

After Recording, Please Return To:

City of Schertz  
1400 Schertz Parkway  
Schertz, Texas 78154  
Attention: City Manager

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

IMPROVEMENT AGREEMENT  
HOMESTEAD PHASE SUBDIVISION- UNIT 11– PUBLIC IMPROVEMENTS

This IMPROVEMENT AGREEMENT (the “Agreement”) is by and between ILF N-T Owner, LP (the “Owner”), and the CITY OF SCHERTZ, a Texas municipal corporation (the “City”) and is effective upon the execution of this Agreement by the Owner and the City (the “Effective Date”); and

WHEREAS, the Owner is the owner of that certain real property located in the City of Schertz, Guadalupe County, Texas, more specifically described on Exhibit “A”, attached hereto and made a part hereof for all purposes (the “Property” or “Homestead Subdivision Unit 11”); and

WHEREAS, the Owner seeks to develop a residential subdivision on the Property (the “Subdivision”) that requires the construction of certain public improvements: and

WHEREAS, this Agreement is made solely with respect to the final plat of Homestead Subdivision Unit 11 which was approved by the City of Schertz Planning and Zoning Commission on XXXX, 2022; and

**Commented [A1]:** TBD - still going through plan check will need to update once approved

WHEREAS, pursuant to Section 21.4.15(C.) (2.) and (F.) (1) of the City’s Unified Development Code, the obligation to construct the public improvements that serve the Subdivision may be deferred if an Improvement Agreement is executed and if sufficient surety is provided to secure the obligation to construct the public improvements; and

WHEREAS, the Owner seeks to defer the construction of the public improvements to a future date, not to exceed three years (3 years), after the recording of the final plat for Homestead Subdivision Unit 11 (the “Final Plat Recordation”) pursuant to this Agreement and Section 21.4.15 of the City’s Unified Development Code:

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 with the exception of contracts for the sales of lots in ordinary course and dedications of utility and public improvements (unrelated to this Agreement) in the ordinary course of business.

2. Construction of Improvements; 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, a roadway segment improvements more particularly shown on Exhibit "B" and in the "Construction Plans" approved [insert date approved] and that are included as part of the application for final plat approval for the subdivision titled Homestead **Subdivision Unit 11** (such improvements shall be referred to herein as the "Improvements").
- b) The Improvements shall be built and completed in accordance with City design standards within three years (3 years) after the Final Plat Recordation.
- c) The cost of the uncompleted Improvements for Homestead **Subdivision Unit 11** is estimated to be Three Hundred and Twenty-One Thousand Nine Hundred Eighty-Four Dollars and Ninety Cents (\$321,984.90), (the "Cost Estimate"), as more particularly shown on **Exhibit "C"** attached hereto and made a part hereof for all purposes. The Owner and the City agree that the amount of the Cost Estimate set forth herein is a commercially reasonable estimate of the cost of the Improvements.
- d) In lieu of the Owner's obligation to construct, or cause to be constructed, the Improvements, at or before the Final Plat Recordation, Owner shall provide to the City, concurrent with the execution of this Agreement, surety in the form attached hereto as **Exhibit "D"** (the "Surety") in an amount equal to 125% of the Cost Estimate amount **Four Hundred and Two Thousand Four Hundred and Eighty One Dollars and Twenty Five Cents (\$402,481.25)**, (the "Improvement Funds").
- e) Owner agrees within three years (3 years) of the Final Plat Recordation to complete the construction of the Improvements in accordance with the Construction Plans and in full compliance with City of Schertz Unified Development Code Section 21.4.15, which is incorporated by reference herein as though fully set forth in this Section of this Agreement. For the purpose of clarification, and in no way limiting Owner's obligations under Section 21.4.15, the Parties agree that full completion of construction of the Improvements shall not occur until the City accepts the Improvements in the manner prescribed in Section 21.4.15. D., and Owner provides a warranty bond which may name the contractor as the principal (to expire twenty-four (24) months following such acceptance) which shall be exactly twenty percent (20%) of the total cost of construction of all the Improvements.
- f) In the event Owner fails to fully complete construction of the Improvements within three years (3 years) subject to subsection h) below, of the Final Plat Recordation

in the manner prescribed herein, City may declare this Agreement to be in default and at the City's sole discretion:

- (i) require that all Improvements be installed by Owner regardless of the extent of completion of the improvements on the Property at the time the Agreement is declared to be in default;
  - (ii) unilaterally draw from the Improvement Funds sufficient amount to complete the 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 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 Improvements.
- g) Within 30 days of the City's acceptance of the Improvements, the City shall release the Surety to Owner and the Parties shall have no further obligation to each other under this Agreement.
- h) If Owner can document an inability to complete these improvements within the three (3) year timeframe due to causes beyond Owner's control, City will in good faith consider an extension.

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  
500 Boylston Street  
STE 2010  
Boston, MA 02116  
Attention: Jesse R. Baker

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**

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: Jesse R. Baker  
Title: Authorized Signatory

**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: Steven Williams, its City Manager

Date: \_\_\_\_\_

THE STATE OF TEXAS       §  
  §  
COUNTY OF GUADALUPE   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023 by Steven 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"**

The Property

Approved Final Plat Exhibit  
and  
Legal Metes and Bounds

*[ See attached ]*

**EXHIBIT "B"**

The Improvements

*[ See attached ]*

**EXHIBIT "C"**

The Cost Estimate

*[ See attached ]*

**EXHIBIT “D”**

The Surety

*[ See attached ]*