

## **DRAINAGE AND MAINTENANCE EASEMENT AGREEMENT**

**THIS DRAINAGE AND MAINTENANCE EASEMENT AGREEMENT** (this “Agreement”) is made by and among THE CITY OF SOMERVILLE Massachusetts body corporate and politic and political subdivision of the Commonwealth of Massachusetts, with an address of 93 Highland Avenue, Somerville, MA 02143 (the “City”) and SILICON PROPCO 2021, LLC, a Delaware limited liability company (together with its successors and assigns, “101 South Owner”), having a mailing address of 301 Commerce Street, Suite 3300, Fort Worth, Texas 76102 and BUILDING 2 OWNER LLC, a Delaware limited liability company (together with its successors and assigns, “808 Windsor Owner”), having a mailing address of c/o Leggat McCall Properties LLC, 10 Post Office Square, Boston, Massachusetts 02109.

### **RECITALS:**

A. The City is the owner of the land with the improvements thereon, situated off of South Street in the City of Somerville, Middlesex County, Massachusetts, and shown as Lot 1C (“Civic Space 1”) on a plan entitled “Subdivision Plan of Land, 33 Earle Street, 101 South Street & 808 Windsor Street, Somerville, Mass.” Prepared by Feldman Geospatial, dated April 8, 2021, recorded with the Middlesex South District Registry of Deeds (the “Registry”) as Plan No. 871 of 2021 (the “Plan”). See also Deed from Boynton Yards LandCo, LLC (“LandCo”) to the City recorded herewith.

B. 101 South Owner is the owner of the land with the improvements thereon situated at 101 South Street in the City of Somerville, Middlesex County, Massachusetts, and shown as Parcel B-3A on the Plan (the “101 South Lot”).

C. 808 Windsor Owner is the owner of the land with the improvements thereon, situated 808 Windsor Street in the City of Somerville, Middlesex County, Massachusetts, and shown as Lot 1B on the Plan (the “808 Windsor Lot”).

D. 101 South Owner utilizes certain subsurface storm water drainage lines, stormwater storage tanks, groundwater recharge systems and other related drainage facilities located within Civic Space 1 (collectively, the “101 South Drainage Facilities”).

E. 808 Windsor Owner utilizes certain subsurface storm water drainage lines, stormwater storage tanks, groundwater recharge systems and other related drainage facilities located within Civic Space 1 (collectively, the “808 Windsor Drainage Facilities”, and together with the 101 South Drainage Facilities, the “Drainage Facilities”).

F. Pursuant to Section 4 of that certain Development Covenant dated January 21, 2021, by and between LandCo and the City of Somerville (the “City”), recorded with the Registry in Book 79089, Page 1 and filed with the Middlesex County South Registry District of the Land Court (the “Registry District”) as Document No. 1898652, and that Decision of the Planning Board of the City of Somerville in Case No. MPSP2020-002 dated February 4, 2021 recorded with the Registry in Book 79088, Page 562 and filed with the Registry District as Document No. 1898649 LandCo has developed Civic Space 1 into a civic space dedicated to the public.

G. The City as owner of Civic Space 1 desires to grant certain drainage easements to 101 South Owner, for the benefit of the 101 South Lot, and 808 Windsor Owner, for the benefit of the 808 Windsor Lot, respectively pursuant to the terms and conditions set forth herein.

### **AGREEMENT:**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Certain Definitions.** For purposes hereof:

(a) The term “Benefitted Lot Owner” shall mean 808 Windsor Owner or 101 South Owner, as the case may be, and their respective successors and assigns.

(b) The term “Easement Areas” shall mean, collectively, the “101 South Easement Area” and the “808 Windsor Easement Area”, each as shown on the Easement Plan.

(c) The term “Easement Plan” shall mean the easement plan attached hereto as **Exhibit A.**

(d) The term “Lot Owner” shall mean each of Civic Space 1 Owner, 101 South Owner and 808 Windsor Owner, as the case may be, and their respective successors and assigns.

(e) The term “Lot” or “Lots” shall mean the real property now constituting Civic Space 1, the 101 South Lot and the 808 Windsor Lot.

(f) The term “maintenance” (or variations thereof such as “maintain” or “maintaining”) shall mean maintenance, repair and/or replacement.

2. **Grant of Easements.**

(a) Drainage Easement in Favor of 101 South Lot. The City hereby grants to 101 South Owner, as appurtenant to the 101 South Lot, an exclusive, perpetual right and easement (i) to install, construct, maintain, operate and use the 101 South Drainage Facilities over a portion of Civic Space 1 shown as the “101 South Easement Area” on the Easement Plan, and (ii) to

discharge stormwater from the 101 South Lot onto the 101 South Easement Area and into the 101 South Drainage Facilities (collectively, the “101 South Drainage Easement”). The 101 South Drainage Facilities that exist as of the Effective Date and which may be hereinafter installed pursuant to 101 South Owner’s rights under this Agreement shall remain the property of the 101 South Owner.

(b) Drainage Easement in Favor of 808 Windsor Lot. The City hereby grants to 808 Windsor Owner, as appurtenant to the 808 Windsor Lot, an exclusive, perpetual right and easement (i) to install, construct, maintain, operate and use the 808 Windsor Drainage Facilities over a portion of Civic Space 1 shown as the “808 Windsor Easement Area” on the Easement Plan and (ii) to discharge storm water from the 808 Windsor Lot onto the 808 Windsor Easement Area and into the 808 Windsor Drainage Facilities (collectively, the “808 Windsor Drainage Easement”, and together with the 101 South Drainage Easement, the “Drainage Easements”). The 808 Windsor Drainage Facilities that exist as of the Effective Date and which may be hereinafter installed pursuant to 101 South Owner’s rights under this Agreement shall remain the property of the 808 Windsor Owner.

3. No Relocation. The City shall not relocate the 101 South Easement Area including, without limitation, the 101 South Drainage Facilities, without the prior written consent of 101 South Owner, which consent may be withheld in 101 South Owner’s sole reasonable discretion. The City shall not relocate the 808 Windsor Easement Area including, without limitation, the 808 Windsor Drainage Facilities, without the prior written consent of 808 Windsor Owner, which consent may be withheld in 808 Windsor Owner’s sole reasonable discretion.

4. Responsibility and Maintenance. Each Benefitted Lot Owner shall be solely responsible for maintaining its Drainage Facilities at its sole cost and expense, and shall comply with all applicable laws, rules and regulations in connection with the exercise of its rights and easements under this Agreement. Except in the event of an emergency, each Benefitted Lot Owner agrees to provide the City with reasonable prior written notice before commencing any work permitted under this Agreement. All work pursuant to this Agreement, once commenced, shall be diligently and expeditiously continued through to completion and shall be carried out in a good and workmanlike manner. If a Benefitted Lot Owner fails to maintain and repair its Easement Area as required by the provisions of this Agreement, which failure continues for thirty (30) days after written notice from the City, the City shall have the right, but shall not be obligated, to perform the maintenance and repair obligations and the Benefitted Lot Owner shall reimburse City for all costs incurred by the City in connection therewith including costs incurred to restore Civic Space 1 as further specified below. Any such reimbursement shall be due within thirty (30) days after such Benefitted Lot Owner’s receipt of an accounting of any such costs (in reasonable detail). Upon the completion of any work performed by a Benefitted Lot Owner pursuant to this Agreement, such Benefitted Lot Owner shall restore any landscaping, plantings, hardscapes or other improvements located in Civic Space 1 that may have been disturbed or damaged as a result of such work to its preexisting condition prior to such disturbance or damage. Additionally each Benefitted Lot Owner shall minimize disruption to the public’s use of Civic Space 1 in connection with any work permitted under this Agreement relating to its Drainage Facilities.

5. Removal of Liens. Each Benefitted Lot Owner shall cause to be removed, by payment, bond or otherwise, within thirty (30) days after notice of the filing thereof, any

mechanics', materialmen's or any other like lien arising out of work performed by or on behalf of such Benefitted Lot Owner with respect to the Drainage Facilities which is filed against any portion of Civic Space 1 on account of any such work by such Benefitted Lot Owner.

6. **Right of Entry.** Each Benefitted Lot Owner may enter upon so much of Civic Space 1 not included within the limits of its Easement Area as may be reasonably necessary to carry out the purposes of the rights and easements granted in this Agreement, with equipment, workers, vehicles, machines and materials; provided, however, that such right of entry shall be exercised (a) at such Benefitted Lot Owner's sole cost, expense and risk, and in compliance with the other terms of this Agreement (including, without limitation, Section 4) (b) only at reasonable times and for a reasonable duration, (c) only to the extent such activities could not be accomplished by entry solely upon such Benefitted Lot Owner's Easement Area, and (d) so as not unreasonably to interfere with the public's use and enjoyment of Civic Space 1.

7. **Indemnification; Insurance.** 101 South Owner hereby agrees 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 101 South Drainage Easement, unless caused by the gross negligence or willful misconduct of the City. 808 Windsor Owner hereby agrees 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 808 Windsor Drainage Easement, unless caused by the gross negligence or willful misconduct of the City. Each Benefitted Lot Owner shall each 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. The City shall have the right to require each Benefitted Lot Owner to increase the amount of such insurance limits as may be reasonably requested by the City. Such insurance shall name the City as additional insured by endorsement to the respective policy.

8. **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	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

To 101 South Owner: Silicon PropCo 2021, LLC  
c/o TPG Real Estate Partners Investments LLC  
345 California Street  
San Francisco, CA 94104  
Attention: Jacob Muller

with a copy to: Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, IL 60654  
Attention: Andrew Small, Esq.

To 808 Windsor  
Owner: Building 2 Owner LLC  
c/o Leggat McCall Properties LLC  
10 Post Office Square  
Boston, Massachusetts 02109  
Attention: F.X. Jacoby

with a copy to: Nutter, McClennen & Fish, LLP  
155 Seaport Boulevard  
Boston, MA 02210  
Attention: Marianne Ajemian, Esq.

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.

9. **General Provisions.**

(a) Covenants Run with the Land. Each covenant, restriction and easement granted herein on each Lot shall be a burden on that Lot (however now or hereafter divided or configured), shall be appurtenant to and for the benefit of the other Lot and each part thereof (however now or hereafter divided or configured), and shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns in title of each Lot.

(b) Modification, Amendment, Release. This Agreement may be modified, amended or released as to any Lot only by a written instrument executed by the then Lot Owners.

(c) No Waiver. The failure of a Lot Owner 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 the Lot Owner 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 Lot Owner.

(d) 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.

(e) 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.

(f) Subject to Prior Rights. All rights and easements granted herein are made subject to rights, easements and restrictions of record, if any, insofar as now in force and applicable. Without limiting the foregoing:

(1) Civic Space 1 Owner and 101 South Owner hereby acknowledge and agree that the 101 South Drainage Easement is being granted pursuant to that certain Access Way Easement Agreement dated June 28, 2019 and recorded with the Registry in Book 72871, Page 91 (the “Original Access Easement”), as amended by Amendment to Access Way Easement Agreement dated November 21, 2021 and recorded with the Registry in Book 79266, Page 576 (the “Amendment to Access Easement”) and therefore, pursuant to Section 3(a) of the Amendment to Access Easement, the portions of the Drainage Easement (as defined in the Original Access Easement) and the Access Way Easement (as defined in the Original Access Agreement) that are located on Civic Space 1 are each hereby terminated and of no further force and effect; and

(2) Civic Space 1 Owner and 808 Windsor Owner hereby acknowledge and agree that the 808 Windsor Drainage Easement is being granted pursuant to that certain Temporary License and Easement Agreement dated December 1, 2021 and recorded with the Registry in Book 79268, Page 117 (the “Temporary Easement Agreement”). and therefore, pursuant to Section 6 of the Temporary Easement Agreement, the portion of the Temporary Easement (as defined in the Temporary Easement Agreement) located on Civic Space 1 is hereby terminated and of no further force and effect.

(f) Civic Space 1 Owner’s Title Reference. For Civic Space 1 Owner’s title, see deed from RECP V & VI HoldCo II, LLC dated December 17, 2019 and recorded with the Registry in Book 73851, Page 568 and filed with the Registry District as Document No. 1831920.

(g) 101 South Owner’s Title Reference. For 101 South Owner’s title to the 101 South Lot, see deed from 101 South Street Owner LLC dated December 30, 2021 and recorded with the Registry in Book 79512, Page 233.

(h) 808 Windsor Owner's Title Reference. For 808 Windsor Owner's title to the 808 Windsor Lot, see deed from Boynton Yards LandCo LLC dated November 24, 2021 and recorded with the Registry in Book 79268, Page 112.

*[signatures and acknowledgements begin on the following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument this \_\_\_\_\_, 2025 .

**CITY OF SOMERVILLE**

By: \_\_\_\_\_  
Katjana Ballantyne, Mayor

Approved as to form:

By: \_\_\_\_\_  
Cindy Amara, City Solicitor

**SILICON PROPCO 2021, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Its: Authorized Signatory

**BUILDING 2 OWNER LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Francis X. Jacoby, III  
Its: Authorized Signatory



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, the undersigned notary public, personally appeared Katjana Ballantyne, as Mayor of the City of Somerville, 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 she signed it voluntarily for its stated purpose, as her free act and deed in such capacity.

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Notary Public:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, the undersigned notary public, personally appeared \_\_\_\_\_, as Authorized Signatory of Silicon PropCo 2021, LLC, 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 for its stated purpose, as the voluntary act of the limited liability company.

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Notary Public:  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, the undersigned notary public, personally appeared \_\_\_\_\_, as Authorized Signatory of Building 2 Owner LLC, 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 for its stated purpose, as the voluntary act of the limited liability company.

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Notary Public:  
My Commission Expires:

**Exhibit A**

**Easement Plan**

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