additional buffer.</p> <p>15 In the case of multi-family residential developments being adjacent to single-family residential developments, the buildings within the multi-family residential developments that are directly adjacent to the single-family residential development shall be limited to two-stories in height. Buildings within the interior of the multi-family residential developments may be three-stories in height.</p> <p>16 Multi-family residential developments cannot exceed 180 dwelling units.</p> <p>17 See section 106-334(i)(3) for open space utilization criteria.</p> <p>18 Following structures exempted from 40 percent lot coverage on single-family detached: Accessory buildings 200 s.f. or less and patio covers up to 900 s.f.</p> <p>19 Maximum lot coverage for single-family detached in planned unit development (PUD) zoning district or residential subdivisions requiring a detention/drainage system, shall be 50 percent. (The impervious cover factor of 55 percent for the total site for drainage, as prescribed in PICM, remains in effect.)</p>	

**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEM 5

Consider approval of an amendment to
the City of La Porte's Future Land Use Plan amending
Tracts 718B, 719 and 719A, La Porte Outlots,
from "Neighborhood Commercial" to "Mid- to High-Density Residential"

Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas

Planning and Development Department Staff Report

ISSUE

Should the Planning and Zoning Commission recommend approval to the City Council of an amendment to the city's Future Land Use Plan amending a tract of land approximately 6.9547 acres in area further described as Tracts 718B, 719, and 719A, La Porte Outlots, situated in the Enoch Brinson Survey, A-5, City of La Porte, Harris County, Texas, from "Neighborhood Commercial" use to "Mid- to High-Density Residential."

RECOMMENDATION

Staff recommends the Planning and Zoning Commission recommend approval to the City Council of an amendment to the city's Future Land Use Plan amending the subject parcel as described above.

DISCUSSION

Staff is presenting for consideration an amendment to the city's Future Land Use Plan as a result of an application by Brownstone Ventures, LLC, for a Special Conditional Use Permit to allow construction of a luxury multifamily apartment complex on the subject site.

The City of La Porte's Land Use Map currently identifies the subject site as developing as a "Neighborhood Commercial" land use. See the attached Exhibit B identifying the Land Use Map for this area. In order for the city to approve the applicant's SCUP, the city's Future Land Use Plan would need to be amended to allow for "Mid- to High-Density Residential" uses.

Section 213.003 of the Texas Local Government Code (LGC) specifies requirements for amending the city's Future Land Use Plan, which was adopted as a component of the Comprehensive Plan. The LGC requires review of the proposed amendment by the Planning and Zoning Commission and approval by the City Council. A public hearing will be scheduled at the time of City Council review.

The Future Land Use Plan identifies the following surrounding land uses (see the attached Exhibit A):

Planning and Zoning Commission Regular Meeting
 July 16, 2015
 Future Land Use Plan Amendment (Legacy at La Porte)

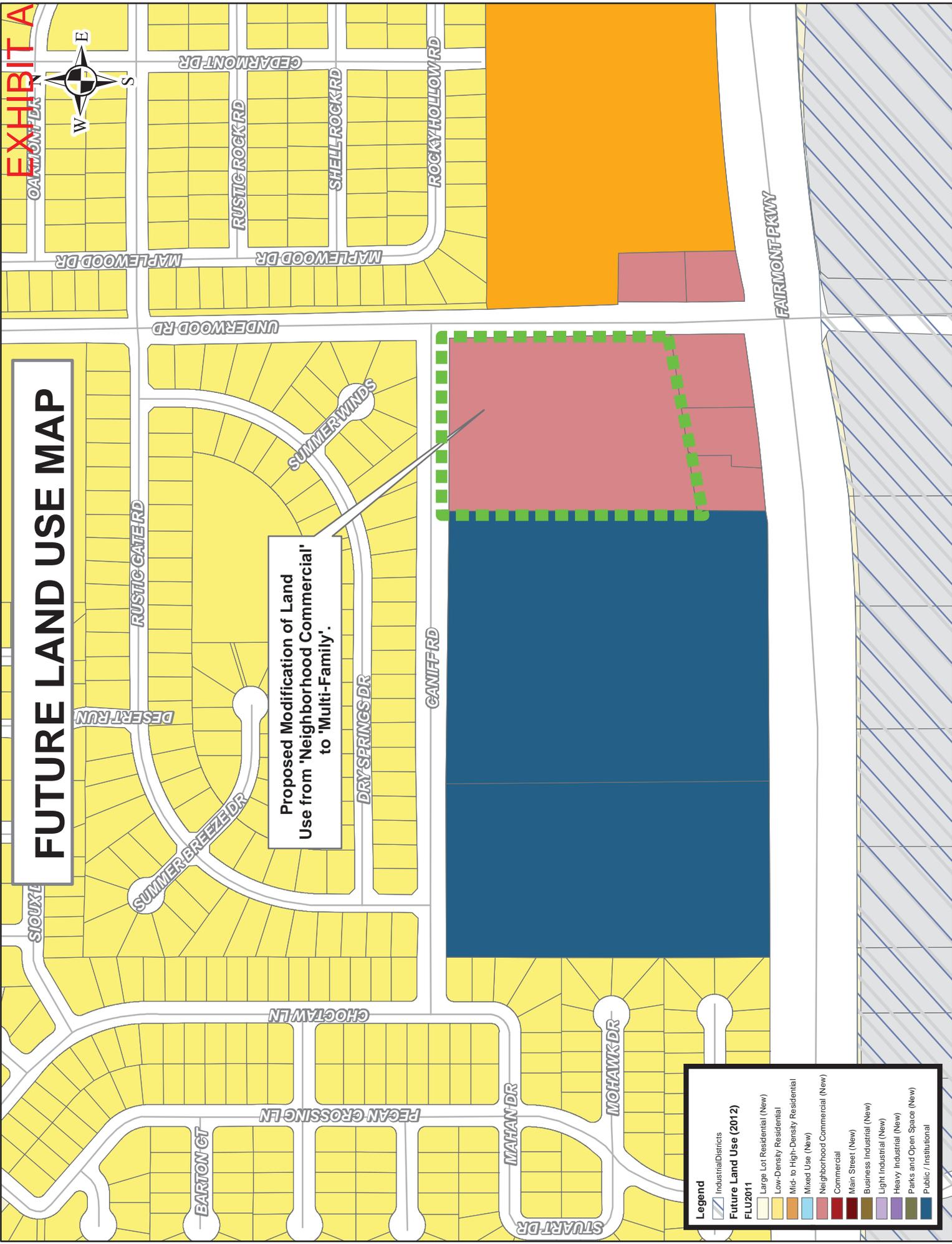
	Land Use	Development
North	Low Density Residential	Existing Summer Winds Subdivision (across Caniff Road)
South	Neighborhood Commercial	Existing Gas Station and Jack In The Box Restaurant; vacant pad site
West	Public/Institutional	Existing First United Methodist Church
East	Neighborhood Commercial Mid- to High-Density Residential Low Density Residential	Existing Retail Strip Center Existing Fairmont Oaks Apartment Complex Existing Fairmont Park West Subdivision <i>(All across Underwood Road)</i>

The subject site is zoned PUD, Planned Unit Development, which allows for multifamily development. The attached Exhibit B demonstrates the zoning for the subject site.

With the proposed amendment, the subject property would provide a transition of commercial (along Fairmont Parkway) to the existing low density residential (Summer Winds Subdivision) to the north and across Caniff Road from the site.

ATTACHMENTS

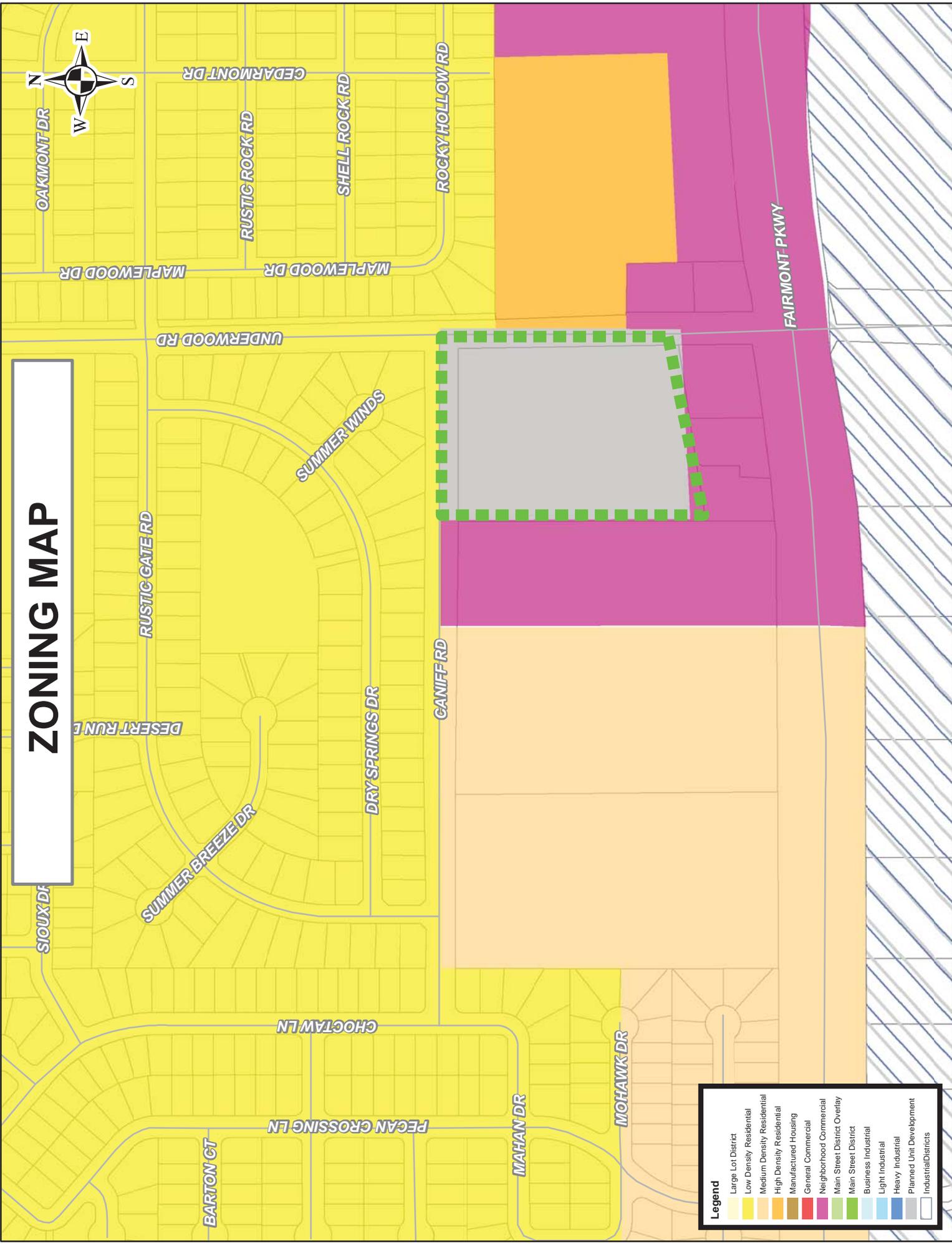
- Exhibit A: Future Land Use Plan
- Exhibit B: Zoning Map



Legend

- Industrial Districts
- Future Land Use (2012)
- FLU2011
- Large Lot Residential (New)
- Low-Density Residential
- Mid- to High-Density Residential
- Mixed Use (New)
- Neighborhood Commercial (New)
- Commercial
- Main Street (New)
- Business Industrial (New)
- Light Industrial (New)
- Heavy Industrial (New)
- Parks and Open Space (New)
- Public / Institutional

ZONING MAP



Legend

[Light Yellow Box]	Large Lot District
[Yellow Box]	Low Density Residential
[Orange Box]	Medium Density Residential
[Light Orange Box]	High Density Residential
[Light Brown Box]	Manufactured Housing
[Red Box]	General Commercial
[Pink Box]	Neighborhood Commercial
[Light Green Box]	Main Street District Overlay
[Light Blue Box]	Main Street District
[Medium Blue Box]	Business Industrial
[Dark Blue Box]	Light Industrial
[Blue Box]	Heavy Industrial
[Grey Box]	Planned Unit Development
[White Box with Blue Border]	Industrial Districts

**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEMS 6-8

Consider recommendation for a Special Conditional Use Permit (#15-91000003)
to allow construction of a multifamily luxury apartment complex
on a 6.9547 parcel of the property known as
Tracts 718B, 719 and 719A, La Porte Outlots.
Applicant: Brownstone Ventures, LLC

*Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas*

Planning and Development Department Staff Report

ISSUE

Consider a recommendation to the City Council on a request by the applicant Brownstone Ventures, LLC for a Special Conditional Use Permit (SCUP) to allow construction of a multifamily luxury apartment community on a 6.95 acre tract of land known as Tracts 718B, 719, and 719A, of the La Porte Outlots.

RECOMMENDATION

Should the Commission desire to consider a recommendation for approval of this request, staff recommends considering various conditions, as included in the attached Special Conditional Use Permit (see Exhibit A).

DISCUSSION

Property Owner:
Aldersgate Trust.

Applicant:
Brownstone Ventures, LLC.

Property Location:
The subject property is a 6.95 acre tract of land located at the southwest corner of Underwood Road and Caniff Road. The legal description of the site is: Tracts 718B, 719, and 719A, La Porte Outlots. The attached Exhibit C is an Area Vicinity Map that shows the general location of the parcel.

Applicant's Request:
The applicant is seeking approval of this SCUP to allow for construction of a multifamily luxury apartment community on the subject property. The applicant is under contract for the entire 6.95 acre tract of land described above. Their proposal is to construct a total of 124 units in six apartment buildings, and including a club house facility. The attached Exhibit B is a copy of the application and proposal, including a conceptual site plan and project description.

The applicant describes the proposed development as a "Class A residential apartment community that provides 124 new luxury units to the City..." and includes one, two and

three bedroom units. The units will consist of luxury kitchens with designer cabinets, stainless steel appliances, faux wood floors, full size washer and dryers, and many other living amenities described in the Development Summary of Exhibit B. The unit mix will include: 62 one bedroom/one bathroom units (50.0%), 58 two bedroom/two bathroom units (46.8%), and 4 three bedroom/two bath units (3.2%). The applicant asserts that this development will provide residential community unique to La Porte and competitive with other luxury apartment communities in surrounding communities.

The applicant presented the concept of a “Class A” multifamily project before the City Council at a workshop at the January 12, 2015 meeting. Although the City Council did not take formal action on the item, there was consensus to allow the applicant to submit an application for consideration in accordance with the code requirements for a SCUP.

Surrounding Zoning and Land Uses:

The site is currently zoned PUD, Planned Unit Development, and is vacant and undeveloped. Development within a PUD is required to seek approval of a SCUP. The attached Exhibit D shows the zoning of the subject property and surrounding properties. The following table summarizes the surrounding zoning and land uses:

	Zoning	Land Use
North	R-1, Low Density Residential	Summer Winds Subdivision (across Caniff Road); single family residential
South	NC, Neighborhood Commercial	Undeveloped, Gas Station, Fast Food Restaurant (Jack in the Box)
West	NC, Neighborhood Commercial	Undeveloped
East	R-3, High Density Residential	Fairmont Oaks apartment complex (across Underwood Road)
	R-1, Low Density Residential	Fairmont Park West Subdivision (across Underwood Road); single family residential
	NC, Neighborhood Commercial	Retail strip center (across Underwood Road)

Notification Requirements:

The public hearing notification requirements outlined in Section 106-171 were performed in accordance with all applicable code provisions, including the following: notice in a newspaper of general circulation at least 15 days prior to the hearing; written notice mailed to owners of real property within 200 feet of the site within 10 days of the hearing; sign posted on the site within 15 days of the hearing. Additional notice of the public hearing was posted at City Hall and on the City’s website in accordance with state law.

Analysis:

There are a number of different considerations staff evaluated during the review of this application. The following describes staff's analysis of those considerations:

Land Use.

This SCUP application is for consideration of the use of the 6.95 acre tract to be used for multifamily development. The subject property is zoned Planned Unit Development, PUD, which allows for the proposed use of this property subject to approval of a SCUP.

According to the city's future land use map, the subject site is designated for "Neighborhood Commercial" uses (see Exhibit E). Should this SCUP be approved for the proposed apartment community, the future land use plan will need to be amended. Such request will be a separate agenda item for consideration by the Commission. In a land use sense, multifamily residential development is a less intense land use category than commercial uses.

As a means of history, in 2007 a SCUP was approved that allowed for construction of a nursing home facility on this site. This facility was never constructed and the SCUP is now invalid.

Site Plan.

The applicant has submitted a conceptual site plan and a project description letter, which includes photographs of a similar development to provide an example of what is proposed at this site. At this time there has been no formal application for a site development plan as required in the city's Development Ordinance. A formal application for a site development plan is not required until after a SCUP is approved. Should City Council approve the proposed SCUP, the applicant will be required to submit application for a site development plan in compliance with applicable code requirements. Staff is recommending a condition that the applicant be required to submit the site plan for approval by the Planning and Zoning Commission.

Density.

The applicant is proposing a density of 17.8297 unit per acre. According to Section 106-333 of the Code of Ordinances, multifamily development is allowed only up to 14 dwelling units per acre. The applicant is proposing an increase to the maximum density of approximately 3.83 units per acre. This deviation to the code requirements can only be approved through approval of a variance by the Board of Adjustment. As a result, staff is recommending that a condition be included in the SCUP requiring application for a variance be approved by the board before this ordinance goes into effect. Should the Board deny the variance, then the SCUP will not go into effect.

Buffering of Existing Residential.

Although the subject site is not located immediately adjacent to residential land uses, the proximity of Summer Winds Subdivision to the north warrants discussion of potential impacts to the existing residents. Building #1 as shown on the Conceptual Site Plan is located approximately 130 feet from the rear property line of 118 and 114 Summer Winds Drive. This distance includes the existing 80-foot Caniff Road right-of-way and 50 feet on the subject property before the location of Building #1. One thing to note is that the applicant has agreed to limit the height of Building #1 to two-stories in height. The conceptual site plan submitted by the applicant shows a cross-hatch where the buildings will be three-story in height. The nearest three-story building will be located 267 feet from rear (south) property line of the Summer Winds Subdivision. The applicant has provided a visual exhibit that demonstrates view lines from both proposed Building #1 and Building #3 to the closest single family residential in summer winds. This demonstrates that there will be minimal impact of the proposed multifamily development being able to see into the back yards with the landscape improvements that staff is recommending as conditions of approval of this SCUP request.

In order to assure compatibility of the proposed development with the surrounding neighborhood and mitigate potential visual impacts, staff is recommending a number of landscape buffer improvements.

1. Ornamental Trees Along Caniff Road. Staff is recommending that the applicant plant one evergreen ornamental tree per 20 linear feet along both sides of Caniff Road adjacent to their property. The reason for ornamental trees as opposed to shade trees is due to existing overhead power lines on the south side of Caniff Road. The species of tree selected shall be approved by the City. Over time, this canopy will provide the first level of visual buffer between Summer Winds and the proposed development. It will also provide a visual streetscape to Caniff.
2. Internal Landscape Requirements. The subject development will be required to comply with all applicable landscape requirements outlined in the city's code. However, staff recommends a couple of additional landscape improvements be considered as conditions of the SCUP. First of all, a minimum 10-foot wide landscape buffer shall be provided along the north property line adjacent to Caniff Road. This buffer shall include the 8-foot high solid wood fence proposed by the applicant as well as a combination of trees and shrubs. These plantings shall be designed to create a two-tier buffer of the building from those properties to the north across Caniff. Second, the applicant shall provide shade trees in the area between the parking and drive aisles and the detention pond. These trees should be planted at a maximum separation of 30 feet on center.

Building Façade Materials.

In the applicant's development summary, they represent the use of stone, stucco and cementitious siding designed to provide a comfortable residential feel and provide

compatibility with the residential nature of the vicinity. Although this development is not subject to the city's design guidelines as outlined in Article IX of Chapter 106, staff is recommending that the requirements of a Tier 2 development be incorporated into the design. One such requirement of Tier 2 development includes the use of 50% stone or masonry and 50% of other masonry materials including stucco and cementitious fiberboard. All other Tier 2 design standards shall be applicable to this development as well.

Proximity to Existing Multifamily Development.

The Fairmont Oaks apartment community is located across Underwood Road from the proposed Legacy development. Section 106-333, Footnote 10, states that multifamily development of 50 or more units must be located at least 1,000 feet from other multifamily residential development. In this case, the property lines of the two apartment communities would be separated by the 100' wide Underwood Road right-of-way. This deviation to the code requirements can only be approved through approval of a variance by the Board of Adjustment. As a result, staff is recommending that a condition be included in the SCUP requiring application for a variance be approved by the Board before this ordinance goes into effect. Should the Board deny the variance, then the SCUP will not go into effect.

Site Access.

The conceptual site plan identifies three access points to the site: the main access point from Underwood Road; a second access point on Caniff Road; and a third emergency only access point to a private access drive to the south of the site. Staff has some concern about the Caniff Road access point and the potential for an increase in traffic exiting this site and traveling west on Caniff and cutting through a single family subdivision. Staff is recommending that the access point on Caniff Road be a 3/4 movement access, which means a left in from west-bound Caniff to the site, a right-in from Caniff east-bound to the site, and a right-only from the site on to east-bound Caniff. Staff recommends that no left turn from the site to west-bound Caniff be allowed. This would require the applicant to construct a median and install signage that would direct traffic to take a right turn only from the site on Caniff.

Traffic Impacts.

Staff is recommending that the applicant prepare a traffic impact analysis that will show the potential impacts of the proposed development on the roadways in the vicinity at the time of site plan submittal. Any recommendations identified in the report to mitigate any negative impacts will need to be mitigated by the applicant.

Public Utilities.

Public utility facilities and services are sufficient to handle the proposed development. Water and sanitary sewer lines are both available within the vicinity. However the

applicant will need to coordinate with the city’s Utilities Division to comply with all minimum requirements at the time of site plan submittal.

Drainage.

Because the proposed development would be draining into Harris County facilities, the applicant will have to comply with all Harris County drainage requirements. Based on the conceptual plan submitted with the proposed SCUP, the applicant is proposing to provide on-site detention. Review of the site’s proposed detention and drainage system will take place during site plan review.

Conclusion:

Based on the analysis above, staff finds that if the Planning and Zoning Commission desires to recommend approval of the proposed Special Conditional Use Permit, then a number of conditions should be considered in the approval. Section 106-217 of the Zoning Ordinance outlines specific conditions for approval of SCUP applications. There are three different conditions that must be met in order to approve a SCUP. The following table identifies each of the three conditions and staff’s finding on each:

Condition:	Staff Analysis:
(1) That the specific use will be compatible with and not injurious to the use and enjoyment of other property, nor significantly diminish or impair property values within the immediate vicinity.	The proposed use will provide luxury multifamily apartment complex in the city, of which the city does not currently have, thereby further diversifying the types of residential product within the city. Because the property is being developed as a luxury apartment complex, the buildings and grounds will be maintained at a high level. Section 106-150 of the code requires minimum bonding and insurance requirements for multifamily development. The applicant will be required to provide the necessary bonding of \$1,000,000 as a guarantee of maintenance. Additionally, there are a number of conditions recommended by staff as part of the proposed SCUP that are intended to minimize any perceived or potential impacts of the proposed development on the surrounding neighborhood.
(2) That the conditions placed on such use as specified in each district have been met by the applicant.	As a condition of approval of the proposed SCUP, the applicant is required to submit a site development plan in accordance with the requirements of the city’s Development Ordinance. Additionally, the site development plan will need to comply with all other provisions of the city’s Zoning Ordinance and will be reviewed during the site development review. In this case, staff is recommending that the site plan be forwarded to the Planning and Zoning Commission for review and approval.
(3) That the applicant has agreed to meet any additional conditions imposed, based on specific site constraints, and necessary to protect the public interest and welfare of the community.	The applicant will need to confirm on the record at the public hearing that they are agreeable to the conditions imposed on the SCUP. Staff has provided a list of conditions as part of this report. However, the Commission and City Council may impose additional conditions, should they approve the proposed SCUP.

Should the Planning and Zoning Commission recommend approval of the requested SCUP application, staff recommends the following conditions be considered:

1. A site development plan shall be submitted in accordance with applicable requirements of the City of La Porte's Development Ordinance and shall comply with all provisions of Chapter 106, "Zoning" of the City's Code of Ordinances and all other department reviews and applicable laws and ordinances of the City of La Porte and the State of Texas. Said site plan shall be reviewed and approved by the Planning and Zoning Commission.
2. All necessary documentation for building permit review must be submitted in conjunction with the city's building permit application process.
3. The applicant must submit for consideration an application for a variance to the maximum allowed density for multifamily development. Should the Board not approve the variance request, then this SCUP will not go into effect. In no instance shall the proposed development exceed 124 units.
4. The applicant must submit for consideration an application for a variance to the provisions concerning proximity of multifamily projects. Should the Board not approve the variance request, then this SCUP will not go into effect.
5. Building #1 as identified on the conceptual site plan shall not exceed 2 stories in height.
6. Building #1 shall be no closer than 50' from the north property line.
7. The proposed development shall comply with the city's design guidelines for Tier 2 development.
8. The applicant shall be required to plant ornamental trees along both sides of Caniff Road at 20 feet on center. Trees shall be planted at a minimum 2 1/2" caliper in size and the species selected shall be approved by the city.
9. A 10' landscape buffer shall be provided along the north property line. This landscape buffer shall include the planting of a combination of shade trees and shrubs. Shade trees shall be planted at 30' on center (minimum 2 1/2" caliper in size) and shrubs at 3' on center (minimum of 4' in height at time of planting).
10. The applicant shall install an 8' high solid masonry or decorative wood fence adjacent to the north property line.

11. Shade trees shall be planted at a minimum 30' on center between the detention pond and Building #3.
12. Harris County driveway permits shall be presented prior to permit issuance for all driveways requested. Full movement access will not be permitted on Caniff Road from the site. The applicant shall be limited to $\frac{3}{4}$ access with only a right-out to east-bound Caniff from the subject site. A raised median shall be installed by the applicant along with all necessary signage to discourage left turns from the site to Caniff.
13. The applicant shall be required to submit a traffic impact analysis at the time of site plan submittal. Said analysis will need to show the impacts of the proposed development on intersections in the vicinity and provide recommendations for mitigation of negative impacts as a result of the development. The city may require the applicant mitigate potential impacts.
14. All paved surfaces shall remain in good, operable, dust free condition over time, and repairs shall be made as requested upon written notification by the city.
15. Any future change in use requires consideration of a Special Conditional Use Permit in accordance with Chapter 106, "Zoning" of the City's Code of Ordinances.

[Any additional conditions requested by the Planning and Zoning Commission.]

ATTACHMENTS

- Exhibit A: Draft of the Proposed SCUP
- Exhibit B: SCUP Application and Supplemental Information from the Applicant
- Exhibit C: Area Map
- Exhibit D: Zoning Map
- Exhibit E: Land Use Map

City of La Porte
Special Conditional Use Permit #15-9100003

This permit is issued to: Brownstone Ventures, LLC
Owner or Agent

6517 Mapleridge, Houston, Texas 77081
Address

For Development of: The Legacy at La Porte Apartment Community
Development Name

Vacant parcel; located at the southwest corner of Underwood Road and Caniff Road
Site Address/Location

Legal Description: Tracts 718B, 719 and 719B, La Porte Outlots

Zoning: PUD, Planned Unit Development

Use: Multifamily Apartment Community

Permit Conditions:

This Special Conditional Use Permit is applicable for the subject property. A copy of which shall be maintained in the files of the City’s Planning and Development Department upon approval. Project development shall be in accordance with the following conditions:

1. A site development plan shall be submitted in accordance with applicable requirements of the City of La Porte’s Development Ordinance and shall comply with all provisions of Chapter 106, “Zoning” of the City’s Code of Ordinances and all other department reviews and applicable laws and ordinances of the City of La Porte and the State of Texas. Said site plan shall be reviewed and approved by the Planning and Zoning Commission.
2. All necessary documentation for building permit review must be submitted in conjunction with the city’s building permit application process.
3. The applicant must submit for consideration an application for a variance to the maximum allowed density for multifamily development. Should the Board not approve the variance request, then this SCUP will not go into effect. In no instance shall the proposed development exceed 124 units.
4. The applicant must submit for consideration an application for a variance to the provisions concerning proximity of multifamily projects. Should the Board not approve the variance request, then this SCUP will not go into effect.
5. Building #1 as identified on the conceptual site plan shall not exceed 2 stories in height.
6. Building #1 shall be no closer than 50’ from the north property line.
7. The proposed development shall comply with the city’s design guidelines for Tier 2 development.
8. The applicant shall be required to plant ornamental trees along both sides of Caniff Road at 20 feet on center. Trees shall be planted at a minimum 2 1/2” caliper in size and the species selected shall be approved by the city.

9. A 10' landscape buffer shall be provided along the north property line. This landscape buffer shall include the planting of a combination of shade trees and shrubs. Shade trees shall be planted at 30' on center (minimum 2 ½" caliper in size) and shrubs at 3' on center (minimum of 4' in height at time of planting).
10. The applicant shall install an 8' high solid masonry or decorative wood fence adjacent to the north property line.
11. Shade trees shall be planted at a minimum 30' on center between the detention pond and Building #3.
12. Harris County driveway permits shall be presented prior to permit issuance for all driveways requested. Full movement access will not be permitted on Caniff Road from the site. The applicant shall be limited to ¾ access with only a right-out to east-bound Caniff from the subject site. A raised median shall be installed by the applicant along with all necessary signage to discourage left turns from the site to Caniff.
13. The applicant shall be required to submit a traffic impact analysis at the time of site plan submittal. Said analysis will need to show the impacts of the proposed development on intersections in the vicinity and provide recommendations for mitigation of negative impacts as a result of the development. The city may require the applicant mitigate potential impacts.
14. All paved surfaces shall remain in good, operable, dust free condition over time, and repairs shall be made as requested upon written notification by the city.
15. Any future change in use requires consideration of a Special Conditional Use Permit in accordance with Chapter 106, "Zoning" of the City's Code of Ordinances.

Failure to occupy the building within 12 months after issuance or as scheduled under the terms of a special conditional use permit shall void the permit as approved, except upon an extension of time granted after application to the Planning and Zoning Commission.

If contract or agreement is terminated after completion of any stage and there is ample evidence that further development is not contemplated, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

Validation Date: _____

Director of Planning and Development

City Secretary

City of La Porte
604 W. Fairmont Pkwy.
La Porte, TX 77571

Planning & Development Department
**SPECIAL CONDITIONAL USE
PERMIT APPLICATION**

Phone: 281.470.5073
Fax: 281.470.5005
www.laportetx.gov

1. PROPERTY OWNER CONTACT INFORMATION:

OWNER NAME: Brownstone Ventures, LLC PHONE 1: 713-432-7727 ext. 208
PHONE 2: 713-705-3507 FAX #: 713-432-0120
E-MAIL: doak@thebrownstonegroup.net
MAILING ADDRESS: 6517 Mapleridge, Houston, Texas 77081

2. BUSINESS INFORMATION:

BUSINESS NAME: Brownstone Ventures, LLC BUSINESS TYPE: Real Estate Development
CONTACT NAME: Doak Brown PHONE #: 713-432-7727 ext. 208
E-MAIL: doak@thebrownstonegroup.net FAX #: 713-432-0120
MAILING ADDRESS: 6517 Mapleridge, Houston, Texas 77081

3. PROPERTY DESCRIPTION:

PARCEL NO(s) (13-digit HCAD Tax ID #): 023-146-000-0719
PROPERTY ADDRESS (If existing): None
PROPERTY LEGAL DESCRIPTION: Tracts 718B, 719, and 719A, La Porte Outlots

4. SUPPORTING DOCUMENTATION (Check Applicable):

GENERAL PLAN SITE PLAN PLAT

REASON FOR REQUEST: Approval of proposed development conceptual site plan.

OWNER or AUTHORIZED AGENT'S SIGNATURE: 
PRINTED NAME: Doak Brown DATE: 6/16/15

5. APPLICATION CHECKLIST & SUPPORTING DOCUMENTATION:

- COMPLETE ITEMS 1 THRU 4 OF APPLICATION
- ATTACH APPLICABLE PLAN(S)
- SUBMIT \$300.00 NON-REFUNDABLE APPLICATION FEE

(STAFF USE ONLY):

DATE RECEIVED: _____ RECEIVED BY: _____

PROJECT NUMBER: _____ - _____

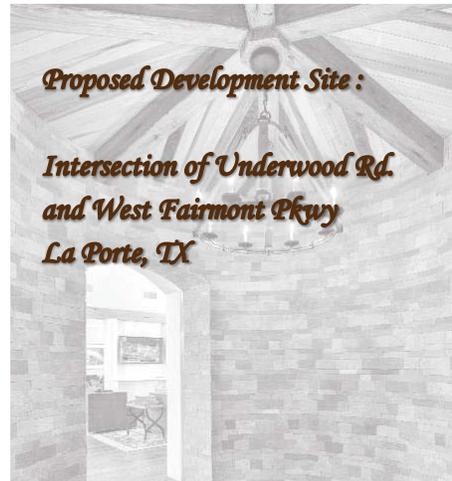
SCHEDULED DATE FOR PLANNING & ZONING COMMISSION AGENDA: _____



The Legacy at La Porte / Texas



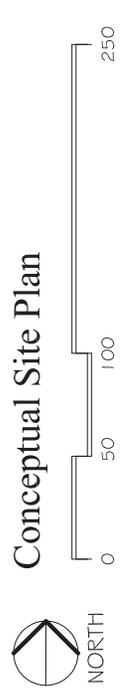
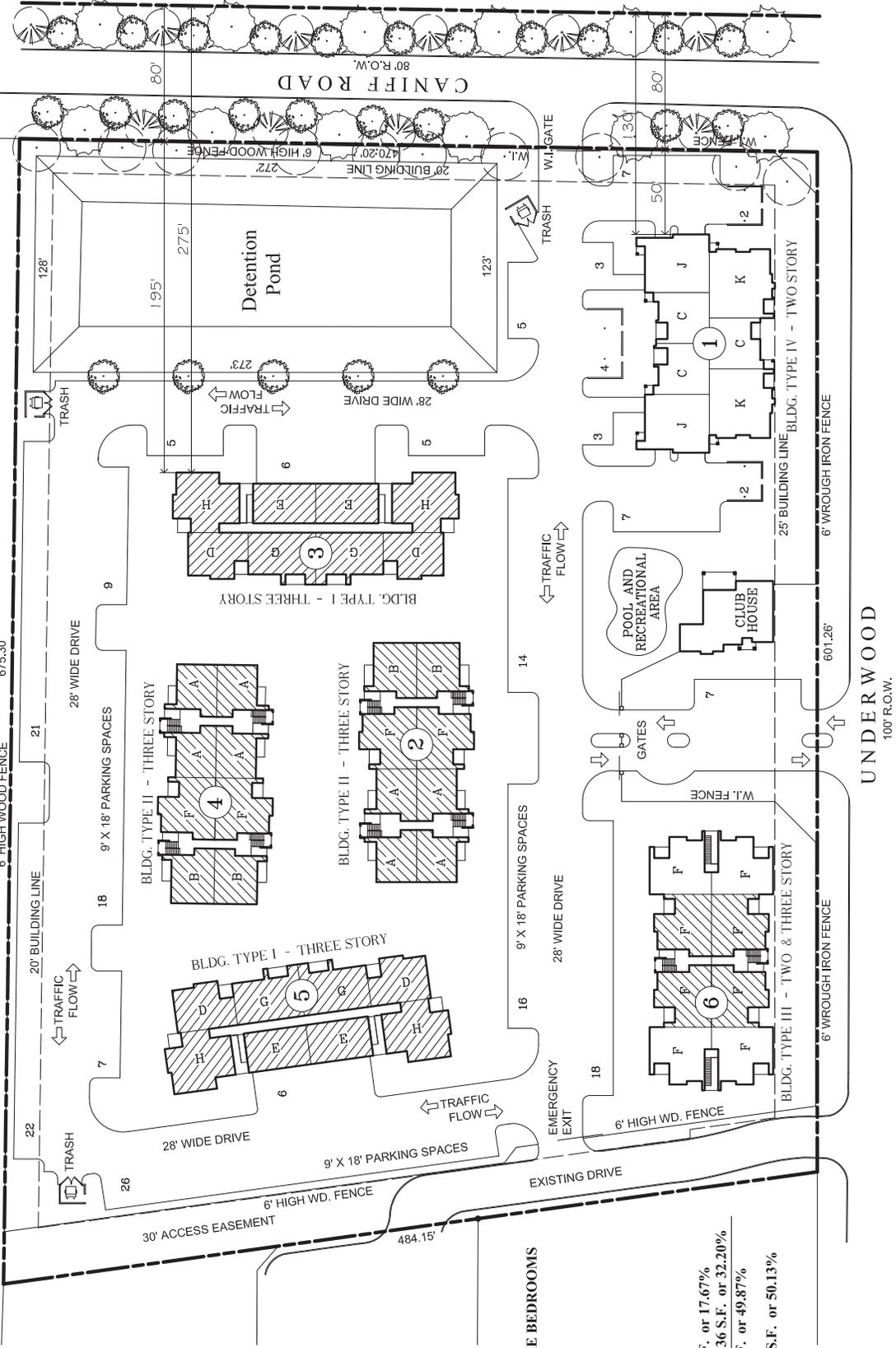
www.thebrownstonegroup.net



Proposed Development Site :

*Intersection of Underwood Rd.
and West Fairmont Pkwy
La Porte, TX*





Conceptual Site Plan

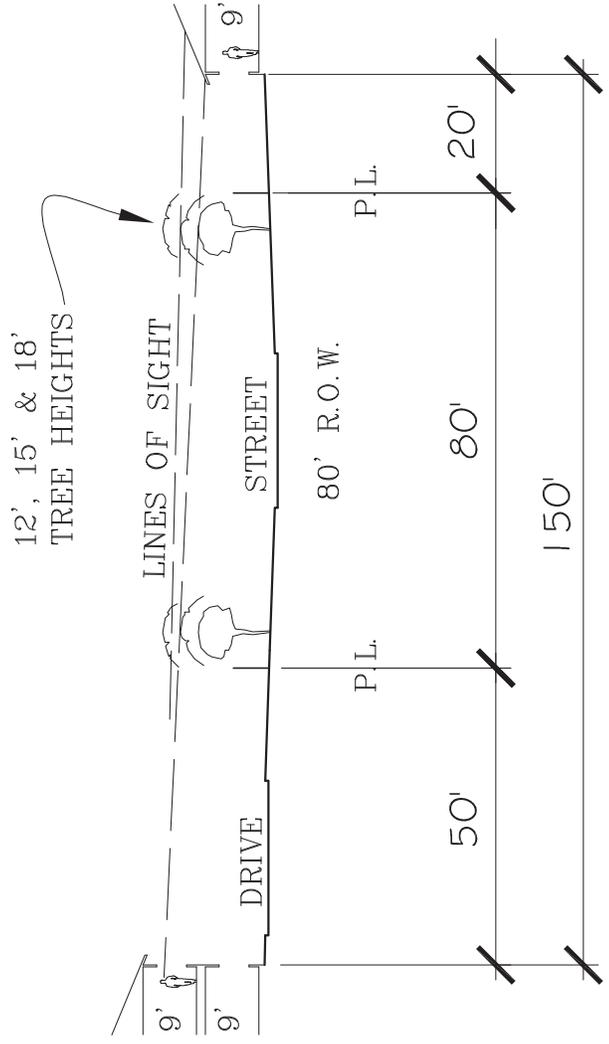
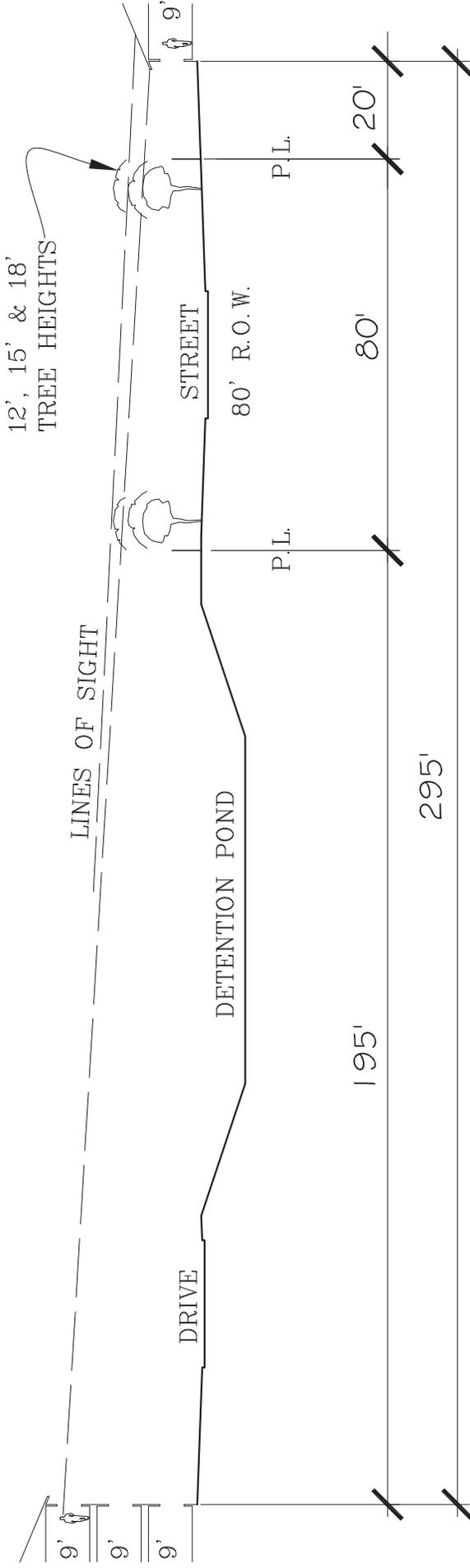
124 UNITS OF ONE, TWO AND THREE BEDROOMS
226 PARKING SPACES

LAND AREA: 6.9547 ACRES
UNITS PER ACRE: 17.8297

TOTAL LAND AREA: 302,947 S.F.

TOTAL BUILDING AREAS: 53,542 S.F. or 17.67%
TOTAL DRIVES AND PARKING: 97,536 S.F. or 32.20%
TOTAL LOT COVERAGE: 151,078 S.F. or 49.87%
TOTAL LANDSCAPE AREA: 151,869 S.F. or 50.13%

EXHIBIT B



Sight Line Study

SCALE IN FEET



LaPORTE APARTMENTS

Unit Square Footage Calculations:

TYPE		NO.	NET AREA	TOTAL NET AREA	GROSS AREA	TOTAL GROSS AREA
A	1 BR / 1 BA	24	665 S.F.	15,960 S.F.	739 S.F.	17,736 S.F.
B	1 BR / 1 BA	12	770 S.F.	9,240 S.F.	868 S.F.	10,416 S.F.
C-dn	1 BR / 1 BA / 1 CP	3	801 S.F.	2,403 S.F.	867 S.F.	2,601 S.F.
C-up	1 BR / 1 BA / 1 CP	3	853 S.F.	2,559 S.F.	919 S.F.	2,757 S.F.
D	1 BR / 1 BA	12	839 S.F.	10,068 S.F.	906 S.F.	10,872 S.F.
E	1 BR / 1 BA / 1 STUDY	8	861 S.F.	6,888 S.F.	861 S.F.	6,888 S.F.
F	2 BR / 2 BA	32	989 S.F.	32,648 S.F.	1,064 S.F.	34,048 S.F.
G	2 BR / 2 BA	12	1,037 S.F.	12,444 S.F.	1,123 S.F.	13,476 S.F.
H	2 BR / 2 BA	12	1,119 S.F.	13,428 S.F.	1,186 S.F.	14,232 S.F.
J	2 BR / 2 BA / 1 Garage	2	1,177 S.F.	2,354 S.F.	1,557 S.F.	3,114 S.F.
K-dn	3 BR / 2 BA / 2 Garage	2	1,334 S.F.	2,668 S.F.	1,863 S.F.	3,726 S.F.
K-up1	3 BR / 2 BA / 2 Garage	1	1,411 S.F.	1,411 S.F.	1,972 S.F.	1,972 S.F.
K-up2	3 BR / 2 BA / 2 Garage	1	1,411 S.F.	1,411 S.F.	2,015 S.F.	2,015 S.F.
TOTAL		124		113,482 S.F.		123,853 S.F.
COMMUNITY BUILDING				1,638 S.F.		1,943 S.F.

DEVELOPMENT SUMMARY

The Legacy at La Porte (“Legacy”) will be a Class-A residential apartment community that provides 124 new luxury units to the City of La Porte. While offering a wide range of residential options – including one, two, and three bedroom floor plans, some with attached garages – the interior features and exterior amenities will remain top-notch and exceed similar existing Class A apartment communities in the surrounding cities.

The Legacy has been designed to resemble a village of homes, while additionally blending the garden-style-apartment model to accommodate the increasing multi-family market demand in La Porte. Situated on approximately seven acres of land near the corner of Underwood Road and Fairmont Parkway, the Legacy development will serve the increasing oil, gas, and petrochemical job growth and economic expansion that is impacting the nearby ship channel. Moreover, this new community will provide luxury apartment options for nearby college students and attract local business executives and working residents in the La Porte vicinity.

At Legacy, the interiors will feature luxury kitchens with designer cabinets, stainless steel appliances, faux wood floors, carpeted bedrooms, ceramic tile bathrooms, crown molding, granite countertops, full size washers and dryers, and open living areas. Other distinctive features will include pantries, large walk in closets, garden size tubs with enclosed shower areas, desk alcoves in select units, and lovely balconies and patios with convenient outside storage.

The exterior of Legacy will include a pleasurable design of stone, stucco, and cementitious siding construction on two and three story buildings. These attractive Class-A buildings will provide a comfortable residential feel, while additionally buffering existing single family homes with a heavy use of pleasing landscaping and fencing around the perimeter. The clubhouse will feature a furnished community room and fitness center, outdoor grilling areas, along with the Legacy’s resort style swimming pool.

The Legacy complies with La Porte’s zoning ordinance except that the development will need to obtain a variance for density and distance from another multifamily residential community. The zoning ordinance only allows 14 units per acre, and it prevents a multifamily development with 50 or more units from being located within 1,000 feet from another multifamily development of 20 units or more. The Legacy’s proposed density is 17.8297 units per acre and is located across the street from Fairmont Oaks Apartments. The proposed development site was selected because it is the only location in the City of La Porte that allows a multifamily use that is not in the floodplain.

We believe that the Legacy is worthy of a variance for density and distance because La Porte needs this type of housing to be competitive with surrounding communities. There is currently no Class A non age restricted apartment community in the City of La Porte. The City of La Porte is most likely losing residents who choose to live in surrounding communities despite working in or near the City of La Porte because of the lack of new multifamily developments. The proposed density of this development allows for nicer amenities than the 14 units per acre would allow. Additionally, 14 units per acre is economically infeasible these days because of the cost of construction associated with multifamily developments.

Expected to exceed \$13 million dollars in development costs at approximately \$107,000 per unit, The Legacy at La Porte will benefit from the Brownstone Companies’ experience and expertise in developing and constructing quality residential apartment communities. With successful existing developments in Houston, Pearland, Laredo, Bryan/College Station, and multiple other areas throughout Texas and the neighboring Gulf Coast States, the Brownstone Companies will deliver a quality product to the City of La Porte.

PROPERTY DESCRIPTION & LOCATION

Location: *The site is located in western La Porte near the northwest corner of Underwood Road and West Fairmont Parkway.*

Units: *124 Total Units*

Parcel Size: *6.9547 Acres*

Density: *17.83 Units per Acre (higher density-build to accommodate economies of scale)*

Stories: *Two- and Three-Story wood frame construction*

Parking: *226 surface spaces (1.82 per unit)*

Unit Mix:

<i>62 one bedroom / one bath units</i>	<i>(50.0%)</i>
<i>58 two bedroom / two bath units</i>	<i>(46.8%)</i>
<i>4 three bedroom / two bath units</i>	<i>(3.2%)</i>

Average Unit Size: *915 square feet*

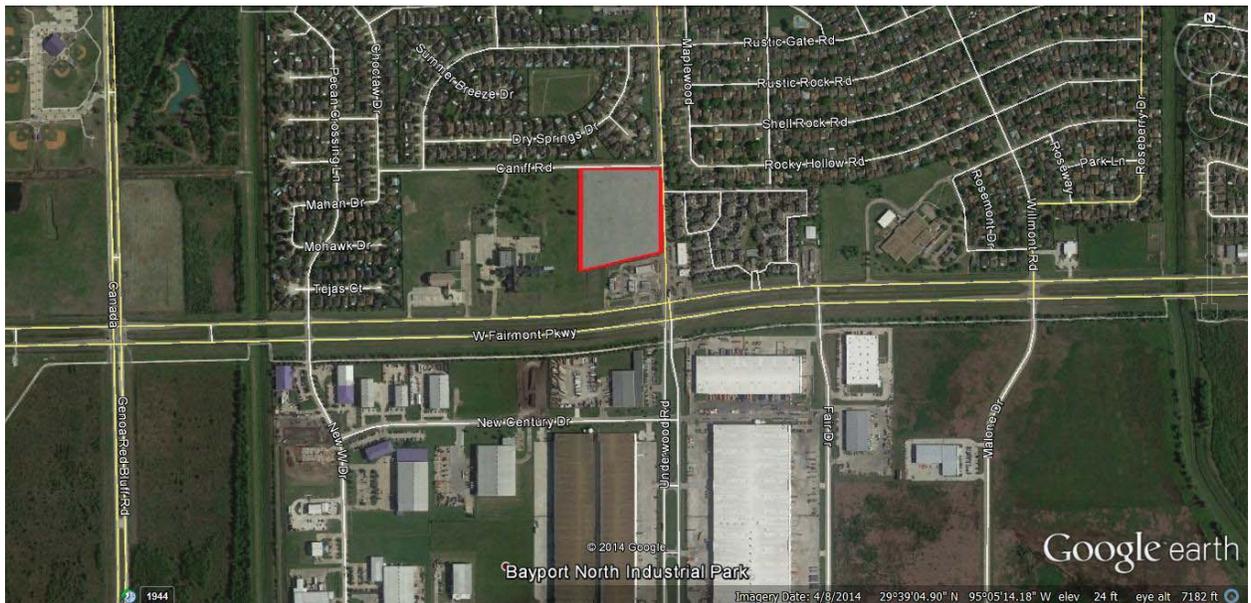
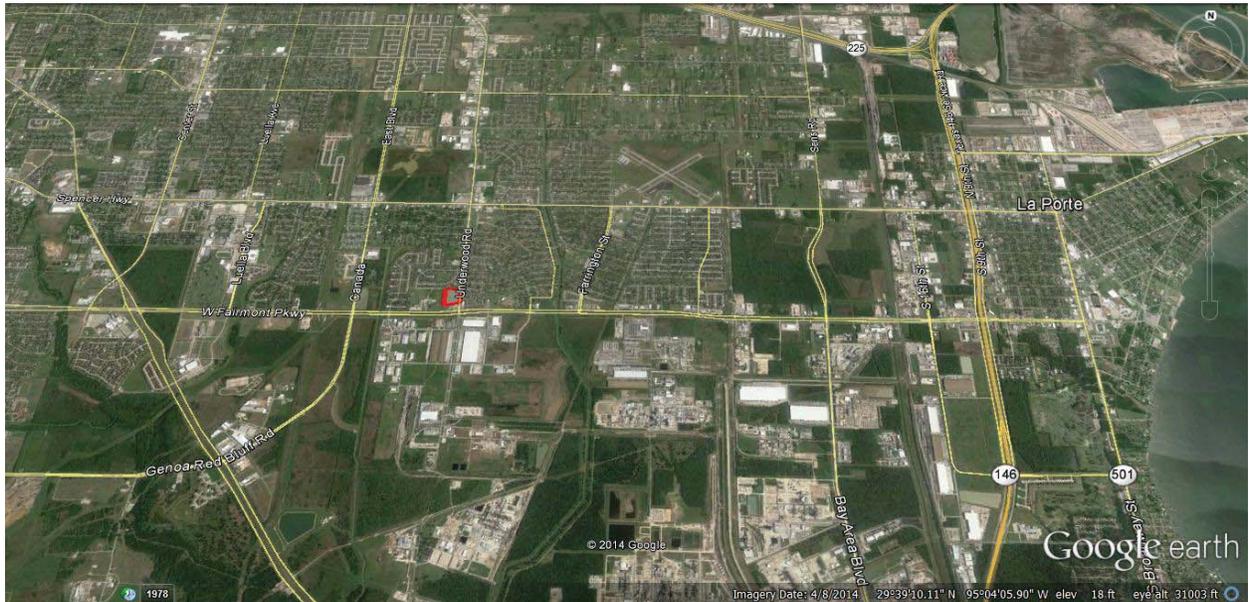
Unit Amenities

- *13x13 Ceramic Tile Flooring in Bathrooms*
- *2 Inch Wooden Mini Blinds*
- *Balcony/Patio with Storage*
- *Brushed Nickel Plumbing Fixtures*
- *Carpeted Flooring in Bedrooms*
- *Ceiling Fans*
- *Ceramic Tile*
- *Desk*
- *Espresso Cabinetry*
- *Faux Wood Flooring in All Areas/ Neutral Carpet in Bedrooms*
- *Garage/Carport*
- *Granite Countertops*
- *Microwave*
- *Pantry*
- *Refrigerator with Ice Maker*
- *Spectacular Views*
- *Stainless Steel Appliances*
- *Two-Tone Paint*
- *Washer/Dryer in All Homes*

Community Amenities:

- *24-Hour Emergency Maintenance*
- *Corporate Housing Available*
- *Gorgeous Clubhouse Featuring: Fireplace, Billiards Room, Fitness Center, and Wi-Fi Lounge/Business Center*
- *Gorgeous Hill Country Landscaping and Atmosphere*
- *Outdoor Grilling Area With Fireplace and Flat Screen TV*
- *Pet Friendly*
- *Professional On-Site Management*
- *Resort Style Pool With Wifi*

AERIAL MAPS



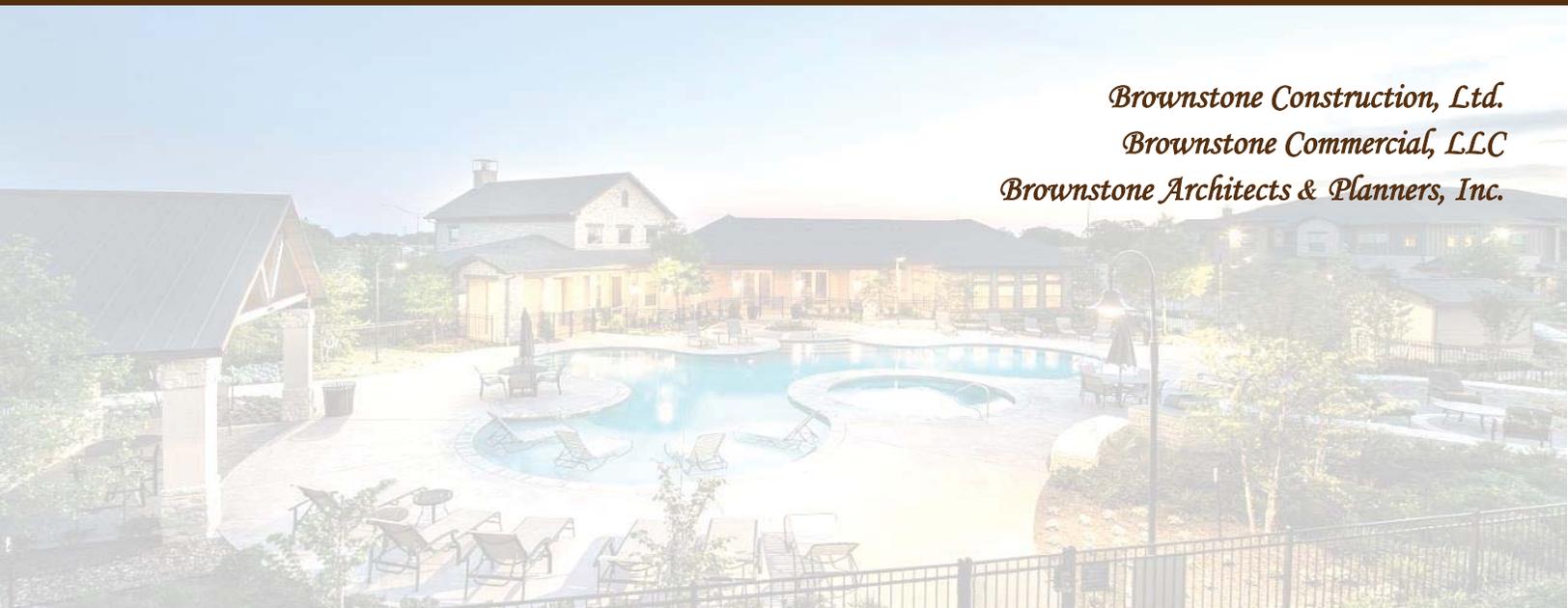


DEVELOPER EXPERIENCE

Since 2005, the Brownstone companies have contracted for more than \$330 million dollars worth of residential developments throughout Texas and the Southeast, consisting of 35 developments surpassing 4,000 units.



Our Companies



*Brownstone Construction, Ltd.
Brownstone Commercial, LLC
Brownstone Architects & Planners, Inc.*

Residential Communities Since 2005**UNDER CONSTRUCTION**

River Bank Village (152 Units) Laredo, TX

Canton Village (80 Units) Canton, TX

Cibolo Crossing (236 Units) Laredo, TX

Austin Village (30 Units) Bastrop, LA

La Esperanza Del Rio (60 Units) Rio Grande City, TX

Preston Apartments (40 Units) Magnolia, AR

Sunset Terrace Senior Village (80 Units) Pharr, TX

La Esperanza Del Alton (80 Units) Alton, TX

PRE DEVELOPMENT

Madison Oaks (60 Units) Winnsboro, TX

COMPLETED

San Diego Creek Apartments (72 Units) Alice, TX

San Gabriel Senior Village (100 Units) Georgetown, TX

Easterling Village (48 Units) Alice, TX

Thomas Ninke Senior Village (80 Units) Victoria, TX

Retama Village (128 Units) McAllen, TX

Gulfbreeze Plaza II (148 Units) Port Arthur, TX

Bluebonnet Senior Village (36 Units) Alamo, TX

Retama Village Phase II (74 Units) McAllen, TX

Sunset Terrace (100 Units) Pharr, TX

Bluffs Landing Senior Village (144 Units) Round Rock, TX

Gulfbreeze Plaza I (86 Units) Port Arthur, TX

Creekside Villas (144 Units) Buda, TX

Villas at Beaumont (36 Units) McAllen, TX

Pearland Senior Village (126 Units) Pearland, TX

Parkview Terrace (100 Units) Pharr, TX

Heights at Corral (80 Units) Kingsville, TX

Belmont Senior Village (192 Units) Leander, TX

Citrus Gardens (148 Units) Brownsville, TX

Casa Ricardo (60 Units) Kingsville, TX

Merrit Lakeside (176 Units) Schertz, TX

Shiloh Crossing (156 Units) Laredo, TX

Braeburn Village (140 Units) Houston, TX

Gary Street Village (35 Units) Winnsboro, LA

Aeolian Senior Apartments (60 Units) Vicksburg, MS

Blooms Apartments (30 Units) Tallulah, LA

The Reserve at Traditions (240 Units) Bryan, TX

Merritt Legacy (208 Units) Leander, TX

Carr Central Apartments (72 Units) Vicksburg, MS

Gulf Coast Arms (160 Units) Houston, TX

Elm Street Village (34 Units) Tallulah, LA



REPRESENTATIVE ARCHITECTURE / EXTERIOR AND INTERIOR PHOTOS



Exteriors





Exteriors





Exteriors





Exteriors





Interiors





Interiors





Interiors



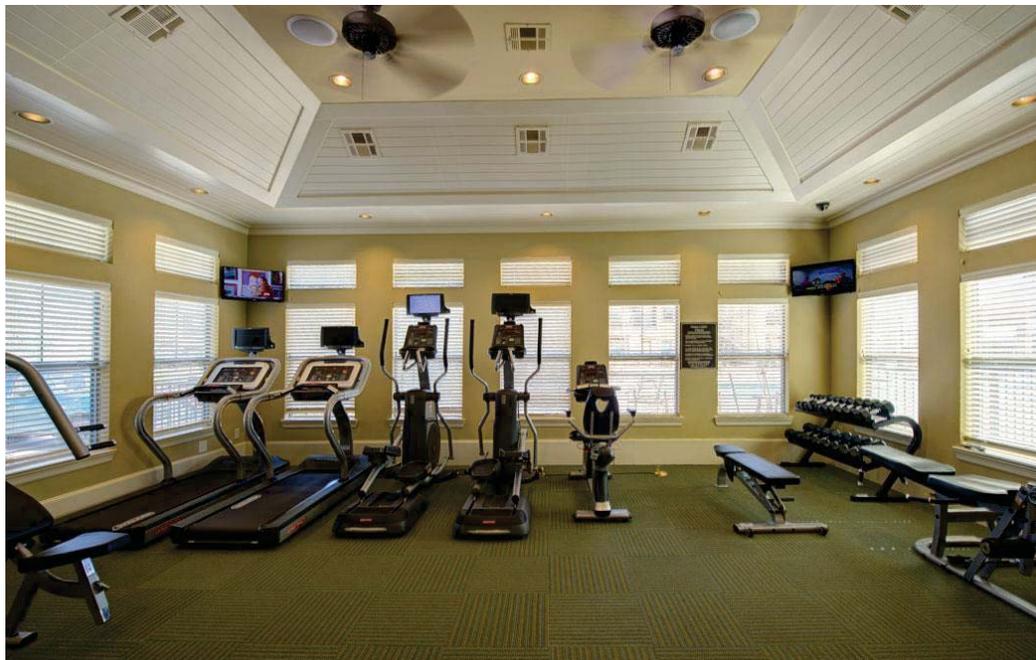


Interiors





Interiors





Interiors



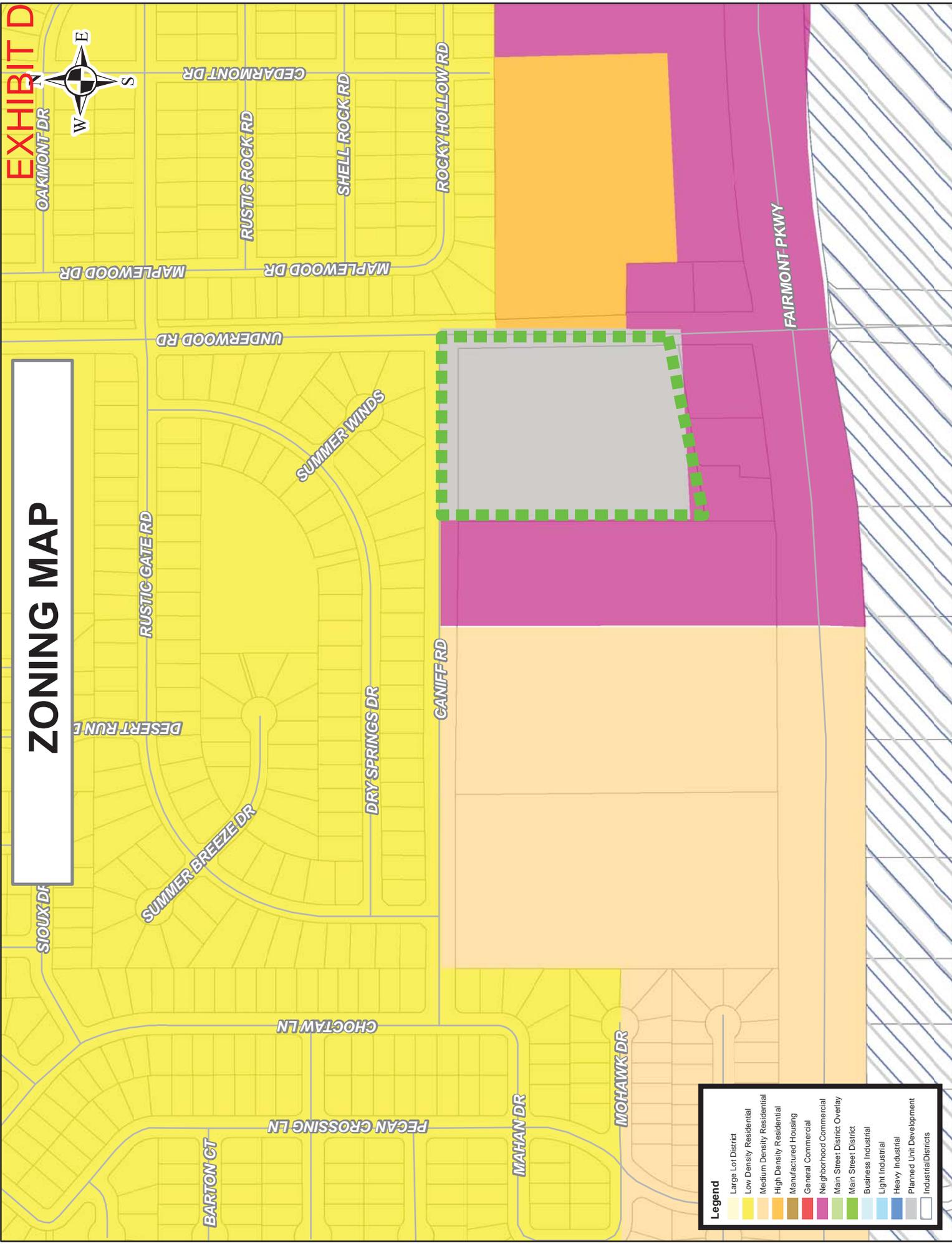
AREA MAP

SCUP REQ. #15-91000003

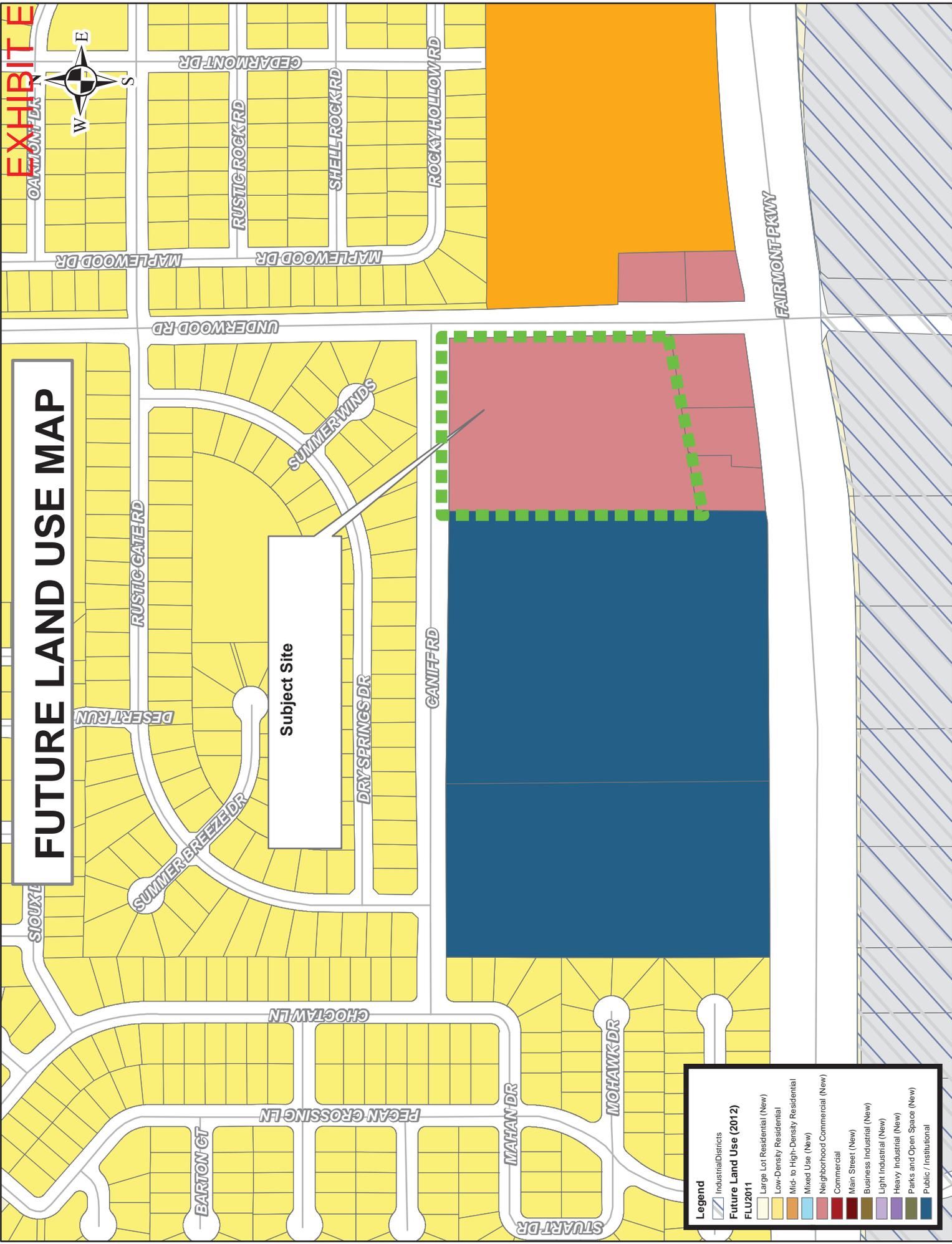


EXHIBIT D

ZONING MAP



Legend	
[Yellow]	Large Lot District
[Light Yellow]	Low Density Residential
[Orange]	Medium Density Residential
[Light Orange]	High Density Residential
[Brown]	Manufactured Housing
[Red]	General Commercial
[Pink]	Neighborhood Commercial
[Light Green]	Main Street District Overlay
[Green]	Main Street District
[Light Blue]	Business Industrial
[Blue]	Light Industrial
[Dark Blue]	Heavy Industrial
[Grey]	Planned Unit Development
[White]	Industrial Districts

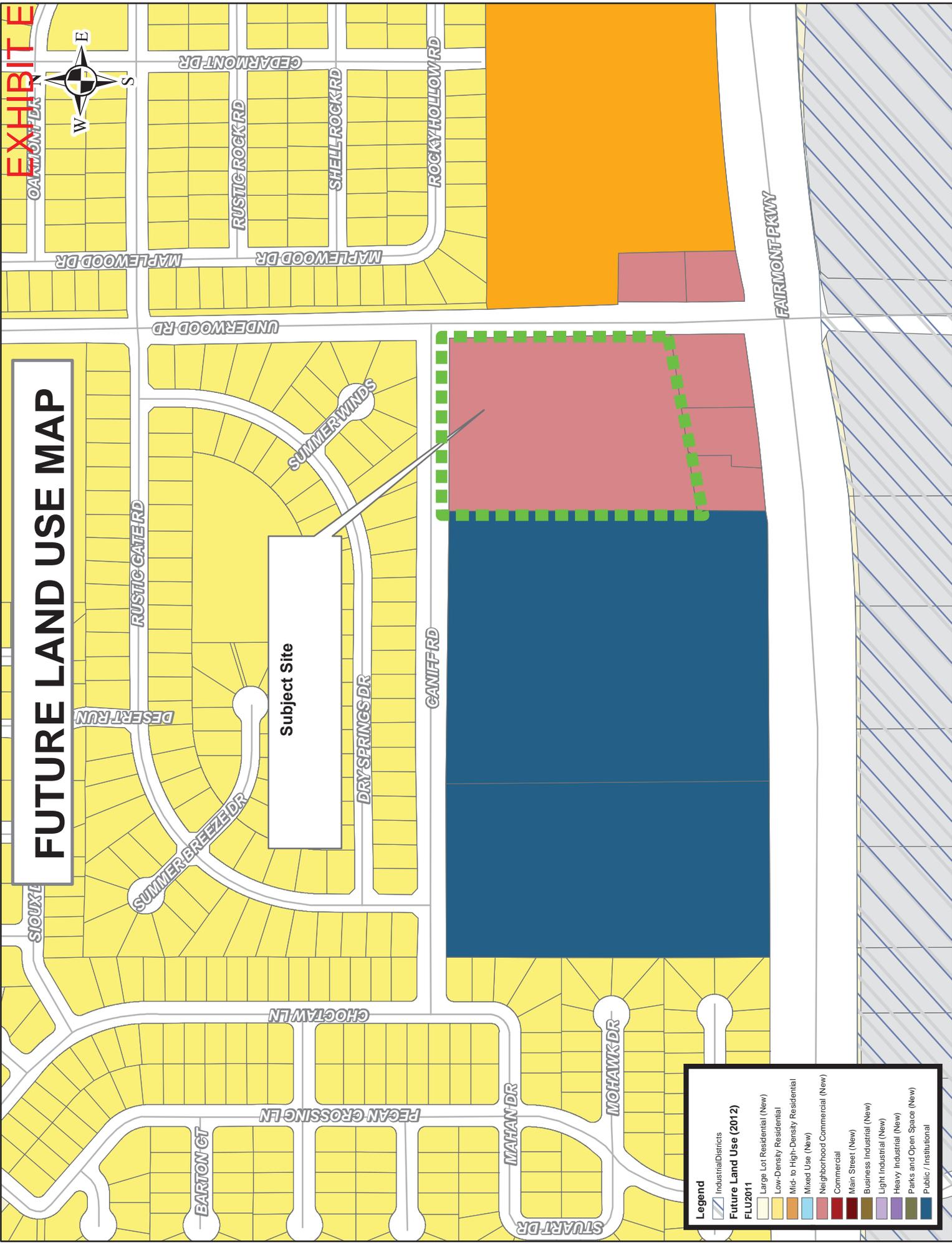


FUTURE LAND USE MAP

Subject Site

Legend

- Industrial Districts
- Future Land Use (2012) FLU2011
- Large Lot Residential (New)
- Low-Density Residential
- Mid- to High-Density Residential
- Mixed Use (New)
- Neighborhood Commercial (New)
- Commercial
- Main Street (New)
- Business Industrial (New)
- Light Industrial (New)
- Heavy Industrial (New)
- Parks and Open Space (New)
- Public / Institutional



**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEM 9

Consider approval of an amendment to the City of La Porte's Future Land Use Plan by amending certain tracts of land between S. 16th Street and Highway 146 and between W. M Street and McCabe Road from "Business Industrial" use to "Light Industrial" use; and from "Business Industrial" use to "Park and Open Space" use; and from "Park and Open Space" use to "Light Industrial" use.

*Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas*

Planning and Development Department Staff Report

ISSUE

Consider a recommendation of approval to the City Council for an amendment to the city's Future Land Use Plan as demonstrated in the attached Exhibit A.

RECOMMENDATION

Staff recommends the Planning and Zoning Commission consider a recommendation for approval of the described amendment to the city's Future Land Use Plan.

DISCUSSION

At the June 8, 2015 City Council meeting, the Council directed staff to work with the property owners of Port Crossing on a number of items to "clean up" various discrepancies between the various documents governing development of the Port Crossing Business Park. The following documents are required to be modified in some manner, and will be presented this evening for consideration:

1. General Plan.
2. Development Agreement.
3. Final Plat.
4. Special Conditional Use Permit.
5. Future Land Use Plan.

Staff is presenting for consideration an amendment to the city's Future Land Use Plan to "clean up" the land use designation for the subject tract of land in the Port Crossing area. The proposed amendment to the Future Land Use Map is intended to clarify the type of development that is anticipated to take place with the Port Crossing area.

There are a number of different modifications being proposed (for reference purposes, the attached Exhibit B is the city's current future land use map for the area:

1. All the parcels of land fronting on S. 16th Street have been modified from "Business Industrial" use to "Light Industrial" use. This change in land use designation will correlate with the warehousing and distribution uses that will develop on these properties. This includes all properties from S. M Street to McCabe Road within the area zoned PUD.

2. The detention pond on the north portion of the development is proposed to be modified from “Business Industrial” use to “Park and Open Space” use to accommodate the existing retention pond on this site.
3. At the southern portion of the site along Highway 146, a portion of the tract is proposed to be modified from “Park and Open Space” use to “Business Industrial” use. The applicant has demonstrated that there is not a need to expand the existing detention ponds from their current size. As a result the need for this tract of land to accommodate detention is no longer necessary and the applicant is requesting consideration to allow this tract to develop with “Business Industrial” land uses.

The subject site is zoned PUD, Planned Unit Development, which allows for “Business Industrial” development. The applicant has also submitted application for an amendment to the Port Crossing General Plan and the city’s amendment to the Future Land Use Plan would be consistent with the plan.

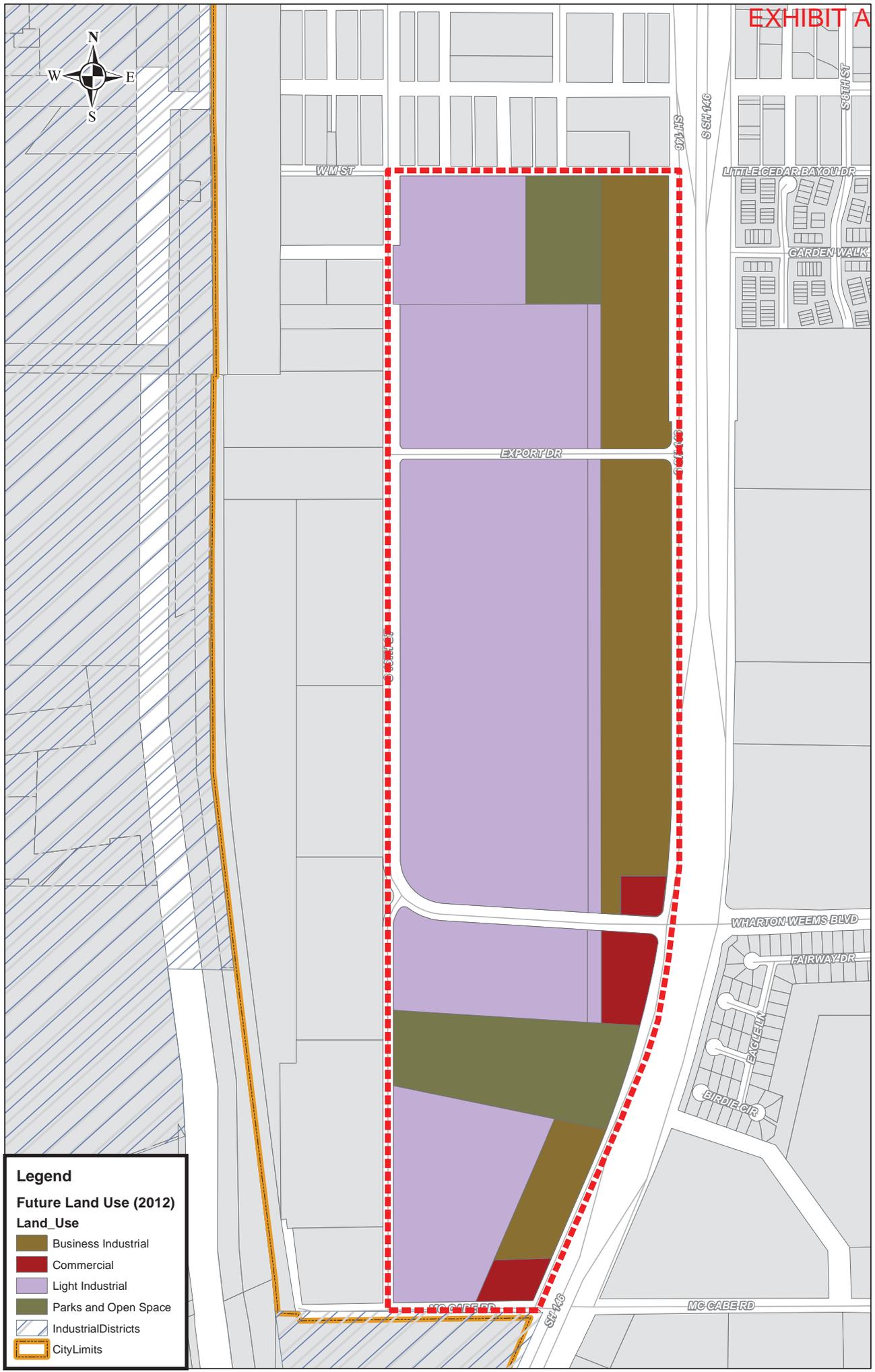
Section 213.003 of the Texas Local Government Code (LGC) specifies requirements for amending the city’s Future Land Use Plan, which was adopted as a component of the Comprehensive Plan. The LGC requires review of the proposed amendment by the Planning and Zoning Commission and approval by the City Council. A public hearing will be scheduled at the time of City Council review.

The Future Land Use Plan identifies the following surrounding land uses (see the attached Exhibit B for existing land uses):

	Land Use	Development
North	Light Industrial General Commercial	Existing office/warehouse/storage yard development Undeveloped land
South	La Porte ETJ	South La Porte Industrial District
West	La Porte ETJ	Bayport Industrial District
East	Highway 146	Highway 146

ATTACHMENTS

- Exhibit A: Proposed Future Land Use Plan
 Exhibit B: Existing Future Land Use Plan

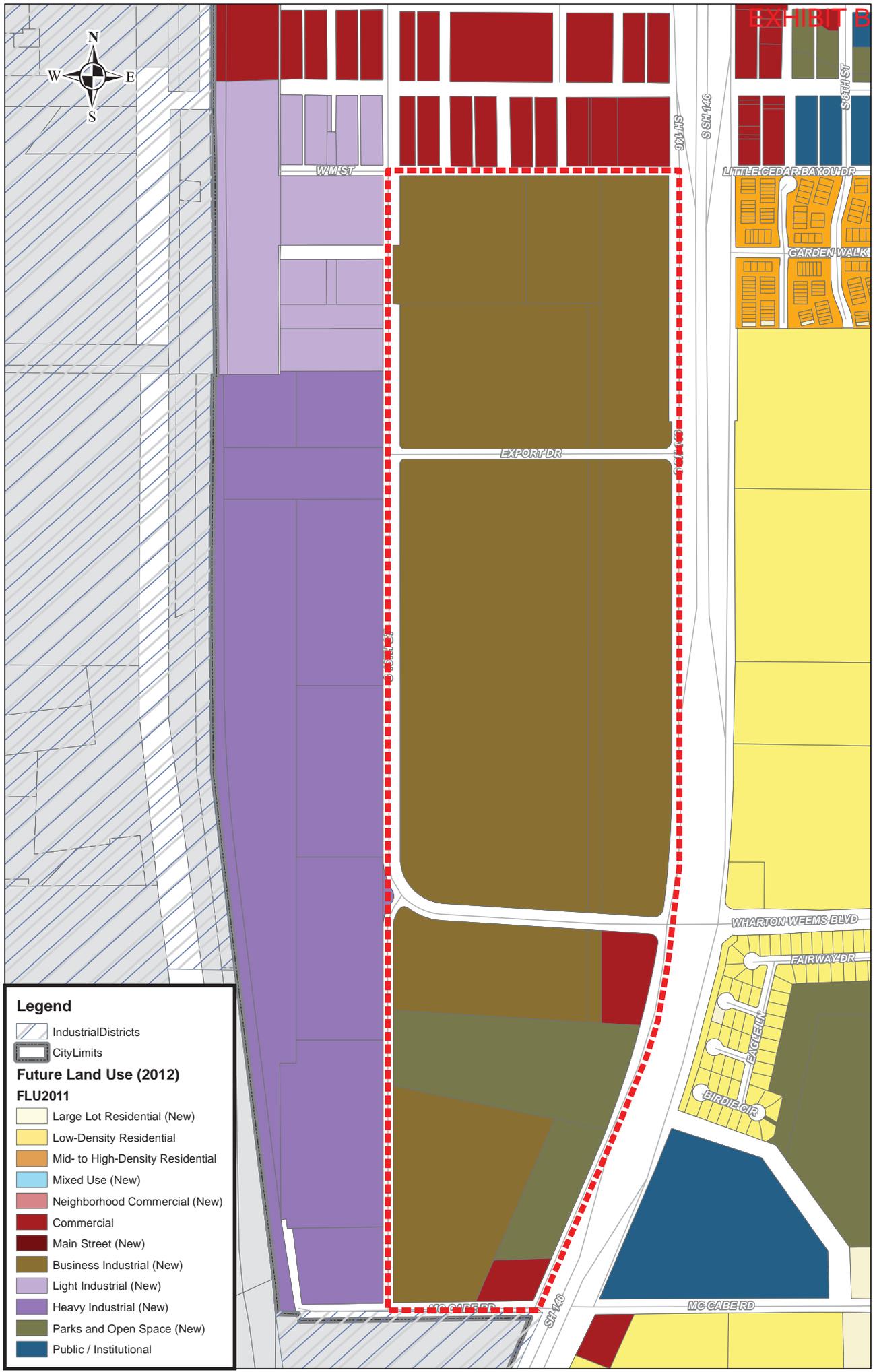


Legend

Future Land Use (2012)

Land_Use

- Business Industrial
- Commercial
- Light Industrial
- Parks and Open Space
- Industrial Districts
- City Limits



Legend

-  Industrial Districts
-  City Limits

Future Land Use (2012)

FLU2011

-  Large Lot Residential (New)
-  Low-Density Residential
-  Mid- to High-Density Residential
-  Mixed Use (New)
-  Neighborhood Commercial (New)
-  Commercial
-  Main Street (New)
-  Business Industrial (New)
-  Light Industrial (New)
-  Heavy Industrial (New)
-  Parks and Open Space (New)
- Public / Institutional

**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEM 10

Consider approval of the
Port Crossing Amending Plat.

*Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas*

Planning and Development Department Staff Report

ISSUE

Should the Planning and Zoning Commission approve the proposed *Port Crossing Amending Plat*?

RECOMMENDATION

Staff recommends the Planning and Zoning Commission approve the proposed amending plat as presented in the attached Exhibit A.

DISCUSSION

The city's Development Ordinance defines an amending plat as: "A plat, previously approved by the Commission and duly recorded, which is resubmitted to the Commission for re-approval and recording which contains dimensions or notational corrections or erroneous information contained on the originally approved and recorded plat."

This plat is intended to clean up the plat with how Port Crossing has been developed over the years since the original plat was approved in 2007 (see the attached Exhibit B). Land use is determined by the city's Future Land Use Plan and not through a subdivision plat document. In this case the proposed amending plat is removing all land use references and is bringing the reserves into compliance with the underlying land uses identified in the city's Future Land Use Plan. Any modifications to underlying land uses requires an amendment to the city's Future Land Use Plan, which would be reviewed by the Planning and Zoning Commission and approved by the City Council.

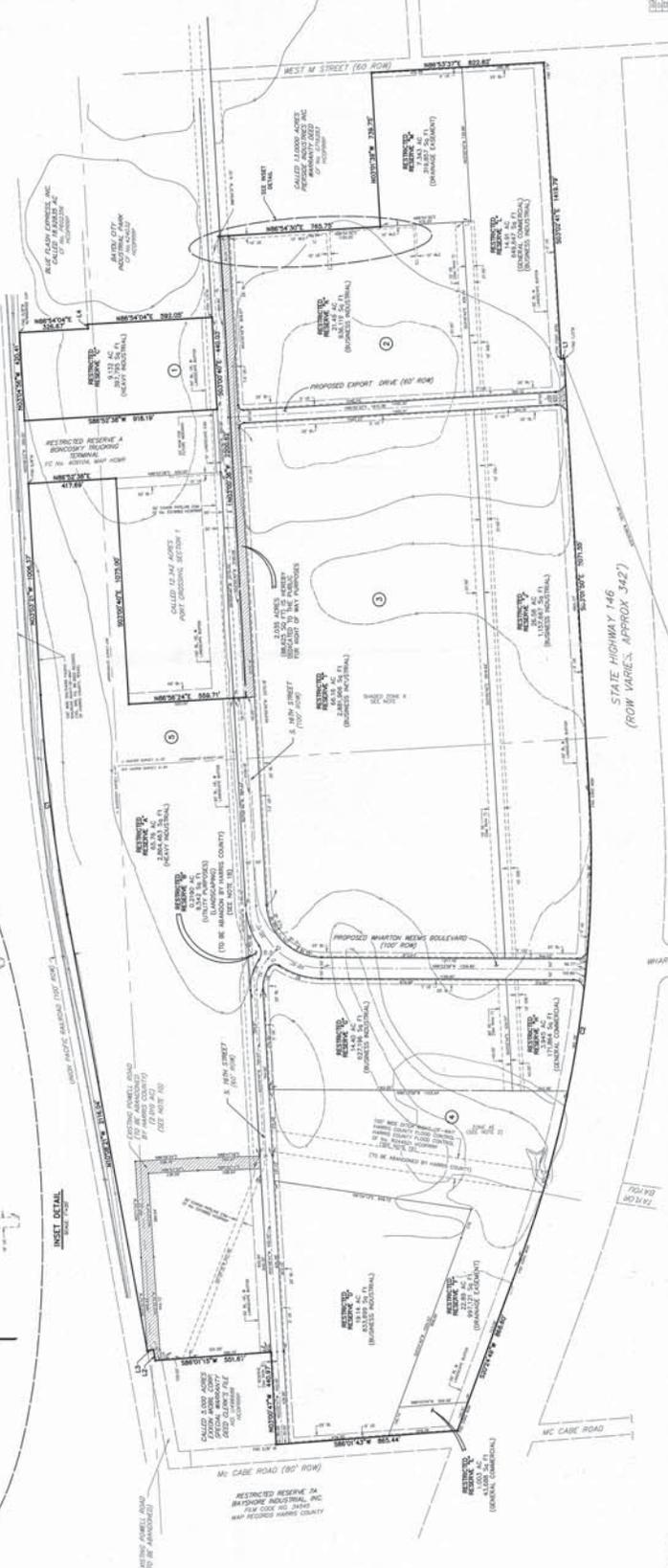
ATTACHMENTS

Exhibit A: Proposed Port Crossing Amending Plat
Exhibit B: Existing Port Crossing Final Plat
Exhibit C: Area Map

FILED
NOV 19 19 39
City of La Porte
Harris County, Texas



1. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.



1. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.

2. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.

3. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.

Table with 4 columns: Lot No., Area, and other details. Contains numerical data for various lots.

FINAL PLAT OF PORT CROSSING

A SUBDIVISION OF 2867 ACRES OF LAND
OUT OF THE
W.P. HARRIS SURVEY, ABSTRACT No. 30
J. HUNTER SURVEY, ABSTRACT No. 35
G. MCKINSTRY SURVEY, ABSTRACT No. 47
CITY OF LA PORTE, TEXAS
13 RESERVES 5 BLOCKS
NOVEMBER 2006

RECORDED
IN THE PUBLIC RECORDS OF HARRIS COUNTY, TEXAS
BOOK 10, PAGE 100
NOV 20 2006

1. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.

2. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.

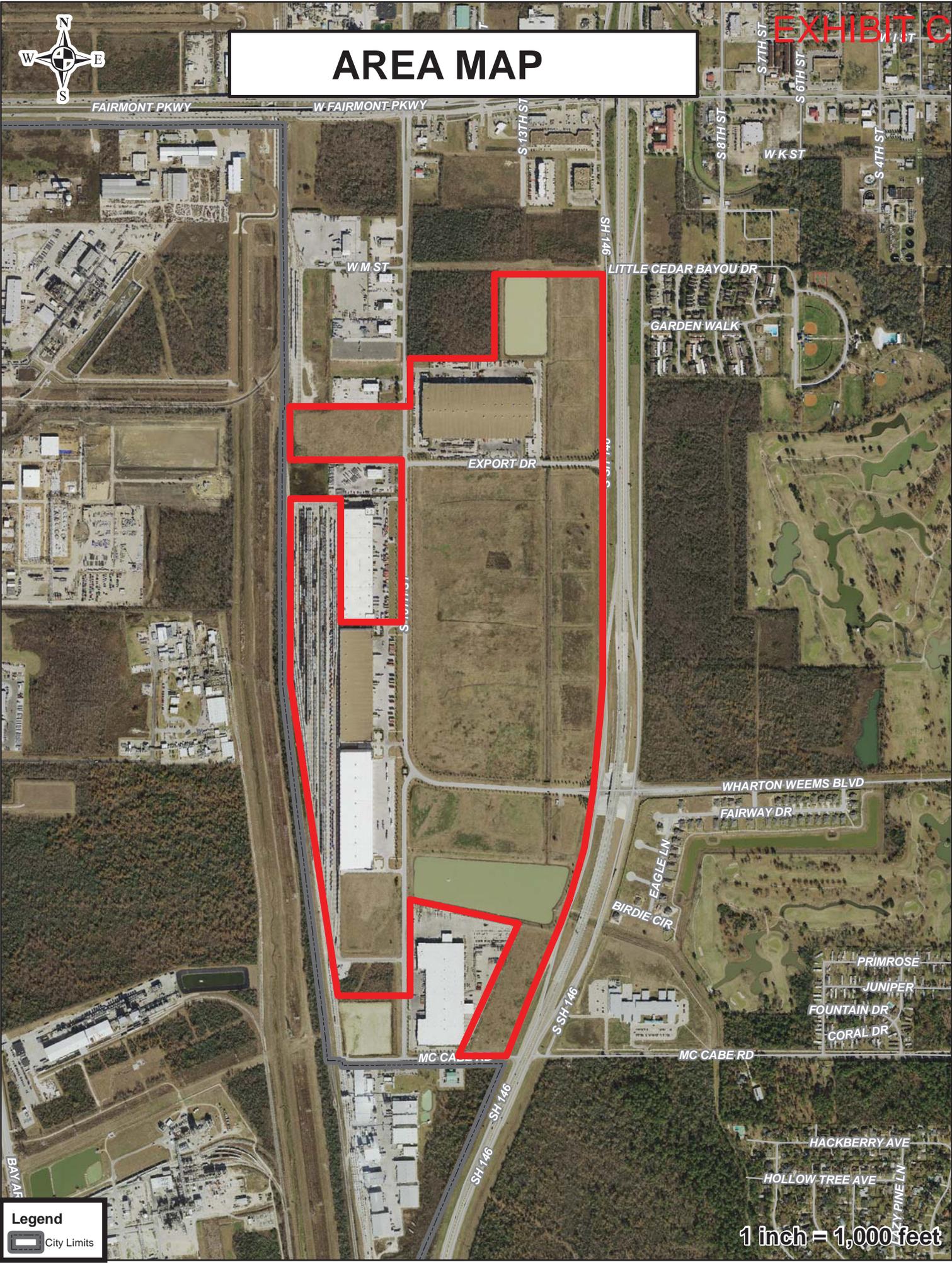
3. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.

4. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.

5. The City of La Porte, Texas, is a city organized under the laws of the State of Texas, and is a political subdivision of the State of Texas. The City of La Porte is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas, and is a city of the County of Harris, State of Texas.



AREA MAP



FAIRMONT PKWY

W FAIRMONT-PKWY

S 13TH ST

S 7TH ST

S 6TH ST

S 8TH ST

W-K ST

S 4TH ST

W M ST

LITTLE CEDAR BAYOU DR

GARDEN WALK

EXPORT DR

WHARTON WEEMS BLVD

FAIRWAY DR

EAGLE LN

BIRDIE CIR

PRIMROSE

JUNIPER

FOUNTAIN DR

CORAL DR

MC CABE RD

MC CABE RD

HACKBERRY AVE

HOLLOW TREE AVE

ZY PINE LN

BAY AVE

SH 146

SSH 146

Legend

 City Limits

1 inch = 1,000 feet

**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEM 11-13

Consider recommendation of approval of a Special Conditional Use Permit (#15-91000004) for an amendment to the Port Crossing Business Park SCUP (previously approved as SCUP #06-006) generally located west of State Highway 146 between the M Street right-of-way and McCabe Road.

Applicant: Port Crossing, L.P.; Port Crossing A3, L.P.; Port Crossing A4, L.P.; Port Crossing B4, L.P.

*Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas*

Planning and Development Department Staff Report

ISSUE

Consider a recommendation to the City Council on a request by the applicant Port Crossing, L.P.; Port Crossing A3, L.P.; Port Crossing A4, L.P.; Port Crossing B4, L.P. for a Special Conditional Use Permit (SCUP) for the Port Crossing Business Park.

RECOMMENDATION

Should the Commission desire to consider a recommendation for approval of this request, staff recommends considering various conditions, as included in the attached Exhibit A, Special Conditional Use Permit.

DISCUSSION

Background Information:

At the June 8, 2015 City Council meeting, the Council directed staff to work with the property owners of Port Crossing on a number of items to “clean up” various discrepancies between the various documents governing development of the Port Crossing Business Park. The following documents are required to be modified in some manner, and will be presented this evening for consideration:

1. General Plan.
2. Development Agreement.
3. Final Plat.
4. Future Land Use Plan.
5. Special Conditional Use Permit.

Property Owner:

Port Crossing, L.P.; Port Crossing A3, L.P.; Port Crossing A4, L.P.; Port Crossing B4, L.P.

Property Location:

The Port Crossing Business Park consists of approximately 313 acres of land, some developed but a majority vacant. The Port Crossing Business Park is located north and west of State Highway 146 and Wharton Weems including all property included in the Final Plat of Port Crossing (a subdivision of 286.7 acres of land out of the WP Harris Survey Abstract No. 30, J Hunter Survey Abstract No. 35, G. McKinstry Survey Abstract No 47); and Reserve A, Block 1, Port Crossing Section 1; and Reserve A, Boncosky Trucking Terminal.

Applicant’s Request:

The applicant has entered into a contract to sell the Port Crossing Business Park. During the due diligence phase, it was discovered that there are a number of discrepancies between the various documents that govern the development of the Port Crossing Business Park. As a result, the applicant is requesting approval of an amendment to the previously approved Port Crossing Business Park SCUP (#06-006, see the attached Exhibit B). Should this SCUP be approved, it will supersede the previously approved SCUP and will function to govern any future development within the business park. The attached Exhibit C is a copy of the application and proposal, including a conceptual site plan and project description.

The proposed development will continue to develop as it was intended, with warehousing, distribution, and flex industrial uses along with three commercial tracts.

Surrounding Zoning and Land Uses:

The site is currently zoned PUD, Planned Unit Development. Development within a PUD is required to seek approval of a SCUP. The attached Exhibit E shows the zoning of the subject property and surrounding properties. The following table summarizes the surrounding zoning and land uses:

	Zoning	Land Use
North	PUD, Planned Unit Development	Undeveloped
	GC, General Commercial	Vacant and Hotel (currently under construction)
South	La Porte ETJ	South La Porte Industrial District
West	La Porte ETJ	Bayport Industrial District
East	State Highway 146	State Highway 146 (approximately 340 right-of-way)

Notification Requirements:

The public hearing notification requirements outlined in Section 106-171 were performed in accordance with all applicable code provisions, including the following: notice in a newspaper of general circulation at least 15 days prior to the hearing; written notice mailed to owners of real property within 200 feet of the site within 10 days of the hearing; sign posted on the site within 15 days of the hearing. Additional notice of the public hearing was posted at City Hall and on the City’s website in accordance with state law.

Analysis:

There are a number of different considerations staff evaluated during the review of this application. The following describes staff’s analysis of those considerations:

Land Use.

This SCUP application is for consideration is intended to clean up a number of issues that arose concerning land use. In November 2014 the City approved modifications to the city’s Zoning Ordinance (Chapter 106) and specifically pertaining to not allow warehousing and distribution and truck terminal uses in the BI, Business Industrial, District. The intent of the Port Crossing Business Park was to allow those uses. There is no change to the development pattern or intensity of the proposed development. City Council has directed staff to work with Port Crossing representatives on a solution that would allow those uses. The proposed SCUP will incorporate a revised General Plan, Development Agreement, and Land Use Exceptions.

Future Development.

Future development will still require approval of individual SCUP’s, site plans, platting (as necessary), and building permits.

Public Utilities.

Public utility infrastructure has already been installed and accepted by the city.

Conclusion:

Based on the analysis above, staff finds that if the Planning and Zoning Commission desires to recommend approval of the proposed Special Conditional Use Permit, then a number of conditions should be considered in the approval. Section 106-217 of the Zoning Ordinance outlines specific conditions for approval of SCUP applications. There are three different conditions that must be met in order to approve a SCUP. The following table identifies each of the three conditions and staff’s finding on each:

Condition:	Staff Analysis:
(1) That the specific use will be compatible with and not injurious to the use and enjoyment of other property, nor significantly diminish or impair property values within the immediate vicinity.	The proposed SCUP is intended to “clean up” what was already approved as part of the previously approved SCUP for Port Crossing (#06-006). There is no intent to increase the intensity of development from what was originally approved in the previous SCUP, but is intended to correct discrepancies between the various documents governing development of this site.
(2) That the conditions placed on such use as specified in each district have been met by the applicant.	As a condition of approval of the proposed SCUP, the applicant is required to submit with individual development a SCUP, site development plan and building construction drawing in accordance with the city’s requirements. Each development will also be subject to this SCUP, General Plan, Development Agreement and Land Use Exceptions.
(3) That the applicant has agreed to meet any additional conditions imposed, based on specific site constraints, and necessary to protect the public	The applicant will need to confirm on the record at the public hearing that they are agreeable to the conditions imposed on the SCUP. Staff has provided a list of conditions as part of this report. However, the Commission and City Council may impose additional conditions.

Planning and Zoning Commission Regular Meeting
July 16, 2015
Port Crossing SCUP

interest and welfare of the community.	
--	--

Should the Planning and Zoning Commission recommend approval of the requested SCUP application, staff recommends the following conditions be considered:

1. This Special Conditional Use Permit-(SCUP) would be applicable to specific development anticipated or proposed by the General Plan.
2. Uses are as described in the Land Use Exceptions (Exhibit C of the Amended Development Agreement).
3. This SCUP outlines in general terms the proposed Planned Unit Development. The developer recognizes and understands that any future construction or development of the private or public improvements anticipated by this SCUP and the General Plan shall require further submittal and approval of special conditional use permits, plats, site plans, construction drawings, and building plans, etc. In addition, this SCUP supersedes SCUP #06-006.
4. This SCUP, the General Plan, Restrictive Covenants, and Land Use Exceptions are exhibits to and are a part of the Amended Development Agreement.
5. Submittals shall be in accordance with this SCUP, General Plan, Development Agreement, Restrictive Covenants, and Land Use Exceptions approved by the City of La Porte and specifically Section 106-216 & 106-217 of the City of La Porte Code of Ordinances as it now exists or may be amended from time to time.
6. The business park identification and entry features shall remain and be maintained as constructed unless approved by the City Council.
7. Truck parking on any lot fronting State Highway 146 will be prohibited on the east side of any structure.
8. The Developer shall comply with all other applicable laws and ordinances of the City of La Porte and the State of Texas. To the extent there is a conflict between those laws and ordinances and this SCUP, the SCUP controls.
9. This SCUP is binding on all owners of property included in the Legal description and their successors and assigns.

[Any additional conditions requested by the Planning and Zoning Commission.]

ATTACHMENTS

- Exhibit A: Draft of the Proposed SCUP
- Exhibit B: SCUP #06-006
- Exhibit C: SCUP Application and Supplemental Information from the Applicant
- Exhibit D: Area Map
- Exhibit E: Zoning Map

City of La Porte
Special Conditional Use Permit #15-91000004

This permit is issued to: Port Crossing, L.P.; Port Crossing A3, L.P.; Port Crossing A4, L.P.; Port Crossing B5, L.P.
Owner or Agent

3330 S. Sam Houston Parkway E.; Houston, Texas 77047
Address

For Development of: Port Crossing Business Park: Approximately 300 acre mixed use development (formerly Texas Import Export).
Development Name

Legal Description: 300 acres of land out of the George B. McKinstry League, A 47; William Harris Survey, A-30; Johnson Hunter Survey, A-35; and more particularly described in the Development Agreement

Zoning: PUD, Planned Unit Development

Permit Conditions:

This Special Conditional Use Permit is applicable for the subject property. A copy of which shall be maintained in the files of the City's Planning and Development Department upon approval. Project development shall be in accordance with the following conditions:

1. This Special Conditional Use Permit-(SCUP) would be applicable to specific development anticipated or proposed by the General Plan.
2. Uses are as described in the Land Use Exceptions (Exhibit C of the Amended Development Agreement).
3. This SCUP outlines in general terms the proposed Planned Unit Development. The developer recognizes and understands that any future construction or development of the private or public improvements anticipated by this SCUP and the General Plan shall require further submittal and approval of special conditional use permits, plats, site plans, construction drawings, and building plans, etc. In addition, this SCUP supersedes SCUP #06-006.
4. This SCUP, the General Plan, Restrictive Covenants, and Land Use Exceptions are exhibits to and are a part of the Amended Development Agreement.
5. Submittals shall be in accordance with this SCUP, General Plan, Development Agreement, Restrictive Covenants, and Land Use Exceptions approved by the City of La Porte and specifically Section 106-216 & 106-217 of the City of La Porte Code of Ordinances as it now exists or may be amended from time to time.
6. The business park identification and entry features shall remain and be maintained as constructed unless approved by the City Council.
7. Truck parking on any lot fronting State Highway 146 will be prohibited on the east side of any structure.
8. The Developer shall comply with all other applicable laws and ordinances of the City of La Porte and the State of Texas. To the extent there is a conflict between those laws and ordinances and this SCUP, the SCUP controls.
9. This SCUP is binding on all owners of property included in the Legal description and their successors and assigns.

If contract or agreement is terminated after completion of any stage and there is ample evidence that further development has been abandoned, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

Validation Date: _____

Director of Planning and Development

City Secretary

Special Conditional Use Permit #SCU 06-006

This permit is issued to: Port Crossing Land, L.P.; Powell Road logistics, L.P.; Rail Logix, GP.LLC.; and National Property Holdings, L.P. (Russell D. Plank)
Owner or Agent

3330 S. Sam Houston Parkway E., Houston, Texas 77047
Address

For development of: Approx. 300 acre Planned Unit Development, (formerly TIEP) a mixed use development further defined by a General Plan. The Planned Unit Development is further defined by a Development Agreement between the Owner/Agent listed above and the City of La Porte. This Special Conditional Use Permit and the General Plan are Exhibits to and a part of the Development Agreement.
Development Name

Legal description: 300 acres of land out of the George B. McKinstry League, A-47; William P. Harris Survey, A-30; Johnson Hunter Survey, A-35 and more particularly described by - Development Agreement.

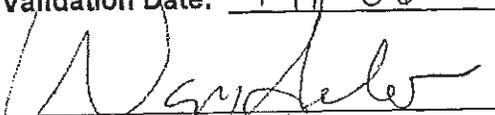
Zoning: The zoning for the tract is Planned Unit Development. The permitted land uses for this Planned Unit Development are generally depicted on "Exhibit " - General Plan for Port Crossing. These permitted land uses are more specifically defined and/or restricted by covenants, conditions, and restrictions established and/or part of the Development Agreement.

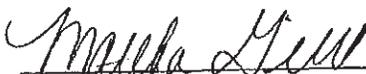
Permit Conditions:

1. This Special Conditional Use Permit (SCUP) would be applicable to specific development anticipated or proposed by the General Plan.
2. This SCUP outlines in general terms the proposed Planned Unit Development. The developer recognizes and understands that any future construction or development of the private or public improvements anticipated by this SCUP and the General Plan shall require further submittal and approval of plats, site plans, construction drawings, and building plans, etc. In addition, this SCUP will supersede SCU#05-003.
3. This SCUP has exhibits and the Development Agreement, Covenants, Conditions, and Restrictions (CCRs) are part of this SCUP.
4. Submittals shall be in accordance with this SCUP, General Plan, the Development Agreement approved by the City of La Porte and specifically Section 106-216 & 217 of the Zoning Ordinance.
5. The Developer shall comply with all other applicable laws and ordinances of the City of La Porte and the State of Texas.

Failure to begin construction within one (1) year after issuance or as scheduled under the terms of a special conditional use permit shall void the permit as approved, except upon an extension of time granted after application to the Planning and Zoning Commission.

If construction is terminated after completion of any stage and there is ample evidence that further development is not contemplated, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

Validation Date: 9-11-06

Director of Planning


City Secretary

City of La Porte
604 W. Fairmont Pkwy.
La Porte, TX 77571

Planning & Development Department
**SPECIAL CONDITIONAL USE
PERMIT APPLICATION**

Phone: 281.470.5073
Fax: 281.470.5005
www.laportetx.gov

1. PROPERTY OWNER CONTACT INFORMATION:

OWNER NAME: Port Crossing Land, LP PHONE 1: 713.578.1211
PHONE 2: 713.826.3878 FAX #: 713.734.5544
E-MAIL: rlovell@nationalpropertyholdings.com
MAILING ADDRESS: 3330 S. Sam Houston Pkwy. E., Houston, TX 77047

2. BUSINESS INFORMATION:

BUSINESS NAME: N/A BUSINESS TYPE: _____
CONTACT NAME: _____ PHONE #: _____
E-MAIL: _____ FAX #: _____
MAILING ADDRESS: _____

3. PROPERTY DESCRIPTION:

PARCEL NO(s) (13-digit HCAD Tax ID #): See Attached
PROPERTY ADDRESS (if existing): _____
PROPERTY LEGAL DESCRIPTION: Port Crossing, a subdivision of 286.7 Acres

4. SUPPORTING DOCUMENTATION (Check Applicable):

GENERAL PLAN SITE PLAN PLAT

REASON FOR REQUEST: Amending SCUP to reference Land Use Chart effective 9/11/06

OWNER or AUTHORIZED AGENT'S SIGNATURE: _____
PRINTED NAME: Ryan Lovell DATE: 06/16/15

5. APPLICATION CHECKLIST & SUPPORTING DOCUMENTATION:

- COMPLETE ITEMS 1 THRU 4 OF APPLICATION
- ATTACH APPLICABLE PLAN(S)
- SUBMIT \$300.00 NON-REFUNDABLE APPLICATION FEE

RECEIVED
(STAFF USE ONLY) JUN 23 2015
DATE RECEIVED: BY: _____ RECEIVED BY: [Signature]
PROJECT NUMBER: 15 - 91000004
SCHEDULED DATE FOR PLANNING & ZONING COMMISSION AGENDA: 7/16/2015

June 22, 2015

Mr. Eric J. Ensey
Planning and Development Dept.
City of La Porte
604 W. Fairmont Parkway
La Porte, Texas 77571

Dear Mr. Ensey:

I write on behalf of Port Crossing Land, LP in connection with the Port Crossing Commerce Center, which is an approximately 300-acre tract of land, zoned “planned unit development” with a special conditional use permit.

The original special conditional use permit for the development was issued in 2005 and amended in 2006. In connection with a planned sale involving the Port Crossing Commerce Center, it became apparent that the special conditional use permit issued in 2006 was not completely clear on what effect changes to the city’s general zoning ordinance would have on the uses allowed in the area covered by the special conditional use permit. On June 8, 2015, the City Council authorized the City Manager to send a letter confirming that the 2006 special conditional use permit was intended, at a minimum, to permit uses allowed in the city’s general zoning ordinance as of September 11, 2006. It was also discovered the plat approved by the city had modified certain boundaries described in the general plan attached to the 2006 special conditional use permit, and had changed the location of certain infrastructure described in exhibits to that permit.

The attached application is intended to confirm, through a formal amendment to the 2006 special conditional use permit, (1) the City Council’s understanding of what uses are allowed in the area covered by that permit; (2) update the general plan, attached to that permit, to bring it into conformance with approved plat amendments; (3) amend the development agreement that is part of the 2006 special conditional use permit to make it consistent with that permit, the general plan, and the land use exception exhibit; and (4) remove CCR’s as an exhibit to the special conditional use permit, as those CCR’s already have been approved by the City and filed, making their inclusion as an exhibit unnecessary.

We are also submitting a minor amending plat that: (1) removes any mention of allowed uses to avoid possible conflicts with the general plan that is part of the special conditional use permit; and (2) modifies reserves “E” and “F” to accurately depict the actual size of the detention pond in reserve “F”, and to expand the reserve “E” area so that it can be developed in accordance with the Amendment to the Drainage Analysis for Port Crossing, prepared by Jones & Carter in 2009, and approved by Harris County Flood Control District on August 27, 2009 and acknowledged by the City Engineer on May 29, 2015.

None of the proposed changes to the 2006 special conditional use permit are substantive. Instead, they ensure that the special conditional use permit, as amended, reflects the

Page 2
June 22, 2015

understandings and agreements previously reached with the City. The proposed minor amended plat does include two substantive changes, both of which have previously been approved by the City. Approval of the plat ensures that it conforms to conditions on the ground as approved by the City.

If you should have any questions, please do not hesitate to contact me.

Yours very truly,

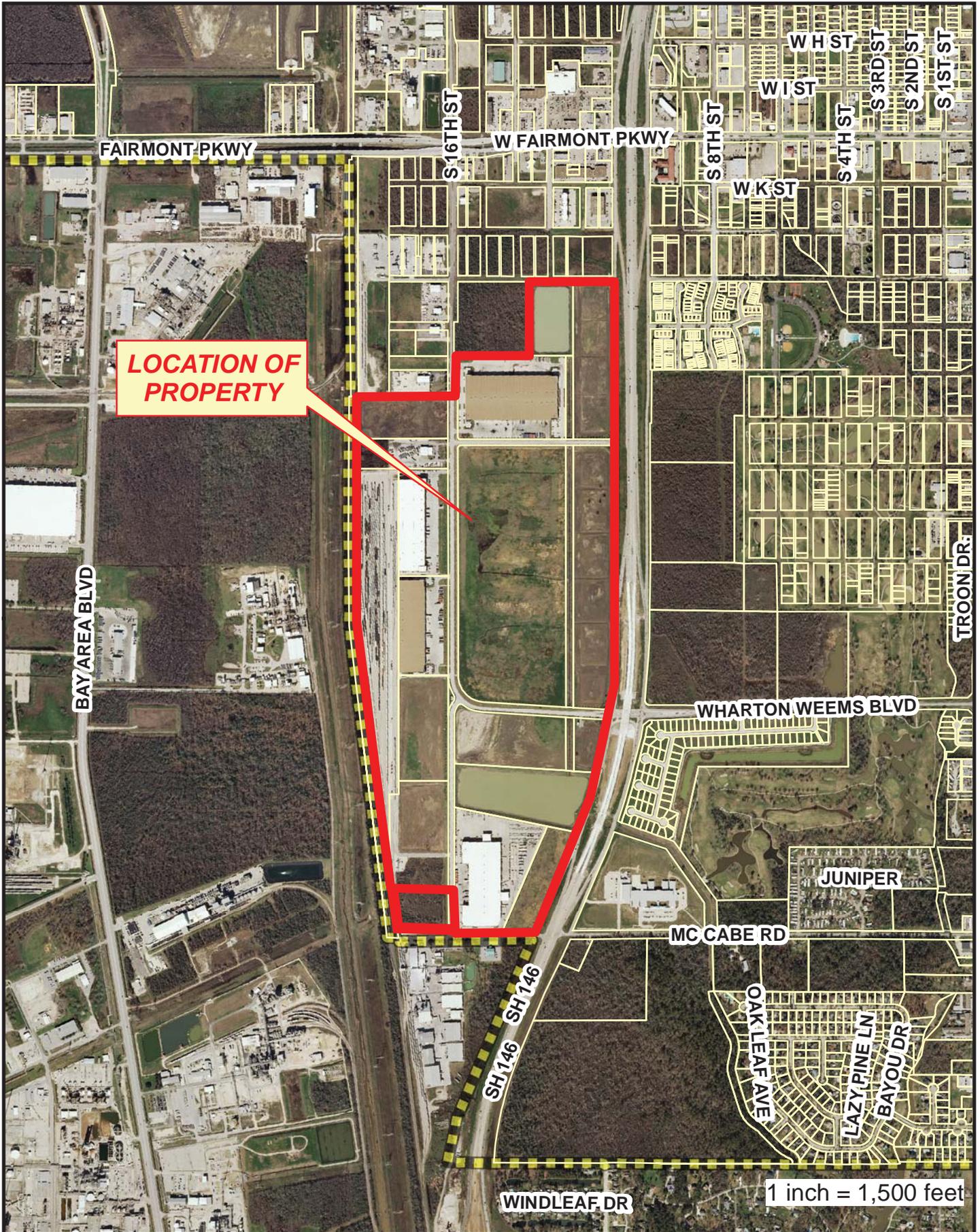


Ryan T. Lovell
Vice President

enclosures

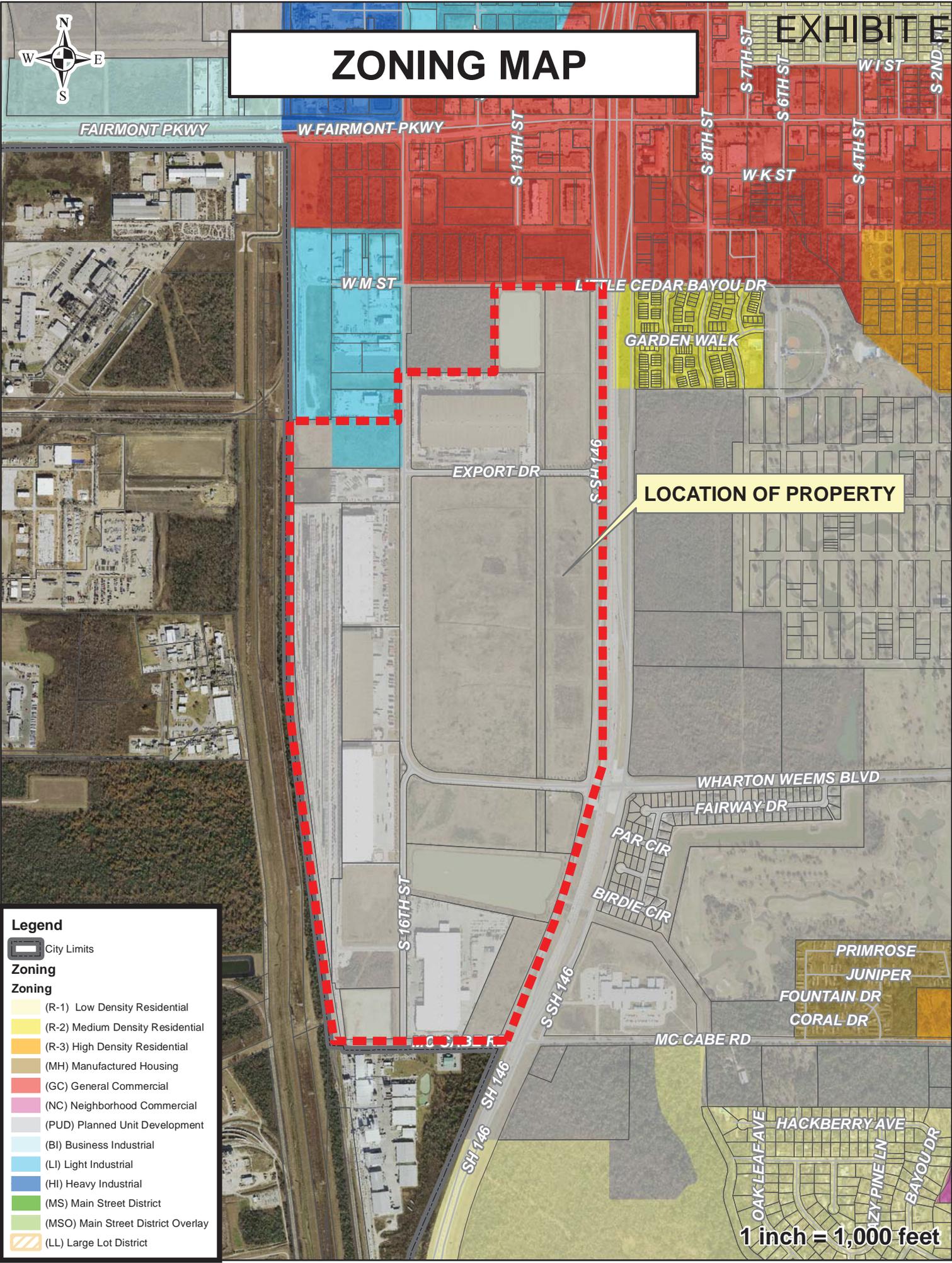
AREA MAP

SCUP REQ. #15-91000004



ZONING MAP

EXHIBIT E



FAIRMONT PKWY

W FAIRMONT PKWY

S 13TH ST

S 7TH ST

S 6TH ST

W 1 ST

S 2ND ST

S 8TH ST

W K ST

S 4TH ST

W M ST

LITTLE CEDAR BAYOU DR

GARDEN WALK

EXPORT DR

LOCATION OF PROPERTY

S SH 146

WHARTON WEEMS BLVD

FAIRWAY DR

PAR CIR

BIRDIE CIR

PRIMROSE

JUNIPER

FOUNTAIN DR

CORAL DR

S 16TH ST

S SH 146

MC CABE RD

SH 146

HACKBERRY AVE

OAK LEAF AVE

HACKBERRY AVE

WZYRINE LN

BAYOU DR

1 inch = 1,000 feet

Legend

- City Limits
- Zoning**
- (R-1) Low Density Residential
- (R-2) Medium Density Residential
- (R-3) High Density Residential
- (MH) Manufactured Housing
- (GC) General Commercial
- (NC) Neighborhood Commercial
- (PUD) Planned Unit Development
- (BI) Business Industrial
- (LI) Light Industrial
- (HI) Heavy Industrial
- (MS) Main Street District
- (MSO) Main Street District Overlay
- (LL) Large Lot District

**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEM 14

Consider recommendation of approval of the Port Crossing General Plan
(previously approved as Texas Import Export General Plan)
generally located west of State Highway 146 between the M Street right-of-way and McCabe Road.

Applicant: Port Crossing, LP

*Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas*

Planning and Development Department Staff Report

ISSUE

Consider approval of the Port Crossing General Plan.

RECOMMENDATION

Staff recommends the Planning and Zoning Commission approve the proposed Port Crossing General Plan as presented in the attached Exhibit A.

DISCUSSION

Background Information:

At the June 8, 2015 City Council meeting, the Council directed staff to work with the property owners of Port Crossing on a number of items to “clean up” various discrepancies between the various documents governing development of the Port Crossing Business Park. The following documents are required to be modified in some manner, and will be presented this evening for consideration:

1. General Plan.
2. Development Agreement.
3. Final Plat.
4. Future Land Use Plan.
5. Special Conditional Use Permit.

Property Owner:

Port Crossing, LP

Property Location:

The Port Crossing Business Park consists of approximately 313 acres of land, some developed but a majority vacant. The Port Crossing Business Park is located north of State Highway 146 including all a majority of properties from the W. M Street right-of-way to McCabe Road.

Applicant's Request:

The applicant has entered into a contract to sell the Port Crossing Business Park. During the due diligence phase, it was discovered that there are a number of discrepancies between the various documents that govern the development of the Port Crossing Business Park. As a result, the applicant is requesting approval of an amendment to the

previously approved Port Crossing General Plan, which was originally approved as the Texas Import Export General Plan (see the attached Exhibit B). Should this General Plan be approved, it will supersede the previously approved General Plan and will function to govern any future development within the business park, as an exhibit to the proposed Amended Development Agreement. The attached Exhibit C is a copy of a letter from the applicant further describing the request.

The proposed development will continue to develop as it was intended, with warehousing, distribution, and flex industrial uses along with three commercial tracts.

Surrounding Zoning and Land Uses:

The majority of the site is currently zoned PUD, Planned Unit Development, however a portion of Reserve C is zoned LI, Light Industrial. Development within a PUD is required to seek approval of a SCUP. The attached Exhibit D shows the zoning of the subject property and surrounding properties. Exhibit E shows the project as it relates to the city’s Future Land Use Plan. The following table summarizes the surrounding zoning and land uses:

	Zoning	Land Use
North	PUD, Planned Unit Development	Undeveloped
	GC, General Commercial	Vacant and Hotel (currently under construction)
South	La Porte ETJ	South La Porte Industrial District
West	La Porte ETJ	Bayport Industrial District
East	State Highway 146	State Highway 146 (approximately 340 right-of-way)

Analysis:

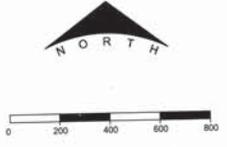
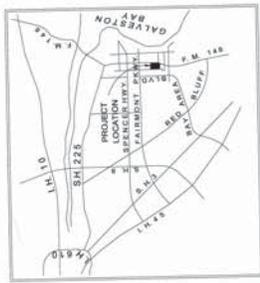
The review of a General Plan is subject to Sections 4.01 of the city’s Development Ordinance. General Plans require final approval by the Planning and Zoning Commission.

The previous Texas Import Export General Plan is an obsolete document and does not adequately describe the proposed development of Port Crossing. The land uses identified in the proposed General Plan are more consistent with the City’s future land use map as well as how the Port Crossing Business Park has developed. This document, if approved, will become an exhibit to the Amended Development Agreement.

As stated above, Reserve C is split zoned LI and PUD. As a result, even though the proposed General Plan identifies the parcel as “Heavy Industrial” use, it could only development in accordance with the requirements the LI zone district. However, the applicant could at a future time petition the city for a rezoning of the property in accordance with applicable requirements outlined in the code.

ATTACHMENTS

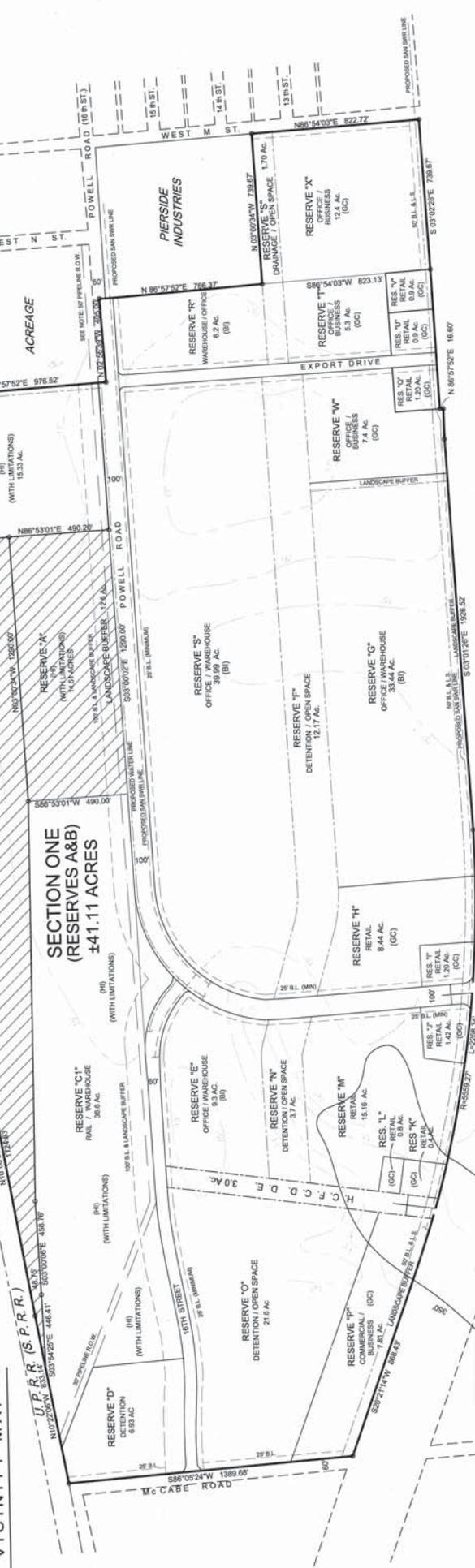
- Exhibit A: Proposed Port Crossing General Plan
- Exhibit B: Existing Texas Import Export General Plan (approved in 2005)
- Exhibit C: Project Description Letter
- Exhibit D: Zoning Map
- Exhibit E: Land Use Map



BAYPORT INDUSTRIAL PARK

REAGENT CHEMICAL & RESEARCH, INC.

**SECTION ONE
(RESERVES A&B)
±41.11 ACRES**



STATE HWY. 146

P.U.D.

P.U.D.

P.U.D.

P.U.D.

P.U.D.

P.U.D.

GENERAL PLAN OF

TEXAS IMPORT / EXPORT PARK

342.262± ACRES OF LAND OUT OF THE

GEORGE B. MCKINSTRY LEAGUE, A-47
WILLIAM P. HARRIS SURVEY, A-30
JOHNSON HUNTER SURVEY, A-35
CITY OF LA PORTE, HARRIS COUNTY, TEXAS

OWNER / DEVELOPER:
STUART HAYNSWORTH, GENERAL PARTNER
815 WALKER AVE., SUITE 1435
HOUSTON, TEXAS 77002

THIS GENERAL PLAN OF TEXAS IMPORT / EXPORT PARK IS ALSO
SUBJECT TO THE TERMS AND PROVISIONS OF A SPECIFIC
CONDITION OF USE PERMIT AND A DEVELOPMENT AGREEMENT.
THIS GENERAL PLAN AND THE SPECIAL CONDITIONAL USE PERMIT
ARE EXHIBITS TO THE DEVELOPMENT AGREEMENT.

ALL PIPELINE R.O.W. IS SUBJECT TO LOCATION VERIFICATION AND
POSSIBLE RELOCATION WITHIN DEDICATED ESM.

NOTE: FOR STUDY AND PLANNING USE ONLY. NO WARRANTY IS MADE
AS TO THE ACCURACY OF THE INFORMATION CONTAINED HEREON.
SAID INFORMATION REPRESENTS A GRAPHIC COMPILATION OF DATUM
OBTAINED FROM MAPS, SURVEYS, AND OTHER DOCUMENTS
PROVIDED TO

Reynold T. Clark

SCALE: 1"=200'

JANUARY 2005

June 22, 2015

Mr. Eric J. Ensey
Planning and Development Dept.
City of La Porte
604 W. Fairmont Parkway
La Porte, Texas 77571

Dear Mr. Ensey:

I write on behalf of Port Crossing Land, LP in connection with the Port Crossing Commerce Center, which is an approximately 300-acre tract of land, zoned “planned unit development” with a special conditional use permit.

The original special conditional use permit for the development was issued in 2005 and amended in 2006. In connection with a planned sale involving the Port Crossing Commerce Center, it became apparent that the special conditional use permit issued in 2006 was not completely clear on what effect changes to the city’s general zoning ordinance would have on the uses allowed in the area covered by the special conditional use permit. On June 8, 2015, the City Council authorized the City Manager to send a letter confirming that the 2006 special conditional use permit was intended, at a minimum, to permit uses allowed in the city’s general zoning ordinance as of September 11, 2006. It was also discovered the plat approved by the city had modified certain boundaries described in the general plan attached to the 2006 special conditional use permit, and had changed the location of certain infrastructure described in exhibits to that permit.

The attached application is intended to confirm, through a formal amendment to the 2006 special conditional use permit, (1) the City Council’s understanding of what uses are allowed in the area covered by that permit; (2) update the general plan, attached to that permit, to bring it into conformance with approved plat amendments; (3) amend the development agreement that is part of the 2006 special conditional use permit to make it consistent with that permit, the general plan, and the land use exception exhibit; and (4) remove CCR’s as an exhibit to the special conditional use permit, as those CCR’s already have been approved by the City and filed, making their inclusion as an exhibit unnecessary.

We are also submitting a minor amending plat that: (1) removes any mention of allowed uses to avoid possible conflicts with the general plan that is part of the special conditional use permit; and (2) modifies reserves “E” and “F” to accurately depict the actual size of the detention pond in reserve “F”, and to expand the reserve “E” area so that it can be developed in accordance with the Amendment to the Drainage Analysis for Port Crossing, prepared by Jones & Carter in 2009, and approved by Harris County Flood Control District on August 27, 2009 and acknowledged by the City Engineer on May 29, 2015.

None of the proposed changes to the 2006 special conditional use permit are substantive. Instead, they ensure that the special conditional use permit, as amended, reflects the

Page 2
June 22, 2015

understandings and agreements previously reached with the City. The proposed minor amended plat does include two substantive changes, both of which have previously been approved by the City. Approval of the plat ensures that it conforms to conditions on the ground as approved by the City.

If you should have any questions, please do not hesitate to contact me.

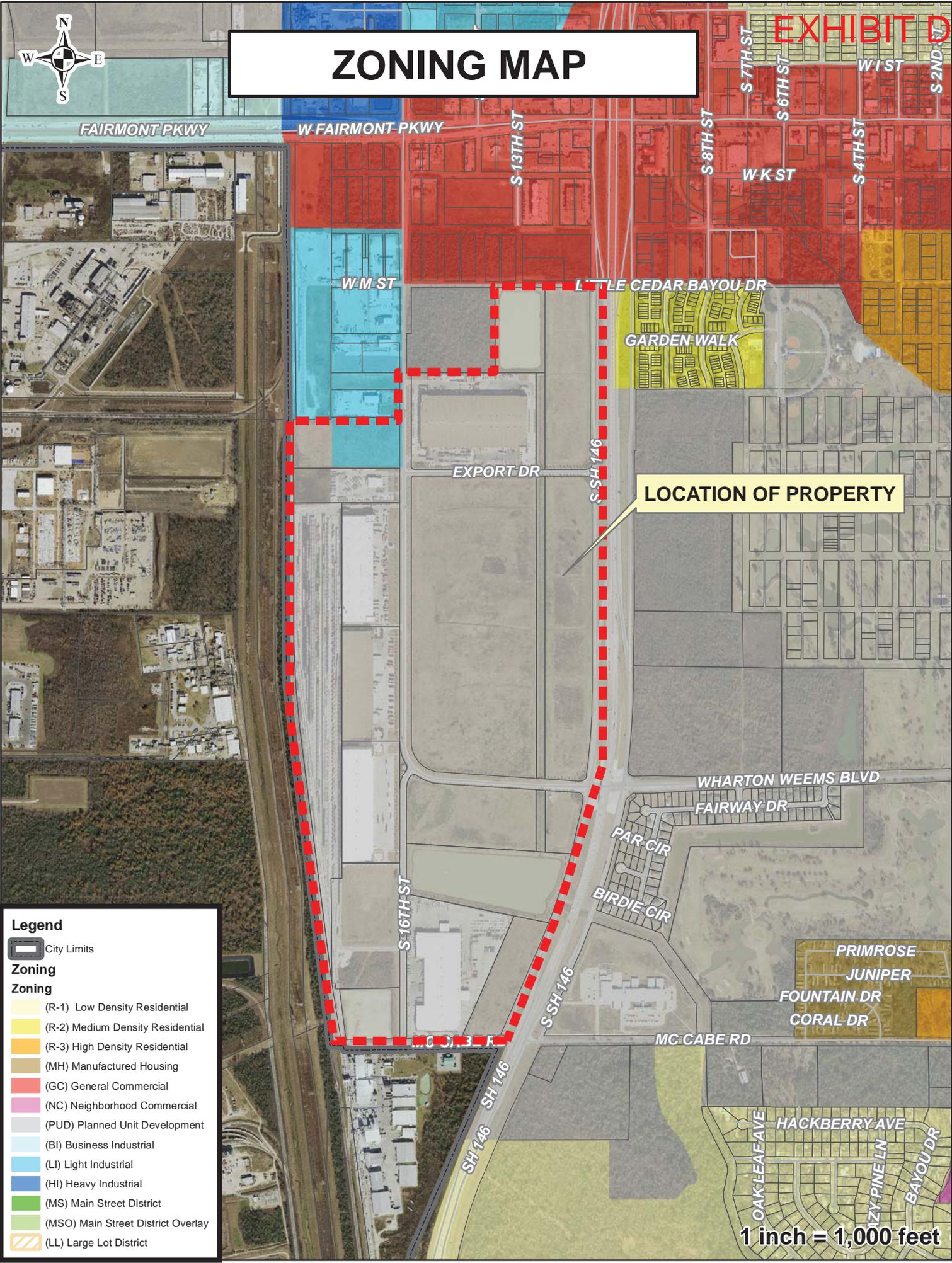
Yours very truly,



Ryan T. Lovell
Vice President

enclosures

ZONING MAP



FAIRMONT PKWY

W FAIRMONT PKWY

S-13TH ST

S-8TH ST

S-7TH ST

S-6TH ST

W-1 ST

S-2ND ST

W-M ST

S-SH-146

LITTLE CEDAR BAYOU DR

GARDEN WALK

EXPORT DR

LOCATION OF PROPERTY

WHARTON WEEMS BLVD

FAIRWAY DR

PAR CIR

BIRDIE CIR

S-16TH ST

S-SH-146

PRIMROSE

JUNIPER

FOUNTAIN DR

CORAL DR

MC CABE RD

SH-146

HACKBERRY AVE

OAK LEAF AVE

WZYRINE LN

BAYOU DR

1 inch = 1,000 feet

Legend

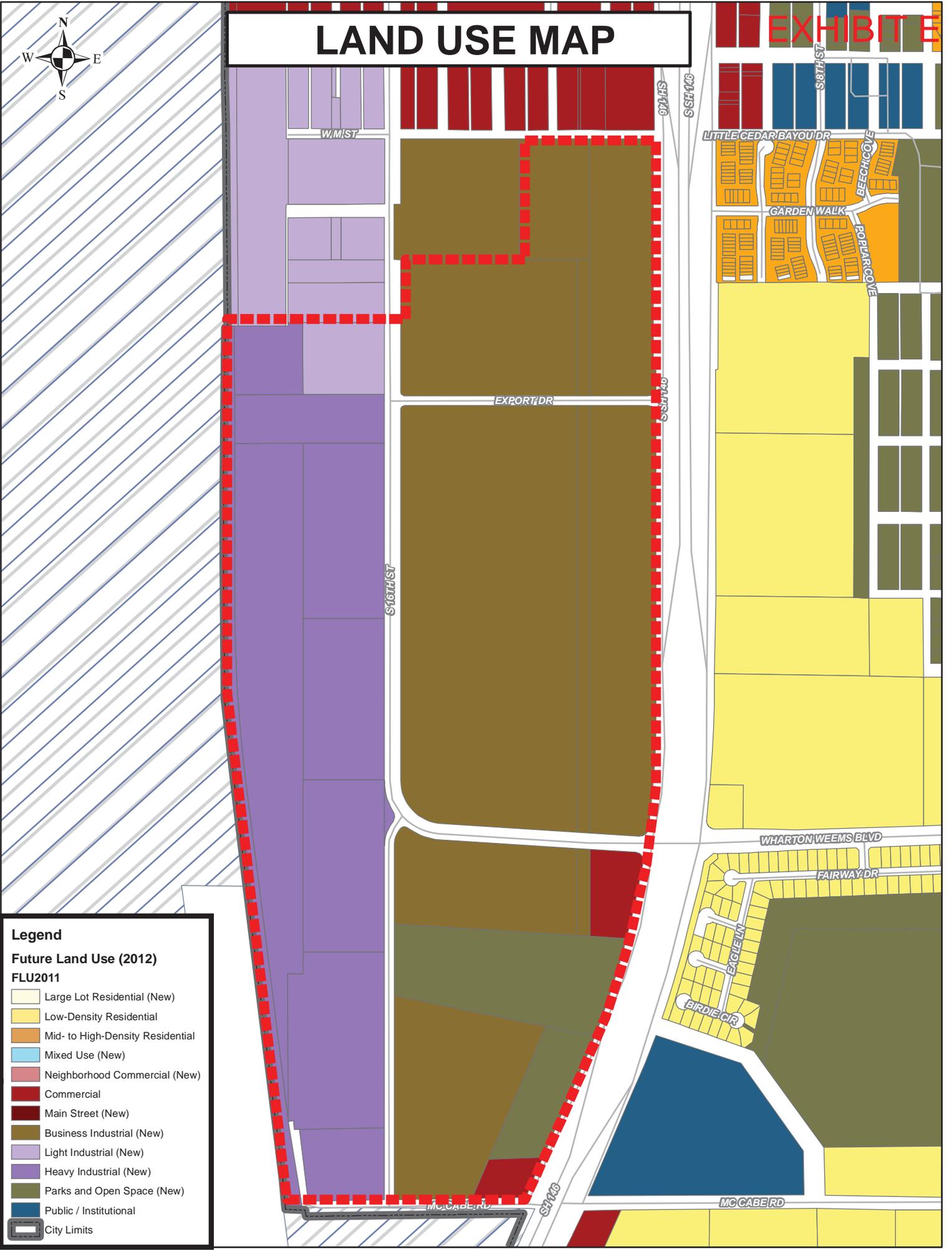
City Limits

Zoning

- (R-1) Low Density Residential
- (R-2) Medium Density Residential
- (R-3) High Density Residential
- (MH) Manufactured Housing
- (GC) General Commercial
- (NC) Neighborhood Commercial
- (PUD) Planned Unit Development
- (BI) Business Industrial
- (LI) Light Industrial
- (HI) Heavy Industrial
- (MS) Main Street District
- (MSO) Main Street District Overlay
- (LL) Large Lot District

LAND USE MAP

EXHIBIT E



Legend

Future Land Use (2012) FLU2011

-  Large Lot Residential (New)
-  Low-Density Residential
-  Mid- to High-Density Residential
-  Mixed Use (New)
-  Neighborhood Commercial (New)
-  Commercial
-  Main Street (New)
-  Business Industrial (New)
-  Light Industrial (New)
-  Heavy Industrial (New)
-  Parks and Open Space (New)
-  Public / Institutional
-  City Limits

**City of La Porte, Texas
Planning and Zoning Commission**



July 16, 2015

AGENDA ITEM 15

Consider recommendation of approval of the Amended Development Agreement
between the City of La Porte and Port Crossing, L.P.
for the Port Crossing Business Park.

Applicant: Port Crossing, L.P.

*Eric J. Ensey, City Planner
Planning and Development Department
City of La Porte, Texas*

Planning and Development Department Staff Report

ISSUE

Consider a recommendation to the City Council on a request by the applicant Port Crossing, L.P. for approval of an Amended Development Agreement for the Port Crossing Business Park.

RECOMMENDATION

Staff recommends the Planning and Zoning Commission recommend approval of the proposed Amended Development Agreement as drafted.

DISCUSSION

At the June 8, 2015 City Council meeting, the Council directed staff to work with the property owners of Port Crossing on a number of items to “clean up” various discrepancies between the various documents governing development of the Port Crossing Business Park. The following documents are required to be modified in some manner, and will be presented this evening for consideration:

1. General Plan.
2. Development Agreement.
3. Final Plat.
4. Special Conditional Use Permit.
5. Future Land Use Plan.

The proposed modifications to the Development Agreement are described below:

- A. *Land Use*. The Amended Development Agreement references the land uses described in Exhibit C of the document (Land Use Exceptions). Based on direction from the City Council, land uses for the various parcels are indicated in the General Plan and are those uses in the city’s Land Use Chart effective on September 11, 2006 (the time when SCUP #06-006 was approved by the City Council).
- B. *Trail System*. The city does not have any plans to construct a trail system through the Port Crossing Development. References to such trail system have been removed.
- C. *Parking and the Landscape Buffer*. The applicant is requesting consideration of a modification that would permit up to one row of standard parking stalls to encroach into the landscape buffer. The recorded restrictive covenants already

have such an allowance, and in fact allow parking as allowed by the Port Crossing Board. Staff is requesting that if such parking is located in the landscape buffer that the following landscape requirements be incorporated:

- i. Shrubs shall be planted at 3' on center between the parking and adjacent rights-of-way.
 - ii. A landscape planter of at least 135 square feet in area shall be provided after every 10 parking stalls and shall include at least 1 shade tree and shrubs.
- D. *Declaration of Restrictive Covenants.* The CCRs for Port Crossing have already been recorded. All reference to CCRs have been revised to refer to the recorded document and not the draft version.
- E. *Fire Protection, Hazardous Materials & Safety.* Items 7.1 and 7.3 have been removed, these items have not been performed and are not required by the Fire Marshal. Staff confirmed with the Fire Marshal that the city's Fire Department will respond to any fire or other emergency within the Port Crossing Business Park as it is within the city's municipal jurisdiction. Additionally, the Fire Marshal reviews all building permits and those zoning permits where hazardous materials may be used or stored and performs inspections as necessary.

ATTACHMENTS

- Attachment A: Draft Amended Development Agreement (showing changes) with Exhibits
- Attachment B: Previously Approved Development

AMENDED DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into between Port Crossing Land, LP; a Texas limited partnership (“Owner-Developer”); their Successors and Assigns, including the “Other Owners” (hereafter defined) and the CITY OF LA PORTE, TEXAS, a Texas Municipal Corporation (“City”) on the ____ day of _____, 2015.

Recitals

[This agreement amends the previous version of this agreement approved by the City Council on September 11, 2006.](#)

Owner-Developer is developing- an approximately 300-acre tract in the City of La Porte, as the Port Crossing, which is referred to as the Tract and defined hereinafter in Article I. Owner-Developer and the Other Owners are- developing the Tract, presently zoned PUD, for retail, commercial, and business park with some industrial uses. Owner-Developer and the Other Owners shall construct municipal utilities, including streets, a water distribution system, wastewater collection system, and the storm drainage/detention system that will connect with the existing City of La Porte and other regional systems in accordance with development regulations and policies of the City, Harris County, and Harris County Flood Control District.

Powell Road Logistics, L.P. (“Powell Road Logistics”), a Texas limited partnership, National Property Holdings, L.P., a Texas limited partnership, Del Piso Investments, LLLP, a Arizona limited liability partnership and FLPCW, LP, a Texas limited partnership, (collectively, the “Other Owners”), the owners of certain tracts of land also containing a total of approximately 63 acres out of the Tract are joining in this Agreement for the purpose of confirming their agreement to develop their respective portions of the Tract pursuant to the provisions of this Agreement.

The City has required, and Owner-Developer and the Other Owners have agreed, that the Tract will be developed in accordance with the General Plan approved by the City (as defined below and attached hereto).

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein, the City and Owner-Developer agree as follows:

ARTICLE I. DEFINITIONS AND EXHIBITS

1.1 Definitions. Unless the context indicates otherwise, the following words as used in this Contract shall have the following meanings:

City means the City of La Porte, Texas.

General Plan means the plan for the physical development and use of the Tract as defined herein and approved by the City on - ____ day of ____, 2015, and as it may be amended from time to time..

Owner-Developer means *Port Crossing Land, LP* or *their* assigns or succeeding developers (or their designated agent or agents).

Tract means the approximately 300 acres of land to be developed by Owner-Developer as described in Exhibit A.

1.2 Exhibits. The following exhibits attached to this Contract are a part of the Contract as though fully incorporated herein:

Exhibit A - [Special Conditional Use Permit #15-91000004 \(“SCUP”\), as it may amended from time to time.](#)

Exhibit B - General Plan

Exhibit C - Land Use Exceptions

;

~~Exhibit D~~ [Exhibit D - Recorded Declaration of Restrictive Covenants for Port Crossing applicable to all construction and uses.](#)

[Exhibit E](#)- Traffic Control Plan

ARTICLE II. GENERAL PLAN AND LAND USE

2.1 General Plan and Land Use. Owner-Developer and Other Owners shall develop their respective portions of the entire Tract in accordance with the General Plan, SCUP and this Agreement approved by the City. The General Plan is attached as Exhibit B and additional Land Use Restrictions are provided for in paragraph 2.3. The Owner-Developer and Other Owners shall only be responsible for compliance with the General Plan, SCUP and this Agreement with respect to their respective portions of the entire Tract.

2.2 Amendments. The City acknowledges and Developer represents that Developer’s intent is to develop the Tract as a predominantly commercial PUD development, with some industrial components consistent with City’s Land Use Plan subject to certain exceptions listed below. Developer or Developer’s successors shall provide appropriate amenities and support facilities as set forth on the General Plan, which is attached to this Agreement. City acknowledges that Developer intends to develop the Tract in phases, and that all development shall be consistent with the Special Conditional Use Permit (SCUP), the General Plan, and this Agreement. Should Developer determine that the General Plan needs to be amended, Developer shall submit an application for amendment of the Special Conditional Use Permit, which said application shall be processed consistent with this Agreement, the current General Plan, and the Zoning

Ordinance of the City of La Porte, as the same may be amended from time to time. Amendments to the General Plan, the Special Conditional Use Permit, and/or this Agreement shall be in writing.

2.3 Additional Land Use Restrictions. Owner/Developer agrees to conform all development and improvements to the Tract to the City's Code of Ordinances and established policies, and further agrees that land uses shall be further restricted according to Exhibit C, except for the permitted uses authorized by Exhibit "C".

ARTICLE III. RESTRICTIVE COVENANTS

3.1 Development of Restrictive Covenants. Owner-Developer has developed a Draft Declaration of Restrictive Covenants for Port Crossing, which are attached to this Agreement as Exhibit "D". These protective covenants and deed restrictions will apply to and be binding upon the Tract, and shall be in form substantially similar to Exhibit "D". The covenants and deed restrictions have been approved by the City and have been recorded concurrently with each recorded plat.

ARTICLE IV. TERMINATION

4.1 Term. This Agreement shall have a term commencing on the date first written above, and continuing until the date in which all portions of the Tract have been platted and developed (with construction of all streets and utilities on the Tract as reflected by the Plat completed or installed and financed by the Owner-Developer.

Failure of Owner-Developer to begin construction in accordance with the Special Conditional Use Permit as scheduled under the terms of the Special Conditional Use Permit, shall terminate this Agreement. Owner-Developer may, before the expiration of one year, request an extension of time from the Planning and Zoning Commission, in the event that construction has not started in accordance with the Special Conditional Use Permit.

ARTICLE V. OPEN SPACE/TRAIL, BUFFERING AND BEAUTIFICATION

5.1 Open Space/Pedestrian ~~Trail~~ System. The Owner-Developer shall provide common open space as shown in ~~Comprehensive Plan and~~ the General Plan, including any required ~~portion of planned City trail system within the project consisting of~~ public sidewalks within the rights-of-way noted on the Plat on at least one side of each street, together with landscaping adjacent to such sidewalks pursuant to the landscape plan approved by the City. ~~Owner-Developer also will cooperate with any additional trail system plan on property dedicated to the City in fee or as an easement within the drainage easement and/or detention pond/drainage system shown on the General Plan.~~

~~It is recognized that, until the final design of the detention pond/drainage system is approved, the exact location and dimensions of these facilities is unknown. When the final design is approved the City will evaluate the potential for use of these areas as public recreation amenities.~~

~~At that time and with mutual consent, the City may elect to accept these facilities either in easement or fee. The initial development of the detention pond/drainage system and perimeter landscaping of these facilities shall be the responsibility of the Owner-Developer. In coordination with the Owner-Developer and the Harris County Flood Control District, the City will accept the drainage and detention facilities as public domain with right of entry, Maintenance of said facilities will rest solely with the Owner-Developer and the property owner's association governing the Tract.~~

5.2 Buffering and Beautification. The Owner-Developer shall implement a uniform and/or compatible landscape plan for all phases of the entire project that will address landscaping provisions not only adjacent to Wharton Weems Blvd. and Powell Road, but also within the building setbacks and landscape easements or reserves throughout. A Landscape Buffer (a minimum of 50' wide) shall be provided along the west side of Powell Road and shall include ~~extensive screening type vegetation~~ landscaping materials compatible with the Declaration of Restrictive Covenants. A landscape buffer, a minimum of 50' wide, will also be provided along State Highway 146. Landscape reserves shall also be included adjacent to all roadways, including the east side of Powell; but rather than screen, shall be landscaped compatible with the ultimate use of that adjacent property. ~~Parking is allowed in any landscape buffer. A row of standard automobile parking stalls is permitted within the Landscape Buffer subject to the following criteria: Parking lots within a Landscape Buffer shall be developed using the following criteria:~~

- i. Shrubs are required in the Landscape Buffer within 10' of any parking area adjacent to the right-of-way and shall be spaced at three feet on center. At maturity, shrubs in a required Landscape Buffer should form a continual evergreen hedge or row of 36 inch in height.
- ii. ~~Parking lot with minimum 20 spaces shall provide a~~ A planter at the ratio of one for every ten parking spaces is required.
- iii. Planters (minimum 135 square feet) shall not abut on more than two sides of required perimeter landscape area. Each required planter shall have one shade tree. Trees shall be dispersed throughout the parking lot to maximize the shading effect on the parking spaces. These trees are exclusive of trees planted around the perimeter of the parking lot.

5.3 Signage. The Owner-Developer shall ~~implement~~ comply with the sign standards policy, as part of the recorded Declaration of Restrictive Covenants (Exhibit "D") consistent with the City's Code of Ordinances as guidance to insure effective and uniform signage is employed throughout the project. This policy will include uniform and/or compatible project identification monuments, business signage, street and other traffic directional devices conforming to the Tract's traffic control plan and deed restrictions.

5.4 Ownership and Maintenance. Ownership of the landscape buffers, reserves and easements will be held by fee ownership of adjoining property or by the Property Owners Association (POA), subject to conditions of the deed restrictions and landscape plan. The

Formatted: Left, Space After: 0 pt

Formatted: Font: Bold

maintenance of the buffers, reserves and easements will be the responsibility of the contiguous property owners pursuant to provisions of the deed restrictions, enforced by the POA.

~~The Open Space/Pedestrian Trail System shall be constructed within the drainage easements, the detention pond/drainage system, landscape reserves, or public right of ways as dictated by the final detention design. Ownership and maintenance of the Open Space/Pedestrian Trail System and drainage/detention pond system shall be determined according to Article 5.1 of this Agreement.~~

ARTICLE VI. SCHEDULE

6.1 Schedule. The Owner-Developer or Other Owners, as applicable, shall establish a specific schedule for the development of and construction improvements on the Tract with the end user(s). However, in lieu of and as the basis of that detailed schedule, the following work program is anticipated:

- Initiation of a complete engineering study, including drainage and preliminary infrastructure design.
- Detailed engineering design for Phase One, being all or a substantial part of the area identified herein as Section One. This would include a rail connection to the main line and a minimum spur connection to the first building anticipated, water and sanitary sewer service, initial drainage, and detention to accommodate Phase One;
- Construction of Wharton Weems Blvd., Powell Road, and Export Drive shall be completed in accordance with the Traffic Study recommendations or as needed for development purposes;
- Initiation of procedure to abandon and relocate a portion of Powell Road, south of the projection of Wharton Weems Blvd. within one (1) year of SCUP approval;
- Platting, site plan, and detailed engineering plan review by the City of La Porte and others;
- Initiation of construction pursuant to item 6.1 above, identified as Phase One; and
- Continuation of remainder of development as rapidly as market demands.

ARTICLE VII. FIRE PROTECTION, HAZARDOUS MATERIALS & SAFETY

~~7.1 — Fire Protection. The Owner-Developer shall formulate a plan for fire protection to serve the Tract by separate agreement with the POA and respective grantees.~~

7.27.1 Hazardous Materials. The Owner-Developer agrees no hazardous materials as identified in state and federal standards (NEPA) as well as City Fire Code, shall be stored on site. Compliance will be enforced by the POA in concert with the City.

~~7.3 — Safety. The Owner-Developer shall formulate a public safety and training plan with the City and POA, to ensure safe, efficient handling and storage of materials prior to issuance of a building permit.~~

ARTICLE VIII. TRAFFIC CONTROL PLAN

8.1.1 Traffic Control Plan. The Owner-Developer has established a Traffic Control Plan (shown on the attached Exhibit “DE”) for the entire project to regulate to the extent practical project-generated vehicular traffic. In Section One, based on the target market use, the Traffic Control Plan will include designated truck routes to and from the site, segregation of automobile traffic, limitation of access from public streets (driveways) and utilization of common cross easements between tracts for internal circulation.

8.2 Truck Traffic. This controlled traffic will ultimately be directed to State Highway 146 via Powell Road to Wharton Weems Blvd., to standards approved by Harris County as shown on Exhibit “B” - General Plan. Project driveways will be constructed to induce proper directional movement to preempt to the extent practical northbound traffic on Powell Road. This will be complemented by traffic signage as appropriate. In addition, Owner-Developer shall employ routing plans, driver instruction, and other controls as necessary to obtain compliance of carriers, employees, and regular contractors or service vendors.

8.3 Driveway Access. The Owner-Developer shall establish driveway access controls that shall be controlled through restrictive covenants, architectural controls and City Site Plan review. This will include conditions and design standards consistent as to size, but fewer in number as established in TxDOT Driveway Manual, Harris County, Texas, and the City Zoning Code (106-835) pursuant to specific site plan review. Unless otherwise approved during review of preliminary plats and the Plat, driveways along SH146 entering this Tract shall be limited to a total of eighteen (18), but in all cases, each individual reserve with frontage on SH146 shall have at least one opening. Provision shall be made, where practical, for internal cross-access easements to maximize ingress, egress and circulation to minimize congestion on public rights-of-way and to encourage traffic to be directed to Wharton Weems Blvd. interchange.

8.4 Transportation Issues The Developer shall continue to work with the City, Harris County and other public and private sector interests to implement the timely study and/or construction of transportation components.

ARTICLE IX. SITE RAIL TRAFFIC

9.1 Site Rail Traffic. The Other Owners and/or Rail Logix, LP (“Rail Logix”), a Texas limited partnership, an affiliate of one of the partners of Owner-Developer, as applicable, will continue to work with City and such parties’ rail consultants, as evidence of the commitment to the City to improve rail efficiency in the area, reduce conflicts at Fairmont Parkway, and potentially decrease current rail impacts. On-site rail facilities and operations shall be controlled by Rail Logix in order to maximize rail efficiency and minimize peak hour conflicts with vehicular traffic at Fairmont Parkway. Owner – Developer, Other Owners and Rail Logix agree and acknowledge that the rail yard as depicted on the General Plan shall be limited to a maximum of 22 rail lines and that no rail lines or sidings will extend to the east side of Powell Road.

ARTICLE X. UTILITIES, DRAINAGE

10.1 Utilities, Drainage. The Owner-Developer shall design and construct adequate water, wastewater, and drainage facilities to serve each phase of this project in accordance with City requirements and as further defined by this Agreement. As to water and sanitary sewer, this would include a water system that would deliver 4-6,000 gallons per minute necessary for sprinklered fire protection with a loop connection to the 16” main on the east side of S.H. 146 and a gravity wastewater disposal system that flows into a 60” trunk line on “K” street south of Fairmont Parkway.

The Developer will provide a drainage study for the Tract. The study and design of drainage improvements shall meet the requirements and approval of the City and Harris County Flood Control District. Owner-Developer’s representative agrees to meet with City, prior to design of public utilities, to discuss design criteria standards and policies. City shall approve all construction plans and specifications for public improvements in accordance with the applicable Public Improvement Criteria Manual.

ARTICLE XI. BUILDING LINES

11.1 Building Lines. The Owner-Developer shall establish building lines appropriate to the use, but not less than those prescribed in the City Code of Ordinances in effect on September 11, 2006. Within the industrial Land Uses area west of Powell Road there will be a landscaped 50-foot buffer and building line along Powell Road. Similarly, along State Highway 146, a 50-foot landscape buffer and building line shall be maintained. These respective 50-foot landscape buffers shall be kept free from all other uses with the exception of signage, drainage and detention improvements, and approved drives, parking and entrances. Owner-Developer agrees that other building lines will be either equal to or greater than that required by the zoning ordinance in effect on September 11, 2006, for the land use shown and shall be based on site use and orientation of the improvements or as shown on the General Plan.

ARTICLE XII. MISCELLANEOUS

12.1 Sale of Tract; Assignability. Any contract by Owner-Developer to sell the entirety or any portion of the Tract to a person or entity intending to develop the tract or such portion thereof (a “Successor Developer,” whether one or more) and any instrument of conveyance for the entirety or any portion of the Tract to such Successor Developer shall recite and incorporate this recorded Contract and exhibits hereto and provide that this Contract be binding on such Successor Developer.

12.2 Force Majeure. If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of inability then claimed, but for no longer period; and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “Force Majeure” as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, or any civil or military authority,

insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, arrests, restraining of government and people, civil disturbances, explosions, or partial or entire failure of water supply resulting in an inability to provide water necessary for operation of the water and sewer systems hereunder. Force Majeure may not be claimed by Owner-Developer under any set of circumstances prior to commencement of construction on the Tract.

12.3 Law Governing. This Contract shall be governed by the laws of the State of Texas and no lawsuit shall be prosecuted on this Contract except in a federal or state court of competent jurisdiction.

12.4 No Additional Waiver Implied. No waiver or waivers of any breach or default by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

12.5 Addresses and Notice. Unless otherwise provided in this Contract, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to the other (except bills), must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Contract, from and after the expiration of three (3) days after it's deposited. Notice given in any such other than the manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of La Porte
Attn: City Manager
604 West Fairmont Parkway
La Porte, Texas 77571

If to Owner/Developer, to:

Port Crossing Land, LP
[Russell Michael](#) Plank
3330 S. Sam Houston Pkwy. E.
Houston, TX 77047

and

Port Crossing Land, LP
~~[Mark Studtmann](#)~~
[Michael Luecht](#)
One Pierce Place, Suite 450
Itasca, IL 60143

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days written notice to the other.

12.6 Merger and Modifications. This Contract, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire agreement between the parties relative to the subject matter thereof. This Contract shall be subject to change or modification only with the mutual written consent of the parties.

12.7 Benefits of Contract. This Contract is for the benefit of the City and Owner-Developer and shall not be construed to confer any benefit on any other person except as expressly provided for herein.

12.8 Attorney's Fees. In the event of any litigation between the parties with respect to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs from the losing party.

12.9 Government Immunity Preserved. The Owner-Developer and the City agree that the City does not, by entering in to this Contract or performing any act hereunder or by failing to take any action hereunder, waive any governmental immunity that the City, its officers, employees, or representatives, have under any law.

12.10 One-Party Breach. Any breach of this agreement by one party identified and referred to herein as Owner-Developer shall not be or constitute a breach of this agreement by the other party of Owner-Developer.

12.11 Covenant Running With the Land. The obligations imposed on Owner Developers herein shall not impose personal liability on them, but shall constitute a covenant running with the land, and as such shall be binding on the present owners of the Tract as well as subsequent owners thereof.

(This space intentionally left blank)

OWNER-DEVELOPER:

Port Crossing Land, LP,
a Texas limited partnership

By: Port Crossing Land GP, LLC
a Texas limited liability company
it general partner

By: _____
~~Russell D~~Michael J. Plank, ~~Vice President~~Managing Partner

Formatted: Font color: Auto

Date: _____

OTHER OWNERS:

DEL PISO INVESTMENTS, LLLP, an Arizona limited
liability limited partnership

By: Harl Avenue Investments, L.L.C., an Arizona
limited liability company, its general partner

By: _____

By: _____

Date: _____

FLPCW, LP

a Texas limited partnership

By: FLP Candle GP, Inc.,
a Texas corporation its general partner

By: _____
George Cook, President

Date: _____

National Property Holdings, L.P.,

a Texas limited partnership

By: National Property Holdings GP, LLC,
a Texas limited liability company
its general partner

By: _____
Michael J. Plank,- President

Date: _____

Powell Road Logistics, L.P.,

a Texas limited partnership

By: Powell Road Logistics GP, LLC
a Texas limited liability company,
its general partner

By: _____
Michael J. Plank, President

Date: _____

CITY OF LA PORTE, TEXAS

By: _____
City Manager

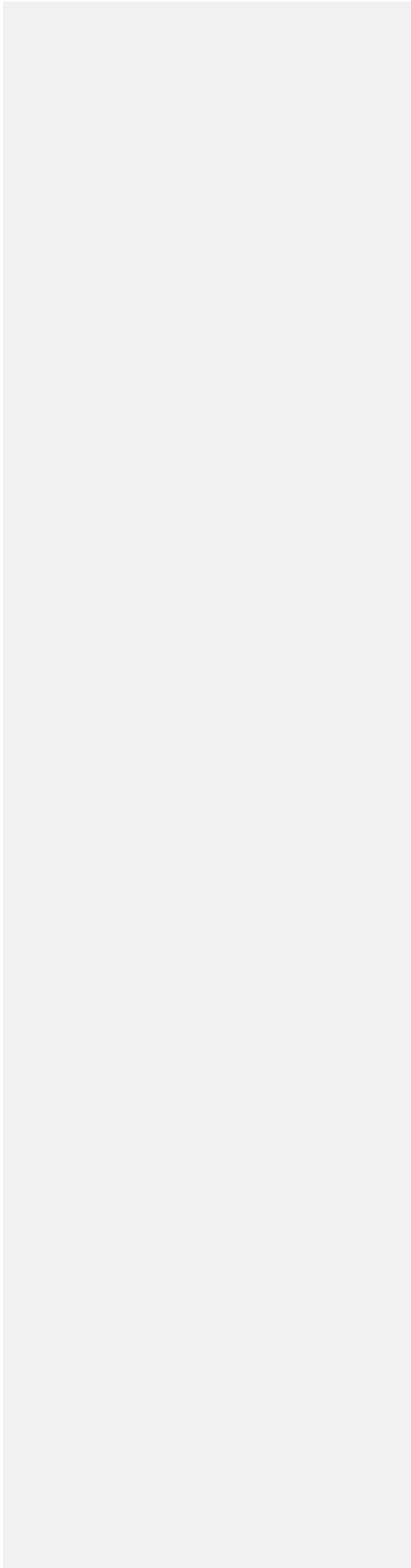
Date: _____

ATTEST:

Martha Gillett, City Secretary

APPROVED:

John D. Armstrong, Assistant City Attorney
Exhibit C



**City of La Porte
Special Conditional Use Permit #15-91000004**

This permit is issued to: Port Crossing, L.P.; Port Crossing A3, L.P.; Port Crossing A4, L.P.; Port Crossing B5, L.P.
Owner or Agent

3330 S. Sam Houston Parkway E.; Houston, Texas 77047
Address

For Development of: Port Crossing Business Park: Approximately 300 acre mixed use development (formerly Texas Import Export).
Development Name

Legal Description: 300 acres of land out of the George B. McKinstry League, A 47; William Harris Survey, A-30; Johnson Hunter Survey, A-35; and more particularly described in the Development Agreement

Zoning: PUD, Planned Unit Development

Permit Conditions:

This Special Conditional Use Permit is applicable for the subject property. A copy of which shall be maintained in the files of the City's Planning and Development Department upon approval. Project development shall be in accordance with the following conditions:

1. This Special Conditional Use Permit-(SCUP) would be applicable to specific development anticipated or proposed by the General Plan.
2. Uses are as described in the Land Use Exceptions (Exhibit C of the Amended Development Agreement).
3. This SCUP outlines in general terms the proposed Planned Unit Development. The developer recognizes and understands that any future construction or development of the private or public improvements anticipated by this SCUP and the General Plan shall require further submittal and approval of special conditional use permits, plats, site plans, construction drawings, and building plans, etc. In addition, this SCUP supersedes SCUP #06-006.
4. This SCUP, the General Plan, Restrictive Covenants, and Land Use Exceptions are exhibits to and are a part of the Amended Development Agreement.
5. Submittals shall be in accordance with this SCUP, General Plan, Development Agreement, Restrictive Covenants, and Land Use Exceptions approved by the City of La Porte and specifically Section 106-216 & 106-217 of the City of La Porte Code of Ordinances as it now exists or may be amended from time to time.
6. The business park identification and entry features shall remain and be maintained as constructed unless approved by the City Council.
7. Truck parking on any lot fronting State Highway 146 will be prohibited on the east side of any structure.
8. The Developer shall comply with all other applicable laws and ordinances of the City of La Porte and the State of Texas. To the extent there is a conflict between those laws and ordinances and this SCUP, the SCUP controls.
9. This SCUP is binding on all owners of property included in the Legal description and their successors and assigns.

If contract or agreement is terminated after completion of any stage and there is ample evidence that further development has been abandoned, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

Validation Date: _____

Director of Planning and Development

City Secretary

Exhibit C

Land Use Exceptions¹

In reserves where the General Plan indicates “GC” uses, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under GC (indicated with a “P”) are permitted here with the exception of:

- Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
- Automotive Repair Services (751-754)
- Outdoor Sales as a Primary or Accessory Use
- Outdoor Storage as a Primary or Accessory Use
- Residential Uses

In reserves where the General Plan indicates “BI” uses, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under BI (indicated with a “P”) are permitted here with the exception of:

- Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
- Automotive Repair Services (751-754)
- Outdoor Sales as a Primary or Accessory Use
- Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers
- General Contractors, Heavy Construction (161, 162, 1541)
- Off Premises Signs

In reserves where the General Plan indicates “LI” uses, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under LI (indicated with a “P”) are permitted here with the exception of:

- Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
- Automotive Repair Services (751-754)
- Outdoor Sales as a Primary or Accessory Use
- Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers
- General Contractors, Heavy Construction (161, 162, 1541)
- Manufacturing of Chemicals and Allied Products (282-285)

¹ Attached to and incorporated into this exhibit is the use chart for the City of La Porte Zoning Ordinance as of September 11, 2006. To the extent that the zoning ordinance for the City of La Porte has been or is amended, after the date Special Conditional Use Permit #SCU06-006 was first adopted, to modify, eliminate or replace the permitted uses or the districts described in this exhibit, this exhibit controls unaffected by any such change.

Off Premises Signs

An additional permitted use shall be SIC Manual Major Group 30 (Rubber and Misc. Plastics Products)

In Reserve “A” labeled Rail/Warehouse on the General Plan, all uses permitted in the City of La Porte Zoning Ordinance Use Chart effective on September 11, 2006, under LI (indicated with a “P”) are permitted here with the exception of:

Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)

Automotive Repair Services (751-754)

Outdoor Sales as a Primary or Accessory Use

Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers

General Contractors, Heavy Construction (161, 162, 1541)

Manufacturing of Chemicals and Allied Products (282-285)

Off Premises Signs

An additional permitted use shall be SIC Manual Major Group 30 (Rubber and Misc. Plastics Products)

Additional permitted uses are certain HI uses permitted in the City of La Porte Zoning Ordinance associated with rail services such as:

A rail yard with a maximum of 22 rail lines is permitted.

Rail service to and distribution from warehouses proposed;

Rail service to light manufacturing not otherwise exempted herein.

§ 106-479

LA PORTE CODE

Sec. 106-479. Special regulations and procedures.

Refer to articles IV, V, VI and VII of this chapter.

Secs. 106-480—106-495. Reserved.

Subdivision IV. GC General Commercial District

Sec. 106-496. Purpose.

The purpose of the GC general commercial district is to provide for low intensity, retail or service outlets which deal directly with the customer for whom the goods or services are furnished. The uses allowed in this district are to provide goods and services on a community market scale and located in areas which are well served by collector or arterial street facilities.

Sec. 106-497. Permitted, accessory, and special conditional uses.

Refer to Table A, commercial uses, section 106-441.

Sec. 106-498. Density/intensity regulations.

Refer to Table B, commercial area requirements, section 106-443.

Sec. 106-499. Special regulations and procedures.

Refer to articles IV, V, VI and VII of this chapter.

Secs. 106-500—106-520. Reserved.

DIVISION 4. INDUSTRIAL DISTRICT REGULATIONS

Subdivision I. Generally

Sec. 106-521. Table A, industrial uses.

(a) *Table A, industrial uses.*

P (ABC) — Permitted uses (subject to designated criteria established in section 106-523).

P — Permitted uses.

A — Accessory uses (subject to requirements of section 106-741).

C — Conditional uses (subject to requirements of sections 106-216 through 106-218 and designated criteria established in section 106-523).

ZONING

§ 106-521

* — Not allowed.

<i>Uses (SIC Code #)</i>	<i>Zones</i>		
	<i>BI</i>	<i>LI</i>	<i>HI</i>
All uses permitted or accessory in the GC zone, except residential	P	P	P
All uses conditional in the GC zone, except residential	C	C	C
<i>Nonmanufacturing Industries:</i>			
Adult oriented business	*	*	P(G)
Air transportation (451—458)	P	P	P
General contractors, heavy construction (161, 162, 1541)	P	P	P
Highway transportation terminal and service facilities (417)	P	P	P
Motor freight transportation and warehousing (421, 423)	*	P	P
Farm product warehousing and storage (4221)	*	P	P
Public warehousing (4222—4226)	P	P	P
Railroad transportation (401)	*	*	P
Shipping container, or fabricated plate work (3443)			
Storage inside	P(ACDE)	P(ACDE)	P
Storage outside (refer to Section 106-444(b))	*	*	P(ACDE)
<i>Wholesale trade:</i>			
Durable goods—light (502, 504, 507, 5082, 5087, 5094)	P	P	P
Durable goods—medium (501)	P	P	P
Durable goods—heavy (503, 5051, 5082—5085, 5088)	*	C	P
Durable goods—heavy (5052, 5093)	*	*	P
<i>Wholesale trade:</i>			
Nondurable goods—light (511—514, 518)	P	P	P

§ 106-521

LA PORTE CODE

<i>Uses (SIC Code #)</i>	<i>Zones</i>		
	<i>BI</i>	<i>LI</i>	<i>HI</i>
Nondurable goods—medium (5172, 5191—5199)	C	P	P
Nondurable goods—heavy (515, 516, 5171)	*	*	P
<i>Manufacturing Industries:</i>			
Chemicals and allied products (282—285)	*	P(ACDE)	P
Electrical and electronic equipment and supplies			
Light (361—365, 367)	P(ACDE)	P(ACDE)	P
Medium (361, 366, 369)	P(ACDE)	P(ACDE)	P
Fabricated metal products and machinery			
Light (341—345, 358, 3592)	P(ACDE)	P(ACDE)	P
Medium (3493, 3498, 351—353, 356)	*	P(ACDE)	P
Heavy (346, 347, 354, 355, 357)	*	P(ACDE)	P
Heavy (348)	*	*	P
Food and kindred products			
Light (202, 205, 2065—2067)	P(ACDE)	P(ACDE)	P
Medium (2086, 2087, 2092—2099)	C	P(ACDE)	P
Heavy (201, 203, 204, 2062, 2063, 207, 2082—2085)	*	C	P
Leather and leather products (311—319)	C	P(ACDE)	P
Welding shops (7692)	P(ACDE)	P(ACDE)	P
Lumber products, furniture and fixtures			
Light (251—259)	P(ACDE)	P(ACDE)	P
Medium (243—245)	C	P(ACDE)	P
Heavy (249)	*	C	P
Measuring, analyzing and controlling instruments (381—387)	P(ACDE)	P(ACDE)	P
Miscellaneous manufacturing (391—396)	P(ACDE)	P(ACDE)	P
Machine shops (3599)	P(ACDE)	P(ACDE)	P
Miscellaneous manufacturing industries (3991—3995)	*	P(ACDE)	P
Off-premises freestanding signs	See article VII of this chapter		

ZONING

§ 106-521

<i>Uses (SIC Code #)</i>	<i>Zones</i>		
	<i>BI</i>	<i>LI</i>	<i>HI</i>
On-premises freestanding signs	See article VII of this chapter		
Paper and allied products (265—267)	*	*	P
Printing and publishing (271—279)	P(ACDE)	P(ACDE)	P
Rubber and miscellaneous plastics (301, 302, 304, 306, 307)	*	C	P
Stone, clay, glass and concrete (321—325, 3261, 327—329)	*	C	P
Tank truck cleaning	*	*	P
Textile mill, and finished products			
Light (224, 225, 231—239)	P(ACDE)	P(ACDE)	P
Medium (222, 223, 226, 229)	*	P(ACDE)	P
Tobacco manufacturers (211—214)	*	P(ACDE)	P
Loading berths at the front or sides of buildings adjacent to R.O.W.	C	C	C
Industrial PUD (refer to section 106-636)	C	C	C
Facilities in excess of height restrictions imposed in section 106-522	*	*	C
Unlisted uses, similar to uses listed above	C	C	C

(b) *Interpretation and enforcement.* Property uses, except as provided for by section 106-521(a), Table A, are prohibited and constitute a violation of this chapter.

(c) *Footnotes.* All permitted uses in industrial zones must meet the following minimum performance standards. If requested by the enforcement officer, all applications for building permits must include a certification from a registered engineer that verifies compliance with these performance standards. Where applicable, all permitted uses in industrial zones must meet and be in compliance with the appropriate federal, state, or local regulations.

A. *Lighting and glare.* Any lighting used shall be arranged so as to deflect light away from any adjoining residential zone or from public streets. Direct or sky-reflected glare, where from floodlights or from high temperature processes such as combustion or welding shall not be directed onto any adjoining property. The source of lights shall be hooded or controlled in some manner so as not to light adjacent property. Bare incandescent light bulbs shall not be permitted in view of adjacent property or public right-of-way. Any light or combination of lights which cast light on a public street shall not exceed one footcandle (meter reading) as measured from the centerline of such street. Any light or combination of lights which casts light on residential property shall not exceed 0.4 footcandles (meter reading) as measured from such property.

§ 106-521

LA PORTE CODE

- B. *Radiation and electrical emissions.* No activities shall be permitted that emit dangerous radioactivity beyond enclosed areas. There shall be no electrical disturbance adversely affecting the operation at any point of any equipment other than that of the creator of such disturbance.

- C. *Smoke.* The emission of smoke by any use shall be in compliance with and regulated by the appropriate federal, state or local agency.

- D. *Dust or other particulate matter.* The emission of dust, fly ash or other particulate matter by any use shall be in compliance with and regulated by the appropriate federal, state or local agency.

- E. *Odors.* The emission of odor by any use shall be in compliance with and regulated by the appropriate federal, state or local agency.

- F. *Explosives.* No activities involving the storage, utilization, or manufacture of materials or products such as TNT or dynamite which could decompose by detonation shall be permitted except such as are specifically licensed by the city council.

- G. *Noise.* All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness and as measured at any property line, shall not exceed the following intensity in relation to sound frequency:

<i>Octave Band Frequency</i>	<i>Maximum Sound Levels — Decibels</i>	
<i>Cycles per Second</i>	<i>Lot Line</i>	<i>H Residential District Boundary</i>
20 to 75	78	63
75 to 150	74	59
150 to 300	68	55
300 to 600	61	51
600 to 1,200	55	45
1,200 to 2,400	49	38
2,400 to 4,800	43	31
Above 4,800	41	25
Impact noise	80	55

Between the hours of 10:00 p.m. and 6:00 a.m. the permissible sound levels beyond residential district boundaries (both Column II and Impact) shall be six decibels less than shown above.

In distances where it is determined that a proposed land use may generate a level of noise that will impact on surrounding land uses, the planning and zoning commission

and city council may require that efforts to reduce the potential noise impact be undertaken. These efforts may include screening, landscaping and site planning techniques.

(Ord. No. 1501U, § A(art. B), 9-23-96; Ord. No. 1501-AA, § 6, 3-23-98; Ord. No. 1501-BB, § 5, 9-15-98; Ord. No. 1501-II, § 5, 3-27-00)

Cross reference—Sexually oriented businesses, § 90-31 et seq.

Sec. 106-522. Table B, industrial area requirements.

(a) *Table B, industrial area requirements.*

<i>Uses</i>	⁴ <i>Minimum Landscaping Requirements (percent)</i>	<i>Maximum Lot Coverage (percent)</i>	<i>Minimum Yard Setbacks F.R.S. 1, 3, 5 (feet)</i>	<i>Adjacent to Residential Minimum Yard Setback F.R.S. 2, 5 (feet)</i>	<i>Maximum Height (feet)</i>
BI business-industrial park; all permitted or conditional	6	50	50-40-30	50-40-30	45
LI light industrial district; all permitted or conditional	6	70	20-10-10	30-50-50	45
HI heavy industrial district; all permitted or conditional	6	30	50-50-30	100-150-150	45 ⁶
Loading docks	N/A	N/A	130-130-130	Same as principal use plus 130 ft.	N/A
Outside storage	N/A	N/A	20-10-5	Same as principal use	Section 106-444(b)
Shipping containers	6	N/A	50-50-30	100-150-150	36 ^{7,8}
On- and off-premises free-standing signs			See article VII of this chapter		
Freestanding on-premises signs located in controlled access highway corridors			See article VII of this chapter		

(b) *Footnotes.*

1. A minimum landscape setback of 20 feet will be required adjacent to all designated conservation areas. Buildings, parking areas, loading docks, outside storage, and refuse containers will not be allowed in such setback areas. These areas are to be landscaped with trees, shrubs, and ground cover, with a planting plan required to be submitted and approved by the enforcement officer. Required landscaping must be maintained by the property owner and/or occupant.
2. No buildings, parking areas, loading docks, outside storage, or refuse containers will be allowed in such setback areas. These areas are to be landscaped with trees, shrubs and ground cover, with a planting plan required to be submitted and approved by the enforcement officer.



DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS

PORT CROSSING

TABLE OF CONTENTS

<u>Article</u>	<u>Page Number</u>
1. PERMITTED AND PROHIBITED USES	2
2. ARCHITECTURAL CONTROL.....	2
3. CONSTRUCTION-RELATED RESTRICTIONS.....	4
4. MAINTENANCE OF PROPERTY	8
5. INSURANCE, INDEMNITY AND CASUALTY LOSS.....	8
6. ENVIRONMENTAL REMEDIATION	10
7. ENFORCEMENT	10
8. COVENANT FOR MAINTENANCE ASSESSMENTS	11
9. PROPERTY OWNERS' ASSOCIATION.....	14
10. SEVERABILITY	14
11. ADDITIONAL RESTRICTIONS	15
12. TERM	15
13. AMENDMENTS	15
14. MISCELLANEOUS	16

DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT, PORT CROSSING LAND, LP, a Texas limited partnership (hereinafter called the "Developer"), being the owner of certain tracts of land containing a total of approximately 231 acres in Harris County, Texas, being more particularly described in Exhibit A attached hereto and made a part hereof for all purposes (said tracts of land being hereinafter referred to as the "Port Crossing" or "Subject Property") and any portion thereof platted as a separate tract or conveyed to third parties or developed by Developer or an affiliated entity being hereinafter referred to as a "Tract", for the purpose of adopting a uniform plan for the benefit of the present and future owners of any portion of the Port Crossing, does hereby adopt and establish restrictions, covenants and easements as hereinafter provided for the Subject Property.

Powell Road Logistics, L.P., a Texas limited partnership, National Property Holdings, L.P., a Texas limited partnership, Del Piso Investments, LLLP, a Arizona limited liability limited partnership and FLPCW, LP, a Texas limited partnership, the owners (collectively, the "Other Owners") of certain tracts of land also containing a total of approximately 63 acres, Harris County, Texas, being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (said tracts of land also comprising part of the "Port Crossing" or "Subject Property") are joining in this "Declaration" (hereafter defined) for the purpose of adopting and establishing the restrictions, covenants, and easements as hereinafter provided for the portion of the Subject Property owned by the Other Owners. Port Crossing, when platted and following the realignment of certain roads, will comprise approximately 300 acres.

Developer contemplates developing Port Crossing in a manner which will include public streets, a water distribution system, a sanitary sewer system, and drainage/detention facilities within the Subject Property and Developer reserves the right to create such public streets and utility-related facilities. Any portions of the Subject Property reserved or restricted or conveyed to the "Association" (hereafter defined) for private streets, utility facilities, and landscaping shall not be subject to "Assessment" (hereafter defined). Additionally, any portion of the Subject Property dedicated for utility facilities (excluding, however, any portion of a Tract) or conveyed to governmental authorities shall not be subject to the restrictions contained in this Declaration, except for the prohibited uses described in Article 1.

Developer, for itself, and its successors and assigns, and the Other Owners (as to the portion of the Subject Property owned by each of the Other Owners, respectively) hereby declare that the Port Crossing and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, equitable servitude and other provisions set forth in this Declaration Of Protective Covenants And Easements ("Declaration"). The Tracts and Private Facilities within the Subject Property shall be subject to the jurisdiction of the "Association" (hereafter defined). The covenants, conditions, restrictions, limitations, reservations, easements and equitable servitudes shall run with, inure to the benefit of, and shall be binding upon, all of the Subject Property, and each Tract and any common area therein, and shall be binding upon and inure to the benefit of (a) the Developer, its successors and assigns, (b) the Association and its successors and assigns, and (c) all persons or entities (the "Owner(s)") having or hereafter acquiring any right, title, or interest in or to any portion of the Subject Property and their heirs, legal representatives, successors and assigns, other than for security purposes.

1.

PERMITTED AND PROHIBITED USES

No Tract or portion of the Subject Property shall be used for any purposes, except for office, research and/or development, retail (subject to the further limitations herein contained), commercial, commercial processing, servicing, light industrial, manufacturing, retail sales of industrial products by manufacturers thereof or by manufacturer's representatives, warehousing or distribution purposes and services ancillary to such uses, or any combination of such uses, and heavy industrial if approved by Developer in writing. No use shall be permitted which (1) is offensive by reason of odor, fumes, dust, smoke, noise, vibrations, radiation, radio interference or pollution, (2) is hazardous by reason of excessive danger of fire or explosion, (3) otherwise constitutes a nuisance, (4) is dangerous or unsafe, (5) would injure the reputation of the Subject Property, or (6) is in violation of any city, county, state or federal law, regulation or ordinance.

The following uses shall not be permitted in or on any portion of the Subject Property: (1) any distilling, refining, smelting, meat, poultry or fish processing plant, agricultural or mining operation; (2) any mobile home park, trailer park, labor camp, or stockyard (except this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance); (3) junk yard, scrap metal yard or waste material business, sales in bulk of junk, automobile wrecking yard, salvage yard, asphalt plant, any storage, dumping, disposal, incineration or reduction of hazardous waste, garbage or refuse, bus station, any fire or bankruptcy sale or auction house operation, or as an airport. (4) any mortuary or funeral home; (5) school, church or governmental office (other than a research or development or business office that does not have customers); (6) any drilling, refining, quarrying or mining operations of any kind, (7) any establishment whose primary business is the sale or rental or display of sexual materials or drug related paraphernalia or whose primary business is providing any adult only or sexually oriented service or product including, but not limited to, massage parlors, topless establishments, any "adult" bookstore or "adult" movie theater; (8) any flea market, bowling alley, nightclub, bar, lounge, tavern, theater, amusement park or video arcade; provided, however, that this prohibition shall not prohibit placement of video machines that are incidental to the conduct of a permitted business at the Subject Property; and (9) any gaming facility or operation including, but not limited to, off-track or sports betting parlor, table games such as blackjack, poker, slot machines, video poker, blackjack, keno machines or similar devices or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to any government-sponsored gaming activities or charitable gaming activities so long as such governmental or charitable activities are incidental to the business being conducted by the occupant of that portion of the Subject Property and do not occur regularly.

The use of any portion of the Subject Property by any Owner shall be subject to all laws, regulations, codes and ordinances of all applicable governing authorities, including, without limitation, any zoning ordinances. In the event of any conflict between the terms of this Declaration and the terms of any such law, code, regulation or ordinance, then the provisions of this Declaration or any law, code, regulation or ordinance which is stricter shall govern.

2.

ARCHITECTURAL CONTROL

A. Plan for Development. The plan for the development of the Subject Property contemplates the centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the Subject Property as a whole. It is accordingly covenanted and agreed that (i) no building, structure or any appurtenances thereto of every type or kind, including, without limitation, patios, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, drives, driveways, parking areas, fences, roofs, screening, walls, retaining walls, stairs, decks, fixtures, poles, exterior tanks, solar energy equipment, exterior air conditioning fixtures and equipment, exterior lighting, radio, conventional or cable or television antenna or dish, microwave television antenna and/or landscaping (collectively herein referred to as the "Improvements") shall be commenced, erected, constructed, placed, or maintained upon any portion of

the Subject Property and/or (ii) any exterior modification, renovation, expansion, restoration or repair (if different from the original exterior construction) change or alteration be made to any Improvement shall be commenced, erected, constructed, placed, or maintained upon any portion of the Subject Property until in the case of (i) or (ii), above, the plans and specifications therefor ("Plans") showing the nature, color, kind, shape, height, materials and location of the same (including site landscaping, drainage and grading plans and utility layout) have been submitted to and approved in writing as to harmony and external design and location and relationship to surrounding structures and topography by Developer until the "Transfer Date" (hereafter defined) and thereafter by the "Board" (hereafter defined). The drainage plans shall cause the Subject Property to be drained in a manner so that no standing water remains for any extended period of time following any precipitation and the Subject Property does not become a breeding ground for mosquitoes. All references in this Article 2 and in Article 3 hereafter made to the Board shall refer to the Developer prior to the Transfer Date and thereafter to the Board. In the event that the Board fails or refuses to approve or disapprove such design or location within thirty (30) days after the Plans have been submitted to it, it will be deemed that the Board has approved such Plans. In the event of damage or destruction of any Improvement, approval shall be granted by the Board for the restoration of Improvements if the Improvement is to be restored in substantial accordance with the original approved Plans. If the Improvements will not be restored in accordance with the original approved Plans, then the Plans for such restoration shall be subject to approval in the same manner as the original Improvements to the Tract. All decisions of the Board shall be final, conclusive and binding and there shall be no review of any action of the Board.

B. No Representation or Warranty; Limitation of Liability. No approval of Plans shall ever be construed as representing or implying that such Plans will, if followed, result in a properly constructed structure complying with all applicable legal requirements or built in a good and workmanlike manner or be deemed approval of the Improvement from the standpoint of safety, whether structural or otherwise. Neither the Developer, the Association, nor any members of the Board shall be liable in damages to anyone submitting Plans for approval, or to any Owner or occupant of any part of the Subject Property affected by this Declaration, by reason of or in connection with the approval or disapproval or failure to approve any Plans submitted. Every person who submits Plans for approval agrees, by submission of such Plans, and every Owner or occupant of any portion of the Subject Property involved herein agrees, by acquiring title thereto or any interest therein, that such person will not bring any action or suit against the Developer, the Association, or any of the members of the Board to recover any such damages.

C. Inspection of Improvements. The Board or its duly authorized representative, as well as the City of LaPorte ("City"), shall have the right, but not the obligation, to inspect any Improvements to a Tract prior to or after completion of any Improvements.

D. Notice of Completion. Promptly upon completion of any Improvements, Owner shall deliver a notice of completion ("Notice of Completion") to the Board and the City and, for all purposes hereunder, the date of receipt of such Notice of Completion by the Board shall be deemed to be the date of completion of such Improvements, provided that the Improvements are, in fact, completed as of the date of receipt of the Notice of Completion.

E. Notice of Non-Compliance. If, as a result of inspections or otherwise, the Board and/or the City finds that any Improvement has been constructed or undertaken without obtaining the approval of the Board and/or the City, or has been completed other than in substantial conformity with the Plans furnished by the Owner to and approved by the Board and/or the City, as applicable, or has not been completed within a reasonable period of time (as agreed upon by the Board and/or the City, or, if no agreement, as determined by the Board and/or the City, in its sole good faith discretion) after the date of approval by the Board and/or the City (as determined by the Board and/or the City), subject to delays due to "Force Majeure" (hereafter defined) causes, the Board and/or the City shall notify the Owner and the City or the Board, as applicable, in writing of the noncompliance, which notice (the "Notice of Noncompliance") shall be given, in any event, within sixty (60) days after the Board and the City receive a Notice of Completion from the Owner. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be reasonably necessary to remedy the noncompliance. The Notice of Noncompliance may be filed in the public records and the cost of preparing and filing the same and the release thereof shall be paid by such Owner.

F. No Waiver or Estoppel. No action or failure to act by the Board shall constitute a waiver or estoppel with respect to future action by the Board.

G. Variances. The Board may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures within set-back lines established by this Declaration, on a plat (or plats) of the Subject Property, parking requirements, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require or when such variance would result in a more common beneficial and/or efficient use and not detract from the overall development plan for the Subject Property as determined by the Board. Such variances must be evidenced in writing and shall become effective when signed by a majority of the members of the Board. The granting of a variance in one instance shall not require the Board to grant a similar variance for another portion of the Subject Property. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; **PROVIDED, HOWEVER, THAT THE GRANTING OF A VARIANCE SHALL NOT OPERATE TO WAIVE ANY OF THE PROVISIONS OF THIS DECLARATION FOR ANY PURPOSE EXCEPT AS TO THE PARTICULAR TRACT AND PARTICULAR PROVISION HEREOF COVERED BY THE VARIANCE, NOR SHALL THE GRANTING OF A VARIANCE AFFECT IN ANY WAY THE OWNER'S OBLIGATION TO COMPLY WITH ALL GOVERNMENTAL LAWS AND REGULATIONS AFFECTING THE PROPERTY CONCERNED, INCLUDING, BUT NOT LIMITED TO ZONING ORDINANCES OR REQUIREMENTS IMPOSED BY ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION. THE OWNERS ACKNOWLEDGE THAT ONLY THE CITY SHALL BE AUTHORIZED TO GRANT VARIANCES AND SPECIAL EXCEPTIONS TO THE CITY ZONING ORDINANCE AND GOVERNMENTAL LAND USE RESTRICTIONS THROUGH THE ZONING BOARD OF ADJUSTMENT. THE BOARD AGREES TO INFORM THE CITY IN WRITING ("VARIANCE NOTICE") PRIOR TO THE GRANTING OF ANY VARIANCE REQUEST OF THE ISSUE UNDER CONSIDERATION AND THE PROPOSED ACTION BY THE BOARD SO THAT THE CITY CAN VERIFY THAT THE PROPOSED VARIANCE, IF GRANTED, WOULD NOT VIOLATE ANY ZONING ORDINANCES, LAND RESTRICTIONS OR REGULATIONS, INCLUDING, WITHOUT LIMITATION, THAT CERTAIN DEVELOPMENT AGREEMENT DATED ON OR ABOUT THE DATE HEREOF BETWEEN DEVELOPER AND THE CITY, AND JOINED IN BY THE OTHER OWNERS.** If the City objects to the granting of the variance, the City shall notify the Board (through its representative designated in the Variance Notice) within ten (10) business days following the City's receipt of the Variance Notice. If the City fails or refuses to approve or disapprove the variance request within such ten (10) day period, the City will be deemed to approve such variance request.

3.

CONSTRUCTION-RELATED RESTRICTIONS

A. Exterior Materials. Each of the Improvements to be located on any portion of the Subject Property shall be constructed with exterior materials of brick, masonry, stone, marble, or permanently finished (in a manner approved in writing by the Board in their discretion) concrete and/or glass, or of an equivalent, permanent, architecturally-finished material to finished grade. All exterior finishes shall be approved by the Board. No Improvement shall be covered with aluminum, iron, steel or other metal surface or finish unless previously approved in writing by the Board. Sidewalks of a design and location approved by the Board shall be constructed along one side of the right-of-way of all dedicated public streets (except State Highway 146) abutting any property line. Any concrete block exterior surfaces shall be painted. All exterior tilt-up concrete walls must be painted unless constructed with decorative aggregate exterior designs.

B. Building Set Backs. No building or structure or other facility of any nature shall be constructed or erected on a Tract between the adjoining street or roadway right-of-way line or adjoining side or rear property lines and the "Set Back Lines" (defined below) which shall run parallel to the Property as follows:

ATTACHMENT A

(1) For all buildings or other structures which are located along State Highway 146, the "Set Back Lines" along such streets and roadways shall be a minimum of fifty feet (50');

(2) For all buildings or other structures fronting any street or roadway, other than State Highway 146, the "Set Back Lines" along such streets or roadways shall be a minimum of twenty-five feet (25') or in accordance with the approved Final Plat of Port Crossing.

(3) For all buildings or other structures, the "Set Back Lines" along any side or rear property line not adjoining a street or roadway shall be a minimum of ten feet (10'); and

(4) The "Set Back Lines" for paving for parking areas which front State Hwy. 146 or any other streets or roadways within the Subject Property shall be determined by the Board, However, in no event shall any paving for parking be closer than ten feet (10') to any side or rear property line not adjoining a street or roadway.

For purposes of this Declaration, all Set Back Lines shall be measured from (a) the right-of-way line of the street or roadway adjoining the Tract as such right-of-way line exists at the time that the construction of the improvements on the Tract is commenced, or (b) the adjoining side or rear property line, as applicable.

C. Parking. Each Owner or lessee shall at all times devote a sufficient portion of its Tract to providing paved off-street parking facilities adequate for the use(s) to which its Tract is put and otherwise sufficient to comply with any applicable law, rule, regulation or ordinance, but not less than the following:

<u>Use</u>	<u>Number of Spaces</u>
Office	4 minimum, plus 3 spaces per 1000 square feet of net usable area
Retail	4 minimum, plus 4 spaces per 1000 square feet of net usable area
Commercial Services, Manufacturing or Limited Warehousing and Distribution	3 spaces per 1000 square feet of office area and one space per 1500 square feet of non-office area, but not less than one space per 1.5 non-office employees

Parking will not be permitted on any street or at any place other than the paved parking spaces provided therefore. Each Owner and lessee shall be responsible for compliance with this Paragraph C by constructing or exhibiting paved parking areas on such Owner's Tract, provided that paved parking areas shall cover not more than eighty-five percent (85%) of the area between a building and a dedicated or private street.

The Board reserves the right during its review of construction plans to relax minimum parking requirements, subject to compliance with all City of La Porte regulations and ordinances, on the Tracts where necessary or desirable to accomplish more effective and compatible land utilization.

D. Signs. All signs shall be in locations and of a design and material approved in writing in advance by the Board. No more than two (2) free standing ground or berm mounted permanent signs shall be permitted for each Tract, unless a Tract has frontage on two or more streets, in which case no more than three (3) free standing ground or berm mounted permanent signs shall be permitted for such Tract. Unless otherwise approved in writing by the Board, all other signs must be attached to a building and shall be parallel to and contiguous with its wall and not project above its roof line. No neon sign or sign of a flashing or moving character shall be installed and no sign shall be painted on a building wall.

ATTACHMENT A

Directional and traffic control signs, and signs advertising the sale or lease of a Tract are also permitted upon the written approval of the design and location by the Board. In the event a building has multiple tenants, all tenants may be shown on one of the permitted signs, at the discretion of the owner of the Tract. The Board shall have the right, and hereby reserves an easement, to enter upon any and all portions of the Property to remove any signs that are in violation of this Article 3 upon reasonable notice to the Owner or lessee of such portion of the Property, all at the expense of such Owner or lessee. The Board may promulgate sign guidelines (which shall include guidelines for pylon signs, monuments and flagpoles) which may be modified by the Board from time to time in its sole good faith discretion. Notwithstanding the Board's approval of any signs, all signs also shall comply with the City's zoning ordinance and be permitted by the City.

E. Harmful Substances. No affluent containing harmful bacteria, poisonous acids, oils or other harmful substance shall be permitted to drain or drift beyond the property lines of any Tract.

F. Loading/Unloading. Delivery vehicle loading and unloading shall occur on-site only and street delivery vehicle loading and unloading is not permitted. Loading/unloading facilities shall be separated from employee, customer and visitor circulation and parking areas.

Loading docks will not be permitted to face any public street or right-of-way, unless otherwise approved by the Board, and provision must be made for handling all freight on those sides of a building which do not face a street; provided, however, that in any instance in which a building would face streets on all of its sides, a loading dock or docks will be permitted on the two sides of such building which are, respectively, farthest from frontage streets unless the Developer shall in writing permit a loading dock on another side of such building. All loading docks must be screened from public view in a manner approved in writing by Developer prior to construction or alteration of any building.

G. Outside Storage or Operations; Screening. No outside storage of any kind shall be permitted except as expressly provided herein, or as otherwise approved in writing by the Board. Retail sales equipment may be displayed outside in a manner which is architecturally compatible with the other Improvements on the Tract, with the approval of the Board. Water towers, cooling towers, communication towers, fans, exterior processing equipment, storage tanks, roof-top equipment, ground-mounted equipment, and any other similar structures or equipment shall be architecturally compatible with the other Improvements on the Tract, or effectively shielded from view from a dedicated or private street in a manner approved in writing by the Board prior to construction. All screening devices shall be subject to compliance with all laws, regulations, codes and ordinances of all applicable governmental authorities.

The right of a purchaser, grantee, Owner or lessee to use any building or buildings shall not be construed to permit the keeping of articles, goods, materials, incinerators, storage tanks, boats, trailers, campers, horse trailers, buses, inoperative vehicles of any kind, boat rigging or other vehicles or associated equipment of a recreational or commercial nature, refuse containers or like equipment in the open or exposed to public view, or view from adjacent buildings. If it shall become necessary to store or keep such materials or equipment in the open, they shall be screened from view in a manner approved in writing by Developer. Adequate screening must also be provided to shield such stored materials and equipment from view from the ground floor level of all adjacent buildings. Under no circumstances shall any materials or equipment be stored within the applicable Set Back Line for any street.

H. Utility and Drainage Easements. Developer reserves the right, without the necessity of joinder of any Owner or other person or entity (and each and every Owner or lessee, by its acceptance of a deed or ground lease covering any portion of the Subject Property, hereby grants to Developer the right), to grant, dedicate, reserve or otherwise create, from time to time, easements ("Utility Easements") for public utility purposes in, on, over, through and across any portion of the Subject Property lying within twenty-five feet (25') of any street (dedicated or private) and within ten feet (10') of any side or rear property line, said easements to be for the purpose of laying, constructing, installing, maintaining, operating, inspecting, repairing, altering, substituting, replacing and removing any and all lines, cables, pipes, conduits, wires, poles, equipment and other necessary or desirable appurtenances for providing utilities (including, without limitation, electric, water, gas, telephone, sanitary sewer, drainage utilities and cable and other communications facilities) to the Subject Property; such easements to be for the use and

ATTACHMENT A

benefit of Developer, and any utility or cable company to whom Developer conveys or grants an easement for the purpose of providing utilities and related services to the Subject Property and the Owner of any portion of the Subject Property, their heirs, legal representatives, successors and assigns. If applicable, Owners shall have the right to use the drainage easement and to tie into any such utility lines located on such Owner's respective Tract upon payment of any tie-in charge imposed by the utility company, or by any party providing such utility service. No structure shall be erected on any of said easements, and no Improvements may be placed within said easements without the prior written approval of the Board and any utility company using such easements. Easements may be crossed by driveways and walkways provided the Owner secures the necessary prior approval of the effected utility companies furnishing services, and provides and installs any special conduit and other equipment of approved (by the utility companies) type and size, under such driveways and walkways prior to construction thereof.

Title to any Tract conveyed by Developer by deed or other conveyance or ground lease shall not be held or construed in any event to include the title to the easement estates in favor of third parties affecting the Tract or any improvements within such easements or appurtenances thereto, constructed by or under Developer, the Association, third parties or their respective agents through, along, or upon any portion of the Subject Property, and the right to maintain, repair, sell, lease or replace such facilities or the appurtenances thereto (but not the Tract) to any municipality or other governmental agency or to any public service corporation or to any other party, is expressly reserved in Developer and the Association.

An easement is hereby granted to utility companies and other entities supplying service (and agents and contractors thereof) for reasonable ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, telephones, cable service, electricity, gas and appurtenances thereto, on, above, across and under the Subject Property within the utility easements from time to time existing to and from service lines situated within such easements to the point of service on or in any structure situated on the Tracts. Further, an easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Subject Property in performance of their duties. Neither Developer nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or contractors to shrubbery, trees, flowers or other improvements (except damage to the aforementioned special conduit and other equipment, if any) located on the land covered by said easements, except to the extent of their respective gross negligence or willful misconduct.

I. Temporary Structures. No tent, shack, temporary building or structure, other than construction offices and structures for related purposes during the construction period, shall be installed or maintained on any Tract without the prior written approval of the Board. All temporary structures used for construction purposes must receive approval by the Board with regard to location and appearance, and must be removed promptly upon completion of construction.

J. Fences. All fences installed by an Owner along or in the vicinity of the boundary lines of such Owner's Tract shall be approved by the Board and further subject to compliance with all laws, regulations, codes, and ordinances of all applicable governmental authorities.

K. Landscaping. Two complete sets of landscaping architectural plans must be submitted to the Board for written approval prior to commencement of construction on a Tract. All open, unpaved space, including, but not limited to, front, side and rear building setback areas, shall be planted and landscaped, according to the plan approved in writing by Developer. Landscape plans submitted for approval of the Board shall indicate the number, size, spacing and species of shrubs and trees, and the species of ground cover. A sprinkler system of approved design shall be installed in all landscaped areas. The Board will require reasonable landscaping of any traffic or parking island located within or at the edges of any parking areas. Landscaping in accordance with the plans approved by the Board must be installed within thirty (30) days following the occupancy of a building or Tract. This period may be extended by the Board in the event of Force Majeure delays. The Board may promulgate landscaping guidelines which may be modified by the Board from time to time in its discretion. All landscaping installed by an Owner shall be subject to compliance with all laws, regulations, codes, and ordinances of all applicable governmental authorities.

4.

MAINTENANCE OF PROPERTY

The Owner or lessees of any portion of the Subject Property shall have the duty of and responsibility for keeping their respective Tract and landscaping, vegetation, premises, Improvements and appurtenances, in a well-maintained, safe, clean, sanitary and attractive condition at all times, in compliance with all applicable regulations of governmental agencies having jurisdiction over health, environment, safety and pollution control. No refuse or waste materials shall be permitted to accumulate on any part of the Subject Property but shall be regularly collected and disposed of. If, in the opinion of the Developer, any such Owner or lessee is failing in this duty and responsibility, then Developer may give such Owner or lessee, or both, written notice of such fact, and such Owner or lessee must, within ten (10) days of such notice, undertake the care and maintenance reasonably necessary to restore such Owner's or lessee's property to a safe, clean and attractive condition. Should any such Owner or lessee fail to fulfill this duty and responsibility after such notice, then the Developer shall have the right and power to perform, or have performed, such care and maintenance, including, without limitation, the mowing of any vacant Tract, and the Owner and lessee (and/or both of them) of the Tract on which such work is performed by the Developer shall be liable for the cost of any such work and shall promptly reimburse the Developer for the cost thereof. If such Owner or lessee shall fail to so reimburse the Developer within thirty (30) days after being billed therefore, then said cost shall be a debt of such owner or lessee (and both or them), payable to the Developer, and shall be secured by the same lien that secures the payment of "Assessments" (hereafter defined), which lien shall be subordinate to any now existing or hereafter created valid liens securing purchase money, the cost of construction or permanent financing therefore, or any renewal or extension of such liens. From and after the Transfer Date, the Association automatically shall have the authority reserved to the Developer in this Article 4 to cure any default of an Owner or lessee. The Developer may delegate such right to cure any default of the Owner or Lessee to the Association prior to the Transfer Date.

The Developer and Port Crossing Association hereby agree to maintain all drainage and detention areas within the development.

5.

INSURANCE, INDEMNITY AND CASUALTY LOSS

A. Each Owner, with respect to its Tract, including the Improvements and any operations thereon, shall maintain at all times during the term of this Declaration, commercial general liability insurance (including contractual liability insurance) with combined single limit coverage for personal injury, bodily injury or death or property damage or destruction (including loss or the use thereof) in the amount of not less than Three Million Dollars (\$3,000,000), (which coverage may be in the form of combined single limit coverage, with an aggregate, or a combination of combined single limit coverage with umbrella coverage), provided further that the amount of such coverage is consistent with industry standard for similar buildings and the cost thereof is not financially prohibitive. Additionally, the Board shall have the right to require an increase in the aggregate limit of such liability insurance if it becomes industry standard to provide increased amounts of coverage. Such insurance shall be maintained in reputable, financially responsible insurance companies, licensed to do business in Texas, and each Owner shall furnish to the Board upon request a certificate or copy of its respective insurance policy conforming with the provisions hereof. The Developer and Board shall be named as an additional insured under each Owner's commercial general liability insurance policy, and such coverage shall be primary to any coverage maintained by the Developer and/or the Board.

B. Each Owner shall maintain, at its cost, property damage insurance covering the full replacement value of all Improvements located on their respective Tract, insuring against the perils of fire, lightning, extended coverage vandalism and malicious mischief, and flood insurance (if available) from time to time. Such insurance shall be maintained in a reputable, financially responsible insurance company, and the Owners shall furnish to any other Owner upon request a certificate or copy of its policy of insurance conforming to the foregoing provisions.

ATTACHMENT A

C. SUBJECT TO THE PROVISIONS OF PARAGRAPH D. BELOW, EACH OWNER ("INDEMNITOR") COVENANTS TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE DEVELOPER, BOARD AND EACH OTHER OWNER ("INDEMNITEE") FROM AND AGAINST ALL CLAIMS, COSTS, EXPENSES AND LIABILITIES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH (I) ALL DAMAGES AND CLAIMS, INCLUDING ANY ACTION OR PROCEEDING BROUGHT, ARISING FROM OR AS A RESULT OF THE DEATH OR INJURY OF ANY PERSON, OR DAMAGE TO THE PROPERTY OF ANY PERSON OR ENTITY, WHICH SHALL OCCUR ON THE TRACT OWNED BY EACH INDEMNITOR, EXCEPT FOR CLAIMS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACT OR OMISSION OF THE INDEMNITEE, ITS LICENSEES, CONCESSIONAIRES, AGENTS, SERVANTS OR EMPLOYEES, OR THE AGENTS, SERVANTS OR EMPLOYEES OF ANY LICENSEE OR CONCESSIONAIRE WHEREVER THE SAME MAY OCCUR; AND (II) ALL DAMAGES AND CLAIMS ARISING FROM OR AS A RESULT OF THE DEATH OR INJURY OF ANY PERSON, OR DAMAGE TO THE PROPERTY OF ANY PERSON OR ENTITY WHICH OCCUR ON ANOTHER OWNER'S PROPERTY AS A RESULT OF THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF THE INDEMNITOR.

D. Notwithstanding anything contained in this Declaration to the contrary, each Owner ("Injured Owner") hereby waives any and all rights of recovery, claims, actions or cause of actions against another Owner, Developer and the Association and such other Owner's, Developer's and the Association's agents, servants, partners, shareholders, directors, trustees, officers or employees (collectively, the "Injuring Owner") for any loss or damage that may occur upon the Injured Owner's property or to any personal property of such Injured Owner by reason of fire, the elements or any other cause which is insured against (or could be insured against) by the terms of policies maintained by the Injured Owner or policies required to be maintained by Injured Owner pursuant to the terms of this Declaration, including the negligence of the Injuring Owner, its agents, officers, partners, shareholders, directors, trustees, servants or employees and no insurer shall have any right of subrogation or assignment against such Injuring Owner.

E. The insurance coverages described in Paragraphs A. and B. above may be carried under a policy or policies covering other liabilities, properties and locations of an Owner of the Tract subject to this Declaration or a subsidiary or affiliate or controlling corporation of such Owner. Each insurance policy or policies shall contain a provision that such policy may not be cancelled without a thirty (30) day written prior notice by the insurer to Developer and the Association.

F. In the event of a casualty loss to any Improvements, the affected Owner shall either (i) within a commercially reasonable time, not to exceed ninety (90) days after the occurrence of the casualty loss, commence to repair all exterior and structural portions of such Improvements to the condition which existed immediately prior to such damage or destruction or to such other condition approved by the Board, and complete the repair or restoration within one hundred eighty (180) days after the occurrence of the casualty loss, subject to Force Majeure delays or (ii) within a commercially reasonable time, not to exceed ninety (90) days after the occurrence of the casualty loss, demolish and remove its damaged Improvements leaving a graded and landscaped and/or seeded area. In the event of any such casualty loss or destruction, each Owner shall as soon as possible repair any common utility lines located upon its Tract which service another Owner's Tract. Any Owner that does not elect to repair or reconstruct after a casualty loss shall be entitled to retain all its insurance proceeds in connection with such casualty loss provided that such Owner demolishes and removes the damaged Improvements; otherwise, the insurance proceeds to cover the costs and expenses of demolishing and removing all damaged Improvements on its Tract shall belong to and be paid to the Association.

6.

ENVIRONMENTAL REMEDIATION

Each Owner ("First Owner") agrees to indemnify, defend and hold harmless each of the other Owners ("Other Owners") from and against any costs, fees or expenses (including, without limitation, environmental assessment, investigation and environmental remediation expenses, third party claims and environmental impairment expenses) incurred by any of the Other Owners in connection with First Owner's generation, storage, transportation, treatment or disposal of Hazardous Substances at, to or from the portion of the Subject Property owned by the First Owner, including, but not limited to, Other Owners' costs in connection with monitoring such compliance. "Hazardous Substances," as used in this Article 71 means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq*), as amended from time to time, and regulations promulgated there under; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq*), as amended from time to time, and regulations promulgated there under; (c) any oil, petroleum products, and their by-products; (d) any substance the presence of which on the portion of the Subject Property, (including, without limitation, in the soil, air, structures and surface and sub-surface waters) owned by the First Owner is prohibited, regulated or restricted by any law or regulation similar to those set forth in this definition, and (e) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

7.

ENFORCEMENT

Any notice to the Developer or Board, as applicable, or request for approval by the Developer or Board, as applicable, shall be made to the Developer or Board, as applicable, in writing, and shall be sent to the Developer or Board, as applicable, by certified or registered mail, postage prepaid, addressed to the then current address of such entities as announced from time to time. Initially, the address of the Developer is: Port Crossing, 3330 S. Sam Houston Parkway E., Houston, Texas 77047, Attention: Russell D. Plank. If any request for approval of a variance or exception to the restrictions provided herein, subject to compliance with all applicable laws, regulations, and ordinances of the City of La Porte or approval of any proposed action by an Owner is required to be made by the Developer or Board, as applicable, the Developer or Board, as applicable, shall, within thirty (30) days after the request is made, give the person making the request, at such person's address as shown in the request, written notification either of the approval by the Developer or Board, as applicable, or of its rejection of the request, with a specification of the reasons for such rejection. If the Developer or Board, as applicable, fails to give to the person requesting such approval notification of rejection within such 30-day period as provided for above, the Developer or Board, as applicable, shall be conclusively deemed to have given its approval with regard to the request made. Any approval or rejection given by the Developer or Board, as applicable, shall be in writing, and shall be signed by the Developer, or Board, as applicable, and any written approval, rejection or other communication by the Developer or Board, as applicable, may be relied upon, as the act of the Developer or Board, as applicable, by the person receiving such approval, rejection or other communication.

The Developer, including any successor owner of a substantial portion of the Subject Property succeeding the Developer as a developer of the Subject Property, any Owner and the Association (collectively, the "Principal Beneficiaries") shall have the right to enforce the restrictive covenants set forth in this Declaration against any person or persons violating or attempting to violate this Declaration. No tenant, lessee or occupant of any portion of the Subject Property and no customer or invitee of any such tenants, lessee or occupant and no other party whomsoever (other than a Principal Beneficiary, as aforesaid) shall have any rights to enforce any provision of this Declaration. In the event of a violation or attempted or threatened violation of any provision of this Declaration, in addition to all other rights and remedies available at law or in equity, a Principal Beneficiary shall be entitled to obtain restraining orders and injunctions (temporary and permanent) enjoining and prohibiting such violation, attempted or threatened violation and commanding compliance with the provisions of this Declaration, without the necessity of posting a bond.

8.

COVENANT FOR MAINTENANCE ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessment. The Developer for each Tract owned within the Subject Property, hereby covenants, and each Owner of any Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is conclusively deemed to covenant and agree as a covenant running with the land to pay to the Association assessments or charges imposed from time to time by the Board for the purposes set forth in Section 8.B. below (hereinafter referred to as "Assessments"). The Board shall have the right to adopt and from time to time revise and amend procedures for the purpose of establishing the Assessments, due dates, billing and collection of the Assessments, provided that such procedures are not inconsistent with the provisions hereto. The assessments established by the Board shall commence against the subject Property on August 1, 2006. The Assessments shall be uniform as to each Tract on a per square foot basis according to the land area comprising such Tract. If the Assessments have commenced to accrue against the Owners, then, at the time an Owner takes title to a Tract, the installment for that month shall be prorated as of the day the Owner takes title. Any Assessments not paid and received within ten (10) days from the due date shall be deemed delinquent and, without notice, shall bear interest until paid at fifteen percent (15%) per annum, not to exceed the maximum non-usurious rate allowed by applicable law. The Board, at its option, may impose and collect late charges on delinquent payments, in addition to interest, in an amount to compensate the Association for the administrative burden of dealing with the delinquency.

To secure the payment of the Assessments levied hereunder and any other sums due hereunder (including, without limitation, reasonable attorney's fees and costs of collection, interest or late charges), a vendor's lien and superior title shall be and is hereby reserved, and a contractual lien is hereby created, in favor of the Association, in and to each Tract and assigned to the Association, which liens shall be enforceable as hereinafter set forth by the Board or its appointed agent ("Agent") on behalf of the Association.

Notice of the unpaid amounts, at any time, secured by the liens referred to, reserved by and created in this Article 8 may, but shall not be required to be given by the recordation in the Real Property Records of Harris County, Texas of a "Notice of Non-Payment," duly-executed and acknowledged by an Agent of the Association, setting forth the amount owed, the name of the reputed Owner or Owners of the affected Tract according to the books and records of the Association, and the legal description of such Tract. The cost of preparing and filing the Notice of Non-Payment and its release shall be secured by the lien therefor.

Each Owner, by acceptance of a deed to such Owner's Tract, hereby expressly recognizes the existence of such liens as being prior to such Owner's ownership of such Tract and hereby vests in the Board or its Agent the right and power to bring all actions against such Owner or Owners personally for the collection of such Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including by judicial and/or non-judicial foreclosure. Additionally, by acceptance of the deed to such Owner's Tract, each Owner expressly grants a power of sale such Owner's Tract and all Improvements thereon, and all rights appurtenant thereto for the purpose of securing the aforesaid Assessments and other sums due hereunder remaining unpaid by such Owner from time to time. The Agent may be changed at any time by the Board. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such liens, then it shall be the duty of the Agent, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Tract and all Improvements thereon, and all rights appurtenant thereto, at the door of the County Courthouse of Harris County, Texas (in the area designated by the Commissioner's Court of Harris County, Texas, for such purpose), on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash after the Agent shall have given notices of the proposed sale in the manner hereinafter set forth, or as provided by statute, whichever is less burdensome. Following sale, the Agent shall make due conveyance of the Tract and all Improvements thereon to the purchaser or purchasers,

ATTACHMENT A

and may, but shall not be required to, give a general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such Tract and all Improvements thereon and their heirs, executors, administrators, successors and assigns. The Agent shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Harris County, Texas, by filing such notice with the County Clerk of Harris County, Texas, at least twenty-one (21) consecutive days preceding the date of sale, and, in addition, the Agent shall serve written notice at least twenty-one (21) days preceding the date of sale by certified mail on each debtor obligated to pay the debt according to the records of the Association of such sale and the notice thereof shall comply with the provisions of Section 51.002 of the Texas Property Code, as it may be amended from time to time. Service of such notice shall be completed upon deposit of the notice in the United States mail, properly addressed to such debtor obligated to pay the debt at the most recent address as shown by the records of the Association. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service. If any change in Texas law occurs subsequent to the date hereof, this paragraph A of Article 8 shall be amended to comply with such change in Texas law.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such sale, including reasonable attorneys' fee and reasonable trustees' fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default, plus interest thereon; and, third, the remaining balance shall be paid to such Owner and/or such Owner's mortgagee. From and after any such foreclosure, the occupants of such Tract shall be required to pay a reasonable rent for the use of such Tract and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and further, shall be entitled to sue for recovery of possession of such Tract by forcible detainer without further notice.

B. Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for the purpose of: (i) the operating costs and expenses of the Association; (ii) the payment of all organization costs and attorney fees incurred by the Association in connection with the enforcement of this Declaration, including, without limitation, enforcement of parking restrictions; (iii) the maintenance, replacement and repair of any Private Streets and any Improvements located within the Private Streets (but not the initial construction of the Private Streets); (iv) the establishment and maintenance of capital and operating reserves that the Board determines to be necessary and desirable; (v) the payment of any ad valorem or other taxes due on any property owned by the Association; (vi) the payment of any costs or expenses incurred with respect to the provision of any facilities and services related to the Private Streets and other portions of the Subject Property determined to be necessary by the Board; (vii) street lighting, street sweeping and street maintenance of any private streets in the Subject Property and maintenance of entry markers, greenbelts, signs, detention ponds, retention areas, esplanades and landscape reserves and other common areas owned by the Association or dedicated to a governmental entity; (viii) planting, landscaping, watering, irrigation, mowing, tree surgery and general upkeep and maintenance of plants or landscaped areas of the common areas owned by the Association; (viii) reimbursement of reasonable and customary costs and expenses of the Association in connection with its operation and management and administration of this Declaration (including, but not limited to, common engagement of third party architects, engineers, attorneys, accountants, managers and other consultants in connection with the administration of this Declaration) and such other non-capital items of expenses as may be deemed by the Association, in its discretion and in good faith, to be necessary or desirable for the carrying out of this Declaration; and (ix) promotion of the recreation, health, and safety (including, without limitation, security patrols and other security measures if deemed necessary by the Association; provided however, that the Association shall not be obligated to provide security patrols or other security measures and the provision of any security measure does not guarantee the safety of any Owners, employees, guests, contractors or invitees or that the property of any Owner, guest, contractor or invitee will not be damaged, vandalized or stolen) and the general welfare of the Owners and lessees the Subject Property.

C. Maintenance Fund. The Assessments collected by the Association shall be paid into a maintenance fund (the "Maintenance Fund") and shall be held, managed, invested and expended by the

Board, in its sole good faith discretion, for any of the permitted purposes. The Board and the Directors shall not be liable to any person or entity as a result of any action taken by the Board with respect to the Maintenance Fund, except for willful misconduct or fraud.

D. Basis of Maximum of Annual Assessments. Notwithstanding the provisions of Paragraph A of this Article 8 to the contrary, the maximum initial annual Assessment shall be two cents (\$0.02) per square foot of land area in the Subject Property. From and after January 1, of the next succeeding calendar year following the imposition of the Assessment, the annual Assessment may be increased as follows:

The Developer may determine and certify that the then current annual Assessment is not sufficient to meet reasonable expenses of maintaining and enforcing this Declaration and, the Developer may increase the annual Assessment by an amount which shall not exceed the greater of: (i) 10% or (ii) an amount equal to the yearly rise in the United States Department of Labor, Bureau of Labor Statistics ("BLS"), Consumer Price Index (for All Urban Consumers CPI-U) Houston-Galveston-Brazoria, TX. – All Items (1982-84 = 100) (the "Index") as of July of each year from the preceding July. If, however, the Index should be discontinued, such calculation shall be made by use of another reputable Index selected by the Board which is recognized by BLS and is comparable to the Index. Additionally, if the base period of the Index (currently 1982-84 = 100) is hereby modified, the base period used in making the aforesaid calculation shall be appropriately adjusted by the Board to reflect such modification and if the Index is published in such manner that an Index figure is not available each July, then the Index figure published for the most recent month preceding July shall be used.

The annual Assessment shall not be increased more than once in any calendar year. However, the right to increase the annual Assessment, as aforesaid, shall be cumulative and in the event the annual Assessment is not increased to the maximum amount allowed for any one or more years, then the Developer shall thereafter have the right to increase any subsequent annual Assessment to an amount equal to the maximum annual Assessment that would have been chargeable for that year as if the annual Assessment had been increased by the maximum allowable hereunder for each of such prior years.

Notwithstanding the foregoing provisions of this Paragraph 8.D, in the event the Board determines that it is necessary to increase the annual Assessment more than the amount prescribed by the formula, the Board, by majority vote, and the affirmative vote of two-thirds (2/3rds) of those Owners who are voting in person or by proxy at a meeting duly called for such purpose, may increase the maximum annual Assessment for the subject calendar year. Once the maximum annual assessment for any calendar year is increased pursuant to the provisions of this grammatical paragraph, the amount to which it has been increased shall be the amount used to determine the maximum annual Assessment for the next calendar year.

E. Subordination of Assessment Lien to Mortgages. The liens securing the Assessments provided for herein shall be subject and subordinate to (i) all liens for taxes or assessments levied by the City, County and State Governments or any political subdivision or special district thereof and (ii) the lien of any duly-recorded first and/or second mortgage lien or first and/or second lien deed of trust upon one or more Tracts made in good faith and for purchase money or improvements. The sale or transfer of any Tract shall not affect the assessment lien. However, the sale or transfer of any Tract which is subject to any first or second mortgage lien, pursuant to a foreclosure of such lien or a conveyance in lieu of foreclosure, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve the new Owner of such Tract from liability for any assessment thereafter becoming due according to the terms herein contained or from the lien thereof.

F. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from the payment of assessments: (a) any areas designated as Common Areas by the Developer and accepted by the Association; and (b) all property dedicated to and accepted by any governmental authority or public utility.

G. Annual Financial Report. The Association shall deliver to each Owner an unaudited annual financial report as required by the Texas Nonprofit Corporation Act not later than sixty (60) days after the end of each calendar year.

9.

PROPERTY OWNERS' ASSOCIATION

The administration of the Subject Property shall be governed by the PORT CROSSING ASSOCIATION, a Texas non-profit corporation ("Association") to be formed not later than one hundred eighty (180) days following the closing of the sale of the first Tract out of the Subject Property. The Association shall act through a Board of Directors ("Board") of not less than three (3) Directors who need not be members of the Association. The initial Directors of the Association shall be selected by the Developer. The initial Directors for the Association shall hold office for an initial term of three (3) years and, thereafter, until their successors are duly elected and qualified. After the expiration of the term of the initial Directors, the members of the Association shall elect a Board of Directors as provided for in the Bylaws of the Association. Directors shall receive no compensation for their services, but, by resolution of the Board, a Director may be reimbursed for reasonable expenses and costs incurred by him in carrying out his duties. The Board shall have the power to enact any rules, bylaws, procedures and regulations, not inconsistent with this Declaration.

"Transfer Date," as used herein, shall mean the earlier to occur of: (i) January 1, 2026; (ii) thirty (30) days following the date that seventy-five percent (75%) or more of the total square footage of the Subject Property has been conveyed to parties not related to or affiliated with the Developer; or (iii) the Developer's recordation of a notice in the Real Property Records of Harris County, Texas, to the effect that the Transfer Date has occurred for purposes of this Declaration.

The Directors and the officers of the Association shall not be personally liable to the Owners, Developer or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any submitted plans), except for gross negligence, willful misconduct or bad faith. Every person who submits any Plans to the Board for approval as herein provided agrees by submission of such Plans, and every lessee or Owner or person claiming by or through an Owner or lessee agrees by acquiring title to any Tract or interest in a Tract, that it will not bring any action or suit against the Association or any director or officer, or any one or more of them, their respective agents, employees, members or assigns, to recover any damages as a result thereof, except for gross negligence, willful misconduct or bad faith.

Any Owner of a Tract within the Subject Property shall be a member of the Association, and shall remain a member for the period of its ownership. Each member of the Association shall be entitled to one (1) vote for each ten thousand (10,000) sq. ft. of the total square footage of the Tract it owns; provided, however, that in the event of the expansion of the Subject Property subject to this Declaration, the votes to which an Owner of land within the Subject Property is entitled shall be revised and adjusted to a ratio that said number of square feet owned bears to the total number of square feet in the Subject Property, as expanded. There shall be no fractional votes. No Owner shall be entitled to vote in any election concerning any action submitted before the Members for their vote during any period in which any such fees or assessments assessed against such Owner are delinquent or such Owner is otherwise in violation of this Declaration as to which such Owner has received written notice of such violation.

10.

SEVERABILITY

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

11.

ADDITIONAL RESTRICTIONS

The Developer may make additional restrictions applicable to any Tract by appropriate provisions in any deed or deeds hereafter conveying any land within the Subject Property, without otherwise modifying the general plan outlined above, and such other restrictions shall inure to the benefit of the Owners of any other land in the Subject Property in the same manner as though they had been expressed herein. Without the consent of any other party, including any Owner, Developer shall have the right to extend the restrictions and covenants hereof to any land hereafter owned or acquired by Developer, any boundary of which lies within one mile of the Subject Property ("Additional Land") by filing a supplemental declaration, in the Real Property Records of Harris County, Texas, adding the Additional Land to the Subject Property subject to this Declaration. Nothing herein contained, however, shall be deemed to impose any restrictions on any portion of the Additional Land unless Developer, as the owner of the Additional Land or any portion thereof, thereafter elects to subject any portion of the Additional Land to the general plan outlined above by expressly providing for same in any deed or other instrument executed by the Developer, as the owner of the portion of the Additional Land to be made subject to these covenants and restrictions.

12.

TERM

These covenants shall run with the land comprising the Subject Property and shall be binding on all Owners and lessees of any of the Subject Property and their respective heirs, executors, Boards, devisees, successors and assigns, and all persons claiming under them, from the date on which these covenants are recorded though January 1, 2056, after which time these covenants shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months prior to January 1, 2056 (or the end of any extended period) an instrument executed and acknowledged by the persons or entities who then own at least two-thirds (2/3rds) of the total square footage of land in the Subject Property (exclusive of public streets) has been recorded in the Real Property Records of Harris County, Texas, terminating these covenants in whole or in part at the end of any such original or extended term.

13.

AMENDMENTS

Notwithstanding the provisions of Article 12 to the contrary, this Declaration may be amended at any time (subject to compliance with all applicable laws, codes, regulations, and ordinances of the City of La Porte) by the written action of the Owners of at least two-thirds (2/3rds) of the total square footage in the Subject Property, regardless of whether such two-thirds (2/3rds) ownership consists of Developer alone, Developer and Other Owners or Other Owners alone; provided, however, that if such two-thirds (2/3rds) ownership consists of Owners alone, then so long as Developer retains fee simple legal title to at least five (5) acres in the Subject Property, such Other Owners must obtain Developer's written consent to any amendment of this Declaration and Developer agrees to consider any proposed amendment in the exercise of good faith judgment and to describe its objections thereto, if any, in writing in reasonable detail. No amendment shall be effective unless made and recorded ten (10) days in advance of the effective date of such change and unless written notice of the proposed amendment is sent to Developer and every Owner at least thirty (30) days in advance of any action taken prior to recordation. No amendment shall be applicable to existing Improvements on the Subject Property (or the replacement of such Improvements following casualty or other damage if restored in a substantially similar manner and the restoration is in compliance with all applicable laws), unless such instrument(s) shall be signed by all of the then Owners of the Subject Property. Notwithstanding anything herein to the contrary, Developer shall have and reserves the right at any time and from time to time, without the joinder or consent of any owner or other party, to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record by Developer for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein or clarifying any provision therein; provided, however, that

any such amendment shall be consistent with and in furtherance of the general plan of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner; and provided further, that nothing herein shall be construed to permit an amendment providing for a use inconsistent with or prohibited by the provisions of this Declaration.

14.

MISCELLANEOUS

A. Protection of Name. No Owner shall use the phrase "Port Crossing" or any word or words similar thereto in connection with any Tract or any business operated in connection with any Tract, without the prior written consent of Developer. The restriction contained in this Paragraph A is for the sole benefit of and may be enforced only by Developer.

B. Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, facsimile machine (with confirmation of delivery) or overnight air courier service. If served by mail, each notice shall be sent postage prepaid, certified mail, return receipt requested, addressed to any person at the address given by such Person to the Association in writing for the purpose of service of such notice, or to the Tract of such person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

C. Right of Entry; Enforcement by Self Help. The Association shall have the right, in addition to and not in limitation of all the rights it may have under this Declaration, to enter upon any Tract, including any Improvements located thereon, for emergency, security, maintenance, repair or safety purposes, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or occupant of the Tract or Improvements.

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Improvements or any portion of a Tract to abate or remove, using such force as reasonably may be necessary, any Improvement to Property, other structure, or thing or condition that violates this Declaration, the Bylaws, any Rules and Regulations, or any use restrictions. Unless an emergency situation exists, such self-help shall be preceded by written notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.

All such entries shall be made with as little inconvenience to the Owner as is practicable in the judgment of the Association and any damages caused thereby (as distinguished from repairs with respect to which the Association is entitled to a reimbursement assessment) shall be borne by the Maintenance Fund of the Association.

D. Platting/Replatting. If for any reason, the Developer should be required or deem it necessary to plat or replat the Subject Property, or any portion thereof, such platting or replatting may be accomplished without the consent of the Other Owners, or their mortgagees; provided, however, that the Developer has obtained the approval of the City and other governmental body or bodies, as applicable, for such platting or replatting. In addition, if for any reason an Owner other than the Developer, should find it necessary or be required to plat or replat all or a portion of the Tract owned by him, such Owner may proceed with the platting or replatting without the consent of the Other Owners, or their mortgagees; provided, however, that (i) such Owner has obtained the approval of the appropriate governmental body or bodies, and (ii) the Board has given its prior written consent to such platting or replatting, which consent shall not be unreasonably withheld or delayed.

E. Violations of Law. Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Subject Property hereby is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

F. Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

G. Restrictions Construed Together. All of the provisions of this Declaration shall be construed liberally to promote and effectuate the fundamental concepts of the Subject Property, as set forth in the Declaration.

H. Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

I. Estoppel Certificates. Within fifteen (15) days after receipt of a written request from any Owner, the Association shall certify by written instrument, duly executed and acknowledged, to any lender, purchaser or any other person specified in the request: (i) whether this Declaration has been supplemented or amended, and if so, the substance of the supplement or amendment; (ii) whether the Owner is in violation of any provision of this Declaration, and if, so, the description of the violation; (iii) the then current amounts of Assessments and the status of their payment by such Owner; and (iv) any other matters may be reasonably requested by the Owner.

J. Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

K. Force Majeure. "Force Majeure," as used herein, shall mean any delays in performance by a party required hereunder due to strikes, riots, acts of God, shortages of labor or materials, work, governmental laws, regulations or restrictions, inclement weather or any other causes of any kind whatsoever which are beyond the reasonable control of such party, in which event, the party prevented from performing as a result of such Force Majeure delays, shall be entitled to an extension of the time for performance equal to the duration of such Force Majeure delays.

L. Governing Law. This Declaration shall be construed and governed under the laws of the State of Texas.

M. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may be transferred by operation of law to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added by operation of law to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a meter. The surviving or consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Subject Property, together with the covenants and restrictions established upon any other property, as one plan, subject also to the provisions of the Declaration.

N. Delay in Enforcement. No delay in enforcing the provisions of this Declaration as to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

EXECUTED this 26th day of September, 2006.

PORT CROSSING LAND, LP,
a Texas limited partnership

By: Port Crossing Land GP, LLC,
a Texas limited liability company
its general partner

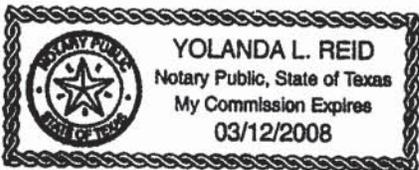
By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS

§
§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on this 26th day of September, 2006, by RUSSELL D. PLANK, Vice President of PORT CROSSING GP, LLC, a Texas limited liability company, general partner of Port Crossing Land, LP, a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

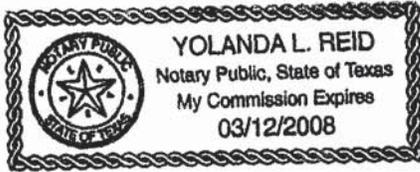
POWELL ROAD LOGISTICS, L.P.,
a Texas limited partnership

By: Powell Road Logistics GP, LLC,
a Texas limited liability company,
its general partner

By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 26th day of September, 2006, by RUSSELL D. PLANK, Vice President of POWELL ROAD LOGISTICS GP, LLC, a Texas limited liability company, general partner of Powell Road Logistics, L.P., a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

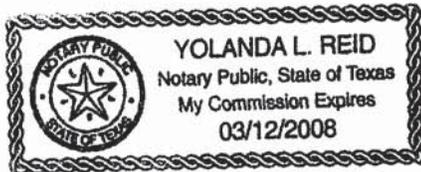
FLPCW, LP,
a Texas limited partnership

By: FLP Candle GP, Inc.,
a Texas corporation,
its general partner

By George Cook
George Cook, President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 26th day of September, 2006, by GEORGE COOK, President of FLP Candle GP, Inc., a Texas corporation, general partner of FLPCW, LP, a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

ATTACHMENT A

NATIONAL PROPERTY HOLDINGS, L.P.,
a Texas limited partnership

By: National Property Holdings GP, LLC,
a Texas limited liability company
its general partner

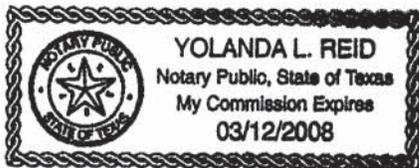
By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on this 20th day of September, 2006, by RUSSELL D. PLANK, Vice President of NATIONAL PROPERTY HOLDINGS GP, LLC, a Texas limited liability company, general partner of National Property Holdings, L.P., a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

ATTACHMENT A

DEL PISO INVESTMENTS, LLLP, an Arizona limited liability limited partnership

By: Harl Avenue Investments, L.L.C., an Arizona limited liability company, its general partner

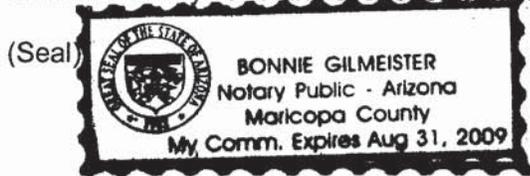
By: [Signature]
Gary Skarsten, Manager

By: [Signature]
Matthew Huarte, Manager

STATE OF ARIZONA §
COUNTY OF ARIZONA §
MARICOPA §

This instrument was acknowledged before me on this the 26 day of September, 2006, by Gary Skarsten, Manager of Harl Avenue Investments, L.L.C., an Arizona limited liability company, general partner of Del Piso Investments, LLLP, an Arizona limited liability limited partnership, on behalf on said limited liability limited partnership.

Given under my hand and seal of office this 26 SEPTEMBER day of July, 2006, A.D.

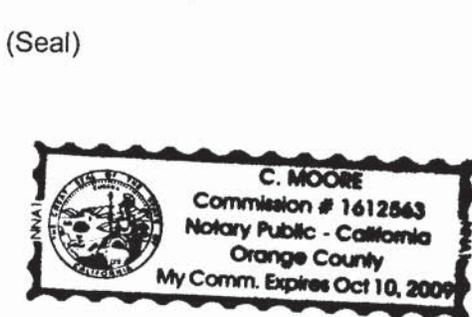


[Signature]
NOTARY PUBLIC, STATE OF ARIZONA
My Commission Expires: 8-31-2009

CALIFORNIA
STATE OF ARIZONA §
COUNTY OF Orange §

This instrument was acknowledged before me on this the 25 day of September, 2006, by Matthew Huarte, Manager of Harl Avenue Investments, L.L.C., an Arizona limited liability company, general partner of Del Piso Investments, LLLP, an Arizona limited liability limited partnership, on behalf on said limited liability limited partnership.

Given under my hand and seal of office this 25 day of July, 2006, A.D.



[Signature]
NOTARY PUBLIC, STATE OF CA
My Commission Expires: 10/10/2009

Exhibit E
TRAFFIC CONTROL PLAN
PORT CROSSING COMMERCE CENTER
An Approximate 300 –acre Mixed Use Development
La Porte, Texas

Port Crossing Commerce Center, an approximate 300-acre business park in the City of La Porte, Texas, is being developed within a PUD zoning district for retail, office, warehousing and distribution, and rail-served industrial. Pursuant to the Special Conditional Use Permit (SCUP) by the City, this document is to provide guidance as to the control of internal and external automobile and truck traffic generated by the Project. While the General Plan for the Project generally designates the various uses, by ordinance each individual building or development site will require further Site Plan review. That review process will, therefore, include an expansion of the Traffic Control Plan from time to time to address site specific issues particular to that use or plan as an addendum to this document.

The goal of the Traffic Control Plan is to insure the efficient flow of traffic to and from and within the Project in a manner that will minimize additional adverse impacts to the existing thoroughfare system of the area. It is intended that the guidance established herein shall be enforced by the Port Crossing Property Owners Association (Association) with oversight by the City. This guidance is to be used in the preparation of development site plans as well as the implementation of operational parameters for internal control of all vehicular traffic be the Owner-Developer and assigns, including project managers, tenants, and subsequent individual site owners or businesses.

The site is served by a controlled access principle arterial, State Highway 146, with an existing interchange at Wharton Weems Boulevard, a 4-lane collector street, bisecting the Project and turning into S. 16th Street as a parallel roadway to S.H. 146. Due to the relatively limited service area of the Wharton Weems and S. 16th Street connection, it will more than adequately accommodate anticipated traffic generated by such a Project.

Therefore, managers, tenants, and business owner-operators are to provide routing instructions for all traffic serving sites within the Project. This shall included employees, company trucks and vehicles, customers, carriers, vendors or regular contractors making repetitive deliveries.

TRAFFIC CONTROL GUIDELINES

The following initial guidelines address the essential initial issues of traffic control relative to the Project and may be amended as more detailed planning and site specific issues develop.

All Project generated traffic shall be directed to ingress and egress the site at the S.H. 146 and Wharton Weems Blvd. intersection. Every effort is to be made to discourage or prevent traffic to or from Fairmont Parkway. Internal traffic is to also be directed to the S.H. 146-Weems intersection, especially truck traffic.

Site plan design where practicable shall utilize common driveways and cross-access easements (drives) between sites to facilitate quality and effective internal traffic flow, circulation within the Project.

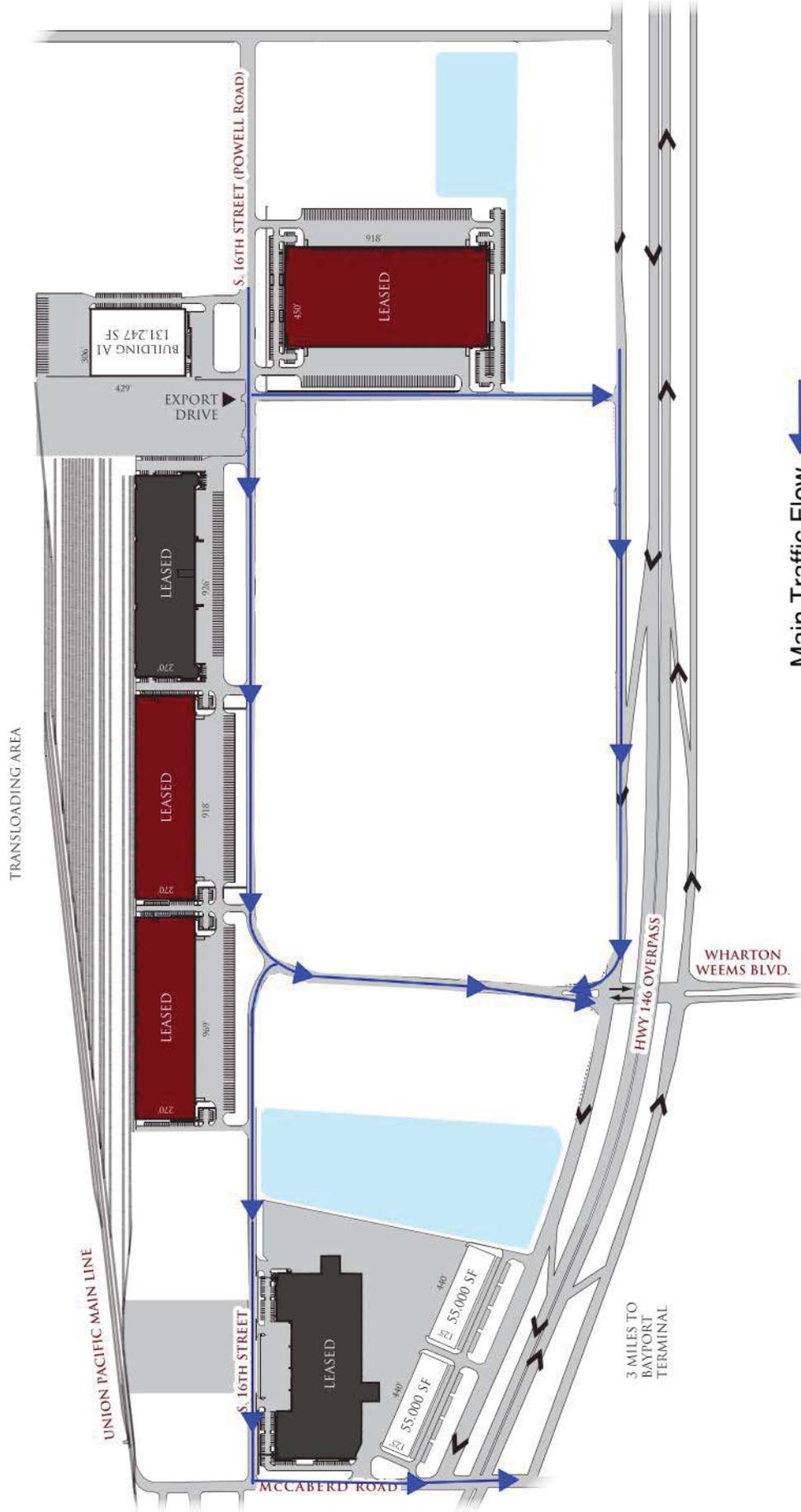
Driveways, especially to S.H. 146, shall be minimized to the extent practicable and within the limits stated within the SCUP. Each build site must be allowed at least one driveway if requested, but sharing of driveways should be encouraged as a policy. Location of driveways opposite each other along Wharton Weems Blvd. should be encouraged, particularly where esplanade openings might exist.

Driveways along S. 16th Street shall be designed and signed accordingly to facilitate the flow of truck traffic toward the S. H. 146 intersection. A driveway design that would preempt truck traffic to the north toward Fairmont Parkway is to be mandated, except for those destined to facilities that may exist south of Fairmont Parkway.

Esplanades, esplanade openings, including left turn lanes, and driveway curb returns shall be designed to safely accommodate truck traffic with minimum impacts on the other roadway traffic. Where it is deemed possible and practicable, consideration shall be given to the separation of automobile and truck entrances, driveways and parking.

All aspects of traffic design discussed herein, including by not limited to geometric design, traffic signs, and standards shall conform to the applicable provisions of the City Code of Ordinances, the Texas Manual on Uniform Traffic Control Devices, and recommendations and standards of the traffic industry (AASHTO).

TRAFFIC CONTROL PLAN



DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into between Port Crossing Land, LP; a Texas limited partnership (“Owner-Developer”); their Successors and Assigns, including the “Other Owners” (hereafter defined) and the CITY OF LA PORTE, TEXAS, a Texas Municipal Corporation (“City”) on the ____ day of _____, 2006.

Recitals

Owner-Developer has proposed development of an approximately 300-acre tract in the City of La Porte, as the Port Crossing, which is referred to as the Tract and defined hereinafter in Article I. Owner-Developer and the Other Owners plan to develop the Tract, presently zoned PUD, for retail, commercial, and business park with some industrial uses. Owner-Developer and the Other Owners shall construct municipal utilities, including streets, a water distribution system, wastewater collection system, and the storm drainage/detention system that will connect with the existing City of La Porte and other regional systems in accordance with development regulations and policies of the City, Harris County, and Harris County Flood Control District.

Powell Road Logistics, L.P. (“Powell Road Logistics”), a Texas limited partnership, National Property Holdings, L.P., a Texas limited partnership, Del Piso Investments, LLLP, a Arizona limited liability partnership and FLPCW, LP, a Texas limited partnership, (collectively, the “Other Owners”), the owners of certain tracts of land also containing a total of approximately 63 acres out of the Tract are joining in this Agreement for the purpose of confirming their agreement to develop their respective portions of the Tract pursuant to the provisions of this Agreement.

The City has required, and Owner-Developer and the Other Owners have agreed, that the Tract will be developed in accordance with the General Plan approved by the City (as defined below and attached hereto).

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein, the City and Owner-Developer agree as follows:

ARTICLE I. DEFINITIONS AND EXHIBITS

1.1 Definitions. Unless the context indicates otherwise, the following words as used in this Contract shall have the following meanings:

City means the City of La Porte, Texas.

General Plan means the plan for the physical development and use of the Tract as defined herein and approved by the City on 28th day of March, 2005, as amended by the “Plat” (hereafter defined).

Owner-Developer means *Port Crossing Land, LP* or their assigns or succeeding developers (or their designated agent or agents).

Tract means the approximately 300 acres of land to be developed by Owner-Developer as described in Exhibit A.

1.2 Exhibits. The following exhibits attached to this Contract are a part of the Contract as though fully incorporated herein:

Exhibit A - Special Conditional Use Permit (“SCUP”) SCUP #SCU 05-003, dated 3/28/05

Exhibit B - General Plan, consisting of the final plat (“Plat”) to be recorded.

Exhibit C - Land Use Exceptions

Exhibit D - Draft Declaration of Restrictive Covenants for Port Crossing applicable to all construction and uses.

Exhibit E- Traffic Control Plan

ARTICLE II. GENERAL PLAN AND LAND USE

2.1 General Plan and Land Use. Owner-Developer and Other Owners shall develop their respective portions of the entire Tract in accordance with the General Plan, SCUP and this Agreement approved by the City. The General Plan is attached as Exhibit B and additional Land Use Restrictions are provided for in paragraph 2.3. The Owner-Developer and Other Owners shall only be responsible for compliance with the General Plan, SCUP and this Agreement with respect to their respective portions of the entire Tract.

2.2 Amendments. The City acknowledges and Developer represents that Developer’s intent is to develop the Tract as a predominantly commercial PUD development, with some industrial components consistent with City’s Land Use Plan subject to certain exceptions listed below. Developer or Developer’s successors shall provide appropriate amenities and support facilities as set forth on the General Plan, which is attached to this Agreement. City acknowledges that Developer intends to develop the Tract in phases, and that all development shall be consistent with the Special Conditional Use Permit (SCUP), the General Plan, and this Agreement. Should Developer determine that the General Plan needs to be amended, Developer shall submit an application for amendment of the Special Conditional Use Permit, which said application shall be processed consistent with this Agreement, the current General Plan, and the Zoning Ordinance of the City of La Porte, as the same may be amended from time to time. Amendments to the General Plan, the Special Conditional Use Permit, and/or this Agreement shall be in writing.

2.3 Additional Land Use Restrictions. Owner/Developer agrees to conform all development and improvements to the Tract to the City’s Code of Ordinances and established

policies, and further agrees that land uses shall be further restricted according to Exhibit C, except for the permitted uses authorized by Exhibit "C".

ARTICLE III. RESTRICTIVE COVENANTS

3.1 Development of Restrictive Covenants. Owner-Developer has developed a Draft Declaration of Restrictive Covenants for Port Crossing, which are attached to this Agreement as Exhibit "D". These protective covenants and deed restrictions will apply to and be binding upon the Tract, and shall be in form substantially similar to Exhibit "D". The covenants and deed restrictions shall be approved by the City and shall be recorded concurrently with each recorded plat.

ARTICLE IV. TERMINATION

4.1 Term. This Agreement shall have a term commencing on the date first written above, and continuing until the date in which all portions of the Tract have been platted and developed (with construction of all streets and utilities on the Tract as reflected by the Plat completed or installed and financed by the Owner-Developer.

Failure of Owner-Developer to begin construction in accordance with the Special Conditional Use Permit within one year after issuance of said permit, or as scheduled under the terms of the Special Conditional Use Permit, shall terminate this Agreement. Owner-Developer may, before the expiration of one year, request an extension of time from the Planning and Zoning Commission, in the event that construction has not started in accordance with the Special Conditional Use Permit.

ARTICLE V. OPEN SPACE/TRAIL, BUFFERING AND BEAUTIFICATION

5.1 Open Space/Pedestrian Trail System. The Owner-Developer shall provide common open space as shown in Comprehensive Plan and the General Plan, including any required portion of planned City trail system within the project consisting of public sidewalks within the rights-of-way noted on the Plat on at least one side of each street, together with landscaping adjacent to such sidewalks pursuant to the landscape plan approved by the City. Owner-Developer also will cooperate with any additional trail system plan on property dedicated to the City in fee or as an easement within the drainage easement and/or detention pond/drainage system shown on the General Plan.

It is recognized that, until the final design of the detention pond/drainage system is approved, the exact location and dimensions of these facilities is unknown. When the final design is approved the City will evaluate the potential for use of these areas as public recreation amenities.

At that time and with mutual consent, the City may elect to accept these facilities either in easement or fee. The initial development of the detention pond/drainage system and perimeter landscaping of these facilities shall be the responsibility of the Owner - Developer. In coordination with the Owner-Developer and the Harris County Flood Control District, the City will accept the drainage and detention facilities as public domain with right of entry,

Maintenance of said facilities will rest solely with the Owner-Developer and the property owner's association governing the Tract.

5.2 Buffering and Beautification. The Owner-Developer shall implement a uniform and/or compatible landscape plan for all phases of the entire project that will address landscaping provisions not only adjacent to Wharton Weems Blvd. and Powell Road, but also within the building setbacks and landscape easements or reserves throughout. A Landscape Buffer (a minimum of 50' wide) shall be provided along the west side of Powell Road and shall include extensive screening-type vegetation. A landscape buffer, a minimum of 50' wide, will also be provided along State Highway 146. Landscape reserves shall also be included adjacent to all roadways, including the east side of Powell; but rather than screen, shall be landscaped compatible with the ultimate use of that adjacent property.

5.3 Signage. The Owner-Developer shall implement a sign standards policy, as part of the Declaration of Restrictive Covenants (Exhibit "D") consistent with the City's Code of Ordinances as guidance to insure effective and uniform signage is employed throughout the project. This policy will include uniform and/or compatible project identification monuments, business signage, street and other traffic directional devices conforming to the Tract's traffic control plan and deed restrictions.

5.4 Ownership and Maintenance. Ownership of the landscape buffers, reserves and easements will be held by fee ownership of adjoining property or by the Property Owners Association (POA), subject to conditions of the deed restrictions and landscape plan. The maintenance of the buffers, reserves and easements will be the responsibility of the contiguous property owners pursuant to provisions of the deed restrictions, enforced by the POA.

The Open Space/Pedestrian Trail System shall be constructed within the drainage easements, the detention pond/drainage system, landscape reserves, or public right-of-ways as dictated by the final detention design. Ownership and maintenance of the Open Space/Pedestrian Trail System and drainage/detention pond system shall be determined according to Article 5.1 of this Agreement.

ARTICLE VI. SCHEDULE

6.1 Schedule. The Owner-Developer or Other Owners, as applicable, shall establish a specific schedule for the development of and construction improvements on the Tract with the end user(s). However, in lieu of and as the basis of that detailed schedule, the following work program is anticipated:

- Initiation of a complete engineering study, including drainage and preliminary infrastructure design.
- Detailed engineering design for Phase One, being all or a substantial part of the area identified herein as Section One. This would include a rail connection to the main line and a minimum spur connection to the first building anticipated, water and sanitary sewer service, initial drainage, and detention to accommodate Phase One;

- Construction of Wharton Weems Blvd., Powell Road, and Export Drive shall be completed in accordance with the Traffic Study recommendations or as needed for development purposes;
- Initiation of procedure to abandon and relocate a portion of Powell Road, south of the projection of Wharton Weems Blvd. within one (1) year of SCUP approval;
- Platting, site plan, and detailed engineering plan review by the City of La Porte and others;
- Initiation of construction pursuant to item 6.1 above, identified as Phase One; and
- Continuation of remainder of development as rapidly as market demands.

ARTICLE VII. FIRE PROTECTION, HAZARDOUS MATERIALS & SAFETY

7.1 Fire Protection. The Owner-Developer shall formulate a plan for fire protection to serve the Tract by separate agreement with the POA and respective grantees.

7.2 Hazardous Materials. The Owner-Developer agrees no hazardous materials as identified in state and federal standards (NEPA) as well as City Fire Code, shall be stored on site. Compliance will be enforced by the POA in concert with the City.

7.3 Safety. The Owner-Developer shall formulate a public safety and training plan with the City and POA, to ensure safe, efficient handling and storage of materials prior to issuance of a building permit.

ARTICLE VIII. TRAFFIC CONTROL PLAN

8.1.1 Traffic Control Plan. The Owner-Developer has established a Traffic Control Plan (shown on the attached Exhibit "E") for the entire project to regulate to the extent practical project-generated vehicular traffic. In Section One, based on the target market use, the Traffic Control Plan will include designated truck routes to and from the site, segregation of automobile traffic, limitation of access from public streets (driveways) and utilization of common cross easements between tracts for internal circulation.

8.2 Truck Traffic. This controlled traffic will ultimately be directed to State Highway 146 via Powell Road to Wharton Weems Blvd., to standards approved by Harris County as shown on Exhibit "B" - General Plan. Project driveways will be constructed to induce proper directional movement to preempt to the extent practical northbound traffic on Powell Road. This will be complemented by traffic signage as appropriate. In addition, Owner-Developer shall employ routing plans, driver instruction, and other controls as necessary to obtain compliance of carriers, employees, and regular contractors or service vendors.

8.3 Driveway Access. The Owner-Developer shall establish driveway access controls that shall be controlled through restrictive covenants, architectural controls and City Site Plan review. This will include conditions and design standards consistent as to size, but fewer in number as established in TxDOT Driveway Manual, Harris County, Texas, and the City Zoning Code (106-835) pursuant to specific site plan review. Unless otherwise approved during review of

preliminary plats and the Plat, driveways along SH146 entering this Tract shall be limited to a total of eighteen (18), but in all cases, each individual reserve with frontage on SH146 shall have at least one opening. Provision shall be made, where practical, for internal cross-access easements to maximize ingress, egress and circulation to minimize congestion on public rights-of-way and to encourage traffic to be directed to Wharton Weems Blvd. interchange.

8.4 Transportation Issues The Developer shall continue to work with the City, Harris County and other public and private sector interests to implement the timely study and/or construction of transportation components.

ARTICLE IX. SITE RAIL TRAFFIC

9.1 Site Rail Traffic. The Other Owners and/or Rail Logix, LP (“Rail Logix”), a Texas limited partnership, an affiliate of one of the partners of Owner-Developer, as applicable, will continue to work with City and such parties’ rail consultants, as evidence of the commitment to the City to improve rail efficiency in the area, reduce conflicts at Fairmont Parkway, and potentially decrease current rail impacts. On-site rail facilities and operations shall be controlled by Rail Logix in order to maximize rail efficiency and minimize peak hour conflicts with vehicular traffic at Fairmont Parkway. Owner – Developer, Other Owners and Rail Logix agree and acknowledge that the rail yard as depicted on the General Plan shall be limited to a maximum of 22 rail lines and that no rail lines or sidings will extend to the east side of Powell Road.

ARTICLE X. UTILITIES, DRAINAGE

10.1 Utilities, Drainage. The Owner-Developer shall design and construct adequate water, wastewater, and drainage facilities to serve each phase of this project in accordance with City requirements and as further defined by this Agreement. As to water and sanitary sewer, this would include a water system that would deliver 4-6,000 gallons per minute necessary for sprinklered fire protection with a loop connection to the 16” main on the east side of S.H. 146 and a gravity wastewater disposal system that flows into a 60” trunk line on “K” street south of Fairmont Parkway.

The Developer will provide a drainage study for the Tract. The study and design of drainage improvements shall meet the requirements and approval of the City and Harris County Flood Control District. Owner-Developer’s representative agrees to meet with City, prior to design of public utilities, to discuss design criteria standards and policies. City shall approve all construction plans and specifications for public improvements in accordance with the applicable Public Improvement Criteria Manual.

ARTICLE XI. BUILDING LINES

11.1 Building Lines. The Owner-Developer shall establish building lines appropriate to the use, but not less than those prescribed in the City Code of Ordinances. Within the industrial Land Uses area west of Powell Road there will be a landscaped 50-foot buffer and building line along Powell Road. Similarly, along State Highway 146, a 50-foot landscape buffer and

building line shall be maintained. These respective 50- foot landscape buffers shall be kept free from all other uses with the exception of signage, drainage and detention improvements, and approved drives, parking and entrances. Owner-Developer agrees that other building lines will be either equal to or greater than that required by ordinance for the land use shown and shall be based on site use and orientation of the improvements or as shown on the General Plan.

ARTICLE XII. MISCELLANEOUS

12.1 Sale of Tract; Assignability. Any contract by Owner-Developer to sell the entirety or any portion of the Tract to a person or entity intending to develop the tract or such portion thereof (a "Successor Developer," whether one or more) and any instrument of conveyance for the entirety or any portion of the Tract to such Successor Developer shall recite and incorporate this recorded Contract and exhibits hereto and provide that this Contract be binding on such Successor Developer.

12.2 Force Majeure. If by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of inability then claimed, but for no longer period; and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, arrests, restraining of government and people, civil disturbances, explosions, or partial or entire failure of water supply resulting in an inability to provide water necessary for operation of the water and sewer systems hereunder. Force Majeure may not be claimed by Owner-Developer under any set of circumstances prior to commencement of construction on the Tract.

12.3 Law Governing. This Contract shall be governed by the laws of the State of Texas and no lawsuit shall be prosecuted on this Contract except in a federal or state court of competent jurisdiction.

12.4 No Additional Waiver Implied. No waiver or waivers of any breach or default by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

12.5 Addresses and Notice. Unless otherwise provided in this Contract, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to the other (except bills), must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Contract, from and after the expiration of

three (3) days after it's deposited. Notice given in any such other than the manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of La Porte
Attn: City Manager
604 West Fairmont Parkway
La Porte, Texas 77571

If to Owner/Developer, to:

Port Crossing Land, LP
Russell Plank
3330 S. Sam Houston Pkwy. E.
Houston, TX 77047

and

Port Crossing Land, LP
Mark Studtmann
One Pierce Place, Suite 450
Itasca, IL 60143

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days written notice to the other.

12.6 Merger and Modifications. This Contract, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire agreement between the parties relative to the subject matter thereof. This Contract shall be subject to change or modification only with the mutual written consent of the parties.

12.7 Benefits of Contract. This Contract is for the benefit of the City and Owner-Developer and shall not be construed to confer any benefit on any other person except as expressly provided for herein.

12.8 Attorney's Fees. In the event of any litigation between the parties with respect to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs from the losing party.

12.9 Government Immunity Preserved. The Owner-Developer and the City agree that the City does not, by entering in to this Contract or performing any act hereunder or by failing to take any action hereunder, waive any governmental immunity that the City, its officers, employees, or representatives, have under any law.

12.10 One-Party Breach. Any breach of this agreement by one party identified and referred to herein as Owner-Developer shall not be or constitute a breach of this agreement by the other party of Owner-Developer.

12.11 Covenant Running With the Land. The obligations imposed on Owner Developers herein shall not impose personal liability on them, but shall constitute a covenant running with the land, and as such shall be binding on the present owners of the Tract as well as subsequent owners thereof.

(This space intentionally left blank)

OWNER-DEVELOPER:

Port Crossing Land, LP,
a Texas limited partnership

By: Port Crossing Land GP, LLC
a Texas limited liability company
its general partner

By: Russell D. Plank
Russell D. Plank, Vice President

Date: 9-26-06

OTHER OWNERS:

DEL PISO INVESTMENTS, LLLP, an Arizona limited
liability limited partnership

By: Harl Avenue Investments, L.L.C., an Arizona
limited liability company, its general partner

By: [Signature]
Gary Sharsten, Manager

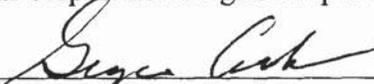
By: [Signature]
Matthew Huarte, Manager

Date: 9/26/06

FLPCW, LP

a Texas limited partnership

By: FLP Candle GP, Inc.,
a Texas corporation its general partner

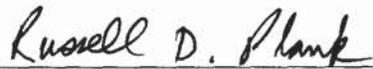
By: 
George Cook, President

Date: 9-28-06

National Property Holdings, L.P.,

a Texas limited partnership

By: National Property Holdings GP, LLC,
a Texas limited liability company
its general partner

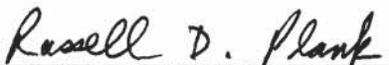
By: 
Russell D. Plank, Vice President

Date: 9-26-06

Powell Road Logistics, L.P.,

a Texas limited partnership

By: Powell Road Logistics GP, LLC
a Texas limited liability company,
its general partner

By: 
Russell D. Plank, Vice President

Date: 9-26-06

CITY OF LA PORTE, TEXAS

By: _____
City Manager

Date: _____

ATTEST:

Martha Gillett, City Secretary

APPROVED:

John D. Armstrong, Assistant City Attorney
Exhibit C

Special Conditional Use Permit #SCU 06-006

This permit is issued to: Port Crossing Land, L.P.; Powell Road logistics, L.P.; Rail Logix, GP.LLC.; and National Property Holdings, L.P. (Russell D. Plank)
Owner or Agent

3330 S. Sam Houston Parkway E., Houston, Texas 77047
Address

For development of: Approx. 300 acre Planned Unit Development, (formerly TIEP) a mixed use development further defined by a General Plan. The Planned Unit Development is further defined by a Development Agreement between the Owner/Agent listed above and the City of La Porte. This Special Conditional Use Permit and the General Plan are Exhibits to and a part of the Development Agreement.
Development Name

Legal description: 300 acres of land out of the George B. McKinstry League, A-47; William P. Harris Survey, A-30; Johnson Hunter Survey, A-35 and more particularly described by - Development Agreement.

Zoning: The zoning for the tract is Planned Unit Development. The permitted land uses for this Planned Unit Development are generally depicted on "Exhibit " - General Plan for Port Crossing. These permitted land uses are more specifically defined and/or restricted by covenants, conditions, and restrictions established and/or part of the Development Agreement.

Permit Conditions:

1. This Special Conditional Use Permit (SCUP) would be applicable to specific development anticipated or proposed by the General Plan.
2. This SCUP outlines in general terms the proposed Planned Unit Development. The developer recognizes and understands that any future construction or development of the private or public improvements anticipated by this SCUP and the General Plan shall require further submittal and approval of plats, site plans, construction drawings, and building plans, etc. In addition, this SCUP will supersede SCU#05-003.
3. This SCUP has exhibits and the Development Agreement, Covenants, Conditions, and Restrictions (CCRs) are part of this SCUP.
4. Submittals shall be in accordance with this SCUP, General Plan, the Development Agreement approved by the City of La Porte and specifically Section 106-216 & 217 of the Zoning Ordinance.
5. The Developer shall comply with all other applicable laws and ordinances of the City of La Porte and the State of Texas.

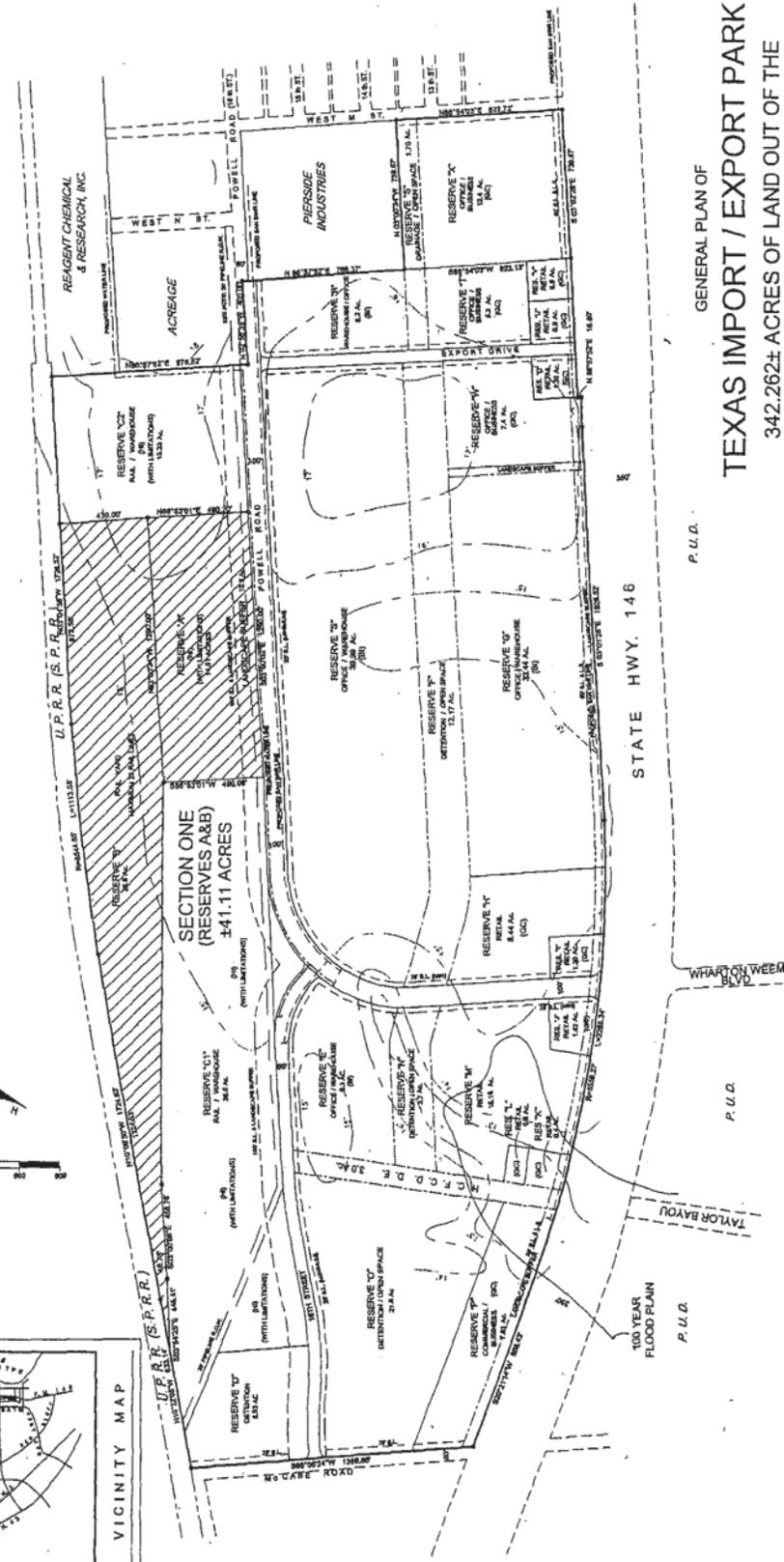
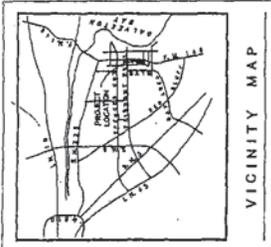
Failure to begin construction within one (1) year after issuance or as scheduled under the terms of a special conditional use permit shall void the permit as approved, except upon an extension of time granted after application to the Planning and Zoning Commission.

If construction is terminated after completion of any stage and there is ample evidence that further development is not contemplated, the ordinance establishing such special conditional use permit may be rescinded by the City Council, upon its own motion or upon the recommendation of the Planning and Zoning Commission of the City of La Porte, and the previous zoning of the entire tract shall be in full effect on the portion which is undeveloped.

Validation Date: 9-11-06

[Signature]
Director of Planning

[Signature]
City Secretary



GENERAL PLAN OF
TEXAS IMPORT / EXPORT PARK
 342.262± ACRES OF LAND OUT OF THE
 GEORGE B. MCKINSTRY LEAGUE, A-47
 WILLIAM P. HARRIS SURVEY, A-30
 JOHNSON HUNTER SURVEY, A-35
 CITY OF LA PORTE, HARRIS COUNTY, TEXAS
 NATIONAL PROPERTY HOLDINGS, L.P.
 REAL ESTATE CONSULTANTS
 SCALE: 1"=200' JANUARY 2005

OWNER / DEVELOPER
 STUART HAYNSWORTH, GENERAL PARTNER
 815 WALKER AVE., SUITE 1435
 HOUSTON, TEXAS 77002

THIS GENERAL PLAN OF TEXAS IMPORT / EXPORT PARK IS ALSO
 A CONDITION OF USE PERMIT AND DEVELOPMENT AGREEMENT.
 THIS GENERAL PLAN AND THE SPECIAL CONDITIONAL USE PERMIT
 ARE EXHIBITS TO THE DEVELOPMENT AGREEMENT.

ALL HEREIN SHOWN IS SUBJECT TO LOCATION VERIFICATION AND
 POSSIBLE RELOCATION WITHIN DESIGNATED LIMITS.

NOTE: FOR STUDY AND PLANNING USE ONLY. NO WARRANTY IS MADE
 THAT THE INFORMATION SHOWN HEREON IS ACCURATE. THE
 SAID INFORMATION REPRESENTS A GRAPHIC COMPILATION OF DATA
 OBTAINED FROM MAPS, SURVEYS, AND OTHER DOCUMENTS
 PROVIDED TO NATIONAL PROPERTY HOLDINGS, L.P.

Russell D. Plank
 RUSSELL D. PLANK

Exhibit D**Land Use Exceptions**

In reserves where the General Plan indicates "GC" uses, all uses permitted in the City of La Porte Zoning Ordinance under GC (indicated with a "P") are permitted here with the exception of:

Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
 Automotive Repair Services (751-754)
 Outdoor Sales as a Primary or Accessory Use
 Outdoor Storage as a Primary or Accessory Use
 Residential Uses

In reserves where the General Plan indicates "BI" uses, all uses permitted in the City of La Porte Zoning Ordinance under BI (indicated with a "P") are permitted here with the exception of:

Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
 Automotive Repair Services (751-754)
 Outdoor Sales as a Primary or Accessory Use
 Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers
 General Contractors, Heavy Construction (161, 162, 1541)
 Off-Premises Signs

In reserves where the General Plan indicates "LI" uses, all uses permitted in the City of La Porte Zoning Ordinance under LI (indicated with a "P") are permitted here with the exception of:

Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
 Automotive Repair Services (751-754)
 Outdoor Sales as a Primary or Accessory Use
 Outdoor Storage as a Primary or Accessory Use, including any storage of Shipping Containers
 General Contractors, Heavy Construction (161, 162, 1541)
 Manufacturing of Chemicals and Allied Products (282-285)
 Off Premises Signs
 An additional permitted use shall be SIC Manual Major Group 30 (Rubber and Misc. Plastics Products)

In Reserve "A" labeled Rail/Warehouse on the General Plan, all uses permitted in the City of La Porte Zoning Ordinance under LI (indicated with a "P") are permitted here with the exception of:

Building Construction – General Contractors and Special Trade Contractors (152-161, 171-179)
 Automotive Repair Services (751-754)
 Outdoor Sales as a Primary or Accessory Use
 Outdoor Storage as a Primary or Accessory Use, Including any storage of Shipping Containers
 General Contractors, Heavy Construction (161, 162, 1541)
 Manufacturing of Chemicals and Allied Products (282-285)
 Off Premises Signs
 An additional permitted use shall be SIC Manual Major Group 30 (Rubber and Misc. Plastics Products)
 Additional permitted uses are certain HI uses permitted in the City of La Porte Zoning Ordinance associated with rail services such as;

A rail yard with a maximum of 22 rail lines is permitted.
 Rail service to and distribution from warehouses proposed;
 Rail service to light manufacturing not otherwise exempted herein.



DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS

PORT CROSSING

TABLE OF CONTENTS

<u>Article</u>	<u>Page Number</u>
1. PERMITTED AND PROHIBITED USES	2
2. ARCHITECTURAL CONTROL.....	2
3. CONSTRUCTION-RELATED RESTRICTIONS.....	4
4. MAINTENANCE OF PROPERTY	8
5. INSURANCE, INDEMNITY AND CASUALTY LOSS.....	8
6. ENVIRONMENTAL REMEDIATION	10
7. ENFORCEMENT.....	10
8. COVENANT FOR MAINTENANCE ASSESSMENTS	11
9. PROPERTY OWNERS' ASSOCIATION.....	14
10. SEVERABILITY	14
11. ADDITIONAL RESTRICTIONS	15
12. TERM	15
13. AMENDMENTS	15
14. MISCELLANEOUS	16

DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT, PORT CROSSING LAND, LP, a Texas limited partnership (hereinafter called the "Developer"), being the owner of certain tracts of land containing a total of approximately 231 acres in Harris County, Texas, being more particularly described in Exhibit A attached hereto and made a part hereof for all purposes (said tracts of land being hereinafter referred to as the "Port Crossing" or "Subject Property") and any portion thereof platted as a separate tract or conveyed to third parties or developed by Developer or an affiliated entity being hereinafter referred to as a "Tract", for the purpose of adopting a uniform plan for the benefit of the present and future owners of any portion of the Port Crossing, does hereby adopt and establish restrictions, covenants and easements as hereinafter provided for the Subject Property.

Powell Road Logistics, L.P., a Texas limited partnership, National Property Holdings, L.P., a Texas limited partnership, Del Piso Investments, LLLP, a Arizona limited liability limited partnership and FLPCW, LP, a Texas limited partnership, the owners (collectively, the "Other Owners") of certain tracts of land also containing a total of approximately 63 acres, Harris County, Texas, being more particularly described in Exhibit B attached hereto and made a part hereof for all purposes (said tracts of land also comprising part of the "Port Crossing" or "Subject Property") are joining in this "Declaration" (hereafter defined) for the purpose of adopting and establishing the restrictions, covenants, and easements as hereinafter provided for the portion of the Subject Property owned by the Other Owners. Port Crossing, when platted and following the realignment of certain roads, will comprise approximately 300 acres.

Developer contemplates developing Port Crossing in a manner which will include public streets, a water distribution system, a sanitary sewer system, and drainage/detention facilities within the Subject Property and Developer reserves the right to create such public streets and utility-related facilities. Any portions of the Subject Property reserved or restricted or conveyed to the "Association" (hereafter defined) for private streets, utility facilities, and landscaping shall not be subject to "Assessment" (hereafter defined). Additionally, any portion of the Subject Property dedicated for utility facilities (excluding, however, any portion of a Tract) or conveyed to governmental authorities shall not be subject to the restrictions contained in this Declaration, except for the prohibited uses described in Article 1.

Developer, for itself, and its successors and assigns, and the Other Owners (as to the portion of the Subject Property owned by each of the Other Owners, respectively) hereby declare that the Port Crossing and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, equitable servitude and other provisions set forth in this Declaration Of Protective Covenants And Easements ("Declaration"). The Tracts and Private Facilities within the Subject Property shall be subject to the jurisdiction of the "Association" (hereafter defined). The covenants, conditions, restrictions, limitations, reservations, easements and equitable servitudes shall run with, inure to the benefit of, and shall be binding upon, all of the Subject Property, and each Tract and any common area therein, and shall be binding upon and inure to the benefit of (a) the Developer, its successors and assigns, (b) the Association and its successors and assigns, and (c) all persons or entities (the "Owner(s)") having or hereafter acquiring any right, title, or interest in or to any portion of the Subject Property and their heirs, legal representatives, successors and assigns, other than for security purposes.

1.

PERMITTED AND PROHIBITED USES

No Tract or portion of the Subject Property shall be used for any purposes, except for office, research and/or development, retail (subject to the further limitations herein contained), commercial, commercial processing, servicing, light industrial, manufacturing, retail sales of industrial products by manufacturers thereof or by manufacturer's representatives, warehousing or distribution purposes and services ancillary to such uses, or any combination of such uses, and heavy industrial if approved by Developer in writing. No use shall be permitted which (1) is offensive by reason of odor, fumes, dust, smoke, noise, vibrations, radiation, radio interference or pollution, (2) is hazardous by reason of excessive danger of fire or explosion, (3) otherwise constitutes a nuisance, (4) is dangerous or unsafe, (5) would injure the reputation of the Subject Property, or (6) is in violation of any city, county, state or federal law, regulation or ordinance.

The following uses shall not be permitted in or on any portion of the Subject Property: (1) any distilling, refining, smelting, meat, poultry or fish processing plant, agricultural or mining operation; (2) any mobile home park, trailer park, labor camp, or stockyard (except this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance); (3) junk yard, scrap metal yard or waste material business, sales in bulk of junk, automobile wrecking yard, salvage yard, asphalt plant, any storage, dumping, disposal, incineration or reduction of hazardous waste, garbage or refuse, bus station, any fire or bankruptcy sale or auction house operation, or as an airport. (4) any mortuary or funeral home; (5) school, church or governmental office (other than a research or development or business office that does not have customers); (6) any drilling, refining, quarrying or mining operations of any kind, (7) any establishment whose primary business is the sale or rental or display of sexual materials or drug related paraphernalia or whose primary business is providing any adult only or sexually oriented service or product including, but not limited to, massage parlors, topless establishments, any "adult" bookstore or "adult" movie theater; (8) any flea market, bowling alley, nightclub, bar, lounge, tavern, theater, amusement park or video arcade; provided, however, that this prohibition shall not prohibit placement of video machines that are incidental to the conduct of a permitted business at the Subject Property; and (9) any gaming facility or operation including, but not limited to, off-track or sports betting parlor, table games such as blackjack, poker, slot machines, video poker, blackjack, keno machines or similar devices or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to any government-sponsored gaming activities or charitable gaming activities so long as such governmental or charitable activities are incidental to the business being conducted by the occupant of that portion of the Subject Property and do not occur regularly.

The use of any portion of the Subject Property by any Owner shall be subject to all laws, regulations, codes and ordinances of all applicable governing authorities, including, without limitation, any zoning ordinances. In the event of any conflict between the terms of this Declaration and the terms of any such law, code, regulation or ordinance, then the provisions of this Declaration or any law, code, regulation or ordinance which is stricter shall govern.

2.

ARCHITECTURAL CONTROL

A. Plan for Development. The plan for the development of the Subject Property contemplates the centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the Subject Property as a whole. It is accordingly covenanted and agreed that (i) no building, structure or any appurtenances thereto of every type or kind, including, without limitation, patios, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, drives, driveways, parking areas, fences, roofs, screening, walls, retaining walls, stairs, decks, fixtures, poles, exterior tanks, solar energy equipment, exterior air conditioning fixtures and equipment, exterior lighting, radio, conventional or cable or television antenna or dish, microwave television antenna and/or landscaping (collectively herein referred to as the "Improvements") shall be commenced, erected, constructed, placed, or maintained upon any portion of

ATTACHMENT B

the Subject Property and/or (ii) any exterior modification, renovation, expansion, restoration or repair (if different from the original exterior construction) change or alteration be made to any Improvement shall be commenced, erected, constructed, placed, or maintained upon any portion of the Subject Property until in the case of (i) or (ii), above, the plans and specifications therefor ("Plans") showing the nature, color, kind, shape, height, materials and location of the same (including site landscaping, drainage and grading plans and utility layout) have been submitted to and approved in writing as to harmony and external design and location and relationship to surrounding structures and topography by Developer until the "Transfer Date" (hereafter defined) and thereafter by the "Board" (hereafter defined). The drainage plans shall cause the Subject Property to be drained in a manner so that no standing water remains for any extended period of time following any precipitation and the Subject Property does not become a breeding ground for mosquitoes. All references in this Article 2 and in Article 3 hereafter made to the Board shall refer to the Developer prior to the Transfer Date and thereafter to the Board. In the event that the Board fails or refuses to approve or disapprove such design or location within thirty (30) days after the Plans have been submitted to it, it will be deemed that the Board has approved such Plans. In the event of damage or destruction of any Improvement, approval shall be granted by the Board for the restoration of Improvements if the Improvement is to be restored in substantial accordance with the original approved Plans. If the Improvements will not be restored in accordance with the original approved Plans, then the Plans for such restoration shall be subject to approval in the same manner as the original Improvements to the Tract. All decisions of the Board shall be final, conclusive and binding and there shall be no review of any action of the Board.

B. No Representation or Warranty; Limitation of Liability. No approval of Plans shall ever be construed as representing or implying that such Plans will, if followed, result in a properly constructed structure complying with all applicable legal requirements or built in a good and workmanlike manner or be deemed approval of the Improvement from the standpoint of safety, whether structural or otherwise. Neither the Developer, the Association, nor any members of the Board shall be liable in damages to anyone submitting Plans for approval, or to any Owner or occupant of any part of the Subject Property affected by this Declaration, by reason of or in connection with the approval or disapproval or failure to approve any Plans submitted. Every person who submits Plans for approval agrees, by submission of such Plans, and every Owner or occupant of any portion of the Subject Property involved herein agrees, by acquiring title thereto or any interest therein, that such person will not bring any action or suit against the Developer, the Association, or any of the members of the Board to recover any such damages.

C. Inspection of Improvements. The Board or its duly authorized representative, as well as the City of LaPorte ("City"), shall have the right, but not the obligation, to inspect any Improvements to a Tract prior to or after completion of any Improvements.

D. Notice of Completion. Promptly upon completion of any Improvements, Owner shall deliver a notice of completion ("Notice of Completion") to the Board and the City and, for all purposes hereunder, the date of receipt of such Notice of Completion by the Board shall be deemed to be the date of completion of such Improvements, provided that the Improvements are, in fact, completed as of the date of receipt of the Notice of Completion.

E. Notice of Non-Compliance. If, as a result of inspections or otherwise, the Board and/or the City finds that any Improvement has been constructed or undertaken without obtaining the approval of the Board and/or the City, or has been completed other than in substantial conformity with the Plans furnished by the Owner to and approved by the Board and/or the City, as applicable, or has not been completed within a reasonable period of time (as agreed upon by the Board and/or the City, or, if no agreement, as determined by the Board and/or the City, in its sole good faith discretion) after the date of approval by the Board and/or the City (as determined by the Board and/or the City), subject to delays due to "Force Majeure" (hereafter defined) causes, the Board and/or the City shall notify the Owner and the City or the Board, as applicable, in writing of the noncompliance, which notice (the "Notice of Noncompliance") shall be given, in any event, within sixty (60) days after the Board and the City receive a Notice of Completion from the Owner. The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be reasonably necessary to remedy the noncompliance. The Notice of Noncompliance may be filed in the public records and the cost of preparing and filing the same and the release thereof shall be paid by such Owner.

F. No Waiver or Estoppel. No action or failure to act by the Board shall constitute a waiver or estoppel with respect to future action by the Board.

G. Variances. The Board may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures within set-back lines established by this Declaration, on a plat (or plats) of the Subject Property, parking requirements, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require or when such variance would result in a more common beneficial and/or efficient use and not detract from the overall development plan for the Subject Property as determined by the Board. Such variances must be evidenced in writing and shall become effective when signed by a majority of the members of the Board. The granting of a variance in one instance shall not require the Board to grant a similar variance for another portion of the Subject Property. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; **PROVIDED, HOWEVER, THAT THE GRANTING OF A VARIANCE SHALL NOT OPERATE TO WAIVE ANY OF THE PROVISIONS OF THIS DECLARATION FOR ANY PURPOSE EXCEPT AS TO THE PARTICULAR TRACT AND PARTICULAR PROVISION HEREOF COVERED BY THE VARIANCE, NOR SHALL THE GRANTING OF A VARIANCE AFFECT IN ANY WAY THE OWNER'S OBLIGATION TO COMPLY WITH ALL GOVERNMENTAL LAWS AND REGULATIONS AFFECTING THE PROPERTY CONCERNED, INCLUDING, BUT NOT LIMITED TO ZONING ORDINANCES OR REQUIREMENTS IMPOSED BY ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION. THE OWNERS ACKNOWLEDGE THAT ONLY THE CITY SHALL BE AUTHORIZED TO GRANT VARIANCES AND SPECIAL EXCEPTIONS TO THE CITY ZONING ORDINANCE AND GOVERNMENTAL LAND USE RESTRICTIONS THROUGH THE ZONING BOARD OF ADJUSTMENT. THE BOARD AGREES TO INFORM THE CITY IN WRITING ("VARIANCE NOTICE") PRIOR TO THE GRANTING OF ANY VARIANCE REQUEST OF THE ISSUE UNDER CONSIDERATION AND THE PROPOSED ACTION BY THE BOARD SO THAT THE CITY CAN VERIFY THAT THE PROPOSED VARIANCE, IF GRANTED, WOULD NOT VIOLATE ANY ZONING ORDINANCES, LAND RESTRICTIONS OR REGULATIONS, INCLUDING, WITHOUT LIMITATION, THAT CERTAIN DEVELOPMENT AGREEMENT DATED ON OR ABOUT THE DATE HEREOF BETWEEN DEVELOPER AND THE CITY, AND JOINED IN BY THE OTHER OWNERS.** If the City objects to the granting of the variance, the City shall notify the Board (through its representative designated in the Variance Notice) within ten (10) business days following the City's receipt of the Variance Notice. If the City fails or refuses to approve or disapprove the variance request within such ten (10) day period, the City will be deemed to approve such variance request.

3.

CONSTRUCTION-RELATED RESTRICTIONS

A. Exterior Materials. Each of the Improvements to be located on any portion of the Subject Property shall be constructed with exterior materials of brick, masonry, stone, marble, or permanently finished (in a manner approved in writing by the Board in their discretion) concrete and/or glass, or of an equivalent, permanent, architecturally-finished material to finished grade. All exterior finishes shall be approved by the Board. No Improvement shall be covered with aluminum, iron, steel or other metal surface or finish unless previously approved in writing by the Board. Sidewalks of a design and location approved by the Board shall be constructed along one side of the right-of-way of all dedicated public streets (except State Highway 146) abutting any property line. Any concrete block exterior surfaces shall be painted. All exterior tilt-up concrete walls must be painted unless constructed with decorative aggregate exterior designs.

B. Building Set Backs. No building or structure or other facility of any nature shall be constructed or erected on a Tract between the adjoining street or roadway right-of-way line or adjoining side or rear property lines and the "Set Back Lines" (defined below) which shall run parallel to the Property as follows:

ATTACHMENT B

(1) For all buildings or other structures which are located along State Highway 146, the "Set Back Lines" along such streets and roadways shall be a minimum of fifty feet (50');

(2) For all buildings or other structures fronting any street or roadway, other than State Highway 146, the "Set Back Lines" along such streets or roadways shall be a minimum of twenty-five feet (25') or in accordance with the approved Final Plat of Port Crossing.

(3) For all buildings or other structures, the "Set Back Lines" along any side or rear property line not adjoining a street or roadway shall be a minimum of ten feet (10'); and

(4) The "Set Back Lines" for paving for parking areas which front State Hwy. 146 or any other streets or roadways within the Subject Property shall be determined by the Board, However, in no event shall any paving for parking be closer than ten feet (10') to any side or rear property line not adjoining a street or roadway.

For purposes of this Declaration, all Set Back Lines shall be measured from (a) the right-of-way line of the street or roadway adjoining the Tract as such right-of-way line exists at the time that the construction of the improvements on the Tract is commenced, or (b) the adjoining side or rear property line, as applicable.

C. Parking. Each Owner or lessee shall at all times devote a sufficient portion of its Tract to providing paved off-street parking facilities adequate for the use(s) to which its Tract is put and otherwise sufficient to comply with any applicable law, rule, regulation or ordinance, but not less than the following:

<u>Use</u>	<u>Number of Spaces</u>
Office	4 minimum, plus 3 spaces per 1000 square feet of net usable area
Retail	4 minimum, plus 4 spaces per 1000 square feet of net usable area
Commercial Services, Manufacturing or Limited Warehousing and Distribution	3 spaces per 1000 square feet of office area and one space per 1500 square feet of non-office area, but not less than one space per 1.5 non-office employees

Parking will not be permitted on any street or at any place other than the paved parking spaces provided therefore. Each Owner and lessee shall be responsible for compliance with this Paragraph C by constructing or exhibiting paved parking areas on such Owner's Tract, provided that paved parking areas shall cover not more than eighty-five percent (85%) of the area between a building and a dedicated or private street.

The Board reserves the right during its review of construction plans to relax minimum parking requirements, subject to compliance with all City of La Porte regulations and ordinances, on the Tracts where necessary or desirable to accomplish more effective and compatible land utilization.

D. Signs. All signs shall be in locations and of a design and material approved in writing in advance by the Board. No more than two (2) free standing ground or berm mounted permanent signs shall be permitted for each Tract, unless a Tract has frontage on two or more streets, in which case no more than three (3) free standing ground or berm mounted permanent signs shall be permitted for such Tract. Unless otherwise approved in writing by the Board, all other signs must be attached to a building and shall be parallel to and contiguous with its wall and not project above its roof line. No neon sign or sign of a flashing or moving character shall be installed and no sign shall be painted on a building wall.

ATTACHMENT B

Directional and traffic control signs, and signs advertising the sale or lease of a Tract are also permitted upon the written approval of the design and location by the Board. In the event a building has multiple tenants, all tenants may be shown on one of the permitted signs, at the discretion of the owner of the Tract. The Board shall have the right, and hereby reserves an easement, to enter upon any and all portions of the Property to remove any signs that are in violation of this Article 3 upon reasonable notice to the Owner or lessee of such portion of the Property, all at the expense of such Owner or lessee. The Board may promulgate sign guidelines (which shall include guidelines for pylon signs, monuments and flagpoles) which may be modified by the Board from time to time in its sole good faith discretion. Notwithstanding the Board's approval of any signs, all signs also shall comply with the City's zoning ordinance and be permitted by the City.

E. Harmful Substances. No affluent containing harmful bacteria, poisonous acids, oils or other harmful substance shall be permitted to drain or drift beyond the property lines of any Tract.

F. Loading/Unloading. Delivery vehicle loading and unloading shall occur on-site only and street delivery vehicle loading and unloading is not permitted. Loading/unloading facilities shall be separated from employee, customer and visitor circulation and parking areas.

Loading docks will not be permitted to face any public street or right-of-way, unless otherwise approved by the Board, and provision must be made for handling all freight on those sides of a building which do not face a street; provided, however, that in any instance in which a building would face streets on all of its sides, a loading dock or docks will be permitted on the two sides of such building which are, respectively, farthest from frontage streets unless the Developer shall in writing permit a loading dock on another side of such building. All loading docks must be screened from public view in a manner approved in writing by Developer prior to construction or alteration of any building.

G. Outside Storage or Operations; Screening. No outside storage of any kind shall be permitted except as expressly provided herein, or as otherwise approved in writing by the Board. Retail sales equipment may be displayed outside in a manner which is architecturally compatible with the other Improvements on the Tract, with the approval of the Board. Water towers, cooling towers, communication towers, fans, exterior processing equipment, storage tanks, roof-top equipment, ground-mounted equipment, and any other similar structures or equipment shall be architecturally compatible with the other Improvements on the Tract, or effectively shielded from view from a dedicated or private street in a manner approved in writing by the Board prior to construction. All screening devices shall be subject to compliance with all laws, regulations, codes and ordinances of all applicable governmental authorities.

The right of a purchaser, grantee, Owner or lessee to use any building or buildings shall not be construed to permit the keeping of articles, goods, materials, incinerators, storage tanks, boats, trailers, campers, horse trailers, buses, inoperative vehicles of any kind, boat rigging or other vehicles or associated equipment of a recreational or commercial nature, refuse containers or like equipment in the open or exposed to public view, or view from adjacent buildings. If it shall become necessary to store or keep such materials or equipment in the open, they shall be screened from view in a manner approved in writing by Developer. Adequate screening must also be provided to shield such stored materials and equipment from view from the ground floor level of all adjacent buildings. Under no circumstances shall any materials or equipment be stored within the applicable Set Back Line for any street.

H. Utility and Drainage Easements. Developer reserves the right, without the necessity of joinder of any Owner or other person or entity (and each and every Owner or lessee, by its acceptance of a deed or ground lease covering any portion of the Subject Property, hereby grants to Developer the right), to grant, dedicate, reserve or otherwise create, from time to time, easements ("Utility Easements") for public utility purposes in, on, over, through and across any portion of the Subject Property lying within twenty-five feet (25') of any street (dedicated or private) and within ten feet (10') of any side or rear property line, said easements to be for the purpose of laying, constructing, installing, maintaining, operating, inspecting, repairing, altering, substituting, replacing and removing any and all lines, cables, pipes, conduits, wires, poles, equipment and other necessary or desirable appurtenances for providing utilities (including, without limitation, electric, water, gas, telephone, sanitary sewer, drainage utilities and cable and other communications facilities) to the Subject Property; such easements to be for the use and

ATTACHMENT B

benefit of Developer, and any utility or cable company to whom Developer conveys or grants an easement for the purpose of providing utilities and related services to the Subject Property and the Owner of any portion of the Subject Property, their heirs, legal representatives, successors and assigns. If applicable, Owners shall have the right to use the drainage easement and to tie into any such utility lines located on such Owner's respective Tract upon payment of any tie-in charge imposed by the utility company, or by any party providing such utility service. No structure shall be erected on any of said easements, and no Improvements may be placed within said easements without the prior written approval of the Board and any utility company using such easements. Easements may be crossed by driveways and walkways provided the Owner secures the necessary prior approval of the effected utility companies furnishing services, and provides and installs any special conduit and other equipment of approved (by the utility companies) type and size, under such driveways and walkways prior to construction thereof.

Title to any Tract conveyed by Developer by deed or other conveyance or ground lease shall not be held or construed in any event to include the title to the easement estates in favor of third parties affecting the Tract or any improvements within such easements or appurtenances thereto, constructed by or under Developer, the Association, third parties or their respective agents through, along, or upon any portion of the Subject Property, and the right to maintain, repair, sell, lease or replace such facilities or the appurtenances thereto (but not the Tract) to any municipality or other governmental agency or to any public service corporation or to any other party, is expressly reserved in Developer and the Association.

An easement is hereby granted to utility companies and other entities supplying service (and agents and contractors thereof) for reasonable ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, telephones, cable service, electricity, gas and appurtenances thereto, on, above, across and under the Subject Property within the utility easements from time to time existing to and from service lines situated within such easements to the point of service on or in any structure situated on the Tracts. Further, an easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Subject Property in performance of their duties. Neither Developer nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or contractors to shrubbery, trees, flowers or other improvements (except damage to the aforementioned special conduit and other equipment, if any) located on the land covered by said easements, except to the extent of their respective gross negligence or willful misconduct.

I. Temporary Structures. No tent, shack, temporary building or structure, other than construction offices and structures for related purposes during the construction period, shall be installed or maintained on any Tract without the prior written approval of the Board. All temporary structures used for construction purposes must receive approval by the Board with regard to location and appearance, and must be removed promptly upon completion of construction.

J. Fences. All fences installed by an Owner along or in the vicinity of the boundary lines of such Owner's Tract shall be approved by the Board and further subject to compliance with all laws, regulations, codes, and ordinances of all applicable governmental authorities.

K. Landscaping. Two complete sets of landscaping architectural plans must be submitted to the Board for written approval prior to commencement of construction on a Tract. All open, unpaved space, including, but not limited to, front, side and rear building setback areas, shall be planted and landscaped, according to the plan approved in writing by Developer. Landscape plans submitted for approval of the Board shall indicate the number, size, spacing and species of shrubs and trees, and the species of ground cover. A sprinkler system of approved design shall be installed in all landscaped areas. The Board will require reasonable landscaping of any traffic or parking island located within or at the edges of any parking areas. Landscaping in accordance with the plans approved by the Board must be installed within thirty (30) days following the occupancy of a building or Tract. This period may be extended by the Board in the event of Force Majeure delays. The Board may promulgate landscaping guidelines which may be modified by the Board from time to time in its discretion. All landscaping installed by an Owner shall be subject to compliance with all laws, regulations, codes, and ordinances of all applicable governmental authorities.

4.

MAINTENANCE OF PROPERTY

The Owner or lessees of any portion of the Subject Property shall have the duty of and responsibility for keeping their respective Tract and landscaping, vegetation, premises, Improvements and appurtenances, in a well-maintained, safe, clean, sanitary and attractive condition at all times, in compliance with all applicable regulations of governmental agencies having jurisdiction over health, environment, safety and pollution control. No refuse or waste materials shall be permitted to accumulate on any part of the Subject Property but shall be regularly collected and disposed of. If, in the opinion of the Developer, any such Owner or lessee is failing in this duty and responsibility, then Developer may give such Owner or lessee, or both, written notice of such fact, and such Owner or lessee must, within ten (10) days of such notice, undertake the care and maintenance reasonably necessary to restore such Owner's or lessee's property to a safe, clean and attractive condition. Should any such Owner or lessee fail to fulfill this duty and responsibility after such notice, then the Developer shall have the right and power to perform, or have performed, such care and maintenance, including, without limitation, the mowing of any vacant Tract, and the Owner and lessee (and/or both of them) of the Tract on which such work is performed by the Developer shall be liable for the cost of any such work and shall promptly reimburse the Developer for the cost thereof. If such Owner or lessee shall fail to so reimburse the Developer within thirty (30) days after being billed therefore, then said cost shall be a debt of such owner or lessee (and both or them), payable to the Developer, and shall be secured by the same lien that secures the payment of "Assessments" (hereafter defined), which lien shall be subordinate to any now existing or hereafter created valid liens securing purchase money, the cost of construction or permanent financing therefore, or any renewal or extension of such liens. From and after the Transfer Date, the Association automatically shall have the authority reserved to the Developer in this Article 4 to cure any default of an Owner or lessee. The Developer may delegate such right to cure any default of the Owner or Lessee to the Association prior to the Transfer Date.

The Developer and Port Crossing Association hereby agree to maintain all drainage and detention areas within the development.

5.

INSURANCE, INDEMNITY AND CASUALTY LOSS

A. Each Owner, with respect to its Tract, including the Improvements and any operations thereon, shall maintain at all times during the term of this Declaration, commercial general liability insurance (including contractual liability insurance) with combined single limit coverage for personal injury, bodily injury or death or property damage or destruction (including loss or the use thereof) in the amount of not less than Three Million Dollars (\$3,000,000), (which coverage may be in the form of combined single limit coverage, with an aggregate, or a combination of combined single limit coverage with umbrella coverage), provided further that the amount of such coverage is consistent with industry standard for similar buildings and the cost thereof is not financially prohibitive. Additionally, the Board shall have the right to require an increase in the aggregate limit of such liability insurance if it becomes industry standard to provide increased amounts of coverage. Such insurance shall be maintained in reputable, financially responsible insurance companies, licensed to do business in Texas, and each Owner shall furnish to the Board upon request a certificate or copy of its respective insurance policy conforming with the provisions hereof. The Developer and Board shall be named as an additional insured under each Owner's commercial general liability insurance policy, and such coverage shall be primary to any coverage maintained by the Developer and/or the Board.

B. Each Owner shall maintain, at its cost, property damage insurance covering the full replacement value of all Improvements located on their respective Tract, insuring against the perils of fire, lightning, extended coverage vandalism and malicious mischief, and flood insurance (if available) from time to time. Such insurance shall be maintained in a reputable, financially responsible insurance company, and the Owners shall furnish to any other Owner upon request a certificate or copy of its policy of insurance conforming to the foregoing provisions.

ATTACHMENT B

C. SUBJECT TO THE PROVISIONS OF PARAGRAPH D. BELOW, EACH OWNER ("INDEMNITOR") COVENANTS TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE DEVELOPER, BOARD AND EACH OTHER OWNER ("INDEMNITEE") FROM AND AGAINST ALL CLAIMS, COSTS, EXPENSES AND LIABILITIES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH (I) ALL DAMAGES AND CLAIMS, INCLUDING ANY ACTION OR PROCEEDING BROUGHT, ARISING FROM OR AS A RESULT OF THE DEATH OR INJURY OF ANY PERSON, OR DAMAGE TO THE PROPERTY OF ANY PERSON OR ENTITY, WHICH SHALL OCCUR ON THE TRACT OWNED BY EACH INDEMNITOR, EXCEPT FOR CLAIMS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACT OR OMISSION OF THE INDEMNITEE, ITS LICENSEES, CONCESSIONAIRES, AGENTS, SERVANTS OR EMPLOYEES, OR THE AGENTS, SERVANTS OR EMPLOYEES OF ANY LICENSEE OR CONCESSIONAIRE WHEREVER THE SAME MAY OCCUR; AND (II) ALL DAMAGES AND CLAIMS ARISING FROM OR AS A RESULT OF THE DEATH OR INJURY OF ANY PERSON, OR DAMAGE TO THE PROPERTY OF ANY PERSON OR ENTITY WHICH OCCUR ON ANOTHER OWNER'S PROPERTY AS A RESULT OF THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF THE INDEMNITOR.

D. Notwithstanding anything contained in this Declaration to the contrary, each Owner ("Injured Owner") hereby waives any and all rights of recovery, claims, actions or cause of actions against another Owner, Developer and the Association and such other Owner's, Developer's and the Association's agents, servants, partners, shareholders, directors, trustees, officers or employees (collectively, the "Injuring Owner") for any loss or damage that may occur upon the Injured Owner's property or to any personal property of such Injured Owner by reason of fire, the elements or any other cause which is insured against (or could be insured against) by the terms of policies maintained by the Injured Owner or policies required to be maintained by Injured Owner pursuant to the terms of this Declaration, including the negligence of the Injuring Owner, its agents, officers, partners, shareholders, directors, trustees, servants or employees and no insurer shall have any right of subrogation or assignment against such Injuring Owner.

E. The insurance coverages described in Paragraphs A. and B. above may be carried under a policy or policies covering other liabilities, properties and locations of an Owner of the Tract subject to this Declaration or a subsidiary or affiliate or controlling corporation of such Owner. Each insurance policy or policies shall contain a provision that such policy may not be cancelled without a thirty (30) day written prior notice by the insurer to Developer and the Association.

F. In the event of a casualty loss to any Improvements, the affected Owner shall either (i) within a commercially reasonable time, not to exceed ninety (90) days after the occurrence of the casualty loss, commence to repair all exterior and structural portions of such Improvements to the condition which existed immediately prior to such damage or destruction or to such other condition approved by the Board, and complete the repair or restoration within one hundred eighty (180) days after the occurrence of the casualty loss, subject to Force Majeure delays or (ii) within a commercially reasonable time, not to exceed ninety (90) days after the occurrence of the casualty loss, demolish and remove its damaged Improvements leaving a graded and landscaped and/or seeded area. In the event of any such casualty loss or destruction, each Owner shall as soon as possible repair any common utility lines located upon its Tract which service another Owner's Tract. Any Owner that does not elect to repair or reconstruct after a casualty loss shall be entitled to retain all its insurance proceeds in connection with such casualty loss provided that such Owner demolishes and removes the damaged Improvements; otherwise, the insurance proceeds to cover the costs and expenses of demolishing and removing all damaged Improvements on its Tract shall belong to and be paid to the Association.

6.

ENVIRONMENTAL REMEDIATION

Each Owner ("First Owner") agrees to indemnify, defend and hold harmless each of the other Owners ("Other Owners") from and against any costs, fees or expenses (including, without limitation, environmental assessment, investigation and environmental remediation expenses, third party claims and environmental impairment expenses) incurred by any of the Other Owners in connection with First Owner's generation, storage, transportation, treatment or disposal of Hazardous Substances at, to or from the portion of the Subject Property owned by the First Owner, including, but not limited to, Other Owners' costs in connection with monitoring such compliance. "Hazardous Substances," as used in this Article 71 means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq*), as amended from time to time, and regulations promulgated there under; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 *et seq*), as amended from time to time, and regulations promulgated there under; (c) any oil, petroleum products, and their by-products; (d) any substance the presence of which on the portion of the Subject Property, (including, without limitation, in the soil, air, structures and surface and sub-surface waters) owned by the First Owner is prohibited, regulated or restricted by any law or regulation similar to those set forth in this definition, and (e) any other substance which by law or regulation requires special handling in its collection, generation, storage, transportation, treatment or disposal.

7.

ENFORCEMENT

Any notice to the Developer or Board, as applicable, or request for approval by the Developer or Board, as applicable, shall be made to the Developer or Board, as applicable, in writing, and shall be sent to the Developer or Board, as applicable, by certified or registered mail, postage prepaid, addressed to the then current address of such entities as announced from time to time. Initially, the address of the Developer is: Port Crossing, 3330 S. Sam Houston Parkway E., Houston, Texas 77047, Attention: Russell D. Plank. If any request for approval of a variance or exception to the restrictions provided herein, subject to compliance with all applicable laws, regulations, and ordinances of the City of La Porte or approval of any proposed action by an Owner is required to be made by the Developer or Board, as applicable, the Developer or Board, as applicable, shall, within thirty (30) days after the request is made, give the person making the request, at such person's address as shown in the request, written notification either of the approval by the Developer or Board, as applicable, or of its rejection of the request, with a specification of the reasons for such rejection. If the Developer or Board, as applicable, fails to give to the person requesting such approval notification of rejection within such 30-day period as provided for above, the Developer or Board, as applicable, shall be conclusively deemed to have given its approval with regard to the request made. Any approval or rejection given by the Developer or Board, as applicable, shall be in writing, and shall be signed by the Developer, or Board, as applicable, and any written approval, rejection or other communication by the Developer or Board, as applicable, may be relied upon, as the act of the Developer or Board, as applicable, by the person receiving such approval, rejection or other communication.

The Developer, including any successor owner of a substantial portion of the Subject Property succeeding the Developer as a developer of the Subject Property, any Owner and the Association (collectively, the "Principal Beneficiaries") shall have the right to enforce the restrictive covenants set forth in this Declaration against any person or persons violating or attempting to violate this Declaration. No tenant, lessee or occupant of any portion of the Subject Property and no customer or invitee of any such tenants, lessee or occupant and no other party whomsoever (other than a Principal Beneficiary, as aforesaid) shall have any rights to enforce any provision of this Declaration. In the event of a violation or attempted or threatened violation of any provision of this Declaration, in addition to all other rights and remedies available at law or in equity, a Principal Beneficiary shall be entitled to obtain restraining orders and injunctions (temporary and permanent) enjoining and prohibiting such violation, attempted or threatened violation and commanding compliance with the provisions of this Declaration, without the necessity of posting a bond.

8.

COVENANT FOR MAINTENANCE ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessment. The Developer for each Tract owned within the Subject Property, hereby covenants, and each Owner of any Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is conclusively deemed to covenant and agree as a covenant running with the land to pay to the Association assessments or charges imposed from time to time by the Board for the purposes set forth in Section 8.B. below (hereinafter referred to as "Assessments"). The Board shall have the right to adopt and from time to time revise and amend procedures for the purpose of establishing the Assessments, due dates, billing and collection of the Assessments, provided that such procedures are not inconsistent with the provisions hereto. The assessments established by the Board shall commence against the subject Property on August 1, 2006. The Assessments shall be uniform as to each Tract on a per square foot basis according to the land area comprising such Tract. If the Assessments have commenced to accrue against the Owners, then, at the time an Owner takes title to a Tract, the installment for that month shall be prorated as of the day the Owner takes title. Any Assessments not paid and received within ten (10) days from the due date shall be deemed delinquent and, without notice, shall bear interest until paid at fifteen percent (15%) per annum, not to exceed the maximum non-usurious rate allowed by applicable law. The Board, at its option, may impose and collect late charges on delinquent payments, in addition to interest, in an amount to compensate the Association for the administrative burden of dealing with the delinquency.

To secure the payment of the Assessments levied hereunder and any other sums due hereunder (including, without limitation, reasonable attorney's fees and costs of collection, interest or late charges), a vendor's lien and superior title shall be and is hereby reserved, and a contractual lien is hereby created, in favor of the Association, in and to each Tract and assigned to the Association, which liens shall be enforceable as hereinafter set forth by the Board or its appointed agent ("Agent") on behalf of the Association.

Notice of the unpaid amounts, at any time, secured by the liens referred to, reserved by and created in this Article 8 may, but shall not be required to be given by the recordation in the Real Property Records of Harris County, Texas of a "Notice of Non-Payment," duly-executed and acknowledged by an Agent of the Association, setting forth the amount owed, the name of the reputed Owner or Owners of the affected Tract according to the books and records of the Association, and the legal description of such Tract. The cost of preparing and filing the Notice of Non-Payment and its release shall be secured by the lien therefor.

Each Owner, by acceptance of a deed to such Owner's Tract, hereby expressly recognizes the existence of such liens as being prior to such Owner's ownership of such Tract and hereby vests in the Board or its Agent the right and power to bring all actions against such Owner or Owners personally for the collection of such Assessments and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including by judicial and/or non-judicial foreclosure. Additionally, by acceptance of the deed to such Owner's Tract, each Owner expressly grants a power of sale such Owner's Tract and all Improvements thereon, and all rights appurtenant thereto for the purpose of securing the aforesaid Assessments and other sums due hereunder remaining unpaid by such Owner from time to time. The Agent may be changed at any time by the Board. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such liens, then it shall be the duty of the Agent, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and to sell such Tract and all Improvements thereon, and all rights appurtenant thereto, at the door of the County Courthouse of Harris County, Texas (in the area designated by the Commissioner's Court of Harris County, Texas, for such purpose), on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash after the Agent shall have given notices of the proposed sale in the manner hereinafter set forth, or as provided by statute, whichever is less burdensome. Following sale, the Agent shall make due conveyance of the Tract and all Improvements thereon to the purchaser or purchasers,

and may, but shall not be required to, give a general warranty of title to such purchaser or purchasers binding upon the Owner or Owners of such Tract and all Improvements thereon and their heirs, executors, administrators, successors and assigns. The Agent shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Harris County, Texas, by filing such notice with the County Clerk of Harris County, Texas, at least twenty-one (21) consecutive days preceding the date of sale, and, in addition, the Agent shall serve written notice at least twenty-one (21) days preceding the date of sale by certified mail on each debtor obligated to pay the debt according to the records of the Association of such sale and the notice thereof shall comply with the provisions of Section 51.002 of the Texas Property Code, as it may be amended from time to time. Service of such notice shall be completed upon deposit of the notice in the United States mail, properly addressed to such debtor obligated to pay the debt at the most recent address as shown by the records of the Association. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service. If any change in Texas law occurs subsequent to the date hereof, this paragraph A of Article 8 shall be amended to comply with such change in Texas law.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such sale, including reasonable attorneys' fee and reasonable trustees' fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default, plus interest thereon; and, third, the remaining balance shall be paid to such Owner and/or such Owner's mortgagee. From and after any such foreclosure, the occupants of such Tract shall be required to pay a reasonable rent for the use of such Tract and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to the appointment of a receiver to collect such rents and further, shall be entitled to sue for recovery of possession of such Tract by forcible detainer without further notice.

B. Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for the purpose of: (i) the operating costs and expenses of the Association; (ii) the payment of all organization costs and attorney fees incurred by the Association in connection with the enforcement of this Declaration, including, without limitation, enforcement of parking restrictions; (iii) the maintenance, replacement and repair of any Private Streets and any Improvements located within the Private Streets (but not the initial construction of the Private Streets); (iv) the establishment and maintenance of capital and operating reserves that the Board determines to be necessary and desirable; (v) the payment of any ad valorem or other taxes due on any property owned by the Association; (vi) the payment of any costs or expenses incurred with respect to the provision of any facilities and services related to the Private Streets and other portions of the Subject Property determined to be necessary by the Board; (vii) street lighting, street sweeping and street maintenance of any private streets in the Subject Property and maintenance of entry markers, greenbelts, signs, detention ponds, retention areas, esplanades and landscape reserves and other common areas owned by the Association or dedicated to a governmental entity; (viii) planting, landscaping, watering, irrigation, mowing, tree surgery and general upkeep and maintenance of plants or landscaped areas of the common areas owned by the Association; (viii) reimbursement of reasonable and customary costs and expenses of the Association in connection with its operation and management and administration of this Declaration (including, but not limited to, common engagement of third party architects, engineers, attorneys, accountants, managers and other consultants in connection with the administration of this Declaration) and such other non-capital items of expenses as may be deemed by the Association, in its discretion and in good faith, to be necessary or desirable for the carrying out of this Declaration; and (ix) promotion of the recreation, health, and safety (including, without limitation, security patrols and other security measures if deemed necessary by the Association; provided however, that the Association shall not be obligated to provide security patrols or other security measures and the provision of any security measure does not guarantee the safety of any Owners, employees, guests, contractors or invitees or that the property of any Owner, guest, contractor or invitee will not be damaged, vandalized or stolen) and the general welfare of the Owners and lessees the Subject Property.

C. Maintenance Fund. The Assessments collected by the Association shall be paid into a maintenance fund (the "Maintenance Fund") and shall be held, managed, invested and expended by the

Board, in its sole good faith discretion, for any of the permitted purposes. The Board and the Directors shall not be liable to any person or entity as a result of any action taken by the Board with respect to the Maintenance Fund, except for willful misconduct or fraud.

D. Basis of Maximum of Annual Assessments. Notwithstanding the provisions of Paragraph A of this Article 8 to the contrary, the maximum initial annual Assessment shall be two cents (\$0.02) per square foot of land area in the Subject Property. From and after January 1, of the next succeeding calendar year following the imposition of the Assessment, the annual Assessment may be increased as follows:

The Developer may determine and certify that the then current annual Assessment is not sufficient to meet reasonable expenses of maintaining and enforcing this Declaration and, the Developer may increase the annual Assessment by an amount which shall not exceed the greater of: (i) 10% or (ii) an amount equal to the yearly rise in the United States Department of Labor, Bureau of Labor Statistics ("BLS"), Consumer Price Index (for All Urban Consumers CPI-U) Houston-Galveston-Brazoria, TX. – All Items (1982-84 = 100) (the "Index") as of July of each year from the preceding July. If, however, the Index should be discontinued, such calculation shall be made by use of another reputable Index selected by the Board which is recognized by BLS and is comparable to the Index. Additionally, if the base period of the Index (currently 1982-84 = 100) is hereby modified, the base period used in making the aforesaid calculation shall be appropriately adjusted by the Board to reflect such modification and if the Index is published in such manner that an Index figure is not available each July, then the Index figure published for the most recent month preceding July shall be used.

The annual Assessment shall not be increased more than once in any calendar year. However, the right to increase the annual Assessment, as aforesaid, shall be cumulative and in the event the annual Assessment is not increased to the maximum amount allowed for any one or more years, then the Developer shall thereafter have the right to increase any subsequent annual Assessment to an amount equal to the maximum annual Assessment that would have been chargeable for that year as if the annual Assessment had been increased by the maximum allowable hereunder for each of such prior years.

Notwithstanding the foregoing provisions of this Paragraph 8.D, in the event the Board determines that it is necessary to increase the annual Assessment more than the amount prescribed by the formula, the Board, by majority vote, and the affirmative vote of two-thirds (2/3rds) of those Owners who are voting in person or by proxy at a meeting duly called for such purpose, may increase the maximum annual Assessment for the subject calendar year. Once the maximum annual assessment for any calendar year is increased pursuant to the provisions of this grammatical paragraph, the amount to which it has been increased shall be the amount used to determine the maximum annual Assessment for the next calendar year.

E. Subordination of Assessment Lien to Mortgages. The liens securing the Assessments provided for herein shall be subject and subordinate to (i) all liens for taxes or assessments levied by the City, County and State Governments or any political subdivision or special district thereof and (ii) the lien of any duly-recorded first and/or second mortgage lien or first and/or second lien deed of trust upon one or more Tracts made in good faith and for purchase money or improvements. The sale or transfer of any Tract shall not affect the assessment lien. However, the sale or transfer of any Tract which is subject to any first or second mortgage lien, pursuant to a foreclosure of such lien or a conveyance in lieu of foreclosure, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve the new Owner of such Tract from liability for any assessment thereafter becoming due according to the terms herein contained or from the lien thereof.

F. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from the payment of assessments: (a) any areas designated as Common Areas by the Developer and accepted by the Association; and (b) all property dedicated to and accepted by any governmental authority or public utility.

G. Annual Financial Report. The Association shall deliver to each Owner an unaudited annual financial report as required by the Texas Nonprofit Corporation Act not later than sixty (60) days after the end of each calendar year.

9.

PROPERTY OWNERS' ASSOCIATION

The administration of the Subject Property shall be governed by the PORT CROSSING ASSOCIATION, a Texas non-profit corporation ("Association") to be formed not later than one hundred eighty (180) days following the closing of the sale of the first Tract out of the Subject Property. The Association shall act through a Board of Directors ("Board") of not less than three (3) Directors who need not be members of the Association. The initial Directors of the Association shall be selected by the Developer. The initial Directors for the Association shall hold office for an initial term of three (3) years and, thereafter, until their successors are duly elected and qualified. After the expiration of the term of the initial Directors, the members of the Association shall elect a Board of Directors as provided for in the Bylaws of the Association. Directors shall receive no compensation for their services, but, by resolution of the Board, a Director may be reimbursed for reasonable expenses and costs incurred by him in carrying out his duties. The Board shall have the power to enact any rules, bylaws, procedures and regulations, not inconsistent with this Declaration.

"Transfer Date," as used herein, shall mean the earlier to occur of: (i) January 1, 2026; (ii) thirty (30) days following the date that seventy-five percent (75%) or more of the total square footage of the Subject Property has been conveyed to parties not related to or affiliated with the Developer; or (iii) the Developer's recordation of a notice in the Real Property Records of Harris County, Texas, to the effect that the Transfer Date has occurred for purposes of this Declaration.

The Directors and the officers of the Association shall not be personally liable to the Owners, Developer or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any submitted plans), except for gross negligence, willful misconduct or bad faith. Every person who submits any Plans to the Board for approval as herein provided agrees by submission of such Plans, and every lessee or Owner or person claiming by or through an Owner or lessee agrees by acquiring title to any Tract or interest in a Tract, that it will not bring any action or suit against the Association or any director or officer, or any one or more of them, their respective agents, employees, members or assigns, to recover any damages as a result thereof, except for gross negligence, willful misconduct or bad faith.

Any Owner of a Tract within the Subject Property shall be a member of the Association, and shall remain a member for the period of its ownership. Each member of the Association shall be entitled to one (1) vote for each ten thousand (10,000) sq. ft. of the total square footage of the Tract it owns; provided, however, that in the event of the expansion of the Subject Property subject to this Declaration, the votes to which an Owner of land within the Subject Property is entitled shall be revised and adjusted to a ratio that said number of square feet owned bears to the total number of square feet in the Subject Property, as expanded. There shall be no fractional votes. No Owner shall be entitled to vote in any election concerning any action submitted before the Members for their vote during any period in which any such fees or assessments assessed against such Owner are delinquent or such Owner is otherwise in violation of this Declaration as to which such Owner has received written notice of such violation.

10.

SEVERABILITY

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

11.

ADDITIONAL RESTRICTIONS

The Developer may make additional restrictions applicable to any Tract by appropriate provisions in any deed or deeds hereafter conveying any land within the Subject Property, without otherwise modifying the general plan outlined above, and such other restrictions shall inure to the benefit of the Owners of any other land in the Subject Property in the same manner as though they had been expressed herein. Without the consent of any other party, including any Owner, Developer shall have the right to extend the restrictions and covenants hereof to any land hereafter owned or acquired by Developer, any boundary of which lies within one mile of the Subject Property ("Additional Land") by filing a supplemental declaration, in the Real Property Records of Harris County, Texas, adding the Additional Land to the Subject Property subject to this Declaration. Nothing herein contained, however, shall be deemed to impose any restrictions on any portion of the Additional Land unless Developer, as the owner of the Additional Land or any portion thereof, thereafter elects to subject any portion of the Additional Land to the general plan outlined above by expressly providing for same in any deed or other instrument executed by the Developer, as the owner of the portion of the Additional Land to be made subject to these covenants and restrictions.

12.

TERM

These covenants shall run with the land comprising the Subject Property and shall be binding on all Owners and lessees of any of the Subject Property and their respective heirs, executors, Boards, devisees, successors and assigns, and all persons claiming under them, from the date on which these covenants are recorded though January 1, 2056, after which time these covenants shall be automatically extended for successive periods of ten (10) years each, unless within six (6) months prior to January 1, 2056 (or the end of any extended period) an instrument executed and acknowledged by the persons or entities who then own at least two-thirds (2/3rds) of the total square footage of land in the Subject Property (exclusive of public streets) has been recorded in the Real Property Records of Harris County, Texas, terminating these covenants in whole or in part at the end of any such original or extended term.

13.

AMENDMENTS

Notwithstanding the provisions of Article 12 to the contrary, this Declaration may be amended at any time (subject to compliance with all applicable laws, codes, regulations, and ordinances of the City of La Porte) by the written action of the Owners of at least two-thirds (2/3rds) of the total square footage in the Subject Property, regardless of whether such two-thirds (2/3rds) ownership consists of Developer alone, Developer and Other Owners or Other Owners alone; provided, however, that if such two-thirds (2/3rds) ownership consists of Owners alone, then so long as Developer retains fee simple legal title to at least five (5) acres in the Subject Property, such Other Owners must obtain Developer's written consent to any amendment of this Declaration and Developer agrees to consider any proposed amendment in the exercise of good faith judgment and to describe its objections thereto, if any, in writing in reasonable detail. No amendment shall be effective unless made and recorded ten (10) days in advance of the effective date of such change and unless written notice of the proposed amendment is sent to Developer and every Owner at least thirty (30) days in advance of any action taken prior to recordation. No amendment shall be applicable to existing Improvements on the Subject Property (or the replacement of such Improvements following casualty or other damage if restored in a substantially similar manner and the restoration is in compliance with all applicable laws), unless such instrument(s) shall be signed by all of the then Owners of the Subject Property. Notwithstanding anything herein to the contrary, Developer shall have and reserves the right at any time and from time to time, without the joinder or consent of any owner or other party, to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record by Developer for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein or clarifying any provision therein; provided, however, that

any such amendment shall be consistent with and in furtherance of the general plan of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner; and provided further, that nothing herein shall be construed to permit an amendment providing for a use inconsistent with or prohibited by the provisions of this Declaration.

14.

MISCELLANEOUS

A. Protection of Name. No Owner shall use the phrase "Port Crossing" or any word or words similar thereto in connection with any Tract or any business operated in connection with any Tract, without the prior written consent of Developer. The restriction contained in this Paragraph A is for the sole benefit of and may be enforced only by Developer.

B. Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, facsimile machine (with confirmation of delivery) or overnight air courier service. If served by mail, each notice shall be sent postage prepaid, certified mail, return receipt requested, addressed to any person at the address given by such Person to the Association in writing for the purpose of service of such notice, or to the Tract of such person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

C. Right of Entry; Enforcement by Self Help. The Association shall have the right, in addition to and not in limitation of all the rights it may have under this Declaration, to enter upon any Tract, including any Improvements located thereon, for emergency, security, maintenance, repair or safety purposes, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or occupant of the Tract or Improvements.

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Improvements or any portion of a Tract to abate or remove, using such force as reasonably may be necessary, any Improvement to Property, other structure, or thing or condition that violates this Declaration, the Bylaws, any Rules and Regulations, or any use restrictions. Unless an emergency situation exists, such self-help shall be preceded by written notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.

All such entries shall be made with as little inconvenience to the Owner as is practicable in the judgment of the Association and any damages caused thereby (as distinguished from repairs with respect to which the Association is entitled to a reimbursement assessment) shall be borne by the Maintenance Fund of the Association.

D. Platting/Replatting. If for any reason, the Developer should be required or deem it necessary to plat or replat the Subject Property, or any portion thereof, such platting or replatting may be accomplished without the consent of the Other Owners, or their mortgagees; provided, however, that the Developer has obtained the approval of the City and other governmental body or bodies, as applicable, for such platting or replatting. In addition, if for any reason an Owner other than the Developer, should find it necessary or be required to plat or replat all or a portion of the Tract owned by him, such Owner may proceed with the platting or replatting without the consent of the Other Owners, or their mortgagees; provided, however, that (i) such Owner has obtained the approval of the appropriate governmental body or bodies, and (ii) the Board has given its prior written consent to such platting or replatting, which consent shall not be unreasonably withheld or delayed.

ATTACHMENT B

E. Violations of Law. Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Subject Property hereby is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

F. Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

G. Restrictions Construed Together. All of the provisions of this Declaration shall be construed liberally to promote and effectuate the fundamental concepts of the Subject Property, as set forth in the Declaration.

H. Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

I. Estoppel Certificates. Within fifteen (15) days after receipt of a written request from any Owner, the Association shall certify by written instrument, duly executed and acknowledged, to any lender, purchaser or any other person specified in the request: (i) whether this Declaration has been supplemented or amended, and if so, the substance of the supplement or amendment; (ii) whether the Owner is in violation of any provision of this Declaration, and if, so, the description of the violation; (iii) the then current amounts of Assessments and the status of their payment by such Owner; and (iv) any other matters may be reasonably requested by the Owner.

J. Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

K. Force Majeure. "Force Majeure," as used herein, shall mean any delays in performance by a party required hereunder due to strikes, riots, acts of God, shortages of labor or materials, work, governmental laws, regulations or restrictions, inclement weather or any other causes of any kind whatsoever which are beyond the reasonable control of such party, in which event, the party prevented from performing as a result of such Force Majeure delays, shall be entitled to an extension of the time for performance equal to the duration of such Force Majeure delays.

L. Governing Law. This Declaration shall be construed and governed under the laws of the State of Texas.

M. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may be transferred by operation of law to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added by operation of law to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a meter. The surviving or consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Subject Property, together with the covenants and restrictions established upon any other property, as one plan, subject also to the provisions of the Declaration.

N. Delay in Enforcement. No delay in enforcing the provisions of this Declaration as to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

EXECUTED this 26th day of September, 2006.

PORT CROSSING LAND, LP,
a Texas limited partnership

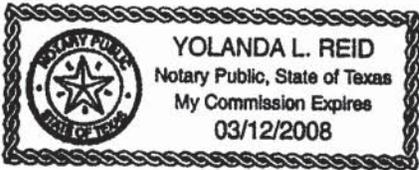
By: Port Crossing Land GP, LLC,
a Texas limited liability company
its general partner

By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS
COUNTY OF HARRIS

§
§
§
§

This instrument was acknowledged before me on this 26th day of September, 2006, by RUSSELL D. PLANK, Vice President of PORT CROSSING GP, LLC, a Texas limited liability company, general partner of Port Crossing Land, LP, a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

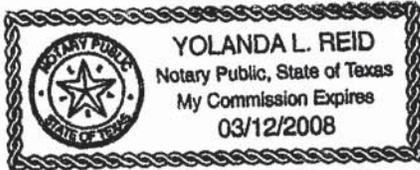
POWELL ROAD LOGISTICS, L.P.,
a Texas limited partnership

By: Powell Road Logistics GP, LLC,
a Texas limited liability company,
its general partner

By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 26th day of September, 2006, by RUSSELL D. PLANK, Vice President of POWELL ROAD LOGISTICS GP, LLC, a Texas limited liability company, general partner of Powell Road Logistics, L.P., a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

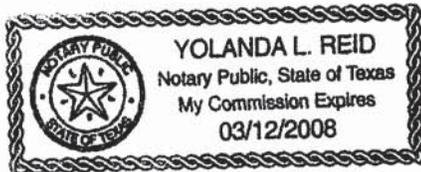
FLPCW, LP,
a Texas limited partnership

By: FLP Candle GP, Inc.,
a Texas corporation,
its general partner

By George Cook
George Cook, President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 26th day of September, 2006, by GEORGE COOK, President of FLP Candle GP, Inc., a Texas corporation, general partner of FLPCW, LP, a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

ATTACHMENT B

NATIONAL PROPERTY HOLDINGS, L.P.,
a Texas limited partnership

By: National Property Holdings GP, LLC,
a Texas limited liability company
its general partner

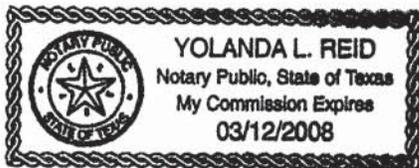
By Russell D. Plank
Russell D. Plank, Vice President

THE STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

This instrument was acknowledged before me on this 20th day of September, 2006, by RUSSELL D. PLANK, Vice President of NATIONAL PROPERTY HOLDINGS GP, LLC, a Texas limited liability company, general partner of National Property Holdings, L.P., a Texas limited partnership, on behalf of such partnership.



Yolanda L. Reid
Notary Public in and for
The State of Texas

ATTACHMENT B

DEL PISO INVESTMENTS, LLLP, an Arizona limited liability limited partnership

By: Harl Avenue Investments, L.L.C., an Arizona limited liability company, its general partner

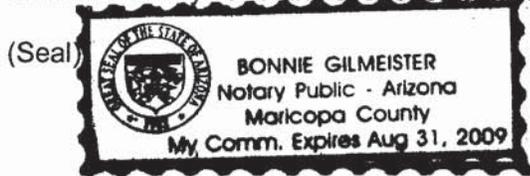
By: [Signature]
Gary Skarsten, Manager

By: [Signature]
Matthew Huarte, Manager

STATE OF ARIZONA §
 §
COUNTY OF ARIZONA §
 §
 §
MARICOPA

This instrument was acknowledged before me on this the 26 day of September, 2006, by Gary Skarsten, Manager of Harl Avenue Investments, L.L.C., an Arizona limited liability company, general partner of Del Piso Investments, LLLP, an Arizona limited liability limited partnership, on behalf on said limited liability limited partnership.

Given under my hand and seal of office this 26 SEPTEMBER day of July, 2006, A.D.

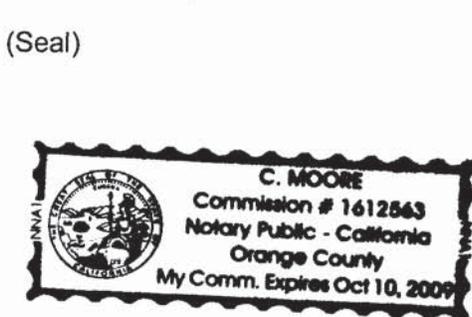


[Signature]
NOTARY PUBLIC, STATE OF ARIZONA
My Commission Expires: 8-31-2009

CALIFORNIA
STATE OF ARIZONA §
 §
COUNTY OF Orange §
 §

This instrument was acknowledged before me on this the 25 day of September, 2006, by Matthew Huarte, Manager of Harl Avenue Investments, L.L.C., an Arizona limited liability company, general partner of Del Piso Investments, LLLP, an Arizona limited liability limited partnership, on behalf on said limited liability limited partnership.

Given under my hand and seal of office this 25 day of July, 2006, A.D.



[Signature]
NOTARY PUBLIC, STATE OF CA
My Commission Expires: 10/10/2009

DRAFT

Exhibit G

DRAFT TRAFFIC CONTROL PLAN
TEXAS IMPORT-EXPORT PARK
An Approximate 292-acre Mixed Use Development
La Porte, Texas

A commercial mixed use project is to be constructed within a PUD zoning district in the City of La Porte, Texas. This project known as *Texas Import-Export Park* (Project) combines as a planned community, a full range of uses from multifamily to rail-served industrial. Pursuant to the adoption of a Special Conditional Use Permit (SCUP) by the City, this document is to provide guidance as to the control of internal and external automobile and truck traffic generated by the Project. While the General Plan for the Project generally designates the various uses, by ordinance each individual building or development site will require further Site Plan review. That review process will, therefore, include an expansion of the Traffic Control Plan to address site specific issues particular to that use or plan as an addendum to this document.

The goal of the Traffic Control Plan is to insure the efficient flow of traffic to and from and within the Project in a manner that will minimize additional adverse impacts to the existing thoroughfare system of the area. It is intended that the guidance established herein shall be enforced by the Project Property Owners Association (Association) with oversight by the City. This guidance is to be used in the preparation of development site plans as well as the implementation of operational parameters for internal control of all vehicular traffic by the Owner-Developer and assigns, including project managers, tenants, and subsequent individual site owners or businesses.

The site is served by a controlled access principle arterial, State Highway 146, with a planned interchange at Wharton Weems Boulevard, a planned 4-lane collector street, bisecting the Project and turning into Powell Road as a parallel facility to S.H. 146. Due to the relatively limited service area of the Wharton Weems-Powell connection, it will more than adequately accommodate anticipated traffic generated by such a Project.

Therefore, managers, tenants, and business owner-operators are to provide routing instructions for all traffic serving sites within the Project. This shall include employees, company trucks and vehicles, customers, carriers, vendors or regular contractors making repetitive deliveries.

TRAFFIC CONTROL GUIDELINES

The following initial guidelines address the essential initial issues of traffic control relative to the Project and may be amended as more detailed planning and site specific issues develop.

DRAFT

All Project generated traffic shall be directed to ingress and egress the site at the S.H. 146-Wharton Weems Blvd. intersection. Every effort is to be made to discourage or prevent traffic to or from Fairmont Parkway. Internal traffic is to also be directed to the S.H. 146-Weems intersection, especially truck traffic.

Site plan design where practicable shall utilize common driveways and cross-access easements (drives) between sites to facilitate quality and effective internal traffic flow, circulation within the Project.

Driveways, especially to S. H. 146, shall be minimized to the extent practicable and within the limits stated within the SCUP. Each building site must be allowed at least one driveway if requested, but sharing of driveways should be encouraged as a policy. Location of driveways opposite each other along Wharton Weems Blvd. should be encouraged, particularly where esplanade openings might exist.

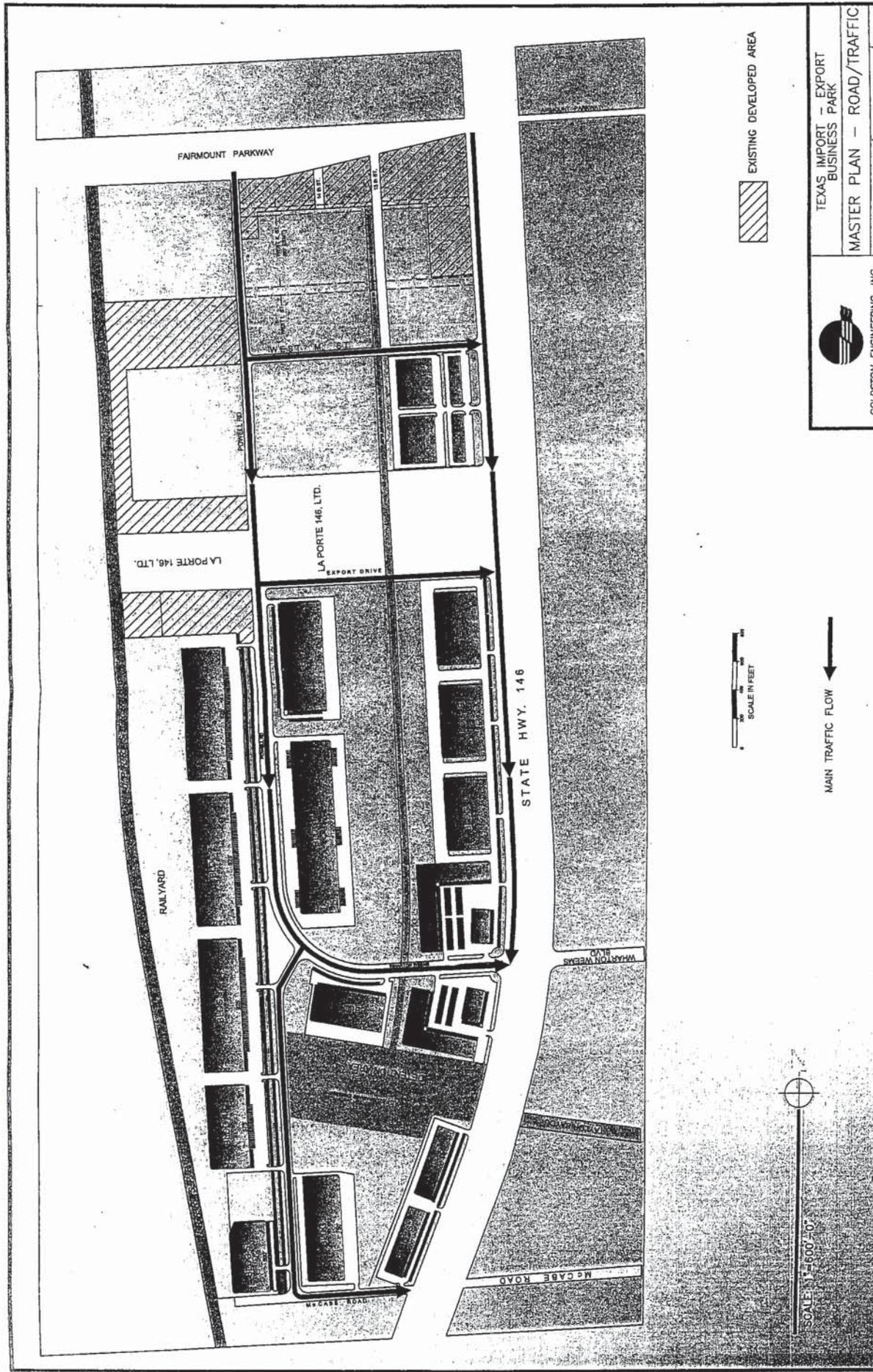
Driveways along Powell Road shall be designed and signed accordingly to facilitate the flow of truck traffic toward the S.H. 146 intersection. A driveway design that would preempt truck traffic to the north toward Fairmont Parkway is to be mandated, except for those destined to facilities that may exist south of Fairmont Parkway.

Esplanades, esplanade openings, including left turn lanes, and driveway curb returns shall be designed to safely accommodate truck traffic with minimum impacts on other roadway traffic. Where possible and practicable consideration shall be given to the separation of automobile and truck entrances, driveways and parking.

All aspects of traffic design discussed herein, including but not limited to geometric design, traffic signs, and standards shall conform to the applicable provisions of the City Code of Ordinances, the Texas Manual on Uniform Traffic Control Devices, and recommendations and standards of the traffic industry (AASHTO).

Included for information purposes only are examples of traffic control devices and designs that illustrate potential solutions to various conditions discussed above. A thorough engineering analysis of the Project will include more detailed study of these traffic issues and will be incorporated into this document.

ATTACHMENT B



EXISTING DEVELOPED AREA

SCALE IN FEET

MAIN TRAFFIC FLOW



SCALE: 1" = 600'