

THE STATE OF TEXAS §
§
GUADALUPE COUNTY §

ROADWAY CAPITAL RECOVERY OFFSET AGREEMENT

This agreement (“**AGREEMENT**”) is made by and between the City of Schertz, (hereinafter “**CITY**”) a Texas Home Rule municipality and ILF N-T Owner, LP (hereinafter “**DEVELOPER**”) a Limited Partnership created under the laws of Texas, collectively, the “**PARTIES**”.

RECITALS

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Chapter 78, Article VII, the City of Schertz has adopted Roadway Capital Recovery Fees (sometimes hereinafter referred to as “capital recovery fee”); and,

WHEREAS, pursuant to City of Schertz Code of Municipal Ordinances Section 78-178, where, in order to serve new development, a developer is required to construct, contribute to, or dedicate, a capital improvement or facility expansion identified in the capital improvements plan the CITY and DEVELOPER may enter into this AGREEMENT whereby the developer is: (1) credited for the reasonable and necessary costs of the capital improvement or facility expansion against the impact fees otherwise due from the new development; or (2) reimbursed for all or a portion of the reasonable and necessary costs of the capital improvement or facility expansion from impact fees as received from other new developments that use the capital improvement or facility expansion; and,

WHEREAS, CITY and DEVELOPER desire to enter into this AGREEMENT in order to memorialize Roadway Capital Recovery Fee Credits (sometimes hereinafter referred to as the “Credits”) achieved by DEVELOPER for reasonable and necessary costs of the capital improvement or facility expansion it incurred.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the PARTIES hereto, intending to be legally bound, hereby agree as follows:

Article I.

PROJECT DESCRIPTION

- A. Project. The project is The Homestead master planned community.
- B. Location. The project is located at the southwest corner of IH-35 and Schwab Road, as more precisely described in *Exhibit A* .

Article II.

ROADWAY CAPITAL RECOVERY FEES

- A. Roadway Capital Recovery Fees. The Roadway Capital Recovery Fees for the project are currently assessed as \$ 1,647 per service unit. This assessment is based on the calculations set out in *Exhibit B* , to this AGREEMENT.

Article III.

CAPITAL IMPROVEMENT PLAN IMPROVEMENTS MADE BY DEVELOPER

- A. Rough Proportionality. The PARTIES acknowledge that as provided in Texas Local Government Code Section 212.904, the CITY may require DEVELOPER to contribute a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs (collectively the “**Infrastructure Costs**”), provided DEVELOPER’S portion of Infrastructure Costs do not exceed the amount required for infrastructure improvements that are roughly proportionate to the PROJECT impact (the “**Proportionate Costs**”).

Article IV.

ROADWAY CAPITAL RECOVERY FEE OFFSET CREDIT

- A. Roadway Capital Recovery Fee Offset Credit Calculation. As shown on *Exhibit C* , to this AGREEMENT, the PARTIES agree to the following:
 - i. The total number of service unit equivalents of capacity supplied by the system facility contributed by the DEVELOPER is estimated to be 2,031.74 service units, and shall be reduced by:
 - (a) The number of service units (Vehicle Miles of Travel) developed within the plat since the contribution of the system facility, which as of the effective date hereof, using the LUVMET is 0; and

- (b) The amount of the City's participation in the excess costs of the system facility (expressed in service unit equivalents), which as of the effective date hereof is 0; and
 - (c) The amount of any payments received from other new developments utilizing the system facility (expressed in service unit equivalents) which as of the effective date hereof is 0.
- ii. The Roadway Capital Recovery Fee Offset Credit that DEVELOPER is eligible to receive is 2,031.74 service units calculated at 602.89 Lots eligible for Credit.
- iii. The Roadway Capital Recovery Fee Offset Credits that the DEVELOPER shall receive may be used to offset the roadway impact fees due in Units 1A, 3B, 4, 6A, 6B, 7A, 7B, 8A, 8B, 9, 10, 11 and 13. The City shall assign Credits to the unit when a final plat is filed in accordance with this AGREEMENT. For Units 7B and 13 which are zoned for multi-family uses, the DEVELOPER shall inform the City as to the number of Credits to be assigned.
- iv. DEVELOPER shall receive the Roadway Capital Recovery Fee Offset Credit upon completion of the public improvements shown on *Exhibit A* ; and the City's acceptance of same for public maintenance in accordance with the terms of applicable provisions of the City's Code of Ordinances.

Article V.

REIMBURSEMENT OF EXCESS OFFSETS

- A. DEVELOPER may apply for reimbursement of excess offsets following either completion of all development subject to the plat with which the excess offsets are associated or after ten years following execution of the this AGREEMENT .
 - i. The DEVELOPER must apply for reimbursement within six months following either:
 - a. Completion of all development subject to the plat with which the excess offsets are associated; or
 - b. Ten years after the date of execution of this AGREEMENT .
 - ii. The excess reimbursement shall be enforced in accordance with the following terms:
 - a. The excess offset amount to be reimbursed shall be equal to the number of excess offsets (expressed as a number of service units) multiplied by a fraction equal to the capital recovery fee per service unit to be collected, as

set forth herein in effect on the date of execution of this AGREEMENT, divided by the maximum assessable capital recovery fee per service unit, as set forth in the capital recovery plan, established in accordance with the City of Schertz Code of Municipal Ordinances Chapter 78, Article VII, in effect on the date of execution of this AGREEMENT;

- b. The amount to be reimbursed for excess offsets may be further equitably reduced, if fewer than 50 percent of the number of service units in the plat with which the system facility giving rise to the excess offset have been developed on the date of application for excess offsets;
- c. Repayment of excess offsets shall be made within five years from the date of execution of a reimbursement agreement between the parties hereto pertaining to the applicable excess offsets from roadway capital recovery fees collected within the same roadway service area in which the property in question is located, subject to the availability of such funds;
- d. Termination or reduction of the CITY's authority under state law to impose capital recovery fees for roadway facilities shall terminate or correspondingly reduce any obligation of the City to make payments under this AGREEMENT or any reimbursement agreement; and
- e. In converting the excess offsets from service unit equivalents to a dollar value, the number of service unit equivalents shall be multiplied by the value of a service unit expressed in dollars using the rates in effect at the time this AGREEMENT was executed.

B. Execution of an excess offset reimbursement agreement with respect to a plat as provided for in above pursuant to City of Schertz Code of Municipal Ordinances Section 78-178 shall automatically terminate any excess offsets associated with that plat pursuant to this AGREEMENT. Any new development within the area subject to such plat shall pay roadway capital recovery fees in accordance with **Schedule 1** [*attached hereto*] then in effect under said Municipal Ordinance.

Article VI.

MISCELLANEOUS

The following miscellaneous provisions are made part of this AGREEMENT:

1. **Additional Instruments.** CITY and DEVELOPER agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this AGREEMENT.
2. **Amendments.** This AGREEMENT constitutes the entire understanding and agreement of the parties as to the matters set forth in this AGREEMENT. No alteration of or amendment to this AGREEMENT shall be effective unless given in

writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

3. **Applicable Law and Venue.** This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas. Venue for any action arising under this AGREEMENT shall lie in the state district courts of Guadalupe County, Texas.
4. **Assignment.** The DEVELOPER may assign this AGREEMENT with the CITY's consent (such consent not to be unreasonably conditioned, withheld or delayed, but in no event shall the offsets provided for in the AGREEMENT be transferred to any development not subject to the plat associated with such offsets).
5. **Binding Obligation.** This AGREEMENT shall become a binding obligation on the signatories upon execution by all signatories hereto. The CITY warrants and represents that the individual executing this AGREEMENT on behalf of the CITY has full authority to execute this AGREEMENT and bind the CITY to the same. DEVELOPER warrants and represents that the individual executing this AGREEMENT on its behalf has full authority to execute this AGREEMENT and bind it to the same.
6. **Counterparts.** This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
7. **Construction.** The PARTIES acknowledge that the PARTIES and their counsel have reviewed and revised the AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the AGREEMENT.
9. **Enforcement.** The City Attorney or his or her designee may enforce all legal rights and obligations under this AGREEMENT without further authorization. DEVELOPER shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining DEVELOPER'S compliance with this AGREEMENT.
10. **Entire Agreement.** This AGREEMENT constitutes the entire agreement between the Parties with respect to the subject matter covered in this AGREEMENT. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this AGREEMENT, except as provided for

in any Exhibits attached hereto or duly approved amendments to this AGREEMENT, as approved by the City Council of the City of Schertz, Texas.

11. Execution of AGREEMENT.
 - a) City Council has authorized the City Manager to execute this AGREEMENT on behalf of the CITY, as evidenced by Resolution, dated October 22, 2019.
 - b) Jesse Baker and Thomas Tischer are authorized to execute this AGREEMENT on its behalf, as evidenced by Company Resolution, dated May 18, 2015 and attached hereto as Attached hereto as *Exhibit D* .
12. Exhibits and Attachments. All Exhibits and Attachments referenced in this AGREEMENT are attached hereto and incorporated herein for all purposes.
13. Force Majeure. It is expressly understood and agreed by the parties to this AGREEMENT that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated party and delays caused by the other party, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
14. Gender. The gender of the wording throughout this AGREEMENT shall always be interpreted to mean either sex, and where the context requires, the plural of any word shall include the singular.
15. Governmental Records. All invoices, records and other documents required for submission to the CITY pursuant to the terms of this AGREEMENT are Governmental Records for the purposes of Texas Penal Code Section 37.10.
16. Immunities and defenses.
 - a) By entering into this AGREEMENT, the PARTIES do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign, statutory or official immunity by the CITY

with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

- b) No employee of CITY, or any councilmember or agent of CITY, shall be personally responsible for any liability arising under or growing out of this AGREEMENT.
17. Mutual Assistance. CITY and DEVELOPER will do all things reasonably necessary or appropriate to carry out the terms and provisions of this AGREEMENT and to aid and assist each other in carrying out such terms and provisions.
18. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Parties thereto:

DEVELOPER: ILF N-T Owner, LP
Attn: Casey Tischer
500 Boylston Street
Boston, MA 02116
ct@freeholdcm.com

and

Matt D. Matthews
8601 Ranch Road 2222
Building 1, Suite 260
Austin, TX 78730
mdm@freeholdcommunitites.com

WITH COPY TO LEGAL COUNSEL:

Tony Corbett
McLean & Howard L.L.P.
Barton Oaks Plaza, Building II
901 South MoPac Expy
Suite 225
Austin, TX 78746
tcorbett@mcleanhowardlaw.com

And

Kathy Rowe
500 Boylston Street, Suite 2010
Boston, MA 02116
kr@freeholdcm.com

City: City Manager
City of Schertz
1400 Schertz Parkway
Schertz, TX 78154
Phone: (210) 619-1000
Fax: (210) 619-1029

WITH COPY TO: Denton Navarro Rocha Bernal & Zech
A Professional Corporation
Attn. T. Daniel Santee
2517 N. Main Avenue
San Antonio, Texas 78212
Phone: (210) 227-3243
Fax: (210) 225-4481

19. Ordinance Applicability. The signatories hereto shall be subject to all ordinances of the CITY, whether now existing or in the future arising provided however no ordinance shall reduce or diminish the contractual obligations contained herein. This AGREEMENT shall confer no vested rights on the PROJECT unless specifically enumerated herein.
20. Severability. In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the PARTIES hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the Parties to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this AGREEMENT which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

21. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the PARTIES, as well as any rights and benefits of the PARTIES, pertaining to a period of time following the termination of this AGREEMENT shall survive termination.

[Page Ends Here – Signature Pages Follow]

EXECUTED in duplicate originals to be effective as of the date of the last signature below.

DEVELOPER:

ILF N-T OWNER, LP,
a Delaware limited partnership

By: ILF N-T GP, LLC,
a Delaware limited liability company,
its General Partner

By: ILF N-T Holdings, LLC,
a Delaware limited liability company,
its Sole Member

By: FCA Nor-Tex, LLC,
a Delaware limited liability company,
its Administrative Member

By: _____
Name: _____
Title: Authorized Signatory

Commonwealth of Massachusetts

County of Suffolk

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the Authorized Signatory of FCA Nor-Tex, LLC, Administrative Member of ILF N-T Holdings, LLC, Sole Member of ILF N-T GP, LLC, General Partner of ILF N-T Owner, LP on behalf of said limited partnership and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

(Personalized Seal)

Notary Public's Signature

CITY:

CITY OF SCHERTZ, TEXAS,

BY: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:
