

After recording return to:

City of Somerville  
Law Department  
93 Highland Avenue  
Somerville, MA 02143  
ATT: Catherine A. Lester Salchert, Esq.



RECORDING INFORMATION AREA

**EASEMENT AND LICENSE AGREEMENT**

This EASEMENT AND LICENSE AGREEMENT (this “**Agreement**”) is entered into as of [September] \_\_\_, 2024, by the **CITY OF SOMERVILLE, MASSACHUSETTS**, a municipal corporation with an address of City Hall, 93 Highland Avenue, Somerville, Massachusetts 02143 (the “**Grantor**”) in favor of (i) **74M PROPERTY OWNER, LLC**, a Delaware limited liability company with an address c/o Greystar Real Estate Partners, One Federal Street, Suite 1804, Boston, Massachusetts 02110 (the “**Grantee**”) (Grantor and Grantee each being a “**Party**”, and collectively, herein, at times, the “**Parties**”).

WITNESSETH:

A. Grantor is the owner of that certain public right-of-way known as Kensington Avenue, the layout of which is depicted on Plan No. 1404 of 1967, as modified by Plan No. 1175 of 1971 (“**Kensington Avenue**”) and a parcel of open space abutting the southeasterly boundary of Kensington Avenue, which open space parcel is situated at 0 Middlesex Avenue and is known commonly as Kensington Park and is more particularly described on Exhibit A attached hereto and incorporated herein by reference and is depicted more particularly as Parcel “A” on that certain plan entitled “Plan of Land, 50 Middlesex Ave., Somerville, Mass, prepared for SSG Development, LLC”, dated April 6, 2012, prepared by Green Seal Environmental, Inc., and recorded with the Middlesex South District Registry of Deeds (the “**Registry**”) as Plan No. 404 of 2012 (the “**0 Middlesex**”).

B. Grantee is the owner of that certain privately-owned parcel of real property situated at and known as 74 Middlesex Avenue, Somerville, Massachusetts, which is more particularly described on Exhibit B attached hereto and incorporated herein by reference and is depicted more particularly on that certain “Consolidation Plan of Land in Somerville Massachusetts”, prepared by Vanasse Hangen & Brustlin, Inc., dated June 6, 2022, and recorded with the Registry as Plan No. 593 of 2022 (“**74 Middlesex**”).

C. Pursuant to that certain Planning Board Decision dated June 22, 2020, in Case No. MPSP 2020-001, recorded in the Middlesex South District Registry of Deeds (the “**Registry**”) in Book 78188, at Page 193, as amended by that certain Plan Revision Decision issued by the Director of Planning, Preservation and Zoning in Case No. P&Z 21-066 dated September 1, 2021, recorded with the Registry in Book 78969, at Page 1, and that certain Site Plan Approval Planning Board Decision in Case Number P&Z 21-022 dated December 30, 2021, recorded with the Registry in Book 79954, at Page 442 (collectively, the “**74 Middlesex Planning Board Approvals**”), permitting a mixed-use project to be constructed at 74 Middlesex, Grantee was required to create a civic space on that certain parcel of land known as 0 Middlesex as well as on a portion of Kensington Avenue, on which Grantee maintain and repair and replace a certain Neighborhood Park Civic Space in satisfaction of the Planning Board Approvals (the “**Civic Space**”), the location of which Civic Space is shown on that certain plan entitled “Civic Space License & Easement Areas Plan”, dated August 7, 2024, and prepared by VHB, Inc., a copy of which is attached hereto as Exhibit C and incorporated herein by reference (the “**Civic Space Plan**”).

D. 0 Middlesex and the portion of Kensington Avenue that is to be used for Civic Space as depicted on the Neighborhood Park Civic Space Plan (collectively, the “**Civic Space Parcels**”) are owned by the City by virtue of (i) with respect to 0 Middlesex, that certain Quitclaim Deed from Somerville Middlesex Self Storage, LLC to the City dated June 14, 2012, and recorded with the Registry in Book 59318, at Page 334 and (ii) with respect to Kensington Avenue, that certain Taking by the Commonwealth of Massachusetts Department of Public Works for and on behalf of the City of Somerville dated November 22, 1967, and recorded with the Middlesex South District Registry of Deeds in Book 11434, at Page 560.

E. Grantee and Grantor, as co-applicants pursuant to the 74 Middlesex Planning Board Approvals, received a Site Plan Approval Decision from the Planning Board, approving the design of the Civic Space in Case No. PZ 21-023 on December 30, 2021, recorded with the Registry in Book 80648, at Page 296, as amended by that certain Major Amendment Decision in Case No. ZP 24-000045 issued by the Planning Board on June 24, 2024, recorded with Registry in Book 83093, at Page 67 (collectively, the “**Civic Space Site Plan Approval Decision**”)(collectively, the 74 Middlesex Planning Board Approvals and the Civic Space Site Plan Approval Decision, shall be referred to, at times, herein as the “**Project Approvals**”), which requires, among other things, the recording of this Agreement with regard to the ongoing maintenance of the Civic Space by the Grantee.

F. The Parties desire to enter into this Agreement for the purposes of granting Grantee the easements, licenses and other rights in and to the Civic Space Parcels as are reasonable or necessary in order for Grantee to exercise its rights and obligations hereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and each Grantee hereby agree as follows:

1. (a) Easement. Grantor hereby grants to Grantees a non-exclusive easement to enter into and utilize the portion of 0 Middlesex depicted as “Easement Area” on the Civic Space Plan, for the purposes of the installation, maintenance, replacement and repair of such landscaping, hardscaping, street seating, plantings, special materials, decorative elements and other facilities and improvements necessary to create, maintain, repair and replace in the manner required by Section 2 of this Agreement, a Neighborhood Parcel

Civic Space as required under the Project Approvals and materially consistent with the Site Plan Approval Decision.

(b) License. Grantor hereby grants to Grantees a non-exclusive license to enter into and utilize the portion of Kensington Avenue comprising the Civic Space for the purposes of the installation, maintenance, replacement and repair of such landscaping, hardscaping, street seating, plantings, special materials, decorative elements and other facilities and improvements necessary to create, maintain, repair and replace in the manner required by Section 2 of this Agreement, a Neighborhood Parcel Civic Space as required under the Project Approvals and materially consistent with the Civic Space Site Plan Approval Decision.

(c) Grantee's Rights. Grantees' rights under this Agreement shall include the right (a) with prior notice to Grantor, and subject to receipt of required permits from Grantor, to use the Civic Space Parcels on a temporary basis from time to time for special events and activities and (b) with prior notice to the Grantor, to close the Civic Space or portions thereof in order to conduct maintenance, repair and replacement activities within the Civic Space; provided, however, that in the instance of conducting emergency repairs, Grantee shall only be required to provide Grantee with such prior notice as is reasonably practicable under the circumstances.

(d) Grantor's Reserved Rights. Grantor hereby reserves the rights for and on behalf of the City of Somerville and members of the general public, the right to enter the Civic Space Parcels for (a) the public to gather, pass and repass and for civic space purposes in perpetuity; and (b) the portion of the Civic Space Parcels comprised of a portion of Kensington Avenue depicted as the "License Area" on the Civic Space Plan, for pedestrian access and use by emergency vehicles, at all times, twenty-four (24) hours a day, seven (7) days a week.

2. Maintenance. Grantee shall maintain, repair and replace, at its sole cost and expense, all improvements installed by such Grantee in the Civic Space Parcels, and shall be responsible for the removal of garbage and emptying of garbage cans and removal of snow and ice from the Civic Space, in a manner consistent with other first class mixed-use developments in the Somerville, Massachusetts area and otherwise in accordance with City of Somerville standards. Pursuant to the above, Grantee shall be required to replace any previously installed improvements that are beyond their useful life with identical installations unless a materially consistent installation is approved in advance in writing by the City subject to the currently applicable design review process. Grantee shall not modify or replace improvements from their as built conditions unless Grantee is in receipt of all required approvals from Grantor, including applicable design review.
3. Insurance. Grantee shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under the Civic Space Parcels to), in connection with any work being performed in, on or under the Civic Space Parcels by Grantee: (i) carry the types of insurance, and in the minimum amounts, listed on Exhibit D; and (ii) prior to the commencement of any work, to deliver a certificate evidencing the insurance required hereunder and naming Grantor as an additional insured on its general commercial liability and workmen's compensation policies.

4. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed given/received: (a) when delivered if delivered by hand; (b) the next business day after deposit with a reputable overnight courier service marked for delivery on the next business day; or (c) upon completion of transmission if sent by facsimile, and addressed to the applicable Party at the following address:

If to Grantor: City Hall  
93 Highland Avenue  
Somerville, MA 02143  
Attn: Office of the Mayor

With a copy to: Executive Director  
Office of Strategic Planning and Community  
Development  
93 Highland Avenue, 3<sup>rd</sup> Floor  
Somerville, MA 02143

and

If to Grantee: City Solicitor  
Law Department  
93 Highland Avenue, 2<sup>nd</sup> Floor  
Somerville, MA 02143  
74M Property Owner, LLC  
c/o Greystar Real Estate Partners  
One Federal Street, Suite 1804  
Boston, MA 02110  
Attention: Gary Kerr

With a copy to: Goulston & Storrs PC  
One Post Office Square, 25<sup>th</sup> Floor  
Boston, MA 02109  
Attention: Darren M. Baird, Esq.

Any address or name specified above may be changed by notice given to the addressee by the other party in accordance with this Section 4. The inability to deliver notice because of a changed address of which no notice was given as provided above, or because of rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by counsel for such party.

5. Recitals. The recitals set forth above are incorporated in and made a part of this Agreement.
6. Successors and Assigns. This Agreement and the rights and obligations of the Parties hereunder shall run with the land and be binding upon and inure to the benefit of the Parties hereto, their respective legal representatives, and the successors and assigns of the

Parties, 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 all Parties hereto.

7. Estoppel Certificate. Upon fifteen (15) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of 74 Middlesex, Grantor shall provide to Grantee and its purchaser or lender, as the case may be, an estoppel certificate stating, to its actual knowledge: (a) whether Grantor 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.
8. Limitation of Liability. No partner, member, shareholder, trustee, beneficiary, director, officer, manager, or employee of Grantee, or any partner of such parties, or any affiliate of any Party hereto, shall have any personal liability under this Agreement. In addition, no Party to this Agreement shall have personal liability under this Agreement. In the event any person obtains a judgment against Grantee in connection with this Agreement, such person's sole recourse shall be to the estate and interest of such Grantee in and to 74 Middlesex.
9. 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.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

**74M PROPERTY OWNER, LLC**, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**CITY OF SOMERVILLE:**

Name: \_\_\_\_\_  
Katjana Ballantyne  
Its: Mayor

Attest:

Approved as to form:

By: \_\_\_\_\_  
Cynthia Amara  
Its: City Solicitor

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF MIDDLESEX )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of 74M Property Owner, LLC, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(Official Signature and Seal of Notary)

COMMONWEALTH OF MASSACHUSETTS )  
 ) ss:  
COUNTY OF MIDDLESEX )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Katjana Ballantyne, the Mayor of the City of Somerville, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:  
(Official Signature and Seal of Notary)

EXHIBIT A

LEGAL DESCRIPTION OF 0 MIDDLESEX

That certain parcel of land located on the westerly side of Middlesex Avenue and southeasterly side of Kensington Avenue in Somerville Massachusetts, being shown as Parcel "A" on a plan entitled "Plan of Land, 50 Middlesex Ave., Somerville, Mass, prepared for SSG Development LLC," dated April 6, 2012, prepared by Green Seal Environmental, Inc., and recorded in the Middlesex South District Registry of Deeds in Plan Book 2012, Plan 404 (the "Plan"), and being more particularly bounded and described as follows:

Beginning at the northerly corner of Parcel "A" at the intersection of Kensington Avenue and Middlesex Avenue;

Thence South 11°25'20" East a distance of 143.92' by Middlesex Avenue to a point at Parcel "B" as shown on the Plan;

Thence North 64°59'44" West a distance of 13.23' to a point;

Thence North 76°56'29" West a distance of 108.43' to a point;

Thence North 11°25'20" West a distance of 20.18' to a point in the side of Kensington Avenue; and

Thence North 45°35'52" East a distance of 130.34' by Kensington Avenue to the point of beginning.

Said Parcel "A" contains 8,822 square feet of land, more or less, according to the Plan.



## EXHIBIT B

### LEGAL DESCRIPTION OF PARCEL 74 MIDDLESEX

Those certain parcels of real property, with improvements situated thereon, situated in the City of Somerville, County of Middlesex, Commonwealth of Massachusetts, which are more particularly bounded and described as follows:

Tract 1:

Parcel One:

The land being shown as Lot A on a plan entitled, "Plan of Land in Somerville, Mass.," dated October 27, 1939, prepared by Everett M. Brooks, Civil Engineer, and recorded with the Middlesex South District Registry of Deeds in Plan No. 1790 of 1948, Book 7376, Page 551, to which plan reference is hereby made for a more particular description.

Parcel Two:

The land being shown as a Lot on a plan entitled, "Plan of Land in Somerville" dated August 13, 1935, prepared by Sumner Schein, Chief Engineer, as modified and approved by the Court, filed in Land Registration Office as Land Court Plan No. 15910A, a copy of a portion of which is filed with the Middlesex Southern Registry District of the Land Court with Certificate of Title No. 128557, to which plan reference is hereby made for a more particular description.

Tract 2:

The land being shown as Lot 1 on a plan entitled, "Subdivision Plan of Land in Somerville" dated November 22, 1967, prepared by Daniel S. Horgan, Chief Engineer, as modified and approved by the Court, filed in Land Registration Office as Land Court Plan No. 28922B, a copy of a portion of which is filed with the Middlesex Southern Registry District of the Land Court with Certificate of Title No. 128557, to which plan reference is hereby made for a more particular description.

All of which parcels are depicted on that certain "Consolidation Plan of Land in Somerville Massachusetts", prepared by Vanasse Hangen & Brustlin, Inc., dated June 6, 2022, and recorded with the Middlesex South District Registry of Deeds as Plan No. 593 of 2022.

Reference is also made to that certain Notice of Voluntary Withdrawal dated December 21, 2022, and issued by the Land Court Department of the Trial Court, which Notice was recorded with said Registry in Book 79742, at Page 78, on January 3, 2022.

EXHIBIT C  
CIVIC SPACE PLAN

[attached behind]

EXHIBIT D

REQUIRED INSURANCE

(a) **Workers' Compensation:** Statutory coverage including employer's liability with limits of not less than \$500,000.00 per accident, \$500,000.00 each employee for occupational disease, \$500,000.00 policy limit for occupational disease.

(b) **Automobile Liability:** \$1,000,000.00 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 \$1,000,000.00 combined single limit per occurrence on bodily injury, personal injury and property damage, \$2,000,000.00 aggregate. The policy shall include contractual liability and broad form property damage coverage. Grantor 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

CITY COUNCIL APPROVAL