

## DEVELOPMENT AGREEMENT

THE STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS           §

This Development Agreement (“Agreement”), is between the CITY OF BEE CAVE, TEXAS, a home rule municipality located in Travis County, Texas (the “City”), WS-COS DEVELOPMENT, LLC, a Delaware limited liability company, and WS-COS INVESTMENTS, LLC, a Delaware limited liability company, (collectively, “WHEELLOCK”) , LAZY NINE MUNICIPAL UTILITY DISTRICT NO. 1A, a political subdivision of the State of Texas (the “District”) and MATTHEWS-BARNES BROTHERS INVESTMENT, a Texas limited partnership (“Covert”) which has joined this Agreement as a limited party for the purposes set forth herein. The City, Wheelock, and the District are referred to individually as a “Party” or collectively as “Parties.”

### INTRODUCTION

Wheelock owns approximately 403 acres of land (the “Eastland Tract”) as more particularly described on the attached **Exhibit “A.”** The District owns an approximately 8 acre tract of land within the Eastland Tract for its facilities.

Approximately 300 acres of land is currently included within the District’s boundaries, which may be enlarged by annexations or reduced by exclusions from time to time. A description of the current boundaries of the District is attached as **Exhibit “B.”**

The District intends to annex the Eastland Tract into its boundaries and exercise its option to select the extraterritorial jurisdiction (“ETJ”) of the City. As a result, the Eastland Tract will be located within the boundaries of the District and all of the land within the boundaries of the District will be within the ETJ of the City.

The District may annex approximately 136 acres of land (the “LTISD Tract”) owned by the Lake Travis Independent School District, as more particularly described on the attached **Exhibit “C”** that is currently within the ETJ of the City.

Upon the anticipated inclusion of the Eastland Tract and the LTISD Tract, the District will be as depicted on **Exhibit “D”** (the “District Tract,” which may be enlarged or reduced by District annexations or exclusions).

Wheelock intends to develop the Eastland Tract in a manner complimentary to its Sweetwater master-planned community with land uses that may include commercial, multi-family, active adult residential, and clustered residential. A master development plan (the “Master Development Plan”) for the development of the

Eastland Tract is attached hereto as **Exhibit "E."** Development standards (in addition to City Requirements and County requirements) applicable to development of the Eastland Tract (the "Master Development Standards") are attached hereto as **Exhibit "F"** (except as modified by Section 2.02).

Covert has joined in the execution of this Agreement to evidence, acknowledge and agree that: (i) the term "Eastland Tract" as used in this Agreement includes approximately 32 acres of property (the "Covert Tract" as depicted in **Exhibit "E"** ) that Covert intends to acquire and develop in accordance with Section 2.02D of this Agreement and in accordance with **Exhibit "I"**, attached hereto; (ii) the Covert Tract is and shall continue to be subject to the terms and provisions of Section 2.02(D) of this Agreement and **Exhibit "I"**; and (iii) Covert' obligations to the City and the City's obligations to Covert under this Agreement shall be limited to the obligations set out in Section 2.02 (D) and Section 6.05 of this Agreement and **Exhibit "I"**.

The Parties wish to enter into this Agreement to provide an alternative to typical City regulatory processes for development in its ETJ, encourage innovative and comprehensive planning of the District Tract and provide certainty of regulatory requirements throughout the term of this Agreement, and encourage the creation of a high-quality community for the benefit of the present and future residents of the City and the Project (hereafter defined).

Authority for this Agreement exists under Chapter 212, Subchapter G, Texas Local Government Code; Chapter 43, Texas Local Government Code; Chapter 245, Texas Local Government Code; and Sections 42.042, 212.172, and 402.014 of the Texas Local Government Code; and such other statutes as may be applicable.

Wheelock, District and the City agree to work with each other in good faith to enhance and preserve the general area for the citizens of City and surrounding areas. Therefore, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged including the agreements set forth below, the Parties agree as follows:

## ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** In addition to the terms defined elsewhere in this Agreement or in City ordinances the following terms and phrases used in this Agreement will have the meanings set out below:

Additional District Land: Land that may be added to the District Tract in accordance with Section 3.07.

Additional Eastland Land: Land that may be added to the Eastland Tract in accordance with Section 3.06.

Additional Residential Land: Land that may be added to the Residential Land in accordance with Section 3.05.

Agreement: This Development Agreement between the City, Wheelock, the District and Covert.

Automotive Sales and Services: Means a use allowed on the Covert Tract which includes all or any of the following uses as such uses are defined in the City of Bee Cave Code of Ordinances: (i) Automobile Accessory Installation (Minor); (ii) Automobile Repair Garage; (iii) Automobile Repair, Major; (iv) Automobile Repair, Minor; (v) Automotive Gasoline or Motor Fuel Service Station; (vi) Auto Parts and Accessory Sales (Indoors); (vii) Auto Rental; (viii) Auto Sales (New); (ix) Auto Sales (Used); and (x) any other accessory uses that are normally associated with the sale or service of vehicles. Provided however, that Automotive Gasoline or Motor Fuel Service Station shall only be authorized as an accessory use and not as a primary use (as such terms are defined in the City of Bee Cave Code of Ordinances).

City: The City of Bee Cave, Texas, a home rule municipality located within Travis County.

City Requirements: Those ordinances or portions of City ordinances defined herein in Section 2.02A and applicable to the Project and provided in Appendix 1.

Code of Ordinances or Code: The City's ordinances in effect on the effective date of this Agreement and as may be amended from time to time.

County: Travis County, Texas.

Covert: Matthews-Barnes Brothers Investments, LP, its successors and assigns.

Covert Tract: The portion of the Eastland Tract indicated on the Master Development Plan on **Exhibit "E."** that is approximately 32 acres and is intended to be developed by Covert for Automotive Sales and Services.

Covert Deed Restrictions: Deed restrictions applicable to a 22.997 acre tract of land in the City described in Exhibit "A" to **Exhibit "K"**, attached hereto, currently owned by Bee Caves-71A, LLC, so that the 22.997 acre tract shall be developed under the City's Neighborhood Services zoning district, or such other zoning requirements as may be approved by the City from time to time.

District: Lazy Nine Municipal Utility District No. 1A, a political subdivision of the State of Texas.

District Tract: Land anticipated to be within the boundaries of the District that will be designated ETJ of the City and shall be subject to agreements regarding prospective City annexation according to the terms of this Agreement. The District Tract is depicted on **Exhibit "D"** and it may be enlarged by District annexations of Additional Land and reduced by District exclusions. The District Tract will always have the same boundaries as that of the District.

Eastland Tract: The approximately 403-acre tract of land described in **Exhibit "A"** and any Additional Eastland Land.

Effective Date of this Agreement: The date established in Section 6.01.

ETJ: Extraterritorial Jurisdiction.

LTISD Tract: The approximately 136-acre tract of land described in **Exhibit "C."**

Master Development Plan: The master development plan for the development of the Eastland Tract as shown on **Exhibit "E."**

Master Development Standards: The Architectural, landscaping, street, parking, open space and other development standards contained in **Exhibit "F"** which in addition to the City and County Requirements govern the development of the Eastland Tract.

Multifamily Apartment Tract: The portion of the Eastland Tract that is intended to be developed with multifamily apartments, indicated as "Multi-Family Residential" on the Master Development Plan on **Exhibit "E,"** and is approximately 33 acres, but can be expanded to include no more than 50 acres pursuant to this Agreement.

Party/Parties: The City, Wheelock, and the District, individually and collectively.

Project: The development of the District Tract (including the Eastland Tract, but not the LTISD Tract) and any Additional District Land (including any Additional Eastland Land) described in **Exhibit "D"**, that may be annexed into the District during the term of this Agreement and shall be designated by the District as ETJ of the City in accordance with **Exhibit "E."**

Residential Land: All of the land within the boundaries of the District, as changed from time to time, except the Eastland Tract, any Additional Eastland Land, and the LTISD Tract.

Wheelock: WS-COS Development, LLC, and WS-COS Investment, LLC, collectively and individually, and their successors and assigns.

Any terms which are used herein and which are defined in the Code of Ordinances shall have the meaning ascribed to them in the Code of Ordinances unless same are expressly defined in this Agreement in which case the definition contained herein shall control. Capitalized terms which are used and defined in this Agreement shall have the meaning ascribed to them in this Agreement.

## **ARTICLE II COMPLIANCE WITH CITY REGULATIONS**

**Section 2.01 Requirements for Development of the Eastland Tract.** The City and Wheelock acknowledge and agree that only those City laws, ordinances, codes, regulations, requirements, technical construction standards and development requirements particularly set forth in Section 2.02A (collectively the “City Requirements”) in effect on the Effective Date of this Agreement, as provided in Appendix 1, except as modified by the terms of this Agreement, together with certain Master Development Standards developed by Wheelock and the District shall apply to the Eastland Tract and any Additional Eastland Land upon such lands inclusion in the ETJ of the City. It is expressly understood and agreed by the City, the District and Wheelock, that the City Requirements shall include certain ordinances which would apply to the Eastland Tract as a tract of land located in the ETJ of the City and certain of the regulations that would apply to the Project if it were currently located in the municipal corporate limits of the City as particularly set out in Section 2.02 together with the Master Development Standards as set out in **Exhibit “F”**.

### **Section 2.02 Regulations for the Development of the Eastland Tract and any Additional Eastland Land.**

A. The following City Requirements and County requirements shall apply to development activity on the Eastland Tract or any Additional Eastland Land or any portion of the Eastland Tract:

- (i) regulations for sexually oriented businesses; as they are enacted and/or amended by the City from time to time;
- (ii) Noise Standards (Section 32.05.008 of the Code) as enacted on the Effective Date of this Agreement;
- (iii) Vibration Standards (Section 32.05.111 of the Code) as enacted on the Effective Date of this Agreement;
- (iv) Smoke, Particulate Matter and Odorous Standards (Section 32.05.009 of the Code) as enacted on the Effective Date of this Agreement;

(v) Signage Requirements (Section 28.01.001, et seq. of the Code) as enacted on the Effective Date of this Agreement except as modified or waived as described in **Exhibit "G"**;

(vi) regulations to prevent imminent destruction of property or injury to persons, including regulations effective only within a floodplain established by federal flood control programs and enacted to prevent the flooding of buildings intended for public occupancy; as they are enacted and/or amended by the City from time to time;

(vii) construction standards for streets and public works whether located on public or private lands or easements unless there is a conflict between the City's standards and the County's standards in which case the County's standards shall control;

(viii) solid waste and litter regulations; as they are enacted and/or amended by the City from time to time;

(ix) Lighting Ordinance (32.05.012 "Lighting and Glare Standards" of the Code) as enacted on the Effective Date of this Agreement;

(x) Subdivision Regulations of the County; and

(xi) Nonpoint Source Pollution Control Regulations (Article 20.04 of the Code and including the impervious cover requirements) shall apply to the Covert Tract, the portion of the Eastland Tract or any additional Eastland Land that drains to Little Barton Creek; the Lower Colorado River Authority's Highland Lakes Watershed Ordinance shall apply to the portion of the Eastland Tract or any additional Eastland Land that drains to Lake Travis via Hurst Creek or Bee Creek, provided however, that regardless of watershed the City's NPS Ordinance shall apply to the Covert Tract. Impervious Cover shall be calculated in accordance with the City's NPS Ordinance for the development of the Project as a whole pursuant to Section 2.03(a).

#### B. City Review Requirements.

One or more of the above described City Requirements may require issuance of a permit pursuant to the applicable ordinance or portion of ordinance. It is the intent of the City that review and approval of the above described City Requirements not follow the permitting procedures set out in such ordinances or portions of ordinances. Rather the City shall review and approve site development and construction in accordance with this Section 2.02 (B). Prior to site development of any portion of the Eastland Tract, Wheelock shall cause to be prepared by Wheelock's engineer a letter describing the nature of the upcoming development, the portion of the Eastland Tract that is to be

developed, the proposed land uses, the timing of the development, and a list of the City Requirements, if any, applicable to the proposed development and identifying the method by which the City Requirements are intended to be met. In particular the engineer shall address nonpoint source pollution control requirements, lighting requirements, signage and noise requirements as applicable. If impervious cover on a particular tract will exceed 40% impervious cover, engineer will provide a copy of a conveyance or acknowledgment filed in the Deed Records of Travis County that reduces the amount of impervious cover for other property within the Project by the equivalent amount of impervious cover being increased. Such letter(s) and documentation shall be submitted to the City at the same time as the Concept Plan is submitted to the Design Criteria Review Committee ("DCR") as such committee and procedure is described in **Exhibit "H"** attached hereto. During site development construction the City shall have the right at reasonable times to inspect the site development. Thereafter and upon completion of the site development, Wheelock's engineer shall provide an opinion to the City under seal regarding all aspects of the site development that can be sealed by an engineer that such applicable site development has been completed and is in compliance with the applicable City Requirements, the Master Development Standards and this Agreement. For all other aspects of the site development that are not sealed by the engineer, Wheelock shall provide an affidavit that certifies that site development has been completed and is in compliance with the applicable City Requirements, the Master Development Standards and this Agreement.

The City agrees to work with the County to effectuate the provisions and intent of this Agreement as they relate to subdivision regulations. The City will attempt to enter into an Interlocal Agreement with County that provides that only County approval will be required for approval of any subdivision plats. However, in the event that the County and City are not able to reach an agreement for the District Tract, the City shall defer review of the subdivision or plat application until the County has reviewed and approved the application and upon receipt of notice that County has approved such subdivision or plat the City will confer approval by written letter delivered within 10 days after the City receives notice of the County approval of such subdivision or plat without any additional review of the application. In such case the City will provide signatures if required by the County.

C. Master Development Standards.

(i) The Parties have agreed that in addition to the City Requirements certain additional standards set out in **Exhibit "F"** ("Master Development Standards") shall apply to development of the Eastland Tract. In particular, the Master Development Standards related to architectural requirements and landscaping shall be applicable to development of the Eastland Tract in lieu of City Ordinances applicable to architecture and landscaping. Provided however, at a

minimum the Covert Tract shall comply with the Architectural and Landscaping standards as provided in Section D of this section.

(ii) Single Family residential uses (and any and all development activity undertaken on the Residential Land or any portion of the Residential Land) shall not be subject to the City's Requirements described in Section 2.02A or the Master Development Standards so long as single family is developed in accordance with the Sweetwater master-planned community; including any deed restrictions currently applicable thereto or as amended from time to time.

(iii) The Master Development Standards may be amended from time to time by Wheelock; upon approval of the City, or without approval of the City so long as the amended standards are more stringent than the standards being changed or so long as the amended standards meet or exceed the equivalent standards within the City's Code of Ordinances. Wheelock acknowledges, agrees and represents that the Master Development Standards, if amended, will meet or exceed the City Requirements. Copies of any amendments to the Master Development Standards shall be provided to the City within 15 days from the date of such amendment.

D. Regulations for the Development of the Covert Tract.

- (i) The Covert Tract is currently planned to be developed generally as set forth on the plan attached hereto as **Exhibit "I"**, provided, however, that the development plans are subject to revision in the reasonable discretion of Covert considering market conditions, design considerations, feasibility, and other considerations, subject to the limitations set forth in this Section 2.02 and other provisions of this Agreement.
- (ii) The Parties agree that development of the Covert Tract shall be in accordance with this Section 2.02 D, Subsections A and C above, and the Master Development Standards except as same may be modified in this Subsection D. In addition, the Covert Tract shall comply with the City Landscape ordinance (Section 32.05.002 of the Code of Ordinances), the City's NPS Ordinance (Section 20.04 of the Code of Ordinances) and the City's Sign Ordinance (Chapter 28 of the Code of Ordinances) effective as of the date of this Agreement. In addition, the Covert Tract shall construct all automotive showrooms using architecture substantially similar to the architecture depicted in **Exhibit "I"**.
- (iii) Except as subsequently approved by the City, development of the Covert Tract shall be subject to the following limitations:



(1) No more than 3 monument signs located along and visible from Highway 71 consistent with Signage Requirements (Section 28.01.001, et seq. of the Code of Ordinances) as enacted on the Effective Date of this Agreement.

(2) Any building with a footprint in excess of 5,000 square feet, shall be setback from Highway 71 a minimum of 225 feet, and no building shall have a footprint in excess of 120,000 square feet;

(3) Any building with a footprint of 5,000 square feet or less, shall have a setback from Highway 71 of at least 75 feet;

Provided however, that parking areas may be constructed (not including any elevated parking) within the 75 foot setback as long as they are located at least 50 feet from Highway 71 and screened in accordance with the City's landscape ordinances. Parking areas along Highway 71 may be constructed with metal fencing so long as the height of the fence is no higher than adjoining landscaping and so long as landscaping screens the fence.

(4) No more than 40 % impervious cover shall be allowed on the Covert Tract unless Wheelock conveys additional impervious cover in accordance with Section 2.02 B, in which case the impervious cover shall not exceed 60%; and

(5) The height of structures on the Covert Tract shall not exceed 35' in height; provided, however, that garages and other structures set back at least 275 feet from Highway 71 may be 45' in height.

(v) One of more of the City Requirements described in Section 2.02 A may require issuance of a permit pursuant to the applicable ordinance or portion of ordinance. It is the intent of the City that review and approval of the development of the Covert Tract shall not follow the permitting procedures set out in such ordinances or portions of ordinances. Rather the City proposes to review and approve site development and construction in accordance with this Section 2.02 (D). So long as the Covert Tract is developed in accordance with the requirements of this Agreement and an engineer acceptable to the City provides an opinion to the City under seal that the Covert Tract has been completed in compliance with the applicable City Requirements, the Master Development Standards and this Agreement no permit or other approval shall be required from the City.

- (vi) Engineer certification of compliance shall be provided by one of the following engineering firms or by such other engineering firm as the City may in writing approve upon request of an Owner. City's approval of such additional engineering firms shall be solely within the discretion of the City.
- Civilitude Engineers and Planners
  - Doucet & Associates Civil Engineering
  - Freese and Nichols, Inc
  - Longaro & Clarke Consulting Engineers
  - Randall Jones & Associates Engineering, Inc.
  - Vickery & Associates, Inc Consulting Engineers
  - 360 Professional Services, Inc.
  - LJA Engineering, Inc.
- (vii) The Parties agree that construction activity for the development of the Covert Tract in accordance with this Agreement for Automotive Sales and Service uses in accordance with this Subsection D and **Exhibit "I"** is expressly contingent on the recording of the Covert Deed Restrictions in the Travis County Deed Records. In the event that Covert does not close and acquire the Covert Tract the Parties agree that the Covert Tract shall not be developed for a Automotive Sales and Services use but shall be developed consistent with the uses authorized for the remainder of the Eastland Tract.
- (viii) Covert acknowledges and represents that it has entered into an agreement with Wheelock to purchase and acquire the Covert Tract for the purpose of developing same for Automotive Sales and Services which purchase agreement becomes effective on the Effective Date of this Agreement. Covert represents that pursuant to the purchase agreement Wheelock and Covert have agreed that Covert shall have 180 days from the Effective Date of this Agreement to terminate the purchase agreement for any reason, but if the purchase agreement is not terminated within the 180 day review period, Covert becomes obligated to cause the Deed Restrictions attached hereto as **Exhibit "K"** to be filed in the Travis County Deed Records. Covert hereby agrees that it will cause the Deed Restrictions to be executed in the form attached hereto as **Exhibit "K"** in conjunction with the execution of this Agreement and shall place same in escrow with the title company handling the purchase agreement with instructions to the escrow agent in the form of the Escrow Agreement described in **Exhibit "K1"**, attached hereto, to record the Deed Restrictions in the Travis County Real Property Records upon the expiration of 180 days from the Effective Date of this Agreement unless Covert exercises its right

to terminate the purchase agreement as described herein. Covert agrees that it will notify the City within 5 days if it terminates the purchase agreement prior to the expiration of the 180 day review period.

**Section 2.03 Exceptions / Variances for the Development of the Eastland Tract.** By its authority as set forth in Section 30.02.004(a) of the Code, the City, by its approval of this Agreement confirms that it has made necessary findings and hereby grants and approves the exceptions, waivers, variances, and credits required in order to limit the City laws, ordinances, codes, and regulations and standards to City Requirements for the development of the Project on the Eastland Tract as described in this Section.

**(a) Impervious Cover.** Impervious cover calculations for the Eastland Tract shall be calculated for the development of the Eastland Tract as a whole, such that portions of the development may exceed the allowable impervious cover as long as the entire development of the Eastland Tract does not exceed the total impervious cover allowed by Code, except as amended in this Agreement.

Allowable impervious cover for the Eastland Tract shall be 40% impervious cover calculated in accordance with Section 20.04.044(d) of the Code of Ordinances. Such calculation shall include the entirety of the Eastland Tract, including any and all acres that may be currently designated as reclaimed water storage and disposal areas by the Texas Commission on Environmental Quality (TCEQ) permit. The calculated allowable impervious cover will be available for utilization on any part, portion, or parcel of the Eastland Tract that may be identified as an independent site plan without limitation of the amount of impervious cover that may be developed or constructed on any separately identified tract of land so long as the aggregate amount of impervious cover on all such parcels does not exceed the total allowable impervious cover as calculated for the entire Eastland Tract. In the event that portions of the Eastland Tract are subdivided and sold to third parties, such sale shall consider the amount of impervious cover remaining to the Eastland Tract and shall designate the amount of impervious cover to the tract being sold to guarantee that the Eastland Tract as a whole does not exceed 40%. Each Site plan submitted to the City shall provide a running total of the amount of impervious cover allocated and the amount of impervious cover left to the Eastland Tract.

**(b) Electric Utilities.** The City's requirements for electric utilities (Article 20.05 of the Code) shall not apply to the Eastland Tract. The Parties understand and agree that Pedernales Electric Cooperative (PEC) is the electric service provider to the Project.

**(c) Cut and Fill.** The Eastland Tract shall not be subject to any limitations with regard to cut and fill earthwork for purposes of constructing the street, drainage and utility infrastructure to serve the various development tracts, or the site development on any of the individual tracts that may be developed by either Wheelock or a subsequent owner or user. Wheelock will, to the extent feasible follow the design

considerations contained in Section 30.03.001, Streets, and Section 20.04.048, Steep Slopes, of the Code of Ordinances.

### **ARTICLE III DEVELOPMENT PLAN**

**Section 3.01 Phased Development.** Wheelock intends to develop the Project in phases. Wheelock may, in its sole discretion, plat each phase of the Project that is located on the Eastland Tract and the Residential Land in multiple, separate subdivision plats. The City acknowledges that the portions of the Eastland Tract and the Residential Land not under active development may remain in use for agricultural lands, wildlife lands, or ranching purposes.

**Section 3.02 General Plan for Development.** Wheelock intends to develop the Project in a manner complimentary to the Sweetwater master-planned community, a mixed-use project that includes commercial, multi-family, and single family residential uses. Potential land uses in the Project may include, but are not limited to: commercial, office, retail, multi-family, single family residential, active adult residential, clustered residential, recreational, and other uses that may be complimentary and compatible to the overall development of the Project. Wheelock intends to develop the Eastland Tract in a manner complimentary to its Sweetwater master-planned community with land uses that may include commercial, multi-family, active adult residential, and clustered residential. The Covert Tract is expressly authorized to be developed for Automotive Sales and Services and related uses, No other automotive dealerships, automotive show rooms or automotive service or repair centers, shall be authorized within the Project or on the Eastland Tract or any Additional Eastland Tract. Land uses as described in parts (i) through (iv) and (vii) through (x) of the definition of Automotive Sales and Services are not approved uses within the Eastland Tract except within the Covert Tract. If Covert does not acquire and close on the Covert Tract, such Automotive Sales and Services land uses shall not be allowed uses except through an amendment to this Agreement.

**Section 3.03 Master Development Plan.**

(a) Wheelock intends to develop the Eastland Tract in accordance with the Master Development Plan. The Master Development Plan is shown on **Exhibit "E."** Wheelock reserves the right to amend and make modifications to the Master Development Plan from time to time subject to the limitation provided in this Section 3.03(b) and (c).

(b) The Multifamily Apartment Tract is shown as approximately 33 acres, but may be expanded to include no more than 50 acres without approval of the City; provided, however that if the Multifamily Apartment Tract is expanded, the density of multifamily apartment units within the Multifamily Apartment Tract shall be calculated

pursuant to this Section. For each additional acre (between 33 acres and 50 acres) included in the Multifamily Apartment Tract, no more than an additional 11 units of multifamily apartments may be developed on the Multifamily Apartment Tract. The total number of units of multifamily apartments may be developed at any location within the Multifamily Tract, as it may be expanded. The Multifamily Apartment Tract may be further expanded (to include more than 50 acres) only with approval of the City.

(c) The Covert Tract may be expanded to 38 acres. Any additional expansions will require the approval of the City.

**Section 3.04 Uses of the Eastland Tract and the Residential Land.** Development of the Eastland Tract and the Residential Land and the land uses thereof will not be limited or controlled by the City's Zoning Ordinance (Chapter 32 of the Code). However, Chapter 32 will be utilized as a reference and planning consideration in the Master Development Plan for the Eastland Tract to the extent feasible relative to the planned land uses and potential development constraints caused by geography, topography, highway access, and/or critical environmental features if any are identified.

**Section 3.05 Addition of Property to the Residential Land.** At any time during the Term, the District may annex land that is not within the ETJ or city limits of the City as of the date of the annexation of such land (the "Additional Residential Land") into its boundaries and, upon such annexation, such Additional Residential Land shall be considered part of the Residential Land for all purposes of this Agreement. Any Additional Residential Land will be subject to and benefit from all provisions and requirements of this Agreement. The District shall notify the City of any annexations of land into the District by providing the City with a copy of the District's order adding land and an updated District boundary map. Provided however, that the District is not authorized to annex land that is within the corporate limits of another municipality or within the ETJ of another municipality, unless the District then selects the ETJ of the City such that the entirety of the District is within the ETJ of the City and not within the jurisdiction of any other municipality. In the event that the District adds additional land that would prevent the City from being able to annex the District Tract into the city limits in accordance with the terms and conditions of this Agreement, such act shall constitute a material breach of this Agreement.

**Section 3.06 Addition of Property to the Eastland Tract.** At any time during the Term, Wheelock may designate land that is (i) part of the District Tract, or (ii) other land not within the ETJ or city limits of the City as of the date of the designation of such land, (the "Additional Eastland Land") to be considered part of the Eastland Tract for all purposes of this Agreement. Any Additional Eastland Land will be subject to and benefit from all provisions and requirements of this Agreement. Wheelock shall notify the City of any designations of Additional Eastland Land by providing the City with an updated property description or map of the Eastland Tract.

**ARTICLE IV  
DISTRICT AND ANNEXATION**

**Section 4.01 The District.** The City acknowledges that except for the LTISD Tract the District currently exists outside any jurisdiction of the City. The District intends to exercise its option to select the ETJ of the City. The City agrees that such selection by the District and inclusion of the Land in the ETJ of the City will not subject the District to any City regulation, control, or oversight, other than those matters specifically provided for by this Agreement.

**Section 4.02 Annexation.** The City agrees that it will not annex the land within the District until the earlier of, (i) thirty (30) years from the Effective Date of this Agreement; or (ii) the date when water, wastewater, drainage, street, and park and recreational facilities have been completed to serve at least 90% of the developable acreage within the land within the District and developers of land within the District have been reimbursed by the District for the water, wastewater, drainage, street, and park and recreational facilities in accordance with the rules of the TCEQ (the "Non-Annexation Period"). The City agrees that a request for annexation will not be required to be submitted with any final plat of property within the land within the District. After the expiration of the Non-Annexation Period, Wheelock agrees that it will voluntarily request annexation into the City when and if City requests that the land within the District be annexed into the City according to the terms of this section and this requirement shall be binding on any subsequent landowner. Any property owner that purchases property covered by this Agreement shall be given notice that is acknowledged by the landowner that the property being acquired is subject to the annexation rights of the City. The City's rights to annex after the Non-Annexation Period shall be included as a plat note prior to final plat of any portion of the District Tract.

**Section 4.03 Strategic Partnership Agreement.** The City and the District agree to take all steps necessary and convenient to enter into a Strategic Partnership Agreement, the form of which is attached as **Exhibit "J."**

**ARTICLE V  
AUTHORITY AND VESTING OF RIGHTS**

**Section 5.01 Authority.** This Agreement is entered into, in part, under the statutory authority of *Sections 42.042, 212.172, and 402.014 of the Texas Local Government Code; Chapter 212, Subchapter G, Texas Local Government Code; Chapter 43, Texas Local Government Code; Chapter 245, Texas Local Government Code;* and such other statutes as may be applicable. The Parties intend that this Agreement shall guarantee the ETJ status of the District Tract as provided in this Agreement, authorize certain

development on the District Tract, provide for the development regulations and standards for the District Tract, provide exceptions to certain ordinances as described herein, and provide other terms and consideration including the potential eventual annexation of the District Tract to City. The City acknowledges and agrees that it has authority under the Texas Local Government Code and other applicable ordinances or statutes to enter into this Agreement.

**Section 5.02 Vesting of Rights.** This Agreement constitutes an application for a permit by Wheelock for the development of the Eastland Tract and initiates the development permit process for the Eastland Tract described herein under Chapter 245 of the Texas Local Government Code. The City acknowledges that Wheelock has vested authority to develop the Eastland Tract in accordance with this Agreement until the expiration or termination of the Agreement.

**Section 5.03 Wheelock's Right to Continue Development.** In consideration of Wheelock's agreements hereunder, the City agrees that it will not during the term of this Agreement, impose or attempt to impose: (a) any moratorium on building or development within the Project; or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within the Project. The preceding sentence does not apply to temporary moratoriums uniformly imposed throughout the City due to an emergency constituting imminent threat to the public health or safety, provided that such a moratorium will continue only during the duration of the emergency.

**Section 5.04 LTISD Tract.** Even though the District intends to annex the LTISD Tract into the boundaries of the District, the Parties agree that nothing in this Agreement is intended to affect or apply to the LTISD Tract. No rights to develop or vesting of development rights is intended to apply to the LTISD Tract by virtue of this Agreement. Rights, obligations, or limitations set out with regard to the City Requirements described herein are not applicable to the LTISD Tract except as same would otherwise be applicable to the LTISD Tract by virtue of it being currently located in the City's ETJ and all regulations and ordinances applicable to property located in the ETJ remain applicable to the LTISD Tract. Any restrictions or conditions or terms related to annexation are likewise not applicable to the LTISD Tract.

## ARTICLE VI EFFECTIVE DATE, TERM, ASSIGNMENT AND REMEDIES

**Section 6.01 Effective Date.** The Effective Date of this Agreement is the date of the City Council authorization to execute this Agreement; provided, however, that construction activity for the development of Automotive Sales and Services uses on the Covert Tract cannot occur unless and until the Covert Deed Restrictions (attached hereto as **Exhibit "K"**) are made effective and recorded in the County deed records.

**Section 6.02 Term.** The term of this Agreement will commence on the Effective Date and continue for the later of the one year anniversary after the expiration of the Non-Annexation Period, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the City, Wheelock, and the District. Upon the expiration of the Term, this Agreement may be extended by mutual agreement of the Parties.

**Section 6.03 Termination and Amendment by Agreement.** This Agreement may be terminated or amended at any time by mutual written consent of the City, Wheelock, and the District. If the Parties terminate this Agreement as provided in this Section 6.03 or Section 6.05 at a time when any site plan has been approved for any contemplated development activity on the Eastland Tract, such termination shall render any approved site plan void, no development approved on the site plan shall be undertaken on the affected tract and any vesting rights that may have occurred in accordance with Section 5 shall likewise be terminated. Covert's signature shall also be required for any termination or amendment that relates to the development of the Covert Tract, for as long as Covert owns the Covert Tract or has a contract for the purchase of the Covert Tract.

**Section 6.04 Assignment.**

a. This Agreement, and the rights and obligations of Wheelock, in whole or in part, may be assigned by Wheelock to a parent, subsidiary or related entity of Wheelock with written notice to the City.

b. Except for an assignment authorized by subsection a., this Agreement, and the rights and obligations of Wheelock, in whole or in part, may be assigned by Wheelock to a subsequent owner, developer and/or builder of all or a portion of the District Tract upon written notice to the City. Any such assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee.

c. Wheelock will provide to the City at least fifteen days advance written notice of any assignment or partial assignment of Wheelock's rights and obligations under this Agreement. If Wheelock assigns its rights and obligations as to a portion of the Eastland Tract or the Residential Land, then the rights and obligations of any assignee and Wheelock will be severable and Wheelock will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the City may pursue all remedies against that nonperforming developer but will not impede development activities of any performing developer as a result of that nonperformance. This Agreement is not intended to create any encumbrance to title as to any ultimate consumer who purchases any portion of the Eastland Tract or the Residential Land.



## **Section 6.05 Remedies.**

a. If the City defaults under this Agreement, Covert, Wheelock or the District shall provide notice of such default by stating, in writing, the specific nature of the default and any action required to cure the default. If such default remains uncured after thirty (30) days, Covert, Wheelock or the District may (i) enforce this Agreement by seeking specific performance from a Travis County District Court; or (ii) pursue injunctive relief to cure the default from a court of proper jurisdiction. Additionally, if such default remains uncured after thirty (30) days, Wheelock may terminate this Agreement, but not as to the Covert Tract (except with Covert's consent) by providing written notice of such termination to the City.

b. If Wheelock defaults under this Agreement, the City shall provide notice of such default by stating, in writing, the specific nature of the default and any action required to cure the default. If such default remains uncured after thirty (30) days, or thereafter Wheelock fails to diligently pursue such cure to completion or other reasonable resolution of the default, the City may terminate this Agreement, except as to the Covert Tract (unless with Covert's consent), or seek injunctive relief or specific performance from a court of proper jurisdiction.

c. If Covert defaults under this Agreement, the City shall provide notice of such default by stating, in writing, the specific nature of the default and any action required to cure the default. If such default remains uncured after thirty (30) days, or thereafter Covert fails to diligently pursue such cure to completion or other reasonable resolution of the default, the City may seek injunctive relief or specific performance from a court of proper jurisdiction.

d. If the District defaults under this Agreement, the City or Wheelock shall provide notice of such default by stating, in writing, the specific nature of the default and any action required to cure the default. If such default remains uncured after thirty (30) days, or thereafter the District fails to diligently pursue such cure to completion or other reasonable resolution of the default, the City or Wheelock may seek injunctive relief or specific performance from a court of proper jurisdiction.

e. Each Party and Covert waives any action for damages against the other except for the recovery of attorney's fees, as per subparagraph f below.

f. If a Party or Covert defaults, the prevailing Party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing Party.

g. It is acknowledged that the termination of this Agreement will cause material harm to the Parties and Covert. It is intended and agreed by all Parties and

Covert that the remedy of termination on a default as expressly provided for in this Agreement shall not be exercised by a Party for minor defaults. If a default is by an assignee of only a part of the District Tract and Project, the only default is by such assignee, this Agreement may be terminated only as to the part or portion of the Eastland Tract or the Residential Land and the Project on which the assignee is in default.

### **Section 6.06 Cooperation.**

a. The City, Wheelock, and the District each agree to cooperate with each other as may be reasonably necessary to carry out the intent of this Agreement, including but not limited to, the execution of such further documents as maybe reasonably necessary.

b. The City agrees to cooperate with Wheelock at Wheelock's expense, in connection with any waivers, permits or approvals Wheelock may need or desire from LCRA, Travis County, TCEQ, United States Environmental Protection Agency, United States Fish Wildlife Service, or any other regulatory authority in order to carry out the development of the Project.

c. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, or other claim related to the District's designation of the District Tract within the City's ETJ, Wheelock agrees to use its reasonable efforts to resolve the suit or claim. Wheelock and the District will each be responsible for its own attorney's fees and other expenses which may be incurred in connection with any such lawsuit or claim and Wheelock shall be responsible for any attorney's fees or expenses incurred by the City in an amount not to exceed \$20,000. Wheelock shall reimburse the City on a monthly basis for such fees and expenses

d. Wheelock, the City, and the District may initiate mediation on any issues in dispute between the Parties. The cost of mediation shall be a joint expense.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

**Section 7.01 Notice.** Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the Party to be notified and with all charges prepaid; (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery," addressed to the Party to be notified and with all charges prepaid; (iii) by personally delivering it to the Party or any agent of the Party listed in this Agreement; or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be

effective only when received. For purposes of notice, the addresses of the Parties will, until changed as provided below, be as follows:

City: City of Bee Cave  
Attn: City Manager  
4000 Galleria Parkway  
Bee Cave, Texas 78738

With Required  
Copy to: Ms. Patty Akers, City Attorney  
Akers & Akers, LLP  
13809 Research Blvd.  
Suite 250  
Austin, Texas 78750

Wheelock: WS-COS Development, LLC  
WS-COS Investments, LLC  
c/o Mike Rafferty  
Wheelock Street Capital, LLC  
3303 Quiet Glen Drive  
Kingwood, Texas 77345

With Required  
Copy to: Lawrence D. Settanni  
Sr. Vice President and Chief Financial Officer  
Wheelock Street Capital, LLC  
660 Steamboat Road, 3<sup>rd</sup> Floor  
Greenwich, CT 06830

The District: Lazy Nine Municipal Utility District No. 1A  
c/o Trey Lary  
Allen Boone Humphries Robinson LLP  
1108 Lavaca, Suite 510  
Austin, TX 78701

Covert: Duke M. Covert  
11750 Research Blvd  
Austin, Texas 78759

With Required  
Copy to:

Michael L. Cook  
Cook Brooks Johnson PLLC  
7800 N Mopac Expressway  
Suite 215  
Austin, Texas 78759

John J. McKetta  
Graves Dougherty Hearon & Moody, PC  
401 Congress Ave  
Suite 2200  
Austin, Texas 78701

The Parties may change their respective addresses to any other address within the United States of America by giving at least five days' written notice to the other Party.

**Section 7.02 Severability; Waiver.** If any provision of this Agreement is illegal, invalid or unenforceable, under present or future laws it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal invalid or enforceable provision as is possible. Any failure by a Party to insist upon strict performance by the other Party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such Party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

**Section 7.03 Applicable Law and Venue.** The interpretation, performance, enforcement and validity of this Agreement are governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

**Section 7.04 Entire Agreement.** This Agreement contains the entire agreement of the Parties. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter.

**Section 7.05 Time.** Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

**Section 7.06 Authority for Execution.** The City certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with

City ordinances. Wheelock hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Wheelock. The District certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the statutes and rules governing the District.

**Section 7.07 Exhibits.** The following exhibits are attached to this Agreement and made a part hereof for all purposes:

Exhibit "A" The Eastland Tract

Exhibit "B" Description of Current District Boundaries

Exhibit "C" The LTISD Tract

Exhibit "D" Description of District Boundaries to be designated as ETJ

Exhibit "E" Master Development Plan

Exhibit "F" Master Development Standards

Exhibit "G" Signage Requirements

Exhibit "H" Design Criteria Review Committee and Procedures

Exhibit "I" Covert Tract Plan and Architectural Depictions

Exhibit "J" Form of Strategic Partnership Agreement

Exhibit "K" Deed Restrictions for Covert Tract

Exhibit "K1" Escrow Agreement

Appendix 1 Ordinances from the City of Bee Cave as of the date of the Agreement

*[Signatures on following page]*

The undersigned Parties have executed this Agreement on the dates indicated below.

The Effective Date of this Agreement is \_\_\_\_\_, 2015.

**CITY OF BEE CAVE, TEXAS,**  
a home rule municipality

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kaylynn Holloway, City Secretary

STATE OF TEXAS                   §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_,  
2015, by \_\_\_\_\_ , \_\_\_\_\_ of the City of Bee Cave,  
Texas, a home rule municipality.

\_\_\_\_\_  
Notary Public Signature

**WS-COS DEVELOPMENT, LLC**, a Delaware limited liability company

By: WSI (II)-COS, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Michael L. Rafferty,  
Authorized Signatory

**WS-COS INVESTMENTS, LLC**, a Delaware limited liability company

By: WSI (II)-COS, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Michael L. Rafferty,  
Authorized Signatory

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2015, by Michael L. Rafferty, authorized signatory of WSI (II)-COS, LLC, a Delaware limited liability company, the Managing Member of WS-COS Development, LLC, a Delaware limited liability company.

---

Notary Public Signature

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2015, by Michael L. Rafferty, authorized signatory of WSI (II)-COS, LLC, a Delaware limited liability company, the Managing Member of WS-COS Investments, LLC, a Delaware limited liability company.

---

Notary Public Signature



**LAZY NINE MUNICIPAL UTILITY  
DISTRICT NO. 1A**, a political subdivision of  
the State of Texas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_,  
2015, by \_\_\_\_\_, \_\_\_\_\_ of Lazy Nine Municipal  
Utility District No. 1A, a political subdivision of the State of Texas.

\_\_\_\_\_  
Notary Public Signature

**MATTHEWS-BARNES BROTHERS  
INVESTMENTS, LP, a Texas limited partnership**

By: D.R. Brothers Management, LLC,  
a Texas limited liability company, its  
general partner

By: \_\_\_\_\_  
Rox B. Covert, Manager

By: \_\_\_\_\_  
Duke M. Covert, Manager

By: \_\_\_\_\_  
Danay C. Covert, Manager

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_,  
2015, by Rox B. Covert, Manager of D.R. Brothers Management, LLC, a Texas limited  
liability company, the general partner of MATTHEWS-BARNES BROTHERS  
INVESTMENTS, LP, a Texas limited partnership.

\_\_\_\_\_  
Notary Public Signature

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_,  
2015, by Duke M. Covert, Manager of D.R. Brothers Management, LLC, a Texas limited  
liability company, the general partner of MATTHEWS-BARNES BROTHERS  
INVESTMENTS, LP, a Texas limited partnership.

\_\_\_\_\_  
Notary Public Signature

STATE OF TEXAS                   §  
COUNTY OF TRAVIS             §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2015, by Danay C. Covert, Manager of D.R. Brothers Management, LLC, a Texas limited liability company, the general partner of MATTHEWS-BARNES BROTHERS INVESTMENTS, LP, a Texas limited partnership.

\_\_\_\_\_  
Notary Public Signature