

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 MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this “**Agreement**”) is entered into as of June ___, 2025, by and between **299 BROADWAY PROPERTY OWNER LLC**, a Massachusetts limited liability company with an address 275 Grove Street, Suite 2-150, Newton, Massachusetts 02466 (the “**Grantor**”) and the **CITY OF SOMERVILLE, MASSACHUSETTS**, a municipal corporation with an address of City Hall, 93 Highland Avenue, Somerville, Massachusetts 02143 (the “**City**”) (Grantor and the City each being a “**Party**”, and collectively, herein, at times, the “**Parties**”).

WITNESSETH:

A. Grantor is the owner of that certain privately-owned parcel of real property situated at and known as 299 Broadway and 15 Temple, Somerville, Massachusetts, as more particularly described on **Exhibit A** attached hereto and incorporated herein (“**Grantor’s Property**”) conveyed to Grantor by Quitclaim Deed recorded with the Middlesex South District Registry of Deeds (the “**Registry**”) in Book 82094, Page 63.

B. City is the owner of the Broadway, Temple Street and Grant Street rights of way adjacent to Grantor’s property.

C. Pursuant 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 (collectively, the “**299 Broadway ZBA Approvals**”), permitting a mixed-use development to be constructed at 299 Broadway and 15 Temple, that also required Grantor to create a pocket park and a pocket plaza connected by a “pedestrian mews” as shown on the plan entitled “Civic Space ” prepared by Bohler dated April 11, 2025, a reduced copy of which is attached here to and incorporated herein as **Exhibit B** (the “**Civic Space Plan**”).

D. 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 E.**

E. The Parties desire to enter into this Agreement for the purposes of granting the easements and other rights in and to the Pedestrian Access Areas and Civic Space Area (defined below) as are reasonable or necessary in order for the Parties to exercise their rights and obligations hereunder.

NOW, THEREFORE, for good and valuable consideration, and for one dollar (\$1.00), the receipt and sufficiency of which are hereby acknowledged, the City and Grantor hereby agree as follows:

1. **Grant of Easements to the City.**

(a) Pedestrian Access Easement: The Grantor hereby grants to the City on behalf of members of the public a non-exclusive public access easement to enter into and utilize the portions of the Grantor's Property to be known as "**the Pedestrian Mews**" depicted on the Civic Space Plan as "Approximate Mews Corridor Area: 1,930 SF", as well as the path from Temple Street to Sewall Park depicted on the Civic Space Plan as "Approximate Temple Street Passageway Area: 1,064 SF" hereinafter referred to as the "**Pedestrian Access 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) The Parties agree that the rights of the general public hereunder to utilize such pathway and mews 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 path from Temple Street to Sewall Park, the easement (or portion thereof) shall be merged into the superior interest of the City and shall cease to exist.

(c) The Parties acknowledge that the Pedestrian Access Areas as shown on the Civic Space Plan abutting Temple Street and within the Pedestrian Mews and the adjacent areas collectively maintain a minimum five (5) foot width for pedestrian access to Sewall Park and the Civic Space Area.

(d) Civic Space Access Easement: The Grantor hereby grants to the City on behalf of members of the public a non-exclusive easement to enter and utilize the portion of the Grantor's Property to be known as "Broadway Pocket Plaza" depicted on the Civic Space Plan as "Approximate Civic Space Area: 7,033 SF" (the "**Civic Space Area**"), for the general public to gather, pass, and repass and for all permitted uses of civic spaces in perpetuity ~~from the hours of 8:00 AM to Sunset~~during the hours that parks are open in the City of Somerville pursuant to Section 12-48 of the Somerville Code of Ordinances or any future amendments or recodification of the Ordinances, unless otherwise permitted by receipt of applicable City permits. Grantor may also establish rules and regulations with the prior written approval of the City for the Civic Space Area, which may include limiting the use of the pathways and mews to pedestrian access only after hours. The initial rules and regulations will be posted prior to the granting of final approval of the

Civic Space Area and any changes thereto will also require the prior written consent of the Grantee

(e) Grantor shall be responsible for the installation of such landscaping, hardscaping, plantings, special materials, decorative elements and other facilities and improvements necessary to create, maintain and repair the Pedestrian Areas and the Civic Space Area as required by the Project Approvals and shall be responsible for obtaining any necessary permits for the same.

(f) The easements granted hereunder shall not be effective until Grantor or Grantor's successors have received Certificates of Occupancy for both Building A and Building B (as such terms are defined in the 299 Broadway ZBA Approvals).

2. Grantor Maintenance Obligations.

(a) Grantor shall maintain, repair and replace, at its sole cost and expense, the Pedestrian Access Areas and the Civic Space Area, 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 City of Somerville standards, all as further stated in the Landscape Maintenance and Management Plan, (the "LMMP") attached hereto and incorporated herein as **Exhibit C**, as the same may be modified in writing by mutual agreement of the parties. Grantor 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. Grantor shall not materially modify or replace improvements from their "As Built" conditions unless Grantor 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) Grantor's Rights. Grantor'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 the Pedestrian Access Areas or the Civic Space Area in order to conduct maintenance and repair activities or replacement activities consistent with paragraph (a) of this Section, within or to the Pedestrian Access Areas or the Civic Space Area or to the infrastructure of those Areas or as needed in order to make repairs to the buildings constructed on Grantor's Property; provided, however, that in the instance of conducting emergency repairs, Grantor 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 the Pedestrian Access Areas and the Civic Space Area by the City and the public. Grantor 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 ("**Laws**").

3. Insurance. Grantor shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under the Pedestrian Access Areas or the Civic Space Area to), (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. **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 Grantor has failed to provide required information needed by the City in order to issue the permit, then Grantor shall not be relieved of the obligations to perform the maintenance obligations contained in this Agreement.

5 **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 Grantor:

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

and:

299 Broadway Property Owner LLC

c/o Beacon Communities
2 Center Plaza, 6th Floor
Boston, MA 02108
Attn: Joshua Cohen

with copies to:

Michael Scott, Esq.
Nutter McClennen & Fish LLP
155 Seaport Boulevard
Boston, MA 02210

and

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 5. 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 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.
8. Estoppel Certificate. Upon fifteen (15) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of the Grantor's Property, City shall provide to Grantor 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 Grantor, 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. None of the duties and obligations of Grantor and the City under this Agreement shall in any way be construed as to create any liability for the Grantor 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: 299 Broadway JV LLC, its Sole Member and Managing
Member

By: 299 Broadway Building B LLC, its Member

By: S&A 299 Broadway LLC, its Managing Member

By: _____

Name:

Title:

By: 299 Broadway Affordable LLC, its Member

By: 299 Broadway Affordable MM LLC, its Managing Member

By: Beacon Communities Corp., its Sole Member

By: _____

Name: Joshua Cohen

Title: President

CITY OF SOMERVILLE:

Name: _____

Katjana Ballantyne

Its: Mayor

Attest:

Approved as to form:

By: _____

Cynthia Amara

Its: City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Date:

On this ____ day of _____, 2024, before me, the undersigned notary public, personally appeared _____, **Authorized Signatory of S&A 299 Broadway LLC, the Managing Member of 299 Broadway Building B LLC, as Member of 299 Broadway JV LLC, as Sole Member and Managing Member 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 she signed it voluntarily in such capacity for its stated purpose.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

Date:

On this ____ day of _____, 2024, before me, the undersigned notary public, personally appeared **Joshua Cohen, President of Beacon Communities Corp., as Sole Member of 299 Broadway Affordable MM LLC, as Managing Member of 299 Broadway Affordable LLC, as Member of 299 Broadway JV LLC, as Sole Member and Managing Member 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 she signed it voluntarily in such capacity for its stated purpose.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF MIDDLESEX)

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

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

Lot 1 and Lot 2 on a plan entitled "Subdivision Plan of Land, Mark Development, LLC" dated March 7, 2025, prepared by Control Point Associates, Inc., recorded with the Middlesex County South District Registry of Deeds (the "Registry") as Plan 363 of 2025.

EXHIBIT B
CIVIC SPACE PLAN

[attached behind]

EXHIBIT C

LANDSCAPE MAINTENANCE AND MANAGEMENT PLAN

[attached behind]

EXHIBIT D

REQUIRED INSURANCE

Grantor's 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.

City Insurance: 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 E

Certificate of Vote of the Somerville City Council

[City to provide]

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