



**FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT
AGREEMENT
(Masonwood)**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “**Amendment**”) is dated effective 5/25/21, 2021 (the “**Amendment Effective Date**”) and is entered into between the CITY OF BEE CAVE, TEXAS a general law municipality located in Travis County, Texas (the “**City**”), and COLINAS LM, LTD., a Texas limited partnership (“**Colinas**”). The City and Colinas are individually referred to as a “**Party**” or collectively as “**Parties**.”

RECITALS:

A. The City previously entered into that certain Amended and Restated Development Agreement dated effective December 18, 2012 (the “**Agreement**”) for that certain Project (as defined therein) located in the City of Bee Cave, Travis County, Texas, as more particularly described in the Agreement.

B. Colinas is the owner of the property (the “**Colinas Tract**”) more particularly described in Exhibit A, “Colinas Tract Property Description” attached hereto which is covered by the Agreement and is designated as a “Neighborhood Services Tract” and a “NS 2 Tract” in the Agreement.

C. The Agreement does not allow drive throughs on the “NS 2 Tract.”

D. Colinas and the City desire to amend certain provisions of the Agreement, pursuant to Section 7.02 of the Agreement, in order to revise the certain development criteria for the “NS 2 Tract” to allow one drive through on Lot 34A of the Colinas Tract and the vehicle queue associated with that drive through to encroach upon Lot 35A of the Colinas Tract as depicted in Exhibit B, “Queuing Site Plan” attached hereto.

E. The Parties desire to modify and amend the Agreement in certain respects, as more particularly set forth in this Amendment.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1) Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Amendment to the same extent as if set forth herein in full.
- 2) Capitalized Terms. All capitalized terms in this Amendment shall have the same meanings as in the Agreement unless expressly provided otherwise herein. Additionally, the following terms and phrases used in this Amendment will have the meanings set out below:
 - a. Initial User. The Initial User shall be defined as a coffee shop establishment, with drive through.
- 3) Amendment by Agreement. Pursuant to Section 7.02 of the Agreement, the Agreement may be terminated or amended only as to a portion of the Land by the mutual written consent of the City and the owners of the portion of the Land affected by the amendment

or termination. Colinas constitutes the owner of the portion of the Land affected by this Amendment.

- 4) Amendment to Allowable Uses Table. The Parties hereby agree the second bullet point of Section 1 of Exhibit "C" of the Agreement shall be amended as follows:

Restaurant, including drive through and in vehicle service, except that no in vehicle service shall be allowed on the 15.89 acre tract of land shown as "Neighborhood Services 2" on Exhibit A-2 attached hereto (the "NS 2 Tract") and only one drive through shall be allowed on said tract. The drive through shall be located on Lot 34A of the NS 2 Tract.

Additionally, said tract is depicted in Exhibit B, Queuing Site Plan, attached to this Amendment.

- 5) Noise. The exterior speaker associated with a drive through menu board shall be equipped with an automatic volume control, to be activated at all times. Noise levels shall not exceed 50 dBA at the property line from 7:00 a.m. to 7:00 p.m. and shall not exceed 30dBA between the hours of 7:00 p.m. and 7:00 a.m. Prior to issuance of a certificate of occupancy for the Initial User, confirmation of compliance with these noise levels shall be required.
- 6) Hours of Operation. The hours of operation for a drive through on the Colinas Drive Through Parcel shall be from 6:00 a.m. to 10:00 p.m.
- 7) Vehicle Queuing. It is expected that the Initial User, will have peak queuing times between 8:00 a.m. and 10:00 a.m., however, the drive through on the Colinas Drive Through Parcel shall maintain an unobstructed 17-car queuing length (340 linear feet) at all times. Any parking spaces that may become blocked by the drive through queue, as reflected in Exhibit B, Queuing Site Plan, shall be identified as "Employee Only Parking." In the event a new certificate of occupancy is requested for the Initial User's tenant space, the City may require a new queuing plan, subject to review, that must be approved prior to issuance of a certificate of occupancy. Vehicular queuing associated with a drive through for a restaurant on Lot 34A of the Colinas Tract shall be permitted to encroach on Lot 35A of the Colinas Tract as depicted in Exhibit B, Queuing Site Plan, attached hereto.
- 8) Ratification of Agreement/Conflict. All terms and conditions of the Agreement are hereby ratified and affirmed, as modified by this Amendment. To the extent there is any inconsistency between the Agreement and this Amendment, the provisions of this Amendment shall control.
- 9) Expiration. If a certificate of occupancy for the Initial User is not issued within twenty-four (24) months from the date of this Amendment, or in the event the Amendment is abandoned by written notice from all owners to the City, this Amendment shall terminate and be of no further force or effect. Upon termination of this Amendment, all original terms, conditions, and requirements of the Agreement shall govern the rights and obligations of the parties as if this Amendment had not occurred.

- 10) No Waiver. No Party's execution of this Amendment shall (a) constitute a waiver of any of its rights and remedies under the Agreement or at law with respect to another Party's obligations under the Agreement or (b) be construed as a bar to any subsequent enforcement of any of its rights or remedies against the other Party.
- 11) Governing Law. This Amendment shall be construed and enforced in accordance with the laws of the State of Texas.
- 12) Entire Agreement. The Parties hereto agree and understand that no oral agreements, or understandings, shall be binding, unless reduced to a writing which is signed by said Parties. The Parties hereto agree and understand that this Amendment shall be binding on them, their personal representatives, heirs, successors and assigns.
- 13) Counterparts. This Amendment may be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement.
- 14) Effect of Amendment. Except as specifically provided in this Amendment, the terms of the Agreement continue to govern the rights and obligations of the parties, and all terms, except as amended by this Amendment, remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Agreement, this Amendment will control.

EXECUTED on the date or dates set forth below, to be effective on the date the last party signs.

[Signature pages follow]

CITY:
CITY OF BEE CAVE, TEXAS,
a general law municipality

By: Kara King
Name: KARA KING
Title: Mayor
Date: 6/8/21

ATTEST:

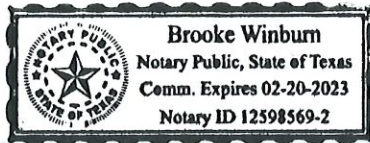
By: [Signature]
Name: Kaylene Holloway
Title: City Secretary
Date: 6/8/21

OWNER: Colinas LM, Ltd.
By: HAM-GP, LLC its general partner
By: [Signature]
Name: Christopher Whitworth
Date: 6/02/21

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me Brooke Winburn (name), a Notary Public on this day personally appeared KARA KING, Mayor of the City of Bee Cave, Texas, a general law municipality, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed on behalf of the City.

Given under my hand and seal of office this 8th day of June, A.D., 2021.



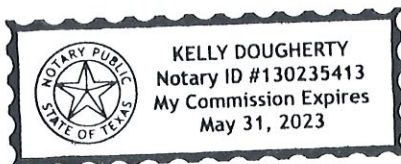
Brooke Winburn
Notary Public's Signature

COLINAS LM, LTD., a Texas limited partnership
By: HAM-GP, LLC, a Texas limited liability company, its general partner
By: Christopher Whitworth
Christopher Whitworth, Manager
Date: 6/07/21

THE STATE OF TEXAS §
§
COUNTY OF Travis §

Before me Kelly Dougherty (name), Notary Public, on this day personally appeared Christopher Whitworth, Manager of HAM-GP, LLC, a Texas limited liability company, general partner of COLINAS LM, LTD., a Texas limited partnership, and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this 2nd Day of June, A.D., 2021.



Kelly Dougherty
Notary Public's Signature

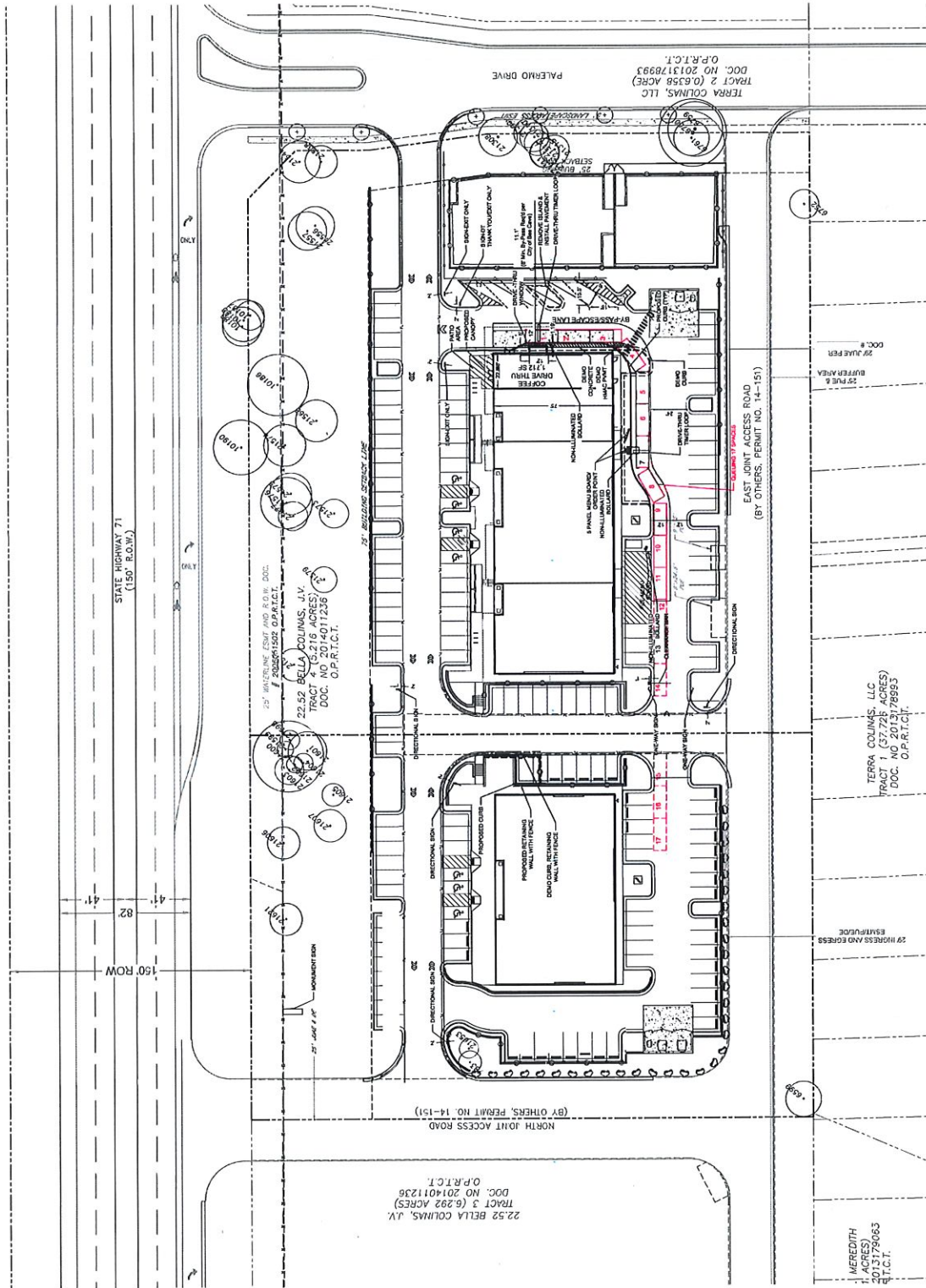
EXHIBIT A

Colinas Tract Property Description

Lots 34A and 35A, Block A, BELLA COLINAS COMMERCIAL AMENDED PLAT OF LOTS 34 AND 35, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Document No. 201700092 of the Official Public Records of Travis County, Texas.



- LEGEND**
- PROPERTY LINE
 - EXIST. BUILDING SETBACK LINE
 - EXIST. EASEMENT
 - PROP. CURB & GUTTER
 - PROP. FIRE LANE MARKING
 - PROP. RETAINING WALL
 - PROP. FENCING
 - PROP. LANDSCAPE LIGHTING
 - PROP. LANDSCAPE SAFETY BOLLARD
 - PROP. CONC. WELL STOP
 - EXIST. FIRE HYDRANT



MALONE + WHEELER
 ENGINEERS, ARCHITECTS & PLANNERS, INC., INC.
 ONE INDEPENDENCE SQUARE, SUITE 2100
 613 Southwest Hwy, Suite 2100
 Fort Worth, TX 76102
 Phone: (817) 899-5300 Fax: (817) 899-6555
 Firm Registration No. 1736

EXHIBIT B - QUEUING SITE PLAN

22.52 BELLA COLINAS, J.V.
 TRACT 3 (6.222 ACRES)
 O.P.R.I.C.T.
 DOC. NO. 2014011236

22.52 BELLA COLINAS, J.V.
 TRACT A (15.216 ACRES)
 DOC. NO. 2014011236
 O.P.R.I.C.T.

TERRA COLINAS, LLC
 TRACT 2 (0.6358 ACRES)
 O.P.R.I.C.T.
 DOC. NO. 2013178993

TERRA COLINAS, LLC
 TRACT 1 (37.725 ACRES)
 DOC. NO. 2013178993
 O.P.R.I.C.T.

MEREDITH
 TRACT 1 (37.725 ACRES)
 O.P.R.I.C.T.
 DOC. NO. 2013178993

After recording return to:

Kaylynn Holloway
City Secretary
City of Bee Cave
4000 Galleria Parkway
Bee Cave, Texas 78738

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



2021145380

**FILED AND RECORDED
OFFICIAL PUBLIC RECORDS**

Dana DeBeauvoir
Dana DeBeauvoir, County Clerk
Travis County, Texas

Jun 29, 2021 12:07 PM
Fee: \$50.00 MEDINAE