



## City of La Porte Planning and Zoning Commission Agenda

Notice is hereby given of a **Special Called Meeting** of the La Porte Planning and Zoning Commission to be held on **Thursday, August 6, 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: July 16, 2015 Meeting.
4. 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. 16<sup>th</sup> 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."
5. Consider approval or other action regarding a request by Port Crossing LP for approval of the proposed Port Crossing Amending Plat.
6. Continue a public hearing from and opened during the July 16, 2015 Regular Meeting of the Planning and Zoning Commission 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
7. Close public hearing.
8. Consider recommendation to the La Porte City Council on Special Conditional Use Permit request #15-91000004.
9. 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.
10. 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.
11. Administrative reports.
12. Commission comments on matters appearing on the agenda or inquiry of staff regarding specific factual information or existing policy.

13. 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, August 6, 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 July 16, 2015**

**Commissioners Present:** Richard Warren, Helen LaCour, Nick Barrera, Lou Ann Martin, Mark Follis, and Wyatt Smith

**Commissioners Absent:** Hal Lawler, Trey Kendrick, and Les Bird

**City Staff Present:** Assistant City Manager Traci Leach, City Planner Eric Ensey, Assistant City Attorney Traci Leach, and Office Coordinator Peggy Lee

**1. Call to order.**

Vice-Chairman Richard Warren called the meeting to order at 6:03 p.m.

**2. Roll Call of Members.**

Commissioners Warren, Barrera, Martin, Follis, and Smith were present for roll call. Commissioner LaCour arrived at 6:05 p.m.

**3. Consider approval of meeting minutes: May 27, 2015; June 18, 2015.**

**Motion** by Commissioner Barrera to approve the meeting minutes of May 27, 2015, and June 18, 2015.

**Second** by Commissioner Martin. **Motion carried.**

**Ayes: Commissioners Barrera, Martin, Follis, Smith, and Warren**

**Nays: None**

**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 1<sup>st</sup> Addition.**

City Planner Eric Ensey presented the staff report on a request by Bayway Homes for approval of a Preliminary Plat to replat and reconfigure six lots in the original Sylvan Beach 1<sup>st</sup> Addition. As proposed, three lots will front Park Avenue and three lots will front Oregon Avenue.

Mr. Ensey responded to Commissioner's questions.

**Motion** by Commissioner Follis to approve a Preliminary Plat for the Replat of Lots 1 thru 5, Block 14, Sylvan Beach 1<sup>st</sup> Addition.

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

**Ayes: Commissioners LaCour, Barrera, Martin, Follis, Smith, and Warren**

**Nays: None**

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.”**

City Planner Eric Ensey presented the staff report on an amendment to the Future Land Use Map 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 a tract of land located at the southwest corner of Caniff Rd. and Underwood Rd.

Commission action on this item was deferred until the conclusion of the staff presentation and public hearing for agenda item #6.

**Motion** by Commissioner Follis to recommend to City Council, denial of an amendment to the Future Land Use Map component of the La Porte Comprehensive Plan for a 6.9547 acre tract of land located at the southwest corner of Underwood Rd. and Caniff Rd.

**Second** by Commissioner Smith. **Motion carried.**

**Ayes:** Commissioners LaCour, Barrera, Martin, Follis, Smith, and Warren

**Nays:** None

6. **Open public hearing to receive input on an application for Special Conditional Use Permit #15-9100003, a request by Brownstone Ventures, LLC to allow for construction of a multifamily luxury apartment complex at the southwest corner of Underwood Rd. and Caniff Rd.**

Vice-Chairman Warren opened the public hearing at 6:16 p.m.

**a. Staff Presentation**

City Planner Eric Ensey presented the staff report on a request by Brownstone Ventures, LLC for a Special Conditional Use Permit to allow construction of a Class A 124-unit residential multifamily luxury apartment complex located at the southwest corner of Underwood Rd. and Caniff Rd.

The written staff report included a number of items that staff requested be included in the motion if the Commission were to recommend approval of the Special Conditional Use Permit.

**b. Applicant Presentation**

Doak Brown, with the Brownstone Companies, addressed the Commission. Mr. Brown showed a slide presentation of one of their developments with the same architecture and buildings currently being proposed. The anticipated rental range is as follows:

One bedroom units per month: \$875-\$1200  
Two bedroom units per month: \$1200-\$1500  
Three bedroom units per month: \$1700-\$1750

Mr. Brown responded to questions from the Commission related to traffic flow.

**c. Public Comments (for, against, or questions)**

Jenna Smith, 3630 Desert Run Dr., expressed concern about traffic.

Jonathan Clark, attorney representing Summer Winds property association, as well as Pecan Crossing subdivision, declined to comment until after the public had an opportunity to speak.

John Blakemore, 9209 Mahan Dr., President of Pecan Crossing Homeowners Association addressed the Commission. Mr. Blakemore spoke about traffic problems the subdivision is experiencing along Fairmont Parkway and Caniff due to all of the development that has occurred since the Pecan Crossing subdivision was built. The proposed apartment complex would add to the existing traffic problem.

Donald Davis, 3621 E. Desert Dr., expressed concern with devaluation of property values, and additional drainage and traffic problems the development would generate.

Robert Wagstaff, 9614 Rustic Gate, President of Summer Winds Homeowners Association addressed the Commission. Mr. Wagstaff spoke about traffic concerns and decreased property values.

Mike Cobb, 109 Summer Winds, spoke about negative traffic impacts.

Angie Davis, 118 Summer Winds, a realtor, spoke about property devaluation.

Gloria Zavala, 114 Summer Winds, would not have purchased her home had she known an apartment complex would be developed nearby.

Cheryl Hargett, 3617 E. Desert Dr., spoke about negative impacts on traffic and property values.

Wanda Kirk, 9506 Dry Desert Way, expressed concerns with negative impacts related to quality of life and traffic.

Dallas Wilbert, resident of Pecan Crossing, is not in favor of the request due to traffic impacts and property devaluation.

David Janda, Sr., 9502 Dry Desert Way, spoke against the request due to traffic problems and property devaluation.

David Janda, resident of Summer Winds subdivision, spoke against the development. He has concerns with its proximity to existing apartments, traffic problems, and the city's requirements for notifying property owners. Mr. Janda suggested the City consider purchasing land in the area for a park that would benefit residents of Pecan Crossing, Summer Winds, and Fairmont Park West subdivisions.

Jonathan Clarke, 5150 Westheimer, Ste. 1200, attorney representing the Summer Winds homeowners association addressed the Commission. Mr. Clarke noted the current land use and zoning are not appropriate for the development nor does it comply with code requirements related to maximum density and 1,000' distance separation from other apartments, both of which would require variances be granted in order for the development to occur.

**d. Question and Answer**

There were no questions at this point in the meeting.

**7. Close public hearing.**

Vice-Chairman Warren closed the public hearing at 7:17 p.m.

**8. Consider recommendation to City Council on Special Conditional Use Permit request #15-9100003.**

Commissioners Follis and Barrera expressed concern with the density and separation issues associated with the development.

**Motion** by Commissioner Barrera to recommend to City Council, denial of Special Conditional Use Permit request #15-9100003 for a 6.9547 acre tract of land located at the southwest corner of Underwood Rd. and Caniff Rd.

**Second** by Commissioner Martin. **Motion carried.**

**Ayes: Commissioners LaCour, Barrera, Martin, Follis, Smith, and Warren**

**Nays: None**

Vice-Chairman Warren called for a brief recess at 7:28 p.m. The meeting reconvened at 7:39 p.m.

**9. Consider recommendation to 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. 16<sup>th</sup> 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 1, 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."**

City Planner Eric Ensey presented the staff report on a proposed amendment to the Future Land Use Map as recommended by staff. Mr. Ensey reminded the Commission that 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 discrepancies between the various documents governing development of the Port Crossing Business Park, which included amending the Future Land Use Plan to clean-up the land use designation for a portion of the Port Crossing site.

Commissioners were reluctant to act on any items on the agenda relating to Port Crossing. Commissioners were concerned that there was a lot of information to take in and they were unclear about the implications of any decisions they would be making.

Jim Harris, attorney for Port Crossing, assured the Commission there were no substantive changes being requested from the 2006 SCUP and Development Agreement.

After a lengthy discussion, Commissioners agreed to table action on the Port Crossing items and schedule a special called meeting for consideration at a later date.

**Motion** by Commissioner Follis to table action on agenda items 9, 10, 13, 14, and 15.

**Second** by Commissioner Martin. **Motion carried.**

**Ayes:** Commissioners LaCour, Martin, Follis, and Smith

**Nays:** Commissioner Barrera

**Abstain:** Vice-Chairman Warren

10. **Consider approval or other action regarding a request by Port Crossing LP for approval of the proposed Port Crossing Amending Plat.**

Item was tabled.

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 AD 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.**

Vice-Chairman Warren opened the public hearing at 9:24 p.m.

**Motion** by Commissioner Follis to continue the public hearing at a special called meeting on August 6, 2015, at 6:00 p.m. in the City Hall Council Chambers.

**Second** by Commissioner Smith. **Motion carried.**

**Ayes:** Commissioners LaCour, Barrera, Martin, Follis, Smith, and Warren

**Nays:** None

- a. **Staff Presentation**
- b. **Applicant Presentation**
- c. **Public Comments (for, against, or questions)**
- d. **Question and Answer**

**12. Close public hearing.**

The public hearing was continued to August 6, 2015.

**13. Consider recommendation to City Council on Special Conditional Use Permit request #15-91000004.**

Item was tabled.

**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.**

Item was tabled.

**15. Consider recommendation to City Council regarding a 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.**

Item was tabled.

**16. Administrative reports.**

City Planner Eric Ensey reported the City Council directed the Commission to begin a review of the tree preservation ordinance and possible requirements for garage sale signs.

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

Commissioner LaCour commented the meeting carried on too long.

**18. Adjourn**

**Motion** by Commissioner LaCour to adjourn.

**Second** by Commissioner Follis.

Vice-Chairman Warren adjourned the meeting at 9:25 p.m.

Respectfully submitted,

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Peggy Lee  
Secretary, Planning and Zoning Commission

Passed and Approved on \_\_\_\_\_, 2015.

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Hal Lawler  
Chairman, Planning and Zoning Commission

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



**August 6, 2015**

## **AGENDA ITEM 4**

Consider approval of an amendment to the City of La Porte's Future Land Use Plan by amending certain tracts of land between S. 16<sup>th</sup> 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**

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### **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**

This item was included as part of the July 16, 2015 Planning and Zoning Commission agenda. The Commission voted to continue the item to a Special Called Meeting on August 6, 2015. There was no modification to this item since the July 16<sup>th</sup> meeting.

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 and memorialize the legal determination that the uses permitted in the Port Crossing development are subject to the provisions of the code at the time the original SCUP was approved in 2006. The following documents have been modified in some manner, and will be presented this evening for consideration:

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

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. 16<sup>th</sup> 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):

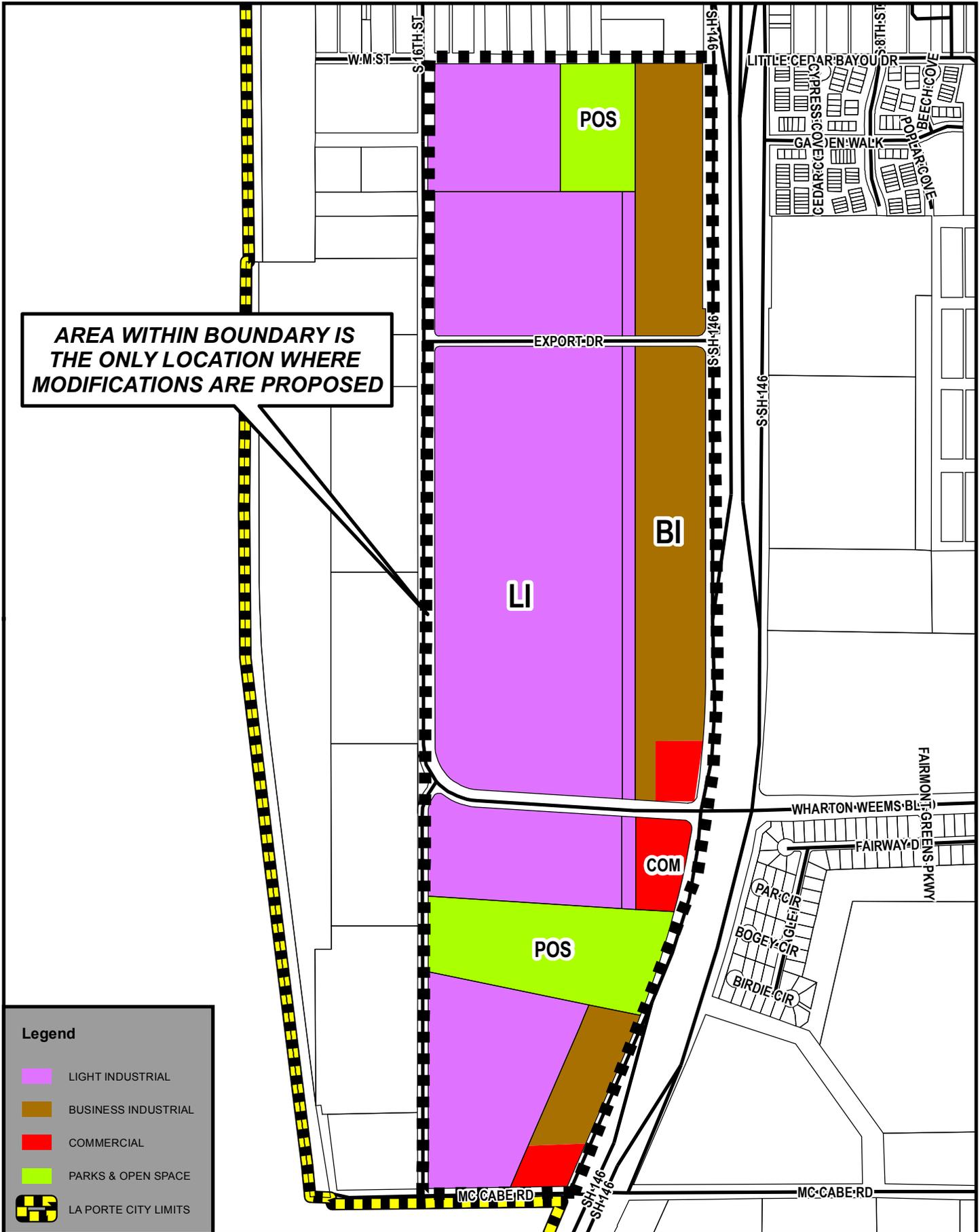
	<b>Land Use</b>	<b>Development</b>
<b>North</b>	Light Industrial General Commercial	Existing office/warehouse/storage yard development Undeveloped land
<b>South</b>	La Porte ETJ	South La Porte Industrial District
<b>West</b>	La Porte ETJ	Bayport Industrial District
<b>East</b>	Highway 146	Highway 146

### ATTACHMENTS

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

# EXHIBIT "A"

## PROPOSED FUTURE LAND USE PLAN

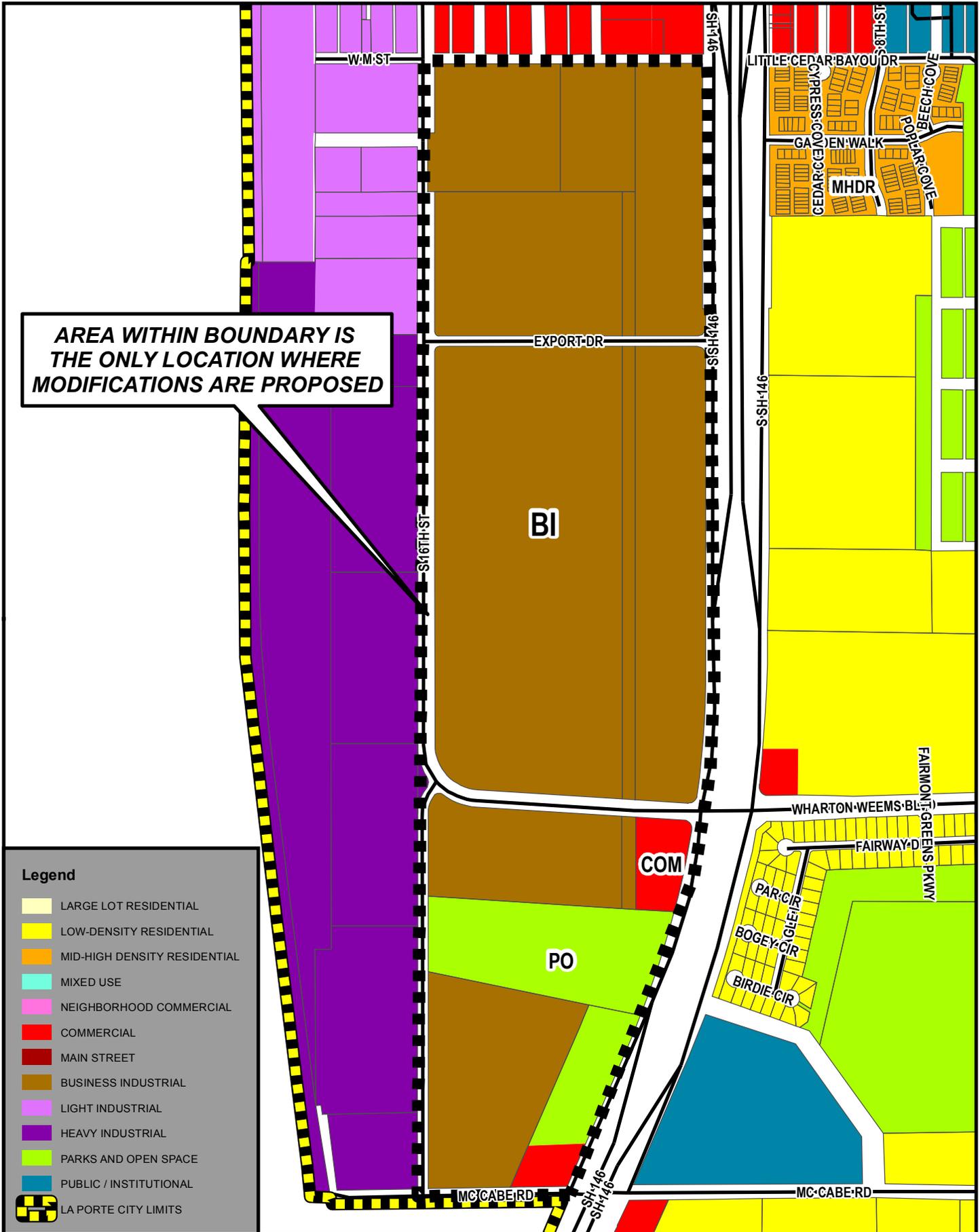


**Legend**

- LIGHT INDUSTRIAL
- BUSINESS INDUSTRIAL
- COMMERCIAL
- PARKS & OPEN SPACE
- LA PORTE CITY LIMITS

# EXHIBIT "B"

## EXISTING FUTURE LAND USE PLAN



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



**August 6, 2015**

## **AGENDA ITEM 5**

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

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### 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

STATE OF TEXAS COUNTY OF HARRIS WE, Port Crossing Land, LP, a Texas limited partnership, and Port Crossing A3, LP, a Texas limited partnership, and Port Crossing A4, LP, a Texas limited partnership, and Port Crossing B5, LP, a Texas limited partnership, and Rail Logix, LP, a Texas limited partnership, owner(s) of the property directly affected by this amending plat, being Reserve(s) out of the block(s) 1, 2, 3, 4 and 5, as indicated hereon, do hereby consent to this amending plat for the purposes herein expressed.

PORT CROSSING LAND, LP, a Texas limited partnership By: Port Crossing Land GP, LLC, a Delaware limited liability company Its: General Partner By: NPH La Porte, LP, a Texas limited partnership Its: Manager By: NPH La Porte GP, LLC, a Texas limited liability company Its: Sole General Partner

STATE OF TEXAS COUNTY OF HARRIS BEFORE ME, the undersigned authority, on this day personally appeared Michael J. Plank and Ryan T. Hesck, 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 considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this day of 2015. Notary Public in and for the State of Texas My Commission Expires:

PORT CROSSING A3, LP, a Texas limited partnership By: Port Crossing A3 GP, LLC, a Delaware limited liability company Its: General Partner By: NPH La Porte, LP, a Texas limited partnership Its: Manager By: NPH La Porte GP, LLC, a Texas limited liability company Its: Sole General Partner

STATE OF TEXAS COUNTY OF HARRIS BEFORE ME, the undersigned authority, on this day personally appeared Michael J. Plank and Ryan T. Hesck, 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 considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this day of 2015. Notary Public in and for the State of Texas My Commission Expires:

PORT CROSSING A4, LP, a Texas limited partnership By: Port Crossing A4 GP, LLC, a Delaware limited liability company Its: General Partner By: NPH La Porte, LP, a Texas limited partnership Its: Manager By: NPH La Porte GP, LLC, a Texas limited liability company Its: Sole General Partner

STATE OF TEXAS COUNTY OF HARRIS BEFORE ME, the undersigned authority, on this day personally appeared Michael J. Plank and Ryan T. Hesck, 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 considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this day of 2015. Notary Public in and for the State of Texas My Commission Expires:

PORT CROSSING B5, LP, a Texas limited partnership By: Port Crossing B5 GP, LLC, a Delaware limited liability company Its: General Partner By: NPH La Porte, LP, a Texas limited partnership Its: Manager By: NPH La Porte GP, LLC, a Texas limited liability company Its: Sole General Partner

STATE OF TEXAS COUNTY OF HARRIS BEFORE ME, the undersigned authority, on this day personally appeared Michael J. Plank and Ryan T. Hesck, 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 considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this day of 2015. Notary Public in and for the State of Texas My Commission Expires:

RAIL LOGIX, LP, a Texas limited partnership By: Rail Logix GP, LLC, a Texas limited liability company Its: General Partner By: Ryan T. Hesck Title: Senior Vice President

STATE OF TEXAS COUNTY OF HARRIS BEFORE ME, the undersigned authority, on this day personally appeared Ryan T. Hesck, 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 considerations therein expressed, and in the capacity therein and herein set out, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this day of 2015. Notary Public in and for the State of Texas My Commission Expires:

AMENDING PLAT CERTIFICATES I, Mike Kurkowski, hereby certify that the following corrections were necessary to eliminate errors which appear on the plat of PORT CROSSING, recorded on February 19, 2007, in Film Code No. 608300, of the Map Records of Harris County, Texas.

Amending Plat to: Remove Reserve Restrictions from the face of the plat.

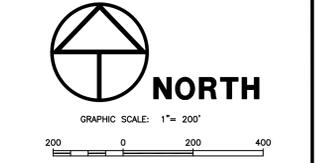
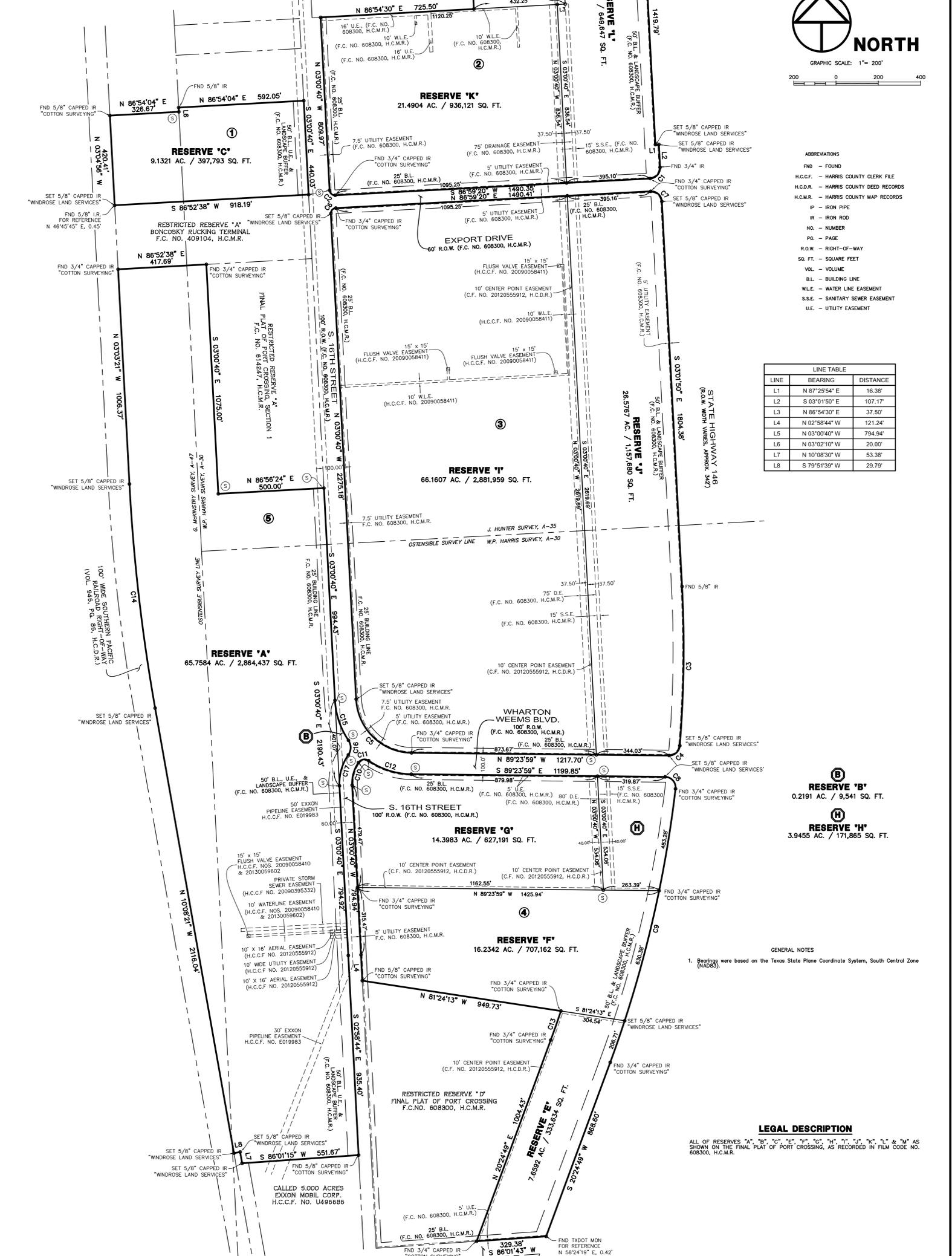
Mike Kurkowski Registered Professional Land Surveyor Texas Registration No. 5101

RECORDED MAP RETURN AGREEMENT CERTIFICATE This is to certify that FLP, LP, Port Crossing Land, LP, Del Piao Investments, LLP, and National Property Holdings, LP, owners of land being platted or subdivided know as PORT CROSSING AMENDING PLAT, approved by the La Porte City Planning and Zoning Commission, authorized Beverly B. Kaufman, County Clerk of Harris County, or her authorized Deputy to return the original recorded map or plat of said subdivision only to the Director of the City of La Porte's Planning Department of his authorized representative, who shall file such original recorded map or plat in the permanent records of that Department.

STATE OF TEXAS COUNTY OF HARRIS This is to certify that the City Planning and Zoning Commission of the City of La Porte, Texas, has approved this plat and subdivision of PORT CROSSING AMENDING PLAT in conformance with the laws of the State of Texas and the ordinance of the City of La Porte and authorized the recording of this plat this day of 2015.

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

CURVE TABLE with columns: CURVE, RADIUS, DELTA, ARC, BEARING, CHORD. Rows C1 through C17.



ABBREVIATIONS table listing symbols for features like FND (Found), H.C.C.F. (Harris County Clerk File), H.C.D.R. (Harris County Deed Records), etc.

LINE TABLE with columns: LINE, BEARING, DISTANCE. Lists lines L1 through L8 with their respective bearings and distances.

GENERAL NOTES 1. Bearings were based on the Texas State Plane Coordinate System, South Central Zone (NAD83).

LEGAL DESCRIPTION ALL OF RESERVES 'A' through 'Q' AS SHOWN ON THE FINAL PLAT OF PORT CROSSING, AS RECORDED IN FILM CODE NO. 608300, H.C.M.R.

PORT CROSSING AMENDING PLAT

A SUBDIVISION OF 253.6018 ACRES OR 11,046,869 SQUARE FEET OF LAND SITUATED IN THE W.P. HARRIS SURVEY, A-30, J. HUNTER SURVEY, A-35, AND G. MCKINSTRY SURVEY, A-47 CITY OF LA PORTE, HARRIS COUNTY, TEXAS

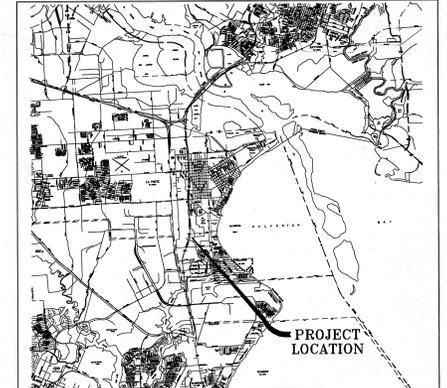
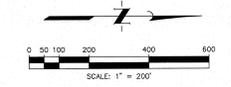
5 BLOCKS 12 RESERVES JUNE, 2015

Owner Port Crossing Land, LP, and Port Crossing A4, LP and Port Crossing A3, LP and Port Crossing B5, LP and Rail Logix, LP 3330 S. Sam Houston Parkway E. Houston, TX 77047

Surveyor Windrose Land Services, Inc. 3200 Wilcrest, Suite 325 Houston, Texas 77042 Phone (713) 459-2281 Fax (713) 461-1151 Firm Registration No. 10108800

Professional Development Consultants Land Surveying, Platting, Project Management, GIS Services

FILED  
2017 FEB 19 AM 9:39  
County Clerk  
HARRIS COUNTY, TEXAS



- GENERAL NOTES:
1. Bearings shown herein are based on Texas State Plane Coordinate System, South Central Zone (NAD 83).
2. The Federal Emergency Management Agency has released Preliminary Flood Insurance Rate Maps based on the Tropical Storm Allison Recovery Project (2005) and other flood hazard data. All flood hazard areas are shown on the map in accordance with the FEMA Flood Insurance Rate Map (FIRM) for the area.
3. A wet-land reserve is hereby established with the stream right-of-way adjacent to all unimproved overbank or riparian areas. Said wet-land reserve shall be established by the stream right-of-way adjacent to all unimproved overbank or riparian areas. Said wet-land reserve shall be established by the stream right-of-way adjacent to all unimproved overbank or riparian areas.
4. The stream channel banks shown herein are based on the natural channel of the stream and do not include any levee or other man-made structure.
5. Property zoned as Planned Unit Development (PUD) having underlying uses of Heavy Industrial (HI), Business Industrial (BI), and General Commercial (GC).
6. General Plan and Special Conditioned Use Permit Numbers 5000-003 dated March 28, 2008, and 5000-008 dated September 11, 2008.
7. Drainage easement to be established to the public with the City of La Porte having right of way.
8. Restricted Reserves A, C, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z are to be developed in Phase 1.
9. Restricted Reserves B, C, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z are to be developed in Phase 2.
10. Some lots within the subdivision are in a Flood Hazard Area. Such lots are subject to an increased chance of flooding and the City of La Porte places strict requirements on development located within the Flood Hazard Area on the site.
11. The City of La Porte requires topographical maps with contour lines with one-meter contours. Such topography did not create these contours but does not guarantee the accuracy of the contour lines.
12. The subdivision is subject to all applicable laws and regulations of Harris County, Texas, and the City of La Porte, Texas.
13. The subdivision is subject to all applicable laws and regulations of Harris County, Texas, and the City of La Porte, Texas.
14. The subdivision is subject to all applicable laws and regulations of Harris County, Texas, and the City of La Porte, Texas.
15. The subdivision is subject to all applicable laws and regulations of Harris County, Texas, and the City of La Porte, Texas.
16. The subdivision is subject to all applicable laws and regulations of Harris County, Texas, and the City of La Porte, Texas.
17. The subdivision is subject to all applicable laws and regulations of Harris County, Texas, and the City of La Porte, Texas.
18. The subdivision is subject to all applicable laws and regulations of Harris County, Texas, and the City of La Porte, Texas.

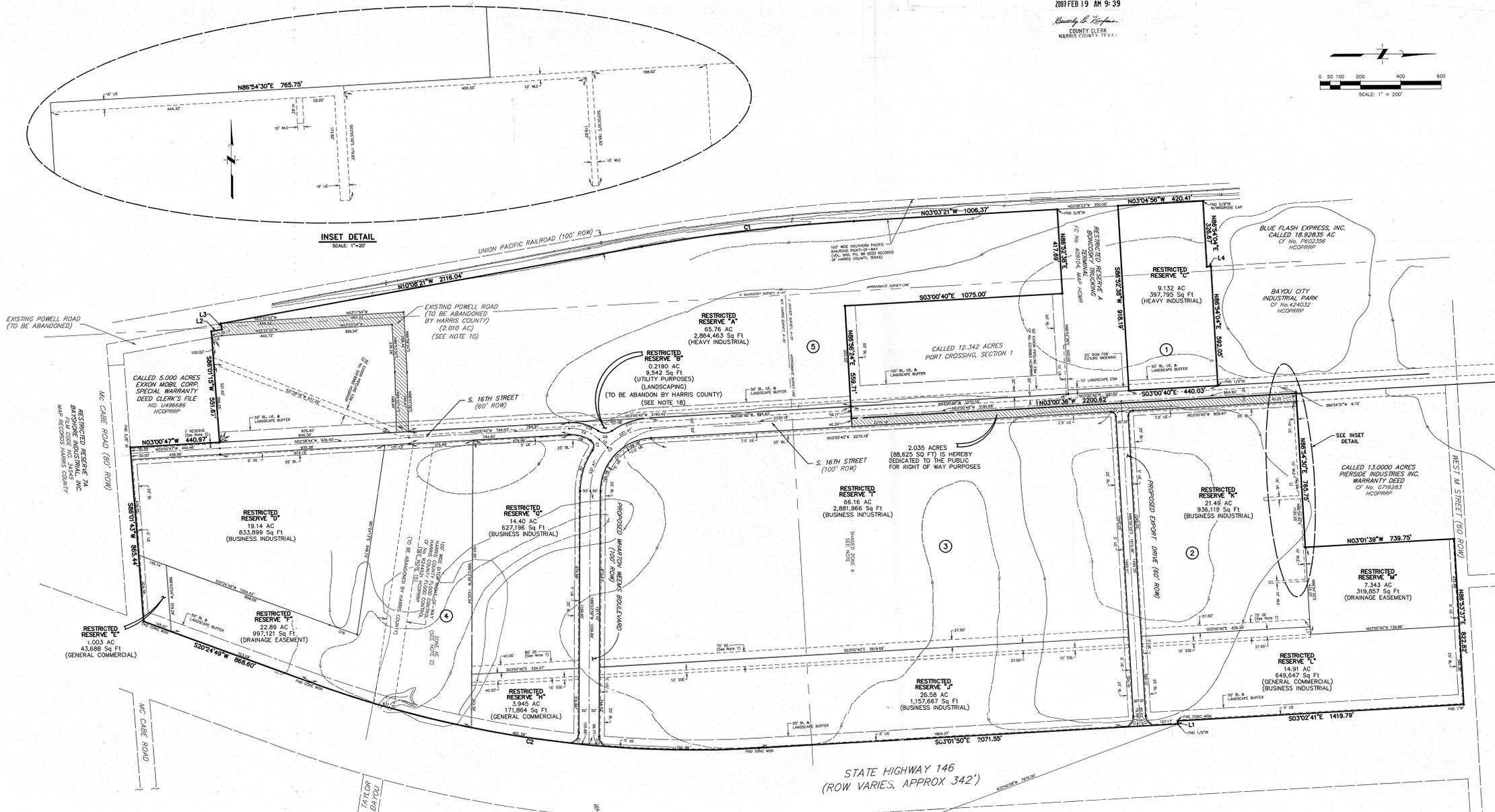


Table with columns: LINE, BEARING, DISTANCE. Lists boundary measurements for various reserves.

Table with columns: CURVE, DELTA ANGLE, RADIUS, ARC LENGTH, TANGENT, CHORD BEARING, CHORD LENGTH. Lists curve data for various reserves.

State of Texas, County of Harris. This is to certify that the City Planning and Zoning Commission of the City of La Porte, Texas has approved this plat... BEVERLY B. KAUFMAN, County Clerk.

STATE OF TEXAS, COUNTY OF HARRIS. We, FLORENCE LP, a Texas Limited Partnership... W.P. HARRIS SURVEY, ABSTRACT No. 30, J. HUNTER SURVEY, ABSTRACT No. 35, G. MCKINSTRY SURVEY, ABSTRACT No. 47.

A METES & BOUNDS description of a certain 277.6 acre tract located in the J. Hunter Survey, Abstract No. 35, the W.P. Harris Survey, Abstract No. 30, and the G. McKinstry Survey, Abstract No. 47 in the City of La Porte, Texas... BEARING: South 89°27'47" East, 186.62 feet along the east corner line to a bound line of the unimproved 153.48 acre tract...

STATE OF TEXAS, COUNTY OF HARRIS. BEFORE ME, the undersigned authority, on this day personally appeared Russell D. Plank, Vice President of Port Crossing, L.P., 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 and in the capacity therein and herein stated, and on the day of said acknowledgment...

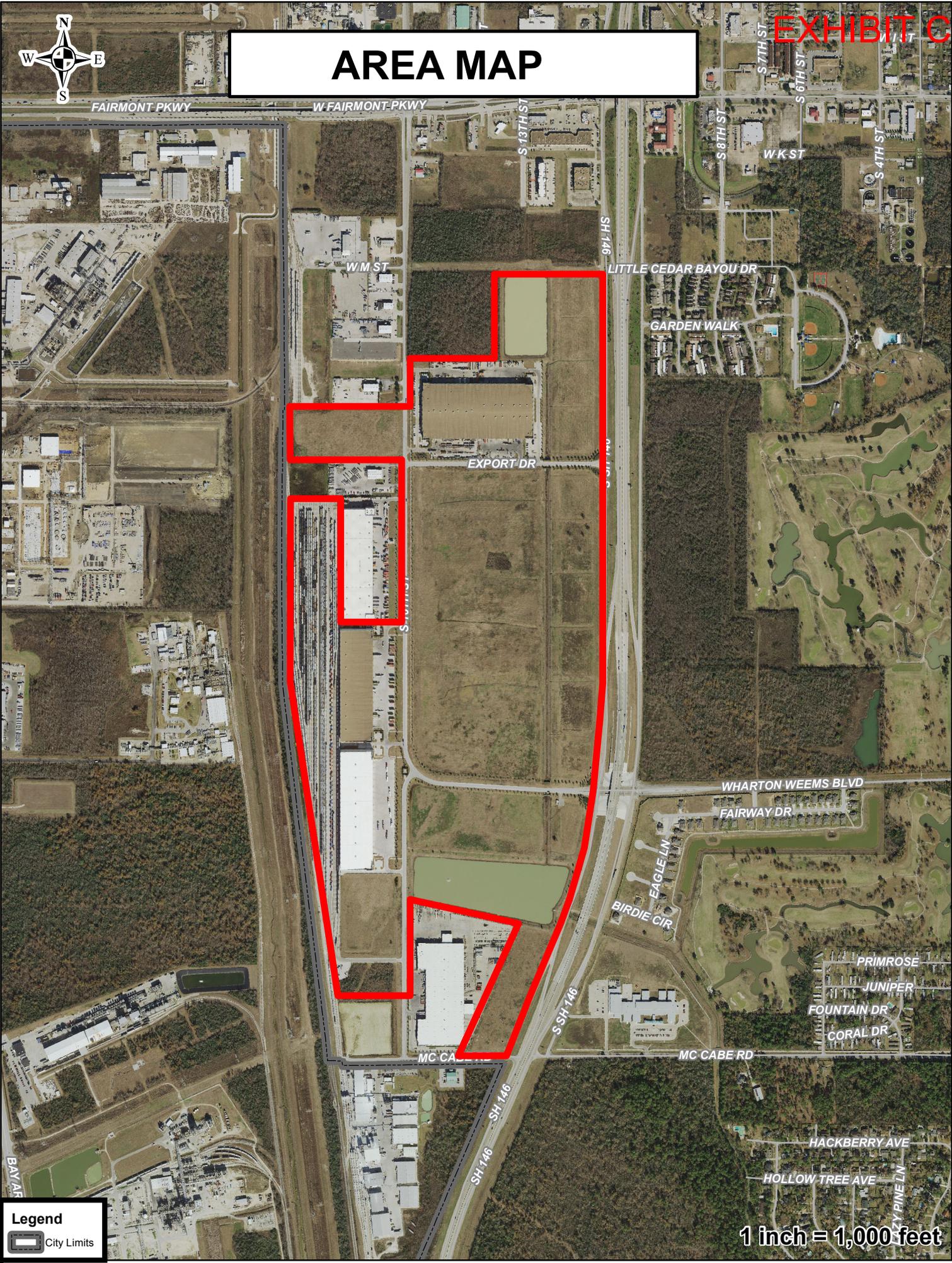
STATE OF TEXAS, COUNTY OF HARRIS. BEFORE ME, the undersigned authority, on this day personally appeared Russell D. Plank, Vice President of Port Crossing, L.P., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and on the day of said acknowledgment...

A METES & BOUNDS description of a certain 9.123 acre tract located in the J. Hunter Survey, Abstract No. 35, and the W.P. Harris Survey, Abstract No. 30, in the City of La Porte, Texas... BEARING: South 89°27'47" East, 186.62 feet along the east corner line to a bound line of the unimproved 153.48 acre tract...

FINAL PLAT OF PORT CROSSING A SUBDIVISION OF 286.7 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 HARRIS COUNTY, TEXAS 13 RESERVES 5 BLOCKS NOVEMBER 2006



# AREA MAP



**Legend**

-  City Limits

1 inch = 1,000 feet

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



**August 6, 2015**

## **AGENDA ITEM 6-8**

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

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### 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:

This item was included as part of the July 16, 2015 Planning and Zoning Commission agenda. The Commission voted to continue the item to a Special Called Meeting on August 6, 2015.

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 and memorialize the legal determination that the uses permitted in the Port Crossing development are subject to the provisions of the code at the time the original SCUP was approved in 2006. The following documents have been modified in some manner, and will be presented this evening for consideration:

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

#### Property Owner:

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

#### Property Location:

Planning and Zoning Commission Regular Meeting  
 August 6, 2015  
 Port Crossing SCUP

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
<b>North</b>	PUD, Planned Unit Development GC, General Commercial	Undeveloped Vacant and Hotel (currently under construction)
<b>South</b>	La Porte ETJ	South La Porte Industrial District
<b>West</b>	La Porte ETJ	Bayport Industrial District
<b>East</b>	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:

<b>Condition:</b>	<b>Staff Analysis:</b>
(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	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

Planning and Zoning Commission Regular Meeting  
 August 6, 2015  
 Port Crossing SCUP

applicant.	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 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 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. Truck stops as defined in Chapter 106 of the La Porte Code of Ordinances shall be prohibited within any part of the 300 acre Port Crossing business park. Any gas station that provides for truck parking, or contains more than one diesel dispenser for every ten (10) gasoline dispensers, or has a canopy over the

Planning and Zoning Commission Regular Meeting  
August 6, 2015  
Port Crossing SCUP

dispensers that is greater than sixteen (16) feet in height shall also be deemed a truck stop.

9. Within reserves E, J1, and L fronting State Highway 146, warehouses are prohibited if the warehouse has a 36 foot clear or higher space; has more than 250,000 feet of storage area; has truck docks on more than two sides or any facing Highway 146; or contains any trailer storage other than necessary for loading and unloading operations. Additionally, each building located thereon must have grade-level store-front entries with windows facing Highway 146. Where warehouses exceed 200,000 square feet in size, building articulation will be required in accordance with Section 106-928 (b)(1) a and b of the La Porte Code of Ordinances.
10. 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.
11. 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 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 for site plan approval 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, shall be required.
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. Truck stops as defined in Chapter 106 of the La Porte Code of Ordinances shall be prohibited within any part of the 300 acre Port Crossing business park. Any gas station that provides for truck parking, or contains more than one diesel dispenser for every ten (10) gasoline dispensers, or has a canopy over the dispensers that is greater than sixteen (16) feet in height shall also be deemed a truck stop.

9. Within reserves E, J1, and L fronting State Highway 146, warehouses are prohibited if the warehouse has a 36 foot clear or higher space; has more than 250,000 feet of storage area; has truck docks on more than two sides or any facing Highway 146; or contains any trailer storage other than necessary for loading and unloading operations. Additionally, each building located thereon must have grade-level store-front entries with windows facing Highway 146. Where warehouses exceed 200,000 square feet in size, building articulation will be required in accordance with Section 106-928 (b)(1) a and b of the La Porte Code of Ordinances.
10. 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.
11. 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  
[Signature]  
Director of Planning

[Signature]  
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

(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,



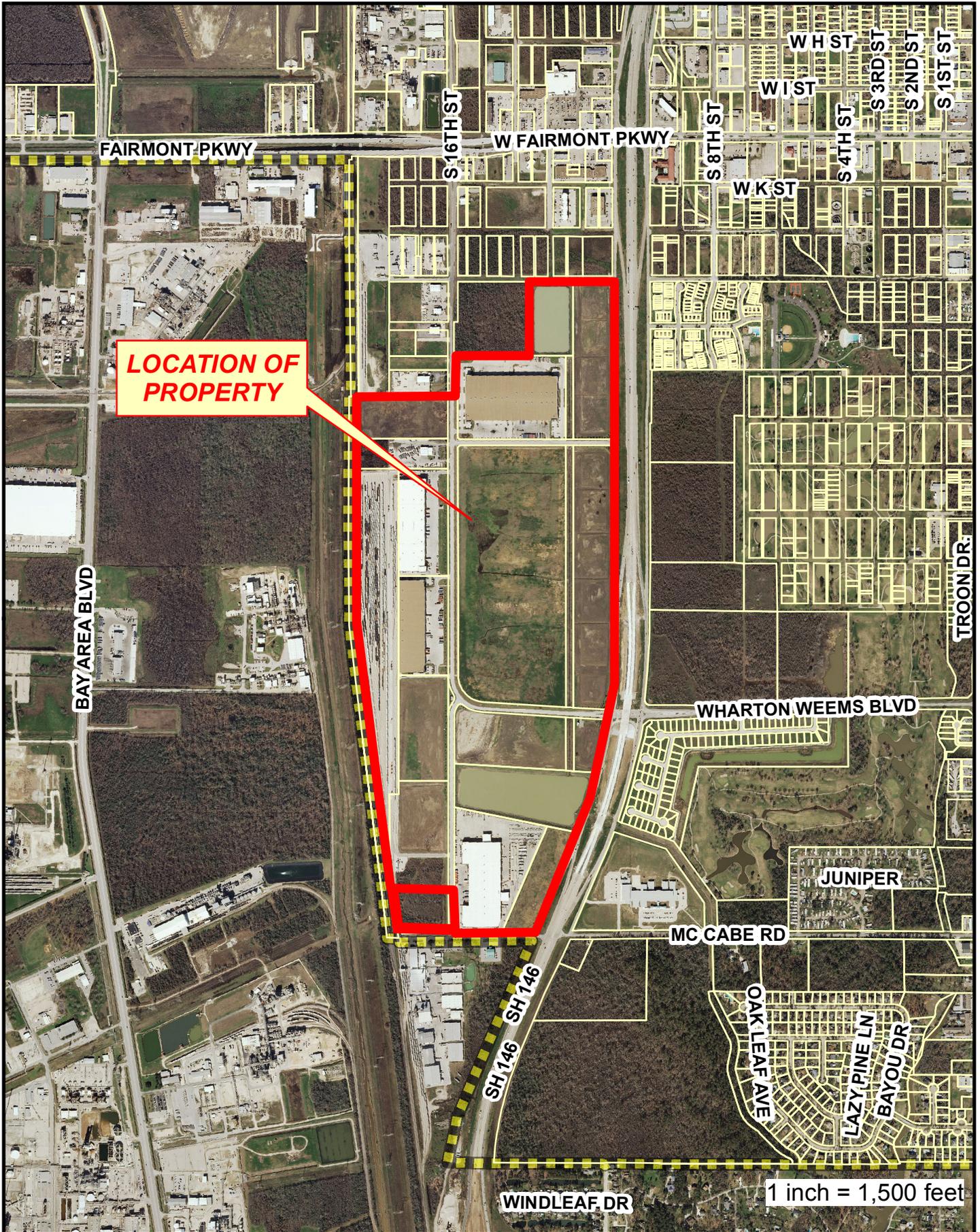
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Ryan T. Lovell  
Vice President

enclosures

# AREA MAP

SCUP REQ. #15-9100004





# ZONING MAP

EXHIBIT E

FAIRMONT PKWY

W FAIRMONT PKWY

S 13TH ST

S 8TH ST

S 7TH ST

S 6TH ST

W 1ST

S 2ND ST

W M ST

S SH 146

S SH 146

EXPORT DR

LITTLE CEDAR BAYOU DR

GARDEN WALK

LOCATION OF PROPERTY

WHARTON WEEMS BLVD

FAIRWAY DR

PAR CIR

BIRDIE CIR

PRIMROSE

JUNIPER

FOUNTAIN DR

CORAL DR

MC CABE RD

S 16TH ST

SH 146

SH 146

OAK LEAF AVE

HACKBERRY AVE

LIZY PINE 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**



**August 6, 2015**

## **AGENDA ITEM 9**

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

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### 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:

This item was included as part of the July 16, 2015 Planning and Zoning Commission agenda. The Commission voted to continue the item to a Special Called Meeting on August 6, 2015.

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 and memorialize the legal determination that the uses permitted in the Port Crossing development are subject to the provisions of the code at the time the original SCUP was approved in 2006. The following documents have been modified in some manner, and will be presented this evening for consideration:

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

#### 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:

	<b>Zoning</b>	<b>Land Use</b>
<b>North</b>	PUD, Planned Unit Development GC, General Commercial	Undeveloped Vacant and Hotel (currently under construction)
<b>South</b>	La Porte ETJ	South La Porte Industrial District
<b>West</b>	La Porte ETJ	Bayport Industrial District
<b>East</b>	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.

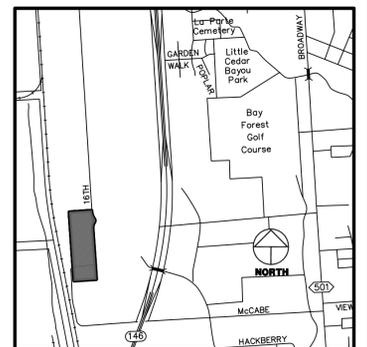
#### **ATTACHMENTS**

- 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



GRAPHIC SCALE: 1" = 200'

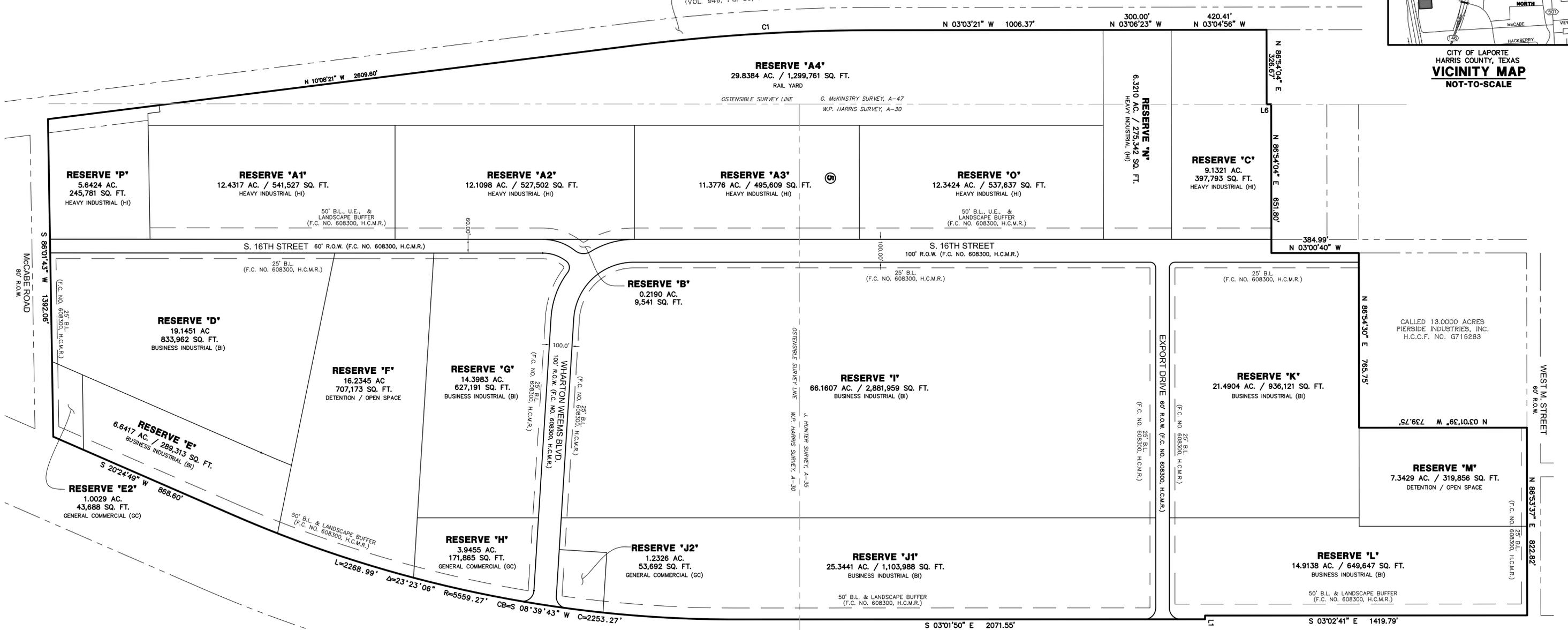
EXHIBIT A



CITY OF LAPORTE  
HARRIS COUNTY, TEXAS  
**VICINITY MAP**  
NOT-TO-SCALE

BAYPORT INDUSTRIAL PARK

100' WIDE SOUTHERN PACIFIC  
RAILROAD RIGHT-OF-WAY  
(VOL. 946, PG. 86, H.C.D.R.)



**PORT CROSSING  
GENERAL PLAN**

313.523 +/- ACRES OF LAND OUT OF THE  
GEORGE B. MCKINSTRY SURVEY, ABSTRACT NO. 47  
WILLIAM P. HARRIS SURVEY, ABSTRACT NO. 30  
JOHNSON HUNTER SURVEY, ABSTRACT NO. 35  
CITY OF LAPORTE, HARRIS COUNTY, TEXAS  
4 BLOCKS 19 RESERVES

JUNE, 2015

Surveyor

Windrose Land Services, Inc.  
3200 Wilcrest Dr., Suite 325  
Houston, Texas 77042  
Phone (713) 458-2281 Fax (713) 461-1151

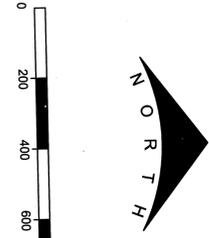
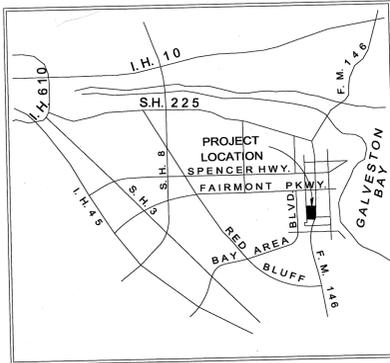


Professional Development Consultants  
Land Surveying, Platting, Project Management, GIS Services  
Firm Registration No. 10108800

NOTE:  
THIS GENERAL PLAN OF PORT CROSSING IS ALSO SUBJECT TO THE TERMS AND PROVISIONS OF A SPECIAL CONDITION OF USE PERMIT AND A DEVELOPMENT AGREEMENT. THIS GENERAL PLAN AND THE SPECIAL CONDITIONAL USE PERMIT ARE EXHIBITS TO THE DEVELOPMENT AGREEMENT.

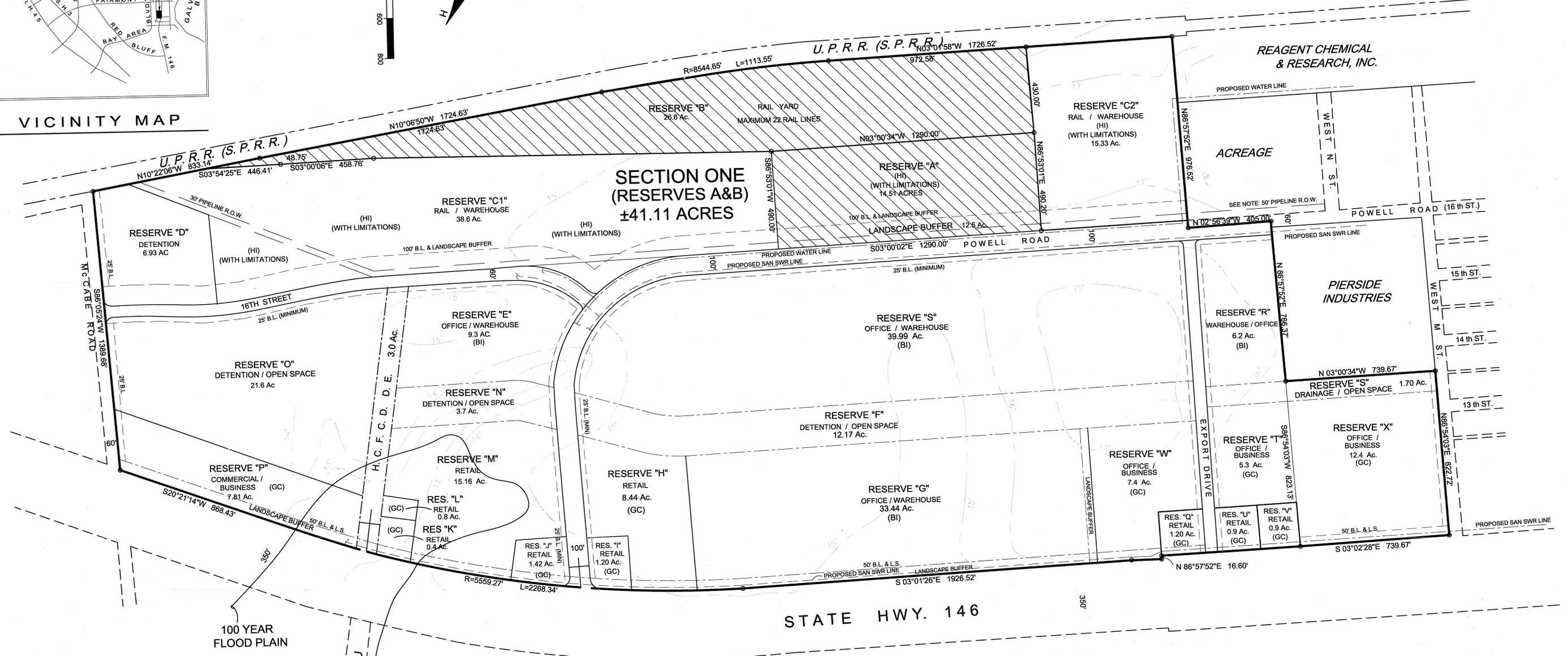
FOR STUDY AND PLANNING USE ONLY. NO WARRANTY IS MADE AS TO THE ACCURACY OF THE INFORMATION CONTAINED HEREON. SAID INFORMATION REPRESENTS A GRAPHIC COMPILATION OF DATUM OBTAINED FROM MAPS, SURVEYS AND OTHER DOCUMENTS.

OWNER/DEVELOPER



BAYPORT INDUSTRIAL PARK

VICINITY MAP



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

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

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

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

*Russell D. Plank*

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,



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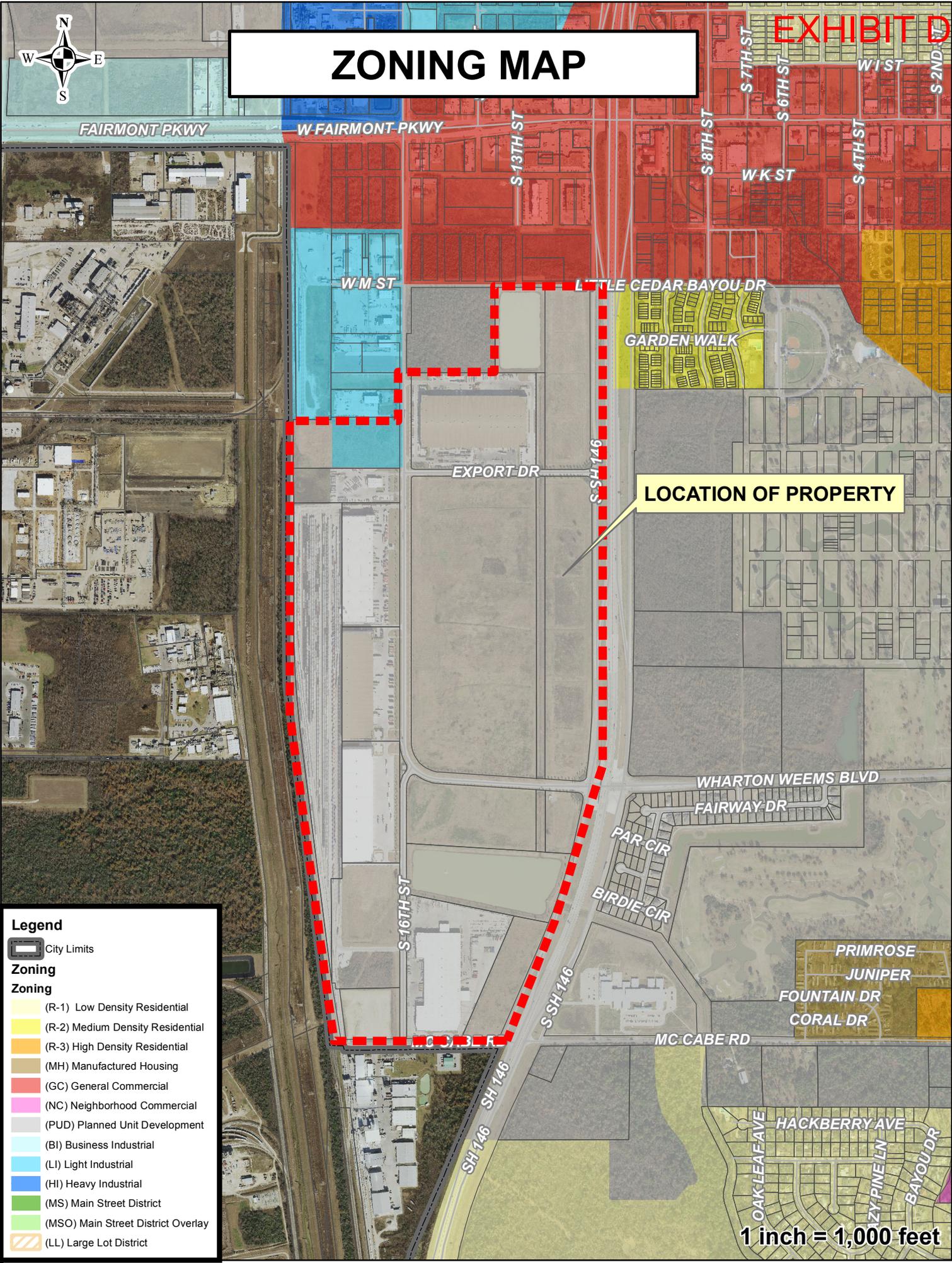
Ryan T. Lovell  
Vice President

enclosures



# ZONING MAP

EXHIBIT D



**Legend**

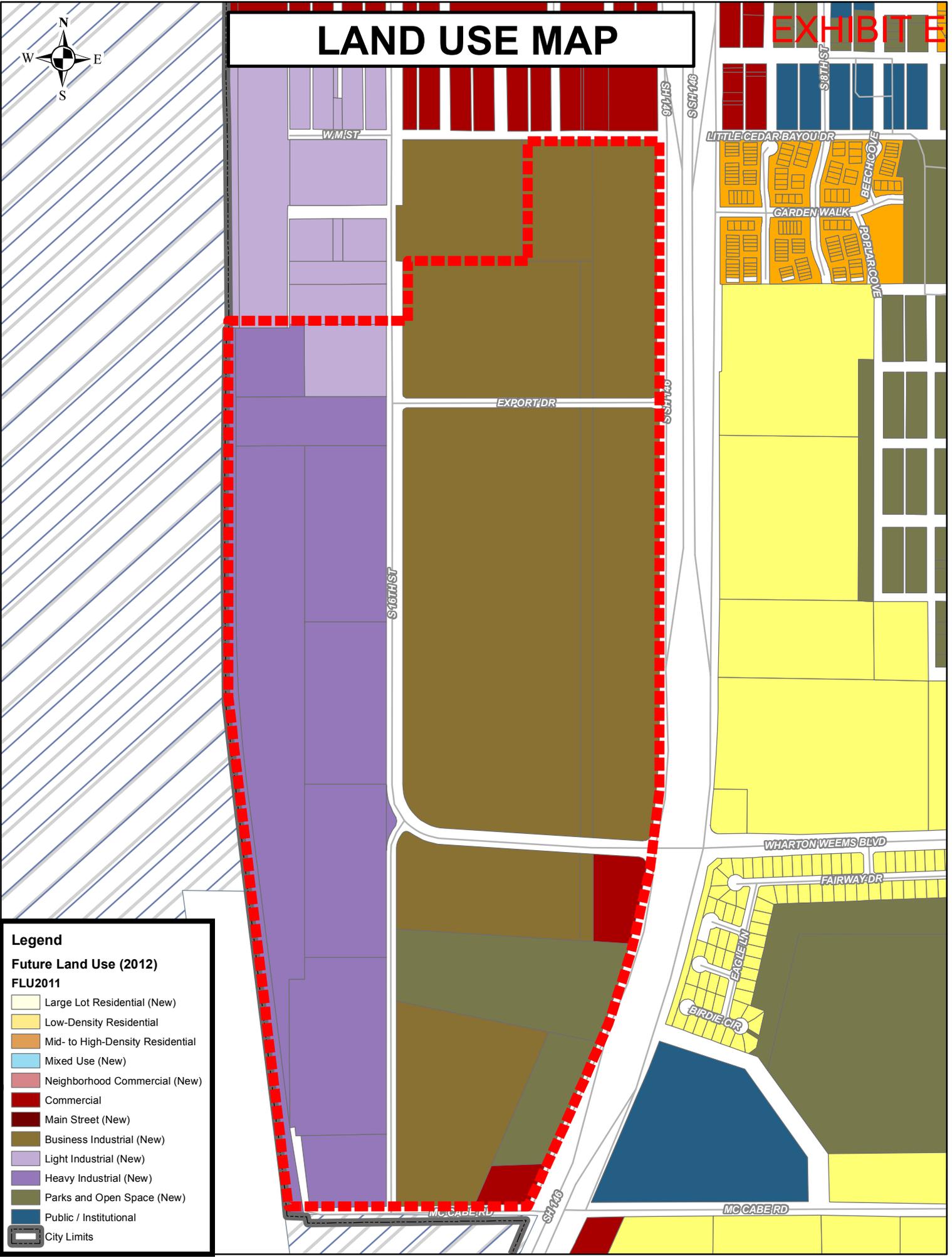
- City Limits
- Zoning**
- (R-1) Low Density Residential
- (R-2) Medium Density Residential
- (R-3) High Density Residential
- (MH) Manufactured Housing
- (GC) General Commercial
- (NC) Neighborhood Commercial
- (PUD) Planned Unit Development
- (BI) Business Industrial
- (LI) Light Industrial
- (HI)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

LOCATION OF PROPERTY

1 inch = 1,000 feet

# 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**



**August 6, 2015**

## **AGENDA ITEM 10**

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**

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### **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**

This item was included as part of the July 16, 2015 Planning and Zoning Commission agenda. The Commission voted to continue the item to a Special Called Meeting on August 6, 2015. Since that meeting, staff and the applicant met to discuss some of the concerns of the Commission. As a result, the Amended Development Agreement has been modified as follows:

1. Exhibit C of the Amended Development Agreement (see Attachment A) has been amended to prohibit truck stops as defined in the section. Among those items defined are canopy height and the number of diesel dispensers.
2. Exhibit C of the Amended Development Agreement (see Attachment A) has been modified to limit the size and type of warehouses that can be developed on the BI tracts along Highway 146. Bay doors will not be allowed to front Highway 146 and the buildings will be designed with grade-level storefront entries and windows facing Highway 146.

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 and memorialize the legal determination that the uses permitted in the Port Crossing development are subject to the provisions of the code at the time the original SCUP was approved in 2006. The following documents have been modified in some manner, and will be presented this evening for consideration:

1. Future Land Use Plan.
2. Final Plat.
3. Special Conditional Use Permit.

4. General Plan.
5. Development Agreement.

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

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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  
its general partner

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

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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: \_\_\_\_\_  
Corby D. Alexander, City Manager

Date: \_\_\_\_\_

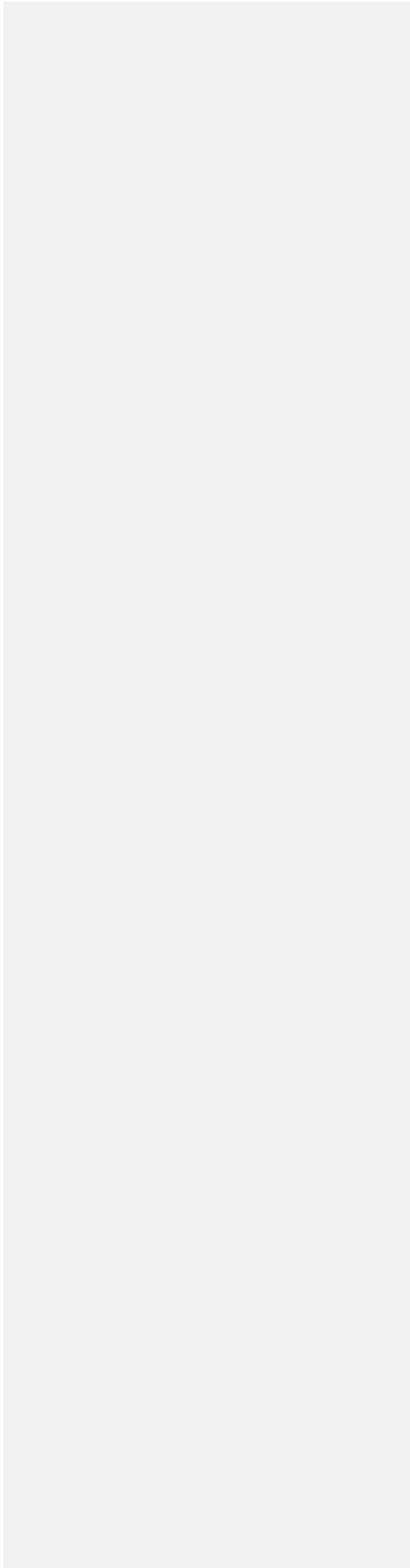
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ATTEST:

\_\_\_\_\_ P  
Patrice Fogarty, City Secretary

APPROVED:

\_\_\_\_\_  
Clark T. Askins, 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 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 for site plan approval 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, shall be required.
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. Truck stops as defined in Chapter 106 of the La Porte Code of Ordinances shall be prohibited within any part of the 300 acre Port Crossing business park. Any gas station that provides for truck parking, or contains more than one diesel dispenser for every ten (10) gasoline dispensers, or has a canopy over the dispensers that is greater than sixteen (16) feet in height shall also be deemed a truck stop.

# ATTACHMENT A

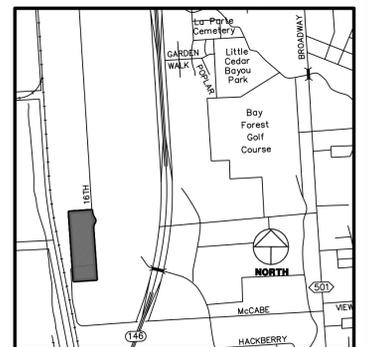
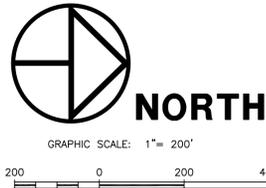
- 9. Within reserves E, J1, and L fronting State Highway 146, warehouses are prohibited if the warehouse has a 36 foot clear or higher space; has more than 250,000 feet of storage area; has truck docks on more than two sides or any facing Highway 146; or contains any trailer storage other than necessary for loading and unloading operations. Additionally, each building located thereon must have grade-level store-front entries with windows facing Highway 146. Where warehouses exceed 200,000 square feet in size, building articulation will be required in accordance with Section 106-928 (b)(1) a and b of the La Porte Code of Ordinances.
- 10. 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.
- 11. 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.

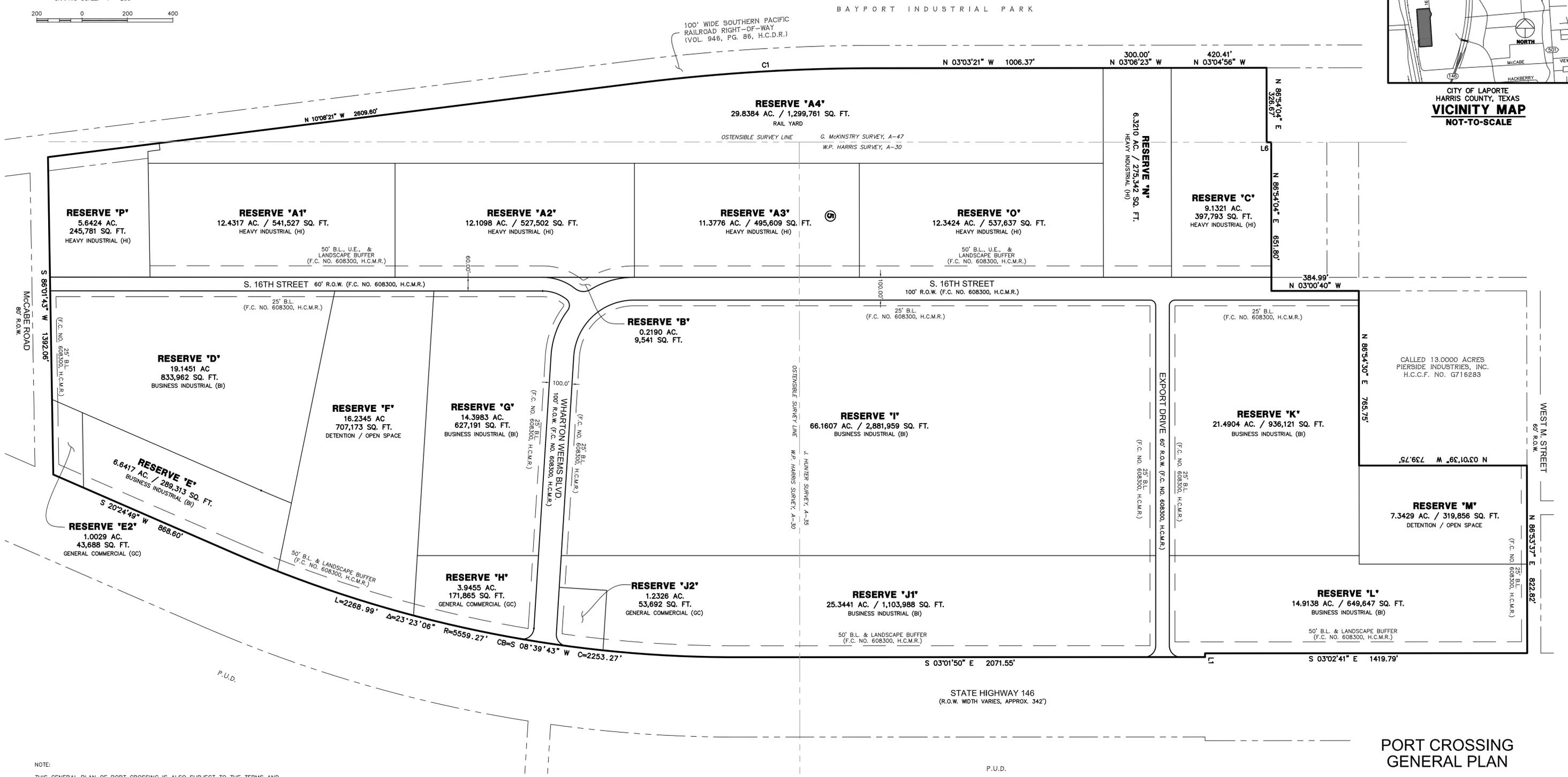
Validation Date: \_\_\_\_\_

\_\_\_\_\_  
Director of Planning and Development

\_\_\_\_\_  
City Secretary



CITY OF LAPORTE HARRIS COUNTY, TEXAS VINCINITY MAP NOT-TO-SCALE



NOTE: THIS GENERAL PLAN OF PORT CROSSING IS ALSO SUBJECT TO THE TERMS AND PROVISIONS OF A SPECIAL CONDITION OF USE PERMIT AND A DEVELOPMENT AGREEMENT. THIS GENERAL PLAN AND THE SPECIAL CONDITIONAL USE PERMIT ARE EXHIBITS TO THE DEVELOPMENT AGREEMENT.

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.

OWNER/DEVELOPER

PORT CROSSING GENERAL PLAN

313.523 +/- ACRES OF LAND OUT OF THE GEORGE B. MCKINSTRY SURVEY, ABSTRACT NO. 47 WILLIAM P. HARRIS SURVEY, ABSTRACT NO. 30 JOHNSON HUNTER SURVEY, ABSTRACT NO. 35 CITY OF LAPORTE, HARRIS COUNTY, TEXAS

4 BLOCKS 19 RESERVES JUNE, 2015 Surveyor

Windrose Land Services, Inc. 3200 Wilcrest Dr., Suite 326 Houston, Texas 77042 Phone (713) 458-2281 Fax (713) 461-1151 Professional Development Consultants Land Surveying, Platting, Project Management, GIS Services Firm Registration No. 10108800

## Exhibit C

### **Land Use Exceptions<sup>1</sup>**

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)

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<sup>1</sup> 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.

# ATTACHMENT A

## 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.

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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 foods 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).

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\* — 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

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## 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

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<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.

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- 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

## ZONING

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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>	<sup>4</sup> <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 <sup>6</sup>
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 <sup>7,8</sup>
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

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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:

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(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.

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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

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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.

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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; (ix) 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 (x) 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 A

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 26<sup>th</sup> day of September, 2006.

PORT CROSSING LAND, LP,  
a Texas limited partnership

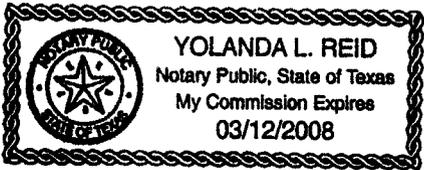
By: Port Crossing Land GP, LLC,  
a Texas limited liability company  
its general partner

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

THE STATE OF TEXAS  
COUNTY OF HARRIS

§  
§  
§

This instrument was acknowledged before me on this 26<sup>th</sup> 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

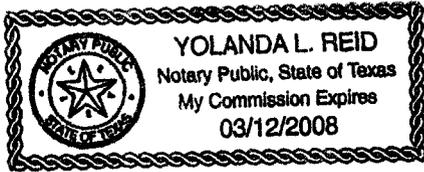
POWELL ROAD LOGISTICS, L.P.,  
a Texas limited partnership

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 26<sup>th</sup> 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

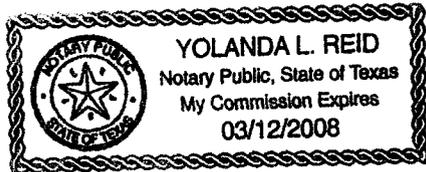
FLPCW, LP,  
a Texas limited partnership

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 26<sup>th</sup> 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

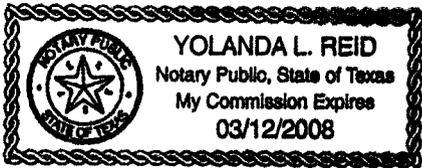
By Russell D. Plank  
Russell D. Plank, Vice President

THE STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

This instrument was acknowledged before me on this 26<sup>th</sup> 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

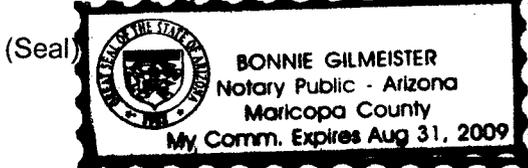
By: [Signature]  
Gary Skarsten, Manager

By: [Signature]  
Matthew Huarte, Manager

STATE OF ARIZONA §  
COUNTY OF ARIZONA §  
MAZICOPA §

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.

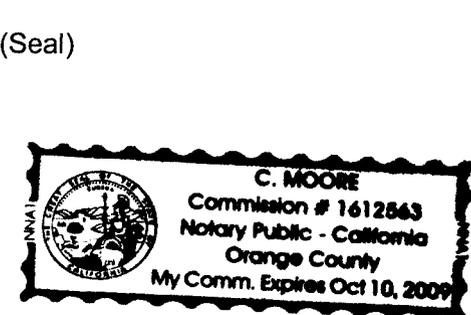


[Signature]  
NOTARY PUBLIC, STATE OF ARIZONA  
My Commission Expires: 8-31-2009

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. 16<sup>th</sup> Street as a parallel roadway to S.H. 146. Due to the relatively limited service area of the Wharton Weems and S. 16<sup>th</sup> 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.

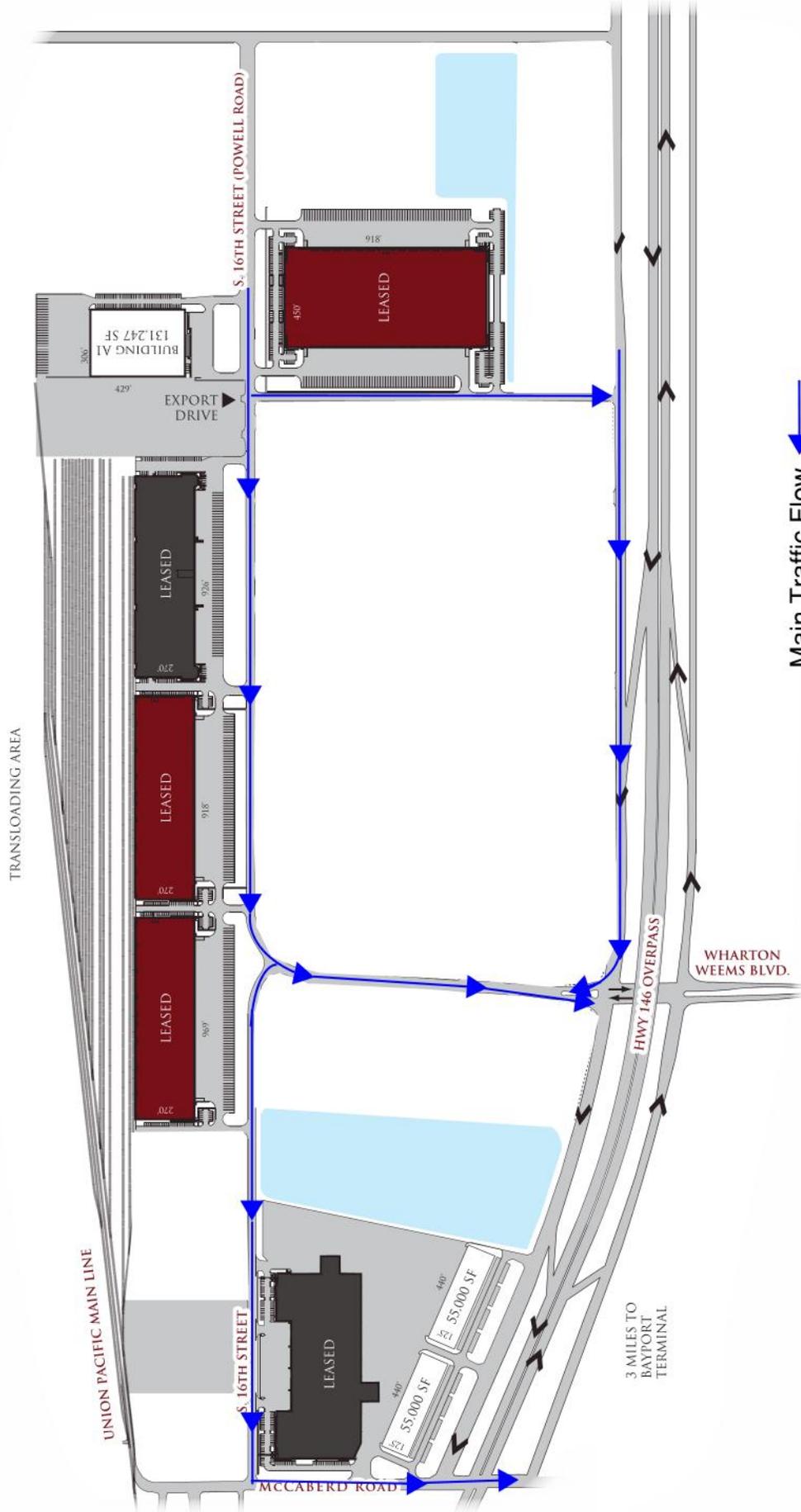
Driveways, especially to S.H. 146, shall be minimized to the extent practicable and within the limits stated within the SCUP. Each build site must be allowed at least one driveway if requested, but sharing of driveways should be encouraged as a policy. Location of driveways opposite each other along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

Driveways along S. 16<sup>th</sup> 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 28<sup>th</sup> 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

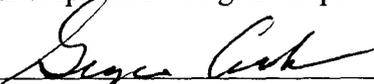
By: [Signature]  
Gary Sharsten, Manager

By: [Signature]  
Matthew Huarte, Manager

Date: 9/26/06

**FLPCW, LP**  
a Texas limited partnership

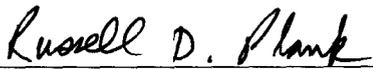
By: FLP Candle GP, Inc.,  
a Texas corporation its general partner

By:   
George Cook, President

Date: 9-28-06

**National Property Holdings, L.P.,**  
a Texas limited partnership

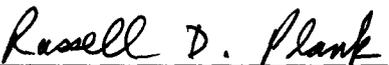
By: National Property Holdings GP, LLC,  
a Texas limited liability company  
its general partner

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



**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

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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:

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(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.

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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,

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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 26<sup>th</sup> day of September, 2006.

PORT CROSSING LAND, LP,  
a Texas limited partnership

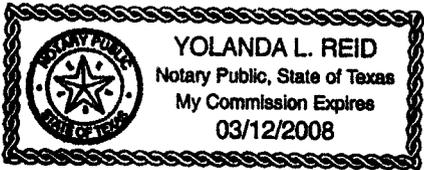
By: Port Crossing Land GP, LLC,  
a Texas limited liability company  
its general partner

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

THE STATE OF TEXAS  
COUNTY OF HARRIS

§  
§  
§

This instrument was acknowledged before me on this 26<sup>th</sup> 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

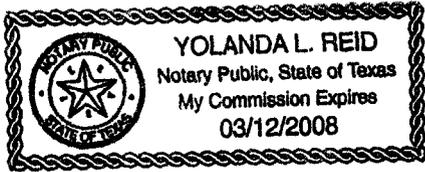
POWELL ROAD LOGISTICS, L.P.,  
a Texas limited partnership

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 26<sup>th</sup> 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

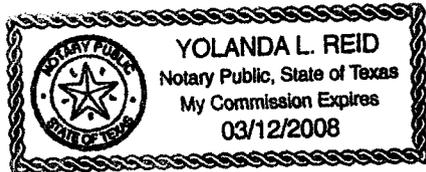
FLPCW, LP,  
a Texas limited partnership

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 26<sup>th</sup> 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

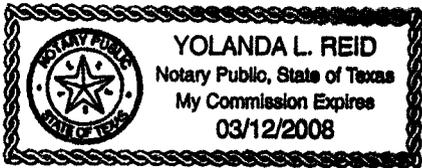
By Russell D. Plank  
Russell D. Plank, Vice President

THE STATE OF TEXAS

§  
§  
§

COUNTY OF HARRIS

This instrument was acknowledged before me on this 26<sup>th</sup> 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

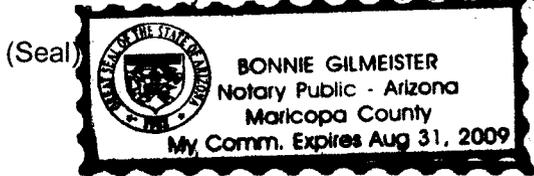
By: [Signature]  
Gary Skarsten, Manager

By: [Signature]  
Matthew Huarte, Manager

STATE OF ARIZONA §  
COUNTY OF ARIZONA §  
MAZICOPA §

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.

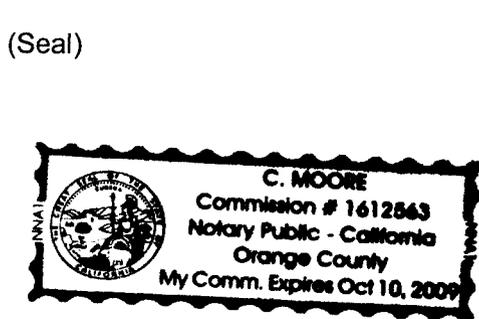


[Signature]  
NOTARY PUBLIC, STATE OF ARIZONA  
My Commission Expires: 8-31-2009

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.

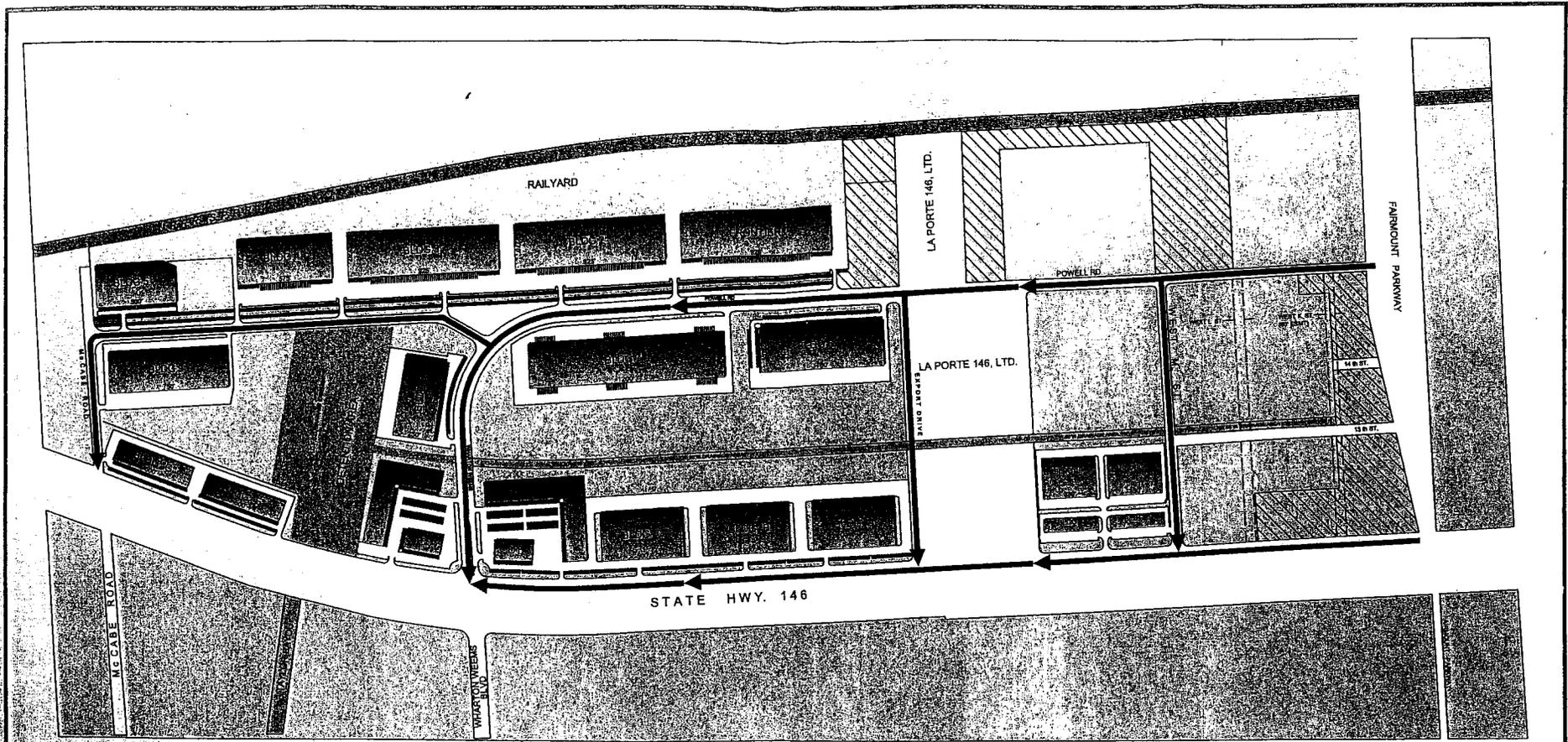
Driveways, especially to S. H. 146, shall be minimized to the extent practicable and within the limits stated within the SCUP. Each building site must be allowed at least one driveway if requested, but sharing of driveways should be encouraged as a policy. Location of driveways opposite each other along 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.



 EXISTING DEVELOPED AREA



MAIN TRAFFIC FLOW 

 GOLDSTON ENGINEERING, INC.	TEXAS IMPORT - EXPORT BUSINESS PARK
	MASTER PLAN - ROAD/TRAFFIC