

## SECOND SETTLEMENT AGREEMENT

This Second Settlement Agreement (the "Agreement") is made and entered into on March 31, 2021 by and between iStar FM Loans LLC ("iStar") and Shore Road-Long Beach Superblock LLC ("Shore Road") and, together with iStar, the "Company"), on the one hand, and City of Long Beach (the "City"), on the other hand. Each of the City and the Company are hereinafter referred to as "Party" and collectively, the "Parties."

### RECITALS

WHEREAS, Shore Road was the owner of an approximately six-acre assemblage of oceanfront property located in the City of Long Beach, New York (the "Superblock Property");

WHEREAS, the Company and the City had entered into a Settlement Agreement and Mutual Release, dated January 16, 2015 (the "Original Settlement"), related to a lawsuit filed by the City in the Supreme Court of the State of New York, County of Nassau *entitled City of Long Beach v. Janow Associates et al.*, Index No. 2502/11;

WHEREAS, after the execution of the Original Settlement, Shore Road applied to the City's Zoning Board of Appeals for a zoning variance for height and density exceptions for the Superblock Property;

WHEREAS, on February 28, 2014, the City's Zoning Board granted the requested zoning variances, subject to certain conditions;

WHEREAS, on or about August 3, 2017, several City residents challenged Shore Road's compliance with the conditions contained in the Zoning Board's approval of the zoning variance for the Superblock Property in *Kirklin et al. v. Zoning Board of Appeals of the City of Long Beach, et al.*, Index No. 3204/2017 (the "Kirklin Action");

WHEREAS, on or about January 22, 2018, the New York State Supreme Court granted the Plaintiffs' motion for summary judgment in the Kirklin Action and denied the motion to dismiss filed by Shore Road, and ordered the Zoning Board to conduct a hearing on the continued validity of the zoning entitlements for the Superblock Property (the "Summary Judgment Decision");

WHEREAS, Shore Road appealed the Summary Judgment in the Kirklin Action to the Appellate Division, Second Department, where the appeal is currently pending (Appellate Division Docket No. 2018-03838);

WHEREAS, on or about April 10, 2018, the Zoning Board held a hearing on the continued validity of the zoning entitlement;

WHEREAS, the Company commenced a litigation in the Supreme Court of the State of New York on or about May 16, 2018 captioned *iStar FM Loans LLC et al. v. The City of Long Beach, et al.*, Index No. 606535/2018, alleging, among other things, that the City and the Long Beach Local Development Corporation breached the Original Settlement (the "Breach of Contract Action");

WHEREAS, on or about May 24, 2018, the City's Zoning Board issued a decision revoking the height and zoning density variances for the Superblock Property;

WHEREAS, on or about June 22, 2018, Shore Road commenced a hybrid action/special proceeding challenging the Zoning Board's revocation of the zoning variances for the Superblock Property in New York State Supreme Court captioned *Shore Road-Long Beach*

*Superblock LLC v. Zoning Board of Appeals of the City of Long Beach*, Index No. 608582/2018 (the “Revocation Challenge”);

WHEREAS, on or about December 13, 2018, the Court entered a decision that, among other things, rejected the Revocation Challenge;

WHEREAS, Shore Road appealed the Revocation Challenge to the Appellate Division, Second Department, and the appeal was dismissed by order of the Appellate Division, Second Department, dated June 15, 2020;

WHEREAS, the City has moved to dismiss the Breach of Contract Action;

WHEREAS, the Company has agreed to convey the Superblock Property to Engel Burman at the Beach LLC (“Engel Burman”); and

WHEREAS, after consultation with their respective counsel, the Company and City, desire to resolve the ongoing litigation related to the zoning entitlements for the Superblock Property and the Breach of Contract Action;

NOW THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be bound the Company and the City agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated herein and are made part of this Agreement.

2. **Effectiveness.** This Agreement shall take effect and become effective only after it is approved by the City Council and is fully executed by the Parties.

3. **Application of Prepayment.** If Engel Burman consummates the acquisition of the Superblock property from Shore Road, The City will allow Engel Burman, as a credit against the fee for the building permit and any and all application fees, other fees, charges, and assessments relating to, or required for, permits and approvals necessary for the construction and completion of the project (but not tax assessments or any fee due for a waiver of on-site retainage requirements under Long Beach City Code § 7-20[j]) the \$2.5 million that iStar paid to the City in connection with its application. If those charges exceed \$2.5 million credit, Engel Burman must pay the difference; if they are less than \$2.5 million, the City will retain the balance. If Engel Burman fails to consummate the acquisition of the Superblock Property, the \$2.5 million credit as set forth in this paragraph will be available to a successor developer that acquires the Superblock property from iStar, provided that (a) the acquirer’s project is for development of the Superblock Property in accordance with the applicable use, height and density requirements and that no variances shall be sought with respect to those three requirements; (b) the acquirer agrees to make the off-site capital improvements to the same extent as agreed by Engel Burman; and (c) the acquirer applies for a building permit to commence the development of the site within two years of the date of this stipulation. The City will not refund or pay any other monies to the Company.

4. **Dismissal of the Litigation.** Within two (2) business days following the full execution of this Agreement, the Parties shall cause their counsel to execute the stipulations attached hereto as Exhibit A and Exhibit B. No later than two (2) business days after Exhibit A is fully executed by counsel for all parties in the Breach of Contract Action, the Parties shall cause their respective attorneys to file with the Court in the Breach of Contract Action a stipulation of dismissal in the

form attached hereto as Exhibit A. No later than four (4) business days after Exhibit B is fully executed by counsel for all parties in the Kirklin Litigation, the Parties shall cause their respective attorneys to file with the Appellate Division, Second Department. Shore Road shall not take any action to have its challenge in the Zoning Board Litigation restored to the Appellate Division, Second Department's active docket or to otherwise reinstate the Kirklin Action.

5. **Release of the Company.** Upon the execution of this Agreement, and in consideration of the acts, payments, and promises described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby on its own behalf and on behalf of its past and present elected officials and employees acting in their official capacities, agencies, departments and component units, as well as each of their respective officers, directors, employees, partners, managers, members, principals, agents, advisors, attorneys, representatives, accountants in their official capacity or to the extent that they are performing work for the City, its agencies, departments and component units, and all persons working by, through, under, or in concert with them with respect to work performed in their official capacity or to the extent that they are performing work for the City; each of their predecessors, successors, assigns, estates, heirs, executors, trusts, trustees, and administrators; and any firm, trust, corporation, or other entity in which any of the foregoing have or had a controlling interest irrevocably, unconditionally, and fully releases, waives, and forever discharges iStar, Shore Road, and their respective past and present (direct or indirect) parents, subsidiaries, affiliates, shareholders, and owners; as well as each of their respective officers, directors, employees, partners, members, principals, agents, advisors, attorneys, representatives, accountants, and all persons working by, through, under, or in concert with them; each of their predecessors, successors, assigns, estates, heirs, executors, trusts, trustees, and administrators; and any firm, trust, corporation, or other entity in which any of the foregoing have or had a controlling interest from any and all actual or potential claims, counterclaims, cross-claims, causes of action, complaints, charges, obligations, actions, lawsuits, controversies, demands, rights, damages, suits, debts, liabilities, losses, dues, accounts, bonds, agreements, contracts, covenants, promises, judgments, costs, disbursements, interest, attorneys' fees, expert or consulting fees, expenses, sums of money, and requests or rights of or to compensation, of every nature, kind, and description whatsoever, whether known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, disclosed or undisclosed, asserted or unasserted, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, whether in law, equity, or otherwise, whether based on federal, state, local, statutory, common law, foreign law, or any other law, statute, rule or regulation now has or ever had, our hereafter can, shall or may have, from the beginning of the world through the date of this Agreement; provided, however, that nothing herein shall be construed as releasing, waiving, or discharging, (i) any and all claims for any breach (or to enforce the terms) of this Agreement; or (ii) any real property tax obligations for the Superblock Property or other property owned by iStar or Shore Road.

6. **Release of the City.** Upon the execution of this Agreement, and in consideration of the acts, payments, and promises described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, iStar and Shore Road hereby on their own behalf and on behalf of their past and present (direct or indirect) parents, subsidiaries, affiliates, shareholders, and owners; as well as each of their respective officers, directors, employees, partners, members, principals, agents, advisors, attorneys, representatives, accountants, and all persons working by, through, under, or in concert with them; each of their predecessors, successors, assigns, estates, heirs, executors, trusts, trustees, and administrators; and

any firm, trust, corporation, or other entity in which any of the foregoing have or had a controlling interest (irrevocably, unconditionally, and fully releases, waives, and forever discharge the City and its past and present elected officials, employees, agencies, departments, component units, their respective past and present (direct or indirect) parents, subsidiaries, affiliates, shareholders, and owners; as well as each of their respective officers, directors, employees, partners, members, principals, agents, advisors, attorneys, representatives, accountants, and all persons working by, through, under, or in concert with them; each of their predecessors, successors, assigns, estates, heirs, executors, trusts, trustees, and administrators; and any firm, trust, corporation, or other entity in which any of the foregoing have or had a controlling interest to the extent they were acting in their official capacity for the City from any and all actual or potential claims, counterclaims, cross-claims, causes of action, complaints, charges, obligations, actions, lawsuits, controversies, demands, rights, damages, suits, debts, liabilities, losses, dues, accounts, bonds, agreements, contracts, covenants, promises, judgments, costs, disbursements, interest, attorneys' fees, expert or consulting fees, expenses, sums of money, and requests or rights of or to compensation, of every nature, kind, and description whatsoever, whether known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, disclosed or undisclosed, asserted or unasserted, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, whether in law, equity, or otherwise, whether based on federal, state, local, statutory, common law, foreign law, or any other law, statute, rule or regulation now has or ever had, our hereafter can, shall or may have, from the beginning of the world through the date of this Agreement; provided, however, that nothing herein shall be construed as releasing, waiving, or discharging, any and all claims for any breach (or to enforce the terms) of this Agreement or any challenges, claims, grievances, litigation, or tax certiorari proceeding that the Company may have related to taxes with respect to the Superblock Property.

7. **No Admission of Liability.** This Agreement does not constitute, and shall not be construed as, an admission of guilt, fault, or liability by or on behalf of any of the Parties. Rather, the Parties have entered into this Agreement solely for the purpose of reaching a compromise and avoiding the expense and uncertainty of litigation.

8. **Confidentiality.** The Parties shall keep confidential the negotiations leading up to this Agreement; *provided, however,* the provisions of this Section shall not apply to any disclosure in a legal proceeding to enforce the rights or obligations set forth in this Agreement; *provided, further, however,* that in the event that one of the Parties receives legal process calling for the disclosure of the terms of this Agreement, it shall provide the other parties with prompt notice (through its counsel) in order to give the other party a reasonable opportunity to assert through proper legal means any claimed right to confidentiality. The Parties may inform the media or community that the Parties have amicably resolved the outstanding litigation, but shall not discuss the terms of this Agreement.

9. **Authority; No Prior Assignment.**

a. The Company hereby warrants and represents to the City that (a) the person executing this Agreement on its behalf is duly authorized, and has full power and authority, to bind the Company and to impose the obligations and give the releases contained herein; (b) all corporate or partnership formalities and approvals required to authorize Company's entry into and performance of this Agreement have been undertaken; (c) the Company has not assigned any of the claims released under this Agreement; and (d) the entry into and performance of this

Agreement is not barred, prohibited, or impaired by law, rule, regulation, contract, covenant, agreement, judgment, order, or decree by which Company is bound.

b. The City hereby warrants and represents to the Company that (a) the person executing this Agreement on its behalf is duly authorized, and has full power and authority, to bind the City and to impose the obligations and give the releases contained herein; (b) all formalities and approvals, including but not limited to approval of the City Council, required to authorize the City's entry into and performance of this Agreement; (c) the City has not assigned any of the Claims released under this Agreement; and (d) the entry into and performance of this Agreement is not barred, prohibited, or impaired by law, rule, regulation, contract, covenant, agreement, judgment, order, or decree by which the City is bound.

10. **Representation of Comprehension of Document.** In entering into this Agreement, the undersigned represent that they have relied upon the legal advice of their attorneys, and that they have read the terms of this Agreement, that those terms have been explained to them by their attorneys and those terms are fully understood and voluntarily accepted by them. The undersigned further agree that the terms of this Agreement were negotiated at arm's length and in good faith by the undersigned, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel. Each of the Parties acknowledges and agrees that each of them has participated in drafting this Agreement and, as a result, nothing in this Agreement shall be construed in favor of one party against another party. Each of the undersigned represents and warrants that this Agreement is executed without reliance on any statement, promise, or representation of fact or opinion by anyone except as set forth in this Agreement.

11. **Invalidity.** The Parties intend that, to the maximum extent legally possible, the invalidity or unenforceability of any provision of this Agreement will not affect any of the other provisions hereof. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. In the event that any provision, or portion of a provision, is deemed to be contrary to law, that provision, or portion of a provision, shall be severed from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect. In lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

13. **No Oral Modifications.** This Agreement may not be amended, altered, modified or changed in any way whatsoever except in a writing signed by City and the Company.

14. **Waiver.** The waiver by the Parties of any default or breach of any provision of this Agreement, or the failure to enforce any of its terms, shall not be deemed to extend to any prior, contemporaneous, or subsequent default or breach of such provision or any other provision of this Agreement.

15. **Costs.** The Parties shall bear their own respective costs and expenses (including, but not limited to, attorneys' fees) in connection with the Litigations and in connection with this Agreement.

16. **Choice of Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to any conflict of laws and/or choice of law provisions or principles thereof). Any action to enforce or interpret any provisions under this Agreement shall exclusively be filed in New York State Supreme Court located in the County of Nassau. The parties submit to personal jurisdiction of the New York State Supreme Court located in the County of Nassau in any such action. Each of the Parties waive, to the fullest extent permitted by law, (i) any objection it may now or hereafter have to the laying of the venue of any such proceeding brought in any such court, and (ii) any claim that any such proceeding brought in any such court has been brought in an inconvenient forum.

17. **Notice.** Any notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when received after being deposited for overnight delivery with a nationally recognized overnight delivery service addressed to the respective parties as follows:

The Company:

iStar  
114 Avenue of the Americas  
New York, NY 10036  
Attention: General Counsel  
Email: dheitner@istar.com

With a copy to:

Matthew D. Parrott, Esq.  
Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Email: m.parrott@friedfrank.com

The City:

The City of Long Beach  
1 West Chester Street  
Long Beach, NY 11561  
Attn: Corporation Counsel  
Email: corpcounsel@longbeachny.gov

With a copy to:

Robert A. Spolzino, Esq.  
Abrams Fensterman  
81 Main Street, Suite 306  
White Plains, New York 10601  
Email: rspolzino@abramslaw.com

A copy of all notices will also be sent to the applicable email addressed at the same time as such notice(s) are sent in accordance with this provision.

18. **Third Party Beneficiary.** Engel Burman and its affiliated entities are third-party beneficiaries of this agreement, and shall have the ability to enforce this Agreement as if they were signatories hereto.

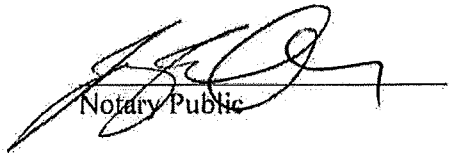


**SHORE ROAD-LONG BEACH SUPERBLOCK LLC**

By:   
Name: **GABRIEL S. RANDALL**  
Title: **SENIOR VICE PRESIDENT**


STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On ~~March~~ <sup>April 5</sup>, 2021, before me personally came GABRIEL RANDALL to me known, and known to me to be the authorized signatory of the limited liability company described in and who executed the within document and she duly acknowledged to me that she executed the same.

  
Notary Public

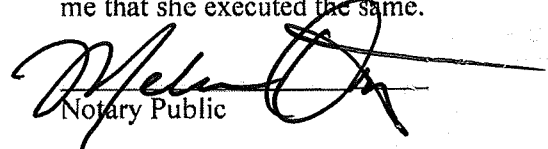
**Jesus Rosado**  
**Notary Public, State of New York**  
**No. 01RO8242246**  
**Qualified in Bronx County**  
**Commission Expires May 31, 2023**

**CITY OF LONG BEACH**

By:   
Donna M. Gayden  
City Manager  
Authorizing Resolution Detail:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On ~~March~~ <sup>April 14</sup>, 2021, before me, the undersigned, personally appeared Donna M. Gayden, personally known to me or proved to me on the basis of satisfactory evidence to me known, who, being by me duly sworn, did depose and say that she is the City Manager of the City of Long Beach, the municipal corporation described in and which executed the foregoing instrument and that she is the authorized signatory of the City of Long Beach and that she duly acknowledged to me that she executed the same.

  
Notary Public

**MELISSA ORTIZ**  
**Notary Public, State of New York**  
**No. 01OR5077631**  
**Qualified in Nassau County**  
**Commission Expires May 12, 2023**



**EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

iSTAR FM LOANS LLC and SHORE ROAD-LONG  
BEACH SUPERBLOCK LLC,

Plaintiffs,

- against -

THE CITY OF LONG BEACH and LONG BEACH  
LOCAL DEVELOPMENT CORPORATION,

Defendants.

Index No. 606535/2018

**STIPULATION OF  
DISCONTINUANCE**

Assigned to Justice DeStefano

Commercial Division  
Part 15

WHEREAS, no party named herein is an infant, an incompetent person for whom a committee has been appointed, or a conservatee, and no person not a party to this action has an interest in the subject matter of the action,

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys of record for the parties in the above-captioned action, that this action is discontinued, with prejudice and without costs or attorneys' fees, and that this Stipulation may be filed with the Clerk of the Court without further notice.

IT IS FURTHER STIPULATED AND AGREED that this stipulation may be executed by facsimile or electronic mail, and in counterparts, each of which shall for all purposes be deemed an original, and all such counterparts taken together shall constitute one and the same agreement.

Dated: New York, New York  
March \_\_\_, 2021

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP

By: \_\_\_\_\_  
Matthew D. Parrott

One New York Plaza  
New York, New York 10004  
(212) 859-8000  
m.parrott@friedfrank.com

-and-

HERRICK FEINSTEIN LLP

Scott E. Mollen  
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New York, New York 10016  
212-592-1400  
smollen@herrick.com

*Attorneys for Plaintiffs*  
*iStar FM Loans LLC and Shore Road-Long*  
*Beach Superblock LLC*

ABRAMS, FENSTERMAN, FENSTERMAN,  
EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP

By: \_\_\_\_\_  
Robert A Spolzino

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Suite 306  
White Plains, NY 10601  
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rspolzino@abramslaw.com

*Attorneys for Defendant*  
*The City of Long Beach*

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPARTMENT

In the Matter of the Application of

JAMES KIRKLIN, BOGUSALAW PAWLOWICZ,  
MICHAEL GOLDSHALL and RIANNA GOLDSHALL,  
MONA GOODMAN, LEAH TOZER, CHRISTOPHER  
JONES and WILLIAM HAAS,

Plaintiffs-Petitioners-Respondents,

For Judgment Pursuant to Article 78 of the Civil Practice  
Law and Rules,

- against -

ZONING BOARD OF APPEALS OF THE CITY OF LONG  
BEACH and SCOTT A. KEMINS, as Building  
Commissioner of the City of Long Beach,

Defendants-Respondents-Respondents,

- and -

SHORE ROAD-LONG BEACH SUPERBLOCK LLC,

Defendant-Respondent-Appellant.

Appellate Division Docket No.  
2018-03838

Nassau County Index No.  
3204/2017

**STIPULATION OF  
DISCONTINUANCE**

WHEREAS, no party named herein is an infant, an incompetent person for whom a committee has been appointed, or a conservatee, and no person not a party to this action has an interest in the subject matter of the action,

IT IS HEREBY STIPULATED AND AGREED, pursuant to Section 1250.2((b)(2) of the Practice Rules of Appellate Division, by and between the undersigned, the attorneys of record for the parties in the above-captioned action, that this action is discontinued, with prejudice and without costs or attorneys' fees, and that this Stipulation may be filed with the Clerk of the Court without further notice.

IT IS FURTHER STIPULATED AND AGREED that this stipulation may be executed by facsimile or electronic mail, and in counterparts, each of which shall for all purposes be deemed an original, and all such counterparts taken together shall constitute one and the same agreement.

Dated: New York, New York  
March \_\_, 2021

SAHN WARD COSCHIGNANO, PLLC

By: \_\_\_\_\_  
Christian Browne

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(516) 228-1300  
CBrowne@swc-law.com

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GOODMAN, LEAH TOZER,  
CHRISTOPHER JONES AND  
WILLIAM HAAS

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON LLP

By: \_\_\_\_\_  
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SHORE ROAD-LONG BEACH  
SUPERBLOCK LLC

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EISMAN, FORMATO, FERRARA, WOLF &  
CARONE, LLP

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*Attorneys for Defendant-Respondent-  
Respondent  
Zoning Board of Appeals of the City of Long  
Beach and Scott A. Kemins, as Building  
Commissioner of the City of Long Beach*