

After recording return to:

City of Somerville Law Department
Somerville City Hall
93 Highland Avenue, 2nd Floor
Somerville, MA 02143
Attn: Catherine A. Lester Salchert, Esq.

RECORDING INFORMATION AREA

EASEMENT AND MAINTENANCE AGREEMENT (OPEN SPACE)

This EASEMENT AND MAINTENANCE AGREEMENT (OPEN SPACE) (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 BRE-BMR ASSEMBLY INNOVATION I LLC, a Delaware limited liability company with an address of 4570 Executive Drive, Suite 400, San Diego, CA 92121 (“Phase I Developer”) and BRE-BMR MIDDLESEX LLC, a Delaware limited liability company with an address of 4570 Executive Drive, Suite 400, San Diego, CA 92121 (“Phase II Developer”; collectively with Phase I Developer, but in each case only to the extent of their respective interests in the Property, “Developer”) (each, a “Party” and collectively, the “Parties”).

WITNESSETH:

A. Pursuant to (i) that certain Amended and Restated Development Covenant dated as of November 20, 2020 by and between the City and BRE-BMR Middlesex LLC (as successor-in-interest to CDNV Assembly LLC and CDNV Land LLC) and recorded with the Middlesex South Registry of Deeds (the “Registry”) at Book 76309, Page 469 (as the same may be amended, the “Development Covenant”), (ii) that certain Decision issued by the Planning Board of the City of Somerville (“Planning Board”) dated June 7, 2018 in Case No. PB2018-07-R1-0320, as amended by that certain Decision issued by the Planning Board on July 24, 2020 (as the same may be amended from time to time, the “Master Plan Approval”) for a mixed use project to be built in phases (the “Project”), (iii) that certain Decision issued by the Planning Board dated November 8, 2018 in Case # PB 2018-12 (the “Alta XMBLY Special Permit”) for the construction of a multi-family residential building (the “Alta XMBLY Project”), and (iv) that certain Decision issued by the Planning Board dated June 24, 2021 in Case # P&Z20-0015 (the “Block 21 Special Permit”) for the construction of a lab/office building and parking garage (the “Phase I Project”), the Parties have each agreed to be responsible for certain maintenance obligations relating to certain open

Parcels adjacent to 5 Middlesex Avenue, Somerville, MA

space 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, Phase I Developer owns the real property on which the Phase I Project will be located, which property is more particularly described on Exhibit A attached hereto and incorporated by reference (the “Phase I Property”), which is adjacent to real property owned by Phase II Developer which will be developed in a later phase, as more particularly described on Exhibit A attached hereto and incorporated by reference (the “Phase II Property”); together with the Phase I Property, the “Property”).

C. The Project is subject to that certain Declaration of Covenants, Conditions and Restrictions dated April 26, 2019 and recorded in Registry at Book 72521, Page 96, as amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions dated as of December 23, 2020 and recorded in the Registry at Book 76516, Page 37 (as the same may be further amended, the “CC&Rs”), under which BRE-BMR Middlesex LLC is Declarant.

D. In connection with its development of the Property, and as required pursuant to the Block 21 Special Permit, Developer will be constructing an open space located on the Phase II Property, which open space will serve the Phase I Project (collectively, the “Open Space”).

E. The City and Developer desire to enter into this Agreement in order to grant the City easements over portions of the Open Space, and to allocate maintenance responsibilities in connection therewith, all as more specifically set forth herein.

F. The Somerville City Council approved this Agreement by a vote taken on a duly authorized meeting held on October 10, 2024, recorded herewith and incorporated herein. A copy of the Vote is also 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 Easements to the City.

- (a) 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 the Open Space consisting of 37,116 square feet of land adjacent to Harold Cohen Way as shown on the Easement Plan attached hereto as Exhibit B as the Easement Area (the “Easement Area”) for the purpose of public access from 8am to 10pm, or as otherwise set forth in City Ordinance, Chapter 12, Article III, Section 12-48, for the general public to gather, pass, and repass; subject to a reservation of rights by Developer to utilize the Easement Area for events (such as special events or activities) subject to receipt of applicable City permits. Developer’s reservation of rights hereunder shall include the right to close or limit access to the Easement Area

from time to time on a temporary basis for repairs with prior notice to the City. Developer's use of the Easement Area shall not impede the use of the Easement Area by the public except as set forth in this paragraph.

- (b) Notwithstanding the foregoing, the Parties acknowledge that the Developer anticipates a future need to use the Easement Area in connection with anticipated development activities, including demolition of the existing building on adjacent Parcel 26A, located at 5 Middlesex Avenue, Somerville, MA ("Existing Building") as well as the construction, including construction staging on all or a portion of the Easement Area, of one or more additional buildings on the parcels comprising the Project (collectively, the "Development Activities"). The Parties anticipate amending or terminating this Easement upon Developer's receipt of a special permit for the next building and/or a demolition permit of the Existing Building ("Future Project Approvals") or in connection with the development of a future open space area for the Project as more particularly described in the Future Project Approvals. Such amendment or termination shall be determined by mutual agreement of the Parties as may also be specified in the Future Project Approvals. The Parties acknowledge and agree that the Development Activities may be performed prior to the amendment or termination of this Easement in all cases in accordance with this Section 1(b). Developer will use commercially reasonable efforts to conduct the Development Activities in a manner to not unreasonably interfere with the use of the Easement Area by the public.

2. Developer Maintenance Obligations.

- (a) Developer shall maintain, repair and replace in a manner substantially consistent with the approved landscape design, at Developer's sole cost and expense the Easement Area, together with any improvements installed by Developer in the Easement Area, including but not limited to (a) the provision of water and electricity, (b) the maintenance and repair of the hardscape improvements and fixtures, and (c) the care and restoration of landscaping elements as needed, all in accordance with the Landscape Maintenance and Management Plan ("LMMP) approved by the City and attached hereto and incorporated herein as Exhibit C. In addition, Developer shall be responsible for 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) responsible for performing any work in, on or under the Easement Area to): (i) carry commercially reasonable types of insurance and minimum amounts no less than those listed on Exhibit D which the parties agree are commercially reasonable as of the date of this Agreement, 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 its general commercial liability and workman's compensation policies.

3. 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 the City of such inability to perform its obligations and given the City the opportunity to respond. If the City determines that Developer has failed to provide required information needed by the City in order to issue the permit, then Developer shall not be relieved of the obligations to perform the maintenance obligations contained in this easement.
4. 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. Specifically, Developer may hire subcontractors, independent contractors, consultants, vendors and/or associate managers in connection with the exercise of its rights or performance of its obligations hereunder.
5. 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.
6. 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.
7. 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:

Phase I Developer: BRE-BMR Assembly Innovation I LLC
4570 Executive Drive, Suite 400
San Diego, CA 92121
Attention: Legal Department

Phase II Developer: BRE-BMR Middlesex LLC
4570 Executive Drive, Suite 400
San Diego, CA 92121
Attention: Legal Department

8. The recitals set forth above are incorporated in and made a part of this Agreement.
9. 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 any portion of the Project provided that Developer shall provide written notice to the City within fifteen (15) days of any such assignment.
10. Upon fifteen business (15) days' prior notice, given upon the transfer, financing and/or refinancing of any portion of 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.

11. 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.
12. 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.
13. 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 under seal this ___ day of September, 2024.

DEVELOPER:

BRE-BMR ASSEMBLY INNOVATION I LLC

By: _____

Name: Carlye Murphy

Title: Senior Vice President, Assistant General Counsel

BRE-BMR MIDDLESEX LLC

By: _____

Name: Carlye Murphy

Title: Senior Vice President, Assistant General Counsel

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

On this ___ day of _____, 2024, before me personally appeared the above-named Carlye Murphy, the Senior Vice President, Assistant General Counsel of BRE-BMR ASSEMBLY INNOVATION I LLC, a Delaware limited liability company, 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

_____, SS.

On this ___ day of _____, 2024, before me personally appeared the above-named Carlye Murphy, the Senior Vice President, Assistant General Counsel of BRE-BMR MIDDLESEX LLC, a Delaware limited liability company, 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:

THE CITY:

THE CITY OF SOMERVILLE

By: _____

Name: Katjana Ballantyne

Title: Mayor

Attest:

Approved as to form:

By: _____

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ___ day of _____, 2024, before me personally appeared the above-named Katjana Ballantyne, as 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 A

Property Description

Phase I Property:

The land in Somerville, Middlesex County, Massachusetts, situated at Middlesex Avenue and being shown as Parcel 25A and Parcel 25B on a plan entitled, “Subdivision Plan of Land in Somerville, Massachusetts, prepared for BRE-BMR Middlesex LLC” dated August 25, 2021, prepared by VHB, Inc. and recorded with the Middlesex South District Registry of Deeds on December 10, 2021 as Plan 916 of 2021, to which plan reference is hereby made for a more particular description.

Phase II Property:

The land in Somerville, Middlesex County, Massachusetts, situated at Middlesex Avenue and being shown as Parcel 25C and Parcel 26A on a plan entitled, “Subdivision Plan of Land in Somerville, Massachusetts, prepared for BRE-BMR Middlesex LLC” dated August 25, 2021, prepared by VHB, Inc. and recorded with the Middlesex South District Registry of Deeds on December 10, 2021 as Plan 916 of 2021, to which plan reference is hereby made for a more particular description.

EXHIBIT B

Open Easement Space Plan

[attached]

EXHIBIT C

Landscape Maintenance and Management Plan (“LMMP”)

[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

City Council Vote