

**CONSENT AGREEMENT
GREAT ESCAPES AT ELGIN**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Consent and Development Agreement (this “Agreement”) is entered into by and between the **City of Elgin, Texas**, a home-rule municipality located in Travis and Bastrop Counties, Texas (the “City”) and **Great Escapes Opportunity Zone Fund, LLC**, a Delaware limited liability company (the “Developer”), effective as of _____, 2019 (the “Effective Date”).

INTRODUCTION

The Developer has certain plans to develop a project commonly known as “Great Escapes at Elgin” (the “Project”), which will include approximately 207 RV units, 3 park model units, and certain recreational clubhouse amenities to serve the surrounding community of the City. The Project will be located on that certain real property consisting of approximately 20.44 acres, located in the City’s extraterritorial jurisdiction, as more particularly described on Exhibit A, attached hereto and incorporated herein (the “Land”). The Project will be constructed in one phase and the Developer anticipates substantial completion of the Project in 2021.

The City holds a Certificate of Convenience and Necessity (“CCN”) for the provision of certain wastewater utility services in and around the City; the Project is located within the certified service area (the “CCN CSA”) identified in the City’s CCN. However, as of the date hereof, the City does not have wastewater utility services available to service the Project. Accordingly, upon execution of this Agreement, the Developer has plans to apply for a Discharge Permit from the TCEQ to allow treated effluent from a proposed wastewater treatment plant designed in accordance with City Rules and TCEQ regulations.

The Developer will not seek to remove the Land from the CCN CSA. Instead, the Developer desires to connect into the City’s public wastewater lines at such time the wastewater lines are constructed and become available for use by the Project, as set forth in Section II of this Agreement.

In consideration of the Developer leaving the Land in the CCN CSA, the City shall provide support and consent to the Developer as the Developer seeks the Discharge Permit from the TCEQ. As a condition to the City’s consent to Developer’s Discharge Permit, the City has required that the Developer and the City enter into this Agreement in order to set forth certain expectations between the City and the Developer concerning the Discharge Permit and the future connection of the Project to future, currently unconstructed, wastewater facilities.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I.
DEFINITIONS**

Section 1.01 Definitions. In addition to the terms defined above in this Agreement, the following terms and phrases, when used in this Agreement, will have the meanings set out below:

Agreement: This Consent and Development Agreement between the City and the Developer.

Applicable Rules: The provisions of the City Code that are applicable to the Project.

CCN: A certificate of convenience and necessity issued by the TCEQ.

CCN CSA: An identified geographic area identified under a CCN, as may be amended from time to time pursuant to the Public Utility Commission of Texas rules and regulations.

City Charter: The City Charter of the City.

City Code: The City Code of Elgin, Texas, Texas Code Ordinances.

City Wastewater Infrastructure: As described on Exhibit C, attached hereto and incorporated herein.

Connecting Wastewater Facilities: Wastewater lines and appurtenances necessary to connect the Project to the initial point of connection with the City's public wastewater infrastructure, to be constructed by the Developer following the City's written notification to the Developer that the City Wastewater Infrastructure is complete and wastewater service has been established for the Project.

Connection Date: The date upon which the City begins to accept wastewater from the Project into the City Wastewater Infrastructure.

Discharge Permit: Permit issued and authorized by the TCEQ for the discharge of treated wastewater.

Effective Date: The date set forth in the first paragraph of this Agreement.

EPA: The United States Environmental Protection Agency.

Land: Has the meaning set forth in the first Introduction paragraph of this Agreement.

Renewal Period: A certain period, approximately every 5-years from the approval of the TCEQ discharge permit.

TCEQ: Texas Commission on Environmental Quality, or its successor agency.

Treatment Plant: A pre-package wastewater treatment plant designed to treat the full-service wastewater flows of the Project, to be designed, installed, and maintained by Developer in accordance with TCEQ rules and regulations.

ARTICLE II. WASTEWATER FACILITIES AND SERVICES

Section 2.01 City to Provide Retail Wastewater Utility Services. On the Connection Date, the City will be the sole provider of retail wastewater services to the Project and will provide such services to the Project in the same manner and on the same terms and conditions as the City provides to other retail customers inside the CCN CSA. Following the Connection Date, the Developer will not contract with any retail public utility other than the City for wastewater services and will not provide any retail or wholesale wastewater services to customers located within

the CCN CSA.

Section 2.02 Service Level. The City agrees and commits to provide sufficient wastewater service for the full build-out of the Project. The City agrees to provide written confirmation of the availability of service upon the Developer's request if required in connection with any applications by the Developer.

Section 2.03 Connecting Wastewater Facilities; Points of Connection. Connecting Wastewater Facilities required to serve the Project will be designed in accordance with Applicable Rules. The initial route of Connecting Wastewater Facilities is shown conceptually on Exhibit B, attached hereto and incorporated herein. The initial method of conveyance shall be a "4" force main terminating at a wastewater manhole shown conceptually on Exhibit B. All other points of connection to the City's wastewater system will be subject to approval by the Developer.

Section 2.04 Responsibility for Design, Financing, and Construction. Unless otherwise specifically provided in this Agreement, the Developer will design, finance, construct, and convey to the City all Connecting Wastewater Facilities required to provide retail wastewater services to the Project, all at no cost to the City.

Section 2.05 Easements. The Connecting Wastewater Facilities shall be constructed in the existing right of way for Albert Voelker Road, as depicted on Exhibit B. The City shall not require the Developer to obtain or incur any costs or expenses for utility easements from existing landowners or obtain additional public rights-of-way in connection with the design, installation, or maintenance of Connecting Wastewater Facilities.

Section 2.08 Commencement of Design. Following the City's notification that wastewater service has been established for the Project, the Developer shall commence design and approval of the plans and specifications for the Connecting Wastewater Facilities prior to the next Renewal Period for the Treatment Plant.

Section 2.08 Commencement of Construction. Following (a) the City's completion of the City Wastewater Infrastructure and (b) the City's approval of the plans and specifications for the Connecting Wastewater Facilities, the Developer shall construct the required infrastructure prior to the next Renewal Period for the Treatment Plant. The City will issue a certificate of completion when all inspections are satisfactorily completed.

Section 2.09 Decommission of Wastewater Treatment Plant. Following (a) the City's completion of the City Wastewater Infrastructure and (b) the City's acceptance of the Connecting Wastewater Facilities, the Developer shall proceed with the decommissioning of the Treatment Plant in accordance with TCEQ rules and regulations. Decommissioning of the Treatment Plant must take place prior to the expiration of the then current Renewal Period. The City shall cooperate with Developer in the decommissioning of the Treatment Plant.

ARTICLE III. TERM, EFFECTIVENESS; ASSIGNMENT AND REMEDIES

Section 3.01 Term. The term of this Agreement will commence on the Effective Date and will end upon the Connection Date, unless otherwise terminated in accordance with Section 3.03 of this Agreement.

Section 3.02 Effectiveness. The City acknowledges that Developer is entering into this Agreement in reliance upon the City's future consent to the submittal and approval for a

Discharge Permit and the associated wastewater Treatment Plant by the TCEQ.

Section 3.03 Termination and Amendment by Agreement. This Agreement may be terminated or amended as to all of the Land at any time by mutual written agreement of the City and the Developer, or a future purchaser of the Land.

Section 3.04 Agreement Running with the Land; Assignment.

(a) The terms of this Agreement run with the Land and shall be binding upon the Developer and its successors and assigns. This Agreement and the rights of the Developer hereunder, may be assigned by the Developer to a purchaser of all or a portion of the Land. Any assignment must be in writing, specifically set forth the assigned rights and obligations without modification, hypothecation, or amendment, and be executed by the proposed assignee and a copy of the assignment must be provided to the City.

(b) If the Developer assigns its rights and obligations hereunder as to a portion of the Land, then the rights and obligations of any assignee and the Developer will be severable, and the Developer will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by assignee, the City may pursue all remedies against that nonperforming assignee.

(c) This Agreement is not intended to and will not be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases a fully developed and improved Project within the Land.

Section 3.05 Cooperation; Agreement Not to Contest or Support Negative Legislation.

(a) The City and the Developer each agree to execute such further documents or instruments as may be necessary to evidence their agreements hereunder and provide to the other parties any other documents necessary to effectuate the terms of this Agreement.

(b) The City agrees to cooperate with the Developer in connection with any waivers or approvals the Developer may desire from Travis County or the TCEQ in order to obtain approvals for the Discharge Permit and/or the Treatment Plant and avoid the duplication of processes or services in connection with the development of the Land.

Section 3.06 Default and Remedies.

(a) **Notice of Default; Opportunity to Cure.** If a party defaults in the performance of any obligation under this Agreement, the non-defaulting party may give written notice to the other parties to this Agreement, specifying the alleged event of default and extending to the defaulting party 30 days from the date of the notice in order to cure the default complained of or, if the curative action cannot reasonably be completed within 30 days, 30 days to commence the curative action and a reasonable additional period to diligently pursue the curative action to completion.

(b) **Dispute Resolution.** If any default is not cured within the curative period specified above, the parties agree to use good faith, reasonable efforts to resolve any dispute among them by agreement, including engaging in mediation or other non-binding alternative dispute resolution methods, before initiating any lawsuit to enforce their respective rights under this Agreement. The parties will share the costs of any mediation or arbitration equally. The parties further agree that

the City is not obligated to resolve any dispute based on an arbitration decision under this Agreement if the arbitration decision compromises the City’s sovereign immunity.

(c) Other Legal or Equitable Remedies. If the parties are unable to resolve their dispute through mediation or arbitration, the non-defaulting party will have the right to enforce the terms and provisions of this Agreement by a suit seeking specific performance or such other legal or equitable relief as to which the non-defaulting party may be entitled. Any remedy or relief described in this Agreement will be cumulative of, and in addition to, any other remedies and relief available to such party. No additional procedural or substantive requirements of State or local annexation law will apply to such annexation, or to the annexation ordinance.

**ARTICLE IV.
MISCELLANEOUS PROVISIONS**

Section 4.01 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; or (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 or email with confirming copy sent by one of the other described methods of notice set forth above. Notice by United States mail will be effective on the earlier of the date of receipt or three 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:

- The City: City of Elgin
1135 Swenson Boulevard
PO Box 591
Elgin, TX 78621
Attn: City Mayor

- With Required Copy to: City of Elgin
1135 Swenson Boulevard
PO Box 591
Elgin, TX 78621
Attn: City Engineer

- The Developer: Great Escapes Opportunity Fund, LLC
2539 S. Gessner, Suite 13
Houston, TX 77063
Attn: Ricky Jenkins

- With Required Copy to: Zeeshan H. Malik
Metcalf Wolff Stuart & Williams, LLP
221 W. 6th Street, Suite 1300
Austin, Texas 78701

Each of the parties may change its respective address to any other address within the United States of America by giving at least five days’ written notice to the other parties. The Developer may, by giving at least five days’ written notice to the City, designate additional parties to receive copies of notices under this Agreement. At such time as the Developer no longer owns land within the District, no further notice to the Developer under this Agreement will be required.

Section 4.02 Severability. If any part of this Agreement or its application to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the parties agree that they will amend or revise this Agreement to accomplish to the greatest degree practical the same purpose as the part determined to be invalid or unconstitutional, including, without limitation, amendments or revisions to the terms and conditions of this Agreement pertaining to or affecting the rights and authority of the parties in areas of the District annexed by the City pursuant to this Agreement, whether for limited or full purposes. If the parties cannot agree on any such amendment or revision within 90 days of the final judgment of the trial court or any state appellate court that reviews the matter, then either party may proceed in accordance with the procedures specified in this Agreement.

Section 4.03 Frustration of Purpose. If any part of this Agreement is modified as a result of amendments to the underlying State law and statutory authority for this Agreement, the parties agree that such modification may frustrate the purpose of this Agreement. The parties agree that, in such event, they will attempt to amend or revise this Agreement to accomplish to the greatest degree practical (i) the same purpose and objective of the part of this Agreement affected by the modification of the underlying State law and statutory authority and (ii) the original intent and purpose of this Agreement. If the parties cannot agree on any such amendment or revision within 90 days from the effective date of amendment of the State law and statutory authority for this Agreement, then this Agreement will terminate, unless the parties agree to an extension of time for negotiation of the modification.

If this Agreement is to be terminated as a result of the operation of this Section, the City will have the right, for a 90 day period prior to the effective date of termination, in its sole discretion, to annex the District for full purposes and dissolve the District. No additional procedural or substantive requirements of State or local annexation law will apply to such annexation and dissolution, or to the annexation and dissolution ordinance.

Section 4.04 Non-Waiver. Any failure by a party to insist upon strict performance by another party of any material provision of this Agreement will not be deemed a waiver thereof 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 4.05 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

Section 4.06 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 supersedes all other agreements between the parties concerning the subject matter.

Section 4.07 Exhibits, Headings, Construction and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender include the feminine or neuter, and the singular includes the plural, and vice-versa. The parties acknowledge that each of them have been actively and equally involved in the negotiation and drafting of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency

between the provisions of this Agreement and any otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 4.08 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 4.09 Authority for Execution. The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized in conformity with its City Charter and City ordinances. The Developer certifies, represents, and warrants that the execution of this Agreement has been duly authorized in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on its behalf.

Section 4.10 Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

- Exhibit A - The Land
- Exhibit B - Connecting Wastewater Facilities
- Exhibit C - City Wastewater Infrastructure

[Remainder of Page Intentionally Blank; Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the dates indicated below.

CITY:

CITY OF ELGIN, TEXAS

By: _____
Name: _____
Title: City Manager
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: City Attorney
Date: _____

DEVELOPER:

**GREAT ESCAPES OPPORTUNITY FUND,
LLC, a Delaware limited liability company**

By: _____
Name: Ricky Jenkins
Title: President
Date _____

EXHIBIT A

The Land

EXHIBIT B

Connecting Wastewater Facilities

EXHIBIT C

City Wastewater Infrastructure

The city of Elgin will be constructing a new WWTP No. 2 with a capacity of 0.25 MGD.