

LAND DISPOSITION AGREEMENT

This Land Disposition Agreement (“LDA”) dated this ___ day of _____, 2021, is made by and between the City of Somerville, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, with usual offices at 93 Highland Avenue, Somerville, MA (the “City” or “Seller”), acting by and through the Mayor’s Office of Strategic Planning and Community Development (“OSPCD”) and E3 Development LLC, a Massachusetts limited liability company duly organized and existing under Chapter 156C of the Massachusetts General Laws, with usual offices at 40 Homer Street, Newton Massachusetts 02459 (the “Buyer”).

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Buyer hereby agree as follows:

A. PROPERTY

The City agrees to sell to Buyer and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth all the City’s right, title and interest in one parcel of land located at **31 Tufts Street, Somerville, Middlesex County, Massachusetts** (the “Property”), more particularly described in EXHIBITA attached hereto and incorporated as part of this LDA.

B. PURCHASE PRICE

The agreed purchase price for the Property is One Hundred Thirty Thousand Dollars (\$130,000) (the “Purchase Price”) of which:

\$20,000.00	was paid upon execution of an Exclusive Negotiating Agreement dated September 30, 2019 (the “ <u>ENA</u> ”);
\$6,000	the balance of a deposit equal to twenty percent (20%) of the Purchase Price (the “ <u>Deposit</u> ”) is paid herewith; and
\$104,000	the balance of the Purchase Price is to be paid at the time of delivery of the Deed by wire transfer in accordance with the City’s instructions (the “ <u>Closing</u> ”).

C. DEPOSIT

The Deposit shall be held in escrow by the OSPCD Director of Administration and Finance (“Escrow Agent”), subject to the terms of this Agreement. The Escrow Agent shall be liable only for willful default or misconduct. In the case of a dispute, the Escrow Agent shall retain the Deposit pending written receipt of instructions signed by both the City and the Buyer, or Court Order. The City shall have no obligation to pay interest on the Deposit to the Buyer.

If the Buyer fails to purchase the Property on the Closing Date (as defined below), the Deposit and any interest thereon shall be retained by the City as the City’s sole remedy at law and in

equity.

D. DEED

The City shall convey its right, title and interest in the Property to the Buyer by a Quitclaim Deed in the form attached as EXHIBIT B (“Deed”). The Deed shall convey good, clear record and marketable title to the Property, free from all encumbrances except for:

1. provisions of the existing laws, rules, and regulations, including without limitation, building, zoning and environmental laws;
2. any liens for municipal betterments first assessed after the date of this LDA;
3. real estate taxes or PILOT payments not yet due and payable;
4. rights, easements, restrictions, and reservations of record, if any; and
5. any provisions of this LDA, that, by their terms, survive the Closing Date.
6. The Deed from the City to the Buyer will include the following restrictive covenants, which shall run with the land and be binding upon the grantee and the grantee’s successors and assigns: a) that there be no material change in development concept at the Property for a period of twenty (20) years from the Closing Date unless the City has given its prior written consent to such change; b) that there be no transfer of title to a tax-exempt owner unless the City has given its prior written consent to such transfer and the City may condition its consent upon the tax-exempt owner’s entering into a Payment in Lieu of Taxes (“PILOT”) Agreement; c) the property shall revert to the City at no cost if Buyer does not break ground on the Project by the third anniversary of the Closing Date (such reversionary language to be released upon the recording of a Certificate of Compliance in the form attached hereto as EXHIBIT C); and d) that approximately 5,000 s.f. of the land area of the property be set aside as open space in perpetuity. The consent of the “City” shall mean the consent of both the Mayor and the Somerville City Council (the “City Council”).

E. TIME FOR PERFORMANCE/DELIVERY OF THE DEED

The Buyer, or an affiliate thereof controlled by the Buyer, shall acquire the Property by accepting delivery of the Deed from the City and paying the balance of the Purchase Price to the City on or before the later of December 31, 2021, or the date upon which the Buyer receives all required zoning and permitting approvals and closes on all required construction financing (the “Closing Date”) at City Hall or such other place as may be mutually agreed upon by the parties. Time is of the Essence of this Agreement. The City will not deliver the Deed prior to the Developer securing zoning relief, building permit, and financing commitment.

F. ACCEPTANCE OF THE DEED

The acceptance of the Deed to the Property by the Buyer and the payment by the Buyer of the

full Purchase Price shall be deemed a full performance by the parties hereto and shall discharge every agreement and obligation of the parties herein contained, except such as by the express terms of this LDA are to survive the Closing.

G. CONDITION OF THE PROPERTY ON THE CLOSING DATE

On the Closing Date, the Property shall be conveyed “as is”, in substantially the same condition as it is as of the date hereof, reasonable wear and tear accepted.

H. USE OF PURCHASE MONEY TO CLEAR TITLE

To enable the City to make conveyance, City may, at the Closing Date, use the purchase money or a portion thereof to clear the title of any or all encumbrances, provided that all instruments so procured are recorded by the City promptly after the delivery of the Deed.

I. BROKER’S FEE

The City and the Buyer each represent and warrant to the other that neither has dealt with any real estate broker or other person who would be entitled to be paid a commission by reason of the procurement of this Agreement or the sale of the Property, and each agrees to defend, indemnify and hold the other harmless from and against any loss, damage or expense arising out of any breach by the indemnifying party of such representation and warranty. These warranties, representations, and indemnifications shall survive the delivery of the Deed.

J. CONSTRUCTION OF THE PROPOSED DEVELOPMENT

Buyer acknowledges that the City has agreed to sell the Property to Buyer so that Buyer can construct at the Property a project (the “Project”), consisting of the use program described in a proposal submitted by the Buyer to the City in response to a publicly advertised disposition process (as it may be modified in accordance with the terms hereof, the “Proposal”), which Proposal is attached hereto as EXHIBIT D.

1. Development Team: The Buyer’s Development Team shall consist of:
 - a. *Applicant: E3 Development LLC*
 - b. *Attorney: Hackett Feinberg P.C. and Adam Dash & Associates*
 - c. *Architect: Placetaylor (building) and Deborah Myers Landscape Architect (open space)*
 - d. *Engineer: Joyce Engineering Group*
 - e. *Lender(s): Somerville Affordable Housing Trust, MA Department of Housing and Community Development, MassHousing*

f. Equity Partners: N/A

2. Description of the Project. The Project is described in the Proposal. The Buyer shall develop the Property substantially in accordance with the Proposal as modified to comply with Planning Board and/or Somerville Zoning Board of Appeals requirements.
3. Development Milestones. Buyer shall commence construction of the Project within thirty-six (36) months after the Closing Date and diligently proceed to completion of construction in accordance with the construction schedule attached hereto as EXHIBIT E.
4. Force Majeure. Notwithstanding the foregoing, the Buyer shall not be in default of this Agreement for failure to meet development milestone dates if such failure is due to a cause beyond the Buyer's reasonable control, such as a flood, earthquake, fire, epidemic, pandemic, quarantine, government-mandated work stoppage, act of terrorism or material shortage(s) resulting from strikes, freight embargoes and/or municipal, state or federal public health crises. It is the intent of this section that, in such event or events, such date(s) shall be extended for the period of the enforced delay; provided, however, that the period of the extension and the reasons therefore shall be in writing signed by both parties. The City shall not unreasonably withhold or delay its written consent to such extension.
5. Security for Performance. The Buyer shall obtain from the general contractor for the Project performance and payment bonds and a lien bond in the amount of 100% of the contract price naming the City of Somerville as an additional obligee.
6. Survival. This Section J shall survive the Closing.

K. IDENTITY OF BUYER AND DEVELOPMENT TEAM /PROHIBITION AGAINST CHANGE OF USE.

1. The Buyer represents that it is acquiring the Property for purposes of development and not for speculation.
2. The Buyer acknowledges that, in view of the importance of the undertakings set forth herein to the general welfare of the community, the participation of the Buyer in the Project is material. The City (i) acknowledges that the Buyer will serve as the Developer of the Project and a single-purpose entity controlled by the Buyer shall take title to the Property as Owner, and (ii) agrees that such arrangement satisfies the requirement for material participation of the Buyer.
3. The Buyer covenants not to transfer the Property to an unrelated third-party buyer without the City's prior written consent until such time as the Project has been fully constructed and a certificate of occupancy has been issued.
4. The Buyer covenants not to make any material change in the development concept as set forth in the Proposal (as modified to comply with Planning Board and/or Somerville

Zoning Board of Appeals requirements) for twenty (20) years from the Closing Date.

L. ACQUISITION AND DEVELOPMENT FINANCING.

The Buyer represents that it has adequate financial resources to acquire the Property and to construct the Project and shall deliver upon execution of the LDA and again at the Closing Date, current versions of the financial statements and pro formas provided by the Buyer in connection with the ENA, demonstrating to the reasonable satisfaction of the City that the Buyer is in stable financial condition, is not the subject of nor threatened with a bankruptcy, receivership, assignment for the benefit of creditors or other insolvency type proceeding, and is financially capable of developing the Project as contemplated by this Agreement.

M. ENVIRONMENTAL TESTING / TITLE / PERMITS AND APPROVALS

During the Exclusive Negotiating Agreement period: (1) the Buyer tested the Property for the presence of oil and hazardous materials and substances and expressly waives any objection to Closing based on the environmental condition of the Property; and (2) the Buyer conducted a title examination and expressly waives any objection to Closing based on issues related to title; and (3) the Buyer obtained all permits and approvals needed to construct the Project, other than the building permit.

N. DEFAULT/TERMINATION/REMEDIES.

If the Buyer is in default in its obligations, other than any default which is governed by Section C of this Agreement, the City shall send written notice of such default, stating what actions are required to cure the default and stating the time period within which the default must be cured. If the Buyer fails to promptly take and diligently pursue action designed to cure the default, or if the default is not cured within ninety (90) days of receipt of written notice of default, or if a default cannot with due diligence be cured within ninety (90) days and Buyer does not commence the cure of such default within such ninety (90) days and thereafter diligently prosecute the same to completion, the City may avail itself of any and all remedies, including without limitation, enforcing the bonds of the general contractor, or bringing an action for damages and/or to enjoin or compel specific performance. No delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this section shall operate as a waiver of such rights or limit such rights in any way. The City shall not, because of concepts of waiver or laches or otherwise, feel constrained to exercise such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the City's waiver of any specific default be treated as a waiver of the City's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default. This Section shall survive the Closing.

O. NOTICE

All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, or by Express Mail or FedEx or other nationally recognized delivery service with tracking capability, addressed in care of the City to:

Executive Director, Mayor's Office of Strategic Planning and Community Development
City Hall
93 Highland Avenue
Somerville, MA 02143

And

City Solicitor
City Hall
93 Highland Avenue
Somerville, MA 02143

and in the case of the Buyer to:

Eliza Datta
E3 Development LLC
40 Homer Street
Newton, MA 02459

and

Hackett Feinberg P.C.
155 Federal Street, 9th Floor
Boston, MA 02110
Attn: Kimberly Martin-Epstein, Esq.

or to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or upon mailing.

P. REPRESENTATIONS AND WARRANTIES

1. The Buyer represents and warrants and shall deliver upon Closing an opinion of its legal counsel, that the Buyer is a duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts; that the Buyer has the legal right, power and authority to enter into and perform all of its obligations under this Agreement; and that the individuals executing this Agreement have been duly authorized to execute the same on behalf of and to bind, the Buyer.
2. The Buyer represents and warrants that the execution of this Agreement and compliance with its terms will not conflict with or result in a breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority of which the Buyer has knowledge or notice, or any other agreement, document or instrument by which the Buyer is bound. The Buyer further represents and warrants that there are no claims, lawsuits or proceedings pending in any court or government agency the outcome of which could materially and adversely

affect the Buyer's ability to perform its obligations under this Agreement.

3. The Buyer acknowledges that the Seller has made no representations or warranties regarding the Property.

Q. CLOSING DOCUMENTS/ADJUSTMENTS TO THE PURCHASE PRICE

The City shall execute and deliver closing documents reasonably and customarily required from a seller of real property in the Commonwealth of Massachusetts, as requested by Buyer's or Buyer's mortgagee's counsel.

The following charges shall be adjusted as of the Closing Date and added to or deducted from the Purchase Price, as the case may be: 1) any water and sewer use charges; 2) any outstanding oil, gas, or electric for the Property; and 3) tax due from the Buyer under G.L. c. 59, s.2C.

R. MISCELLANEOUS PROVISIONS

1. This Agreement shall be binding on the Buyer's successors and assigns.
2. This Agreement shall be governed by Massachusetts law, shall be construed as a Massachusetts contract, shall take effect as a sealed instrument, and shall be modified or amended only by a written instrument executed by the City and the Buyer and approved by the City Council.
3. Captions are for convenience only and shall not limit the scope or substance of this Agreement.
4. Time is of the essence of this Agreement.
5. No official or employee of the City of Somerville shall have any personal interest, direct or indirect, in this Agreement or in the Buyer, nor shall such officials or employees participate in any decision relating to this Agreement which affects their personal interest or the interests of any corporation, partnership, or association in which they are, directly or indirectly, interested. No official or employee of the City of Somerville shall be personally liable to the Buyer or any successor in interest in the event of any default or breach by the City of Somerville or for any amount which may become due to the Buyer or to its successor or on any obligations under the terms of this Agreement.
6. Wherever the consent or approval of the City is required herein, it shall mean the consent or approval of both the Mayor and the City Council.
7. This LDA shall be recorded at the Middlesex South District Registry of Deeds.
8. This LDA may be executed in multiple counterparts, each of which shall be treated as an original.

EXECUTED under seal on the day and year first written above.

SELLER:
CITY OF SOMERVILLE

BUYER:
E3 DEVELOPMENT LLC

By: _____
Joseph A. Curtatone
Its: Mayor

By: _____
Eliza Datta
Its: Manager

Approved as to form: _____
City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared the above-named Joseph A. Curtatone, 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:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Eliza Datta, 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 she signed it voluntarily, as Manager of E3 Development LLC, for its stated purpose as the voluntary act of E3 Development LLC.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
FORM OF DEED

EXHIBIT C
FORM OF CERTIFICATE OF COMPLIANCE

PROPERTY ADDRESS: 31 TUFTS STREET, SOMERVILLE, MA

CERTIFICATE OF COMPLIANCE AND RELEASE OF REVERTER

The **CITY OF SOMERVILLE**, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, with usual offices at 93 Highland Avenue, Somerville, MA, (the "City"), **hereby certifies**, that pursuant to the requirements of the certain deed from the City dated _____, 2021 conveying the premises known as 31 Tufts Street, Somerville, Middlesex County, Massachusetts (the "Premises") to _____, a Massachusetts limited liability company ("Grantee"), and recorded with the Middlesex County Registry of Deeds in **Book** ____, **Page** ____ (the "Deed"), that the Grantee complied with the requirements allowing for a release of the Right of Reverter set forth in said Deed.

For authority see Middlesex Deeds **Book** ____, **Page** _____ and **Document No.** _____ of the Registered Land Division.

IN WITNESS WHEREOF, the said City of Somerville has caused its corporate seal to be affixed hereto and these presents to be signed in its name and on its behalf by

_____, Mayor of the City of Somerville, this _____ day of _____
20__.

BY: _____

Mayor
Hereunto duly authorized

Approved as to form: _____
City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this _____ day of _____, 202_, before me, the undersigned Notary Public, personally appeared the above-named _____, 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 D
DEVELOPMENT PROPOSAL

EXHIBIT E
CONSTRUCTION SCHEDULE