

EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into by the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (the “City”) and **JMC/STM/TGCI UNION SQUARE II LLC**, a Massachusetts limited liability company with an address of 100 Grandview Road, Suite 207, Braintree, MA 02184. (“Developer”) (each, a “Party” and collectively, the “Parties”).

WITNESSETH:

A. Pursuant to that certain Decision issued by the Planning Board of the City of Somerville (“PB”) dated May 11, 2021, filed with the City Clerk on May 11, 2021, recorded on October 12, 2021 in the Middlesex South Registry of Deeds in Book 78892, Page 149, and filed on January 10, 2024 in the Middlesex South Registry District of the Land Court as Document No. 1950167 in Case No. CZC20-000060, (as the same may be amended from time to time, the “PB Approval”) for a commercial project (the “Project”), the Parties have each agreed to be responsible for certain maintenance obligations relating to certain sidewalks 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, Developer owns the real property on which the Project will be located, the property being more particularly described on Exhibit A attached hereto and incorporated by reference (the “Private Property”).

C. The City is the owner of certain public roadways, portions of which are adjacent to the Project, specifically Lake Street and Hawkins Street. The Developer is the owner of certain landscaped areas and portions of public sidewalks located or to be located adjacent to Lake Street and Hawkins Street (collectively, the “Public Property”), as shown on the plan entitled “Sidewalk Easement Plan of Land,” dated May 15, 2024, prepared by GM2 Associates, and recorded with the Middlesex South Registry of Deeds herewith, a reduced copy of which is attached hereto as Exhibit B (the “Sidewalk Easement Plan”).

D. The City and Developer desire to enter into this Agreement in order to provide a public access easement over portions of the Private Property and to provide a maintenance license over portions of the Public Property, and to allocate maintenance responsibilities in connection therewith, all as more specifically set forth herein.

E. The City has been authorized to accept the easements pursuant to a vote of the City Council of Somerville recorded herewith and attached hereto as Exhibit E.

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 Maintenance License to Developer.

(a) The City hereby grants to the Developer a non-exclusive license on, over, across and through portions of the Public Property comprised of approximately 1473 square feet in total and measuring approximately 7.00 feet in width and approximately 121.12 feet in length on Lake Street and measuring approximately 7.00 feet in width and approximately 85.22 feet in length on Hawkins Street, all as shown on the Sidewalk Easement Plan and more particularly described in Exhibit C (collectively, the “Developer’s License Area”) for the purpose of maintaining the sidewalk. The Parties agree that the rights of the general public hereunder to utilize such sidewalks for pedestrian access shall not be curtailed.

(b) To the extent that any portion of the Developer’s License 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 City’s Pedestrian 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. 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 comprised of approximately 720 square feet in total and measuring approximately 3.01 feet in width and approximately 108.28 feet in length on Lake Street and measuring approximately 5.00 feet in width and approximately 85.22 feet in length on Hawkins Street, all as shown on the Sidewalk Easement Plan and more particularly described in Exhibit C (collectively, the “City’s Pedestrian 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 easement area, the easement

(or portion thereof) shall be merged into the superior interest of the City and shall cease to exist.

3. Developer Maintenance Obligations.

(a) Developer shall maintain, repair and replace, at Developer's sole cost and expense, all sidewalks, fencing, and landscaped areas within, on, or adjacent to the City's Pedestrian Easement Area and Developer's License Area, together with any improvements installed by Developer, subject to receipt of required approvals, in the City's Pedestrian Easement Area and Developer's License Area, including 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 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 City's Pedestrian Easement Area or in, on or under the Developer's License Area to i) carry the types of insurance, and in the minimum amounts, listed on Exhibit D; 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 the applicable (Developer or contractor) 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 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 provided that Developer has notified City in writing of the inability to perform its obligations.

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.

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 or to such other address for a Party as may be specified in a notice so given to the other Party:

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: **JMC/STM/TGCI UNION SQUARE II LLC**
100 Grandview Road, Suite 207
Braintree, MA 02184
Attention: Peter Mahoney

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 that assumes, in whole or in part, ownership of the Project or to any other owner or developer, in whole or in part, of the Project with written consent of the City, such consent not to be unreasonably withheld; provided, however, that notice shall be given to the City of, but no consent from the City shall be required for, an assignment of this Agreement to a purchaser in connection with a sale of the entire Project to such purchaser.

12. Upon ten (10) business days' prior notice, given in connection with or in anticipation of the transfer, financing and/or refinancing of any portion of the 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]

EXHIBIT A

Private Property Description
(3-5 Hawkins Street and 5 Lake Street)

PARCEL ONE: (Registered Land)

That certain parcel of land situate in Somerville in the County of Middlesex in the Commonwealth of Massachusetts, bounded and described as follows:

Southwesterly by Lake Street, forty and 12/100 feet;

Northwesterly by lot A being in the line of a way as shown on plan hereinafter mentioned, fifty-six and 16/100 feet;

Northeasterly by three and 48/100 feet; and

Northwesterly by fifty-one and 96/100 feet by said lot A;

Northeasterly by lands now or formerly of Somerville Savings Bank and Rhoda W. Freeman, thirty and 34/100 feet; and

Southeasterly fifty-nine and 18/100 feet;

Northeasterly six and 70/100 feet; and

Southeasterly forty-seven and 40/100 feet by land now or formerly of Melville A. Shapiro.

Said parcel is shown as lot B on said plan (Plan No.19125B).

All of said boundaries are determined by the Court to be located as shown on a subdivision plan, as approved by the Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry of Middlesex County in Registration Book 376, Page 17, with Certificate 56278.

There is appurtenant to the above-described land rights in passageway shown on said plan as contained in Deed document No. 196446.

PARCEL TWO:

The land on Lake and Hawkins Street in Somerville bounded:

Southeasterly by said Hawkins Street, thirty-one and 50/100 feet (31.50);

Southerly by said Lake Street, fifty-two (52) feet;

Northwesterly by land now or formerly of Mt. Auburn Realty Company, Inc., thirty-three (33) feet; and

Northerly by other land now or formerly of said Mt. Auburn Realty Company, Inc., fifty-one (51) feet.

PARCEL THREE:

The land in Somerville, Middlesex County, Massachusetts, with the building thereon numbered 3 and 5 on Hawkins Street, bounded and described as follows:

Beginning at a point on the westerly side of Hawkins Street, thirty-one and 5/10 (31.5) feet northeasterly from the intersection of Lake Street and Hawkins Street;

Thence running northeasterly by said Hawkins Street fifty-three and 72/100 (53.72) feet;

Thence turning and running northwesterly by land of owners unknown, sixty-five (65) feet;

Thence turning and running northeasterly by said land five (5) feet;

Thence turning and running easterly by land of owners unknown, fifty-eight and 71/100 (58.71) feet;

Thence turning and running southerly by land of owners unknown, fifty-nine and 18/100 (59.18) feet;

Thence turning and running easterly by land of owners unknown, seven (7) feet;

Thence turning and running southerly by land of owners unknown, forty-six and 75/100 (46.75) feet;

Thence turning and running westerly by Lake Street, eighty-one (81) feet;

Thence turning and running northeasterly by land conveyed by Mt. Auburn Realty Company, Inc. to Boston Edison Company by deed recorded with Middlesex South District Deeds in Book 6929, Page 4 thirty-three (33) feet;

Thence turning and running easterly by land conveyed to said Boston Edison Company as aforesaid, fifty-one (51) feet, more or less, to the point of beginning.

Containing approximately 10,118 square feet of land.

Less and Excepting from the above-referenced Parcel Three only, the land described in Book 6929, Page 4.

For Developer's title, see deed recorded with the Middlesex South District Registry of Deeds in Book 78154, Page 158 and filed with the Middlesex South Registry District of the Land Court as Document No. 1884920 creating Certificate of Title No. 276652.

EXHIBIT B

Copy of Sidewalk Easement Plan

[SEE ATTACHED]

EXHIBIT C

Description of City's Pedestrian Easement Area and Developer's License Area

City's Pedestrian Easement Area:

Beginning at a point on the Northerly sideline of Hawkins Street, at the Northeasterly corner of the easement herein described; thence running

- S 28°48'13" W a distance of 85.22 feet to a point; thence turning and running
- N 81°55'27" W a distance of 108.28 feet to a point; thence turning and running
- N 28°49'44" E a distance of 3.01 feet to a point; thence turning and running
- S 81°55'27" E a distance of 102.93 feet to a point; thence turning and running
- N 28°48'13" E a distance of 84.04 feet to a point; thence turning and running
- S 61°54'11" E a distance of 5.00 feet to the Point of Beginning.

The above-described easement contains an area of 720± s.f. and is more particularly shown and described as "CITY'S PEDESTRIAN EASEMENT AREA" on the Sidewalk Easement Plan (defined above).

Developer's License Area:

Beginning at a point on the Northerly sideline of Hawkins Street, at the Northwesterly corner of the license area herein described; thence running

- S 61°11'47" E a distance of 7.00 feet to a point; thence turning and running
- S 28°48'13" W a distance of 84.53 feet to a point; thence turning and running
- SOUTHWESTERLY along a curve to the right, having a radius of 8.00 feet, an arc length of 9.67 feet, and a delta angle of 69°16'20" to a point, thence turning and running
- N 81°55'27" W a distance of 120.43 feet to a point; thence turning and running
- N 08°04'33" E a distance of 7.00 feet to a point; thence turning and running
- S 81°55'27" E a distance of 121.12 feet to a point; thence turning and running

N 28°48'13" E a distance of 85.22 feet to the Point of Beginning.

The above described license area contains an area of 1473± s.f. and is more particularly shown and described as “DEVELOPER'S LICENSE AREA” on the Sidewalk Easement Plan (defined above).

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, as applicable, as determined in the City's sole reasonable discretion.

EXHIBIT E

Certified Vote of the City Council

[SEE ATTACHED]