

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 AGREEMENT

THIS EASEMENT AGREEMENT (this “Agreement”) is made by and between the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (together with its successors and assigns, the “City”), and **299 BROADWAY PROPERTY OWNER LLC**, a Massachusetts limited liability company with an address c/o Nutter McClennen & Fish LLP, 155 Seaport Boulevard, Boston, Massachusetts 02210 (together with its successors and assigns, the “299 Broadway Owner”)

RECITALS:

A. Pursuant to an Order of Taking by the City of Somerville recorded herewith, the City is the owner of the land with any improvements thereon located along Temple Street in the City of Somerville, known as 11 Temple Street, being Lot 3 (“Lot 3”) 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 (the “Subdivision Plan”).

B. 299 Broadway Owner is the owner of (i) land in the City of Somerville, known as 15 Temple Street, being Lot 1 on the Subdivision Plan (“Lot 1”), and (ii) land in the City of Somerville, known as 299 Broadway, being Lot 2 on the Subdivision Plan (“Lot 2”). Said Lot 1 and Lot 2 being a portion of the property conveyed to 299 Broadway Owner by Quitclaim Deed dated September 18, 2023, recorded with the Registry in Book 82094, Page 63 and filed for registration with the Middlesex South Registry District of the Land Court as Document No. 1945745. See also order of deregistration recorded with the Registry in Book 82861, Page 450.

C. In February 2023, affiliates of 299 Broadway Owner received a comprehensive permit from the Somerville Zoning Board of Appeals (the “ZBA”) under Massachusetts General

Law Chapter 40B to construct two mixed-use residential and retail buildings, one on Lot 1 and one on Lot 2, and adjacent civic spaces, and the use of Lot 3 for access and parking (the “Project”). 299 Broadway Owner sought and received several modifications to the 2023 comprehensive permit from the ZBA. The comprehensive permit, as amended to date and as may be amended in the future, is hereinafter referred to as the “Comprehensive Permit.”

D. To facilitate the construction and operation of Project authorized in the Comprehensive Permit and the Mobility Management Plan approved by the City pursuant to the requirements of the Somerville Zoning Ordinance (as the same may be amended in the future, the “Mobility Management Plan”), 299 Broadway Owner, as the owner of Lot 1 (“Lot 1 Owner”) and the owner of Lot 2 (“Lot 2 Owner”), requires several temporary and permanent easements within Lot 3 for the benefit of Lot 1 and Lot 2.

E. The City, as owner of Lot 3, desires to grant such easements within Lot 3 to 299 Broadway Owner for the benefit of Lot 1 and Lot 2 pursuant to the terms and conditions set forth herein.

F. 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 A**.

AGREEMENT:

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easements.

(a) Temporary Construction Easement. The City hereby grants to Lot 1 Owner and Lot 2 Owner an exclusive temporary construction easement on Lot 3 (the “Temporary Construction Easement”) (i) to conduct site enabling activities, (ii) to construct and install the paving, curbing, striping, bicycle lane and other improvements and infrastructure approved within Lot 3 as part of the Comprehensive Permit and Mobility Management Plan (“Lot 3 Improvements”), and (iii) to utilize Lot 3 as a construction staging and laydown area during the construction of the buildings and improvements to be constructed on Lot 1 and Lot 2. This Temporary Construction Easement shall terminate upon the last to occur of the issuance of a Certificate of Occupancy for Building A (as such term is defined in the Comprehensive Permit) on Lot 1, a Certificate of Occupancy for Building B (as such term is defined in the Comprehensive Permit) on Lot 2, and the completion of the Lot 3 Improvements on Lot 3.

(b) Permanent Access Easement. The City hereby grants to Lot 1 Owner and Lot 2 Owner the perpetual non-exclusive right and easement for vehicular, pedestrian and bicycle access from Broadway and Temple Street over any paved access drive and circulation elements, excluding parking spaces, constructed as part of the Lot 3 Improvements or otherwise located within Lot 3, including, without limitation, access to the building to be constructed on Lot 1, and for trash removal from Lot 1 and Lot 2.

(c) **Permanent Maintenance Easement.** The City hereby grants to Lot 1 Owner and Lot 2 Owner a non-exclusive perpetual easement to maintain, repair or replace the Lot 3 Improvements within Lot 3.

2. **No Relocation.** The City shall not relocate any easement without the prior written consent of the Lot 1 Owner and the Lot 2 Owner, which consent may be withheld in such owner's sole reasonable discretion.

3. **Building Code and Comprehensive Permit Compliance.** The City agrees (i) for the benefit of Lot 1 that no building, structure or other above-grade improvement shall be erected on Lot 3 that would cause the building to be constructed on Lot 1 in accordance with the Comprehensive Permit to violate the Massachusetts State Building Code or other applicable laws or regulations, and (ii) for the benefit of Lot 1 and Lot 2 that it will take no action on Lot 3 that will cause Lot 1 or Lot 2 to be in violation of the Comprehensive Permit.

4. **Responsibility and Maintenance.** Any work conducted by Lot 1 Owner or Lot 2 Owner or its agents or contractors on Lot 3 shall, once commenced, be diligently and expeditiously continued through to completion and shall be carried out in a good and workmanlike manner. Upon the completion of any work performed by the Lot 1 Owner or Lot 2 Owner pursuant to this Agreement, other than work under the Temporary Construction Easement, such owner shall restore any landscaping, hardscapes, or other improvements located in Lot 3 that may have been disturbed or damaged as a result of such work to its preexisting condition prior to such disturbance or damage.

5. **Removal of Liens.** If any mechanics', materialmen's or any other like lien arising out of work performed by or on behalf of 299 Broadway Owner, Lot 1 Owner or Lot 2 Owner is filed against any portion of Lot 3, the party on whose account such work occurred shall cause the lien to be removed, by payment, bond or otherwise, within thirty (30) days after notice of the filing thereof.

6. **Indemnification; Insurance.** Lot 1 Owner and Lot 2 Owner hereby agree to indemnify, defend and hold harmless the City from and against any and all liability, claims, damages, expenses (including, but not limited to, reasonable attorneys' fees, incurred with respect to any litigation), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property occurring as a result of the use or misuse of the easements granted hereunder, unless caused by the gross negligence or willful misconduct of the City. The Lot 1 Owner and Lot 2 Owner shall maintain commercial general liability insurance with limits of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) annual aggregate. Such insurance shall name the City as additional insured by endorsement to the respective policy.

7. **Notices.** Notices under this Agreement shall be delivered personally or sent by certified mail, return receipt requested, or by Federal Express or other recognized overnight carrier, to the following addresses or to such other addresses as the parties may from time to time designate in writing:

To the City	Somerville City Hall 93 Highland Avenue Somerville, MA 02143 Attention: Office of the Mayor
with a copy to:	Somerville City Hall 93 Highland Avenue Somerville, MA 02143 Attention: Executive Director, Office of Strategic Planning and Community Development
with a copy to:	Somerville City Hall 93 Highland Avenue Somerville, MA 02143 Attention: City Solicitor
To Lot 1 Owner:	299 Broadway Property Owner LLC c/o Beacon Communities 2 Center Plaza, 6 th Floor Boston, MA 02108 Attention: Joshua Cohen
with a copy to:	Julie Stande, Esq. Nixon Peabody LLP Exchange Place 53 State Street Boston, MA 02109-2835
To Lot 2 Owner:	299 Broadway Property Owner LLC c/o Nutter McClennen & Fish LLP 155 Seaport Boulevard Boston, MA 02210 Attention: Michael Scott, Esq.
	299 Broadway Property Owner LLC c/o Samuels & Associates 136 Brookline Avenue Boston, MA 02215 Attention: Damien Chaviano

Any notice will be deemed to be given (i) if personally delivered, on the date received, (ii) if sent by certified mail, three (3) business days after the date when mailed, and (iii) if sent by Federal Express or by other recognized overnight courier, on the first business day after the date when mailed.

8. **General Provisions.**

(a) Easement Appurtenant. The easements granted herein on Lot 3 shall be a burden on Lot 3 (however now or hereafter divided or configured), shall be appurtenant to and for the benefit of Lot 1 and Lot 2 and each part thereof (however now or hereafter divided or configured). In the event that Lot 2 Owner enters into a ground lease of Lot 2 (any such ground lease, together with any replacements thereof, each a "Lot 2 Ground Lease"), then, as long as any Lot 2 Ground Lease is in effect, as evidenced by a notice of lease recorded with the Registry relating thereto, the holder of the tenant's leasehold interest under the Lot Ground Lease (the "Lot 2 Tenant") shall perform all obligations of the Lot 2 Owner hereunder and shall be entitled to exercise all of the Lot 2 Owner's rights and remedies under this Agreement. The foregoing provisions shall be self-operating and no further instrument shall be necessary to implement the same and by executing and recording any notice of lease, the Lot 2 Tenant (together with its successors and assigns) agrees to the provisions hereof. Promptly after the recording of a notice of lease relating to the Lot 2 Ground Lease, the Lot 2 Tenant shall send written notice of such recording to the City and the Lot 1 Owner, which notice shall also state the Lot 2 Tenant's notice address for all notices to be provided hereunder. All notices to be sent to Lot 2 Owner hereunder shall also be sent to the Lot 2 Tenant and all notices sent to the Lot 2 Tenant hereunder shall also be sent to the Lot 2 Owner.

(b) Estoppel Certificate. Upon fifteen (15) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of Lot 1 or Lot 2, the City shall provide to the Lot 1 Owner or Lot 2 Owner, respectively, 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.

(c) Limitation of Liability. No partner, member, shareholder, trustee, beneficiary, director, officer, manager, or employee of the Lot 1 Owner or Lot 2 Owner, 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. In the event any person obtains a judgment against Lot 1 Owner or Lot 2 Owner in connection with this Agreement, such person's sole recourse shall be to the estate and interest of such Party in its property described herein.

(d) Modification, Amendment, Release. This Agreement may be modified, amended, or released as to any lot only by a written instrument executed by the then owners of such lots.

(e) No Waiver. The failure of a party to insist upon strict performance of any of the covenants or restrictions contained in this Agreement shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in any of the covenants or restrictions herein by the same party.

(f) Severability. If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of its Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term

and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(h) Counterparts. This Agreement may be executed in several counterparts and all such executed counterparts shall constitute one Agreement, binding on all parties hereto, notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

[signatures and acknowledgements begin on the following page]

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: _____

Name:

Title: Authorized Signatory

Commonwealth of Massachusetts
Middlesex, ss.

On this ____ day of _____, 2025, before me, the undersigned notary public, personally appeared _____, Authorized Signatory 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 he or she signed it voluntarily in such capacity for its stated purpose.

Notary Public

My commission expires:

CITY OF SOMERVILLE

By: _____

Katjana Ballantyne

Its: Mayor

Attest:

Approved as to form:

By: _____

Cindy Amara

Its: City Solicitor

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

Copy of City Council Vote

Summary report: Litera Compare for Word 11.9.1.1 Document comparison done on 9/5/2025 12:25:34 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
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Modified DMS: iw://imanagework.nutter.com/IMANAGE/7364710/8	
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<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
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Embedded Excel	0
Format changes	0
Total Changes:	11

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Summary report: Litera Compare for Word 11.9.1.1 Document comparison done on 9/9/2025 10:31:47 AM	
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Intelligent Table Comparison: Active	
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<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	22