

WHEREAS, the City finds that it is in the best interest of the City to enter into the Agreement with the Owner for acquisition of the easement necessary for the construction of Public Improvement in order to provide the infrastructure to serve other properties outside the boundary of the proposed Homestead Subdivision plat:

NOW THEREFORE, in consideration of the agreements set forth herein and for other reciprocal good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and stipulated by the Parties, the Owner and the City agree as follows:

1. Ownership of the Property. The Owner hereby represents and warrants that, as of the Effective Date, it has not conveyed, assigned, or transferred all or any portion of its interest in the Property to any other person or entity (any such person or entity referred to herein as “Purchaser”), nor is it a party to any contract or other understanding to do so that is not subject to this Agreement.

2. Acquisition of Easements; Covenants. The Owner and the City covenant and agree to the following:

- a) The Owner is obligated by Section 21.12.10 of the City’s Unified Development Code to construct, or cause to be constructed, sewer improvements.
- b) Construction of the sewer improvements requires acquisition of offsite easements and the Owner is required to bear the cost of easement acquisition. The Owner has not been able to acquire all of the necessary easements and has sought the City’s assistance in acquiring the remaining easements see **Exhibit B**. The Owner agrees to reimburse the City for all costs associated with acquiring the easements, including but not limited to the acquisition price and attorney’s fees. The Owner shall pay the City the amount required to purchase the easements in advance of the City closing on the purchase.

3. Approval of Agreement. The City has approved the execution and delivery of this Agreement pursuant to Section 21.4.15(C.)(2.) of the City’s Unified Development Code, and the Owner represents and warrants that it has taken all necessary action to authorize its execution and delivery of this Agreement.

4. Governmental Immunity. The City does not waive or relinquish any immunity or defense on behalf of itself, its officers, employees, Councilmembers, and agents as a result of the execution of this Agreement and the performance of the covenants and actions contained herein.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors, and assigns, and the terms hereof shall run with the Property.

6. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts shall be construed together and shall constitute one and the same Agreement.

7. Integration. This Agreement is the complete agreement between the parties as to the subject matter hereof and cannot be varied except by the written agreement of the Owner and the City. The Owner and the City each agrees that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

8. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered three (3) days after such notice is deposited in the United States mail, postage fully prepaid, registered or certified mail return receipt requested, and addressed to the intended recipient at the address shown herein. Any address for notice may be changed by written notice delivered as provided herein. All notices hereunder shall be in writing and served as follows:

If to the Owner:

ILF N-T Owner, LP, a Delaware limited partnership
500 Boylston Street, Suite 2010
Boston, MA 02116
Attention: Mr. Jesse Baker, Authorized Signatory

If to the City:

CITY OF SCHERTZ
1400 Schertz Parkway
Schertz, Texas 78154
Attention: City Manager

With copy to:

Denton Navarro Rocha Bernal & Zech, P.C.
2517 N. Main Avenue
San Antonio, Texas 78212
Attention: T. Daniel Santee

9. Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, such unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of this Agreement. Whenever the context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

10. Recitals; Exhibits. Any recitals in this Agreement are represented by the parties hereto to be accurate, constitute a part of the parties' substantive agreement, and are fully incorporated herein as matters of contract and not mere recitals. Further, any exhibits to this Agreement are incorporated herein as matters of contract and not mere exhibits.

11. No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to, and shall not be deemed to, create a partnership or joint venture among the parties.

12. Choice of Law. This Agreement will be construed under the laws of the State of Texas without regard to choice-of-law rules of any jurisdiction. Venue shall be in the State District Courts of Guadalupe County, Texas with respect to any lawsuit arising out of or construing the terms and provisions of this Agreement. No provision of this Agreement shall constitute consent by suit by any party.

[Signatures and acknowledgments on the following pages]

Signature Page to
Improvement Agreement

This Improvement Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

Owner:

**ILF N-T OWNER, LP, A DELAWARE
LIMITED PARTNERSHIP**

By: _____
Name: _____
Title: _____
Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2020 by _____, the _____ of ILF N-T Owner, LP on behalf of said limited partnership.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Improvement Agreement

This Improvement Agreement has been executed by the parties as of the dates of the Acknowledgments to be effective as of the Effective Date.

City:

CITY OF SCHERTZ,
a Texas municipal corporation

By: _____

Name: Mark Browne, City Manager

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2020 by Mark Browne, City Manager of the City of Schertz, Texas, a Texas municipal corporation, on behalf of said City.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

EXHIBIT A

The Property

Legal Metes and Bounds
and
Master Plan

[See attached]

EXHIBIT B

The Easements

[See attached]