

This space for recorder's use only

EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this "Agreement") is entered into as of November __, 2023, by the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (the "City"), and US UNION SQUARE D2.1 OWNER LLC, a Delaware limited liability company, with an address of 31 Union Square, Somerville, Massachusetts 02143 ("Owner") (each, a "Party" and collectively, the "Parties").

WITNESSETH:

A. Reference is hereby made to (i) a Coordinated Development Special Permit in Case PB2017-21 issued by the Planning Board of the City of Somerville on December 14, 2017, recorded with the Middlesex South District Registry of Deeds (the "Registry") in Book 70602, Page 1 (the "CDSP"); (ii) Planning Board Decision regarding Design & Site Plan Review in Case PB 2019-04, dated July 11, 2019, recorded with the Registry in Book 75417, Page 239 (the "DSPR Decision"); and (iii) that certain Development Covenant recorded with the Middlesex South Registry of Deeds in Book 76588, Page 161 (as the same may be amended from time to time, the "Development Covenant") (the CDSP, DSPR Decision and Development Covenant are, collectively, the "Project Approvals").

B. Owner owns the property located at 10 Prospect Street, Somerville, Massachusetts, as more particularly described on Exhibit A attached hereto and incorporated by reference (the "Owner Property").

C. The Owner Property is a portion of the larger mixed-use master plan project being developed in Union Square (the "Master Plan Project").

D. The City is the owner of the public right of way adjacent to the Owner Property, 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 B (the “Easement Plan”).

E. In accordance with the Project Approvals, the City and Owner desire to enter into this Agreement in order to grant to each other certain easements over portions of the Owner Property and the Public Ways, respectively, and to allocate certain 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 Owner hereby agree as follows:

1. Grant of Easements to Owner. The City hereby grants to Owner, to the extent the City has a fee ownership interest in the Public Ways, a non-exclusive easement on, over, across and through portions of the Public Ways along Prospect Street and Somerville Ave identified on the Easement Plan entitled “Union Square Parcel D2.1, 10 Prospect Street, Easement Plan of Land in Somerville, Massachusetts, Middlesex County,” prepared by DGT Associates Surveying & Engineering, dated September 15, 2023 and shown on the Easement Plan as the “Public Sidewalk Easement Area” comprising approximately 2,777 square feet as shown on the Easement Plan (the “Public Sidewalk Easement Area”) for (i) the purpose of exercising the Owner Maintenance Obligations (as defined below), and (ii) all other purposes as if the Public Sidewalk Easement Area were part of the Owner Property, including, without limitation, the installation, maintenance, replacement and repair of directional, wayfinding and property identification signage, lighting, utilities serving the Owner Property, 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 Owner Property (such as outdoor restaurant seating or retail kiosks) or events serving the Owner Property and/or the public (such as special events or activities or valet parking areas). 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 Ways and/or the Public Sidewalk Easement Area 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 Public Sidewalk Easement Area has not yet been dedicated and conveyed to the City, and is owned in fee by Owner, 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 Public 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. Owner hereby grants to the City a non-exclusive permanent easement, in common with Owner and all others now or hereafter entitled thereto, on, over, across and through those certain portions of the Owner Property immediately adjacent to

the Public Sidewalk Easement Area along Prospect Street and Somerville Ave as, comprising approximately 2,477 square feet, and shown on the Easement Plan as the “Owner Sidewalk 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 unreasonably curtailed. To the extent that the City acquires a fee simple interest in all or any portion of the Owner Sidewalk Easement Areas, the easement (or portion thereof) shall be merged into the superior interest of the City and shall cease to exist.

3. Owner Maintenance Obligations. Owner shall maintain, repair and replace, at Owner’s sole cost and expense, all sidewalks and landscaped areas within the Owner Sidewalk Easement Areas and the Public Sidewalk Easement Area, together with any improvements installed by Owner in the Owner Sidewalk Easement Areas and the Public Sidewalk Easement Area, including removal of garbage and emptying of garbage cans and removal of snow and ice, in a manner consistent with other mixed-use developments in the Boston, Massachusetts area and otherwise in accordance with any then-applicable federal, state, and City of Somerville legal requirements, including but not limited to those related to accessibility requirements for persons with disabilities, but excluding any maintenance, repair or replacement of City-owned street lighting fixtures and equipment located within the Public Sidewalk Easement Area.. All of Owner’s said responsibilities shall be referred to herein collectively as the “Owner Maintenance Obligations.”

Owner shall (and/or shall cause any contractor(s) responsible for performing any work in, on or under the Sidewalk Easement Area) (i) to carry the types of insurance as would be carried by a reasonably prudent owner of commercial real property provided that said insurance shall be no less than the minimum amounts and types required by the City and set forth on Exhibit C; and (ii) upon written request of the City, deliver a certificate evidencing the insurance required hereunder and naming the City as an additional insured..

4. City Maintenance Obligations. Except as specifically otherwise set forth herein as being Owner’s responsibility, the City shall maintain and repair the Public Ways, to the extent the City has a fee ownership interest in the Public Ways, in accordance with City standards for the maintenance of public ways. For avoidance of doubt, the City shall maintain, repair and replace any and all City-owned street lighting fixtures located within the Public Sidewalk Easement Area.
5. Reservation of Rights. Owner hereby reserves the right to access the Owner Sidewalk Easement Areas for customary purposes incidental to Owner’s ownership and development of the Owner Property, including, without limitation, the right to install, maintain, repair, and replace within the boundaries of the Owner Sidewalk Easement Areas, at Owner’s sole expense, any and all utilities reasonably necessary in order to serve the land and improvements owned by Owner, so long as the same do not unreasonably, permanently

interfere with the City's use of the Owner Sidewalk Easement Areas for the purposes granted hereunder and provided further that all required permits for such activities have been obtained from the appropriate authorities.

6. 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 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, Owner shall not be in default of its obligations hereunder for failure to fulfill the applicable obligation.
7. 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.
8. Good Faith; Diligence. In performing the functions under this Agreement, both Parties shall act in good faith and reasonably 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.
9. No Third Party Beneficiaries. None of the duties and obligations of Owner and the City under this Agreement shall in any way be construed as to create any liability for Owner or the City with respect to third parties who are not parties to this Agreement.
10. 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
 Attention: City Solicitor

Owner: US Union Square D2.1 Owner LLC
c/o Union Square Station Associates LLC
31 Union Square
Somerville, Massachusetts 02143
Attn: Greg Karczewski

With a copy to: Union Square Station Associates LLC
c/o Magellan Development Group
225 N. Columbus Drive, Suite 100
Chicago, Illinois 60606
Attn: Kim Sharon

And to: Affinius Capital
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230-2239
Attn: Carrington Brown
Email: legal@affiniuscapital.com

And to: DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110
Attn: Brian Hochleutner, Esq.

11. The recitals set forth above are incorporated in and made a part of this Agreement.
12. 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 Owner's prior written consent (which may be granted or withheld in Owner's sole reasonable discretion except to the extent the City is assigning its rights and obligations to a successor entity with responsibility for City of Somerville rights of way). Owner may assign its rights and/or obligations in whole or in part to any affiliate of Owner or to any owner of the Owner Property provided that Owner shall provide written notice to the City, as applicable, of any such assignment within fifteen (15) business days of any such assignment.
13. Upon ten (10) business days' prior notice, given upon the transfer, financing and/or refinancing of any portion of the Owner Property and otherwise no more than once a year, the City shall provide to Owner, Owner'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; (c) that this Agreement is in full force and effect as of the date of the estoppel certificate.

14. No partner, member, shareholder, trustee, beneficiary, director, officer, manager or employee of 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 Owner 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.
15. 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.
16. 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.

OWNER:

US UNION SQUARE D2.1 OWNER LLC,
a Delaware limited liability company

By: AMK

Name: Gregory Karczewski

Title: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On the 06 day of DECEMBER 2023, before me, the undersigned notary public, Greg Karczewski personally appeared, proved to me through satisfactory evidence of identification, which was MA DRIVER'S LICENSE, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily in my presence as the authorized signatory of US Union Square D2.1 Owner LLC as the voluntary act of the company.



ENTELE KOKA
Notary Public
Commonwealth of Massachusetts
My Commission Expires
September 21, 2029

ENTELE KOKA

Notary Public

Entele Koka

My Commission Expires:

09. 21. 2029

[Signatures continue on next page]

THE CITY:

THE CITY OF SOMERVILLE

By: Katjana Ballantyne
Name: Katjana Ballantyne
Title: Mayor

Attest:

Approved as to form and legality:

By: Cynthia Amara
Name: Cynthia Amara
Title: City Solicitor

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

On the 7 day of December, 2023, before me, the undersigned notary public, Katjana Ballantyne personally appeared, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily in my presence as the authorized signatory of The City of Somerville as the voluntary act of the company.

Susan M T Kaczok

Notary Public Susan M T Kaczok

My Commission Expires: 1/11/2024

EXHIBIT A

Owner Property Description

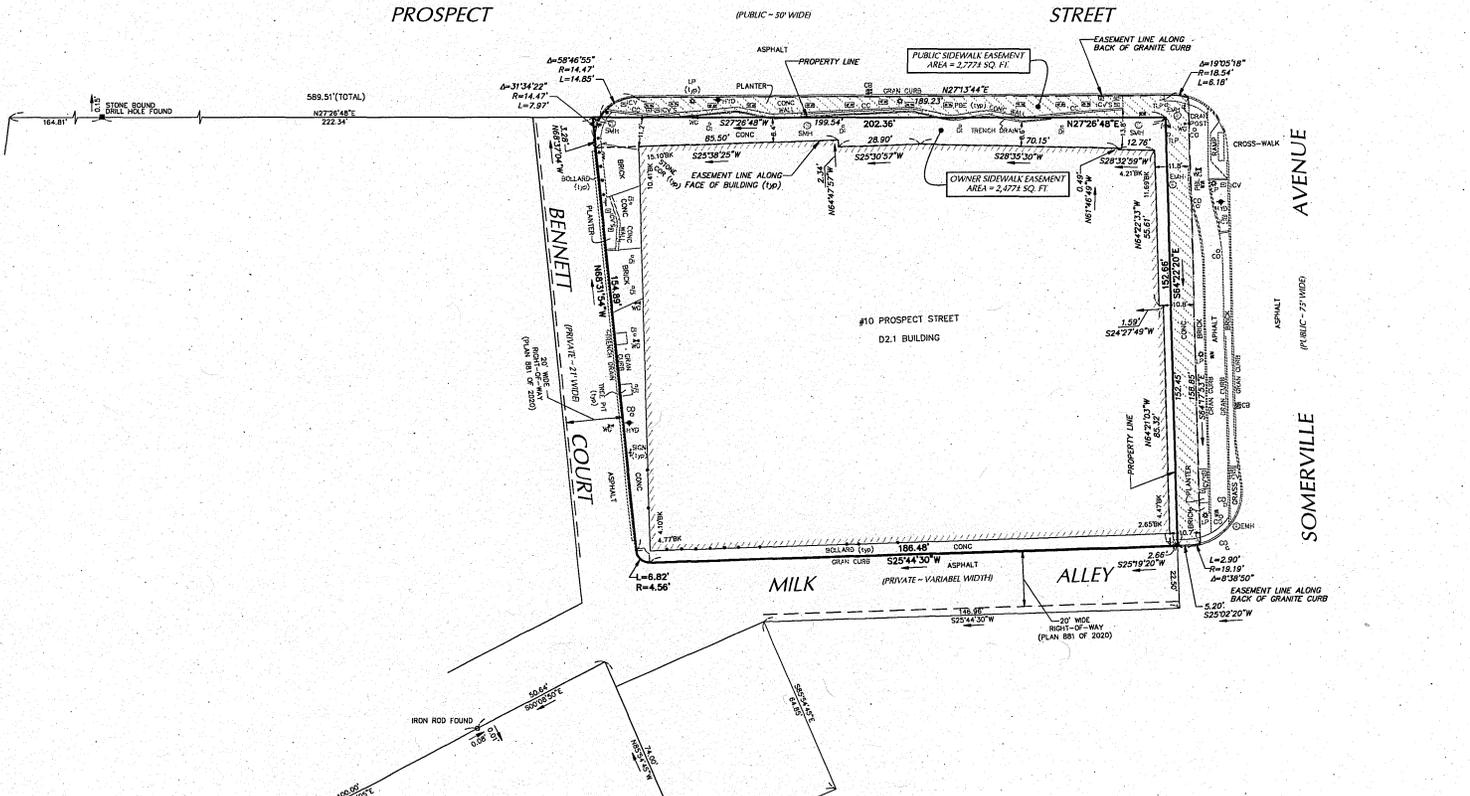
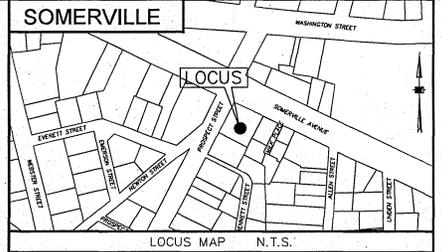
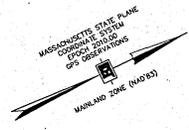
That certain parcel of land in the City of Somerville, Middlesex County, Massachusetts, being shown as Lot 4 on a plan entitled "Subdivision Plan of Land – Prospect Street at Somerville Avenue" prepared by Design Consultants, Inc., dated November 23, 2020, and recorded with the Middlesex South Registry of Deeds as Plan 881 of 2020.

EXHIBIT B

Easement Plan

[see attached]

REGISTRY USE ONLY



- LEGEND**
- BK BACK
 - CB CATCH BASIN
 - CC CONCRETE CURB
 - CD CLEAN OUT
 - CONC CONCRETE
 - COR CORNER
 - CI CURB INLET
 - EMH ELECTRIC MANHOLE
 - GRAN GRANITE
 - HYD HYDRANT
 - ICV IRRIGATION CONTROL VALVE
 - LP LIGHT POLE
 - ICE FULL BOX ELECTRIC
 - PBL PULL BOX LIGHT
 - SMH SENSER MANHOLE
 - TLP TRAFFIC LIGHT POLE
 - WG WATER GATE
 - (1/P) TYPICAL

REFERENCES

OWNER OF RECORD:
 N/T US UNION SQUARE D2.1 OWNER LLC
 7850/A2 (2021) DEED
 PLAN 881 OF 2020

LOCUS AREA = 30,566 SQ. FT. or 0.7028 ACRES
 ASSESSOR PARCEL ID: 02/01/4

PLAN REFERENCE

"EXISTING CONDITIONS PLAN, PROSPECT STREET AT SOMERVILLE AVENUE", PREPARED BY DESIGN CONSULTANTS, INC., CIVIL ENGINEERS AND LAND SURVEYORS, DATED DEC. 09, 2009.

NOTES

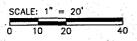
1) FIELD SURVEY PERFORMED: SEPTEMBER 7-8, 2023.

I HEREBY CERTIFY THAT:
 THIS PLAN IS BASED ON AN ON-THE-GROUND SURVEY AND PRESENTS THE FACTS AS FOUND AT THE TIME OF THE SURVEY.
 THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.



Michael A. Clifford
 PROFESSIONAL LAND SURVEYOR

30-SEP-2023
 DATE



UNION SQUARE PARCEL D2.1 10 PROSPECT STREET		RESEARCH: DGT
EASEMENT PLAN OF LAND IN SOMERVILLE, MASSACHUSETTS MIDDLESEX COUNTY		FIELD: A. RUSH
PREPARED FOR: GILBANE BUILDING COMPANY		CALCULATION: V. VEN
PREPARED BY: DGT Associates Surveying & Engineering Framingham • Boston • Worcester		DRAFTING: V.V.
BY: [] DESCRIPTION: [] DATE: [] REV: 0 PLAN NO.: S1622-00EA		CHECK: M. CLIFFORD, PLS
803 SUMMER STREET, 1ST FLOOR, BOSTON, MA 02127 617.275.0541 www.DGTassociates.com		PROJ. MANAGER: B. TALEB
		DATE: 15-SEP-2023
		JOB NO. S1622.00
		CRD FILE S1622_ALL_NAD83
		SHEET NO. 1 OF 1

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 g 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.

EXHIBIT D

City Council Clerk's Certificate of Vote