

**REIMBURSEMENT AGREEMENT WITH DEVELOPER FOR
CONSTRUCTION OF PUBLIC IMPROVEMENTS
ASSOCIATED WITH MODULE 3A UNIT 1 (THE CROSSVINE)**

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF BEXAR §

This Reimbursement Agreement with Developer for Construction of Public Improvements Associated with Module 3A Unit 1 (The Crossvine) (the “Agreement”) is by and between the City of Schertz, a Texas municipal corporation (the “City”), and Schertz 1518, Ltd., owner and developer of certain hereinafter described property located within the City (the “Developer”), all collectively referred to as “Parties”, and is effective upon the execution of this Agreement by the Developer and the City (the “Effective Date”).

WHEREAS, Developer wishes to develop certain property (hereinafter, the “Property” or “Crossvine Module 3A Unit 1 Subdivision”) located within the City limits, which is approximately 53.27 acres of land, out of the Julian Diaz Survey No.66, Abstract No. 187, County Block 5059, the E.R. Evans Survey No. 80, Abstract No. 216, County Block 5060 and being out of a 145.427 acre tract of land as conveyed to Schertz 1518, LTD of record in Volume 11564 Page 1814 and a 91.288 acre tract of land as conveyed to Schertz 1518, LTD of record in Volume 11601 Page 2280, all being of the official public records of Bexar County, Texas and situated in the City of Schertz, Bexar County, Texas.

WHEREAS, the Property abuts FM 1518, a Texas Department of Transportation (“TxDOT”) ROW, wherein all City of Schertz water infrastructure (the “Improvements”) must be relocated as depicted in Exhibit “A”, and where said Improvements have not been completed; and

WHEREAS, during the development planning stage for the Property, the City submitted to the Developer a request that the Developer undertake the completion of the Improvements for the benefit of the City, which Improvements will benefit portions of the City beyond The Crossvine Module 3A Unit 1 Subdivision; and

WHEREAS, TxDOT is expanding FM 1518 and by such expansion requiring the existing City of Schertz water infrastructure to be relocated out of the FM 1518 ROW and into utility easements; and

WHEREAS, Developer and the City have agreed that the Developer will construct certain Improvements that must be relocated out of the FM 1518 ROW as depicted in Exhibit “A”, and the City has agreed to reimburse the Developer for all of the costs associated with the construction of the Improvements as more specifically set forth herein; and

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Agreement for the construction of the Improvements; and

WHEREAS, the Property and Improvements are located within the Schertz Tax Increment

Reinvestment Zone Number Two; and

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land in the municipality to construct public improvements related to the development without complying with the competitive sealed bidding procedures of Chapter 252 of the Texas Local Government Code; and,

NOW THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I – Definitions.

The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

1.1. “Agreement” means this agreement, including any amendments hereto, between the City and Developer.

1.2. “Contractor” shall mean the person, firm, corporation, partnership, association, or other entity awarded the contract by Developer for the construction and installation of the Improvements.

1.3. “City’s Costs” shall mean all of the costs associated with the construction of the Improvements including, but not limited to, construction costs, engineering costs, legal costs, administrative costs, and consulting costs of third parties, the cost of bonds and insurance, costs or expenses associated with soliciting bids for the construction of the Improvements, costs of acquiring easements, surveying, geotechnical, and materials testing costs; ancillary costs associated with, caused by, or occasioned by any delay on the part of the City in obtaining permits, approving plans, submissions, or applications, i.e., remobilization costs or increases in the cost of materials resulting from such delays, and similar costs or expenses; it being the intent hereof that all such costs shall be the responsibility of the City of Schertz and Developer shall have no cost, exposure or liability therefor except as set forth in Section 2.2 below. The City’s Costs are estimated to be approximately One Million Two Hundred Eighty Thousand and No/100 Dollars (\$1,280,000.00).

1.4. “Improvements” shall mean the improvements depicted on Exhibit “A”

ARTICLE II – Construction of Improvements.

2.1. Acquisition of Easements. Developer agrees to acquire and dedicate (or provide for future dedication of) all necessary utility easements required in order to construct the Improvements. Easements may be dedicated via approved recorded subdivision plat or through separate instrument approved by the City.

2.2. Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications previously approved by the City Engineer and the construction permits issued by the City. No change in the

construction plans shall be made by Developer without the prior written approval of the City Engineer, which approval shall not be unreasonably hindered, withheld, or delayed. For the purposes hereof, all changes in construction plans which are submitted to the City of Schertz for approval shall be approved or denied within ten (10) calendar days of submission and, if not denied within such time period they shall be deemed approved. The entire responsibility for the payment of the costs and expenses associated with the planning, administration, and construction of the Improvements shall be the responsibility and obligation of Developer, subject, however, to the reimbursement obligations of the City as herein provided.

2.3. **Contracts for Construction.** The City acknowledges that Developer has utilized the competitive sealed bidding procedure as defined in Local Government Code Sec.252 Subchapter C to select a qualified Contractor to construct the Improvements in accordance with the plans and specifications which have been approved by the City Engineer. Developer shall be solely responsible for payment of the work as it is completed and shall make all payments in a timely manner to the Contractor, sub-contractors, and other parties involved in the construction of the Improvements, subject, however, to the reimbursement obligations of the City as herein provided.

2.4. **Performance, Payment, and Warranty Bonds.** Developer shall post (or cause to be posted) with the City faithful performance, payment, and warranty bonds for construction of the Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code. The Developer shall covenant to warrant the Improvements for a period of two (2) years following acceptance by the City of all Improvements. A warranty bond shall be provided in the amount of 20% of the costs of the Improvements for such period. The costs of such bonds shall be a City Cost and shall be reimbursable to Developer.

2.5. **Inspection.** The City Engineer or designee shall periodically inspect the construction of the Improvements in the same manner, and shall possess the same authority, as is provided during the construction of subdivision improvements pursuant to the City of Schertz Subdivision Ordinance, as amended.

2.6. **Insurance.** The Contractor awarded the contract to construct the Improvements shall be required to carry Worker's Compensation Insurance on his employees and public liability and property damage insurance on his equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars (\$500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional insured on such Certificates, and City shall be notified within thirty calendar days of any cancellation of such insurance.

2.7. **Accounting.** Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which were not contemplated to be reimbursable costs by City. Developer shall maintain the accounting of the

Improvements for a period of two years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the Improvements at any time with reasonable notice.

2.8. Indemnity. Developer agrees to protect, indemnify, and save City harmless from and against all claims, demands and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, the gross negligence or willful misconduct of Developer or Developer's agents, representatives, employees, contractors, or subcontractors.

ARTICLE III – Obligations and Payments.

3.1. Developer Obligations. The Developer agrees to dedicate or cause to be dedicated to the City all necessary easements required in order to construct the Improvements. Easements which are granted will be reflected on the final plats or, where necessary, dedicated by separate instrument. Easements granted by third parties will be dedicated by separate instrument.

3.2. City Obligations. The City agrees to pay City's Costs to Developer as set forth herein pursuant to the procedures set forth in Section 3.3 below.

3.3. Payment Procedures. City shall deliver to Developer payment of the City's Costs as provided in this this section.

3.3.1 Developer shall periodically submit (anticipated to be monthly) a draw request (the "Draw Request") and the City Engineer shall review the Draw Request showing costs incurred by the Developer during the prior month (or similar construction period) which are City's Costs. The Draw Request shall include lien waivers from the contractor for the percentage of completion or amount requested. Within eight (8) days of the submission of the Draw Request to the City, the Developer shall certify to the City that it has approved the Draw Request. Provided, however, City understands and recognizes that Developer is advancing its capital for City's Costs and that Developer may submit Draw Requests more frequently than monthly to the extent that some invoices and/or Draw Requests are submitted by the Contractor to Developer more frequently than monthly.

3.3.2 Upon the City Engineer's receipt of each Draw Request, the City Engineer shall promptly inspect the Improvements (or otherwise be satisfied with information and evidence submitted by Developer) to confirm the percentage of completion as set forth in the Draw Request. The City Engineer shall approve or reject the Draw Request within ten (10) days of submission of the Draw Request by Developer. If approved, the City Engineer shall promptly cause the City to reimburse Developer for the amount of the Draw Request which Draw Request shall be funded within fifteen (15) days of approval by the City Engineer. If rejected, the City Engineer shall specify the reason for rejection and the requirements to cure the objection. Upon cure and approval,

the City Engineer shall immediately cause the City to reimburse Developer for the amount of the Draw Request. It is understood and acknowledged that the City's Costs may be part of a larger draw request for work being performed by and for Developer.

3.3.3 Upon the City Engineer's receipt of the final Draw Request, a final inspection on the Improvements shall be conducted, noting any required corrections or repairs. Once corrections or repairs are made and deemed acceptable, the City will accept the Improvements and reimburse Developer the final payment as represented by the final Draw Request.

3.3.4 Developer shall submit, and the City Engineer shall review, documentation dedicating all required utility easements. Utility easements shall be considered dedicated upon appropriate approval, execution, and recordation of any documents establishing the easements with the Bexar County Clerk's office. The recording fees (if any) shall be a reimbursable cost.

Article IV – Assignment, Modification and Waiver.

4.1. Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

4.2. Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.

4.3. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.

4.4. Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.

4.5. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

4.6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.

4.7. Venue. This Agreement shall be performable and enforceable in Guadalupe County, Texas, and shall be construed in accordance with the laws of the State of Texas.

4.8. Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.

4.9. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City: CITY OF SCHERTZ
1400 Schertz Parkway
Schertz, TX 78154
Attention: City Manager

With copy to: Denton Navarro Rocha Bernal & Zech, P.C.
2417 N. Main Avenue
San Antonio, TX 78212
Attention: T. Daniel Santee

If to Developer: Schertz 1518, Ltd.
2402 S. 2nd St.
Austin, Texas 78704
Attn: Bradley Bechtol

With a copy to: Bradford L. Pittenger
Round One Capital
9525 N. Capital of Texas Hwy., #123
Austin, Texas 78759

4.10. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

4.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

[Signatures and acknowledgments on the following pages]

Signature Page to
Reimbursement Agreement with Developer for Construction of Public Improvements
Associated with Module 3A Unit 1 (The Crossvine)

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

Developer:

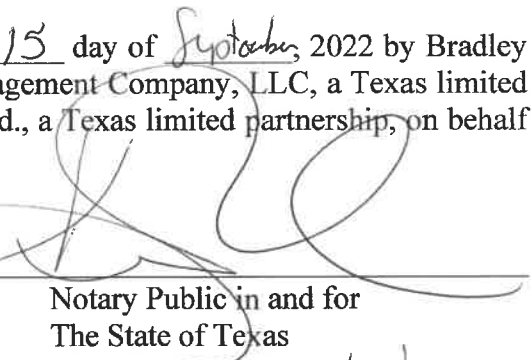
SCHERTZ 1518, LTD., a Texas limited partnership
BY: MTR-Schertz 1518 Management Company, LLC, a Texas limited liability company

By: 
Bradley Bechtol, Manager

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 15 day of September, 2022 by Bradley Bechtol, Manager of for the MTR-Schertz 1518 Management Company, LLC, a Texas limited liability company, general partner of Schertz 1518, Ltd., a Texas limited partnership, on behalf of such entities, purposes herein expressed.




Notary Public in and for
The State of Texas

My Commission Expires: 02/07/2025

Signature Page to
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This 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, its City Manager

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2022 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
IMPROVEMENTS**

