

MAINTENANCE EASEMENT AGREEMENT

This MAINTENANCE EASEMENT AGREEMENT (this “Agreement”) by and between **31 TUFTS STREET LLC**, a Massachusetts, limited liability company, with an address of 40 Homer Street, Newton, Massachusetts 02459 (“Adjacent Property Owner”), and the **CITY OF SOMERVILLE**, a Massachusetts body corporate and politic and political subdivision of the Commonwealth of Massachusetts, with an address at 93 Highland Avenue, Somerville, MA 02143 (the “Grantee” or “City”), collectively as the “Parties”.

WITNESSETH:

- A. Reference is hereby made to (i) that certain decision in Case Number P&Z 20-004 issued by the Zoning Board of Appeals of the City of Somerville (“ZBA”) on July 6, 2021, recorded with the Middlesex South District Registry of Deeds in Book 78355, Page 249; (ii) that certain Decision in Case Number P&Z 22-033, issued on April 15, 2022, recorded with the Middlesex South District Registry of Deeds in Book 80113, Page 327 and subsequently corrected by that Confirmatory Document dated July 7, 2022 and recorded in Book 80600, Page 442, clarifying that the ZBA was the approving Board (collectively the “Project Approvals”).
- B. Adjacent Property Owner owns certain real property located at 31 Tufts Street, Lot 1, Somerville, Massachusetts (“Lot 1”) by Deed dated May 11, 2022 and recorded in the Middlesex South District Registry of Deeds in Book 80154, Page 201, and the City owns certain real property located at 31 Tufts Street, Lot 2, Somerville, Massachusetts (“Lot 2”) by Deed of even date recorded herewith. Lot 1 and Lot 2, collectively referred to herein as the “Property”, were created when the Property was split into two lots pursuant to the Project Approvals, with Lot 1 to be dedicated to the development of for use as affordable rental housing, including the new construction of one (1) three-story building of

approximately 14,000 square feet, more or less, consisting of sixteen (16) workforce and affordable multi-family residential rental units with no parking (the “Project”), and with Lot 2 consisting of approximately 4,255 square feet of land, more or less, for the development of a pocket park (“Pocket Park”). Various easements of record were created as part of splitting the Property into Lot 1 and Lot 2.

- C. Lot 2 has been developed into a Pocket Park in accordance with the Project Approvals.
- D. Per the Project Approvals and deed restriction, Lot 2 is required to be a Pocket Park in perpetuity as a publicly accessible open space on the Property.
- E. Per the Project Approvals, Adjacent Property Owner and the City desire to enter into this Agreement in order for Adjacent Property Owner to perform the maintenance responsibilities for Lot 2 , as more specifically set forth herein.
- F. Pursuant to a vote by the City Council of the City of Somerville attached hereto as **EXHIBIT E**, the City has approved the Pocket Park Maintenance Easement in favor Adjacent Property Owner to maintain and repair the improvements located at Lot 2.

NOW THEREFORE, in consideration of One Dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Adjacent Property Owner and the City agree as follows:

1. Grant of Easement to Adjacent Property Owner. The City does hereby grant to the Adjacent Property Owner, its successors and assigns, a non-exclusive permanent easement over all of Lot 2, for the purpose of maintaining the Pocket Park in perpetuity as further provided herein.

2. Release of Easements. The parties hereby release the “Public Access Easement” in favor of the City over a certain portion of Lot 2, and also hereby release the “Public Access and Maintenance Easement” in favor of the owner of Lot 2 over a certain portion of Lot 1, both easements as described in the Deed conveying Lot 2 to Tufts Glen Pocket Park LLC, as recorded in the Middlesex South District Registry of Deeds on Book 80154, Page 207, which “Public Access Easement” and “Public Access and Maintenance Easement” shall both be null and void and of no further force or effect. Per the Project Approvals, the public shall have access to Lot 2 via the access points on Glen Street and Tufts Street as shown on the As-Built Plans attached hereto and incorporated herein as Exhibit C.

3. Remaining Easements. The parties hereto acknowledge that the other existing easements affecting Lot 2 shall continue to run with the land, including but not limited to the “Transformer Access and Maintenance Easement” and “Underground Electric Conduit Easement” across certain portions of Lot 2 in favor of the Adjacent Property Owner, and the “Walkway Easement” across a certain portion of Lot 2 in favor of the owner of 163 Glen Street, Somerville, Massachusetts, all as described in the Deed conveying Lot 1 to the Adjacent Property Owner as recorded in the

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Middlesex South District Registry of Deeds on Book 80154, Page 201 and in the Deed conveying Lot 2 to Tufts Glen Pocket Park LLC as recorded in the Middlesex South District Registry of Deeds on Book 80154, Page 207, and the Deed of Lot 2 to the City of even date recorded herewith.

4. Adjacent Property Owner's Maintenance Responsibilities: The Adjacent Property Owner shall be responsible for the on-going maintenance and operations of the Pocket Park (the "Park Maintenance Work"), including but not limited to (a) the provision of water and electricity, (b) the maintenance and repair of the hardscape improvements and fixtures, and (c) the care and restoration of the landscaping elements as needed, all in accordance with the Landscape Maintenance and Management Plan (LMMP) approved by the City and attached hereto as **EXHIBIT B**, as it may be amended with the prior written approval of the City. Adjacent Property Owner shall maintain the Pocket Park in substantially the same condition as shown on the "As-Built" plans attached hereto and incorporated herein **EXHIBIT C**. No material changes shall be made to the Pocket Park without receipt of all required approvals from the City.

5. Temporary Closures: The Parties acknowledge that Adjacent Property Owner may, with prior notice to the City and receipt of all applicable permits and approvals, close portions of the Pocket Park on a temporary basis as reasonably required from time to time for maintenance and repair of same. Adjacent Property Owner shall (and/or shall cause any contractor(s)) responsible for performing any work in, on or under the Property) to perform all such work in a good and workmanlike manner in accordance with all applicable federal, state and local laws, rules, regulations and ordinances.

6. Insurance. Adjacent Property Owner shall (and/or shall cause any contractor(s)) responsible for performing any work in, on or under the Pocket Park, as applicable) to (i) carry the types of insurance as would be carried by a reasonably prudent owner of commercial real property, provided that said insurance shall be no less than the minimum amounts and types required by the City and set forth on **EXHIBIT D**; and (ii) upon written request of the City, deliver a certificate evidencing the insurance required hereunder and naming the City as an additional insured. The Parties acknowledge that Adjacent Property Owner has no employees and anticipates hiring contractors to perform the required maintenance.

7. No Third-Party Beneficiaries: None of the duties and obligations of Adjacent Property Owner and the City under this Agreement shall in any way be construed as to create any liability for the Adjacent Property Owner or the City with respect to third parties who are not parties to this Agreement, including but not limited to members of the general public.

8. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed duly given if (a) mailed by certified or registered mail, postage and registration charges prepaid, on the third day after deposit in US Mail; (b) by overnight delivery service with receipt, on the next business day after deposit with the delivery service; or (c) by hand delivery on the day of actual receipt, to the parties at the addresses set forth below or to such other address for a party as may be specified in a notice so given to the other party:

The City: City of Somerville
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143
Attention: Mayor

With a copy to: City of Somerville
Somerville City Hall – Law Department
93 Highland Avenue
Somerville, MA 02143
Attention: City Solicitor

Adjacent Property
Owner: 31 Tufts Street LLC
40 Homer Street
Newton, Massachusetts 02459
Attn: Eliza Datta

With a copy to: Adam Dash & Associates
48 Grove Street, Suite 304
Somerville, MA 02144
Attn: Adam Dash, Esq.

And to: [Massachusetts Housing Finance Agency](#),
[One Beacon Street](#)
[Boston, MA 02108](#)
[Attention: General Counsel](#)

9. Recitals. The recitals set forth above are incorporated in and made a part of this Agreement.

10. Successors and Assigns. This Agreement and the rights and obligations of the Parties hereunder shall be binding upon and inure to the benefit of the Parties hereto, their respective legal representatives, and the successors and assigns of the Parties. This Agreement and the rights and easements granted hereunder shall run with the land and inure to the benefit of and be binding upon the Parties and their successors and assigns.

11. Governing Law. shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and may not be modified or amended in any manner other than by a written agreement signed by both Parties hereto.

12. Assignment.

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(1) By City. The City shall not assign its rights or obligations under this Agreement, without Adjacent Property Owner's prior written consent which shall not be unreasonably withheld, except to the extent the City is concurrently assigning its rights and obligations to a successor entity with responsibility for City of Somerville civic spaces, and in such case notice of such assignment will be given to Adjacent Property Owner.

(2) By Adjacent Property Owner. Adjacent Property Owner may assign its rights and/or obligations in whole or in part to any affiliate of Adjacent Property Owner or to any unaffiliated owner of the Adjacent Owner Property, provided that Adjacent Property Owner shall provide written notice to the City of any such assignment within fifteen (15) business days of any such assignment.

13. Transfer, Financing, Refinancing. Upon fifteen (15) business days' prior notice, given upon the transfer, financing and/or refinancing of any portion of the Property and otherwise no more than once a year, the City shall provide to Adjacent Property Owner, its purchaser or lender, as the case may be, an estoppel certificate stating, to its actual knowledge: (a) whether the City knows of any defaults under this Agreement, and, if so, the nature thereof; (b) whether this Agreement has been assigned, modified or amended in any way and, if so, the nature thereof; and (c) that this Agreement is in full force and effect as of the date of the estoppel certificate.

14. No Personal Liability. No partner, member, shareholder, trustee, beneficiary, director, officer, manager or employee of Adjacent Property Owner, or any partner of such parties, or any affiliate of any Party hereto, shall have any personal liability under this Agreement. In the event any person obtains a judgment against Adjacent Property Owner in connection with this Agreement, such person's sole recourse shall be to the estate and interest of such party in and to its property described herein.

15. Severability. If any term or provision of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

16. Entire Agreement. This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

17. Indemnification.

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(a) 31 Tufts Street LLC, its successor and assigns, shall indemnify, defend (with counsel acceptable to City, which acceptance shall not be unreasonably withheld), and hold harmless the City of Somerville, its officers, employees, agents and representatives from and against any and all claims, suits, liabilities, losses, damages, costs or expenses, (including judgments, costs, interest, attorney’s fees and expert’s fees) arising from or in connection with any act or omission relating in any way to the performance of this Agreement by 31 Tufts Street LLC., its agents, officers, employees, or subcontractors. The extent of this indemnification shall not be limited by any obligation or any term or condition of any insurance policy. The obligations set forth in this paragraph shall survive the termination of this Agreement.

(b) The City of Somerville, its successor and assigns, to the extent permitted by law, shall indemnify, defend (with counsel acceptable to 31 Tufts Street LLC, which acceptance shall not be unreasonably withheld), and hold harmless the 31 Tufts Street LLC., its officers, employees, agents and representatives from and against any and all claims, suits, liabilities, losses, damages, costs or expenses, (including judgments, costs, interest, attorney’s fees and expert’s fees) arising from or in connection with any act or omission relating in any way to the performance of this Agreement by the City of Somerville, its agents, officers, employees, or subcontractors. The extent of this indemnification shall not be limited by any obligation or any term or condition of any insurance policy. The obligations set forth in this paragraph shall survive the termination of this Agreement.

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EXECUTED as a sealed instrument as of the day June 2024.
31 TUFTS STREET LLC

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~~ADJACENT PROPERTY OWNER.~~

By: _____
Name:
Title: Authorized Signatory
Date:

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF MIDDLESEX) ss.
)

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared _____, the Authorized Signatory of 31 TUFTS STREET LLC proved to me through satisfactory evidence of identification, which was a [current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of _____, the Authorized Signatory of 31 TUFTS STREET LLC.

Notary Public
My Commission Expires:

THE CITY:

THE CITY OF SOMERVILLE

By: _____

Name: Katjana Ballantyne

Title: Mayor

Date: _____

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Approved as to form and legality:

By: _____

Name: Cynthia Amara

Title: City Solicitor

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF MIDDLESEX) ss.

)

On the ____ day of _____, 2024, before me, the undersigned notary public, Katjana Ballantyne personally appeared, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily in my presence as the authorized signatory of The City of Somerville as the voluntary act of the company.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF LOT 2

A certain parcel of land situated at the northeast corner of the intersection of Glen Street and Tufts Street in the City of Somerville, shown as "Lot Two" in a plan entitled 'Lot Split Plan of Land at 31 Tufts St., Somerville MA, Middlesex County' prepared by Joyce Consulting Group, PC, dated March 2, 2022, and recorded in the Middlesex South Registry of Deeds as Plan 302 of 2022, and bounded and described as follows:

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Beginning at a point of land at the northeast corner of the intersection of Glen Street and Tufts Street thence running northeasterly, along the northerly line of Glen Street, at a bearing N 55° 33' 42", one hundred and fifteen (115.0) feet to a point;

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Thence turning northerly running along lands of Glen Condos, LLC, at bearing N 34° 26

'18"W, thirty-seven (37) feet to a point;

Thence turning westerly, running along lands of 'Lot 1 at bearing S 55° 33'42" W, one hundred and fifteen (115) feet to a point in the easterly line of Tufts Street;

Thence turning southerly running along the easterly line of Tufts Street at a bearing S 34° 26' 18" E, thirty-seven (37) feet to the point and place of beginning.

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Containing four thousand two hundred fifty-five (4,255) square feet more or less.

This Conveyance is made subject to the restrictions and easements of record contained in the Quit Claim Deed from the City of Somerville to Tufts Glen Pocket Park LLC dated May 11, 2022, recorded with the Middlesex South Registry of Deeds in Book 80154, Page 207 and as shown on Plan 302 of 2022 filed with the Middlesex South Registry of Deeds.

For title reference see deed dated May 16, 2022 recorded with the Middlesex South Registry of Deeds in Book 80154, Page 207.

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EXHIBIT B

Leonard Grimes Pocket Park Landscape Maintenance and Management Plan dated May [], 2024 (Exhibit B is the LMMP). **“LMMP”**

Moved (insertion) [1]

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EXHIBIT C
AS BUILT PLANS

EXHIBIT D
INSURANCE REQUIREMENTS

- (a) **Worker's Compensation:** Statutory coverage including employer's liability with limits of not less than \$500,000 per accident, \$500,000 each employee for occupational disease, \$500,000 policy limit for occupational disease.
- (b) **Automobile Liability:** \$1,000,000 combined single limit per accident on bodily injury and property damage covering all owned, leased or hired vehicles used in performing the scope of work.
- (c) **Comprehensive General Liability:** At least \$1,000,000 combined single limit per occurrence on bodily injury, personal injury and property damage, \$2,000,000 aggregate. The policy shall include contractual liability and broad form property damage coverage. The City and Adjacent Property Owner shall be named as an additional insured.
- (d) **Professional Liability:** In amounts that are customary and reasonable for the type of work to be performed.

EXHIBIT E
CERTIFICATE OF CITY COUNCIL VOTE

[see attached]

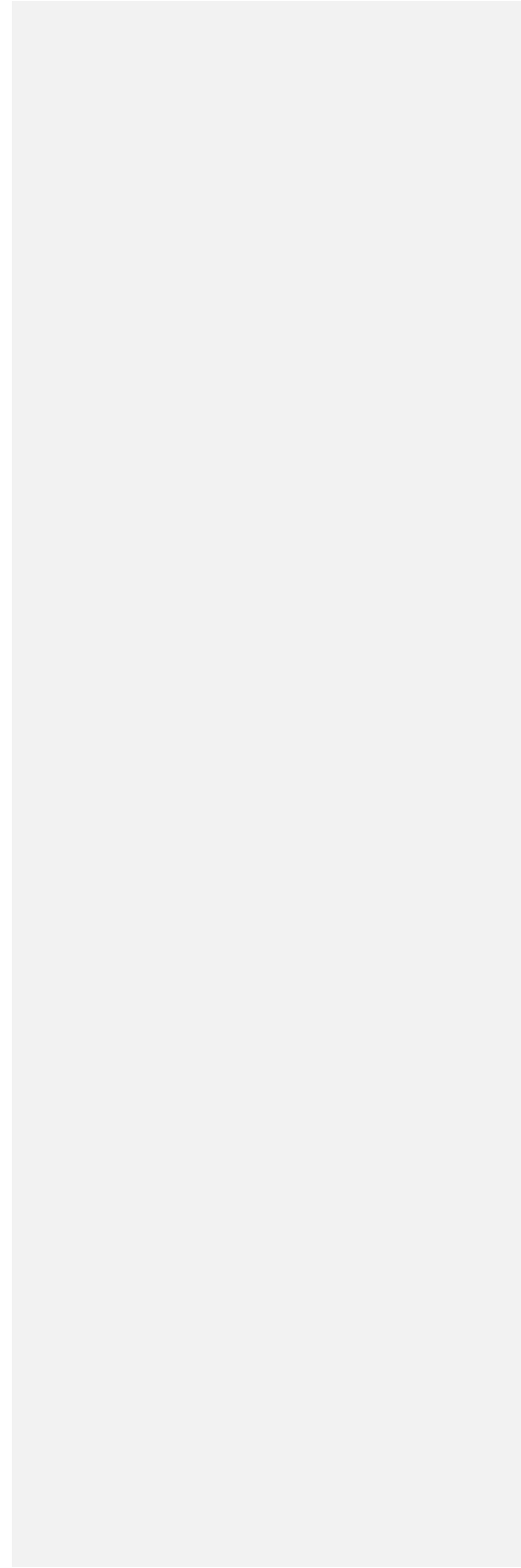


EXHIBIT F
CERTIFICATE OF VOTE- 31 TUFTS LLC

Moved up [1]: Leonard Grimes Pocket Park Landscape Maintenance and Management Plan dated May [], 2024 (Exhibit B is the LMMP).¶