

**REIMBURSEMENT AGREEMENT WITH DEVELOPER FOR
CONSTRUCTION OF PUBLIC IMPROVEMENT**

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

This Development Agreement (the “Agreement”) is by and between the City of Schertz, a Texas municipal corporation (the “City”), and ILF N-T, LP., 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 (the “Property”) located within the City limits, which is approximately 74.78 acres of land, Unit 3B being a 15.29 acres tract of land in the City of Schertz, Comal & Guadalupe County, Texas out of the J.F. Zapeda Survey No. 257, Abstract 685, The J.F. Zapeda Survey NO. 257, Abstract 471, and the P. San Miguel Survey No. 256, Abstract 227 and being out of a 522.18 acres tract of land; Unit 5 being 32.89 acres out of the J.F. Zapeda Survey Number 257, Abstract 471, Guadalupe County, Texas, being a remainder of a called 522.18 acres; and Unit 7A being a 26.60 acre tract of land, being out of the Pedro San Miguel Survey No. 256, Abstract 227, C.M. Gahagan Survey No. 258, Abstract 142 and State Survey, Abstract Tate2 of Guadalupe County and a 522.18 acre tract of land conveyed to ILF N-T Owner, LP of Record in Document Number 201406044206, official public records of Comal County, Texas.

WHEREAS, the Property is the subject of the applications for Subdivision Plat establishing Homestead Unit 3B, Homestead Unit 5 and Homestead Unit 7A; and

WHEREAS, during the development planning stage for the Property, the Developer submitted to the City a request that the City participate in the completion of the Improvements, which will benefit portions of the City beyond the Homestead Unit 3B, Homestead Unit 5 and Homestead Unit 7A Subdivisions; and

WHEREAS, Developer has requested that it be allowed to construct all Improvements to serve the Property and share the costs with the City; and

WHEREAS, Developer has constructed certain Improvements and commenced construction of the remainder of the Improvement; and

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

WHEREAS, Section 212.071, et. seq. of the Texas Local Government Code limits the participation by the municipality at a level not to exceed 30 percent of the total contract price.

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 each person, firm, corporation, partnership, association, or other entity awarded a contract by Developer for the construction and installation of the Improvements (or portion thereof).
- 1.3. “Improvements” shall mean the improvements described on Exhibit “A”
- 1.4. “City’s Participation Costs” shall mean costs associated with the construction of the Improvements, as designated on Exhibit “C” as City of Schertz responsibility.

ARTICLE II – Construction of Improvements.

- 2.1. Acquisition of Easements. Developer has acquired and dedicated all necessary utility easements as illustrated in Exhibit “B” attached hereto at the Developer’s sole expense the City has approved and accepted the same and there shall be no participation by the City in any related easement acquisition costs. Easements were 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 for units 3B, 5 and 7A as approved by the City Engineer on 12/05/2018, 1/25/2022 and 4/01/2020, respectively, as illustrated in Exhibit “A” attached hereto. No change in the shall be made by Developer without the prior written consent of the City Engineer, which consent shall be unreasonably conditioned, withheld or delayed. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, except as herein provided.
- 2.3. Contracts for Construction. Developer shall utilize 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 approved plans and specifications if required per Local Government Code Sec. 212 Subchapter C. The contract may be awarded via one or more contracts to either to the lowest responsible bidder(s) or to the bidder(s) who provides goods and services at the best value for the municipality. The City Engineer shall review all bid documents, contract documents, and costs estimates. 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, and any other parties under contract with the Developer in connection with the construction of the Improvements.

2.4. Performance, Payment and Warranty Bonds. Developer's Contractor shall post within 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 public 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.

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 named 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 approved by City prior to it being incurred. 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 performance of this Agreement by Developer or Developer's agents, representatives, employees, contractors, or subcontractors.

ARTICLE III – Obligations and Payments.

3.1. Developer Obligations. The City agrees that the Developer has dedicated to the City all necessary easements as illustrated on Exhibit "B" either by the final plat of Homestead Unit 3B, Homestead Unit 5 and Homestead Unit 7A or by separate instrument.

3.2. City Obligations. The City agrees to pay to Developer City's Participation

Costs which shall equate to the actual costs for the City's responsibility at as illustrated on Exhibit "C". Notwithstanding any provision of this Agreement to contrary, City's Obligation shall only be for the reimbursement of costs incurred by Developer and shall not in any event exceed SEVEN-HUNDRED SEVENTY-SEVEN THOUSAND ONE-HUNDRED DOLLARS AND FIFTY-FIVE CENTS (\$777,100.55) (hereinafter the "City's Share").

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

3.2.1 Submittal and review. Developer shall submit and the City Engineer shall review documentation, as may be reasonably required by City Engineer, showing final, actual construction costs paid by the Developer.

3.2.2 Upon the City Engineer's review and approval of the documents, 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.

3.2.3 Developer shall submit and the City Engineer shall review documentation dedicating all required utility easements listed in Exhibit "B" to the extend not recorded. If not recoded as of the date hereof, utility easements shall be considered dedicated upon appropriate approval, execution, and recordation of any documents establishing the easements with the Guadalupe County Clerk's office. Developer shall be responsible for any associated recording fees.

3.2.4 Within 30 days of both the acceptance of the Improvements and the dedication of all necessary utility easements, the City will pay to Developer the City's Participation Costs (Exhibit "C"). The \$321,544.76 to be paid by the City for the oversize of the offsite sewer force main includes the ONE HUNDRED TWENTY-FIVE THOUSAND SIX HUNDRED FIFTY-FIVE DOLLARS AND 30 CENTS (\$125,655.30) that the City is already obligated to contribute per the existing Subdivision Improvement Agreement that is attached as Exhibit "D".

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 party, 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: ILF N-T Owner, LP
500 Boylston Street
Boston, MA 02116
Attention: Matt Matthews

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
Agreement with Developer for Construction of Public Improvement

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

Signature Page to
Agreement with Developer for Construction of Public Improvement

This Community Facilities 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: Steve Williams, its City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on the ____ day of _____, 2023 by Steve Williams, 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

**EXHIBIT B
NECESSARY EASEMENTS**

Ex. A1. Michael Scott Turner – 0.239 Acre

Ex. A2. Michael Scott Turner - 0.005 Acre

Ex. A3. Schertz Commercial Park, L.P. – 0.572 Acre

Ex. A4. Schertz Commercial Park, L.P. –0.062, 0.120 & 0,024 Acre

Ex. A5. Schertz Commercial Park, L.P. – 0.10 Acre

Ex. A6. Nolley Caribbean - 0.517 Acre

Ex. A7. Nolley Caribbean – 0.013 Acre

Ex. A8. Nolley Caribbean - 0.111 Acre

EXHIBIT C
CITY'S PARTICIPATION COSTS

Exhibit C

City's Participation Costs for Water Line Upsizing

1. \$19,560.00 - Upsizing of the water line in Unit 7A from 8" to 12" in Homestead Parkway
 2. \$101,970.00 - Upsizing of the water line in Unit 7A from 8" to 12" in Schwab Road and Archer Pass
 3. \$41,800.79 - Upsizing of the water line in Unit 3B from 8" to 12" in Winkler Trail
 4. \$292,225.00 - Providing a 12" water line in Unit 5 within the GVSUD CCN connecting Fred Couples way to Homestead Parkway
- \$455,555.79 Sub Total**

City's Participation Costs for Phase 2 Offsite Sewer Forcemain Improvements (per agreement City's participation share is 21% to be capped at \$348,966.64).

1. \$223,975.65 – 21% of \$1,066,550.70 for construction
 2. \$39,970.94 – 21% of \$190,337.81 for engineering
 3. \$57,598.17 – 21% of appraised value of easements
- \$321,544.76 Sub Total**

\$777,100.55 Total City's Participation Costs

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EXHIBIT D
EXISTING SUBDIVISION IMPROVEMENT AGREEMENT