

Middlesex South Registry of Deeds

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Middlesex South Registry of Deeds
Maria C. Curtatone, Register
 208 Cambridge Street
 Cambridge, MA 02141
 617-679-6300
www.middlesexsouthregistry.com

After recording return to:

City of Somerville Law Department
Somerville City Hall
93 Highland Avenue, 2nd Floor
Somerville, MA 02143
Attn: Catherine A. Lester Salchert, Esq.

RECORDING INFORMATION AREA

EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into as of December 20, 2022, by the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (the “City”) and BRE-BMR ASSEMBLY INNOVATION I LLC, a Delaware limited liability company with an address of 4570 Executive Drive, Suite 400, San Diego, CA 92121 (“Phase I Developer”) and BRE-BMR MIDDLESEX LLC, a Delaware limited liability company with an address of 4570 Executive Drive, Suite 400, San Diego, CA 92121 (“Phase II Developer”; collectively with Phase I Developer, but in each case only to the extent of their respective interests in the Property, “Developer”) (each, a “Party” and collectively, the “Parties”).

WITNESSETH:

A. Pursuant to (i) that certain Amended and Restated Development Covenant dated as of November 20, 2020 by and between the City and BRE-BMR Middlesex LLC (as successor-in-interest to CDNV Assembly LLC and CDNV Land LLC) and recorded with the Middlesex South Registry of Deeds (the “Registry”) at Book 76309, Page 469 (as the same may be amended, the “Development Covenant”), (ii) that certain Decision issued by the Planning Board of the City of Somerville (“Planning Board”) dated June 7, 2018 in Case No. PB2018-07-R1-0320, as amended by that certain Decision issued by the Planning Board on July 24, 2020 (as the same may be amended from time to time, the “Master Plan Approval”) for a mixed use project to the built in phases (the “Project”), (iii) that certain Decision issued by the Planning Board dated November 8, 2018 in Case # PB 2018-12 (the “Alta XMPLY Special Permit”) for the construction of a multi-family residential building (the “Alta XMPLY Project”), and (iv) that certain Decision issued by the Planning Board dated June 24, 2021 in Case # P&Z20-0015 (the “Block 21 Special Permit”) for the construction of a lab/office building and parking garage (the “Phase I Project”), the Parties have each agreed to be responsible for certain maintenance obligations relating to

Parcels adjacent to 5 Middlesex Avenue, Somerville, MA

certain roadways, sidewalks and other infrastructure serving the Project and to grant each other various rights in connection with the use and maintenance of the same.

B. As of the date of this Agreement, Phase I Developer owns the real property on which the Phase I Project will be located, which property is more particularly described on Exhibit A attached hereto and incorporated by reference (the "Phase I Property"), which is adjacent to real property owned by Phase II Developer which will be developed in a later phase, as more particularly described on Exhibit A attached hereto and incorporated by reference (the "Phase II Property"; together with the Phase I Property, the "Property"). *For title reference to the Property, see Deeds recorded with said Registry at Book 76516, Page 51; Book 76516, Page 55; and Book 80451, Page 390.*

C. The Project is subject to that certain Declaration of Covenants, Conditions and Restrictions dated April 26, 2019 and recorded in Registry at Book 72521, Page 96, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions dated as of December 23, 2020 and recorded in the Registry at Book 76516, Page 37 (as the same may be further amended, the "CC&Rs"), under which BRE-BMR Middlesex LLC is Declarant.

D. The City is the owner of certain public roadways, portions of which are adjacent to the Phase I Project, specifically Foley Street and Middlesex Avenue (the "Existing Public Ways") and the City will be the owner of certain roadways serving the Phase I Project that are currently private ways but, pursuant to the Master Plan Approval, are intended to be dedicated and conveyed to the City upon completion of construction, specifically Harold Cohen Way (formerly known as Road K) and Road L easterly of Harold Cohen Way (the "Future Public Ways"), together with certain landscaped areas, bike lanes and portions of public sidewalks located or to be located adjacent to the Existing Public Ways and Future Public Ways (collectively, the "Public Property"), as shown on the plan attached hereto as Exhibit B (the "Public and Private Property Plan").

E. Upon completion of construction, Phase I Developer will be the owner of certain private ways or portions thereof serving the Phase I Project to be located on the Phase I Property and currently referred to as Service Drive and Road L Extension (provided, however, that Phase II Developer will be the owner of a portion of the Road L extension located on the Phase II Property) (collectively, the "Private Ways") as well as portions of what will appear to be wholly public sidewalks adjacent to Foley Street and Harold Cohen Way, but which will be located on the Phase I Property, and other sidewalks and landscaped areas located on the Phase I Property (collectively, "Private Property"), as shown on the plan attached hereto as Exhibit B.

F. The City and Developer desire to enter into this Agreement in order to grant each other easements over portions of the Public Property and Private Property, respectively, and to allocate maintenance responsibilities in connection therewith, all as more specifically set forth herein.

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

1. Grant of Easements to Developer. The City hereby grants to Developer a non-exclusive easement on, over, across and through portions of the Public Property identified on the Easement Plan attached hereto as Exhibit C as the Sidewalk Easement Area (the “Sidewalk Easement Area”) for (i) the purpose of exercising the Developer Maintenance Obligations (defined below), and (ii) all purposes as if the Sidewalk Easement Area were part of the Phase I Project, including, without limitation, the installation, maintenance, replacement and repair of directional, wayfinding and Project identification signage, lighting, utilities serving the Project, seasonal decorations, special materials, street seating, decorative elements and other facilities and improvements and, subject to all required permits from the City, the usage of the same for individual tenants of the Project (such as outdoor restaurant seating or retail kiosks) or events serving the Project and/or public (such as special events or activities or valet parking areas). Developer’s right hereunder shall include the right, with prior notice to the City, and any otherwise required permit from the City, to close Public Ways, the Sidewalk Easement Area and other landscaped areas and/or sidewalks located on Private Property on a temporary basis from time to time for maintenance, repair and replacement of improvements thereto and for special events and activities. To the extent that any portion of the Sidewalk Easement Area has not yet been dedicated and conveyed to the City, and is owned in fee by Developer, the doctrine of merger shall not be applicable to any of the easements, rights, privileges, responsibilities, obligations and covenants contained herein with respect to the Sidewalk Easement Area and there shall be no merger of estates or interest created herein as a result of any unity of title or interest thereto or therein.

2. Grant of Easements to the City.
 - (a) Developer hereby grants to the City a non-exclusive permanent easement, in common with Developer and all others now or hereafter entitled thereto, on, over, across and through those certain portions of the Private Property shown on the Easement Plan attached hereto as Exhibit C as the Pedestrian Right of Way Easement Area and measuring five (5) feet in width (the “Pedestrian Right of Way 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. The Parties agree that the rights of the general public hereunder to utilize such sidewalks for pedestrian access shall not be curtailed. To the extent that the City acquires a fee simple interest in all or any portion of the Pedestrian Right of Way Easement Area, the easement (or portion thereof) shall be merged into the superior interest of the City and shall cease to exist.

 - (b) Developer hereby grants to the City a non-exclusive permanent easement, in common with Developer and all others now or hereafter entitled thereto, on, over, across and through those certain portions of the Private Property shown on the Easement Plan attached hereto as Exhibit C as the Ancillary Pedestrian Easement Areas and located immediately adjacent to the Pedestrian Right of Way Easement Area (the “Ancillary Pedestrian Easement Areas”), for the purpose of limited pedestrian access for the general public; subject to a reservation of rights by Developer to utilize the Ancillary Pedestrian Easement Areas for any and all purposes related to Developer’s use of the

Private Property, including without limitation, for landscaping, signage, lighting, utilities, seasonal decorations, special materials, street seating, decorative elements and other facilities and improvements (such as outdoor restaurant seating and retail kiosks) or events (such as special events or activities or valet parking areas), building maintenance, repairs, replacement and operations, and reasonable security measures. Developer's reservation of rights hereunder shall include the right to close or limit access to the Ancillary Pedestrian Easement Areas from time to time on a temporary or long-term basis for special events, other activities and other uses in Developer's sole discretion. Developer's use of the Ancillary Pedestrian Easement Areas shall not impede the use of the Pedestrian Access Easements and shall not be operated so as to limit the width of the Pedestrian Access Easement to less than five (5) feet.

- (c) Developer hereby grants to the City a non-exclusive easement, in common with Developer and all others now or hereafter entitled thereto, to install, operate, replace, repair, improve and maintain any and all public water, sewer, drainage, and storm water detention in, under and upon those certain portions of the Private Property shown on the Easement Plan attached hereto as Exhibit C as the Utility Easement Area (the "Utility Easement Area"). Notwithstanding the foregoing, Developer shall have the right, from time to time, at its sole cost and expense, to relocate the utilities within the Utility Easement Area so long as such relocation is in accordance with legal requirements (as defined herein) and is first approved in writing by the appropriate utility companies or governmental authorities, as applicable. The City shall be responsible for the operation, maintenance, repair, restoration and replacement of any utility facilities located by or on behalf of the City in the Utility Easement Area ("City Utilities") at its sole cost and expense; provided, however, that if Developer exercises its right to relocate the utilities within the Utility Easement Area and opts to relocate the City Utilities, Developer, at its sole cost and expense, shall relocate such City Utilities. The City shall perform all work (or cause all work to be performed) on City Utilities within the Utility Easement Area in a good and workmanlike manner and in a manner that permits the Utility Easement Area to be kept in a safe, secure and orderly condition at all times, excepting only reasonable disruption necessary to perform such activities, and shall restore the Utility Easement Area to substantially its condition prior to any such work.

3. Developer Maintenance Obligations.

- (a) Phase I Developer shall maintain, repair and replace, at Phase I Developer's sole cost and expense, all sidewalks and landscaped areas within the Sidewalk Easement Area (except to the extent responsibility for snow and ice removal adjacent to the proposed fire station in Block 21 are allocated by Phase I Developer to the City under the lease agreement for the fire station, as shown on Exhibit C) and within the Pedestrian Right of Way Easement Area, together with any improvements installed by Phase I Developer in the Sidewalk Easement Area and Pedestrian Right of Way 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 handicapped accessibility. In addition, Developer shall maintain and repair the Private Ways in which the Utility Easement Area is located, including the 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. All of Developer's said responsibilities shall be referred to herein collectively as the "Developer Maintenance Obligations."

- (b) Developer shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under the Sidewalk Easement Area to): (i) carry commercially reasonable types of insurance and minimum amounts, it being agreed that the requirements listed on Exhibit D are commercially reasonable as of the date of this Agreement, and (ii) prior to the commencement of any work, deliver a certificate evidencing the insurance required hereunder and naming the City as an additional insured on its general commercial liability and workman's compensation policies.
4. City Maintenance Obligations. Except as specifically otherwise set forth herein as being Developer's responsibility, the City shall maintain and repair all Public Ways, including without limitation, the bike lanes located within Foley Street and Middlesex Avenue adjacent to the Phase I Property, in accordance with City standards for the maintenance of public ways. The City's said responsibilities are referred to herein collectively as the "City Maintenance Obligations."
5. Permits and Approvals. Each Party must 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 Developer 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, Developer shall not be in default of its obligations hereunder for failure to fulfill the applicable obligation.
6. No Agency. Neither Party shall be deemed to be an agent of the other as a result of the Parties entering into, exercising their rights or performing their obligations under this Agreement. Specifically, Developer may hire subcontractors, independent contractors, consultants, vendors and/or associate managers in connection with the exercise of its rights or performance of its obligations hereunder.
7. 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.

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

Developer:
Phase I Developer: BRE-BMR Assembly Innovation I LLC
4570 Executive Drive, Suite 400
San Diego, CA 92121
Attention: Legal Department

Phase II Developer: BRE-BMR Middlesex LLC
4570 Executive Drive, Suite 400
San Diego, CA 92121
Attention: Legal Department

10. The recitals set forth above are incorporated in and made a part of this Agreement.
11. 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. The City shall not assign its rights or obligations under this Agreement without Developer's prior written consent. Developer may assign its rights and/or obligations in whole or in part to any affiliate of Developer or to any owner or developer of any portion of the Project provided that Developer shall provide written notice to the City within fifteen (15) days of any such assignment.

12. Upon fifteen business (15) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of Private Property and otherwise no more than once a year, the City shall provide to Developer, Developer's 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.
13. No partner, member, shareholder, trustee, beneficiary, director, officer, manager or employee of Developer, 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 Developer 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.
14. 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.
15. 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 date and year first written above.

DEVELOPER:

BRE-BMR ASSEMBLY INNOVATION I LLC

By: Carlye Murphy
Name: Carlye Murphy
Title: Senior Vice President, Legal

BRE-BMR MIDDLESEX LLC

By: Carlye Murphy
Name: Carlye Murphy
Title: Senior Vice President, Legal

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

On this 15TH day of DECEMBER, 2022, before me personally appeared the above-named Carlye Murphy, the Senior Vice President, Legal of BRE-BMR ASSEMBLY INNOVATION I LLC, a Delaware limited liability company, who proved to me through satisfactory evidence of identification, which was DRIVER'S LICENSE, to be the person whose name is signed on the preceding instrument, and acknowledged to me that such person signed said instrument voluntarily for its stated purpose as his/her free act and deed in such capacity.

Amalia Dorgan
Notary Public



Amalia Dorgan
NOTARY PUBLIC
Commonwealth of
Massachusetts
My Commission Expires
10/28/2027

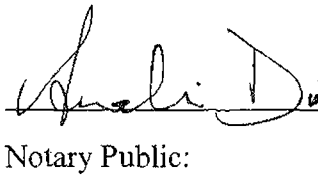
Notary Public:

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

On this 15th day of DECEMBER, 2022, before me personally appeared the above-named Carlye Murphy, the Senior Vice President, Legal of BRE-BMR MIDDLESEX LLC, a Delaware limited liability company, who proved to me through satisfactory evidence of identification, which was DRIVER'S LICENSE, to be the person whose name is signed on the preceding instrument, and acknowledged to me that such person signed said instrument voluntarily for its stated purpose as his/her free act and deed in such capacity.


Notary Public:

Amalia Dorgan
NOTARY PUBLIC
Commonwealth of
Massachusetts
My Commission Expires
10/28/2027

My commission expires:

THE CITY:

THE CITY OF SOMERVILLE

By: Katjana Ballantyne
Name: Katjana Ballantyne
Title: Mayor

Attest:

Approved as to form and legality:

By: BRR
Name: ~~David Shapiro~~ Bonnie Berch-Rote
Title: ~~Acting City Solicitor~~
Assistant City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 26th day of December, 2022, before me personally appeared the above-named Katjana Ballantyne, as Mayor of the City of Somerville, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding instrument, and acknowledged to me that such person signed said instrument voluntarily for its stated purpose as his/her free act and deed in such capacity.

Susan M Tkaczuk

Notary Public: Susan M Tkaczuk

My commission expires: 1/11/2024

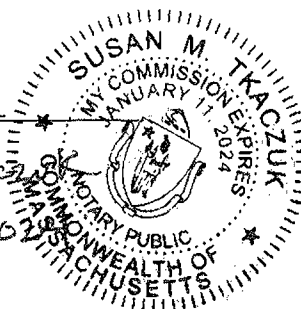


EXHIBIT A

Property Description

Phase I Property:

The land in Somerville, Middlesex County, Massachusetts, situated at Middlesex Avenue and being shown as Parcel 25A and Parcel 25B on a plan entitled, "Subdivision Plan of Land in Somerville, Massachusetts, prepared for BRE-BMR Middlesex LLC" dated August 25, 2021, prepared by VHB, Inc. and recorded with the Middlesex South District Registry of Deeds on December 10, 2021 as Plan 916 of 2021, to which plan reference is hereby made for a more particular description.

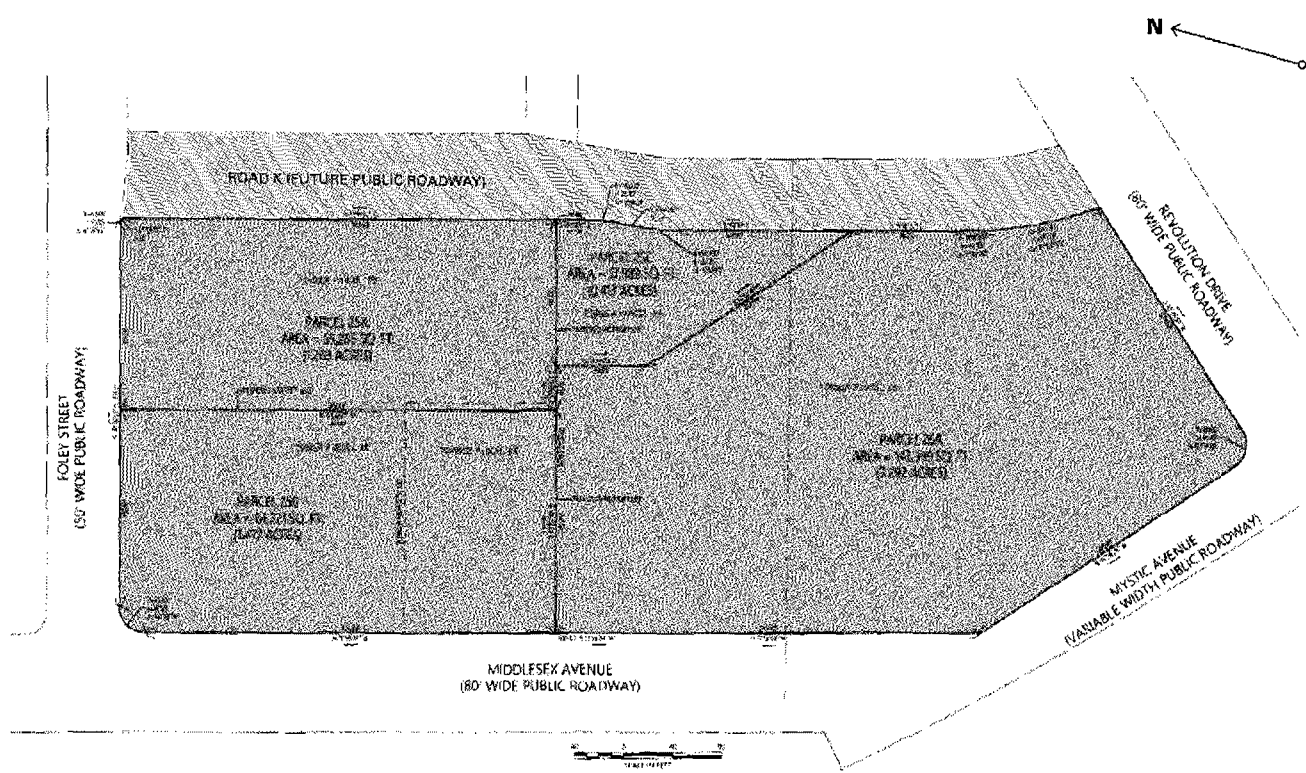
Phase II Property:

The land in Somerville, Middlesex County, Massachusetts, situated at Middlesex Avenue and being shown as Parcel 25C and Parcel 26A on a plan entitled, "Subdivision Plan of Land in Somerville, Massachusetts, prepared for BRE-BMR Middlesex LLC" dated August 25, 2021, prepared by VHB, Inc. and recorded with the Middlesex South District Registry of Deeds on December 10, 2021 as Plan 916 of 2021, to which plan reference is hereby made for a more particular description.

For title reference to the Property, see Deeds recorded with said Registry at Book 76516, Page 51; Book 76516, Page 55; and Book 80451, Page 390.

EXHIBIT B

Public and Private Property Plan






-  Public Property
-  Future Public Property
-  Private Property

EXHIBIT C

Easement Plan

[see attached]



LEGEND

- BLOCK 21 PROPERTY LINE
- BUILDING OUTLINE
- FACE OF CURB
- SIDEWALK EASEMENT AREA (TO BE OWNED BY CITY, DEVELOPER MAINTAINS)
- PEDESTRIAN RIGHT OF WAY EASEMENT AREA (5' PUBLIC RIGHT OF WAY ON DEVELOPER PROPERTY)
- DEVELOPER OWNS, ANCILLARY PEDESTRIAN EASEMENT AREAS TO CITY
- DEVELOPER OWNS
- TO BE CITY OWNED AND MAINTAINED B+KE LANE
- TO BE OWNED BY CITY, CITY MAINTAINS
- UTILITY EASEMENT AREA (DEVELOPER OWNS, UTILITY EASEMENT TO CITY)

HAROLD COHEN WAY
(FUTURE PUBLIC WAY)

FOLEY STREET
(PUBLIC WAY)

BLOCK 21A
(LAB BUILDING)

PARCEL 21A
AREA = 55,795 SQ. FT.
1.269 ACRES

BLOCK 21 ALLEY
(PRIVATE WAY)

BLOCK 21B
(PARKING GARAGE)

ROAD L EXTENSION
(PRIVATE WAY)

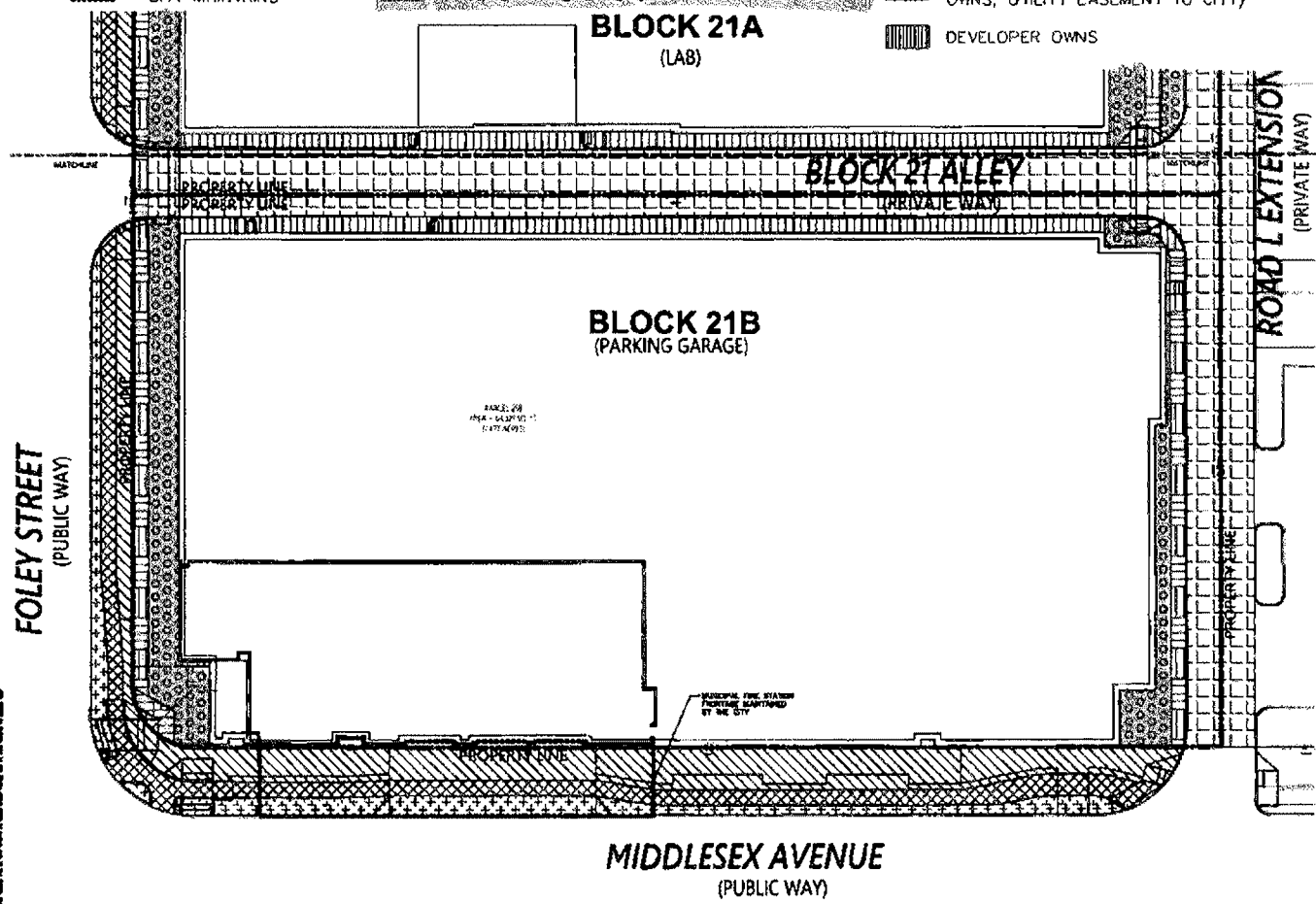
ASSEMBLY INNOVATION
PARK BLOCK 21
1.8 Million Square
Feet

C-1A



LEGEND

- BLOCK 21 PROPERTY LINE
- BUILDING OUTLINE
- FACE OF CURB
- FIRE STATION FRONTAGE, CITY MAINTAINS
- ▨ SIDEWALK EASEMENT AREA (TO BE OWNED BY CITY, DEVELOPER MAINTAINS)
- ▩ PEDESTRIAN RIGHT OF WAY EASEMENT AREA (5' PUBLIC RIGHT OF WAY ON DEVELOPER PROPERTY)
- ▧ DEVELOPER OWNS, ANCILLARY PEDESTRIAN EASEMENT AREAS TO CITY
- ▤ TO BE CITY OWNED AND MAINTAINED BIKE LANE
- ▥ TO BE OWNED BY CITY, CITY MAINTAINS
- ▦ UTILITY EASEMENT AREA (DEVELOPER OWNS, UTILITY EASEMENT TO CITY)
- ▧ DEVELOPER OWNS



ASSEMBLY INNOVATION
PARK BLOCK 21
1 Middlesex Avenue
Somerville, Massachusetts
02145
V-18-001

C-1B

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) **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. 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.