

STATE OF TEXAS §

COUNTY OF BRAZOS §

**THE RANCH AT TURKEY CREEK**  
**CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement (“Agreement”) is entered into by and between the County of Bryan, Texas, a Texas home-rule municipal corporation, (“County”), and Cozumel Investors, Ltd. (“Developer”).

WHEREAS, the Texas Constitution prohibits any County, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 381 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Developer is the owner of 6.17 acres of property identified by the Brazos Central Appraisal District (“BCAD”) as Parcel 304076, which is more fully described in the boundary description which is attached to this Agreement as **Exhibit A** (“Property”); and

WHEREAS, the Property is located off State Highway 47, a thoroughfare the County has been focused on protecting and promoting high-quality development since before the construction of the Health Science Center and the creation of the BioCorridor; and

WHEREAS, Developer desires to redevelop the property into condominiums/apartments, but requires upgrades to the infrastructure, specifically construction of an 8-inch water line, which will make the project economically infeasible in the long term; and

WHEREAS, in the interest of encouraging further development of this area, the County is willing to offer an incentive equal to the actual cost of the 8-inch water line, provided that the Property reaches \$5,000,000 in increased taxable value, which incentive will be paid in the form of a reimbursement out of a portion of the tax revenue generated by the Property; and

WHEREAS, the County has determined that it is in the best interests of the County to continue to develop the area around Highway 47 to spur further growth and that the project planned by Developer will be beneficial to the citizens of this County at large.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements and covenants set forth herein, the County and the Developer agree as follows:

## DEFINITIONS

“Base Year Taxable Value” shall mean the taxable value for the Property for the year in which this Agreement is executed. The Parties agree that this value is Thirty Two Thousand Two Hundred Fifty Dollars (\$32,250.00).

“Cash Incentive” shall mean that amount of money to be reimbursed annually by County to Company as a grant herein calculated upon a percentage of ad valorem taxes assessed for a specified year for the Property, Improvements and Tangible Personal Property in accordance with the terms of this Agreement.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for the all of the Improvements.

“Incremental Taxable Value” means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

“Maintenance and Operations Rate” means the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the following year.

“Property” means the real property comprised of approximately 6.17 acres more or less and as depicted in Exhibit "A", not including any improvements constructed on such real property.

## **ARTICLE I** **8-inch Water Line**

1. Developer will be responsible for engaging a contractor to construct the public infrastructure necessary to develop the Property into townhomes, including construction of an 8-inch water line, as shown on the engineer’s estimate attached to this Agreement as **Exhibit B**, (“Project”). Developer shall have the Project designed and constructed at its own expense.

2. Within thirty (30) days of the effective date of this Agreement, Developer shall have a professional engineer provide the County Engineer with design plans for the Project. The design plans shall be subject to final approval by the County Engineer. Prior to commencing work, Developer will obtain the necessary permits to conduct work

within County right of way, including obtaining bonds, insurance, and meeting other requirements related thereto.

**ARTICLE II**  
**CHAPTER 381 GRANT**

3. The County will provide a Chapter 381 Economic Development grant equal to the actual hard costs of the 8-inch water line (i.e. labor and materials, excluding overhead or design costs) up to \$80,000. The grant will be paid periodically, upon request by the Developer. Developer must have met the conditions set forth below in order to be eligible for a grant:

- a. Developer must not be in breach of this Agreement;
- b. County must have accepted all required public infrastructure;
- c. A certificate of occupancy must have been issued for the Property;
- d. All ad valorem taxes for the Property must have been paid; and
- e. The BCAD appraised value for the Property must be at least \$5,032,250.

4. County agrees to pay annually to Developer an amount equal to fifty percent (50%) of the Maintenance and Operations Rate portion of the Ad Valorem Tax Revenues collected by the County on the Incremental Taxable Value of the Property for the preceding calendar year by the Company and/or any End user in accordance with the terms of this Agreement, provided that the total amount of Chapter 381 Payments paid to Company under this Agreement shall not exceed EIGHTY THOUSAND DOLLARS (\$80,000.00)

4. The grant payments will be equal to fifty percent (50%) of the Maintenance and Operations Rate tax revenue generated by the Increased Value of the Property. The Increased Value of the Property is the BCAD appraised value of the property (following issuance of one or more certificates of occupancy by the County), less the base value of \$32,250.

5. Once the Developer has met the above conditions, and on an annual basis thereafter while this Agreement remains in effect, the Developer may submit a request for a grant payment to the County, along with copies of invoices from the contractor showing actual amounts paid. As a condition for reimbursement, Requests shall be made in the month of October, and shall be payable out of the taxes paid for that year only. The Developer must include a receipt from the Brazos County Tax Office showing that the taxes for the year have been paid. Failure to request reimbursement waives any right to a reimbursement out of that year's taxes.

6. In no event will the Chapter 381 Payment paid in connection with a tax year exceed the amount of ad valorem taxes actually collected by the County on the Property by July 1 for such tax year, and any rollback taxes previously collected by the County on the Property.

7. The County's obligation to make the Chapter 381 Payment(s) hereunder is subject to annual appropriation by the Brazos County Commissioners' Court, which the County agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the County's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

8. The total amount of Chapter 381 Payments paid by the County under this Agreement shall in no event exceed EIGHTY THOUSAND DOLLARS (\$80,000.00), at which time County's obligation to make the Chapter 381 Payments to Company ends.

9. County will remit the first Chapter 381 Payment to Developer no later than sixty (60) days after receipt by the County Auditor of a proper Payment Request from the Company in accordance with the terms of this Agreement. Beginning with the First Year of Cash Incentives, Company may only submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year. The failure by Developer to timely submit to the County Auditor a Payment Request will result in the forfeiture of the Chapter 381 Payment attributable to that tax year.

10. During the term of this Agreement, Developer shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Company from claiming any exemptions from tax provided by applicable law.

### **ARTICLE III** **TERM**

11. The term of this Agreement shall be from the effective date, which shall be the date signed by the last party to sign, and shall terminate upon the occurrence of one of the following:

- a. Developer has received a combined total of \$ 80,000 in grant payments;
- b. Developer has received ten (10) annual grant payments; or
- c. Forty-two (42) months have passed since the effective date of this Agreement and Developer has not yet qualified for, or has not yet requested, a grant payment.

### **ARTICLE IV** **MISCELLANEOUS**

12. Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Worker"). During the

term of this Agreement, Developer shall notify County of any complaint brought against Developer alleging that Developer has employed Undocumented Workers. If Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Developer to the County not later than the 120th day after the date the County notifies Developer of the violation. Developer shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Developer contracts.

13. **Indemnification.** DEVELOPER DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE COUNTY, AND ALL OF THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE ERROR, OMISSION, OR NEGLIGENT ACT OF DEVELOPER, ITS OFFICERS, AGENTS, OR EMPLOYEES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND DEVELOPER WILL AT ITS OWN COST AND EXPENSE DEFEND AND PROTECT THE COUNTY FROM ANY AND ALL SUCH CLAIMS AND DEMANDS. THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE DEVELOPER OR ANY CONTRACTOR OR SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

14. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.

15. **Texas law to apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the County of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.

16. **Sole Agreement.** This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.

17. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

18. No Waiver. County's failure to take action to enforce this Agreement in the event of Developer's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent County from taking action to enforce this Agreement on subsequent occasions.

19. Notices. County and Developer hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

**COUNTY**

Brazos County  
County Judge  
200 South Texas Ave.  
Suite 332  
Bryan, Texas 77803

**DEVELOPER**

Cozumel Investors, Ltd.  
Attn: Michael J. Beckendorf  
2509 River Forest Drive  
Bryan, Texas 77802

20. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

21. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

22. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.

23. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

24. Time is of the Essence. Time is of the essence in all matters pertaining to the performance of this Agreement. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and federal legal holidays. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or federal legal holiday, then that obligation shall be performable the next following regular business day.

*[signatures to follow]*

Executed to be effective this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**BRAZOS COUNTY COMMISSIONERS COURT**

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**Duane Peters, County Judge**

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**Lloyd Wassermann  
Commissioner, Precinct 1  
Precinct 2**

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**Sammy Catalena  
Commissioner,**

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**Kenny Mallard  
Commissioner, Precinct 3**

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**Irma Cauley  
Commissioner, Precinct 4**

**ATTEST:**

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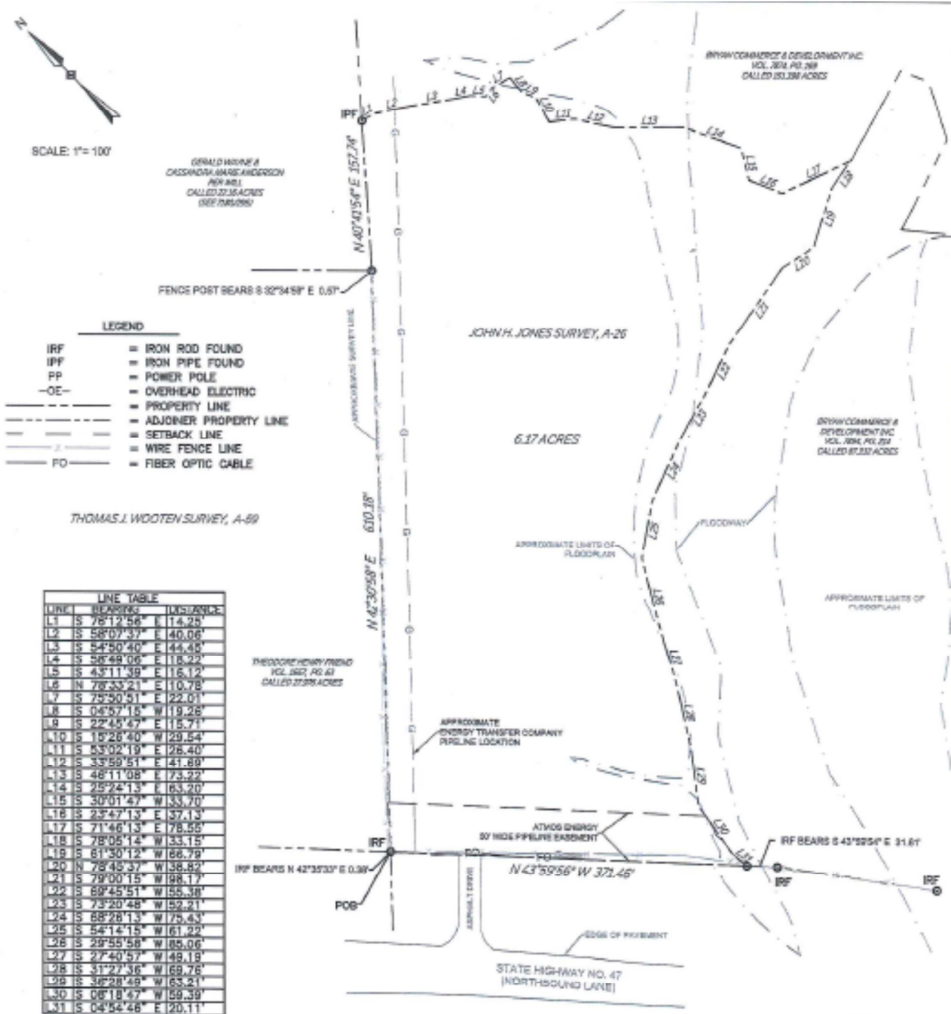
**Karen McQueen, County Clerk**

**DEVELOPER**  
**Cozumel Investors, Ltd.**

By: \_\_\_\_\_  
Michael J. Beckendorf, Managing Member  
Cozumel Group, L.L.C. General Partner

**Exhibit A**





- LEGEND**
- IRF = IRON ROD FOUND
  - IPF = IRON PIPE FOUND
  - PP = POWER POLE
  - OE- = OVERHEAD ELECTRIC
  - = PROPERTY LINE
  - - - = ADJACENT PROPERTY LINE
  - = SETBACK LINE
  - = WIRE FENCE LINE
  - FO = FIBER OPTIC CABLE

**LINE TABLE**

LINE	BEARING	DISTANCE	BEARING	DISTANCE
1.1	S 78°12'56"	E 14.22		
1.2	S 58°07'37"	E 40.06		
1.3	S 24°50'40"	E 44.45		
1.4	S 28°49'06"	E 115.29		
1.5	S 43°11'49"	E 115.12		
1.6	N 78°53'21"	E 110.78		
1.7	S 72°50'51"	E 22.01		
1.8	S 04°57'15"	W 119.26		
1.9	S 77°23'47"	E 115.77		
1.10	S 15°28'40"	E 109.54		
1.11	S 53°02'19"	E 226.40		
1.12	S 33°59'51"	E 41.89		
1.13	S 48°11'08"	E 72.22		
1.14	S 75°24'13"	E 63.20		
1.15	S 30°01'47"	W 133.70		
1.16	S 24°47'13"	E 37.13		
1.17	S 71°46'13"	E 78.55		
1.18	S 78°05'14"	W 133.15		
1.19	S 61°30'12"	W 166.79		
1.20	N 78°43'37"	W 138.52		
1.21	S 79°00'15"	W 98.17		
1.22	S 69°45'51"	W 55.38		
1.23	S 73°20'48"	W 59.21		
1.24	S 58°28'13"	W 725.43		
1.25	S 44°14'15"	W 61.29		
1.26	S 20°55'58"	W 165.06		
1.27	S 27°40'57"	W 49.18		
1.28	S 31°27'36"	W 69.76		
1.29	S 26°28'49"	W 163.21		
1.30	S 08°18'47"	W 59.39		
1.31	S 04°42'46"	E 20.11		

OWNER: COOLUMB INVESTMENTS LTD.  
 TITLE CO: ADRIELAND TITLE CO.  
 G.F. NO.: 358283

- NOTES:**
- BEARINGS REFER TO NAD83 TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (4205) AS OBTAINED BY GPS OBSERVATION.
  - TITLE APPEARS TO BE VESTED IN E & F DEVELOPMENT, INC., BY VIRTUE OF A DEED RECORDED IN VOLUME 8710, PAGE 78, OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.
  - PORTIONS OF THE SUBJECT PROPERTY APPEAR TO LIE WITHIN THE 100 YEAR FLOOD LIMIT AS SHOWN IN THE FEMA FLOOD INSURANCE RATE MAP OR BRAZOS COUNTY, TEXAS AND INCORPORATED AREAS, COMMUNITY MAP NO. 4801062, PANEL NO. 0289E, MAP NO. 480410389E, REVISED EFFECTIVE DATE OF MAY 16, 2012.
  - PROPERTY IS SUBJECT TO TERMS AND CONDITIONS AS WELL AS SETBACKS PER THE CITY OF BRYAN CODE OF ORDINANCES.
  - PROPERTY CORNERS ARE MONUMENTED WITH 1/2-INCH IRON RODS SET OR OTHERWISE NOTED.

**LAND TITLE SURVEY**  
 VOLUME 8710, PAGE 78  
 CALLED 6.17 ACRE TRACT  
 JOHN H. JONES SURVEY, A-26  
 BRYAN, BRAZOS COUNTY, TEXAS

ADDRESS:  
 STATE HIGHWAY 47  
 BRYAN, TEXAS 77807

**GESSNER ENGINEERING**

PLAN | DESIGN | VERIFY

GESSNER ENGINEERING  
 Corporate Office  
 280 Ashford Drive  
 College Station, Texas 77840  
 www.gessnereng.com

FIELD REPRESENTATIVE  
 TONY FIBEL, TEXAS PLAT 02838

CALL OR FAX: 979.683.8848  
 TELEPHONE: 979.683.0000  
 FACSIMILE: 979.683.0744  
 CELLPHONE: 735.565.4224

**CERTIFICATE OF SURVEYOR**

I, GREGORY HOPCUS, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6047, IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE, CORRECT, AND ACCURATELY REPRESENTS THE LINES AND DIMENSIONS OF THE PROPERTY. WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND, AND THAT IT INDICATES ALL EASEMENTS AND FENCES AS THEY ARE VISIBLE ON THE GROUND, AND THAT THERE ARE NO ENCROACHMENTS, CONFLICTS OR PROTRUSIONS, EXCEPT AS SHOWN HEREON.

GREGORY HOPCUS R.P.L.S. NO. 6047



**SURVEY PLAT**

Date: 08-17-16  
 Drawn By: MN  
 Checked By: GH  
 Project Number: 16-0473

**Exhibit B**

**Probable Estimate of Public Infrastructure Construction Costs**  
**The Ranch at Turkey Creek - 8" WL Offsite Extension to Villa Maria**  
**Gessner Engineering, LLC**  
**October 17, 2016**

GE Job #: 16-0473

**MISCELLANEOUS**

Item #	Item	Quantity	Units	Unit Cost	Total
100	Mobilization and Overhead	1	LS	\$ 20,000.27	\$ 20,000.27
101	Hydromulch	3,413	SY	\$ 0.60	\$ 2,048.00
102	Silt Fence Erosion Control	2,303	LF	\$ 1.50	\$ 3,454.50
<b>Sub Total - Miscellaneous</b>					<b>\$ 25,502.77</b>

**Water**

Item #	Item	Quantity	Units	Unit Cost	Total
200	8" PVC Waterline (incl. fittings)	2048	LF	\$ 60.00	\$ 122,880.00
201	8" Gate Valve	5	EA	\$ 2,900.00	\$ 14,500.00
202	8" Meter	1	EA	\$ 30,000.00	\$ 30,000.00
203	Fire Hydrant Assembly w/ valve and box	2	EA	\$ 6,900.00	\$ 13,800.00
204	6" PVC Waterline (incl. fittings)	10	LF	\$ 56.00	\$ 560.00
205	Trench Safety	2058	LF	\$ 2.00	\$ 4,116.00
206	Connect to 12" Line (Cut-In Tee) (incl. appurtenances)	1	EA	\$ 6,200.00	\$ 6,200.00
<b>Sub Total - Water System</b>					<b>\$ 192,056.00</b>

**Paving**

Item #	Item	Quantity	Units	Unit Cost	Total
300	6" Concrete Pavement Trench Repair	44.44	SY	\$ 55.00	\$ 2,444.20
<b>Sub Total - Water System</b>					<b>\$ 2,444.20</b>

<b>Construction Cost</b>	<b>\$ 220,002.97</b>
<b>20% Contingency</b>	<b>\$ 44,000.59</b>
<b>Total Construction Cost</b>	<b>\$ 264,003.56</b>

