

Record and Return To:

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

SIDEWALK EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is made as of the ___ day of _____, 2023, by and between BRICKBOTTOM I QOZB LP, a Delaware limited partnership having a principal office at 610 West 26th Street, Suite 910, New York, NY 10001 (the “Grantor”), and the CITY OF SOMERVILLE, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts with usual address of 93 Highland Avenue, Somerville, MA 02143 (the “Grantee” or the “City” in general).

WITNESSETH:

- A. Reference is made to that certain Decision issued by the Planning Board of the City of Somerville (“Planning Board”) for the parcel known as 28 Fitchburg Street dated May 11, 2021, filed with the City Clerk, on October 28, 2021 and recorded on December 6, 2021 in the Middlesex Registry of Deeds in Book 79295, page 1 in Case No. P&Z CZC21-0019, (as the same may be amended from time to time, the “PB Approval”) for a commercial project (the “Project”), and that certain Development Covenant between the Grantor and the City dated July 13, 2021 and recorded in the Middlesex South Registry of Deeds on July 27, 2022 in Book 80492 Page 515 (collectively the “Project Approvals”).
- B. Grantor owns the property located at 100 Chestnut Street Somerville, Massachusetts, as more particularly described on Exhibit A attached hereto and incorporated by reference (the “Property”).
- C. Per the Project Approvals, Grantor is required to create and maintain in perpetuity a public right-of-way for pedestrian access for the full area of the sidewalk within the frontage area along Chestnut Street.
- D. The Grantor and the City desire to enter into this Agreement in order to grant each other easements over portions of the Property and adjacent to the City’s Public Ways, respectively, and to allocate maintenance responsibilities in connection therewith, all as more specifically set forth herein.

Property Address: 100 Chestnut Street, Somerville, MA 02143

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

1. The Grantor hereby grants to the City a non-exclusive perpetual easement on, over, across and through a portion of the Grantor's land at 100 Chestnut Street comprised of approximately 5,310 square feet in area and measuring approximately 12.50 feet in width and between 484.79 and 484.81 feet in length on Chestnut Street all as described in Exhibit B attached hereto and shown on the Easement Plan attached hereto as part of Exhibit B, referred to herein as the Easement Area, being private property in the City of Somerville, Middlesex County, MA, 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. Provided that the Grantor reserves for itself and its lessees, and its and their respective successors and assigns, the right to use the Easement Area in connection with maintenance, repair, demolition and construction of buildings and improvements located on Grantor's land, subject to receipt of any and all necessary permits and approvals from the City prior to obstruction of the Easement Area. The Grantor shall, at its own cost and expense, initially improve the Easement Area to City sidewalk standards pursuant to plans therefor filed with the City Department of Public Works, and thereafter shall maintain the Easement Area.
2. Grantor Maintenance Obligations:
 - (a) Grantor shall maintain, repair and replace, at Grantor's sole cost and expense, all sidewalks and landscaped areas within the Sidewalk Easement Area together with any improvements installed by Grantor in the Sidewalk 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. All of Grantor's said responsibilities shall be referred to herein collectively as the "Grantor Maintenance Obligations."
 - (b) Grantor 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 C as 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.

3. 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, any bike lanes 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.
4. 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 Grantor 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, Grantor shall not be in default of its obligations hereunder for failure to fulfill the applicable obligation.
5. 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.
6. 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.
7. 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.
8. 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

Grantor: BRICKBOTTOM I QOZB LP
ATTN:
610 West 26th Street, Suite 910
New York, NY 10001

With a copy to: Sullivan & Worcester, LLP
One Post Office Square
ATTN: Jennifer Schultz, Esq.
Boston, MA 02109

9. The recitals set forth above are incorporated in and made a part of this Agreement.
10. 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 the Project, with the prior written consent of the City, such consent not to be unreasonably withheld.
11. Upon ten business (10) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of Grantor's Property and otherwise no more than once a year, the City shall provide to Grantor, Grantor'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.

12. 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 the event any person obtains a judgment against Grantor 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.
13. 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.
14. 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.

GRANTOR

BRICKBOTTOM I QOZB LP
a Delaware limited partnership

By: NRL Brickbottom I GP LLC
a Delaware limited liability company
its General Partner

By: _____
Name: _____
Title: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS
Middlesex, ss.

On this _____ day of _____, 2023, before me, the undersigned notary public, _____ personally appeared, proved to me through satisfactory evidence of identification, which was a current driver’s license, 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 Authorized Signatory for NRL Brickbottom I GP LLC, a Delaware limited liability company, as General Partner for Brickbottom I QOZB LP, a Delaware limited partnership, as the voluntary act of said limited partnership and its general partner.

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: Cynthia Amara

Title: City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ___ day of _____, 2023, 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 _____, 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:

My commission expires:

Exhibit A – Legal Description (of Property)

I: 28 Fitchburg Street

Parcel 1 – Lots 24, 23, 22, 14 and parts of Lots 21 and 13 shown on Plan Book 8, Plan 35.

Parcel 2 – unnumbered lot shown on Land Court Plan No. 3195A, filed with Certificate of Title No. 7696.

Parcel 3 – Lot G shown on Plan No. 1750 or 1960 recorded in Book 9715, Page 267.

II. 26 Chestnut Street: Lot 1 shown on Plan No. 145 of 2005

III. 28 Chestnut Street: Lot 2 shown on Plan No. 145 of 2005

Except “Proposed Lot 1R” shown on Plan No. 799 of 2021 conveyed to Brickbottom II QOZB LP by deed dated May 13, 2022, recorded in Book 80263, Page 211, as affected by a Confirmatory Deed recorded in Book 80486, Page 57.

Remaining locus is now “Proposed Lot 2R” and “Proposed Lot 3” shown on Plan No. 799 of 2021.

For Grantor’s title, see (i) deed recorded in the Middlesex County (Southern District) Registry of Deeds in Book 75012, Page 519 and filed with the Middlesex County Southern Registry District of the Land Court as Document No. 1845820 (the “Vesting Deed”); and (ii) Notice of Voluntary Withdrawal of Land from the Registration System recorded in said Deeds in Book 79241, Page 361 and filed with said Registry District of the Land Court as Document No. 1900413. See also deed conveying a portion of the premises described in the Vesting Deed recorded in said Deeds in Book 80263, Page 211, as affected by confirmatory deed recorded as aforesaid in Book 80486, Page 57.

EXHIBIT B – Description of Easement Area and Plan

SIDEWALK EASEMENT

A CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF SOMERVILLE, MIDDLESEX COUNTY, COMMONWEALTH OF MASSACHUSETTS, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY SIDELINE OF CHESTNUT STREET AND THE WESTERLY SIDELINE OF FITCHBURG STREET; THENCE

N 34°47'10" W A DISTANCE OF FOUR HUNDRED TWENTY FOUR AND SEVENTY NINE HUNDREDTHS FEET (424.79') TO A POINT, BY THE NORTHERLY SIDELINE OF CHESTNUT STREET; THENCE

N 55°12'47" E A DISTANCE OF TWELVE AND FIFTY HUNDREDTHS FEET (12.50') TO A POINT; THENCE

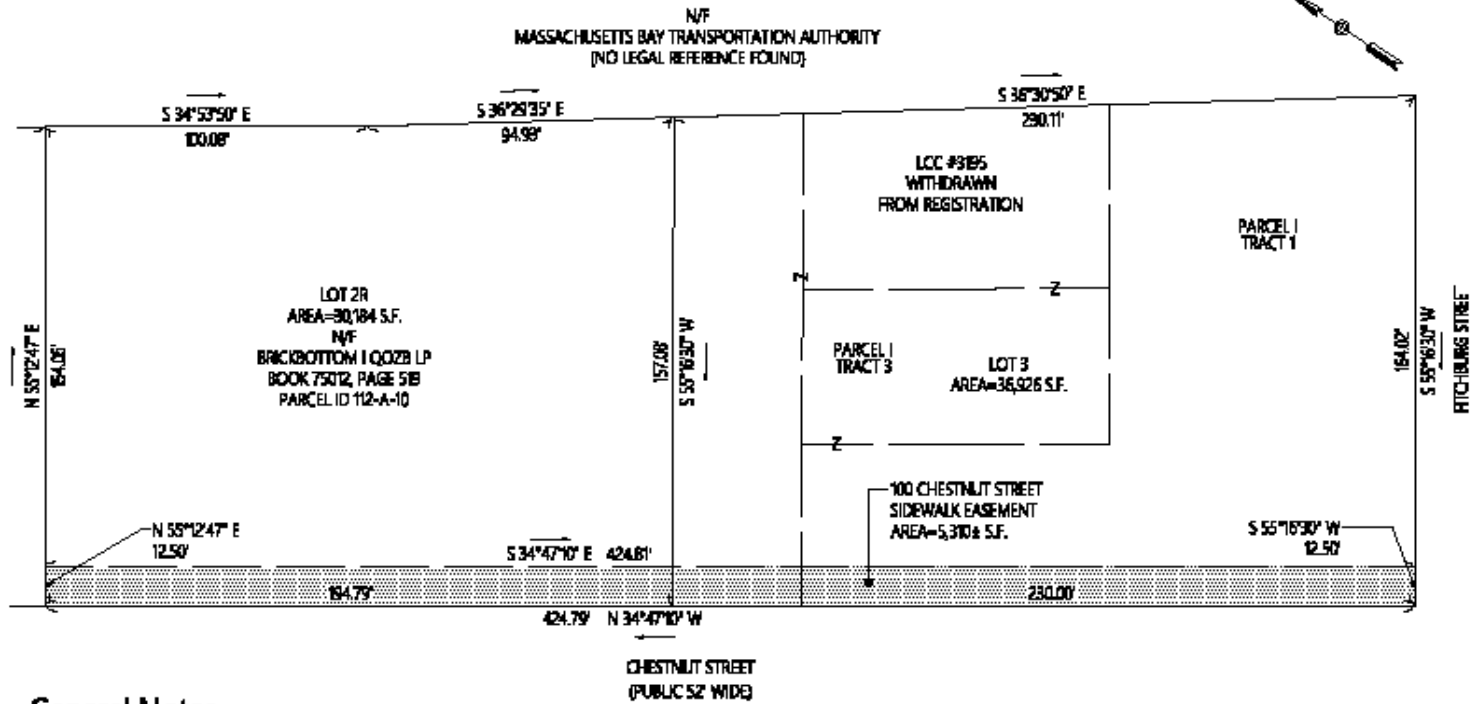
S 34°47'10" E A DISTANCE OF FOUR HUNDRED TWENTY FOUR AND EIGHTY ONE HUNDREDTHS FEET (424.81') TO A POINT; THENCE

S 55°16'30" W A DISTANCE OF TWELVE AND FIFTY HUNDREDTHS FEET (12.50') TO THE POINT OF BEGINNING, BY THE WESTERLY SIDELINE OF FITCHBURG STREET.

SAID EASEMENT CONTAINS 5,310± SQUARE FEET

See Sketch Plan attached hereto as part of this Exhibit B.

EXHIBIT B



General Notes

THE PROPERTY LINES SHOWN ON THIS PLAN ARE BASED UPON PLAN ENTITLED "EXISTING CONDITIONS PLAN" BY FELDMAN GEOSPATIAL, DATED JULY 14, 2022


 <p>101 Walnut Street PO Box 9151 Watertown, MA 02471 - 617.924.1770</p>	<p>SIDEWALK EASEMENT 100 CHESTNUT STREET SOMERVILLE, MA</p>	<p>Date 12/12/2022</p> <p>Scale NOT TO SCALE</p> <p>VHBCad File Name 14768.00</p>
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EXHIBIT C

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.