

AGREEMENT AND DEVELOPMENT PLAN

CIRCLE BREWING COMPANY

PLANNED DEVELOPMENT DISTRICT (PDD)

THE STATE OF TEXAS §
COUNTY OF BASTROP §

THIS AGREEMENT AND DEVELOPMENT PLAN (this “Agreement”) is made and entered by and between the CITY OF ELGIN, TEXAS, a Texas municipal corporation, (hereinafter referred to as the "City"), and CIRCLE BREWING COMPANY LLC , its successors and assigns, (hereafter referred to as the "Owner"); provided, however, upon sale, transfer or conveyance of portions of the hereinafter described property, the duties and obligations of the Owner, as it relates to the respective property, shall be assumed by the new owner, and the Owner shall have no further liability relating to their respective property.

WHEREAS, the Owner is the owner of certain real property consisting of 22 acres, as more particularly described in **Exhibit "A-E"**, (herein after referred to as the “Property”) attached hereto and made a part hereof.

WHEREAS, the Owner has submitted a request to the City to zone the Property as a Planned Development District (the "PDD"), and those portions of the Property currently lie within City Limits.

WHEREAS, pursuant to Chapter 46, Article IV, Division 10, Code of Ordinances, City of Elgin, Texas, the Owner has submitted a Development Plan setting forth the development conditions and requirements within the PDD, which Development Plan is contained in Section II of this Agreement; and

WHEREAS, the City has held public hearings required by law to solicit input from all interested citizens and affected parties; and

WHEREAS, on _____, the City's Planning and Zoning Commission recommended approval of the Owner's application for a PDD; and

WHEREAS, the City Council has reviewed the proposed Development Plan and determined that it promotes the health, safety, and general welfare of the citizens of Elgin and that it complies with the intent of the Planned Development District Ordinance of the City;

NOW THEREFORE BY THIS AGREEMENT WITNESSETH that, in consideration of the covenants and conditions set forth herein, the City and the Owner agree as follows:

I.

GENERAL PROVISIONS

1. CONFORMITY WITH DEVELOPMENT PLAN

All uses and development within the Property shall conform to the Development Plan included in Section II herein the "Plan."

2. CHANGES AND MODIFICATIONS

No changes or modifications will be made to this Development Plan unless all provisions pertaining to changes or modifications as stated herein are followed.

3. ZONING VIOLATION

The Owner, his successors and assigns understand that any person, firm, corporation or other entity violating any conditions or terms of the Development Plan shall be subject to any and all penalties for the violation of any zoning ordinance provisions as stated in the Code of Ordinances, City of Elgin, Texas, as amended. This Plan will be filed in the Official Records of Bastrop County, thereby placing future purchasers of the property on notice of all of the terms and conditions of this Plan.

4. MISCELLANEOUS PROVISIONS

4.1 Assignment.

Neither party may assign its rights and obligations under this Agreement without having first obtained the prior written consent of the other which consent shall not be unreasonably withheld. This section shall not prevent the Owner from selling the Property or portions of the Property, together with all development rights and obligations contained in this Development Plan, and no consent shall be required in connection with any sale provided the purchaser assumes Owner's obligations in writing as to such portions of the Property.

4.2 Necessary Documents and Actions.

Each party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.

4.3 Severability.

In case one or more provisions contained herein are deemed invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provisions hereof and in such event, this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.4 Entire Agreement.

This Agreement constitutes the entire agreement of the parties and supersedes any prior or contemporaneous oral or written understandings or representations of the parties respecting the subject matter hereof.

4.5 Applicable Law.

This Agreement shall be construed under and in accordance with the laws of the State of Texas.

4.6 Venue.

All obligations of the parties created hereunder are performable in Bastrop County, Texas and venue for any action arising hereunder shall be in Bastrop County.

4.7 No Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties hereto (and their respective successors and assigns), any rights, benefits or remedies under or by reason of this Agreement.

4.8 Duplicate Originals.

This Agreement may be executed in duplicate original, each of equal dignity.

4.9 Notices.

Until changed by written notice thereof any notice required under this Agreement may be given to the respective parties, by certified mail, postage prepaid or by hand delivery to the address of the other party shown below:

OWNER

CITY OF ELGIN, TEXAS

Circle Brewing Co. LLC
Benjamin Sabel
2340 W Braker Ln., Suite B
Austin, TX 78758

City of Elgin, Texas
P.O. Box 591
Elgin, Texas 78621
Attn: City Manager

4.10 Effective Date.

This Agreement shall be effective from and after the date of due execution hereof by all parties.

4.11 Appeal of Administrative Decisions.

Administrative decisions provided for in this Agreement may be appealed to the City Council in writing within 30 days following receipt by the Owner of the written confirmation of the decision.

4.12 Binding Effect.

This Agreement and the Development Plan binds and benefits the Owner and its successors and assigns.

4.13 Sunset Provision

In the event that this Planned Development Plan is not recorded within _____ (___) years from the date the Planned Development Plan is approved by the City Council, then the Planned Development Plan shall be automatically voided and the zoning shall revert to Residential R-1 (the zoning ordinances in effect at the time of approval of this PDD).

II

DEVELOPMENT PLAN (“Plan”)

1. **DEFINITIONS**

Words and terms used herein shall have their usual force and meaning, or as defined in the Code of Ordinances, as amended, City of Elgin, Texas, hereinafter referred to as "the Code"

2. **PROPERTY**

This Development Plan (hereinafter referred to as “Plan”) covers approximately 22 acres of land, all of which is located within the city limits of Elgin, Texas, and more particularly described by metes and bounds in **Exhibit "A"**, attached hereto.

3. **PURPOSE**

The purpose of this Plan is to insure a PDD that 1) is equal to or superior to development that would occur under the standard ordinance requirements, 2) does not have an undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utilities or any other matters affecting the public health, safety and welfare, 3) is adequately provisioned by essential public facilities and services, and 4) will be developed and maintained so as not to dominate, by scale or massing of structures, the immediate neighboring properties or interfere with their development or use in accordance with any existing zoning district.

4. **APPLICABILITY OF CITY ORDINANCES**

4.1 **Zoning and Subdivision Ordinances**

The Property shall be regulated for purposes of zoning and subdivision by this Plan. All aspects not specifically covered by this Plan shall be regulated by applicable sections of the Code. If there is a conflict between this Agreement and Plan and the Code, this Agreement and Plan shall supersede the specific conflicting provisions of the Code.

4.1.1 **Zoning Basis** - The Development will base general zoning requirements on I-General Industrial District as basis for zoning compliance, but not limited to permitted use.

4.1.2 **Setbacks and Area Regulations** - The Development will extend setbacks from 25’ to 50’ in lieu of screening requirements.

4.1.3 **Height Regulations** – The Development will reduce 90’ height maximum to a 50’ maximum in lieu of screening requirements.

4.1.4 **Commercial and Industrial Uses in or adjacent to residential districts** – Due to

extended 50' setbacks, wall requirement shall not apply to the Development.

4.1.5 Off-Street Automobile and Vehicle Parking and Loading – The Development to extend setbacks to 50' in lieu of screening requirements. “Naturalized” parking to minimize impact on neighboring properties and existing landscaping. Crushed granite or other pervious parking lot cover to be allowed. Driveways to remain paved. Per **Exhibit “B-C”**, both phase one and phase two parking calculations per IBC and City code equate to 115 required spots (calculations based on sqft of all proposed buildings: Taproom = 1 parking space / 60 sqft, Brewhouse = 1 parking space / 400 sqft, Future Storage = 1 parking space / 400 sqft). Parking coverage size provides for 2 times the area required to park 115 cars, allowing for no additional adjustment needed to parking requirements for future expansion, specifically “future outdoor event space”.

4.1.6 Vegetation – No minimum required street yard landscaping due to naturalized area and 50' setbacks. Naturalized parking and 50' setbacks to satisfy landscaping requirements in lieu of all buffering, screening, and/or perimeter landscaping. Agricultural clearing approved solely in areas designated as “farmland” and “livestock” in **Exhibit “C”**. The Development to abide by City code that stipulates tree mitigation for all trees 18” diameter and above, but shall not apply for trees below 18”. **Exhibit “D”** outlines proposed minimal tree removal, in effort to preserve “naturalized” landscaping and abide by spirit of Vegetation code compliance.

4.2 Other Ordinances

All other Ordinances within the Code shall apply to the Property, except as clearly modified by this Plan.

5. PERMITTED USES

The Property shall be used and developed as shown in **Exhibits "B-C"** attached hereto and incorporated herein. **Exhibit “B-C”** depicts the Development Plan for the property. All uses specified in **Exhibit “B-C”** shall be permitted including:

5.1 Commercial: All uses that would be permitted in the Downtown Overlay shall be permitted. Commercial uses will include but are not limited to a brewery and taproom, events space, future outdoor event space, and live music venue.

5.2 Agricultural: All uses provided for in R-1 shall be permitted, particularly the growing of food, raising of livestock, and associated activities.

6. UNDERGROUND UTILITY SERVICE

All utility lines must be underground to connection points provided by the utility service provider. All transformers must be visually screened where feasible.

9. SIGNS

- 9.1 Signage will abide by City of Elgin requirements, with the sole exception of Freestanding sign at the corner of Lexington Rd. & Louise St, which will allow for sign to be illuminated.

10. WATER AND WASTEWATER

- 10.1 Potable water and wastewater will be provided by City of Elgin to the Property Line. The Development reserves the right to add a well, for solely agricultural use and per city and state codes and standards.
- 10.2 Water and wastewater Impact Fees to be waived.
- 10.3 Fire Protection: Per water flow test on 4/4/2019, system is capable of producing over the required 1500 GPM at 20 PSI to the site. Flow test is attached in **Exhibit “E”**, which is to be acknowledged by the City as accurate and proof of compliance per IBC or equal.
- 10.4 Water usage and wastewater out are not equal, due to variance caused by brewing process. Wastewater output estimated at 55% of water usage, and as such, usage, fees and billing should be based upon this discrepancy.

11. WATER QUALITY, DETENTION, AND IMPERVIOUS COVER

- 11.1 The Development will not provide water quality controls.

12. DESIGN OF INGRESS OR EGRESS FOR DRIVEWAYS

12.1 This project will not provide mutual access agreements on parking lots, driveways and adjoining properties as encouraged on Section 36-514.8 of the Code of Ordinances. This project will not provide connectivity to adjacent properties.

13. STREETS, BLOCKS, LOTS, SIDEWALKS, BUILDING LINES, AND SETBACKS, DRAINAGE AND STORM SEWERS AND OTHER MATTERS

13.1 Trail: A proposed trail network may be built within the Right of Way and within Setbacks, to be approved by the City. Trail will be in lieu of sidewalk, to be crushed granite or similar material. Trail to be maintained by the Development.

13.2 Transportation: Traffic Impact Analysis completed by former proposed development, Elgin Agrarian. The Development is estimated at 60-75% of the traffic produced by the previous project. In lieu of a new traffic study, the Development to adhere to prior development TIA recommendation to place signage improvements on an honorary basis. Specifically, signage to change stop at 9th St. & Louise St as well as place stop condition at curve in Lexington Rd. curve, adjacent to East edge of property line.

14. CHANGES TO AGREEMENT AND DEVELOPMENT PLAN

14.1 Minor Changes

Minor changes to this Agreement or Plan, which do not substantially and adversely change this Plan, may be approved administratively, if approved in writing, by the City Engineer, the Director of Planning, the Director of Public Works, and the City Attorney.

14.2 Major Changes

All changes not permitted under section 14.1 above, shall be resubmitted following the same procedure required by the original PDD application; provided, however, that nothing herein or otherwise shall require an owner of a portion of the Property (the “Rezoning Owner”) to obtain the consent or approval of any other owner of a portion of the Property for a change in zoning (including amending this Agreement) as it applies to the land of the Rezoning Owner.

DRAFT

Manager:

CIRCLE BREWING COMPANY LLC

By: _____
Benjamin Sabel, President

CITY OF ELGIN

By: _____
CHRIS CANNON, Mayor

ATTEST:

By: _____
AMELIA SANCHEZ, CITY SECRETARY

STATE OF TEXAS

_____ **COUNTY**

Sworn and subscribed before me this the ____ day of _____, 20____ by Benjamin Sabel, President, Circle Brewing Co. LLC.

SEAL

Signature of Notary

STATE OF TEXAS
_____ **COUNTY**

Sworn and subscribed before me this the ____ day of _____, 20____ by **Chris Cannon,**
Mayor, City of Elgin, Texas.

SEAL

Signature of Notary

STATE OF TEXAS
_____ **COUNTY**

Sworn and subscribed before me this the ____ day of _____, 20____ by
_____ **City Secretary, City of Elgin, Texas.**

SEAL

Signature of Notary