

CIVIC SPACE 1 MAINTENANCE AGREEMENT AND COVENANT

This CIVIC SPACE 1 MAINTENANCE AGREEMENT AND COVENANT (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 the BOYNTON YARDS OWNERS’ ASSOCIATION, INC., a Massachusetts nonprofit corporation (the “Association”), with an address c/o Leggat McCall Properties LLC, 10 Post Office Square, Boston, Massachusetts 02109. The City and the Association are each sometimes referred to herein as a “Party” and collectively, the “Parties”.

WITNESSETH:

A. Reference is hereby made to 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”).

B. The Project (as defined herein) is also subject to 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”).

C. The Master Plan Special Permit and the Development Covenant contemplate the development by Boynton Yards LandCo LLC, a Delaware limited liability company (“LandCo”) and its affiliates of approximately 1,862,000 million sf in seven (7) buildings of a pedestrian and transit-oriented, mixed-use development within Boynton Yards (the “Project”).

D. The Somerville Planning Board issued a Site Plan Approval (P&Z 21-077) dated October 7, 2021 and recorded with the Registry in Book 79268, Page 104 (the “Civic Space 1 SPA”) to allow the development of a neighborhood park civic space, which is also consistent with a public common civic space type, for the portion of the Project consisting of the land with the improvements thereon situated at 111 South Street in the City of Somerville, Middlesex County, Massachusetts, and shown as Lot 1C (“Civic Space 1”) on a plan entitled “Subdivision Plan of Land, 33 Earle Street, 101 South Street & 808 Windsor Street, Somerville, Mass.” prepared by Feldman Geospatial, dated April 8, 2021, recorded with the Registry as Plan No. 871 of 2021.

E. As contemplated in the City of Somerville Zoning Ordinance (as the same may be amended and in effect, the “SZO”), a Civic Space Permit for Civic Space 1 was issued on May 12, 2023 (Permit #ESC22-000042) (the “Civic Space 1 Permit”, and collectively with the Civic Space 1 SPA, the “Civic Space 1 Approvals”).

F. Pursuant to the Master Plan Special Permit, the Development Covenant, the Civic Space 1 Approvals and the SZO, LandCo has dedicated Civic Space 1 to public use as civic or open space in perpetuity by a covenant running with the land contained in the conveyance of Civic Space 1 to the City by a Quitclaim Deed of even date and recorded immediately prior to this Agreement (the “Civic Space 1 Deed”).

G. In order to provide a governance structure and standards and procedures applicable to the overall development, administration, maintenance and preservation of the Project consistent with the Master Plan Special Permit and other applicable governmental permits and approvals, LandCo, LMP/DLJ BY LandCo MM LLC, a Delaware limited liability company, 101 South Street Owner LLC, Building 2 Owner LLC, the Association and all other parties that may hereafter own any portion of the Project, entered into that certain Owners' Association Agreement for Boynton Yards, Somerville, Massachusetts dated as of December 30, 2021 and recorded with the Registry in Book 79512, Page 156 (as the same may be amended, restated, supplemented or otherwise modified in accordance with the provisions hereof and thereof, the "Owners' Association Agreement").

H. The Owners' Association Agreement authorizes the Association to enter into Civic Space Agreements (as such term is defined in the Owners' Association Agreement) with the City regarding the operation on behalf of Association members and maintenance of Civic Spaces (as such term is defined in the Owners' Association Agreement) within the Project, including, Civic Space 1.

I. Pursuant to the Master Plan Special Permit, the Development Covenant and the Civic Space 1 Approvals and the terms and conditions of the Owners' Association Agreement, the Parties desire to enter into this Agreement to establish the rights and obligations of the Parties related to the maintenance on behalf of the Association members of Civic Space 1 as a publicly open civic space consistent with the requirements of the Master Plan Special Permit, the Development Covenant, the Civic Space 1 Approvals and the SZO, all on the terms and conditions set forth herein.

J. The City has granted the license, rights and obligations contained herein in favor of the Association pursuant to a Vote of the City of Somerville City Council, recorded herewith and also attached as Exhibit C.

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

1. Grant of Maintenance License to Association. The City hereby grants to the Association a non-exclusive license on, over, across and through Civic Space 1 for the purpose of exercising the Association Maintenance Obligations (as defined below). The Association's rights hereunder shall include the right, with prior notice to the City, and any otherwise required permit from the City, to close Civic Space 1 or portions thereof on a temporary basis from time to time for maintenance, repair and replacement of improvements thereto. Such license shall be nonrevocable unless and until it is revoked by the City in writing and by recording the appropriate instrument at the Registry. The Association's use of Civic Space 1 shall be subject to all applicable City of Somerville ordinances regarding civic spaces and parks. For avoidance of doubt, it is also acknowledged and agreed that, except as otherwise contemplated under this

Agreement or the LMMP (as defined herein), in no event may the Association modify Civic Space 1 or improvements existing thereon without having first received any required governmental permits and approvals.

2. Association Maintenance Obligations. The Association shall maintain, repair and replace, at the Association's sole cost and expense including the provision of water and electricity, Civic Space 1 in perpetuity and all the improvements thereon, including but not limited to the removal of garbage and emptying of garbage cans and removal of snow and ice, in a manner consistent with other first class public space in the Boston, Massachusetts area and otherwise in accordance with any then-applicable federal, state and City of Somerville standards and ordinances, including but not limited to those related to accessibility requirements for persons with disabilities. The Association's specific maintenance, and landscape management obligations with respect to Civic Space 1 are set forth in the Landscape Maintenance and Management Plan attached hereto as Exhibit A and incorporated herein by reference (the "LMMP"). All of the Association's responsibilities set forth in this Section and the LMMP shall be referred to herein collectively as the "Association Maintenance Obligations." The City acknowledges and agrees that the Association is authorized to perform the Association Maintenance Obligations on behalf of the Association's members; provided, however, that if there is any conflict between the terms and conditions of the Owners' Association Agreement and this Agreement regarding the use of Civic Space 1 by the public, this Agreement shall control. The City shall have the right of specific performance of the Association Maintenance Obligations against the Association, and in the event of the failure of the Association to perform its obligations or the dissolution of the Association, the City shall have the right of specific performance against the then current owner of 808 Windsor Street.
3. Insurance. The Association shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under Civic Space 1) (i) carry the types of insurance and in the minimum amounts listed on Exhibit B attached hereto; and (ii) upon request of the City, deliver a certificate evidencing the insurance required hereunder and naming the City as an additional insured for Automobile Liability, Commercial General Liability and Professional Liability with respect to Civic Space 1.
4. City Maintenance Obligations. The City shall maintain and repair all public ways adjacent to Civic Space 1, including without limitation, any bike lanes, in accordance with City standards for the maintenance of public ways.
5. Permits and Approvals. Each Party shall at all times obtain and maintain governmental permits and approvals to the extent required by this Agreement and applicable ordinances of the City of Somerville for the exercise of such Party's rights and performance of its obligations hereunder. Notwithstanding the foregoing, if the Association is prohibited from complying with any of the Association Maintenance Obligations as a result of a City agency, department, or official denying any such

required governmental permit or approval, the Association shall not be in default of its obligations hereunder for failure to fulfill the applicable Association Maintenance Obligation provided that the Association has notified the City of such inability to perform such Association Maintenance Obligation and given the City a reasonable opportunity to respond. If the City determines that the Association has failed to provide information that is reasonably necessary in order to issue such governmental permit or approval, then the Association shall not be relieved from the performance of such Association Maintenance Obligation.

6. Master Plan Approvals and Use. The City acknowledges and agrees that the use of Civic Space 1 as a civic space is a requirement of the Master Plan Special Permit and the Development Covenant and that, in furtherance thereof, the City has acquired Civic Space 1 from LandCo subject to a covenant that Civic Space 1 will remain dedicated to public use as a civic space as referenced in the Master Plan Special Permit, the Development Covenant and the then-current Somerville Zoning Ordinance.
7. Subsurface Drainage Facilities. Reference is made to that certain Drainage and Maintenance Easement Agreement by and among the City, Building 2 Owner LLC (the “808 Windsor Owner”) and Silicon PropCo 2021 LLC (the “101 South Owner”) of even date and recorded herewith (the “Drainage Easement”). Notwithstanding anything herein to the contrary, the Association’s obligations under this Agreement shall be subject to the rights of the 808 Windsor Owner, the 101 South Owner, and each of their respective successors and assigns, under the Drainage Easement. Under the terms of the Drainage Easement, the City acknowledges and agrees that the 808 Windsor Owner and 101 South Owner, and not the Association, are responsible for any damage to Civic Space 1 caused by the use or operation of any of their respective subsurface drainage facilities permitted under the Drainage Easement; provided, however, that the Association agrees to use commercially reasonable efforts to cause the 808 Windsor Owner and/or the 101 South Owner, and each of their successors in title, to repair any such damage in accordance with 808 Windsor Owner’s and 101 South Owner’s respective obligations under the Drainage Easement including the obligation to restore Civic Space 1 to its preexisting condition prior to such disturbance or damage.
8. Cooperation. The City acknowledges the Parties’ desire to activate Civic Space 1 through programming that may include fitness classes, concerts, markets, performances, exhibits, celebrations, and other events and gatherings all in accordance with applicable City Ordinances and policies. In issuing permits and approvals for the use of Civic Space 1 by the Association and third parties (such third parties, “Permittees”) for such programs, events and other uses of Civic Space 1 (“Park Programming”) the City and the Association agree to reasonably cooperate with each other and, to the extent feasible, to coordinate among City departments, on pre- and post-event management, and participate in periodic meetings and discussions regarding the same. The City agrees to cooperate with the Association to repair or recover costs

to repair damage caused to Civic Space 1 by Permittees for violation of such permits and approvals, applicable laws, City Ordinances or Civic Space 1 rules and regulations.

9. 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.
10. 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.
11. No Third-Party Beneficiaries. None of the duties and obligations of either the City or the Association under this Agreement shall in any way be construed as to create any liability for either the City or the Association with respect to third parties who are not parties to this Agreement.
12. 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

Association: Boynton Yards Owners' Association
 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.

13. The recitals set forth above are incorporated in and made a part of this Agreement.
14. 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 City shall not assign its rights or obligations under this Agreement without the Association's prior written consent.
15. Upon recording, the Agreement shall be indexed as a covenant in the property record of 808 Windsor Owner and shall constitute a covenant running with the land owned by 808 Windsor Owner. In the event that the Association ceases to exist, this Agreement will remain enforceable against 808 Windsor Owner and its successors and assigns unless and until the City releases this Agreement in writing and by recording the appropriate instrument at the Registry.
16. Notwithstanding anything to the contrary set forth in this Agreement, (i) no member, director, officer, employee or agent of the Association shall be personally liable in any manner or to any extent under or in connection with this Agreement, and (ii) in no case shall either Party be liable under this Agreement for any form of special, indirect or consequential damages.
17. 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.
18. 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 _____, 2025.

ASSOCIATION:

BOYNTON YARDS OWNERS' ASSOCIATION, INC.,
a Massachusetts nonprofit corporation

By: _____

Name: Francis X. Jacoby, III

Title: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this ____ day of _____, 2025, 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 Owners' Association, Inc., as the voluntary act of the nonprofit corporation.

Before me,

Notary Public:

My commission expires

[Signatures continued on the following page]

THE CITY:

THE CITY OF SOMERVILLE

By: _____

Name: Katjana Ballantyne

Title: Mayor

Attest:

Approved as to form:

By: _____

Name: Cindy Amara

Title: City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2025, 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:

EXHIBIT A

**Landscape Maintenance and Management Plan
And Civic Space 1 Record Drawings (Final)**

[See attached]

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) 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 C

Certificate of Vote of the Somerville City Council

[See attached]

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