

THE STATE OF TEXAS       §  
  §  
COUNTY OF FORT BEND     §

DEVELOPMENT AGREEMENT  
(CORTEZ COMMERCIAL PARK)

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as the "County"), a body politic acting herein by and through its Commissioners Court and Robert Cortez, Jr., (hereinafter referred to as the "Owner").

WHEREAS, the Owner proposes to develop his property, being a 10.50 acre tract of land in the B.B.B. & C. Railroad Company Section 3, Abstract 128 and B.B.B. & C. Railroad Company Section 5, Abstract 129, near the intersection of Koeblen Road and FM 2977 in Fort Bend County, Texas, (the "Owner's Property"); and

WHEREAS, Koeblen Road is a public road classified as a major thoroughfare maintained by the County that currently adjoins the Owner's Property; and

WHEREAS, the County proposes to make certain improvements to Koeblen Road, including expansion to a four-lane boulevard for a length of approximately nine hundred thirty linear feet (930 LF) adjacent to the Owner's Property, (the "Project"); and

WHEREAS, the County and the Owner agree that the Owner will substantially benefit from the construction of the Project; and likewise the County and citizens will also substantially benefit from the Project; and

WHEREAS, the County and the Owner agree to participate in the construction of the Project under the terms agreed to herein in fulfillment of the Owner's obligation for dedication of right of way and contribution to the construction of adjoining major thoroughfares under the County's Regulations of Subdivisions and state law; and

WHEREAS, the County has investigated and determined that it would be advantageous and beneficial to the County and its citizens to participate in the construction of the Project, as provided herein; and

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, County and Owner agree as follows:

1. Owner's Responsibilities. The Owner hereby agrees to perform the following:

(a) Provide funding for the cost of the Project to the County in the amount of \$70,000 under the terms agreed to herein.

(b) Prepare and submit to the County for approval, a plat of the proposed subdivision of the Owner's Property with the dedication of right of way for public use, including the following as shown on the Land Plan attached hereto as Exhibit A, and incorporated herein for all purposes:

- (I) Twenty-five (25) feet of right-of-way by plat for future widening of FM 2977 (Minonite Road), and
- (II) Twenty (20) feet plus additional widening for curve and corner clip of right-of-way by plat for future widening of Koeblen Road.

2. County's Responsibilities. The County hereby agrees to construct the Project at future date, as determined feasible and within the County's discretion. The Owner contribution will be available to the County for the construction costs associated with the Project, and County shall, in its sole discretion, be entitled to use, at any time, all or a portion of the Owner's funds to construct the Project directly or jointly as a part of a larger Koeblen Road Project or related project with a third party such as municipal utility district or a private developer.

3. Payment Schedule

(a) The Owner shall submit a payment of fifty percent (50%) of the contribution payable to the County pursuant to Section 1. (a) above upon its submission of the subdivision plat to Commissioners Court for approval.

(b) The remaining portion of the contribution payable to the County shall be submitted by the Owner upon the Owner's application for a Development Permit for any property being developed within "Reserve C".

4. Disclaimer/Waiver of Damages/Liability.

(a) Owner acknowledges and agrees that County is not providing any guarantee, representation and/or warranty, and County hereby disclaims any guarantee, representation and/or warranty, of any work performed by County, or their agents, employees, representatives, contractors, subcontractors and/or designees, in connection with the construction of the Project, in whole or in part.

(b) Owner acknowledges and agrees that County shall in no way be liable for any damages, if any, which may be sustained by the Owner and/or Owner Property, resulting, in whole or in part, directly or indirectly, from County's failure to complete the construction of the Project.

(c) Subject to the Reserved Right to Litigate as set forth herein, Owner hereby releases County, its officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), it/they may have with regard to the construction and/or completion of the Project and/or any other act and/or omission relating, directly or indirectly, to the Project, in whole or in part, as provided in this Agreement, except to the extent any such claims arise from

the herein contained reserved Right to Litigate or due to, or damages are caused by, the negligence, breach of this Agreement or willful misconduct of County or its authorized officers, agents, representatives or employees.

4. Limitations of Agreement. The parties hereto acknowledge this Agreement is limited to the development of the Owner Property and the Project only. Further, this Agreement does not waive or limit any of the obligations of Owner to County under any other order whether now existing or in the future arising.

5. Default. In the event Owner fails to comply with any of the provisions of this Agreement within sixty (60) business days after Owner's receipt of written notice thereof from County, County shall have the following remedies in addition to County's other rights and remedies, at law or in equity:

- (a) to file this instrument in the Real Property Records of Fort Bend County as a lien and/or encumbrance against Owner and/or the Owner Property; and/or
- (b) to refuse to accept any portion of any public improvements on the Owner Property and/or associated with the development of the Owner Property; and/or
- (c) to refuse to finally accept the Owner Property and/or any portion thereof; and/or
- (d) to seek specific enforcement of this Agreement.

In the event of County's default under this Agreement, Owner will be entitled to seek any remedy available to them at law or in equity.

6. Miscellaneous.

(a) Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows.

If to County, to:

Fort Bend County Engineering  
Attention: County Engineer  
301 Jackson Street  
Richmond, Texas 77469

With a copy to:

Fort Bend County  
Attention: County Judge  
401 Jackson Street  
Richmond, Texas 77469

If to Owner, to:

Robert Cortez, Jr.  
2918 Avenue I  
Rosenberg, Texas 77471

(b) Assignment. This Agreement is not assignable by Owner without the prior written consent of County, which consent shall not be unreasonably withheld.

(c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, as allowed.

(d) Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

(e) Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Fort Bend County, Texas.

(f) Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

(g) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

(h) Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

(i) Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(j) Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

(k) Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

(l) Sovereign Immunity. Subject to the Reserved Right to Litigate, the parties agree that County has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

(m) No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

(n) Attorneys' Fees. In any legal proceeding brought concerning this agreement, the prevailing party may recover its reasonable and necessary attorneys' fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended or any other applicable law or statute governing any related litigation.

(o) Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of County and the Owner and/or its authorized representatives.

(p) Owner's Warranties/Representations. All warranties, representations and covenants made by Owner or County in this Agreement or in any certificate or other instrument delivered by Owner to County or County to Owner under this Agreement shall be considered to have been relied upon by County and Owner and will survive the satisfaction of any fees and/or payments made under this Agreement, regardless of any investigation made by County / Owner or on County's / Owner's behalf.

(q) Indemnification. The parties agree that the Indemnity provisions set forth in Paragraph 4 herein are conspicuous, and the parties have read and understood the same.

(r) Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this agreement to be effective on the date executed by County.

FORT BEND COUNTY:

\_\_\_\_\_  
KP GEORGE, County Judge

\_\_\_\_\_  
Date



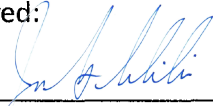
\_\_\_\_\_  
ROBERT CORTEZ, JR., Owner

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
LAURA RICHARD, County Clerk

Approved:



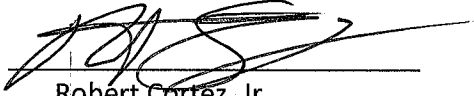
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J. STACY SLAWINSKI, P.E., County Engineer

Approved as to legal Form:

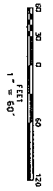
\_\_\_\_\_  
MARCUS D. SPENCER  
First Assistant County Attorney

OWNER:

Robert Cortez, Jr.

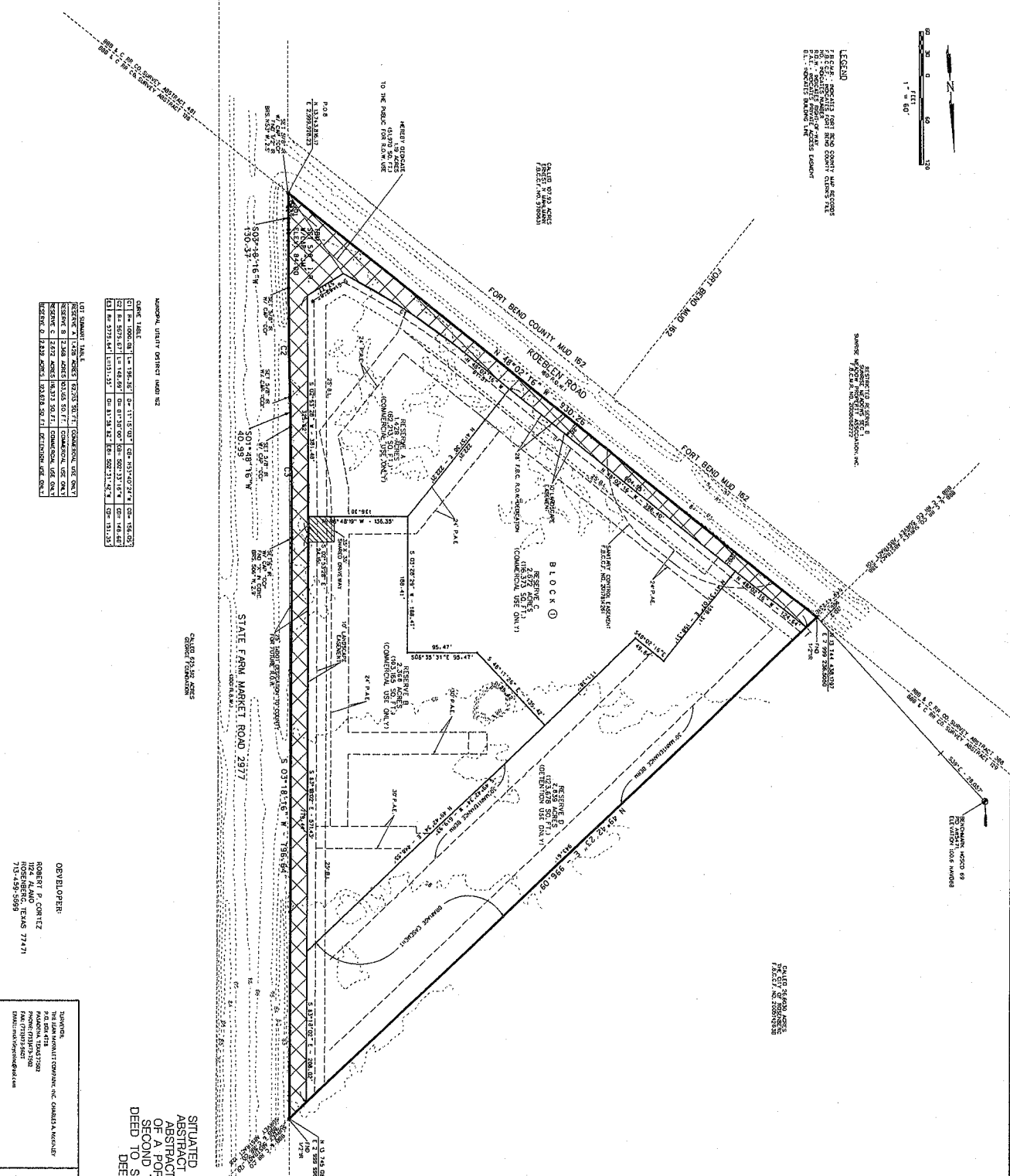
By:   
Robert Cortez, Jr.

# EXHIBIT A



**LEGEND**  
 1. RESERVE 10% FOR COUNTY LAND RESERVE  
 2. RESERVE 10% FOR COUNTY LAND RESERVE  
 3. RESERVE 10% FOR COUNTY LAND RESERVE  
 4. RESERVE 10% FOR COUNTY LAND RESERVE  
 5. RESERVE 10% FOR COUNTY LAND RESERVE  
 6. RESERVE 10% FOR COUNTY LAND RESERVE  
 7. RESERVE 10% FOR COUNTY LAND RESERVE  
 8. RESERVE 10% FOR COUNTY LAND RESERVE  
 9. RESERVE 10% FOR COUNTY LAND RESERVE  
 10. RESERVE 10% FOR COUNTY LAND RESERVE

REGISTERED SURVEYOR  
 STATE OF TEXAS  
 NUMBER 72228  
 EXPIRES 09/02/2012



ADDITIONAL UTILITY DISTRICT NOTES:

DATE	TABLE
01/11/06	01
02/14/06	02
03/14/06	03
04/14/06	04
05/14/06	05
06/14/06	06
07/14/06	07
08/14/06	08
09/14/06	09
10/14/06	10
11/14/06	11
12/14/06	12
01/14/07	13
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01/14/10	49
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06/14/10	54
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08/14/10	56
09/14/10	57
10/14/10	58
11/14/10	59
12/14/10	60

DEVELOPER:  
 ROBERT P. CORTIZ  
 1024 ALAMO  
 TEXAS 77471  
 713-458-5599

THURGOOD  
 THE LAW FIRM OF THURGOOD, L.L.P.  
 1000 WEST WILSON  
 FORT WORTH, TEXAS 76102  
 PHONE: (817) 339-3300  
 EMAIL: thurgood@thurgood.com

**J. MORALES**  
 ARCHITECTS • ENGINEERS • SURVEYORS

3425 Federal Street  
 Houston, TX 77004  
 (713) 713-9472  
 jmorales@jma.com  
 TEL: 713-713-9472  
 FAX: 713-713-9472

**CORTIZ COMMERCIAL PARK**  
 BEING A 10.50 ACRE TRACT OF LAND  
 SITUATED IN THE B.B.B. & C. RAILROAD COMPANY SECTION 3,  
 ABSTRACT 128, AND B.B.B. & C. RAILROAD COMPANY SECTIONS  
 ABSTRACT 128, FORT BEND COUNTY, TEXAS, AND BEING ONE  
 OF A PORTION OF THOSE CERTAIN TRACTS OF LAND, ONE  
 SECOND PART CORTIZ THIRD TRACT DESCRIBED IN WARRANT  
 DEED TO DEED CORP. OF FORT BEND COUNTY, TEXAS,  
 DEED TO DEED RECORDS 4 RESERVES 1 BLOCK

