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CONVEYANCE AND EASEMENT AGREEMENT

This CONVEYANCE AND MAINTENANCE EASEMENT (this “Agreement”) is entered into as of the ____ day of April, 2024 (the “Effective Date”) by and between UNION SQUARE RELP D2.2 OWNER LLC, a Delaware limited liability company, with an address at c/o Union Square Station Associates LLC, 10 Prospect Street, Somerville, Massachusetts 02143 (“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 “City”). Adjacent Property Owner and the City are each referred to herein as a “Party” and collectively as the “Parties”.

WITNESSETH:

- A. Reference is hereby made to (i) that certain Coordinated Development Special Permit in Case PB2017-21 issued by the Planning Board of the City of Somerville on December 14, 2017, recorded with the Middlesex South District Registry of Deeds (the “Registry”) in Book 70602, Page 1 (as the same may be amended from time to time, the “CDSP”); (ii) that certain Planning Board Decision regarding Design & Site Plan Review in Case PB 2019-05, dated August 22, 2019, recorded with the Registry in Book 75482, Page 158 (as the same may be amended from time to time, the “DSPR Decision”); (iii) that certain Development Covenant recorded with the Registry in Book 76588, Page 161 (as the same may be amended from time to time, the “Development Covenant”) (the CDSP, DSPR Decision and Development Covenant are collectively the “Project Approvals”), and (iv) that certain Conveyance and Easement Agreement by and between the Massachusetts Bay Transportation Authority (“MBTA”) and Adjacent Property Owner, dated December 22, 2021 and recorded with the Registry at Book 79511, Page 1 (as the same may be amended from time to time, the “MBTA Easement”).
- B. Adjacent Property Owner owns certain real property located at 20-50 Prospect Street, Somerville, Massachusetts, including the real property as more particularly described on **Exhibit A-1 as Lot 2A** attached hereto and incorporated by reference (“Lot 2A” or the

“Conveyance Property”), and the real property as more particularly described on Exhibit A-2 attached hereto and incorporated by reference (the “Adjacent Owner Property”),

- C. The Conveyance Property has been developed as a Civic Space in accordance with the Project Approvals and the MBTA Easement and is a portion of the Union Square Revitalization project, a larger mixed-use master planned project being developed in Union Square.
- D. Per the Project Approvals, Adjacent Property Owner has created and is required to maintain the Civic Space in perpetuity as a publicly accessible civic 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 convey fee title to the Conveyance Property to the City subject to the reservation of certain rights and easements, and to facilitate Adjacent Property Owner’s maintenance responsibilities in connection therewith, all as more specifically set forth herein.
- F. Pursuant to a vote by the City Council of Somerville attached hereto as Exhibit C, the City has accepted the conveyance of Lot 2A and approved this Agreement providing for Adjacent Property Owner to program, maintain and repair the improvements located on Lot 2A (the “Civic Space”).

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. Conveyance of Property. Adjacent Property Owner does hereby give, grant, bargain, and convey to the City, its successors and assigns, in fee, all of Adjacent Property Owner’s right, title and interest in the Conveyance Property, together with all improvements thereon and an assignment of all construction and equipment warranties to the extent assignable, subject to all encumbrances of record, including without limitation the MBTA Easement, and subject to the Easement (as defined below), in accordance with this Agreement , including the following terms and conditions:
 - a. Use of the Conveyance Property. The Conveyance Property shall be used by the City solely as public civic space in accordance with the Project Approvals and the MBTA Easement, for the public to gather, pass, and repass, and the City and Adjacent Property Owner shall have the right to program and use the Civic Space subject to the Adjacent Property Owner’s receipt of applicable licenses or permits. Additionally, Adjacent Property Owner may use applicable portions of the Civic Space as outdoor space accessory to adjacent retail uses as determined by Adjacent Property Owner, or its designee, subject to receipt of applicable licenses or permits.

- b. Reservation of Easement. Adjacent Property Owner does hereby reserve a non-exclusive perpetual right and easement (the “Easement”) as set forth in Section 2 below.
2. Reserved Easement. Adjacent Property Owner hereby reserves, for itself, its successors, grantees and assigns, the non-exclusive, perpetual right and easement to operate, maintain, program and repair the Civic Space, along with any and all utilities reasonably necessary for the Civic Space, including through provision of planters, outdoor seating and furniture, use of space for and accessory to adjacent restaurant and retail uses, art installations and holiday decorations, and for special events and activities, subject to receipt of required approvals, provided that the same shall be, to the extent reasonably practical, planned to accommodate continuous beneficial use by the City and the public and including access by Adjacent Property Owner or its designee to perform required maintenance, and to repair and replace installations previously installed that are beyond their useful life, in each case subject to receipt of any applicable licenses and/or permits, at Adjacent Property Owner’s sole expense. For avoidance of doubt, it is also acknowledged and agreed that in no event may the Adjacent Property Owner or the City modify the Civic Space or improvements existing on the Civic Space, without the approval of the other Party and without having first received all required licenses, permits or approvals.
3. Adjacent Property Owner’s Maintenance Responsibilities: The Adjacent Property Owner shall maintain the Civic Space and improvements in accordance with the Project Approvals and MBTA Easement and the with the landscape maintenance and management plan referenced on Exhibit D, as the same may be updated by mutual written agreement of the City and Adjacent Property Owner, from time to time, or modified or replaced subject to receipt of required approvals of the City, and in any event in a good condition meeting City standards for comparable civic spaces located within and maintained by the City, it being acknowledged that Adjacent Property Owner may, with prior notice to the City and any applicable permits and approvals, close portions of the Property on a temporary basis as reasonably required from time to time for maintenance, repair and replacement of improvements thereto.. 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.
4. Insurance. Adjacent Property Owner shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under the Property) (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 B**; and (ii) upon written request of the City, deliver a certificate evidencing the insurance required hereunder and naming the City as an additional insured.

5. 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.
6. 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: Union Square RELP D2.2 Owner LLC
 c/o Union Square Station Associates LLC
 10 Prospect Street
 Somerville, Massachusetts 02143
 Attn: Greg Karczewski

With a copy to: Union Square Station Associates LLC
 c/o Magellan Development Group
 225 N. Columbus Drive, Suite 100
 Chicago, Illinois 60606
 Attn: Kim Sharon

And to: Affinius Capital
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attn: Carrington Brown
Email: legal@affiniuscapital.com

And to: DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110
Attn: Brian Hochleutner, Esq.

7. Recitals. The recitals set forth above are incorporated in and made a part of this Agreement.
8. 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, 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. This Agreement and the 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. The City shall not assign its rights or obligations under this Agreement, without Adjacent Property Owner's prior written consent (which may be granted or withheld in Adjacent Property Owner's sole reasonable discretion), 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. 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 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.
9. Assignment. 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.
10. 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.

11. 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.
12. 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.

[Remainder of page intentionally blank; signature page follows]

EXECUTED as a sealed instrument as of the Effective Date.

ADJACENT PROPERTY OWNER:

UNION SQUARE RELP D2.2 LLC

By: _____
Name: Gregory Karczewski
Title: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF MIDDLESEX) ss.
)

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared Greg Karczewski, the Authorized Signatory of UNION SQUARE RELP D2.2 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 Greg Karczewski, the Authorized Signatory of UNION SQUARE RELP D2.2 LLC.

Notary Public
My Commission Expires:

THE CITY:

THE CITY OF SOMERVILLE

By: _____

Name: Katjana Ballantyne

Title: Mayor

Attest:

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-1
LEGAL DESCRIPTION OF CONVEYANCE PROPERTY

That certain parcel of land in the City of Somerville, Middlesex County, Massachusetts, being shown as Lot 2A on a plan entitled “Subdivision Plan of Land – Prospect Street at Somerville Avenue” prepared by Design Consultants, Inc., dated November 23, 2020, and recorded in the Middlesex South Registry of Deeds as Plan 881 of 2020

Being a portion of the premises conveyed to Union Square RELP D2.2 Owner LLC by the Somerville Redevelopment Authority by deed dated February 22, 2021 and recorded at the Middlesex South Registry of Deeds in Book 76638, Page 68.

EXHIBIT A-2
LEGAL DESCRIPTION OF ADJACENT OWNER PROPERTY

That certain parcel of land in the City of Somerville, Middlesex County, Massachusetts, being shown as Lots 1, 3 and 5 on a plan entitled “Subdivision Plan of Land – Prospect Street at Somerville Avenue” prepared by Design Consultants, Inc., dated November 23, 2020, and recorded in the Middlesex South Registry of Deeds as Plan 881 of 2020.

EXHIBIT B
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 C
CERTIFICATE OF CITY COUNCIL VOTE

[see attached]

EXHIBIT D
LANDSCAPE MANAGEMENT PLAN

D2 Civic Space Landscape Maintenance and Management Plan dated October 26, 2023