SUBSEQUENT DEVELOPER AGREEMENT

BY AND BETWEEN

THE CITY OF ASBURY PARK, AS REDEVELOPMENT ENTITY,

ASBURY PARTNERS, LLC, AS MASTER DEVELOPER

AND

AP TRIANGLE, LLC, AS SUBSEQUENT DEVELOPER

Dated:______________ __, 2020

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SUBSEQUENT DEVELOPER AGREEMENT

THIS SUBSEQUENT DEVELOPER AGREEMENT made this **______** day of **_________** by and between

THE MAYOR AND CITY COUNCIL (together, the "Governing Body") OF THE CITY OF ASBURY PARK (the "**City**"), in its capacity as a "redevelopment entity" pursuant to *N.J.S.A.* 40A:12A-4 with principal offices at 1 Municipal Plaza, Asbury Park, New Jersey 07712;

ASBURY PARTNERS, LLC in its capacity as Master Developer, pursuant to the hereinafter defined Redeveloper Agreement (the "**Master Developer**"), with principal offices at c/o iStar, Attn: Brian A. Cheripka, 1114 Avenue of the Americas, 39th Floor, New York, NY 10039, along with its permitted successors and/or assigns;

AND

AP TRIANGLE, LLC with principal offices at c/o iStar, Attn: Brian A. Cheripka, 1114 Avenue of the Americas, 39th Floor, New York, NY 10039, (including, where applicable, its relevant urban renewal entity affiliate formed pursuant to the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 et seq., the "**Entity**") (each, a "Party" and collectively, the "**Parties**").

WITNESSETH

WHEREAS, the *New Jersey Local Redevelopment and Housing Law*, *N.J.S.A.* 40A:12A-1 *et seq.* (the "**Act**") authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

WHEREAS, the Act confers certain contract, planning and financial powers upon a redevelopment entity, as defined at Section 3 of the Act, in order to implement redevelopment plans adopted pursuant thereto; and

WHEREAS, the City has elected to exercise these redevelopment entity powers directly, as permitted by Section 4 of the Act; and

WHEREAS, on June 5, 2002, the City adopted the "Asbury Park Waterfront Redevelopment Plan (Plan IV)" (as amended and supplemented from time to time, the "**Redevelopment Plan**", a copy of which is on file with the City Clerk) with respect to the "Asbury Park Waterfront Redevelopment Area," as defined in the Redevelopment Plan (the "**Redevelopment Area**"); and

WHEREAS, the Redevelopment Plan, as initially adopted, provided for the Redevelopment Area to be redeveloped on a "block-by-block" basis; and

WHEREAS, pursuant to the Act, including Section 8 thereof (*N.J.S.A.* 40A:12A-8), a municipality is permitted to contract with a redeveloper to develop redevelopment projects

pursuant to a redevelopment plan within an area in need of redevelopment, as all such terms are defined in the Act; and

WHEREAS, the City and the Master Developer entered into that certain "Amended and Restated Redeveloper and Land Disposition Agreement" dated October 28, 2002, which provides, among other things, that the Master Developer shall be responsible for the redevelopment of the properties governed by the Redevelopment Plan, which redevelopment it may to undertake itself, or through agreements with selected subsequent developers on a "block-by-block" basis; and

WHEREAS, in 2018 the City amended the Redevelopment Plan to provide for the redevelopment of individual properties within the Redevelopment Area, provided certain criteria are met, including the designation of the person or entity wishing to redevelop a property as a subsequent developer; and

WHEREAS, on June 13, 2018, the City adopted the First Amendment to the "Amended and Restated Redeveloper and Land Disposition Agreement" (the "First Amendment" and the "Amended and Restated Redeveloper and Land Disposition Agreement" together shall be referred to as the "**Redeveloper Agreement**", a copy of which is on file with the City Clerk), which set forth the City and Master Developer responsibilities with regard to the selection and designation of subsequent developers; and

WHEREAS, pursuant to the Redevelopment Plan and the Redeveloper Agreement, as amended, "any owner, purchaser, assignee or transferee of all or part of any property within the [Redevelopment] Area that is subject to the provisions of the Amended [Redevelopment] Plan" may seek to be designated as a subsequent developer by submitting a subsequent developer application to the Master Developer and the City, along with any escrow and application fees required by the City; and

WHEREAS, the Entity is an Affiliate of the Master Developer; and

WHEREAS, the Entity has submitted to the Master Developer and the City a subsequent developer application (the "**Application**"), pursuant to the Redeveloper Agreement and the Redevelopment Plan, stating its intention to develop forty-eight (48) residential condominium townhome units (the "**Units** ") on portions of property identified as Block 3203, Lots 1-5 and 15-19 and Block 3206, Lots 1-4 on the tax maps of the City; and

WHEREAS, after review by the Director of Planning and Redevelopment, the Technical Review Committee("TRC") and the City Administration, certain comments and suggestions have been made regarding the Application in order to include certain additional features: and

WHEREAS, as a result of those comments and suggestions, the Entity has agreed to revise the Project to provide that the Project shall be described as more fully set forth in EXHIBIT A, Project Description attached hereto and made a part hereof; and

WHEREAS, in order to implement the Project and facilitate the environmental remediation of the lots, the Entity intends to apply to the Asbury Park Planning Board for approval to merge Block 3203, Lots 1-5 and 15-19 and Block 3206, Lots 1-4 and to subdivide

the resulting merged lot into five (5) lots consisting of three (3) lots: one 88,949 sq. ft. lot development lots comprised of 24,103 square feet, 33,067 square feet and 31, 779 square feet, respectively, upon which the Units will be constructed in phases in three (3) buildings and which will be remerged upon completion of construction into a unified, single condominium community; one 6,091 square foot triangular lot located at the corner of Cookman and Heck Avenues (the "Remainder Lot"), collectively, the "**Project Site**", ; and a third 84,768 sq. ft. triangular lot which is intended for future development-; and

WHEREAS, the City desires that the Remainder Lot be designed, constructed, landscaped, and maintained as landscaped Public Open Space by the Entity as a condition of this Agreement (the "Public Open Space")and as more specifically described herein; and

WHEREAS, pursuant to Article 3A of the Redeveloper Agreement, as amended, the Master Developer and the City have reviewed the Application and determined that the Project, as revised, is in compliance with and effectuates the goals of the Redevelopment Plan, and that Entity possesses the experience, capability, and financial capacity to complete the Project; and

WHEREAS, the Parties desire to enter into this Subsequent Developer Agreement for the Project Site to set forth the obligations of the Parties with respect to the Project including the Public Open Space,

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby covenant and agree, each with the other, as follows:

ARTICLE 1
DEFINITIONS

1.01 Definitions. As used in this Subsequent Developer Agreement the following terms shall have the meanings ascribed thereto in the recitals above, or ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation". The words "agree," "agreements," "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld, conditioned or unduly delayed," except or unless the context may otherwise specify. All references to Sections or Articles shall refer to Sections or Articles in this Subsequent Developer Agreement unless otherwise specified.

"Act" shall be defined as set forth in the preamble. **"Actual Pledged Special Assessments"** shall be defined as set forth in Section 6.01 of this Subsequent Developer Agreement.

"**Affiliate**" shall mean a person or entity which, directly or indirectly, controls, is controlled by, or is under common control with the relevant person or entity.

"Applicable Laws" shall mean all federal, state and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Act, the Land Use Law, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable environmental laws and applicable federal and state labor standards.

"Application" shall be defined as set forth in the preamble.

"Applications for Governmental Approvals" shall mean the Plans, drawings, documentation, presentations and applications necessary and appropriate for the purpose of obtaining any and all approvals from any government or public entity required to complete the Project or any part thereof, including, but not limited to, Building Permits.

"Building Permit" shall mean a building permit issued by or on behalf of the City.

"Certificate of Completion" shall mean the Certificate of Completion as set forth in Section 4.06.

"Certificate of Occupancy" shall be as defined in the applicable section of the municipal code of the City and the applicable provisions of the Uniform Construction Code.

"City" shall be defined as set forth in the preamble.

"Commencement of Construction" and "Commence Construction" shall mean any activity associated with construction of the Project on the Project Site.

“Completion of Construction” and “Complete Construction” shall mean the completion of the Project on the Project Site such that the Project is ready for the use for which it was intended, subject to the installation of (i) seasonal landscaping and (ii) final fixtures, floor coverings and décor items subject to the discretion and demand of purchasers of individual Units within the Project.

“Declaration of Covenants and Restrictions” shall mean a written instrument to be executed by the Entity and recorded in the office of the Monmouth County Clerk, in the form annexed hereto as Exhibit 1, intended to encumber the Project Site and to run with the land, setting forth certain statutory and contractual undertakings of and restrictions applicable to the Entity and its successors and assigns in connection with the ownership, redevelopment or rehabilitation of the Project Site and the Project as set forth in Sections 3.02(a), (b), (l), (m), and (n) of this Subsequent Developer Agreement.

“**Deficiency Amount**” shall be as set forth in Section 3.03(r) of this Subsequent Developer Agreement.

“Effective Date” shall mean the date this Subsequent Developer Agreement is executed by the last of the three Parties, being City, the Master Developer and the Entity.

“Entity” shall be defined as set forth in the preamble and shall expressly include any urban renewal entity affiliate of the Entity that executes the Financial Agreement for the Project.

“Event of Default” shall be as set forth in Article 6 of this Subsequent Developer Agreement.

“Event of Force Majeure” shall mean an enforced delay in the performance of obligations of a Party to this Subsequent Developer Agreement arising from causes beyond that Party’s reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts or omissions of the other parties (including litigation by third parties), fires, floods, epidemics, quarantine restrictions, freight, energy shortages, embargoes, unusual or severe weather, or delays of contractors, subcontractors or material suppliers due to any of the foregoing such causes.

“Final Site Plan” shall mean the final site plan with respect to the development of the Project Site to be submitted to, and approved by Resolution of the City’s Planning Board in accordance with the Land Use Law.

“**Financial Agreement**” shall mean that certain agreement by and between the City and an urban renewal entity affiliate of the Entity, required to be executed prior to Commencement of Construction, for a long term tax exemption applicable to the Project pursuant to the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 et seq.

“Governing Body” shall be defined as set forth in the preamble.

“Governmental Approvals” shall mean all government permits, licenses, consents and approvals necessary for the development, construction, lease, sale, occupancy or completion of the Project, or any part thereof, issued by or on behalf of any government and issued in reliance

on the Applications for Government Approvals and including approvals from any utility supplier.

"Infrastructure Ordinance" shall be defined as set forth in Section 2.02 of this Subsequent Developer Agreement.

"Institution" shall mean any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employee's welfare, pension or retirement system or any other corporation or organization subject to supervision and regulation by the insurance or banking departments of the State or of the United States Treasury, or any successor department or departments hereafter exercising the same functions as said departments, provided such Institution has a net worth of not less than $100,000,000 or assets of at least $1,000,000,000. iStar Inc. is deemed to be an Institution. A wholly owned affiliate of iStar Inc. funded in whole or in part by iStar Inc. is also deemed to be an Institution. Participatory lending arrangements among Institutions shall be permitted.

"Land Use Law" shall mean *N.J.S.A.* 40:55D-1 *et seq*.

"**Master Developer"** shall be defined as set forth in the preamble.

"Mortgage" shall mean any instrument held by a Permitted Mortgagee constituting a lien on the Project and/or the Project Site or revenues derived therefrom including, without limitation, a mortgage, deed of trust or indenture of mortgage and deed of trust, and any modification, amendment, spreader, consolidation or renewal thereof.

"Original Infrastructure Ordinance" shall be defined as set forth in Section 2.02 of this Subsequent Developer Agreement.

"**Outside Approvals Date**" shall be defined as set forth in Section 4.03 of this Subsequent Developer Agreement.

"Parties" shall be defined as set forth in the preamble.

"Permitted Mortgagee" shall mean an Institution which holds a Mortgage on the Project Site.

"Planning Board" shall mean the planning board of the City established pursuant to *N.J.S.A*. 40:55D-23.

"Plans" shall mean the plans, including site plans, building floor plans, building elevations, architectural renderings for the Project or any portion thereof. "Plans" shall include, but shall not be limited to, the minimum requirements of Applicable Laws or Project Documents depending on the context of its use in this Subsequent Developer Agreement.

"**Pledged Special Assessment**" shall be defined as set forth in Section 6.01 of this Subsequent Developer Agreement.

"Project" shall be defined as set forth in Exhibit A, Project Description.

"Project Date" shall be defined as set forth in the preamble.

"Project Documents" shall mean the Redevelopment Plan, the Redeveloper Agreement, and this Subsequent Developer Agreement.

"Project Site" shall have the meaning set forth in the Preamble.

"Projected Pledged Special Assessments" shall be defined as set forth in Section 6.01 of this Subsequent Developer Agreement.

"**Public Open Space"_**shall have the meaning as set forth in Exhibit A. Project Description .

"RAB Law" shall be defined as the Redevelopment Area Bond Financing Law, *N.J.S.A.* 40A:12A-64 *et seq.*

"RABs" shall be defined as set forth in Section 6.01 of this Subsequent Developer Agreement.

"Redeveloper Agreement" shall be defined as set forth in the preamble.

"Redevelopment Area" shall be defined as set forth in the preamble.

"Redevelopment Entity" shall mean the City's Governing Body acting in its capacity as a redevelopment entity pursuant to the Act and any permitted successors or assigns.

"Redevelopment Plan" shall be defined as set forth in the preamble.

"Special Assessment Agreement" shall be defined as set forth in Section 4.09 of this Subsequent Developer Agreement.

"State" shall mean the State of New Jersey.

"Subsequent Developer" shall mean the Entity, as the owner, purchaser, assignee or transferee of all or part of any property within the Area that is subject to the provisions of the Amended Plan, who has been approved as a Subsequent Developer by the City and the Master Developer in accordance with the Amended Plan and who has entered into a fully executed Subsequent Developer Agreement with the City and the Master Developer with respect to the Project.

"Subsequent Developer Agreement" shall mean this agreement by and between the City and the Entity.

“Surplus Pledged Special Assessments” shall be defined as set forth in Section 6.01 of this Subsequent Developer Agreement.

“**Temporary Certificate of Occupancy**” shall mean the certificate provided for at N.J.S.A. 52:27D-133 indicating that a portion of the relevant construction has been completed in accordance with the construction permit, the State of New Jersey Construction Code and other ordinance or regulation implementing the State of New Jersey Uniform Construction Code.

“Transfers” shall be as set forth in Section 5.03 of this Subsequent Developer Agreement.

“Units” shall be defined as set forth in the preamble.

“Workforce Information Session” shall be as set forth in Section 3.02(l)i of this Subsequent Developer Agreement.

ARTICLE 1A
DESIGNATION AS SUBSEQUENT DEVELOPER

1A.01 Designation of Subsequent Developer. On the Effective Date of this Subsequent Developer Agreement, the Entity shall be hereby designated as a Subsequent Developer pursuant to the terms and conditions of the Redevelopment Plan, as amended, the Master Developer Agreement, as amended, and this Subsequent Developer Agreement. This designation shall terminate upon the first of the following the occur: (i) the Outside Approvals Date, without any further action of any Party hereto, (but only if all conditions subsequent set forth in Section 6.01 hereof are not satisfied on or before such date); (ii) upon the issuance of a Certificate of Completion as set forth in Section 4.07; (iii) upon mutual termination by the Parties; or (iv) or upon an Event of Default, pursuant to the terms in Article 6.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.01 Representations and Warranties of the City. The City hereby makes the following representations and warranties:

(a) The Redevelopment Plan has been duly adopted in compliance with all Applicable Laws and is currently in full force and effect.

(b) The City has the legal power, right and authority to enter into this Subsequent Developer Agreement and the instruments and documents referenced herein to which the City is a Party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder and has duly executed this Subsequent Developer Agreement.

(c) All requisite action has been taken by the City and all requisite consents have been obtained in connection with the entering into this Subsequent

Developer Agreement and the instruments and documents referenced herein to which the City is a Party, and the consummation of the transaction contemplated hereby, and to the best of the City's knowledge and belief are authorized by all Applicable Laws. To the best knowledge of the City there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by the City entering into or performing its obligations under this Subsequent Developer Agreement.

(d) This Subsequent Developer Agreement has been duly executed by the City, and is valid and legally binding upon the City and enforceable in accordance with its terms pursuant to all Applicable Laws and the execution and delivery thereof does not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the City is a Party or by which it is bound.

(e) The City represents that to the best of its knowledge and belief, there is no action, proceeding or investigation now pending or threatened, nor any basis therefor, known or believed to exist which questions the validity of this Subsequent Developer Agreement.

2.02 Representations and Warranties of the Master Developer

(a) The Master Developer has the legal capacity to enter into this Subsequent Developer Agreement.

(b) The Master Developer is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary resolutions have been duly adopted to authorize the execution and delivery of this Subsequent Developer Agreement and to authorize and direct the persons executing this Subsequent Developer Agreement to do so for and on the Master Developer’s behalf.

(c) To the best of the Master Developer’s knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which questions the validity of this Subsequent Developer Agreement or any action or act taken or to be taken by the Master Developer pursuant to this Subsequent Developer Agreement.

(d) To the best of the Master Developer’s knowledge and belief, after diligent inquiry, the Master Developer’s execution and delivery of this Subsequent Developer Agreement will not constitute a violation of (i) the “Amended and Restated Redeveloper and Land Disposition Agreement” dated October 28, 2002, as amended by the First Amendment to the “Amended and Restated Redeveloper and Land Disposition Agreement,” approved by the City Council on June 13, 2019, and effective August 1, 2018; (ii) the Subsequent Developer Agreement Among the City of Asbury Park, Madison Asbury Retail, LLC, and Asbury Partner, LLC, dated June 1, 2010; (iii) the ordinance finally

adopted by the City on February 13, 2013 and entitled "AN ORDINANCE OF THE CITY OF ASBURY PARK, IN THE COUNTY OF MONMOUTH, NEW JERSEY, PROVIDING FOR THE SPECIAL ASSESSMENT OF THE COST OF CERTAIN WASTEWATER, STORMWATER, ROADWAY, STREETSCAPE, UTILITY AND OTHER INFRASTRUCTURE IMPROVEMENTS IN PORTIONS OF THE PRIME RENEWAL AREA AND THE BOARDWALK AREA WITHIN THE ASBURY PARK WATERFRONT REDEVELOPMENT AREA AND ESTABLISHMENT OF A MECHANISM FOR PAYMENT OF THE COST THEREOF," (the "**Original Infrastructure Ordinance**"), as amended on June 13, 2018 by Ordinance No. 2018-20 (the **"Infrastructure Ordinance"**); and (iv) the Infrastructure Component Report last adopted by the City by resolution on June 13, 2018.

2.03 Representations and Warranties of the Entity. The Entity makes the following representations and warranties:

(a) The Entity has the legal capacity to enter into this Subsequent Developer Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as same applies to the Project as of the date of this Subsequent Developer Agreement.

(b) The Entity is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary resolutions have been duly adopted to authorize the execution and delivery of this Subsequent Developer Agreement and to authorize and direct the persons executing this Subsequent Developer Agreement to do so for and on the Entity's behalf.

(c) To the best of the Entity's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Subsequent Developer Agreement or any action or act taken or to be taken by the Entity pursuant to this Subsequent Developer Agreement; or (ii) is likely to result in a material adverse change in the Entity's property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Subsequent Developer Agreement.

(d) The Entity's execution and delivery of this Subsequent Developer Agreement and its performance hereunder will not constitute a violation of any operating, partnership, shareholder and/or similar agreement of the Entity or of any agreement, mortgage, indenture, instrument or judgment, to which the Entity is a Party.

(e) To the best of the Entity's knowledge and belief after diligent inquiry all information and statements included in any information submitted to the City and its agents, are true and correct in all material respects. The Entity acknowledges that the facts and representations contained in the information

submitted by the Entity are a material factor in the decision of the City to enter into this Subsequent Developer Agreement.

(f) The cost and financing of the Project will be the responsibility of the Entity.

(g) The Entity is financially and technically capable of financing, designing, constructing, operating, and maintaining the Project in accordance with its obligations under this Subsequent Developer Agreement.

ARTICLE 3

COVENANTS AND RESTRICTIONS

3.01 Covenants and Restrictions of the City.

(a) The City covenants that it will comply with all Applicable Laws.

(b) The City covenants to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan and this Subsequent Developer Agreement, and to execute any documents required to obtain such approvals and otherwise to cooperate with the Entity with respect to the Governmental Approvals.

(c) Upon request by the Entity to condemn any restrictions on the real property constituting the Project Site initially imposed by James Bradley, the rights to which, if any, being held by his heirs, successors and assigns, the City agrees to exercise the power of eminent domain in accordance with applicable law on such terms and conditions as are acceptable to the City in its sole discretion at the time of the request.

3.02 Covenants and Restrictions of the Master Developer

(a) Master Developer covenants that it will assist with and participate in a coordinated defense with the City in the event of litigation related to the validity of this Subsequent Developer Agreement, so long as said defense does not involve litigation against an affiliated entity of Master Developer.

(b) The Master Developer covenants that it has reviewed the Application in good faith and has found it acceptable for the purpose of entering into this Agreement.

3.03 Covenants and Restrictions of the Entity.

(a) The Entity shall construct on the Project Site only the uses as established in the Redevelopment Plan and as approved by the Planning Board.

(b) The Entity shall not sell, lease or otherwise transfer all or any portion of the Project Site unless an initial Certificate of Occupancy has been

issued for the Project or as otherwise permitted in accordance with the Financial Agreement, provided that nothing contained herein shall prohibit the Entity from entering into contracts for such purposes.

(c) The Entity shall keep the Project Site free from any substantial accumulation of debris or waste materials generated as a result of the Project and shall maintain in good condition any landscaping required to be planted on the Project Site pursuant to the Final Site Plan. Additionally, the Entity shall keep the areas immediately surrounding the Project Site, such as public roads, sidewalks, etc. free from any accumulation of debris or waste materials generated as a result of the Project and any such debris shall be removed at the end of each work day, or sooner in the case of public safety, as directed by the City Manager.

(d) The Entity shall, in connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Site or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and the Entity, its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status.

(e) The Entity shall, in order to effectuate the purposes of this Subsequent Developer Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be reasonably requisite or proper for the construction and development of the Project in accordance with the Final Site Plan, this Subsequent Developer Agreement, the Redevelopment Plan, and Applicable Law.

(f) The Entity shall, upon completion of construction of the Project, obtain all Governmental Approvals required, if any, authorizing the occupancy and use of the Project for the purposes contemplated hereby.

(g) The Entity shall not suspend or abandon or discontinue the performance of its obligations under this Subsequent Developer Agreement for a period of more than sixty (60) consecutive days, provided, however, that a suspension of the performance of its obligations under this Subsequent Developer Agreement shall be permitted for the reasons set forth in Section 4.06 of this Subsequent Developer Agreement.

(h) The Entity shall cause the Project to be developed, financed, constructed, operated and maintained without any cost or expense to the City.

(i) The Entity shall develop, finance, construct, operate and maintain the Project on the Project Site consistent with Applicable Laws, Government Approvals, the Redevelopment Plan, and this Subsequent Developer Agreement.

(j) The Entity shall not encumber, hypothecate or otherwise use the Project Site, or any part thereof as collateral for any transaction unrelated to the Project.

(k) The Entity shall use commercially reasonable efforts to diligently undertake the financing, construction, development, operation, and maintenance of the Project during the period between the Commencement of Construction and Completion of Construction of the Project in accordance with the deadlines or timeframes for completion of Project activities as set forth in this Subsequent Developer Agreement.

(l) **Opportunities for Local Residents during Construction**. The Entity shall make a good faith effort to encourage twenty (20) percent local resident participation in the construction of the Project. The Entity shall be deemed to have satisfied the good faith effort requirement contained in this Section if the Entity takes the following actions:

i. Hold a pre-qualification information session (the "**Workforce Information Session**"), in coordination with the City Manager, or his/her designee, prior to the solicitation of bids and pricing for the Project to encourage local contractors/subcontractors to bid on the Project.

ii. Notify contractors/subcontractors before executing a contract and/or prior to pre-bid and pre-construction meetings about the required good faith effort to engage local residents, in the construction of the Project.

iii. As part of the Workforce Information Session, notify contractors, subcontractors and any then known prospective tenants/operators of the Project of the Workforce Information Session; provide information (to the extent known) to attendees of potential short term and long term positions with respect to the Project; collect resumes and expressions of interest in employment from those who attend; and make those resumes and expressions of interest in employment available to the contractors, subcontractors and any then known prospective tenants/operators of the Project.

iv. Establish two (2) paid internships annually during the term of this Agreement in the fields of property management, real estate development, and/or construction management with the Entity, an affiliate of the Entity, the general contractor for the Project and/or any subcontractor or then known tenants/operators of the Project.

Applications for the internships can be submitted at the Workforce Information Session.

v. Establish two (2) apprenticeships, subject to receipt of two (2) qualified applicants, in the construction field annually during the term of this Agreement with the Entity, an affiliate of the Entity, the general contractor for the Project or any then known tenants/operators of the Project. Applications for the apprenticeships can be submitted at the Workforce Information Session.

vi. Establish four (4) scholarships annually during the term of this Agreement, in the amount of $2,500 each, to be used in the discretion of the recipient for vocational or academic education. Those who have successfully completed the internships, apprenticeships, or the hotel training program described below shall be eligible for the scholarship.

vii. Establish one (1) mentorship annually during the term of this Agreement for small businesses to gain experience in large scale construction. Businesses can apply to participate in the mentorship program at the Workforce Information Session.

viii. Regularly contact and cooperate with the City Manager, or his/her designee, in connection with workforce opportunities. Notify the City Manager of workforce needs for the Project so that the Director may refer qualified City residents to meet the workforce needs of the Project.

(m) **<u>Opportunities for Women and Minorities in Construction Jobs:</u>** The Entity shall make good faith efforts to encourage women and minority participation in the construction of the Project. The Entity shall be deemed to have satisfied the good faith effort requirement contained in this Section if the Entity takes the following actions:

i. The Entity shall disseminate information within the City and the County of Monmouth concerning opportunities for women and minority contractors, vendors and suppliers prior to the commencement of construction of the Project.

ii. Hold the Workforce Information Session, in coordination with the City Manager, or his/her designee, prior to the solicitation of bids and pricing for the Project to encourage women and minority contractors/subcontractors to bid on the Project.

iii. Notify contractors/subcontractors before executing a contract and/or prior to pre-bid and pre-construction meetings about the

required good faith effort to engage women and minorities, in the construction of the Project.

(n) The Entity shall construct the Project in conformance with CAFRA Permit number 1303-03-0001.2, issued by the New Jersey Department of Environmental Protection on March 26, 2004, as subsequently modified, and shall not seek any further modification of the CAFRA Permit. Only Master Developer and its affiliates are permitted to seek modification of the CAFRA Permit.

(o) The Entity shall record the Declaration of Restrictions in the office of the Monmouth County Clerk.

(p) The Entity shall indemnify the City as set forth in Section 9.11 hereof.

(q) The Entity shall provide all information, and shall execute all certificates or other documents, reasonably required in connection with the initial issuance of the RABs or required on a continuing basis in connection with the RABs. Such information shall include, but shall not be limited to, all representations, warranties, covenants and disclosures reasonably required pursuant to Applicable Laws, including, without limitation, the Act, limited liability company authorization law, RAB Law, federal and state income tax and securities laws, and in connection with the initial or re-sale of the RABs, or otherwise. The covenants of the Entity in this Section 3.04(q), including, without limitation, the requirement to provide information reasonably required in connection with any re-sale of the RABs, shall survive the termination of this Subsequent Developer Agreement, and shall only terminate at such time as no RABs remain outstanding.

(r) The Entity, and not the Master Developer, shall pay the Deficiency Amount (as defined in the Infrastructure Ordinance), if any, and the Special Assessment Agreement shall provide as such. The Entity's obligation to pay the Deficiency Amount shall survive the termination of this Subsequent Developer Agreement. The Deficiency Amount, if any, shall be payable by the Entity within thirty (30) days following the sale of the final Unit, and shall be payable if and to the extent that the Actual Pledged Special Assessment is less than the Projected Pledged Special Assessment, and shall be used to redeem all or any portion of the RABs, such that the Actual Pledged Special Assessment shall be sufficient to pay the debt service and other charges applicable to the remaining aggregate principal amount of RABs (after redemption caused by payment of the Deficiency Amount) as same shall come due through maturity. Notwithstanding the foregoing, the Parties may agree to a different Deficiency Amount and/or payment mechanism, but only if agreed to in writing by all Parties and the terms of which shall be set forth in the indenture for the RABs.

3.04 Effect of Covenants. (a) It is intended and agreed that the covenants and restrictions set forth in Sections 3.03(a) and 3.03(b) shall be covenants running with the land. All covenants in Section 3.03, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Subsequent Developer Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the City and the Master Developer, and any successor in interest to the Project Site, or any part thereof, against the Entity.

3.03 It is intended and agreed that the covenants and restrictions set forth in Section 3.01 and Section 3.02, respectively, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Subsequent Developer Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Entity and its successors and assigns, and any successor in interest to the Project Site, or any part thereof, against the City, the Master Developer their successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project Site or any part thereof. Enforcement by City or Master Developer. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed that the City, the Master Developer, and their successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.03 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the City and, as applicable, the Master Developer for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City or Master Developer has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City and the Master Developer shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies as set forth in Article 6 of this Subsequent Developer Agreement.

3.04 Duration of Covenants. With respect to the Project, but for the covenants set forth in Section 3.03(q) and Section 3.03(r), which shall survive the termination of this Subsequent Developer Agreement, the covenants set forth in Section 3.03 shall be deemed satisfied and of no further force and effect upon termination of this Subsequent Developer Agreement as evidenced by the issuance by the City of a Certificate of Completion.

3.05 Termination of Declaration. The Declaration of Covenants and Restrictions may be terminated if the Subsequent Developer Agreement is terminated by mutual agreement of the parties or by default. If terminated, the Parties shall prepare a release of the Declaration for execution.

ARTICLE 4

PROJECT IMPLEMENTATION

4.02 4.01 General Scope of Project. It is understood and agreed by and between the Parties that the Entity has the right to develop the Project Site with the Project consistent with the terms of the Entity's Subsequent Developer's Application, Applicable Laws, Governmental Approvals, the Redevelopment Plan, the Redeveloper Agreement, and this Subsequent

Developer Agreement. The Parties acknowledge the Entity's right to make non-material changes to the Project as described in the Application if same are required as a condition of Planning Board approval. Amendments to Application. The Entity shall not make any material change to its Application. In the event of any changes to the Application are proposed, the Entity shall provide copies of all amended plans, applications, or submissions to the City and the Master Developer within ten (10) business days prior to any amended submission to the Planning Board or any Governmental Agency and shall provide the City and Master Developer with not less than ten (10) days' written notice prior to any hearing or meeting related to any amended submission.

4.03 Application for Governmental Approvals for Project Site. Within 30 days of the Effective Date, the Entity shall use commercially reasonable efforts to submit (if not already submitted) and diligently prosecute to conclusion, all other Applications for Government Approvals necessary for the financing, development, construction, operation, and maintenance of the Project Site. The Entity shall obtain all Governmental Approvals within one (1) year of the Effective Date ("**Outside Approvals Date**"), as may reasonably be extended by formal action of the City Council for up to an additional 120 days, provided that the Entity has utilized good faith efforts to obtain Governmental Approvals but has not yet received same. In no event shall the Outside Approvals Date be extended beyond 120 days without the explicit written consent of all Parties to this Subsequent Developer Agreement.

4.04 Project; Entity Deadlines. With respect to the Project, the Entity shall meet the deadlines and timeframes for the completion of Project activities as set forth in this Section 4.04 and as set forth more fully in the Project Schedule annexed herein as Exhibit B and made a part hereof.

(a) Commencement of Construction for the Project. The Project, which consists of three (3) buildings containing a total of 48 Units, as described the Recitals set forth above, shall be constructed in three (3) phases, described as follows:

(1) Phase I – One (1) residential condominium townhome building containing sixteen (16) Units, and the construction of the Public Open Space

(2) Phase II – One (1) residential condominium townhome building containing sixteen (16) Units.

(3) Phase III – One (1) residential condominium townhome building containing sixteen (16) Units.

(b) No later than 90 days after all Governmental Approvals have been obtained and any applicable appeal period for such Governmental Approvals has expired, with the exception of receipt of Building Permits for Phase I, Phase II and Phase III of the Project, the Entity shall apply for Building Permits and Commence Construction with respect to Phase I of the Project; provided, however, that the Entity shall not Commence Construction prior to the occurrence of all conditions subsequent set forth in Section 6.01(a) – (c) hereof.

(c) Completion of Construction for Phase I of the Project. Not later than twelve (12) months years after receipt of Building Permits for Phase I and all other required Governmental Approvals authorizing the Commencement of Construction of the Project, the Entity shall Complete Construction with respect to Phase I of the Project.

(d) Commencement of Construction for Phase II of the Project. Prior to Completion of Construction for Phase I of the Project, the Entity shall apply for and receive Building Permits for the commencement of construction of Phase II of the Project.

(e) Completion of Construction for Phase II of the Project. Not later than twelve (12) months years after receipt of Building Permits authorizing the Commencement of Construction of Phase II of the Project, the Entity shall Complete Construction with respect to Phase II of the Project.

(f) Commencement of Construction for Phase III of the Project. Prior to Completion of Construction for Phase II of the Project, the Entity shall apply for and receive Building Permits for the commencement of construction of Phase III of the Project.

(g) Completion of Construction for Phase III of the Project. Not later than twelve (12) months years after receipt of Building Permits authorizing the Commencement of Construction of Phase III of the Project, the Entity shall Complete Construction with respect to Phase III of the Project and any other remaining components of the Project.

4.05 Progress Reports. (a) For so long as this Subsequent Developer Agreement shall remain in effect the Entity shall, without the need for a written request, provide quarterly reports to be submitted on February 1, May 1, August 1 and November 1 of each year, to the City and Master Developer, as to the actual progress of the Entity with respect to (i) the acquisition of Government Approvals; (ii) Commencement of Construction of the Project; (iii) Completion of Construction of the Project; (iv) Opportunities for Local Residents, Women and Minorities required by Sections 3.03 (l) (m) and (n); and (v) such other matters consistent with this Subsequent Developer Agreement as the City shall reasonably request be addressed in such reports.

(b) Outcome Assessments. The Entity hereby agrees to provide written reports to the City one year after the completion of construction of the Project, with respect to the internships, apprenticeships and mentorships described at Section 3.03 above, detailing the number of people who participated, the number who successfully completed the program, the number who were hired in the respective field as a result of the program, their job titles, and whether they were still employed in those positions as of the date of the outcome assessment.

4.06 Extensions. Extensions for deadlines set forth in Article 4 shall be as follows. All deadlines contained herein shall be reasonably extended as a matter of right in the event of any Event of Force Majeure. It is the purpose and intent of this provision that in the event of the

occurrence of any such enforced delay, the time or times for performance of the obligations of the City or the Entity shall be extended for a reasonable period not less than the period of the enforced delay.

4.07 Certificate of Occupancy and the Certificates of Completion. (a) Upon Completion of Construction pursuant to Section 4.04 with respect to a Unit in the Project, the Entity shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for any such Unit in the Project. No Certificate of Occupancy or Temporary Certificate of Occupancy shall be issued until the completion of the Public Open Space, in accordance with the Landscaping Plan, to the satisfaction of the City.

(a) Following the issuance of all of the final Certificates of Occupancy for the Units in the Project (which shall be presumptive evidence of satisfaction of all requirements related to construction of the Project) and the satisfaction of the terms and conditions of this Subsequent Developer Agreement, and upon request for the same by the Entity, the City agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Entity has performed all of its duties and obligations with respect to the Project under this Subsequent Developer Agreement and has completed construction of the Project in accordance with the requirements of this Subsequent Developer Agreement. The Certificate of Completion (which shall be in recordable form) shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants including without limitation the covenants in Article 3 (but for the covenants set forth in Section 3.03(q) and Section 3.03(r), which shall survive the termination of this Subsequent Developer Agreement), with respect to the Project in this Subsequent Developer Agreement and the Redevelopment Plan with respect to the obligations of the Entity to construct the Project within the dates for completion of same. Within thirty (30) days after written request by the Entity, the City shall provide the Entity with the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that the Entity has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default under this Agreement and what reasonable measures or acts will be necessary in the opinion of the City in order for the Entity to be entitled to the Certificate of Completion. Upon the issuance of a Certificate of Completion, the conditions that were found and determined to exist on the Project Site at the time the Project Site was determined to be in need of redevelopment, shall be deemed to no longer exist and the land and improvements thereon shall not be subject to eminent domain as a result of those determinations.

4.08 Intentionally Omitted

4.09 Off-Site Obligations. The Entity shall be responsible for certain off-site obligations as follows:

(a) Sewer connection charges of no less than $3,220 per unit in accordance with Ordinance adopted February 2, 2005, to be paid in the manner and at the time set forth therein;

(b) Payment to the City of $2,212 per unit (which shall constitute a credit against the applicable Master Developer's obligation under Article 13 of the Redeveloper Agreement) to offset the costs of affordable housing and other community initiatives in the City, with one-half of such payment to be due concurrently with the application for building permits, and the other half of such payment to be due at the time of application for temporary or permanent certificates of occupancy. Once made, such payments shall not be refundable. For the purpose of calculating the credit against the Master Developer's obligation under Article 13 of the Redeveloper Agreement, the issuance of a Certificate of Occupancy for a unit shall constitute proof that the Entity paid the affordable housing fee that was due for that unit; and

(c) Pursuant to the Original Infrastructure Ordinance as amended, including on June 13, 2018 by the Infrastructure Ordinance**,** the City shall impose a special assessment on the Project and the Project Site equivalent to the benefit conferred or deemed conferred by certain public infrastructure improvements constructed and installed to be constructed and installed by the Master Developer, including public wastewater, stormwater, roadway, streetscape, utility and other infrastructure improvements in the Redevelopment Area in accordance with the provisions of the Redevelopment Plan.

(i) The Entity hereby agrees and acknowledges that it has determined to enter into a special assessment agreement with the City pursuant to *N.J.S.A.* 40A:12A-66 of the RAB Law, as authorized by the Infrastructure Ordinance (the "**Special Assessment Agreement**").

(ii) The Parties hereby agree that the Special Assessment Agreement shall be substantially in the form of the agreement attached to the Original Infrastructure Ordinance as Exhibit B, as amended by Ordinance No. 2018-20, the final form of which shall be acceptable to the Master Developer and so accepted in writing by the Master Developer prior to the authorization of such Special Assessment Agreement by the City and the Entity.

(iii) The Parties hereby agree that, for purposes of calculating the special assessment, the Special Assessment Agreement shall provide that the assumed sales prices of the Units until sold shall be those prices set forth in Exhibit 2 attached hereto, unless otherwise agreed to in writing by all

Parties. Nothing shall prohibit the Entity from selling the Units for more than the assumed sales prices set forth in Exhibit 2.

(iv) The Parties hereby agree that the first installment of the special assessment under the Special Assessment Agreement shall commence to accrue on the first day of the month immediately following the earlier of: (i) eligibility of a Unit for the issuance of a Certificate of Occupancy; and (ii) the expiration of the construction interest period on the RABs. As set forth in Section 6.03(d)(ii), the actual construction interest period (not to exceed two (2) years) shall be selected by the Subsequent Developer no later than the execution of the Special Assessment Agreement, based upon its good faith estimate of the construction period for the Project. Nothing in this Section 4.09(c)(iv) shall affect the deadlines and timeframes set forth in Section 4.04 hereof.

(v) The Parties hereby agree that the Entity, and not the Master Developer, shall be responsible for payment of the Deficiency Amount, if any, and the Special Assessment Agreement shall provide as such.

ARTICLE 5

PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

5.01 Prohibition against Transfers of Interests by the Entity. The Entity recognizes the importance of the Project to the general welfare of the community and that the identity of the Entity and its qualifications are critical to the City and Master Developer in entering into this Subsequent Developer Agreement particularly in view of the public aids that have been made available for the purpose of making such redevelopment possible. Except as is otherwise provided by the Subsequent Developer Agreement, Applicable Laws and/or the Financial Agreement, the City and Master Developer consider that a transfer of the ownership of the Entity or of any part thereof or any other act or transaction involving or resulting in a change in the ownership of the Entity, is for practical purposes, a transfer or disposition of the Project then owned by the Entity. The Entity recognizes that it is because of such qualifications and identity that the City and Master Developer are entering into this Subsequent Developer Agreement with the Entity, and, in so doing, the City and Master Developer are relying on the obligations of the Entity and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by the Entity hereunder.

As a result of, but subject to, the terms of the preceding paragraph, prior to completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed, the Entity agrees for itself and any successor in interest that (i) there shall be no transfer by any owner of any controlling interest in the Entity, or by any successor in interest to such owner of any interest in the Entity, (ii) nor shall any such owner or successor in interest suffer any such transfer to be made, (iii) nor shall such owner or successor in interest make, or suffer to be made, any other change in ownership of any controlling equity interest in the Entity or in the relative distribution thereof between and among the owners, or with respect to the identity of the parties in control of the Entity, by any other method or means, whether by increased

capitalization, merger with another corporation, partnership, or limited liability entity or otherwise. For purposes of this Subsequent Developer Agreement, the term "owners" is defined to include the interests of the members of the Entity, as the case may be, and the owners of such members, partners, or shareholders.

5.02 Exemptions from Prohibited Transfers. Notwithstanding the foregoing, following notice to and with the consent of the City which consent shall not be unreasonably withheld, conditioned or delayed, the following shall not constitute a prohibited transfer, for purposes of Section 5.01: The assignment by the Entity of its rights under this Subsequent Developer Agreement upon the following conditions: (i) the assignee of the Entity must be an entity controlling, controlled by, or under common control of the Entity or iStar Inc.; (ii) the assignee of the Entity shall assume all of the obligations of the assignor Entity hereunder, but the assignor Entity shall remain primarily liable for the performance of such Entity's obligations, (iii) the Entity may transfer or assign its obligation to design, construct, landscape, and maintain the Public Open Space to the Master Developer upon notice to the City (iv) a copy of the fully executed written assignment and assumption agreement shall be promptly delivered to the City and Master Developer, (v) such assignment does not violate any of the Governmental Approvals.

5.03 Transfer of Subsequent Developer Agreement. The Entity further agrees for itself, and its successors and assigns, that prior to the completion of the Project or any portion thereof, as evidenced by the issuance of a Certificate of Completion it will not make or create, or suffer to be made or created, any sale, assignment, conveyance, lease or transfer in any other mode or form (collectively, the "**Transfers**") of its interests in the Project Site or its interest in this Subsequent Developer Agreement or in this Project, or any part thereof or any interest therein, without the prior written approval of the City, except as provided below, in the Financial Agreement, and otherwise in this Article 5.

5.04 Consent to Permitted Transfers. (a) The City and Master Developer hereby consent, without the necessity of further approvals from any entity, to the following Transfers: (i) any Mortgage or related security granted by the Entity to a Permitted Mortgagee for the purpose of obtaining the financing necessary to enable the Entity or any successor in interest to the Project Site or any part thereof, to perform its obligations under this Subsequent Developer Agreement with respect to Completion of the Project and any other purpose authorized by this Subsequent Developer Agreement, (ii) any Mortgage or Mortgages and other liens and encumbrances granted by the Entity to a Permitted Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, and marketing of the Project; (iii) any transfer of all or portions of the real property comprising the Project Site from its current owner to the Entity; (iv) any contract to sell a unit in the Project to a purchaser and/or the sale of such unit upon its completion and the issuance of a Certificate of Occupancy; and (v) any lease or occupancy agreement(s) for all portions of the Project or the Project Site, provided that the same are in compliance with the Financial Agreement.

(b) With respect to any of the Transfers listed in Section 5.04(a), (i)-(iii) the Entity shall provide to the City and to the Master Developer written notice of at least fifteen (15) days prior to such Transfer, including a description

of the nature of such Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such Transfers.

5.05 Prohibition Against Speculative Development. Because of the importance of Project to the general welfare of the community, the Entity represents and agrees that its undertakings pursuant to this Subsequent Developer Agreement will not be used for speculation in land holding.

5.06 Information as to Ownership of Entity. In order to assist in the effectuation of the purpose of this Article 5, the Entity agrees that during the period between the execution of this Subsequent Developer Agreement and the completion of the Project as evidenced by the issuance of a Certificate of Completion, the Entity shall, at such time or times as the City may reasonably request, furnish the City with a complete statement subscribed and sworn to by the managing partner, managing member or other executive officer or member of the Entity, setting forth all of the partners, both general and limited, managing members, shareholders, or other owners of equity interests of the Entity and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Entity, their names and the extent of such interests.

5.07 Transfer of Title to Public Open Space. The Subsequent Developer shall, upon completion of the Public Open Space, transfer title of the Public Open Space to the City for the consideration of one (1) dollar. The Subsequent Developer, or its permitted transferee or assignee, shall continue to maintain the Public Open Space, for a period of five (5) years from the date of construction.

(a) Time and Place of Closing. The closing of title to the Public Open Space from the Subsequent Developer to the City (the "Closing"), shall occur as soon as practicable after the first issuance of any Certificate of Occupancy for any Units, but in no event later than six (6) months from the issuance of the final Certificate of Completion for Phase I of the Project. Title shall close on a mutually agreeable date at the offices of the City's Corporation Counsel or such other place as the Subsequent Developer and the City may mutually agree.

(b) Transfer of Ownership. At Closing, the Subsequent Developer shall provide the City with a properly executed Bargain and Sale Deed with Covenants Against Grantors' Acts for the Property (the "Deed"), a properly executed affidavit of consideration or exemption, and such other documentation as may reasonably be requested by the City or its title company.

ARTICLE 6

DEFAULT AND REMEDIES

6.01 Automatic Termination of Subsequent Developer Agreement. This Subsequent Developer Agreement, including, without limitation, the Entity's designation as a Subsequent Developer, shall automatically terminate, without any further action of any Party after notice and opportunity to cure in accordance with Section 6.02, 6.03 or 6.04 as applicable, if each

and every of the following conditions subsequent are not completed on or before the Outside Approvals Date::

(a) Entity has obtained all Governmental Approvals;

(b) Financial Agreement is authorized, executed, and delivered by each of the Entity and the City;

(c) Special Assessment Agreement, in form consented to by Master Developer in writing, is authorized, executed, and delivered by the City and the Entity; and

(d) City issues one or more series of bonds (non-recourse to the City) pursuant to the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 *et seq.* ("**RABs**").

(i) The terms and conditions of the RAB shall be in accordance with and as further set forth in the Redeveloper Agreement, including, without limitation: (1) the RABs shall be primarily secured by the pledged portion of the special assessment provided under the Special Assessment Agreement (the "**Pledged Special Assessment**"); (2) the RABs shall be issued on federally tax-exempt basis to the extent permitted by applicable law; and (3) the proceeds of the RABs shall be made available to the Master Developer for the construction of, or reimbursement for, infrastructure improvements benefitting the Project.

(ii) The RABs shall have a reasonable construction interest period, not to exceed two years (2) from the date of issuance of the RABs. The actual construction interest period (not to exceed two (2) years) shall be selected by the Subsequent Developer no later than the execution of the Special Assessment Agreement, based upon its good faith estimate of the construction period for the Project. Nothing in this Section 6.03(d)(ii) shall affect the deadlines and timeframes set forth in Section 4.04 hereof. The RAB purchaser will determine whether to accrue interest during the construction period, or fund it (capitalized interest) with a portion of the proceeds of the RABs.

(iii) For purposes of sizing the RABs, the assumed sales prices of the Units shall be those prices set forth in Exhibit 1 attached hereto, unless otherwise agreed to in writing by the Parties.

(iv) The indenture of trust (supplemental or otherwise) providing for the issuance of the RABs shall provide, at a minimum, that, to the extent the actual amount of aggregate Pledged Special Assessments payable by the owners of the Units upon sale of all Units (the "Actual Pledged Special Assessments") is greater than the amount of the Pledged Special Assessments assumed at the time of issuance of the RABs (the "Projected Pledged Special Assessments," and the difference between the Actual

Pledged Special Assessments and the Projected Pledged Special Assessments, the "Surplus Pledged Special Assessments"), the City may, after receipt of a written request of the Master Developer, issue an additional series of RABs, to be primarily secured by the Surplus Pledged Special Assessments, and the terms and conditions of such RAB shall comport with (i)-(iv) above, to be set forth in the applicable indenture of trust. The use of the bond proceeds from any such issuance of RABs shall be as set forth in the Redeveloper Agreement.

6.02 City Defaults. The following shall constitute an Event of Default by the City: the failure of the City to observe and perform any covenant, condition, representation, warranty or agreement hereunder, and continuance of such failure for a period of forty-five (45) days, after receipt by the City of written notice from the Entity specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the forty-five (45) days after such written notice has been given, it shall not be an Event of Default as long as the City is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

6.03 Entity Defaults. Any one or more of the following shall constitute an Event of Default by the Entity:

(a) Failure of the Entity to observe and perform any covenant, condition, representation, warranty or agreement hereunder, specifically including failure to meet the milestones in Section 4.02 and Section 4.03 hereunder, and continuance of such failure for a period of forty-five (45) days, after receipt by the Entity of written notice from the City or Master Developer specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the forty-five (45) days after such written notice has been given, it shall not be an Event of Default as long as the Entity is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(b) (i) The Entity shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Entity and shall not have been dismissed for a period of ninety (90) consecutive days; (iii) the Entity, (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Entity has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Entity shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Entity, and shall not have been dismissed for a period of ninety (90) consecutive days;

(vii) an Order for Relief shall have been entered with respect to or for the benefit of the Entity, under the Bankruptcy Code; (viii) an Order, judgment or decree shall have been entered, without the application, approval or consent of the Entity, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Entity, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; (ix) the Entity shall have suspended the transaction of its usual business for ninety (90) consecutive days.

(c) The Entity or its successor in interest shall (i) fail to pay any real estate taxes, payments in lieu of real estate taxes, the fees and special assessments set forth in Section 4.09 herein, or any other governmental assessments on the Project Site or any part thereof when due and such failure shall continue for a period of ten (10) consecutive days after notice thereof or, (ii)(a) place on the Project Site any encumbrance or lien unauthorized by this Subsequent Developer Agreement, or (b) suffer any levy or attachment to be made, or any construction liens that have not been adequately bonded or collateralized, or any other unauthorized encumbrance or lien to attach, and with respect to (ii) (a) or (b), provision satisfactory to the City for removal or discharge of such unauthorized encumbrance or lien shall not have been made within sixty (60) days after written demand by the City to do so.

(d) There is, in violation of this Subsequent Developer Agreement, a transfer or assignment as prohibited in Article 5.

6.04 Remedies of City or Master Developer upon Event of Default by the Entity. (a) Whenever any Event of Default by the Entity shall have occurred and be continuing, the City may terminate this Subsequent Developer Agreement, rescind any designation of the Entity as a Subsequent Developer or take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Entity under this Subsequent Developer Agreement, provided that no remedy available to the City shall prohibit the Entity from completing sales of Units in the Project to contract purchasers in accordance with the terms of the preliminary offering statement approved by the New Jersey Department of Community Affairs, assert or impose liability on the Entity for special, indirect, consequential or punitive damages or assert or impose personal or individual liability on the affiliates, members, managers, officers and agents of the Entity.

(b) Whenever any Event of Default by the Entity shall have occurred and be continuing, the Master Developer may make a written request to the City to exercise any remedies available to the City in the Event of Default by the Entity, as set forth in Section (a), which request shall not be unreasonably denied by the City. If the City does not undertake to enforce this Subsequent Developer Agreement, within one hundred and twenty days (120) days of receipt of the written request or at least thirty (30) days prior to the expiration of any applicable appeal period that may apply to such enforcement, whichever shall be shorter, Master Developer may take whatever action at law or in equity as may

appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Entity under this Subsequent Developer Agreement

(c) In addition to, and not in limitation of, the remedies available to the City and to the Master Developer as set forth above, and not withstanding any requirement of the City and the Master Developer to submit to binding arbitration to the contrary, the City or the Master Developer, as set forth above, may seek in a court of competent jurisdiction a temporary injunction or injunction to prevent: (i) any transfer or assignment not permitted pursuant to Article 5; or (ii) any action by the Entity in breach of covenants as set forth in Section 3.03(a) or 3.03(b).

6.05 Remedies of the Entity upon Event of Default. Whenever any Event of Default by the City or the Master Developer shall have occurred and be continuing, the Entity may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the City or the Master Developer under this Subsequent Developer Agreement.

6.06 Restoration of Status. In case any Party, as applicable, shall have proceeded to enforce its rights under this Subsequent Developer Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely any Party, as applicable, then and in every such case, the Parties shall be restored respectively to their respective positions and rights hereunder, and all rights, remedies and powers of the Parties shall continue as though no such proceedings had been taken.

6.07 Failure or Delay by Any Party. Except as otherwise expressly provided in this Subsequent Developer Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or any such rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6.08 Remedies Cumulative. No remedy conferred by any of the provisions of this Subsequent Developer Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

COOPERATION AND COMPLIANCE

7.01 Implementation of Subsequent Developer Agreement and Redevelopment Plan. The parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, and consents in order to satisfy the terms and conditions of this Subsequent Developer Agreement and the Redevelopment Plan as it applies to the Project and further agree to cooperate as may be reasonably requested by any Permitted

Mortgagee of the Entity in connection with obtaining financing for the Project or a part thereof; provided, however, that all cost of such action shall be borne by the Entity.

ARTICLE 8

MORTGAGE FINANCING; RIGHTS OF THE MORTGAGEE

8.01 Mortgage Financing. Neither the Entity nor the owner of the Property may obtain and record a Mortgage for the Project prior to the execution and recordation of the Special Assessment Agreement, unless (a) the Mortgage contains an explicit provision providing that it shall be subordinate to the Special Assessment Agreement; and (b) in the event a Mortgage is recorded against the Property prior to the recording of the Special Assessment Agreement, the Special Assessment Agreement shall include the agreement and acknowledgment of the mortgagee that the Mortgage lien is subordinate to the lien of the Special Assessment Agreement. For purposes of clarification and to remove any doubt, (x) no consent of the issuer of any Mortgage for the Project, or the purchase money mortgage financing any unit within the Project, is required, so long as the Special Assessment Agreement has been recorded prior to the recording of any such Mortgage or purchase money mortgage and (y) nothing in this Agreement in any way restricts any Mortgage or purchase money mortgage, to the extent desired or permitted by the Entity, from being recorded as first lien mortgages, subordinate only to the lien of the Special Assessment Agreement and other municipal liens. The Entity further agrees to provide a copy of any proposed Mortgage to the Master Developer at least five (5) days prior to the execution of said Mortgage. Thereafter, all monies obtained in connection with any construction financing for the Project must be devoted to the construction of improvements within the Project Site, related hard costs such as, but not limited to, land acquisition, and related soft costs such as interest, professional fees and filing fees. Upon completion of the Project, as evidenced by issuance of a Certificate of Completion for the Project, the Entity may refinance the Project Site without restriction.

8.02 Completion of Project by Mortgagee. Notwithstanding any of the provisions of this Subsequent Developer Agreement, including those which are or are intended to be covenants running with the land, any Permitted Mortgagee holding a Mortgage on the Project Site (including any such holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other court proceedings, or action in lieu thereof, but not including (i) any other Party who thereafter obtains title to the Project Site from or through such holder or (ii) any purchaser at foreclosure sale), shall in no way be obligated by the provisions of this Subsequent Developer Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in this Subsequent Developer Agreement be construed to so obligate such holder; provided that nothing in this Article or any other Article or provision of this Subsequent Developer Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted under the Redevelopment Plan.

8.03 Notice to Mortgagee. If the City or Master Developer shall deliver any notice or demand to the Entity with respect to any Event of Default by the Entity of its obligations or covenants under this Subsequent Developer Agreement, the City or Master Developer shall forward a copy of such notice or demand to each Permitted Mortgagee holding any Mortgage

authorized by this Subsequent Developer Agreement. The Entity shall promptly advise the City and Master Developer of the name and address of any Permitted Mortgagee upon the closing of any Mortgage loan to such Permitted Mortgagee.

8.04 Mortgagee's Right to Cure Default**.** After delivery of notice of an Event of Default, each Permitted Mortgagee shall (insofar as the rights of the City and Master Developer are concerned) have the right, at its option, to cure or remedy such Event of Default and to add the cost thereof to the Mortgage debt and the lien of its Mortgage; provided that, if the breach or default is with respect to construction of the Project, nothing contained in this Subsequent Developer Agreement shall be deemed to permit or authorize such Permitted Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the holder's security, including the improvements or construction already begun) without first having expressly assumed the obligation to the City, by written agreement reasonably satisfactory to the City, to complete, in the manner provided in this Subsequent Developer Agreement, the Project on the Project Site or the part thereof to which the lien, interest or title of such holder relates.

Any such Permitted Mortgagee opting to effect necessary cure action shall cure the Event of Default (i) within 30 days of receipt of notice of same in the case of a monetary default and (ii) within 60 days of receipt of notice of same in the case of a non-monetary default, unless same cannot reasonably be cured within such 60 day period and the Permitted Mortgagee commences the cure within the 60 day period and diligently pursues same to completion.

Any such Permitted Mortgagee who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the City to receive the Certificate of Occupancy and the Certificate of Completion as set forth in this Subsequent Developer Agreement.

ARTICLE 9

MISCELLANEOUS

9.01 Conflict with Redeveloper Agreement. To the extent that (i) the rights and responsibilities of the Entity and obligations of the City contained in this Subsequent Developer Agreement are inconsistent with the rights and responsibilities of a Subsequent Developer or the obligations of the City as set forth in the Redeveloper Agreement then provisions of this Subsequent Developer Agreement shall govern. The City acknowledges that the Master Developer shall have no liability under this Subsequent Developer Agreement and that its acknowledgement of this Subsequent Developer Agreement is solely for the purpose of recognizing the Entity and the Project pursuant to the Redeveloper Agreement. Nothing contained in this Subsequent Developer Agreement modifies, alters or waives the rights of either the City of the Master Developer under the Redeveloper Agreement. No action or inaction by the Entity shall be imputed to be considered a breach, default, or violation of the Redeveloper Agreement by the Master Developer.

9.02 No Consideration for Agreement. The Entity warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Subsequent Developer Agreement, other than normal costs of conducting business and costs of

professional services such as architects, engineers, financial consultants and attorneys. The Entity further warrants it has not paid or incurred any obligation to pay any officer or official of the City, any money or other consideration for or in connection with this Subsequent Developer Agreement.

9.03 Non-Liability of Officials and Employees. No member, official or employee of the City shall be personally liable to the Entity, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to the Entity or its successor, or on any obligation under the terms of this Subsequent Developer Agreement. No member, officer, or employee of the Entity shall be personally liable to the City under this Subsequent Developer Agreement.

9.04 Inspection of Books and Records.

(a) The City shall have the right at all reasonable times on reasonable advance notice to the Entity to inspect the books and records of the Entity pertinent to the requirements of this Subsequent Developer Agreement, including but not limited to construction contracts, books and records, leases, insurance policies, and agreements.

(b) The Entity shall have the right at all reasonable times to inspect the books and records of the City pertinent to the purposes of this Subsequent Developer Agreement.

(c) Such inspections must be performed at a time and in a manner as to not unreasonably interfere with the business operations of the Party whose books and records are being inspected.

9.05 Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Subsequent Developer Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Entity and the City, and acknowledged by the Master Developer.

9.06 Recitals. The recitals contained in this Agreement contain statements of fact and/or expressions of intention by the Parties and are deemed to be part of the substance of this Agreement.

9.07 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

9.08 Title of Articles and Sections. The titles of the several Articles and Sections of this Agreement, as set forth in the Table of Contents or at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.10 Severability. The validity of any Articles and Section, clause or provision of this Subsequent Developer Agreement shall not affect the validity of the remaining Articles and Section, clauses or provisions hereof.

9.11 Indemnification. The Entity, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense to indemnify, defend and hold harmless the Master Developer, the City, its governing body, their respective officers, employees, agents, attorneys and consultants, representatives and employees, agents, attorneys and consultants, representatives and employees and respective successors and assigns from any third Party claims, liabilities, losses, costs, damages, penalties and expenses (including reasonable attorney's fees) resulting solely from or in connection with one or a combination of the following (i) any breach by the Entity or its agents, employees or consultants, of the Entity's obligations under this Subsequent Developer Agreement, or (ii) the acts or omissions of the Entity agents, contractors or subcontractors, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project.

9.12 Governing Law. The Subsequent Developer Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

9.13 Waiver of Jury Trial. The Parties to this Subsequent Developer Agreement do hereby waive the right to a trial by jury with respect to any dispute or controversy concerning or arising as a consequence of this Agreement.

9.14 Notices. Any notice by a Party to this Subsequent Developer Agreement to another of the parties shall be deemed to have been properly given only if (i) delivered personally or (ii) sent by registered or certified mail return receipt requested in a postage paid envelope or (iii) sent by nationally recognized overnight delivery service to a Party at such Party's address set forth above or such other address as a Party may designate in writing. Notices shall be deemed to have been duly given when received by the addressee or upon the addressee's refusal to accept delivery. The terms of this Section 9.14 shall apply to any

Permitted Mortgagee upon such Permitted Mortgagee giving notice to the other parties of its identity and address.

9.15 Condemnation. The City is authorized under the Act to condemn property in a redevelopment area for the purpose of effectuating a redevelopment project; however, pursuant to Section 17.2 of the Redeveloper Agreement, the City has contractually agreed not to exercise its eminent domain powers concerning any property within the Boardwalk Area or the Prime Renewal Area of the Redevelopment Plan without Master Developer's consent.

IN WITNESS WHEREOF, the parties have executed this Subsequent Developer Agreement as of the date first written above.

[SEAL]

Attest: **THE CITY OF ASBURY PARK**

By: ____________________________
Cindy Dye
City Clerk

By: ____________________________
John Moor
Mayor
Date: ______________

Witness: **AP TRIANGLE, LLC**

____

By: ____________________________
[name]
[title]
Date: _________________

ASBURY PARTNERS, LLC

By: ________________________________

EXHIBIT A

Project Description

EXHIBIT A

AP Triangle LLC Townhouse Development

Block 3203, Lots 1-4, P/O 5 & 15, 16-19
Block 3206, Lots 1-3, P/O Lot 4

CITY OF ASBURY PARK, MONMOUTH COUNTY, NJ

Narrative Description of Project

Overview

AP Triangle LLC (the "Applicant") proposes a 48 unit townhouse residential community development project on an approximately 2-acre portion of the triangular-shaped block bounded by Cookman Avenue, Asbury Avenue and Heck Street and described on the City of Asbury Park's Tax Maps as Block 3203, Lots 1-5 and 15-19 and Block 3206, Lots 1-4 (hereinafter referred to as the "AP Triangle LLC Townhouse Development Project" or the "Project). The Project is located within Asbury Park's Waterfront Redevelopment Area ("WRA"). In order to implement the Project and facilitate the environmental remediation of the lots, Applicant intends to apply to the Asbury Park Planning Board for approval to merge Block 3203, Lots 1-5 and 15-19 and Block 3206, Lots 1-4 and to subdivide the resulting merged lot into five (5) lots consisting of three (3) development lots comprised of 24,103 square feet, 33,067 square feet and 31, 779 square feet, respectively, upon which Project will be constructed in phases, one (1) 6,091 square foot triangular lot located at the corner of Cookman and Heck Avenues (the "Remainder Lot") upon which a public space will be constructed as described below, and a third 84,768 sq. ft. triangular lot which is intended for future development. The three development lots will be remerged upon completion of construction into a unified, single condominium community.

The Project will consist of three (3) rows of buildings, comprised of sixteen (16) townhomes each. One row of townhouses is located along the Heck Street frontage ("Building 2"). A second row is located along the Asbury Avenue frontage ("Building 1"). The third row is located along an internal landscaped courtyard ("Building 3"). The two end units of each townhouse row are proposed to be 3 stories in height (with mezzanine) to reduce the height and massing of each row at the corners of the site. The remainder of the units are 4 stories in height. Each townhouse dwelling has two proposed parking spaces (one garage parking space and one driveway parking space).

As part of the overall development of the block, a public space will be constructed on the Remainder Lot at the northeast corner of the Heck Street and Cookman Avenue intersection. This space, which is 6,091 sq ft., will be Public Open Space and will provide both a strong visual connection and a strong pedestrian connection between Cookman Avenue and Lake Avenue. The Public Open Space shall be designed, constructed, landscaped, and maintained as part of the Project and in accordance with landscaping plans approved by the Mayor and City Council Upon completion the Public Open Space will be deeded to the City of Asbury Park pursuant to Section 5.07 hereof shall be deeded to the City, and shall be maintained by the Entity for a period of five (5) years after construction. Thereafter maintenance shall be provided by the City.

Architectural Design

The Project advances the design principles set forth in Section 2.2 (Redevelopment Objectives) of the Asbury Park Waterfront Redevelopment Plan ("WRP") by developing new residential buildings that extend Asbury Park's Oceanside character in a contemporary way. The proposed cedar shake style cladding references a traditional shore aesthetic while presenting a dramatic curbside appearance that is emblematic of newer coastal architecture. The overall layout of the townhome community emphasizes the frontages along Heck Street, Cookman Avenue and Asbury Avenue and reinforces the walkable urbanism of the area.

Careful consideration has been taken towards the details and the articulation of facade materials to achieve the City's goals of high-quality architecture and creating a pleasant and attractive environment for pedestrians. By varying the cementitious wood shake colors as well as the heights and colors of the bay projections, the proposed façade design becomes dynamic and gains dimensionality while maintaining a balanced overall composition. Building materials, including cementitious wood shakes, gray slate siding, and hardie trim elements, have been selected based on the site's architectural context and comply with architectural guidelines of the WRP. All building frontages, including those on Heck Street and Asbury Avenue, will have substantial landscaping including a majority of native plantings and street trees.

Building Program

Two townhouse floorplans will be offered which will range from approximately 1753 sq. ft. to 2884 sq. ft., with variations between depending upon the townhome location within the community. Each townhouse will be 26 feet wide providing ample space and accommodating social environments with open floor plans between the great room, dining room and kitchen. The townhouses will have a minimum of 3-bedrooms and some of the floorplans will have an optional 4th bedroom. All townhouses will offer luxury master suites with large walk-in closets and ensuite baths. Each townhouse dwelling will have 3 ½ baths to 4 full baths and all floorplans will have at least one separate loft area to provide a retreat from the main living areas

and support family activities. Each townhouse will have a very large rooftop deck (in excess of 200 square feet for townhouses with a full 4th story and in excess of 400 square feet for townhouses with a mezzanine level above the 3rd story) which will enhance the outdoor utility of the overall community and provide unparalleled views and enjoyment to each homeowner.

Zoning/WRP Compliance

The Project is located on an approximately 2.04-acre site within a portion of Block 3203, Lots 1-5 & 15-19 and Block 3206, Lots 1-4, as described above. The proposed condominium community is consistent with the requirements and the guidelines of the WRP. The proposed development tracts will exceed the WRP's minimum tract area requirements.

Pursuant to the WRP, the maximum height of the townhomes ranges from 3 stories (with a mezzanine level above) to 4 stories. The recent amendment to the WRP eliminated the need for a deviation from the height restrictions in the Development Control Plan concerning the 2-story maximum height requirement on the corner of Heck Street and Cookman Avenue.

A total of 96 parking spaces are provided which exceeds the requirement of 72 parking spaces (based on 1.5 spaces per dwelling unit). All garages are oriented towards the internal drive aisles and courtyard areas.

The following deviations from the WRP will be required:

- Deviation to permit the Remainder Lot at the intersection of Cookman Avenue and Heck Street to be less than the minimum lot area required under the WRP.
- Deviation to permit the Development Lot for Building 1 to have a secondary frontage along Heck Street of 98.59 square feet where a minimum of 100 feet of lot frontage is required.
- Deviation to permit sliding doors and windows where hinged doors and windows are required under the WRP. This aspect of the proposed application is present in other developments throughout the entire WRA.
- Deviation to permit windows installed flush with the outer surface of the façade. This aspect of the proposed development is present in other developments throughout the entire WRA.
- Deviation to permit frontage fencing which is composed of metal, instead of wood pickets.
- Deviation to permit frontage fences in a color other than white.

- Deviation to permit gray facades.

Infrastructure Improvements

- **Heck Street:** Installation of curb-cuts and storm drainage per Approved Development Plan and relocation and re-installation of street lights, trees, trash cans or other streetscape items as required by or in order to facilitate the implementation of the Approved Development Plan.
- **Asbury Avenue:** Installation of curb-cuts and storm drainage per Approved Development Plan and relocation and re-installation of street lights, trees, trash cans or other streetscape items as required by or in order to facilitate the implementation of the Approved Development Plan.
- **General:** Utilize existing sanitary laterals, arrange and pay applicable utility provider all costs for natural gas, electric, water and cable TV service.
- **Bicycle Racks:** Install bicycle racks in accordance with the conditions of the site plan approval by the Planning Board...

EXHIBIT B

Project Schedule

The schedule listed below outlines the general construction timing for the project, subject to obtaining all government approvals, weather conditions, and required municipal action.

Task	Deadline
Obtain Building Permits	May 1, 2020
Construction Start	May 15, 2020
Infrastructure and Site Work Complete	September 1, 2020
Deliver Bldg. Two (16 units)	March 15, 2021
Deliver Bldg. Three (16 units)	September 15, 2021
Deliver Bldg. One (16 units)	March 15, 2022
Finish Construction/Final Top Coat	April 30, 2022

EXHIBIT 1

Declaration of Covenants and Restrictions

DECLARATION OF

COVENANTS AND RESTRICTIONS

This Declaration of Covenants and Restrictions ("Declaration"), is made this _______ day of ___________, 2020, by AP Triangle, LLC, with principal offices c/o iStar, Attn: Brian Cheripka, 1114 Avenue of the Americas, 39th Floor, New York, NY 10039 (the "Entity")

FOR THE BENEFIT OF

The City of Asbury Park, a municipal corporation of the State of New Jersey with offices at 1 Municipal Plaza, Asbury Park, New Jersey, 07712 (the "City") acting in the capacity of a redevelopment agency for the City of Asbury Park, New Jersey; and such other persons and parties entitled to enjoy the benefits and protections of the covenants and restrictions hereof and to enforce the obligations of the Entity hereunder.

W I T N E S S E T H:

WHEREAS, the *New Jersey Local Redevelopment and Housing Law*, *N.J.S.A.* 40A:12A-1 *et seq.* (the "**Act**") authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

WHEREAS, on June 5, 2002, the City adopted the "Asbury Park Waterfront Redevelopment Plan" (as amended and supplemented from time to time, the "**Redevelopment Plan**") with respect to the "Asbury Park Waterfront Redevelopment Area," as defined in the Redevelopment Plan (the "**Redevelopment Area**"); and

WHEREAS, the City and Asbury Partners, LLC (the "**Master Developer**") entered into that certain "Amended and Restated Redeveloper and Land Disposition Agreement" dated October 28, 2002, which provides, among other things, that the Master Developer shall be responsible for the redevelopment of the properties governed by the Redevelopment Plan, which redevelopment it may to undertake itself, or through agreements with selected subsequent developers on a "block-by-block" basis; and

WHEREAS, in 2018 the City amended the Redevelopment Plan to provide for the redevelopment of individual properties within the Redevelopment Area, provided certain criteria are met, including the designation of the person or the Entity wishing to redevelop a property as a subsequent developer; and

WHEREAS, on June 13, 2018, the City adopted the First Amendment to the "Amended and Restated Redeveloper and Land Disposition Agreement" (the "**First Amendment**" and the "**Amended and Restated Redeveloper and Land Disposition Agreement**" together shall be referred to as the "**Redeveloper Agreement**", a copy of which is on file with the City Clerk), which set forth the City and Master Developer responsibilities with regard to the selection and designation of subsequent developers; and

WHEREAS, pursuant to the Redevelopment Plan and the Redeveloper Agreement, as amended, "any owner, purchaser, assignee or transferee of all or part of any property within the [Redevelopment] Area that is subject to the provisions of the Amended [Redevelopment] Plan" may seek to be designated as a subsequent developer by submitting a subsequent developer application to the Master Developer and the City, along with any escrow and application fees required by the City; and

WHEREAS, the Entity is the owner of property identified as Block 3203, Lots 1-5 and 15-19 and Block 3206, Lots 1-4 on the tax maps of the City and located within the Redevelopment Area (the "**Project Site**") intends to redevelop the Project Site with forty-eight (48) residential condominium units to be constructed in three phases, as well as the construction of landscaped Public Open Space to be completed as part of the first phase (the "**Project**"); and

WHEREAS, the City, the Master Developer, and the Entity have entered into that certain Subsequent Developer Agreement (the "**Subsequent Developer Agreement**") which memorializes the terms and conditions by which the Entity will implement and carry out the Project; and

WHEREAS, pursuant to the Subsequent Developer Agreement, the Entity agreed to certain covenants governing the Entity's (i) use of the land on which the Project will be constructed (the "**Project Site**") (ii) construction of the Project and (iii) indemnification of the City and its officers, agents, employees, contractors, and consultants (hereinafter the "**Indemnified Parties**"); and

WHEREAS, the Subsequent Developer Agreement requires that such Covenants be memorialized in a Declaration of Covenants, and Restrictions and that said declaration be recorded against the Project Site by the Entity in the office of the Monmouth County Register,

NOW, THEREFORE, the Entity declares that the Project and the Project Site as defined above and such additions thereto as may hereinafter be made in accordance herewith, is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, conditions, charges, and obligations hereinafter set forth in this Declaration:

Section 1. **General.** The foregoing whereas clauses are hereby incorporated in this section 1 as if fully set forth at length.

Section 2. **Definitions.** Defined terms not otherwise defined herein shall have the meaning assigned to such terms in the Subsequent Developer Agreement, a fully executed copy of which shall be on file in City Hall.

Section 3. **The Entity's Covenants.** In accordance with the terms of the Subsequent Developer Agreement, the Entity expressly covenants and agrees as follows:

(a) The Entity shall construct on the Project Site only the uses as established in the Redevelopment Plan and as approved by the Planning Board.

(b) The Entity shall not sell, lease or otherwise transfer all or any portion of the Project Site unless an initial Certificate of Occupancy has been issued for the Project or as otherwise permitted in accordance with the Financial Agreement, provided that nothing contained herein shall prohibit the Entity from entering into contracts for such purposes.

(c) The Entity shall keep the Project Site free from any substantial accumulation of debris or waste materials generated as a result of the Project and shall maintain in good condition any landscaping required to be planted on the Project Site pursuant to the Final Site Plan. Additionally, the Entity shall keep the areas immediately surrounding the Project Site, such as public roads, sidewalks, etc. free from any accumulation of debris or waste materials generated as a result of the Project and any such debris shall be removed at the

end of each work day, or sooner in the case of public safety, as directed by the City Manager.

(d) The Entity shall, in connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Site or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, gender identity, sex or familial status, and the Entity, its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status.

(e) The Entity shall, in order to effectuate the purposes of the Subsequent Developer Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be reasonably requisite or proper for the construction and development of the Project in accordance with the Final Site Plan, the Subsequent Developer Agreement, the Redevelopment Plan, and Applicable Law.

(f) The Entity shall, upon completion of construction of the Project, obtain all Governmental Approvals required, if any, authorizing the occupancy and use of the Project for the purposes contemplated hereby.

(g) The Entity shall not suspend or abandon or discontinue the performance of its obligations under the Subsequent Developer Agreement for a period of more than sixty (60) consecutive days, provided, however, that a suspension of the performance of its obligations under the Subsequent Developer Agreement shall be permitted for the reasons set forth in Section 4.06 of the Subsequent Developer Agreement.

(h) The Entity shall cause the Project to be developed, financed, constructed, operated and maintained without any cost or expense to the City.

(i) The Entity shall develop, finance, construct, operate and maintain the Project on the Project Site consistent with Applicable Laws, Government Approvals, the Redevelopment Plan, and the Subsequent Developer Agreement.

(j) The Entity shall not encumber, hypothecate or otherwise use the Project Site, or any part thereof as collateral for any transaction unrelated to the Project.

(k) The Entity shall use commercially reasonable efforts to diligently undertake the financing, construction, development, operation, and maintenance of the Project during the period between the Commencement of Construction and Completion of Construction of the Project in accordance with the deadlines or timeframes for completion of Project activities as set forth in this Subsequent Developer Agreement.

(l) **<u>Opportunities for Local Residents during Construction</u>**. The Entity shall make a good faith effort, as same is defined in the Subsequent Developer Agreement, to encourage twenty (20) percent local resident participation in the construction of the Project.

(m) **<u>Opportunities for Women and Minorities in Construction Jobs:</u>** The Entity shall make good faith efforts, as same are defined in the Subsequent Developer Agreement, to encourage women and minority participation in the construction of the Project.

(n) The Entity shall construct the Project in conformance with CAFRA Permit number 1303-03-0001.2, issued by the New Jersey Department of Environmental Protection on March 26, 2004, as subsequently modified, and shall not seek any further modification of the CAFRA Permit.

(o) The Entity shall record the Declaration of Restrictions in the office of the Monmouth County Clerk.

(p) The Entity shall indemnify the City as set forth in Section 9.11 of the Subsequent Developer Agreement.

(q) The Entity shall provide all information, and shall execute all certificates or other documents, reasonably required in connection with the initial issuance of the RABs or required on a continuing basis in connection with the RABs. Such information shall include, but shall not be limited to, all representations, warranties, covenants and disclosures reasonably required pursuant to Applicable Laws, including, without limitation, the Act, limited

liability company authorization law, RAB Law, federal and state income tax and securities laws, and in connection with the initial or re-sale of the RABs, or otherwise. The covenants of the Entity in this Section 3(q), including, without limitation, the requirement to provide information reasonably required in connection with any re-sale of the RABs, shall survive the termination of the Subsequent Developer Agreement, and shall only terminate at such time as no RABs remain outstanding.

(r) The Entity, and not the Master Developer, shall pay the Deficiency Amount (as defined in the Infrastructure Ordinance), if any, and the Special Assessment Agreement shall provide as such. The Entity's obligation to pay the Deficiency Amount shall survive the termination of the Subsequent Developer Agreement. The Deficiency Amount, if any, shall be payable by the Entity within thirty (30) days following the sale of the final Unit, and shall be payable if and to the extent that the Actual Pledged Special Assessment is less than the Projected Pledged Special Assessment, and shall be used to redeem all or any portion of the RABs, such that the Actual Pledged Special Assessment shall be sufficient to pay the debt service and other charges applicable to the remaining aggregate principal amount of RABs (after redemption caused by payment of the Deficiency Amount) as same shall come due through maturity. Notwithstanding the foregoing, the Parties may agree to a different Deficiency Amount and/or payment mechanism, but only if agreed to in writing by all Parties and the terms of which shall be set forth in the indenture for the RABs.

(s) The Entity shall ensure that any agreements with its lessees or assigns shall reflect the covenants set forth herein.

Section 4. **The Encumbered Lands**. The lands and premises (together with the improvements to be constructed thereon) which are intended to be encumbered by this Declaration consist of the Project Site which consists of Block 3203, Lots 1-5 and 15-19 and Block 3206, Lots 1-4 on the tax maps of the City, and as more particularly described in the metes and bounds description attached hereto as Exhibit A.

Section 5. **Effect and Duration of Covenants.** The Entity hereby acknowledges that this Declaration shall be recorded, imposing on the Project Site the covenants provided in this Declaration, provided, however, that such covenants shall be binding on the Entity itself, each successor in interest to the Project, the Project Site, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Entity or such successor or party shall have title to, or an interest in, or possession or occupancy of the Project Site, the Project or any part thereof and so long as said Entity, successor or party maintains its status as a Subsequent Developer of the Project. The covenants provided herein shall run with the land and shall cease and terminate when a Certificate of Completion for such improvements has been issued, except that the covenants set forth in Section 3(q) and Section 3(r) shall survive the termination of the Subsequent Developer Agreement, and shall only terminate at such time as no RABs remain outstanding.

Section 6. **Indemnity.** The Entity shall comply with the provisions set forth in Section 9.11 of the Subsequent Developer Agreement entitled INDEMNIFICATION. The Indemnity shall survive the termination of the Subsequent Developer Agreement and shall run with the land, provided, however, that the Indemnity shall be binding on the Entity itself, each

successor in interest to the Project, the Project Site, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Entity or such successor or party shall have title to, or an interest in, or possession or occupancy of the Project Site, the Project Improvements or any part thereof.

Section 7. **Binding Effect and Enforcement.** This Declaration shall inure to the benefit of the City, its legal and personal representatives, successors and assigns, and such other persons and parties entitled to enjoy the benefits and protections of the covenants and restrictions hereof and to enforce the obligations of the Entity hereunder. This Declaration and the covenants and restrictions imposed upon the Project Site hereunder shall be enforceable by the City, and such other persons and parties entitled to enforce the provisions of the Subsequent Developer Agreement against the Entity.

(*remainder of page is intentionally blank*)

(*Signature page to Declaration of Covenants and Restrictions*)

AP Triangle, LLC

By: ________________________

, Managing Member

STATE OF NEW JERSEY :

:ss:

COUNTY OF ___________:

BE IT REMEMBERED, that on this __ day of ___________, 2020 before me, the subscriber, an officer duly authorized pursuant to N.J.S.A. 46:14-6 to take acknowledgments for use in the State of New Jersey, personally appeared _____________, who acknowledged under oath, to my satisfaction, that this person (or if more than one, each person): (a) is the managing member of AP Triangle, LLC, the New Jersey limited liability company named in the within instrument and is authorized to sign the within instrument on behalf of the limited liability company; and (b) as such member or manager, signed, sealed and delivered this instrument as the voluntary act and deed of the limited liability company, made by virtue of authority from all of its members.

____

Notary Public

Exhibit A

(Legal Description)

EXHIBIT 2

Assumed Unit Pricing