

EASEMENT AND MAINTENANCE AGREEMENT

This EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into as of _____, 2024 (“Effective Date”), by the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (the “City”) and 599 Somerville Ventures, LLC, a Delaware limited liability company with an address of 90 Chestnut Street, Boston, MA 02108 (“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 (“Planning Board”) dated January 20, 2021, filed with the City Clerk February 3, 2022 and recorded on March 24, 2022 in the Middlesex Registry of Deeds in Book 79872, page 328 in Case No. P&Z 20-031, (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 is more particularly described on Exhibit A attached hereto and incorporated by reference (the “Property”).

C. The City is the owner of certain public roadways, portions of which are adjacent to the Project, specifically Somerville Avenue and Spring Street. The Developer is the owner of certain landscaped areas and portions of public sidewalks located or to be located adjacent to the Somerville Avenue and Spring Street (collectively, the “Public Property”), as shown on the plan attached hereto as Exhibit B (the “Certified Plot Plan”).

D. Upon completion of construction, Developer will be the owner of portions of what will appear to be wholly public sidewalks adjacent to Somerville Avenue and Spring Street, but which will be located on the Property, and other sidewalks and landscaped areas located on the Property (collectively, “Private Property”), as shown on the plan attached hereto as Exhibit B.

E. 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.

F. The City has been authorized to accept the easements pursuant to a vote the City Council of Somerville 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 903 square feet in total and measuring approximately 7.23 feet in width and between 61.86 and 68.75 feet in length on Spring Street and measuring approximately 19.09 feet in width and approximately 204 feet in length on Somerville Avenue, all as shown on the Easement Plan attached hereto as 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 955 square feet in total and measuring approximately 5.02 feet in width, 61.86 feet in length on Spring Street and measuring approximately 2.62 feet in width, 203.60 feet in length on Somerville Avenue, all as shown on the Easement Plan attached hereto as 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 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 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)) be responsible for performing any work in, on or under the City's Pedestrian Easement Area: (i) to carry the types of insurance, and in the minimum amounts, listed on Exhibit D; and (ii) prior to the commencement of any work, to 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.

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 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:

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: 599 Somerville Ventures, LLC
90 Chestnut Street
Boston, MA 02108
Attention: Collin Yip, Manager

With a copy to: Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
Attention: Carla M. Moynihan, Esq.

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 or to any owner or developer of the Project, with the prior written consent of the City, such consent not to be unreasonably withheld.
12. Upon fifteen business (15) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of 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]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date and year first written above.

DEVELOPER:

599 SOMERVILLE VENTURES, LLC

By: Rafi Properties
Name: Colin Yip
Title: Manager

By: _____
Name: Colin Yip
Title: Manager

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

EXHIBIT A

Private Property Description

599, 599 1/2, 601, 601 1/2 Somerville Avenue, Somerville, MA

A Certain Parcel of land with the buildings thereon, situated in Somerville, Middlesex County, Massachusetts, now known as Street Nos. 599, 599 1/2, 601, 601 1/2 Somerville Avenue, corner of Spring Street, bounded and described as follows:

SOUTHWESTERLY by said Somerville Avenue, fifty and 53/100 (50.53) feet;

NORTHWESTERLY by land now or late of Quinlan, sixty-five (65) feet;

NORTHEASTERLY by land of undersigned owners, fifty (50) feet;

SOUTHEASTERLY by said Spring Street, sixty-five (65) feet.

609-611 Somerville Avenue, Somerville, MA

The land with the buildings thereon, in Somerville, Middlesex County, Massachusetts being the premises numbered 609-611 Somerville Avenue, Somerville, MA as shown as Lot 3 on a "Plan of Premises in Somerville belonging to John J. Quinlan" dated July 1911, by W.A. Mason & Son, Inc. Surveyors, recorded with Middlesex South District Deeds at the end of Book 4219, bounded and described as follows:

SOUTHWESTERLY by Somerville Avenue, thirty (30) feet;

NORTHWESTERLY by land of owners unknown, ninety-six and 60/100 (96.60) feet;

NORTHEASTERLY by land of owners unknown, thirty (30) feet;

SOUTHEASTERLY by Lot No. 2 on said plan, ninety-five and 20/100 (95.20) feet.

Containing 2,877 square feet of land more or less according to said plan or however otherwise said premises may be bounded, measured or described.

603-605 Somerville Avenue, Somerville, MA

A certain parcel of land with the buildings thereon situated in Somerville, Middlesex County, Massachusetts being the premises numbered 603-605 Somerville Avenue and being shown as Lot 1 on a plan of made by W.A. Mason & Son, Inc. Surveyors, dated July 1911, recorded with Middlesex South District Deeds at the end of Book 4219, bounded and described as follows:

SOUTHWESTERLY by Somerville Avenue, thirty and 50/100 (30.50) feet;

NORTHWESTERLY by Lot 2 on said plan, fifty-four and 20/100 (54.20) feet;

NORTHEASTERLY by said Lot 2, three (3) feet;

NORTHERLY by said Lot 2 by a curved line, seven and 85/100 (7.85) feet;

NORTHWESTERLY by said Lot 2, thirty-three and 80/100 (33.80) feet;

NORTHEASTERLY by land of owners unknown, thirty-two and 58/100 (32.58) feet;

SOUTHEASTERLY by land of owners unknown, ninety-two and 10/100 (92.10) feet;

Containing according to said plan 2,900 square feet.

599 Somerville Avenue is benefited by an Exclusive Use easement as shown on the plan labelled as "Exclusive Use 599 Somerville Ave-Access & Utility Easement (Area=494 +/-

S.F.)” for all the purposes for which driveways are used in the city of Somerville, including but not limited to parking, passing and repassing.

607 Somerville Avenue, Somerville, MA

The land together with the buildings thereon, situated in Somerville, Middlesex County, Massachusetts, being now known as and numbered 607 Somerville Avenue, and being the lot numbered 2 on a plan of land belonging to John J. Quinlan, made by W.A. Mason & Son Surveyors, dated July 1911, and recorded with Middlesex South District Registry of Deeds at the end of Book 4219, bounded and described as follows:

SOUTHWESTERLY by Somerville Avenue, 36.50 feet;

NORTHWESTERLY by lot numbered 3 on said plan, 95.20 feet;

NORTHEASTERLY by land or owners unknown, 48 feet;

SOUTHEASTERLY by lot numbered 1 on said plan by four distinct lines as shown on said plan, respectively 33.80 feet, 7.85 feet, 3 feet and 54.20 feet.

Containing 3980 square feet of land.

615-617 Somerville Avenue, Somerville, MA

Two parcels of land on Somerville Avenue in Somerville, Middlesex County, Massachusetts, together with the buildings thereon, if any: and being shown as Lot A and Lot B1 on a plan entitled "Plan of Land in Somerville, Mass." dated March 28, 1946, W.A. Mason & Son Co., Surveyors, duly recorded with Middlesex South District Deeds on April 20, 1946 in Book 6964, Page 429, said two parcels being together bounded and described as follows:

SOUTHWESTERLY by Somerville Avenue, fifty-six (56) feet;

NORTHWESTERLY by land or owners unknown, one hundred thirty-four and 74/100 (134.74) feet;

NORTHEASTERLY by land now or formerly of Somerset Social Club, Inc. nineteen and 40/100 (19.40) feet;

NORTHWESTERLY again by said land, two and 90/100 (2.90) feet;

NORTHEASTERLY by said land, seven and 15/100 (7.15) feet;

SOUTHEASTERLY by said land, two and 90/100 (2.90) feet;

NORTHEASTERLY again by said land, twenty-nine and 46/100 (29.46) feet;

SOUTHEASTERLY again by land of owners unknown, one hundred thirty-four and 80/100 (134.80) feet.

Lot A contains 7,189.8 square feet and Lot B1 contains 378 square feet of land more or less.

EXHIBIT B

Certified Plot Plan

[see attached]

EXHIBIT C

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

Legal Description and Plan

[see attached]

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.

EXHIBIT E

Certified Vote of the City Council

Summary report: Litera Compare for Word 11.3.0.46 Document comparison done on 4/1/2024 4:50:03 PM	
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Intelligent Table Comparison: Active	
Original DMS: nd://4860-4879-1609/9/Easement Agreement Sidewalk 599 Somerville.docx	
Modified DMS: nd://4860-4879-1609/10/Easement Agreement Sidewalk 599 Somerville.docx	
Changes:	
<u>Add</u>	6
<u>Delete</u>	17
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<u>Move To</u>	0
<u>Table Insert</u>	0
<u>Table Delete</u>	0
<u>Table moves to</u>	0
<u>Table moves from</u>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	23