

## EASEMENT AGREEMENT

This EASEMENT AGREEMENT (this “Agreement”) is made by and among the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (the “City”), the SOMERVILLE REDEVELOPMENT AUTHORITY, a redevelopment authority organized and existing under M.G.L. c. 121B (the “SRA”), BUILDING 2 OWNER LLC, a Delaware limited liability company, with a place of business at c/o Leggat McCall Properties LLC, 10 Post Office Square, Boston, Massachusetts 02109 (“Building 2 Owner”), and BOYNTON YARDS LANDCO LLC, a Delaware limited liability company, with a place of business at c/o Leggat McCall Properties LLC, 10 Post Office Square, Boston, Massachusetts 02109 (“LandCo”; together with Building 2 Owner, the “Owners” and each individually an “Owner”). The City, the SRA, Building 2 Owner and LandCo are each sometimes referred to herein as a “Party” and collectively, the “Parties”.

### WITNESSETH:

A. Reference is hereby made to (i) a Master Plan Special Permit in Case MPSP2020-002 issued by the Planning Board of the City of Somerville, recorded with the Middlesex South District Registry of Deeds (the “Registry”) in Book 79088, Page 562, as amended and restated in the Amended Master Plan Special Permit in Case MPSP21-0972, recorded with the Registry in Book 81131, Page 561 (the “Master Plan Special Permit”); (ii) Planning Board Special Permit with Site Plan Review, dated October 7, 2021, recorded with the Registry in Book 79268, Page 97 (the “Site Plan Approval”); and (iii) that certain development covenant recorded with the Registry in Book 79089, Page 1 (as the same may be amended from time to time, the “Development Covenant”) (the Master Plan Special Permit, Site Plan Approval and Development Covenant are, collectively, the “Project Approvals”).

B. Building 2 Owner owns the property located at 808 Windsor Street, Somerville, Massachusetts, as more particularly described on Exhibit A attached hereto and incorporated by reference (the “Building 2 Owner Property”).

C. LandCo owns the property located off of Windsor Street and Windsor Place, as more particularly described on Exhibit B attached hereto and incorporated by reference (the “LandCo Property”; together with the Building 2 Owner Property, the “Owner Properties” and each individually an “Owner Property”).

D. The Owner Properties are portions of the larger mixed-use master plan project being developed in Boynton Yards (the “Master Plan Project”).

E. The City and the SRA are the owners of certain public rights of way adjacent to the Building 2 Owner Property known as Windsor Street and South Street, together with certain landscaped areas, bike lanes and portions of public sidewalks located or to be located adjacent thereto (collectively, the “Public Ways”), as shown on the plan attached hereto as Exhibit C (the “Easement Plan”).

F. In accordance with the Project Approvals, the City, the SRA and Owner desire to enter into this Agreement in order to grant each other certain easements over portions of the Owner Properties and the Public Ways, respectively, and to allocate certain maintenance responsibilities in connection therewith, all as more specifically set forth herein.

G. The City and the SRA, respectively, have each accepted the easements granted to each of them and have granted the easements contained herein in favor of the Owners pursuant to a Vote of the City of Somerville City Council and a Vote of the Somerville Redevelopment Authority, each recorded herewith and also attached as Exhibit E.

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

1. Grant of Easements to Owner. The City and the SRA each hereby grants to Building 2 Owner, to the extent each has a fee ownership interest in the Public Ways, a non-exclusive license on, over, across and through portions of the Public Ways identified on the Easement Plan as the “Public Sidewalk License Area” (the “Public Sidewalk License Area”) for (i) the purpose of exercising the Building 2 Owner Maintenance Obligations (as defined below), and (ii) all other purposes as if the Public Sidewalk License Area were part of the Building 2 Owner Property, including, without limitation, the installation, maintenance, replacement and repair of directional, wayfinding and property identification signage, lighting, utilities serving the Building 2 Owner Property, seasonal decorations, special materials, street seating, decorative elements and other facilities and improvements and, all subject to receipt of applicable permits from the City, and the usage of the same for individual tenants of the Building 2 Owner Property (such as outdoor restaurant seating or retail kiosks) or events serving the public (such as special events or activities or valet parking areas each such use also subject to receipt of applicable permits from the City). Building 2 Owner’s right hereunder shall include the right, with prior notice to the City, and any otherwise required permit from the City, to close the Public Sidewalk License Area on a temporary basis from time to time for maintenance, repair and replacement of improvements thereto.
2. Grant of Easements to the City.
  - a. Building 2 Owner hereby grants to the City a non-exclusive permanent easement, in common with Building 2 Owner and all others now or hereafter entitled thereto, on, over, across and through those certain portions of the Building 2 Owner Property shown on the Easement Plan as (i) the “Sidewalk Easement Area – South Street” and (ii) the “East Sidewalk, Platform and Ramp Easement Area” (the foregoing easement areas in clauses (i) through (ii), the “Building 2 Owner Easement Areas”) for the purpose of pedestrian access for the general public at all times, twenty four (24) hours a day, seven (7) days a week.

- b. LandCo hereby grants to the City a non-exclusive permanent easement, in common with LandCo and all others now or hereafter entitled thereto (including, without limitation, Building 2 Owner), on, over, across and through those certain portions of the LandCo Property shown on the Easement Plan as “Sidewalk Easement Area – Thoroughfare 1” (the “LandCo Easement Area” and together with the Building 2 Owner Easement Areas, the “Owner Easement Areas” and individually an “Owner Easement Area”) for the purpose of pedestrian access for the general public at all times, twenty four (24) hours a day, seven (7) days a week.
  - c. The Parties agree that the rights of the general public hereunder to utilize such sidewalks, platforms and ramps within the Owner Easement Areas for pedestrian access shall not be unreasonably curtailed. To the extent that the City acquires a fee simple interest in all or any portion of the Owner Easement Areas, the easement (or portion thereof) shall be merged into the superior interest of the City and shall cease to exist.
  - d. Building 2 Owner and LandCo acknowledge that, as shown on the Easement Plan, the Owner Easement Areas and abutting Public Sidewalk License Area collectively maintain a minimum five (5) foot width for pedestrian access for the entire perimeter of the Building 2 Owner Property.
3. Building 2 Owner Maintenance Obligations. Building 2 Owner shall maintain, repair and replace, at Building 2 Owner’s sole cost and expense, all sidewalks and landscaped areas within the portions of the Building 2 Owner Easement Areas and the Public Sidewalk License Area, together with any improvements installed by Building 2 Owner in the Building 2 Owner Easement Areas and the Public Sidewalk License Area, including removal of garbage and emptying of garbage cans and removal of snow and ice, in a manner consistent with other first class mixed-use developments in the Boston, Massachusetts area and otherwise in accordance with any then-applicable federal, state and City of Somerville standards, including but not limited to those related to accessibility requirements for persons with disabilities. All of Building 2 Owner’s said responsibilities shall be referred to herein collectively as the “Building 2 Owner Maintenance Obligations.”

Building 2 Owner shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under the Public Sidewalk License Area and/or Building 2 Owner Easement Areas) (i) carry the types of insurance and in the minimum amounts listed on Exhibit D attached hereto; and (ii) upon written request of the City, deliver a certificate evidencing the insurance required hereunder and naming the City and the SRA as additional insured parties for Automobile Liability, Commercial General Liability and Professional Liability with respect to the Sidewalk License and Easement Areas.

4. LandCo Maintenance Obligations. LandCo shall maintain, repair and replace, at LandCo’s sole cost and expense, all sidewalks and landscaped areas within the LandCo Easement

Area, together with any improvements installed by LandCo in the LandCo Easement Area, including removal of garbage and emptying of garbage cans and removal of snow and ice, in a manner consistent with other first class mixed-use developments in the Boston, Massachusetts area and otherwise in accordance with any then-applicable federal, state and City of Somerville standards, including but not limited to those related to accessibility requirements for persons with disabilities. LandCo shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under the LandCo Easement Area) (i) carry the types of insurance and in the minimum amounts listed on Exhibit D attached hereto; and (ii) upon written request of the City, deliver a certificate evidencing the insurance required hereunder and naming the City and the SRA as additional insured parties for Automobile Liability, Commercial General Liability and Professional Liability with respect to the Sidewalk License and Easement Areas.

5. City Maintenance Obligations. Except as specifically otherwise set forth herein as being either Owner's responsibility, the City, for itself and on behalf of the SRA, to the extent each has a fee ownership interest in the Public Ways, shall maintain and repair the Public Ways, as well as any other land abutting the Building 2 Owner's Property that the City may acquire for use as a public way pursuant to the Project Approvals, in accordance with City standards for the maintenance of public ways.
6. Reservation of Rights. Each Owner hereby reserves the right to access its respective Owner Easement Area(s) for customary purposes incidental to such Owner's ownership and development of its Owner Property, including, without limitation, the right to install, maintain, repair, and replace within the boundaries of its Owner Easement Area(s), at such Owner's sole expense, any and all utilities reasonably necessary in order to serve the land and improvements owned by such Owner, so long as the same do not unreasonably interfere with the City's use of such Owner Easement Area(s) for the purposes granted hereunder and provided further that all required permits for such activities have been obtained from the appropriate authorities.
7. Permits and Approvals. Each Party shall at all times, as long as this Agreement remains in effect, 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 Owner 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 Owner shall not be in default of its obligations hereunder for failure to fulfill the applicable obligation, provided that such denial is not due to the Owner's failure to comply with requirements for issuance of the permit.
8. No Agency. No Party shall be deemed to be an agent of any other Party as a result of the Parties entering into, exercising their rights or performing their obligations under this Agreement.

9. Good Faith; Diligence. In performing the functions under this Agreement, all Parties shall act in good faith and reasonably cooperate with each other in all matters relating to the services to be provided by any Party under this Agreement. All Parties shall furnish all information in their possession or control that any other Party reasonably requests and that is reasonably necessary in connection with performing duties and services under this Agreement.
10. No Third-Party Beneficiaries. None of the duties and obligations of either Owner, the City, and the SRA under this Agreement shall in any way be construed as to create any liability for either Owner, the City or the SRA with respect to third parties who are not parties to this Agreement.
11. 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:

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

The SRA:                   Somerville Redevelopment Authority  
93 Highland Avenue  
Somerville, MA 02143  
Attention: Phil Ercolini, Chair  
With a copy to [sra@somervillema.gov](mailto:sra@somervillema.gov)

Building 2 Owner:       Building 2 Owner LLC  
c/o Leggat McCall Properties LLC  
10 Post Office Square  
Boston, MA 02109  
Attn: Francis X. Jacoby, III

With a copy to: Nutter, McClennan & Fish, LLP  
155 Seaport Boulevard  
Boston, MA 02210  
Attn: Marianne Ajemian, Esq.

LandCo: Boynton Yards LandCo LLC  
c/o Leggat McCall Properties LLC  
10 Post Office Square  
Boston, MA 02109  
Attn: Francis X. Jacoby, III

With a copy to: Nutter, McClennan & Fish, LLP  
155 Seaport Boulevard  
Boston, MA 02210  
Attn: Marianne Ajemian, Esq.

12. The recitals set forth above are incorporated in and made a part of this Agreement.
13. 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. 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. Neither the City nor the SRA shall assign its rights or obligations under this Agreement without each Owner's prior written consent (which may be granted or withheld in each Owner's sole reasonable discretion). Each Owner may assign its rights and/or obligations in whole or in part to any affiliate of such Owner or to any owner of the applicable Owner Property, provided that such Owner shall provide written notice to the City and the SRA, as applicable, of any such assignment within fifteen (15) business days of any such assignment.
14. Upon ten (10) business days' prior notice, given upon the transfer, financing, and/or refinancing of any portion of either Owner Property and otherwise no more than once a year, the City and the SRA shall each provide to the applicable Owner, such Owner's purchaser or lender, as the case may be, an estoppel certificate stating, to its actual knowledge: (a) whether the City or the SRA, as applicable, 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.
15. No partner, member, shareholder, trustee, beneficiary, director, officer, manager, or employee of either 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 either Owner in connection with this Agreement, such person's sole recourse shall be to the estate and interest of such Owner in and to its property described herein.

16. 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.
17. 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 under seal as of this \_\_\_\_\_ day of 2024

**BUILDING 2 OWNER:**

**BUILDING 2 OWNER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Francis X. Jacoby, III  
Title: Authorized Signatory

**COMMONWEALTH OF MASSACHUSETTS**

County of \_\_\_\_\_ MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Francis X. Jacoby, III 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 he signed it voluntarily for its stated purpose as Authorized Signatory for Building 2 Owner LLC, a Delaware limited liability company, as the voluntary act of the limited liability company.

Before me,

\_\_\_\_\_  
Notary Public:  
My commission expires

[Signatures continued on the following page]



**LANDCO:**

**BOYNTON YARDS LANDCO LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Francis X. Jacoby, III

Title: Authorized Signatory

**COMMONWEALTH OF MASSACHUSETTS**

County of \_\_\_\_\_ MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Francis X. Jacoby, III 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 he signed it voluntarily for its stated purpose as Authorized Signatory for Boynton Yards LandCo LLC, a Delaware limited liability company, as the voluntary act of the limited liability company.

Before me,

\_\_\_\_\_  
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: Cindy Amara  
Title: City Solicitor

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss

On this \_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Katjana Ballantyne, as Mayor of the City of Somerville, 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 she signed it voluntarily for its stated purpose, as her free act and deed in such capacity.

Before me,

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

[Signatures continued on the following page]

**THE SRA:**

**SOMERVILLE REDEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Name: Phil Ercolini

Title: Chair

**COMMONWEALTH OF MASSACHUSETTS**

County of \_\_\_\_\_ MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared \_\_\_\_\_, 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 he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ for the Somerville Redevelopment Authority.

Before me,

\_\_\_\_\_  
Notary Public:  
My commission expires

## **EXHIBIT A**

### **Building 2 Owner Property Description**

The land with the buildings thereon in Somerville, Middlesex County, Massachusetts, shown as Lot 1B on a plan entitled “Subdivision Plan of Land, 33 Earle Street, 101 South Street & 808 Windsor Street, Somerville, Mass.” by Feldman Geospatial, dated April 8, 2021, designated as Job No. 16670G and recorded at Middlesex South District Registry of Deeds as Plan 871 of 2021.

## **EXHIBIT B**

### **LandCo Property Description**

The land with the buildings thereon, if any, in Somerville, Middlesex County, Massachusetts, shown as Lot T1.1 on a plan entitled “Subdivision Plan of Land” by Feldman Geospatial, dated April 11, 2022, and recorded at Middlesex South District Registry of Deeds as Plan 864 of 2022.

**EXHIBIT C**

**Easement Plan**

[See attached]

## **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) Commercial 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.
- (d) Professional Liability: In amounts that are customary and reasonable for the type of work to be performed.

**EXHIBIT E**

**Certificate of Vote of the Somerville City Council and  
Certificate of Vote of the Somerville Redevelopment Authority**

[See attached]

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