

DEVELOPER'S AGREEMENT

THIS AGREEMENT entered into this 13th day of October, 2020 (the "Effective Date")

BETWEEN

BOROUGH OF RED BANK
90 Monmouth Street
Red Bank, New Jersey 07701

(hereinafter referred to as the "Borough")

AND

HRK AT RB, LLC
2 Hennessy Boulevard
Atlantic Highlands, New Jersey 07701

(hereinafter referred to as "Developer")

AFFECTING all, or a portion of, real estate known as:

**Block 29, Lot 5.01 (formerly known as Block 29, Lots 5, 6 & 7)
within the Borough of Red Bank, County of Monmouth, State of New Jersey**

WHEREAS, the Borough previously granted certain approvals to Riverwalk Commons Red Bank, LLC for a development project located at 24-30 Mechanic Street, also identified as Block 29, Lot 5.01, and formerly identified as Block 29, Lots 5, 6, & 7, on the Borough's Tax Map (the "Developer's Property"); and

WHEREAS, HRK at RB, LLC (the "Developer") subsequently obtained ownership of the Property and its approvals; and

WHEREAS, per the Developer's approvals, electrical service must be provided to the Property by Jersey Central Power & Light ("JCP&L") through the Borough's existing rights-of-way on the Developer's Property and on 19-29 Mechanic Street, identified as Block 28, Lot 4 on the Borough's Tax Map (the "Second Property"); and

WHEREAS, simultaneously with the execution of this Developer's Agreement, the Borough has executed an Easement with JCP&L, attached hereto as Exhibit A, permitting JCP&L to construct two (2) new utility poles within the Borough's rights-of-way existing on the Developer's Property and the Second Property, which two (2) new utility poles are identified as #JC 216784a55316 & #JC 216784a55320 (the "New Utility Poles"); and

WHEREAS, in connection with its demand for the aforesaid Easement, JCP&L has represented to the Borough that there are no reasonable alternatives to providing electrical service to the Property, other than the installation of the New Utility Poles within the Borough's rights-of-way on the Developer's Property and the Second Property; and

WHEREAS, given the Borough's difficulties with and substantial charges from JCP&L to re-locate utility poles during the Borough's recent public improvements projects within its rights-of-way throughout the municipality, the Borough has expressed to the Developer its disapproval of accepting complete and full responsibility for the New Utility Poles benefitting the Developer's Property, as called for by the JCP&L Easement; and

WHEREAS, in accordance with its customary practice, JCP&L has failed and refused to accept any responsibility for the New Utility Poles within the Borough's rights-of-way beyond its ordinary legal and administrative liabilities under New Jersey law and through the New Jersey Board of Public Utilities; and

WHEREAS, the costs of a protracted legal challenge to JCP&L's position would not be beneficial to either the Developer or the Borough under the circumstances; and

WHEREAS, in resolution of the foregoing circumstances, the Borough and the Developer have agreed to share responsibility for the New Utility Poles in accordance with the terms and conditions of this Developer's Agreement;

NOW, THEREFORE, the parties to this Agreement for and in consideration of the mutual promises and covenants to each other and for other good and valuable consideration, including the approvals granted by the Borough for the Developer's Property, hereby agree for themselves, their successors and assigns, as follows:

1. Application: The terms and conditions of this Agreement shall be applicable only to the Developer's Property, the JCP&L Easement, and the New Utility Poles. This Agreement shall not modify or affect any other term, condition, or provision of the Developer's approvals or other applicable agreement, code, law, ordinance, or regulation.

2. Duration: This Agreement shall be in full force and effect for ten (10) years (the "Term") following the Effective Date first written hereinabove.

3. Developer's Obligation(s): If, at any time during the Term, the Borough requires the temporary or permanent removal, re-location, modification, or other work to be performed on the New Utility Poles by JCP&L to assist, permit, allow, or otherwise advance the performance of projects, repairs, or other work by the Borough using public monies or grant funds, then the Developer, or its assignee as the case may be, shall be responsible for the first \$15,000.00 of costs incurred or charged by JCP&L in each such instance. This monetary obligation of the Developer and the \$15,000.00 limitation thereon shall be applicable to each "cost agreement" that may be presented to the Borough by JCP&L during the Term that includes work on the New Utility Poles, which, if JCP&L's "cost agreement" includes work on additional utility poles, the Developer's costs shall be pro-rated by line-item relating to the work on the New Utility Poles. The parties, while acknowledging their mutual non-control of JCP&L, agree to use their best efforts to consolidate all such work in as few "cost agreements" as necessary in each instance.

4. Assignment: In the event the Developer's Property is sold or otherwise conveyed during the Term, the Developer shall assign this Agreement as part of any such transfer, and the proposed new titled owner of the Developer's Property shall deliver such instrument(s) as may be satisfactory to the Red Bank Borough Attorney evidencing the new titled owner's assumption of the liabilities and obligations of this Agreement.

5. Withholding Permits/Certificates of Occupancy: Developer understands and agrees in the event of violation of this Agreement, the Borough may, in its discretion, withhold the issuance of any further building permit(s) and/or certificate(s) of occupancy for the Developer's Property until the violation has been corrected.

6. Voluntary Agreement: Developer specifically and unequivocally states that the terms and conditions as agreed upon in this Agreement have not been forced upon it by undue influence, coercion and are not being undertaken under protest. Developer reviewed all rationale for the obligations set forth herein and is undertaking them voluntarily.

7. Recording of this Agreement: Developer shall record this Developer's Agreement in the Monmouth County Clerk's office, where it shall remain on record until its expiration under Section 2 hereof. Upon expiration, the Governing Body shall adopt a Resolution authorizing the execution and delivery of a Release and Satisfaction of Developer's Agreement in recordable form at the Developer's cost and expense.

8. Severability: If any terms or conditions are determined invalid by a court of competent jurisdiction, the remainder shall remain in full force and effect.

9. Interpretation of Law: This Agreement shall be interpreted under and governed by the laws of the State of New Jersey.

10. **Notices:** All notices required or permitted under this Agreement shall be in writing by first-class mail to the addresses set forth herein or as otherwise designated by the parties in writing.

IN WITNESS WHEREOF, the Developer has hereunto caused these presents to be signed by its proper authorized parties and has caused its proper seals, if any, to be affixed hereto. The Borough of Red Bank has caused this instrument to be signed by its Mayor and attested by its Clerk and does cause its proper corporate seal to be affixed as of the date and year first above written.

HRK AT RB, LLC

BOROUGH OF RED BANK

By: _____

By: _____

Pasquale Menna, Mayor

Name: _____

Title: _____

Witnessed: _____

Attest: _____

Pamela Borghi, Clerk

Name: _____

Title: _____

STATE OF NEW JERSEY
SS:
COUNTY OF MONMOUTH

I certify that on this _____ day of _____ 2020, before me personally came _____ of HRK AT RB, LLC, to me known and known to me to be the individual described in and who executed the foregoing instrument, and such person duly acknowledged to me understanding the meaning of the instrument and that he executed the same as his act and deed, and as the authorized representative of the entity named therein, and with full authority to act on its behalf, and that he is over the age of 18.

Notary Public of New Jersey

STATE OF NEW JERSEY
SS:
COUNTY OF MONMOUTH

I certify that on this _____ day of _____ 2020, Pamela Borghi personally came before me and she acknowledged under oath to my satisfaction that (a) she is the Municipal Clerk of the Borough of Red Bank, the municipal corporation named in this document; (b) she is the attesting witness to the signing of this document by the proper municipal officer, who is PASQUALE MENNA, Mayor of the Borough of Red Bank, in the municipal corporation; (c) this document is signed and delivered by the Borough as its voluntary act duly authorized by proper Resolution of the Governing Body and (d) she knows the proper seal of the Borough was affixed to this document.

Gregory J. Cannon, Esq.
Borough Attorney, Borough of Red Bank
NJ Bar ID# 038042007

EXHIBIT A



EASEMENT

The undersigned, Borough of Red Bank whose address is 90 Monmouth Street Red Bank NJ 07701 (the "Grantor"), is the owner of certain lands located in the Borough of Red Bank, County of Monmouth State of NJ, known and designated as Tax Block 29/ 28 , Lot 5.01/ 4 , and recorded in The Office of The Clerk of Monmouth County, on 6/24/2019, in Deed Book OR-9354/ 5830 , page 4099/ 179, referred to as the property.

Grantor, hereby grants and conveys to Grantee Jersey Central Power & Light Company and Verizon of New Jersey Inc., both New Jersey Corporations, (the "Grantee") for valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, a permanent easement and uninterrupted right, from time to time, to construct, reconstruct, operate, inspect, renew, replace, improve, maintain, redesign, alter, relocate, extend and remove overhead, underground and ground level facilities described below (the "Facilities") as may be deemed necessary or convenient by Grantee for electric, CATV and communication purposes for the use and benefit of the Land and/or adjacent lands on, over, under and across along and beyond the property, the course of said facilities to run as follows:

This is for the right to interbuild pole JC 216782a55320 between existing poles BT60101RBK and BT60102RBK adjacent to and along the northernly side of Mechanic St and for the right to install pole JC 216784a55316 adjacent to and along the southerly side of Mechanic St on said property and in the bed of said road with the right to support said pole line with guys and anchors extending from said pole line onto said property.

The Facilities may include, without limitation, poles (with or without crossarms), guy wires, guy stubs, anchors, street lights and standards, transformers, transformer pads, switching compartments, conduits, conductors, ducts, wires, cables, fibers, pedestals, terminal boxes, manholes, hand-holes and other related equipment and apparatus from time to time deemed necessary or convenient by Grantee to accomplish the above purpose.

Grantor gives full authority and unqualified right to the Grantee to trim, remove, clear, keep clear, and otherwise control (by such methods as Grantee, in its sole judgment, may deem necessary or proper, including but not limited to the use of herbicides) any and all trees, underbrush, or other vegetation located within the right of way. Grantee shall also have the full authority and right, in its sole discretion, to trim, remove, clear, keep clear, and otherwise control any or all trees or vegetation adjacent to said right of way, that, in the opinion of Grantee, may interfere or threaten to interfere with the construction, operation, maintenance, or repair of Grantee's Facilities or ingress or egress to, from, or along said right of way.

Grantor covenants not to construct, place, maintain or use structures of any kind, or plant shrubs or trees within eight feet of either side of the center line of the underground Facilities, if any, as installed, raise or lower the ground elevation of the land above or beneath the Facilities; grow beneath overhead Facilities any vegetation or trees, except farm crops or other compatible species identified by Grantee; or obstruct access to, remove structural support from, divert or impound water to or on, or otherwise interfere with, the Facilities.

The rights and obligations hereunder shall be binding upon and inure to the benefit of the Grantor and Grantee and their heirs, executors, administrators, successors and assigns. Licensees and Lessees, as the case may be.

Borough of Red Bank

Mavor, Pasquale Menna

Clerk, Pamela Borgh

Municipality

STATE OF _____

COUNTY OF _____

I certify that on _____, Pasquale Menna as Mayor and Pamela Borghi as Clerk of Borough of Red Bank personally appeared before me and acknowledged to my satisfaction that this person (or if more than one, each person) has the Legal Authority for the organization named within this instrument and being so authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the easement.

Notary Public of New Jersey

My commission expires: _____

Dated: _____

County: Monmouth

Order #: 16542687

W/R#: 60664388

RECORD AND RETURN TO:
JERSEY CENTRAL POWER AND LIGHT COMPANY
RIGHT OF WAY DEPARTMENT
P.O Box 1911
MORRISTOWN, N.J. 07962-1911