

subdivision improvement agreement is executed and if sufficient surety is provided to secure the obligation to construct the public improvements; and

WHEREAS, the Developer seeks to defer the construction of the Improvements to a future date as set forth hereinafter after the recording of the final plat for the Subdivision (the “Final Plat Recordation”) pursuant to this Agreement and Section 21.4.15 of the City’s Unified Development Code; and

WHEREAS, the City is currently constructing sewer improvements more specifically identified in Section 2(b) that the Developer is planning to tie into; and

WHEREAS, if necessary the Developer is requesting to be able to obtain a certificate of occupancy for the Project prior to completion of the sanitary sewer improvements outlined in Section 2, through the use a licensed contractor to “pump and haul” the wastewater from the Project.

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

1. Development of the Property. Karen L. Dahle hereby represents and warrants that, as of the Effective Date, she is the owner of the Property. SHA PFC it is under contract to purchase the Property, and it will be developed in partnership with Developer. Karen L. Dahle, SHA PFC and Developer understand that this agreement is for the benefit of Developer and the SHA PFC, and does not extend to other parties, unless provided for otherwise herein.

2. Scope of Improvements. The public Improvements addressed and contemplated by this Agreement to be completed subsequent to Final Plat Recordation include (i) Improvements to be undertaken by the owner on its own behalf, and (ii) improvements being undertaken by the City on behalf of the City.

(a) The Improvements to be completed by the Developer are those improvements identified on construction plans which are to be approved by the City and are more specifically identified as FM 1518 Multifamily Apartments Construction Plan Improvements prepared by Moy Tarin Ramirez Engineers, LLC.

(b) The Improvements to be completed by City are those improvements identified on construction plans which have been approved by the City and are more specifically identified as the “Woman Hollering Creek Wastewater Lines” (herein so called) prepared by Cobb Findley.

3. Construction of Improvements; Covenants. The Developer and the City covenant and agree to the following:

(a) The Developer is obligated by Section 21.12.10 of the City’s Unified Development Code to construct, or cause to be constructed, all Improvements shown on the FM 1518 Multifamily Apartments Construction Plan Improvements referenced in Section 2(a) which must be approved and will be included as part of

the application for plat approval for the subdivision titled FM 1518 Multifamily Apartments Plat.

(b) Section 21.12.10 of the City's Unified Development Code requires the completion of the Woman Hollering Creek Wastewater Lines more particularly shown on those certain Woman Hollering Creek Wastewater Lines referenced in Section 2(b) above.

(c) The completion of the Woman Hollering Creek Wastewater Lines is required in order for the Developer to complete the FM 1518 Multifamily Apartments Construction Plan Improvements.

(d) The City has undertaken the construction of the Improvements represented by the Woman Hollering Creek Wastewater Lines and shall prosecute the completion thereof in a prompt and workmanlike fashion and the date of completion and acceptance thereof shall be the "Woman Hollering Creek Wastewater Lines Completion Date".

(e) The FM 1518 Multifamily Apartments Construction Plan Improvements shall be built and completed in accordance with City design standards by Developer within twelve months (12 months) of filing the plat of the Subdivision in the Bexar County Real Property Records.

(f) The cost of the FM 1518 Multifamily Apartments Construction Plan Improvements is estimated to be **COST and NO/100 (\$XXX,000.00)** (the "Cost Estimate-Improvements"). The Developer and the City agree that the amount of the Cost Estimate-Improvements set forth herein is a commercially reasonable estimate of the cost of the FM 1518 Multifamily Apartments Construction Plan Improvements.

(g) In lieu of the (i) Developer's obligation to construct, or cause to be constructed, the FM 1518 Multifamily Apartments Construction Plan Improvements at or before the Final Plat Recordation, Developer shall provide to the City, concurrent with the execution of this Agreement, surety in the form attached hereto as Exhibit "C" (the "Surety") in an aggregate amount equal to 120% of the Cost Estimate-Improvements (the "Improvement Funds") and which Surety shall provide that it automatically renews in the event that it has not been released at the time of its expiration.

(h) City agrees to not withhold a Certificate of Occupancy for the FM 1518 multi-family apartment complex until construction of the FM 1518 Multi-Family Apartments Construction Plan Improvements and the Woman Hollering Creek Wastewater Lines if the Developer utilizes a licensed contractor to "pump and haul" the wastewater until completion of the FM 1518 Multi-Family Apartments Construction Plan Improvements and the Woman Hollering Creek Wastewater.

(i) For the purpose of clarification, and in no way limiting Developer's obligations under Section 21.4.15, the Parties agree that full completion of

construction of the FM 1518 Multi-Family Apartments Construction Plan Improvements shall not be deemed to have occurred until the City accepts such Improvements in the manner prescribed in Section 21.4.15. D of the City's Unified Development Code.

(j) In the event Developer fails to fully complete construction of the FM 1518 Apartments Construction Plan Improvements as required per 3 (e), the City may declare this Agreement to be in default and at the City's sole discretion:

- (i) require that all FM 1518 Multifamily Apartments Construction Plan Improvements as required per 3 (e) be installed by Developer regardless of the extent of completion of the improvements on the Property at the time this Agreement is declared to be in default;
- (ii) unilaterally draw from the Improvement Funds sufficient amount to complete the FM 1518 Multifamily Apartments Construction Plan Improvements itself or through a third party; or
- (iii) assign the Improvement Funds to any third party, including a subsequent owner of the Property, provided that such Improvements Funds shall only be assigned for the purpose of causing the construction of the FM 1518 Multifamily Apartments Construction Plan Improvements by such third party and for no other purpose and in exchange for the subsequent owner's agreement and posting of security to complete the FM 1518 Multifamily Apartments Construction Plan Improvements.

(k) Within 30 days of the City's acceptance of the FM 1518 Apartments Improvements, the City shall release the Surety to Developer and the Parties shall have no further obligation to each other under this Agreement.

4. Wastewater Pump and Haul. The City and Developer have entered into the Wastewater Pump and Haul Agreement for the FM 1518 Apartments attached hereto as **Exhibit "D"**.

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

6. 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.

7. 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. Any Owner obligations, benefits, or requirements of this Agreement shall automatically be assigned to subsequent owners of the Property following

conveyance. As of the Effective Date, the subsequent Owner is anticipated to be the Schertz Housing Authority Public Facilities Corporation.

8. 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.

9. 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 Developer and the City. The Developer and the City each agrees that there are no oral agreements, understandings, representations or warranties which are not expressly set forth herein.

10. 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:

Karen L. Dahle
9120 E. FM 1518 N
Schertz, TX 78154

Schertz Housing Authority Public Facilities Corporation

If to the Developer:

1518 Apartments Ltd.
c/o The NRP Group
200 Concord Plaza Drive, Suite 900
San Antonio, Texas 78216
Attn: Jason Arechiga

With copy to:

Killen, Griffin & Farrimond
10101 Reunion Place, Suite 250
San Antonio, Texas 78216
Attn: Ashley Farrimond

If to the City:

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

With copy to:

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

11. 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.

12. 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.

13. 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.

14. 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 a consent by suit by any party.

[Signatures and acknowledgments on the following pages]

Signature Page to
Subdivision Improvement Agreement

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

Owner:

Karen L. Dahle

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of October, 2022 by Karen L. Dahle.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Subdivision Improvement Agreement

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

**Schertz Housing Authority Public Facilities
Corporation**

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2022 by _____, _____, Schertz Housing Authority Public Facilities Corporation.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Subdivision Improvement Agreement

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

Developer:

1518 Apartments Ltd.

a Texas limited liability partnership

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of October, 2022 by _____, _____, 1518 Apartments Ltd., a Texas limited liability partnership.

(SEAL)

Notary Public in and for
The State of Texas

My Commission Expires: _____

Signature Page to
Subdivision Improvement Agreement

This Subdivision 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: Dr. Mark Browne, its City Manager
Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of October, 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"

Legal Description - The Property

[Plat Name]

[See attached]

EXHIBIT "B"

Submitted Preliminary Plat

[Plat Name]

[See attached]

EXHIBIT "C"

Improvement Funds Surety

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

Date: _____

Expiration Date: (+ one year)

Beneficiary: City of Schertz
1400 Schertz Parkway, Building #1
Schertz, Texas 78154
Attn: City Manager

Applicant: 1518 Apartments Ltd.
c/o The NRP Group
200 Concord Plaza Drive, Suite 900
San Antonio, Texas 78216

Gentlemen:

We hereby issue our Irrevocable Standby Letter of Credit No. _____ in your favor up to the aggregate amount of US\$_____.00 (_____ Thousand ____ Hundred and No/100 United States Dollars) ("Stated Amount") available by draft(s) drawn on us at sight, marked "Drawn under Irrevocable Standby Letter of Credit No. _____ of _____ Bank, _____, Texas" accompanied by the following:

1. Beneficiary's written statement signed by its authorized representative reading as follows: "The undersigned is an authorized representative of the City of Schertz, Texas (hereinafter "Beneficiary") and has the authority to make any one of the following statements. 1) 1518 Apartments Ltd. (hereinafter "Applicant") has provided security for the Subdivision Improvement Agreement for The Crossvine, Module 3A, Unit 1 as entered into by and between 1518 Apartments Ltd. and the City of Schertz, Texas, a Texas Municipal Corporation (hereinafter the "Agreement "); 2) 1518 Apartments Ltd. has failed to perform in accordance with the terms and conditions of the Agreement; and 3) Beneficiary is entitled to the amount of [insert amount] under _____ Bank Irrevocable Standby Letter of Credit No. _____."

OR

"The undersigned is an authorized representative of the City of Schertz, Texas (hereinafter "Beneficiary") and has the authority to make any one of the following statements. 1) Beneficiary has received notice from _____ Bank that Standby Letter of Credit No. _____ will not be extended beyond its current expiration date and Beneficiary has not received an acceptable replacement Letter of Credit or suitable Security from Applicant and 2) Beneficiary is therefore entitled to the amount of [insert amount] under _____ Bank Irrevocable Standby Letter of Credit No. _____.

2. This original Letter of Credit and any amendments thereto (if any).

Special Conditions:

1. Partial and multiple drawings are permitted however the aggregate amount of all drawings may not exceed the Stated Amount. In the event of a partial drawing, the original Letter of Credit will be endorsed and returned to you, unless the Letter of Credit has expired or the amount available has been reduced to zero.
2. It is a condition of this Letter of Credit that it shall be automatically extended without amendment for an additional period of one year from the current expiration date and each future expiration date, unless and until you have been notified by us in writing by registered mail or overnight courier, not less than one hundred eighty (180) days before the expiration date, with a copy to Denton Navarro Rocha Bernal & Zech, P.C., 2517 N. Main Avenue, San Antonio, Texas 78212, Attention: T. Daniel Santee, that we elect not to extend this Letter of Credit.
3. This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, it being understood that any reference to any such document, instrument or agreement is for informational purposes only.
4. Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of _____ Bank under this Letter of Credit is the individual obligation of _____ Bank, and is in no way contingent upon reimbursement with respect thereto.
5. If, prior to the expiration date, the Applicant's obligation to you has been fulfilled and you no longer require this Letter of Credit, we kindly request that you return the original Letter of Credit and all original amendments (if any), together with your signed letter, giving us your consent to close the Letter of Credit. The Letter of Credit and your letter should be returned to _____ Bank at the address listed below.
6. All issuing bank fees shall be for the account of the Applicant.

We hereby engage with you that documents drawn under and in compliance with the terms of this Irrevocable Standby Letter of Credit will be duly honored if presented for payment to _____ Bank, _____, _____, Texas _____, Attention: _____, prior to ___:00 p.m. Central Time on or before the expiration date of this Letter of Credit.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"), in effect on the date this Letter of Credit is issued, and as to matters not addressed by ISP98 is subject to and governed by Texas State Law and applicable U.S. Federal Law.

_____ Bank

 Name: _____
 Title: _____

EXHIBIT “D”

Wastewater Pump and Haul Agreement for the FM 1518 Apartments