

SPACE CENTER PLAZA
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (hereinafter referred to as the "Declaration") is made as of this ___ day of ___, 2008, by [_____,] a _____.

RECITALS

WHEREAS, Declarant is the owner of that certain tract of land more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Declarant and the City of Nassau Bay, Texas entered into that certain Development Agreement dated March 20, 2007, incorporated herein by reference (the "Development Agreement"), a copy of which can be obtained from the Association or the City of Nassau Bay; and

WHEREAS, Declarant has created certain Development Guidelines for the Property, incorporated herein by reference (the "Development Guidelines"), a copy of which can be obtained from the Association; and

WHEREAS, the Property is subject to that certain Planned Unit Development Plan, incorporated herein by reference (the "PUD Plan"), a copy of which can be obtained from the City of Nassau Bay; and

WHEREAS, Declarant desires to impose certain covenants, conditions, restrictions and easements on the Property;

NOW, THEREFORE, in consideration of the premises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby declares that the Property shall be owned, leased, transferred, conveyed, demised, used, occupied and improved subject to the covenants, conditions, restrictions and easements in this Declaration, all of which shall run with the Property and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

ARTICLE 1

DEFINITIONS

1.1 General Definitions. As used in this Declaration the following words and phrases shall have the meanings indicated:

"Architecture Review Committee" or "Committee" shall mean and refer to the Architectural Review Committee established in accordance with Article 7 hereof for the purpose of monitoring and establishing standards for the development of the Property in accordance with this Declaration.

"Assessments" shall mean and refer to the Annual Assessment and any Special Assessments, as more fully described in Article 4 hereof.

"Association" shall mean and refer to [_____] Association, Inc., a Texas nonprofit corporation, which shall be formed pursuant to the TBOC, and its successors and assigns.

"Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, as more fully described in Article 2 hereof.

"Bylaws" shall mean and refer to the rules adopted by the Board of Directors of the Association which govern the operation of the Association.

“City” shall mean and refer to the City of Nassau Bay, Texas, a home rule municipality located in Harris County, Texas.

“Common Public Areas” shall mean and refer to that property which the City now or hereafter owns or otherwise holds for the common use and enjoyment of the Owners, as depicted as “Parcel J” on the Parcel Plan attached as Exhibit B.

“Common Retail Areas” shall mean and refer to the portions of Parcel G and Parcel H that are held for the common use and enjoyment of the Owners, including the parking lots, sidewalks and landscaped areas, as depicted as “Parcel G” and “Parcel H” on the Parcel Plan attached as Exhibit B.

“Declarant” shall mean [_____], and any successor appointed in writing by [_____] (and any succeeding appointee) to succeed to the rights of Declarant.

“Development Guidelines” shall mean those certain Development Guidelines created by the Committee for the Property which address various development issues for the Property, including, without limitation, setbacks, density, elevations, screening, landscaping, exterior finishes, open space requirements, outside storage, parking, exterior lighting and signage. The Development Guidelines are subject to change as determined by the Committee; provided, however, in all events, the requirements of the Development Guidelines shall at least be as restrictive as those requirements contained in the City of Nassau Bay zoning code and ordinance and the approved PUD Plan. A copy of the Development Guidelines is available at the offices of the Association.

“Governmental Authorities” shall mean any board, bureau, commission, department or body of any municipal, county, state or federal governmental unit or subdivision thereof, having or acquiring jurisdiction over the Property, or any part thereof

“Improvements” shall mean all improvements, structures and appurtenances thereto of every type and kind and all plants and landscaping elements placed, constructed, or located on the Property, including but not limited to, buildings, parking areas, roads, driveways, sidewalks, walkways, loading areas, fences, screening walls, retaining walls, poles, and signs of any type or kind.

“Laws” shall mean all laws, statutes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities.

“Management District” shall mean and refer to the NASA Area Management District.

“Member” shall mean and refer to every person or entity who holds a membership in the Association.

“Owner” shall mean the City, persons and entities that may, from time to time, hold fee simple title of record to all or any portion of a Parcel. In the event fee simple title to a Parcel is held by more than one person or entity, the obligations of the Owners of that parcel under the provisions of this Declaration shall be the joint and several obligations of such persons and entities. The term “Owner” shall not include persons or entities that hold merely a lien or interest in the Property or any portion thereof as security for the performance of an obligation. Declarant and any Owner of a Parcel acknowledge and agree that an Owner shall not sell any Parcel to any group, organization, entity, or club, etc (except the City) that does not pay ad valorem property taxes, unless specifically protected by the United States Constitution.

“Parcel” shall mean each parcel of the Property, or any portion thereof, which may be subdivided in the future and any future parcels added to the Property under this Declaration.

“Parcel A” shall mean that certain parcel of the Property depicted as “Parcel A” on the Parcel Plan attached as Exhibit B.

“Parcel B” shall mean that certain parcel of the Property depicted as “Parcel B” on the Parcel Plan attached as Exhibit B.

“Parcel C” shall mean that certain parcel of the Property depicted as “Parcel C” on the Parcel Plan attached as Exhibit B.

“Parcel D” shall mean that certain parcel of the Property depicted as “Parcel D” on the Parcel Plan attached as Exhibit B.

“Parcel E” shall mean that certain parcel of the Property depicted as “Parcel E” on the Parcel Plan attached as Exhibit B.

“Parcel F” shall mean that certain parcel of the Property depicted as “Parcel F” on the Parcel Plan attached as Exhibit B.

“Parcel G” shall mean that certain parcel of the Property depicted as “Parcel G” on the Parcel Plan attached as Exhibit B.

“Parcel H” shall mean that certain parcel of the Property depicted as “Parcel H” on the Parcel Plan attached as Exhibit B.

“Parcel J” shall mean that certain parcel of the Property owned by the City, depicted as “Parcel J” on the Parcel Plan attached as Exhibit B.

“Parcel Plan” shall mean and refer to the Parcel Plan attached hereto as Exhibit B.

“Permittees” shall mean all customers, clients, contractors, employees, agents, invitees, tenants, and licensees of any Owner and of any tenant of any Owner.

“Property” shall mean and refer to the property located within the PUD Plan, described in Exhibit A.

“Prorata Share” shall mean each Parcel’s portion of an Assessment which shall be equal to the ratio, expressed as a percentage, that a Parcel bears to the total number of Parcels in the Property. The City’s Prorata Share shall be evenly divided among each Parcel Owner. For example, if there are eight (8) Parcels, then each Parcel shall be responsible for 1/7th of any Assessment (the City’s Parcel shall be divided evenly among the other Parcels). If a Parcel has more than one Owner, then such Owners shall proportionately (by acreage) share the Prorata Share of any Assessment for such Parcel. The current Prorata Share for each Parcel is attached as Exhibit C.

“Retail Association” shall mean and refer to a maintenance association comprised of members of the Association that are the Owners of Parcel G and Parcel H.

“Roadway” shall mean the public right-of-way owned by the City, to be designated and constructed by Declarant, including Space Park Drive and Saturn Lane, shown as “Parcel J” on the Parcel Plan attached as Exhibit B.

“Sign Easement Area” means the area in the Property designated by Declarant as depicted on the Parcel Plan attached as Exhibit B.

“TBOC” shall mean the Texas Business Organizations Code, as amended from time to time, and any successor code or statute.

“TIRZ” shall mean the Tax Increment Reinvestment Zone created by the City over the Property and other property within the City.

“Utility Easement” shall mean the grant of the perpetual, non-exclusive right-of-way and easement to (a) enter and re-enter the easement area specified in Section 3.1 below, for the purposes of constructing, installing, laying, removing, repairing, replacing, re-laying, and maintaining Utility Systems, and (b) use said Utility Systems. Each Utility Easement shall include a reservation in favor of the Owner of the easement area to make every use of

the premises affected by the applicable Utility Easement, provided that such reserved right does not materially interfere with the rights granted to the grantee of said easement, and from time to time, to relocate such easement at such servient Owners' expense without interruption of utility services.

"Utility Systems" shall mean systems for any one or more general utilities, whether maintained privately or by the applicable utility company, including without limitation, water, sewer, electricity, gas, storm water, telephone, computer, cable television, traffic signal or control devices, together with all necessary underground pipes, conduits, fittings, appurtenances and related facilities.

ARTICLE 2

MEMBERSHIP AND VOTING RIGHTS

2.1 Organization. The Association shall be formed and operated as a Texas nonprofit corporation pursuant to the TBOC and shall be governed by TBOC, this Declaration and the Bylaws. The Association shall have the powers of a nonprofit corporation under the TBOC and those granted by this Declaration and the Bylaws. The principal purposes of the Association are the collection, expenditure and management of the Assessments (as hereinafter defined), enforcement of the Declaration, providing for the maintenance and preservation of the Property, and the general overall supervision of all of the affairs and well being of the Property within its jurisdiction.

2.2 Board of Directors. The Association shall act through a Board of Directors which shall manage the affairs of the Association. The initial Board of Directors shall consist of seven (7) members who shall each serve an initial term of three (3) years. Six (6) of the initial members of the Board of Directors (and any successor appointed as a result of their death, resignation or removal) shall be appointed by Declarant, and one (1) of the initial members of the Board of Directors (and any successor appointed as a result of their death, resignation or removal) shall be appointed by the City. Thereafter, the members of the Board of Directors shall be elected by the Members in accordance with the Bylaws of the Association.

2.3 Membership. Every person or entity, including the City, who is a record Owner of a fee or undivided fee interest in a Parcel, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Parcel merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Parcel. Ownership of a Parcel shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Parcel, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

2.4 Voting Rights. There are two classes of membership entitled to voting rights in the Association with respect to the Property and they shall be as follows:

Class A: All Owners other than Declarant shall be considered Class A Members, and for each Parcel owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as provided in the Bylaws of the Association. When a particular Parcel is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Parcel shall be considered Class A Members; however, for that particular Parcel they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Parcel shall be exercised as they among themselves determine.

Class B: Class B Member shall be the Declarant, and for each Parcel it owns the Declarant shall be entitled to ten (10) votes on each matter coming before the Members at any meeting or otherwise. Once a Parcel is sold to an individual or individuals who would be classified as Class A Members, the ten (10) votes attached to that Parcel shall be converted into a Class A Membership. Additionally, all Class B Memberships with respect to the Property shall cease and be automatically converted into Class A Memberships on the happening of any of the following events, whichever occurs first:

(i) The time when the Class A Members' votes exceed the total of the Class B Member's votes;

(ii) The date which is ten (10) years from and after the date on which the Declaration is filed in the Real Property Records of Harris County, Texas; or

(iii) At such earlier time as the Class B Member, in its sole discretion, shall elect.

2.5 Service Providers. No person serving on the Board shall be entitled to compensation for services performed, however, the Board may employ one or more architects, engineers, land planners, management companies, accountants, bookkeepers, attorneys or other consultants to assist the Board in carrying out the duties of the Association hereunder, and the Association shall pay such parties for services rendered to the Association out of the Assessments collected by the Association.

2.6 Transfer of Parcel Ownership. In the event of a transfer of the fee ownership of any Parcel, the Association shall charge the transferring Owner \$250.00 as an administration fee.

2.7 Rules and Regulations. The Association, through its Board of Directors, may establish and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration and shall not adversely affect the use or enjoyment of any Parcel that is otherwise in accordance with this Declaration. The rules and regulations may include sanctions for any violation thereof including reasonable monetary fines, suspension of the right to vote, and/or suspension of services, if any, provided by the Association to the Parcel of the violator. The Association shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association may, through the Board, by contract or other agreement, enforce federal, state, county and city laws, regulations and ordinances applicable to the Property or any portion thereof.

2.8 Governmental Interests. The Association may dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility, subject to such conditions as may be determined by the Association.

2.9 Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any such officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been an officer or director of the Association to the fullest extent permitted by the TBOC. The Association shall maintain directors and officers' liability insurance coverage and such other insurance coverage in such amounts as the Board of Directors shall determine to be reasonable.

ARTICLE 3

GRANTS AND RESERVATION OF EASEMENTS

3.1 Utility Easements. Declarant establishes and reserves for itself and its designees (including without limitation the Owners, any governmental authority or utility company) a perpetual, non-exclusive utility easement burdening each Owner's Parcel in (i) the area depicted on the Parcel Plan attached as Exhibit B, and (ii) that portion of each Parcel (and only in such portions of each Parcel) located within the boundary of each public street right-of-way abutting such Parcel.

3.2 Easement for Ingress and Egress. Declarant establishes and reserves for itself and its designees (including without limitation the Owners, any governmental authority) for the benefit of all the Parcels, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular traffic on, over, and across the Roadway (hereinafter defined) (the "Roadway Easements"). Each Owner shall pay its Prorata Share of the cost of the management, insurance, repair and maintenance of the Roadway Easements; provided, however, in no event shall the City be required to pay a Prorata Share of such costs. Unless and until the Roadway and/or Roadway Easements are public right of ways, the Declarant, its designee and/or the Management District shall be responsible for the

maintenance of the Roadway and Roadway Easements, including maintaining commercially reasonable levels of insurance and performing repairs and remedial work as it may deem necessary, and shall have all rights and privileges reasonably necessary to perform such responsibilities. Upon such time that Declarant dedicates the Roadway to the City and the City accepts such dedication, the City and/or its designee shall be responsible for the maintenance and repair of the Roadway, including maintaining the utilities located within such Roadway and Roadway Easements (such as storm, water and sanitary sewer) and shall have all rights and privileges reasonably necessary to perform such responsibilities.

3.3 Easement for Signage. Declarant hereby reserves for itself and its designees for the benefit of all of the Parcels a perpetual, non-exclusive easement burdening the Sign Easement Area (shown on Exhibit B) for the purpose of erecting and maintaining monument signs and related landscaping, irrigation and lighting for the Property, as shown on the Parcel Plan attached as Exhibit B. The Association shall be responsible for the maintenance of such signs and shall have the full and free use of the easements and rights-of-way for the purposes named, and shall have all rights and privileges reasonably necessary to the exercise of the easement rights granted and to perform repairs, maintenance and remedial work as it may deem necessary. Each Owner shall pay its Prorata Share of the costs of installing, maintaining, repairing and replacing the signs and related landscaping, irrigation and lighting; provided, however, in no event shall the City be required to pay a Prorata Share of such costs.

3.4 Easement for Drainage. Declarant establishes and reserves for itself and its designees (including without limitation the Owners, any governmental authority) for the benefit of all the Parcels, a perpetual, non-exclusive right-of-way and easement for drainage and storm water retention, if required. Each Owner shall pay its Prorata Share of the cost of the management, insurance, repair and maintenance of the drainage and retention facilities located in the easement area ("Drainage Improvements"); provided, however, in no event shall the City be required to pay a Prorata Share of such costs. Unless and until the Drainage Improvements are dedicated to and accepted by a governmental agency, the Declarant or its designee shall be responsible for the maintenance of the Drainage Improvements, including maintaining commercially reasonable levels of insurance and performing repairs and remedial work as it may deem necessary, and shall have all rights and privileges reasonably necessary to perform such responsibilities.

3.5 Easement for Emergency and Service Vehicles. Declarant establishes and reserves for itself and its designees (including, without limitation, the Owners or any governmental authority) for the benefit of all the Parcels, a perpetual, non-exclusive right-of-way and easement for pedestrian and vehicular traffic on, over, and across the fire lane (the "Fire Lane") for the sole purpose of providing emergency related services to the Property and installing "911 gates" in appropriate areas across the Fire Lane, including across the Point Lookout Road entrance to the Fire Lane, as shown on the Parcel Plan attached as Exhibit B. The Owner(s) of the Parcel(s) on which the Fire Lane is situated shall be responsible for the maintenance of such Fire Lane, including the performance of repairs and remedial work as may be necessary as determined by the Association, and shall have all rights and privileges reasonably necessary to perform such responsibilities.

3.6 Regulation and Use of Easements. The enjoyment, at any time, of any non-exclusive easement created and established by this Declaration shall be subject to such reasonable and non-discriminatory regulations, restrictions and/or limitations, as the Association may impose at such time; provided that such regulation, restriction and/or limitation is not inconsistent with the rights herein granted and does not materially interfere with the intended uses of the easement.

3.7 Easements for Benefit of Permittees. Any easements or rights of entry created or established by this Declaration for the benefit of any Owner shall be for the benefit not only of such Owner but also for the benefit of any Permittee of such Owner's Parcel.

ARTICLE 4

PAYMENT OF ASSESSMENTS, DISPUTES AND LIENS

4.1 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of funding the operating expenses of the Association and for any other purpose determined by the Board to benefit the Property. In particular, such Assessments may be utilized for, but shall not be limited to, the

enforcement of the Declaration; maintenance of the Property; performance of landscaping activities on the Property; payment of fees and expenses of service providers a set forth in Section 2.5 hereof; payment of premiums for directors and officers liability insurance and such other insurance coverage as the Board shall determine to be reasonably necessary; erection, maintenance and repair of entrance signs to the Property; enforcement of parking restrictions; erection, maintenance and repair of parking signs, street signs, directional signs and other Property identification signs; maintenance and cleaning of Roads (including esplanades) within or abutting the Property; lighting of street, roads and medians within or adjacent to the Property; general upkeep of the Property; and any other items of expense as may be deemed by the Board of the Association, in its discretion, to be necessary and desirable for the general benefit of the Property.

4.2 Annual Assessments. Each Owner of a Parcel or any part thereof, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges (the "Annual Assessments") to be established and collected as hereinafter provided; provided, however, in no event shall the City be required to pay such Annual Assessments.

4.3 Maximum Assessments. The amount of the Annual Assessments shall be determined by majority vote of the Association, it being intended that the Association will gather input from all Members and the City in order to each year fix the Annual Assessments at an amount which approximates the costs and expenditures of the Association for the purposes herein specified.

4.4 Special Assessments. In addition to the Annual Assessments, the Board may levy special assessments (the "Special Assessments") for emergency purposes and any other purpose determined by the Board to benefit the Property but requiring funds exceeding those available from the Annual Assessments; provided, however, in no event shall the City be required to pay such Special Assessments. Any Special Assessments must be approved by two-thirds (2/3rds) of the vote of Members voting in person or by proxy at a meeting of the Owners duly called for such purpose as hereinafter provided. For all purposes of this Declaration, the term "Assessment" shall mean the Annual Assessment and any Special Assessments.

4.5 Rates of Assessment. Assessments on all Parcels within the Property shall be fixed at uniform rates.

4.6 Notice and Quorum. Written notice of any meeting called for the purpose of increasing the Annual Assessment or for approving any Special Assessment shall be sent to all Owners not less than ten (10) days or more than thirty (30) days in advance of the meeting. At such called meeting, the presence of Owners or of proxies entitled to cast fifty percent (50%) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.7 Date of Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence on January 1, 2009, and the Annual Assessments for 2009 shall become due and payable on that date. The Annual Assessments for each year thereafter shall become due and payable as provided herein below.

4.8 Payment of Assessments. Except as otherwise herein provided to the contrary, Assessments shall be paid by the Owner of each Parcel to the Association in Nassau Bay, Harris County, Texas. Annual Assessments shall be due and payable annually in advance on or before the 1st day of January of each year commencing with the date of commencement thereof as provided above. Special Assessments shall be due and payable when designated at the meeting of Owners approving the Special Assessment. Except for the City, each Owner shall be personally liable for the payment of all Assessments (and other charges set forth in this Declaration) which accrue during the time said Owner holds title to a Parcel and the foreclosure (by trustee's sale pursuant to power of sale under a deed of trust, deed in lieu thereof or otherwise) under any mortgage, vendor's lien or deed of trust covering any parcel or any portion thereof shall not extinguish or affect in any manner the personal liability for the payment thereof. Any payment of an Annual Assessment not received by the Association on or before the 15th day of January of each year shall be delinquent and any payment of a Special Assessment not paid within fifteen (15) days after its designated due date shall be delinquent. Such Assessments and other charges and the obligation of each Owner (except for the City) to pay same shall constitute a covenant running with the title to each Parcel.

4.9 Establishment of Liens. Any and all Assessments made by the Association in accordance with the provisions of this Declaration, together with interest thereon at the lesser of twelve percent (12%) per annum or the highest non-usurious rate allowed by Law, any "Late Charge" (as hereinafter defined), and the costs of collection (including without limitation court costs and reasonable attorneys' fees) (all of the foregoing sometimes hereinafter collectively referred to as "Lien Costs"), shall become the personal obligation of the Owner of each such Parcel assessed.

(a) Late Charge. The Association may, at its option, in order to defray additional administrative costs, require the delinquent Owner to pay a late charge of five percent (5%) of the amount of the delinquent assessment or portion thereof ("Late Charge").

(b) Notice of Lien. The Lien Costs shall become a charge and continuing lien ("Lien") against the Parcel(s) only from and after the time of the recording in the Real Property Records of Harris County, Texas (the "Real Property Records") of a written acknowledged statement ("Notice of Lien") by the Association setting forth the amount due to the Association as of the date the statement is signed, the legal description of the Parcel against which the Lien is charged and the record Owner thereof. A copy of the Notice of Lien shall be mailed to the Owner in the manner provided for giving notice as set forth in Section 8.13.

(c) Release of Lien. Upon full payment of all sums secured by such Lien or other satisfaction thereof, the Association shall cause to be recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Association may demand from the applicable Owner payment of a reasonable fee to be determined by the Association, to cover the cost of preparing and recording the Notice of Release prior to recording same. Any purchaser who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sum stated in the Notice of Lien.

4.10 Subordination of Liens. All Liens shall be subordinate to the lien of mortgages (meaning any recorded mortgage) made in good faith and for value and recorded prior to the date on which the Notice of Lien is recorded (and not for the benefit of an affiliate of the defaulting Owner) and all taxes, bonds, assessments or other levies which by Law would be superior.

4.11 Enforcement of Liens. If any Assessment or installment thereof remains delinquent beyond its due date, the Association or Declarant may notify the delinquent Owner as to the default ("Notice of Default").

(a) Notice Contents. The Notice of Default shall state: (i) that the Assessment or an installment thereof is delinquent; (ii) all actions necessary to cure the default; (iii) a date not less than fifteen (15) days from the date the Assessment or installment thereof was due by which such default must be cured; and (iv) that the failure to cure the default on or before the date specified in the notice may result in the Association invoking one or the remedies hereinafter provided.

(b) Interest. In the event any Owner fails to pay an Assessment or installment thereof within fifteen (15) days after the same becomes due, such Assessment or installment shall bear interest from its due date at the highest non-usurious rate allowable by Law.

(c) Remedies. The Association shall have any and all of the following remedies to the extent permitted by Law, which remedies are in addition to all other remedies available to the Association.

(i) To accelerate, if applicable, the entire amount of any Assessment due to be paid in installments.

(ii) To advance, on behalf of the Owner(s) in default, funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is liable to the Association. Monies so advanced, together with interest at the lesser of twelve percent (12%) per

annum or the highest non-usurious rate, any Late Charge, and all costs of collection thereof (including without limitation actual attorneys' fees), may thereupon be collected by the Association and such advance by the Association shall not waive the default.

(iii) To file an action to foreclose its Lien at any time after the effective date thereof in the manner provided for the foreclosure of mortgages under applicable Law. The Association shall have the right to purchase such Parcel at any foreclosure sale, and to retain, lease, mortgage or convey the same.

(iv) To file an action against the Owner to collect the delinquent reimbursement of Assessments, without waiving any lien rights or rights of foreclosure.

4.12 Remedies. In the event of a breach of this Declaration, the Association, the Declarant and/or the City shall have the exclusive right to enforce this Declaration and may maintain an action for specific performance against the breaching Owner(s) who allegedly breached the provisions of this Declaration. No objection to the form of action in any proceeding for specific performance of this Declaration shall be raised by any breaching Owner.

4.13 Notice by Owner. If an Owner is alleging a breach of the Declaration, such Owner shall notify both the Association and Declarant in writing of such alleged breach.

4.14 Records. The Association shall maintain a record of Assessments for inspection upon reasonable notice by any Owner. Each Owner shall pay its Prorat a Share of the costs and expenses incurred by the Association in connection with the maintenance of such records.

ARTICLE 5

LAND USE CLASSIFICATIONS AND RESTRICTIONS

5.1 Permitted Uses. Each Owner covenants to use and/or cause its Parcel to be used only in accordance with the covenants, conditions and restrictions set forth in this Declaration. The uses set forth on Exhibit D shall not be permitted without the prior written consent of Declarant. In addition, the Property shall not be used for any purpose that does not comply with applicable Laws and the approved PUD Plan.

(a) Parcel A. For so long as this Declaration remains in effect, Parcel A may be used solely for the purpose of constructing and operating thereon and therefrom a multi-level office building with an adjacent multi-level parking garage, including incidental amenity space utilized in connection with the operation of such office building (collectively, the "Office Building").

(b) Parcel B. For so long as this Declaration remains in effect, Parcel B may be used solely for the purpose of constructing and operating thereon and therefrom (i) a conference center with an integrated multi-level parking garage, including incidental office and/or amenity space utilized in connection with the operation of such conference center (collectively, the "Conference Center"); and (ii) a building to be designated as the Nassau Bay City Hall Building, including incidental office and/or amenity space utilized in connection with the operation of such building (collectively, the "City Hall Building").

(c) Parcel C. For so long as this Declaration remains in effect, Parcel C may be used solely for the purpose of constructing and operating thereon and therefrom a multi-level hotel, designated and operated for the primary purpose of providing overnight lodging facilities to the general public for compensation, including incidental office, the related parking structure or structures and all related utilities and amenities together with banquet rooms, meeting rooms and/or amenity space and/or retail utilized in connection with the operation of a full-service hotel (collectively, the "Hotel").

(d) Parcel D. For so long as this Declaration remains in effect, Parcel D may be used solely for the purpose of constructing and operating thereon and therefrom a multi-family residential building with an internal multi-level parking garage, including incidental office and/or amenity space utilized in

connection with the operation of such residential multi-family building (collectively, the "Apartment Building").

(e) Parcels E – H. For so long as this Declaration remains in effect, the uses for Parcel E, Parcel F, Parcel G and Parcel H must conform to the uses defined in the approved PUD Plan.

5.2 Construction. During construction on a Parcel, an Owner may use its Parcel as a temporary staging area for such construction, subject to the prior written approval of the Committee.

ARTICLE 6

MAINTENANCE

6.1 Maintenance by Owners. The Owners shall have the responsibility of keeping the Improvements and landscaping located on the Parcels (including, without limitation, the portion(s) of the Parcels which are within public or private easement(s) or setback areas) in a well-maintained, safe, clean and attractive condition at all times (such maintenance standards are set forth in Appendix C of the Development Guidelines). Owner's maintenance obligation shall include, but not be limited to: the maintenance of all visible exterior surfaces of all buildings and other Improvements; the prompt removal of all paper, debris, refuse and dead and diseased trees and plantings from all areas of the Parcels; the repair, replacement, cleaning of all parking lots, sidewalks and other hard surface areas located on each Parcel; the repair and maintenance of broken bumper stops and/or curbing on each Parcel; the maintenance and clearing of drainage inlets, storm sewers and any surface and subsurface drainage facilities located on each Parcel, so as to remain clear of debris and enable the proper flow of water; relamping of all signs and lighting fixtures located on each Parcel; the mowing, watering, fertilizing, weeding, replanting and replacing of all landscaping located on each Parcel; the repair, replacement and cleaning, during construction of Improvements on the Parcels, consistent cleaning of dirt, construction debris and other construction related refuse from streets and storm drains and inlets.

6.2 Maintenance by the City. The City and/or Management District shall maintain the Common Public Areas and any other designated areas (esplanades in abutting streets), in a well-maintained, safe, clean and attractive condition at all times (such maintenance standards are set forth in Appendix C of the Development Guidelines).

6.3 Maintenance of Common Retail Areas. The Retail Association shall maintain the Common Retail Areas in a well-maintained, safe, clean and attractive condition at all times (such maintenance standards are set forth in Appendix C of the Development Guidelines).

6.4 Right of Association to Perform Work. In the event of default on the part of the Owner in observing any of the requirements set out in Section 6.1 of this Declaration, the Association or its agents or assignees (including, without limitation, the Committee) shall have the right and an easement to enter upon the Parcels, without liability to such Owner (or any tenant, invitee, customer or licensee of Owner) for trespass or otherwise, and cause to be done any work or any other act necessary to secure compliance with this Declaration and may charge such Owner for the reasonable costs of any such work or act. As a condition precedent to exercising the rights given to the Association under this Section 6.4, the Association shall give the Owner written notice specifying with particularity the nature of the work or act which the Association considers necessary, and such Owner shall have a period of thirty (30) days after receipt of such written notice within which to commence such work or act. The cost of any such work or act performed by the Association shall be assessed against such Owner's property upon which such work or act is done. Each Owner shall be deemed to have agreed to pay for any such work or act performed by the Association within ten (10) days after receipt of a statement covering such work. Any such amounts due shall be the personal obligation of said Owner, together with interest thereon accrued at the maximum lawful rate from the due date hereunder until paid and the reasonable costs, fees and expenses (including reasonable attorney's fees), incurred in connection with collection of such amounts, and shall be collectible by the Association in an appropriate action at law or in equity. Further, any amount which shall become owing to the Association under the terms of this Section 6.4 (including, without limitation, interest as herein provided and the reasonable

costs, fees and expenses incurred in connection with collection of such amounts) shall constitute and be secured by a valid and subsisting lien, hereby created, imposed and fixed, and which shall exist upon and against the Parcels and all Improvements thereon, for the benefit of the Association, its successors and assigns, which lien may be foreclosed in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property; provided, however, the lien hereby created shall be subordinate and inferior to (i) all liens for taxes or special assessments levied by the City, County, and State governments, or any political subdivision or special district thereof, and (ii) all liens securing amounts due or to become due under any mortgage, vendor's lien, or deed of trust filed for record prior to the date payment of any such charges or assessments become due and payable.

6.5 **Right of City to Perform Work.** In the event of default on the part of the Association in observing any of the requirements set out in **Section 6.4** of this Declaration, the City or its agents or assignees shall have the right and an easement to enter upon the Parcels, without liability to such Owner (or any tenant, invitee, customer or licensee of Owner) for trespass or otherwise, and cause to be done any work or any other act necessary to secure compliance with this Declaration and may charge such Owner for the reasonable costs of any such work or act. As a condition precedent to exercising the rights given to the City under this **Section 6.5**, the City shall give the defaulting Owner, including all other Owners of Parcels, written notice specifying with particularity the nature of the work or act which the City considers necessary (the "**First Cure Notice**"), and such Owner shall have a period of thirty (30) days after receipt of the First Cure Notice within which to commence such work or act. If the Owner fails to commence the necessary work within such thirty-day period, then the City shall give the defaulting Owner, including all other Owners of Parcels, a second written notice specifying with particularity the nature of the work or act which the City considers necessary (the "**Second Cure Notice**"), and such Owner shall have a period of fifteen (15) days after receipt of the Second Cure Notice within which to commence such work or act. The cost of any such work or act performed by the City shall be assessed against such Owner's property upon which such work or act is done. Each Owner shall be deemed to have agreed to pay for any such work or act performed by the City within ten (10) days after receipt of a statement covering such work. Any such amounts due shall be the personal obligation of said Owner, together with interest thereon accrued at the maximum lawful rate from the due date hereunder until paid and the reasonable costs, fees and expenses (including reasonable attorney's fees), incurred in connection with collection of such amounts, and shall be collectible by the City in an appropriate action at law or in equity; provided, however, the City shall not have the right to sue the Owner for damages in connection with the work performed by the City or the costs, fees and expenses incurred in connection with collection of such amounts. Further, any amount which shall become owing to the City under the terms of this **Section 6.5** (including, without limitation, interest as herein provided and the reasonable costs, fees and expenses incurred in connection with collection of such amounts) shall constitute and be secured by a valid and subsisting lien, hereby created, imposed and fixed, and which shall exist upon and against the Parcels and all Improvements thereon, for the benefit of the City, its successors and assigns.

ARTICLE 7

ARCHITECTURAL CONTROL

7.1 **Architectural Review.** All construction, landscaping, Improvements and development on any Parcel shall be subject to the prior written approval of the Committee formed and constituted as provided in **Section 7.2** below. No Improvements shall be commenced, erected, constructed, placed or maintained upon any Parcel, nor shall any exterior addition to or change or alteration thereto be made, without the prior written approval of the Committee, obtained in the manner set forth in **Section 7.5** below. The provisions of this **Article 7** do not apply to the design, construction, renovation, alteration, repair or refurbishment of the interior of the Improvements on any Parcel.

7.2 **Committee Membership.** The Architectural Review Committee (the "**Committee**") shall be initially composed of five (5) members. Such five members shall include (i) Declarant, (ii) three (3) members designated by Declarant (one (1) of such three (3) members shall be an AIA architect), and (iii) one (1) member designated by the City. Declarant may designate or appoint a successor member or designate a representative or representatives to act for it. The term "**Committee**" as used herein shall refer to Declarant, its successors as provided herein or its assignee as permitted herein, or the Committee's designated representative(s). In the event of death, dissolution, or resignation of any member or members of the Committee, the remaining member or members (if any) shall appoint successor member or members, and until such successor member or members shall have been so

appointed, the remaining member or members shall have full right, authority and power to carry out the functions of the Committee as provided herein, or to designate a representative with like right, authority and power. In no event shall any member of the Committee have any liability for any error of judgment or action taken by such Committee or otherwise be responsible or accountable under any circumstances for any action or inaction of the Committee so long as such member is acting in good faith. The Declarant has the right to remove any Committee member designated by it with or without cause. The City may change its designated member on the Committee by providing written notice to the Committee and Declarant. Neither Declarant nor any other members of the Committee shall be entitled to any compensation for services performed pursuant to this Declaration

7.3 Duties and Powers. As provided for in this Declaration, the purpose of the Committee is to protect the environmental and architectural integrity of the Property in accordance with the provisions of this Declaration. Any and all Improvements on the Property should be in accordance with the Development Guidelines and approved PUD Plan. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Parcel, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications for the same shall have been submitted to and approved in writing by the Committee in accordance with the Development Guidelines. The Committee is not authorized to amend the Development Guidelines. The Development Guidelines shall only be amended by the Association upon recommendation by the Committee. The Committee shall not recommend changes to the Development Guidelines that are in violation of the approved PUD Plan.

7.4 Submissions to Committee. To secure the approval of the Committee required in this Article 7, the Owner shall deliver to the Committee, in form and substance reasonably satisfactory to the Committee, the Preliminary Plans and Final Construction Plans (defined below). The Preliminary Plans and Final Construction Plans shall be collectively referred to hereinafter as, the "Plans." A pre-planning discussion with the Committee is recommended to highlight any specific sensitivity that may exist. All building and site design must adhere to the approved PUD Plan. The approval process may include referral to a qualified outside consultant. The Association shall be entitled to charge a reasonable fee for submission and review of such Plans.

7.5 Preliminary Plan Approval. The builder/developer is required to submit the following preliminary information when available:

- (a) Floor plans
- (b) Exterior building elevations
- (c) Site plan
- (d) Site size (acreage)
- (e) Existing improvements on site (utilities, fencing)
- (f) Percentage of site devoted to open space
- (g) Existing vegetation locations within proposed setbacks or reserves that may be impacted by land use, driveway or services access parking lots, or median cuts.
- (h) Building(s) location and size (square footage)
- (i) Building and parking setbacks/dimensions
- (j) Parking lot(s) configuration, ration and capacity
- (k) Service area(s), trash receptacle, and mechanical equipment locations (with screening method)

- (l) Proposed fencing and/or screening walls
- (m) Satellite/antenna dish location (with screening method)
- (n) Proposed signage location(s)
- (o) A note outlining the builder/developer's understanding of maintenance and irrigation boundaries for the site where site adjoins an existing maintained landscape setback.

Plans should be drawn in a format typically produced by a registered professional architect. The builder/developer may wish to submit a rendering or sketch of exterior building appearance as a supplement to this submittal.

Committee approval of Preliminary Plans does not constitute Committee acceptance of the Final Construction Plans or approval to begin construction. All information required in the Final Construction Plan Approval must be submitted and approved in writing prior to any construction. The Committee may convene and act on special occasions in an effort to accommodate unusual situations where justified. These procedures are part of the overall effort to insure that an acceptable quality level is attained without the necessity of imposing undue, cumbersome regulation.

7.6 Final Construction Plan Approval. Upon completion and approval of Preliminary Plans, the builder/developer shall submit Final Construction Plans. The submittal should include the following:

- (a) Site Plan
- (b) Utility layouts on site (approval(s) by appropriate agencies required)
- (c) Landscape plans and tree preservation plan
- (d) Exterior lighting plans (including photo meters details)
- (e) Signage plans and elevation(s) (temporary and permanent locations)
- (f) Architectural elevations (all sides)
- (g) Exterior material and color samples
- (h) The Owner's construction contact and field superintendent's name and telephone number

It is recommended that the builder/developer engage a registered professional architect, landscape architect, and engineer for the preparation of the project plans, specifications, and construction administration services.

7.7 Committee Approval. The Committee shall notify Owner in writing whether the Final Construction Plans are approved or disapproved within thirty (30) days after the Committee's receipt of a complete and legible copy of all requested items. Any such disapproval shall set forth the specific reason or reasons for such disapproval. Should the Committee fail to approve or disapprove the Final Construction Plans in writing within such thirty (30) day period, then the Committee shall be deemed to have approved the Final Construction Plans. No construction of the Improvements provided for in the Final Construction Plans shall be commenced until the expiration of the aforementioned thirty (30) day period or the receipt of the Committee's written approval of the Final Construction Plans for such Improvements, whichever shall first occur. If the Committee shall disapprove any part of the Final Construction Plans, the Owner may revise the Final Construction Plans to incorporate such changes and may deliver the revised Final Construction Plans to the Committee and the Committee shall have fifteen (15) business days within which to review such revised Final Construction Plans to determine Owner's compliance with

the Committee's requested changes. Should the Committee fail to advise Owner in writing of whether or not the revised Final Construction Plans are in compliance with the suggested changes within the fifteen (15) business day period, then the Committee shall be deemed to have approved the Final Construction Plans. Owner shall secure the approval of the Committee to any material change or revision in approved Final Construction Plans in the manner provided in this Section 7 for the approval of Final Construction Plans. No construction of the Improvements provided for in the Plans shall be commenced until the Owner has received the Committee's written approval of the Plans.

7.8 Compliance with PUD Plan. All components of building and site design must adhere to the local codes having jurisdiction. Projects in the City of Nassau Bay must adhere to the City of Nassau PUD Plan, and/or any other applicable codes, statutes, regulations or ordinances. The builder/developer is responsible for obtaining all local county Flood Control approvals. The builder/developer will also be responsible for determining the nature of restrictions associated with pipeline or utility easements which may be located on the site. The Committee will not be responsible for the interpretation of any building codes or ordinances. Committee approval of submitted plans does not constitute compliance with any governmental codes, ordinances or regulations, nor does Committee approval release the builder/developer from the responsibility of compliance with all codes, ordinances, or regulations in effect.

7.9 EPA Compliance. The builder/developer is responsible for abiding by all Non-Point Discharge Elimination System (NPDES) regulations as promulgated by EPA in September 1992. Additional Guidance has been issued by the City of Nassau Bay and Harris County. To this effort, the builder/developer must prepare a Pollution Prevention Plan (PPP) for the construction site, including an erosion and sedimentation control plan for the site which must be included in the construction drawings. The builder/developer is also responsible for submitting a Notice of Intent (NOI) to EPA for compliance with EPA's General Permit. Declarant retains the right, but not the obligation, to request a copy of the builder/developer PPP and to make on-site inspection and reasonable changes to ensure adequate erosion protection.

7.10 Commencement of Construction. No construction may commence until plans have been approved by the Committee or its assignee consultant. The Committee and the City reserve the right to enforce compliance with the approved plans by legal means as necessary.

7.11 Variances. The Committee is granted the authority, in its sole and absolute discretion, to permit, consent to or approve a variance from the specific requirements or effect of any particular restriction or covenant contained herein, subject to compliance with the approved PUD Plan and the guidelines set forth in the Development Guidelines. The Committee may require the submission to it of such documents and items (including, as examples but without limitation, written request for and a description of the variance requested and Plans reflecting such variance), as it shall deem appropriate, in connection with its consideration of a request for a variance. If the Committee shall approve such request for a variance, the Committee shall evidence such approval, and grant its permission for such variance, only by written instrument in recordable form, addressed to the Owner, describing the applicable covenant(s) and the particular variance requested, and signed by Declarant or a majority of the then members of the Committee.

7.12 Decision and Scope of Review. The decision of the Committee shall be final, conclusive and binding upon the applicant. Neither the Committee nor any of its members shall be liable in damages or otherwise to anyone submitting the Plans for approval, or to any Owner by reason of mistake of judgment, negligence, omissions or errors, arising out of or in connection with the approval or disapproval, or failure to approve or disapprove, the Plans. The Committee may reject Plans for any reason related to the planned development of the Property, including without limitation, purely aesthetic reasons. The Committee may adopt design and architectural standards from time to time, which shall be consistently applied to the development of the Property and approval of the Plans from and after the date adopted. The initial design and architectural standards are available upon written request to the Committee. Further, no person exercising any prerogative of approval or disapproval by the Committee shall incur any liability by reason of the good faith exercise thereof.

7.13 Completion of Construction. Construction of the Improvements on a Parcel shall commence within six (6) months of the date the Owner receives the Committee's written approval of the Final Construction Plans for such Improvements, as set forth in the Development Guidelines. If the Owner fails to commence

construction of the Improvements within such six-month period, the Committee's Approval of the Final Construction Plans shall terminate and be null and void, and the Owner shall be required to resubmit the Plans in accordance with the procedures set forth in the Development Guidelines.

7.14 Damage to Improvements. In the event any Improvement is damaged or destroyed by any casualty, Owner shall, as promptly as is reasonably practical, (i) repair and/or reconstruct such Improvement in accordance with this Declaration, or (ii) level such Improvement, remove the debris and keep the Parcel neat, orderly and well-maintained and covered with either planted grass, one inch (1") of asphaltic concrete, a dust cap, decomposed granite or other appropriate ground cover reasonably approved by the Committee until subsequently improved, provided that no such protective covering shall increase the drainage burden on other Parcels of the Property.

ARTICLE 8

MISCELLANEOUS

8.1 Covenants Running with the Land. All benefits and burdens of this Declaration shall be deemed to be covenants that run with the land. Upon the sale and conveyance by Owner of its entire right, title and interest in its Parcel, such party shall be released from its obligations under this Declaration arising subsequent to the effective date of such sale and conveyance other than those obligations arising from any default by such party in the performance of any provision of this Declaration prior to such sale and conveyance.

8.2 Injunctive Relief. Each party hereto stipulates and acknowledges that the existence of any breach or threatened breach of any covenant, duty, obligation or restriction of or on such party (the "Defaulting Party") herein contained would constitute a severe impediment to the ability of the other party hereto (the "Non-Defaulting Party") to receive the benefits contemplated by this Declaration; that the existence of such breach or threatened breach will cause irreparable damage to the Non-Defaulting Party for which there would not be an adequate remedy at law and for which no other equitable remedy would be adequate or available. Accordingly, the Non-Defaulting Party shall be entitled to enjoin any such breach or threatened breach without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of the Non-Defaulting Party hereunder shall be deemed cumulative and no remedy of Non-Defaulting Party, whether or not exercised by the Non-Defaulting Party, shall be deemed to be in exclusion of any other; it being the intention of the parties hereto that the Non-Defaulting Party shall be entitled to all remedies available at law or in equity (subject, however, to the provisions of Section 8.7 below).

8.3 Incorporation of Documents. Any and all deeds conveying a Parcel or any other portion thereof, shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration. Whether the incorporation of the terms and conditions of this Declaration is specifically set forth by reference in such deed, acceptance by the grantees of such a deed shall be deemed to be acceptance by such grantee of all of the terms and conditions of this Declaration.

8.4 Invalidity and Waiver. If any portion of this Declaration is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Declaration shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Declaration shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

8.5 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Texas.

8.6 Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to secure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such acts shall be excused for the period of the delay and the period for the performance of any such acts shall be extended for a period equivalent to the period of such delay.

8.7 **Limitation of Liability.** Notwithstanding anything to the contrary in this Declaration, under no circumstances shall any obligation or liability be personally binding upon, nor shall resort for the enforcement thereof be had to any other property of Declarant or any of its officers, directors, shareholders, partners, employees or agents, regardless of whether such obligations or liabilities are in the nature of contract, tort or otherwise.

8.8 **No Third Party Beneficiary.** This Declaration is not intended to give or confer any benefits, rights, privileges, claims actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever.

8.9 **Annexation.** Declarant shall have the right, from time to time, to add additional property to the Property (the "**Annexed Property**"). Upon such annexation, (i) the Annexed Property shall be owned, leased, transferred, conveyed, demised, used, occupied and improved subject to the covenants, conditions, restrictions and easements in this Declaration; and (ii) the Owner(s) of the Annexed Property will become Members of the Association pursuant to the terms of this Declaration.

8.10 **Special Amendment.** The Declarant may amend this Declaration/and or the Development Guidelines unilaterally at any time and from time to time (i) to add additional land to the Property subject to this Declaration; (ii) if such amendment is necessary to bring any provision hereinto compliance with any applicable governmental statute, rule, or regulation, or judicial determination which shall be in conflict therewith; (iii) to correct errors in the Declaration or Development Guidelines; or (iv) to amend the Parcel Plan related to Parcel division line locations, so long as such amendment is consistent with the PUD Plan. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to any such amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record such amendments. The right and power to make such amendments hereunder shall terminate at such time as Declarant no longer holds or controls the title to any portion of the Property. Declarant shall provide written notice to the City prior to any special amendment to the Declaration.

8.11 **Amendment in General.** Subject to the provisions in **Section 8.10**, the provisions of this Declaration may be amended, modified, enlarged, terminated, or otherwise changed in whole or in part by Declarant at any time so long as Declarant holds or controls fee title to any portion of the Property and, thereafter, by approval of at least two-thirds (2/3rds) of the vote of Members. Declarant shall provide written notice to the City prior to any amendment to the Declaration.

8.12 **Attorneys' Fees.** Should any Owner or Declarant employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

8.13 **Notices.** All notices required or permitted hereunder shall be in writing. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent United States Postal Service, return receipt requested, in which case notice shall be deemed delivered on the date indicated on the receipt or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt, to the following addresses:

[DECLARANT ENTITY]
c/o Griffin Partners
5151 San Felipe, Suite 1300
Houston, Texas 77056
Attn: Fred Griffin

with a copy to:

City of Nassau Bay
1800 NASA Parkway

Nassau Bay, Texas 77058
Attn: John Kennedy, City Manager

with a copy to:

Mayer Brown LLP
700 Louisiana Street, Suite 340
Houston, Texas 77002
Attn. Ronald M. Shoss

8.14 Waiver of Jury Trial. To the extent permitted by applicable law, the parties hereby waive any right to trial by jury in any legal proceeding arising out of or relating to this Declaration.

8.15 Breach Shall Not Permit Termination. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect, in any manner, any other rights or remedies which the Owners may have hereunder by reason of any breach of this Declaration.

8.16 No Partnership. Neither anything contained in this Declaration nor any acts of the Owners shall be deemed or construed by Owners, or any of them or by any person other than an Owner, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners.

8.17 Estoppel Certificate. Each Owner and the Declarant shall on not less than thirty (30) days' prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to its knowledge, a particular Owner is in default as to its Parcel under the provisions of this Declaration. Any such certificate delivered pursuant to this Section 8.14 may be relied on by any prospective purchaser or mortgagee of the Parcel, but reliance on such certificate may not extend to any default not involving the payment of Assessments of which the signer had no actual knowledge.

8.18 Term. This Declaration shall run with the land and contain and remain in full force an effect for a period of forty (40) years beginning as of the date of execution of this Declaration, and shall automatically be extended thereafter for successive periods of ten (10) years each, unless an instrument executed by the Declarant (so long as Declarant holds fee title to any portion of the Property) and two-thirds (2/3rds) of all Members terminating this Declaration has been recorded in the Real Property Records.

8.19 Assignment of Declarant's Rights. The Declarant may at any time, and shall in the event Declarant no longer holds fee title to any portion of the Property, assign its rights and obligations under this Declaration to any Owner. Alternatively, the Declarant may assign its rights and obligations under this Declaration to the Association, in which the Owners shall have rights, privileges and obligations consistent with this Declaration. Declarant shall provide written notice to the City prior to any such assignment.

8.20 No Oil, Gas or Mining Operations. No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying or mining operations of any kind shall be conducted on the surface of any portion of the Property; and no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted (temporarily or otherwise) in or upon any portion of the surface of the Property.

8.21 Conflicting Provisions. In the event of a conflict between the Declaration, Development Agreement, approved PUD Plan, Development Guidelines, and the City of Nassau Bay zoning code and ordinances, the most restrictive provision shall control.

8.22 Further Assurances. Each of the parties agrees to execute all such other further documents and agreements as may be reasonably requested by the other party from time to time, either before or after the Effective Date, in order to carry out the intent of this Declaration and to confer the benefits intended to be bestowed by this Declaration. This provision shall survive the recordation of this Declaration.

8.23 Counterparts. This Declaration may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Declaration has been executed by the undersigned as of the day and year first above written.

[SIGNATURE BLOCK FOR GRIFFIN ENTITY]

By: _____
Name: _____
Title: _____

[ADD AC KNOWLEDGMENT]

Exhibit 'A' - Legal Description

All that certain 31.48 acres (1,371,529 square feet) of land out of the Raymond Pearson 1776 Ranch Tract located in the HOUSTON ORCHARD COMPANY'S WEBSTER SUBDIVISION, in the SARAH DEEL LEAGUE, ABSTRACT NO. 13, in Harris County, Texas, being made up of all those certain tracts of land called Tracts I, II, III, IV, V, VI, VIII, IX, X, and XI conveyed to Griffin Partners Nassau Bay, L.P., a Texas limited partnership, by instrument recorded under Harris County Clerk's File (H.C.C.F.) Number 20070228728; that certain tract of land called 1.3851 acres conveyed to City of Nassau Bay by instrument recorded under H.C.C.F. F627139; that certain tract of land called 46,658 square feet conveyed to City of Nassau Bay by instrument recorded under H.C.C.F. E628095 (hereinafter called "Roadway Tract"); and, the residue of a tract of land called 34.2852 acres conveyed to Nassau Development Co. by instrument recorded under H.C.C.F. B667316, all of the Official Public Records of Real Property in Harris County, Texas, and said 31.48 acres being more particularly described by metes and bounds as follows with bearings being based on the North line of said 34.2852 acres:

BEGINNING at the most Northerly corner of said Roadway Tract and the herein described tract, same being the most Westerly corner of a called 175 foot by 125 foot tract conveyed to Motiva Enterprises, LLC, by instrument recorded under H.C.C.F. T543450 in the Official Public Records of Real Property in Harris County, Texas, said point being at the Southeastery line of Nasa Road 1 (F.M. 528), a 200 foot wide public roadway right-of-way.

THENCE S 19°12'00" E, along the Southwestery line of said Motiva tract and a called 1.165 acre tract conveyed to Vincent M. Quartaro by instrument recorded under H.C.C.F. D498912, a distance of 420.00 feet to a point for corner, same being the most Southerly corner of said 1.165 acres, said point being at the Northwestery line of Space Park Drive, an 80 foot wide public roadway right-of-way.

THENCE N 70°48'00" E, along the Northwestery line of said Space Park Drive and the Southeastery line of said 1.165 acres, a distance of 173.80 feet to a point for corner, said point being at the Southwestery line of Upper Bay Road, a varying width public roadway right-of-way.

THENCE S 32°26'42" E, a distance of 82.29 feet to a point for angle to the right, said point being at the intersection of the Southeastery line of said Space Park Drive and the Southwestery line of said Upper Bay Road, said point also being the beginning of a non-tangent curve to the left having a radius of 1269.94 feet and a central angle of 06°06'15";

THENCE Southeastery, along the Southwestery line of said Upper Bay Road and the arc of said curve to the left, an arc distance of 179.63 feet, the chord of which curve bears

S 23°15'08" E, 179.48 feet to a point for reverse curvature of a tangent curve having a radius of 1189.94 feet and a central angle of 06°20'35";

THENCE Southeastery, along the Southwestery line of said Upper Bay Road and the arc of said curve to the right, an arc distance of 131.74 feet, the chord of which curve bears

S 24°07'58" W, 131.67 feet to a point for the most Easterly corner of the herein described tract, same being the most Northerly corner of a called 0.7862 acre tract (Parcel "A") conveyed to Syntag, L.P., by instrument recorded under H.C.C.F. S867621;

THENCE S 74°50'45" W, along the Northwestery line of said Syntag tract, a distance of 219.55 feet to a point for corner, same being the most Westerly corner of said Syntag tract.

THENCE S 19°12'00" E, along the Southwestery line of said Syntag tract, a distance of 156.22 feet to a point for corner, same being the most Southerly corner of said Syntag tract, said point being at the Northwestery line of Gloria Dei Houston, a subdivision in Harris County, Texas, according to the map or plat thereof recorded at Film Code 475046, Map Records of Harris County (M.R.H.C.), Texas.

THENCE S 74°50'45" W, along the Northwestery line of said Gloria Dei Houston; the Northwestery line of a called 0.2296 acre tract (Parcel "B") conveyed to Syntag, L.P., by instrument recorded under H.C.C.F. S867621; and, the Northwestery line of a called 3.046 acre tract conveyed to WM. J. Harrington Cammer-Co by instrument recorded under H.C.C.F. C280191, a distance of 608.19 feet to a point for angle to the left;

THENCE S 70°47'14" W, along the Northwestery line of said WM. J. Harrington tract and the Northwestery line of Queens Court, Section Two, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 232, Page 112, M.R.H.C., a distance of 689.94 feet to a point for angle to the right;

THENCE S 77°22'16" W, along the Northwestery line of said Queens Court, Section Two, and the Northwestery line of Nassau

Bay, Section One, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 96, Page 51, M.R.H.C., a distance of 122.22 feet to the most Southerly corner of the herein described tract, said point being at the Northeastly line of Point Lookout Road, a varying width public roadway right-of-way;

THENCE N 19°12'46" W, along the Northeastly line of said Point Lookout Road, a distance of 15.99 feet to the point of curvature for a curve to the left having a radius of 991.29 feet and a central angle of 12°11'30";

THENCE Northwestly, along the Northeastly line of said Point Lookout Road and the arc of said curve to the left, an arc distance of 210.93 feet, the chord of which curve bears

N 25°18'31" W, 210.53 feet to a point for tangency;

THENCE N 31°24'16" W, along the Northeastly line of said Point Lookout Road, a distance of 152.61 feet to a point for angle to the right;

THENCE N 25°29'31" W, along the Northeastly line of said Point Lookout Road, passing the Southeastly line of said Space Park Drive at a distance of 19.83 feet, and continuing for a total distance of 100.31 feet to a point for corner, same being the most Southerly corner of a called 36,156 square feet tract conveyed to Nasa Townsquare, Inc., by instrument recorded under Harris County Clerk's File (H.C.C.F.) Number V692461, said point being at the Northwestly line of said Space Park Drive;

THENCE N 70°48'00" E, along the Northwestly line of said Space Park Drive and the Southeastly line of said Nasa Townsquare tract, a distance of 111.69 feet to a point for corner, same being the most Easterly corner of said Nasa Townsquare tract;

THENCE N 19°12'00" W, along the Northeastly line of said Nasa Townsquare tract and the Northeastly line of a called 0.5166 acre tract conveyed to B&B Pratt Family Limited Partnership by instrument recorded under H.C.C.F. T468154, a distance of 420.00 feet to a point for corner, same being the most Northerly corner of said 0.5166 acre tract and the most Westerly corner of said 1.3951 acres, said point being at the Southeastly line of said Nasa Road 1;

THENCE N 70°48'00" E, along the Southeastly line of said Nasa Road 1, a distance of 1,373.12 feet to the **POINT OF BEGINNING** and containing a calculated area of 31.48 acres (1,371,259 square feet) of land.

NOTE: THIS DOCUMENT HAS BEEN PREPARED UNDER 22 TAC § 663.23; DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND; IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTERESTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT HAS BEEN PREPARED.

PREPARED

August 9, 2007

& REVISED

September 6, 2007

BY

DALE L. HARDY / GEOSURV, LLC

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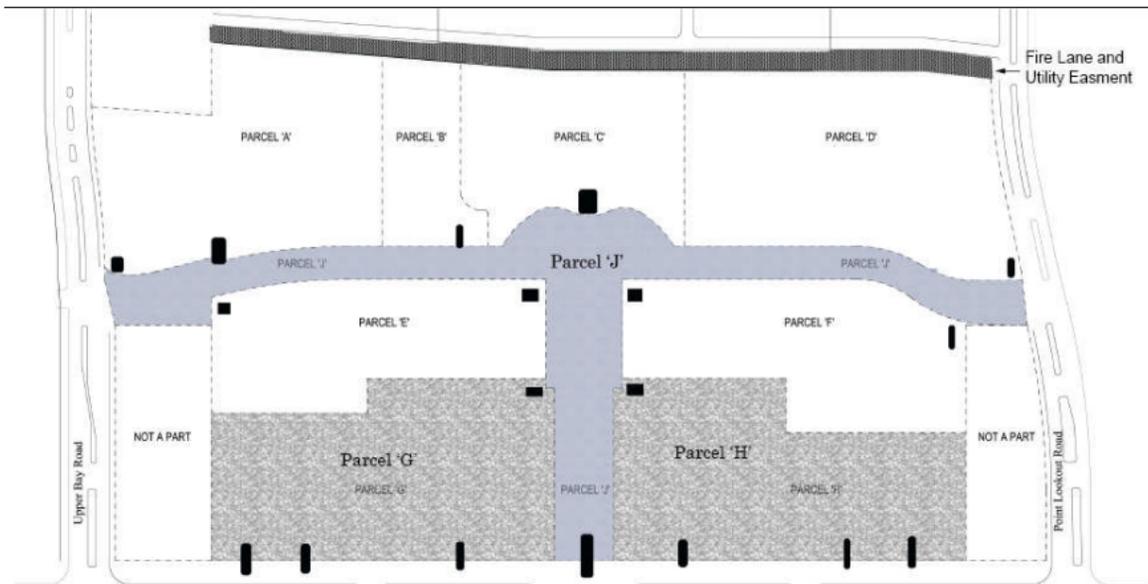


Exhibit "B"
PARCEL PLAN
NASSAU BAY, TEXAS

Note: This drawing is conceptual. Parcel lines are approximate only. Signage locations are approximate locations.

EXHIBIT 'C'
SCHEDULE OF PRORATA SHARE ALLOCATED TO EACH PARCEL

PARCEL	SIZE	PRORATA SHARE
Parcel 'A'	178,156	15.77%
Parcel 'B'	N/A	0%
Parcel 'C'	122,354	10.83%
Parcel 'D'	209,428	18.54%
Parcel 'E'	122,877	10.88%
Parcel 'F'	135,550	12.00%
Parcel 'G'	184,874	16.37%
Parcel 'H'	176,247	15.60%
Parcel 'J'	N/A	0%
TOTAL	1,129,486	100.00%

*Note: These Parcel Sizes are subject to change.
Prorata Share percents change prorata to the total.*

EXHIBIT D

PROHIBITED USES

1. Any public or private nuisance;
2. Any noise or sound that is objectionable due to intermittence, beep, frequency, shrillness or loudness, except for security devices or sound making devices that are required by governmental authorities having jurisdiction over the affected property;
3. Any ground vibration that is perceptible, without instruments, at any point along any exterior lot line, or any radio, television, microwave or electronic above-ground transmission disruptive beyond the boundaries of such property;
4. Any fumes, obnoxious odors, smoke (except that normal cooking operations may be conducted in any food preparation facility located on such property), radiation, gases or vapors;
5. Any dust, dirt or ash in excessive quantities;
6. Any dangerous hazards (except that normal cooking operations may be conducted in any food preparation facility located on such property);
7. Any drilling or excavation for or removal of oil, gas, minerals, water or other subsurface substances;
8. Any chemical plant, refining, smelting, agricultural, drilling or mining operation;
9. Any dumping, disposal, incineration or reduction of garbage or refuse, other than handling or reducing such waste if produced on such property from authorized uses and if handled in a reasonably clean and sanitary manner;
10. A use for mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
11. A use, in whole or in part, for storing, dumping or disposing of garbage or refuse;
12. Any storage of commercial trucks, buses, boats or trailers (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
13. A use, in whole or in part, as a used car sales or storage lot, or as a place or location for the sale or storage of used cars; or
14. A use for a so-called "headshop", free-standing auto body shop, adult book store or adult movie house which sells, exhibits or distributes pornographic materials, massage parlor, topless lounge or bar, any dry cleaning plant or flea market.
15. Any tattoo parlors, dry cleaning plants (however this does not preclude a drop-off and pick-up dry cleaning facility), pawn shop, check cashing service (other than in conjunction with the operation of a traditional branch bank), arcades, game rooms, pool halls or billiard parlors (provided that the foregoing will not prohibit the ancillary, incidental operation of an arcade, game room or pool or billiard area within any Hotel Improvements), beauty or barber colleges, funeral parlors or funeral homes, off-track betting parlors, and any other uses that are prohibited under the applicable zoning ordinance.