

After recording return to:

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

RECORDING INFORMATION AREA

SEWALL PARK MAINTENANCE AGREEMENT

This SEWALL PARK MAINTENANCE AGREEMENT (this “Agreement”) is by and between the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (the “City”), and 299 BROADWAY PROPERTY OWNER LLC, a Massachusetts limited liability company (the “Developer”). The City and 299 Broadway are each sometimes referred to herein as a “Party” and collectively, the “Parties”.

WITNESSETH:

A. Reference is hereby made to that certain City of Somerville Zoning Board of Appeals Decision in Case Number P&Z 22-092 dated February 14, 2023 recorded with the Registry in Book 82094, at Page 116, as amended (as amended, the “Comprehensive Permit”), permitting a mixed-use development to be constructed at 299 Broadway and 15 Temple, which includes the construction of a civic space at 30 Sewall Street to be known as Sewall Park on a parcel of land shown as Lot 5 on a plan entitled “Subdivision Plan of Land, Mark Development, LLC” dated March 7, 2025, prepared by Control Point Associates, Inc. (the “Subdivision Plan”), recorded with the Middlesex County South District Registry of Deeds (the “Registry”) in Plan Book _____, Plan _____ (“Lot 5”).

B. The Developer is the owner of those certain privately-owned parcels of real property situated at and known as 299 Broadway and 15 Temple Street, Somerville, Massachusetts, shown as Lot 1 on the Subdivision Plan (“Lot 1”) and Lot 2 on the Subdivision Plan (“Lot 2”), being a portion of the conveyed to the Developer by Quitclaim Deed recorded with Registry in Book 82094, Page 63.

C. Pursuant to a Land Disposition Agreement by and between the Somerville Redevelopment Authority (the “SRA”) and the Developer, the Developer intends to convey Lot 5 to the SRA in connection with funding received from the MassWorks Infrastructure Program and the Developer intends to develop Lot 5 in accordance with the Comprehensive Permit.

D. Once the Developer has completed the anticipated improvements to Lot 5 in accordance with the Comprehensive Permit, the SRA intends to deed Lot 5 to the City for permanent ownership (the “City Transfer Date”).

E. Pursuant to the Comprehensive Permit, the Parties desire to enter into this Agreement to establish the rights and obligations of the Parties related to the maintenance of Lot 5 by Developer, in its capacity as the owner of Lot 1 and Lot 2, as a publicly open civic space consistent with the requirements of the Comprehensive Permit, effective as of the City Transfer Date, all on the terms and conditions set forth herein.

F. The City Council of the City of Somerville approved this Agreement by a vote taken at a duly authorized meeting held on [_____ 2025]. A certified copy of the vote is recorded herewith and a copy of the vote is also attached hereto as Exhibit C.

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

1. Developer Maintenance Obligations.

- (a) As of the City Transfer Date, the Developer, in its capacity as the owner of Lot 1 and Lot 2, shall maintain, repair and replace, at its sole cost and expense, open spaces and improvements on Lot 5, and shall be responsible for the removal of garbage and emptying of garbage cans and removal of snow and ice from the same in a manner consistent with other first class mixed-use developments in the Somerville, Massachusetts area and otherwise in accordance with Somerville standards, all as further stated in the provisions applicable to Lot 5 in the Landscape Maintenance and Management Plan, (the “LMMP”) attached hereto and incorporated herein as Exhibit A, as the same may be modified in writing by mutual agreement of the parties. The Developer shall be required to replace any previously installed improvements that are damaged with identical installations unless a materially consistent installation is approved in advance in writing by the City. The Developer shall not materially modify improvements from their “As Built” conditions unless the Developer is in receipt of approval of any required modifications to the LMMP or to the Comprehensive Permit or plans referenced in the Comprehensive Permit and an amendment to this Agreement is subsequently recorded containing the updated as built plans.
- (b) Developer’s Rights. The Developer’s rights under this Agreement shall include the right with prior notice to City, and subject to receipt of any required permits

from the City, to close portions or all of Lot 5 in order to conduct maintenance and repair activities or replacement activities consistent with paragraph (a) of this Section, or to the infrastructure within or below Lot 5 in accordance with the Easement Agreement (as hereinafter defined); provided, however, that in the instance of conducting emergency repairs, the Developer shall only be required to provide the City with such prior notice as is reasonably practicable under the circumstances. Without limiting the generality of the foregoing, any such maintenance shall be, to the extent practical, planned to permit the continued use of Lot 5 by the City and the public. The Developer shall perform all such work in a good and workmanlike manner in accordance with all applicable federal, state and local laws, rules, regulations and ordinances.

2. Insurance. The Developer shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under Lot 5 to), (i) carry the types of insurance, and in the minimum amounts, listed on Exhibit B; and (ii) prior to the commencement of any work, to deliver a certificate evidencing the insurance required hereunder and naming the Developer as an additional insured on its general commercial liability policy.
3. City Maintenance Obligations. The City shall maintain and repair all public ways adjacent to Lot 5 in accordance with City standards for the maintenance of public ways.
4. Permits and Approvals. Each Party shall at all times obtain and maintain permits and approvals to the extent required by law for the exercise of such Party's rights and performance of its obligations hereunder. Notwithstanding the foregoing, if either Party is prohibited from complying with any of its obligations hereunder as a result of a City agency, department, or official denying any such required permit or approval, such Party shall not be in default of its obligations hereunder for failure to fulfill the applicable obligation. If the City determines that the Developer has failed to provide required information needed by the City in order to issue the permit, and that the Developer was notified of such failure and did not cure the failure, then the Developer shall not be relieved of the obligations to perform the maintenance obligations contained in this Agreement.
5. Comprehensive Permit and Covenant Regarding Use. The City acknowledges and agrees that the use of Lot 5 as a civic space is a requirement of the Comprehensive Permit and that, in furtherance thereof, as of the City Transfer date, Lot 5 is subject to a covenant that Lot 5 will remain dedicated to public use as a civic space as referenced in the Comprehensive Permit.
6. Existing Easements. Reference is made to that certain Easement Agreement by and between the SRA and the Developer dated _____, 2025, recorded with the Registry in Book _____, Page _____, which grants the Developer, as the owner of Lot 1 and Lot 2 as shown on the Subdivision Plan, certain easement rights across Lot 5 and to maintain and improve certain improvements within Lot 5, including easement rights

for the Developer to conduct the maintenance activities contemplated in Section 1 above.

7. 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 confirmation of receipt if sent by electronic mail, and addressed to the applicable Party at the following address:

If to City: 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, 3rd Floor
Somerville, MA 02143

and

City Solicitor
Law Department
93 Highland Avenue, 2nd Floor
Somerville, MA 02143

If to Developer: 299 Broadway Property Owner LLC
c/o Mark Development, LLC
275 Grove Street, Suite 2-150
Newton, MA 02466

299 Broadway Property Owner LLC
c/o Beacon Communities
2 Center Plaza, 6th Floor
Boston, MA 02108
Attn: Joshua Cohen

299 Broadway Property Owner LLC
c/o Samuels & Associates
136 Brookline Avenue
Boston, MA 02215
Attention: Damien Chaviano

with copies to: **Michael Scott, Esq.**

Nutter McClennen & Fish LLP
155 Seaport Boulevard
Boston, MA 02210

Julie Stande, Esq.
Nixon Peabody LLP
Exchange Place
53 State Street
Boston, MA 02109-2835

Any address or name specified above may be changed by notice given to the addressee by the other party in accordance with this Section. Any notice to be given by any party hereto may be given by counsel for such party.

6. Recitals. The recitals set forth above are incorporated in and made a part of this Agreement.
7. Successors and Assigns; Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall run with Lot 1, Lot 2 and Lot 5 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.
8. Estoppel Certificate. Upon fifteen (15) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of the Developer's Property, the City shall provide to the Developer and its purchaser or lender, as the case may be, an estoppel certificate stating, to its actual knowledge: (a) whether 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.
9. Limitation of Liability. No partner, member, shareholder, trustee, beneficiary, director, officer, manager, or employee of the Developer, 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.
10. Good Faith; Diligence. In performing the functions under this Agreement, both Parties shall act diligently and in good faith and cooperate with each other in all matters relating to the services to be provided by either Party under this Agreement. Both Parties shall furnish all information in their possession or control that either Party reasonably requests and that is reasonably necessary in connection with performing duties and services under this Agreement.
11. No Third-Party Beneficiaries. Subject to Section 9 above, none of the duties and obligations of the Developer and the City under this Agreement shall in any way be

construed as to create any liability for the Developer or the City with respect to third parties who are not parties to this Agreement.

12. Counterparts. 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.

299 BROADWAY PROPERTY OWNER LLC, a
Massachusetts limited liability company

By: _____
Name:
Title: Authorized Signatory

Commonwealth of Massachusetts
Middlesex, ss.

On this ____ day of _____, 2025, before me, the undersigned notary public, personally appeared _____, Authorized Signatory of 299 Broadway 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 document and acknowledged to me that he or she signed it voluntarily in such capacity for its stated purpose.

Notary Public
My commission expires:

By: _____
Katjana Ballantyne
Its: Mayor

By: _____
Cindy Amara
Its: City Solicitor

On this _____ day of _____, 2025, 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

LANDSCAPE MAINTENANCE AND MANAGEMENT PLAN

[attached behind]

EXHIBIT B

Insurance Requirements

(a) **Workers' Compensation:** If applicable, 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. The Developer shall be named as an additional insured.

(d) **Professional Liability:** If applicable, in amounts that are customary and reasonable for the type of work to be performed.

The City is self-insured for liability claims under M.G.L. Chapter 258, the Massachusetts Torts Claims Act and has property damage and liability insurance as required by law on City-owned vehicles.

EXHIBIT C

Certificate of Vote of the Somerville City Council

[See attached]

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