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SIDEWALK AND ALLEY EASEMENT AND MAINTENANCE AGREEMENT

This SIDEWALK AND ALLEY EASEMENT AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into as of April __, 2024, by the CITY OF SOMERVILLE, a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143 (the “City”), and UNION SQUARE RELP D2.2 OWNER LLC, a Delaware limited liability company, with an address of 10 Prospect Street, 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 2019-07, dated August 22, 2019, recorded with the Registry in Book 73564, Page 359 (the “D2.3 DSPR Decision”); (iii) Planning Board Decision regarding Design & Site Plan Review in Case PB 2019-06, dated August 22, 2019, recorded with the Registry in Book 73564, Page 390 (the “D2.2 DSPR Decision”); (iv) Planning Board Decision regarding Design & Site Plan Review in Case PB 2019-03, dated July 11, 2019, recorded with the Registry in Book 75417, Page 228 (the “Alley DSPR Decision”); and (v) 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, D2.3 DSPR Decision, D2.3 DSPR Decision, Alley DSPR Decision, and Development Covenant are, collectively, the “Project Approvals”).

B. Owner owns the property located at 20-50 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 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 “License and Easement Plan”).

E. In accordance with the Project Approvals, the City and Owner desire to enter into this Agreement in order to grant certain public access easements to the City over portions of the Owner Property and to provide Owner with access to certain portions of the Public Ways on which the sidewalks will be located for the purpose of maintaining the same, and to allocate certain maintenance responsibilities in connection therewith, all as more specifically set forth herein.

F. Pursuant to a vote of the Somerville City Council attached hereto as Exhibit D, the City has accepted Owner’s grant of public access easements over portions of the Owner Property and the City’s corresponding grant of a sidewalk maintenance license to Owner to maintain the sidewalk on Prospect Street.

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 License 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 license on, over, across and through portions of the Public Ways (on Prospect Street) identified on the License and Easement Plan (which is entitled “License and Easement Plan, 20-50 Prospect Street, Somerville, Mass.,” was prepared by Feldman Geospatial, and is dated April 9, 2024) as the “Public Sidewalk License Area” comprising approximately 2,452 square feet as shown on the License and Easement Plan (the “Public Sidewalk License Area”) for (i) the purpose of exercising the Owner Maintenance Obligations (as defined below), and (ii) for the following purposes as if the Public Sidewalk License Area were part of the Owner Property, including, but not limited to , 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, each such use subject to receipt of 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, subject to receipt of all required permits.). Owner’s right hereunder shall include the right, with prior notice to the City, and upon receipt of any required permit from the City, to close the Public Sidewalk License Area on a temporary basis from time to time for maintenance, repair and replacement thereof. To the extent that any portion of the Public Sidewalk License 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 License 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 comprising approximately 3,733 square feet of sidewalk areas along Charlestown Place, and shown on the Easement Plan as the “City Sidewalk Easement Areas” (collectively, the “City Sidewalk Easement Areas”), for the purpose of pedestrian access for the general public at all times, twenty four (24) hours a day, seven (7) days a week, and those certain portions of the Owner Property comprising approximately 31,141 square feet of alley areas, and shown on the Easement Plan as the “City Alley Easement Areas” (collectively, the “City Alley Easement Areas” and together with the City Sidewalk Easement Areas, the “City Easement Areas”) for the purpose of pedestrian access as to the City Sidewalk Easement Areas, and for the purposes of pedestrian and vehicular, and where applicable, bicycle, access as to the City Alley Easement Areas, 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 and to utilize such alleys for pedestrian and vehicular access shall not be unreasonably curtailed. To the extent that the City acquires a fee simple interest in all or any portion of the City Easement Areas, the easements (or portions 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, alleys and landscaped areas within the Public Sidewalk License Areas and the City Easement Areas, together with any improvements installed by Owner in the Public Sidewalk License Areas and the City Easement Areas 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, if any, located within the Public Sidewalk License Areas. 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 Public Sidewalk License Areas (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 and equipment located within the Public Sidewalk Easement Area.
5. Reservation of Rights. Owner hereby reserves the right to access the City 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 City Easement Areas, at Owner's sole expense, any and all utilities reasonably necessary in order to serve the land and improvements owned by Owner, subject to receipt of any required permits so long as the same do not unreasonably, permanently interfere with the City's use of the City Easement Areas for the purposes granted hereunder and provided that Owner is in receipt of all required permits for such activities from the appropriate authorities. Owner's right hereunder shall also include the right to close the Owner Areas or portions thereof on a temporary basis from time to time for maintenance, repair and replacement of improvements, provided that Owner is in receipt of the necessary permits for the same, as well as the right to cause owners of properties adjacent to the Owner Easement Areas with new curb cuts connecting thereto to share in costs of maintenance, repair and replacement of the Owner Easement Areas, and to pay reasonable fees for curb cuts.
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 provided Owner has notified City of the inability to perform and has given City thirty (30) days to address such denial.
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: Union Square RELP D2.2 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, and by recording any such amendment at the Middlesex South Registry of Deeds. 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:

UNION SQUARE DELP D2.2 OWNER LLC,
a Delaware limited liability company

By: _____

Name: Gregory Karczewski

Title: Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On the ____ day of _____, 2024, before me, the undersigned notary public, Greg Karczewski personally appeared, 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 signed it voluntarily in my presence as the authorized signatory of Union Square RELP D2.2 Owner LLC as the voluntary act of the company.

Notary Public

My Commission Expires:

[Signatures continue on next page]

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

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

On the ____ day of _____, 2024, before me, the undersigned notary public, Katjana Ballantyne personally appeared, 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 signed it voluntarily in my presence as the authorized signatory of The City of Somerville as the voluntary act of the company.

Notary Public

My Commission Expires:

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.

Being a portion of the premises conveyed to the Grantor herein by the Somerville Redevelopment Authority by deed dated February 22, 2021 and recorded at the Middlesex South Registry of Deeds in Book 76638, Page 68.

EXHIBIT B

License and Easement Plan

[see attached]

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

[see attached]