

Appendix B

The draft Agreement to be signed between the City of Somerville and 299
Broadway Property Owner LLC

URBAN CENTER HOUSING TAX INCREMENT FINANCING AGREEMENT BY 299 BROADWAY PROPERTY
OWNER LLC AND

THE CITY OF SOMERVILLE

This Urban Center Housing Tax Increment Financing Agreement ("Agreement") is made on this ____ [DATE THE MAYOR SIGNS], 2023 by and between the City of Somerville, a Massachusetts municipal corporation with offices at Somerville City Hall, 93 Highland Avenue MA 02143 (the "City"), and 299 BROADWAY PROPERTY OWNER LLC, a Massachusetts limited liability company with a usual place of business of c/o Mark Development, LLC, 275 Grove Street, Suite 2-150, Newton, MA 02466 together with its successors and assigns, (the "Developer") (the City and the Developer may be referred to collectively hereafter as the "Parties").

RECITALS

1. By vote of the Somerville City Council on February 23, 2023, taken in accordance with M.G.L. c. 40 §60 and the regulations promulgated thereunder at 760 CMR 58.05-58 .06, the City (i) designated the Winter Hill Urban Renewal Area as its first Urban Center Housing Tax Increment Financing ("UCH-TIF") Zone ("UCH-TIF Zone") and (ii) adopted a plan ("UCH-TIF Plan") for the UCH-TIF Zone.
2. The Massachusetts Department of Housing and Community Development ("DHCD") approved the City's UCH-TIF Zone and UCH-TIF Plan in accordance with M.G.L. c. 40 §60 and 760 CMR 58.12.
3. A Resolution was submitted to Somerville City Council ("City Council") for the City Council meeting on February 23, 2023, through which the City Council considered the following action: (a) approve and adopt the proposed UCH-TIF Zone and the proposed UCH-TIF Plan, as required by DHCD; and (b) approve this Agreement between the Developer and the City of Somerville for the property under agreement by an affiliate of the Developer located at 299 Broadway and 15 Temple Street, Somerville, MA 02145 as described in Exhibit A attached hereto (the "Property"); and (c) authorize the Mayor to enter into this Agreement on behalf of the City and take such other and further actions as may be necessary or appropriate to carry out the purposes of such Resolution.
4. The Mayor has proposed that an UCH-TIF Plan for the UCH-TIF Zone be created to meet the requirements of 760 CMR 58.05, which UCH-TIF Plan and Zone includes the Property, as defined hereafter. On February 21, 2023, the Somerville City Council held a public hearing to determine whether the proposed UCH-TIF Plan and Zone should be approved. Notice of the public hearing regarding the consideration of the UCH-TIF Plan and Zone was published in the Somerville Times, the City's local paper of record that is published and circulated weekly in the City. The notice was published in the Somerville Times in each of two successive weeks, the first appearing on February 8, 2023 and the second on February 15, 2023, and the notice was published on the City's website at least three days prior to the public hearing.

5. The City has a Mayor and City Council form of government that was originally established by Charter in 1871 that was subsequently revised in 1899 by a special vote accepting Chapter 240 of the Acts of 1899. The City Council 's vested powers include, but are not limited to, the power to adopt ordinances, enact policies, and approve tax increment financing agreements. Pursuant to the City Charter, the City Council maintains the authority to adopt the UCH-TIF Plan and UCH-TIF Zone and authorize the Mayor to enter into a UCH-TIF Agreement with the Developer to implement the UCH-TIF Plan.
6. An affiliate of the Developer has signed a purchase and sale agreement with the property owners to purchase the Property on or before April 5, 2023.
7. The Developer proposes a two-phase project comprised of the full demolition of the preexisting site and buildings, the construction of site improvements, and the construction of two residential apartment buildings containing 288 units, approximately 15,000 gross square feet of ground floor retail space, community space, and one art and community enterprise space.
8. In accordance with DHCD requirements, 132 units (i.e. 45%) shall be deed restricted in perpetuity as affordable housing for households with incomes at or below 80% of the Area Median Income. The buildings and all related site improvements and amenities located or to be located on the Property are referred to herein as the "Project."
9. The Developer has entered into a separate agreement with the lessee of the Walgreens site to terminate their lease agreement with the Developer and to facilitate relocation of the Walgreens business to another location in the Winter Hill neighborhood.
10. The Property and the Project are situated within the Winter Hill Urban Renewal Plan Area. The Winter Hill Urban Renewal Plan Area encompasses the same land as the UCH-TIF Zone. The purpose of the Winter Hill Urban Renewal Plan and UCH-TIF Plan is to restore the Winter Hill commercial corridor as a main street destination supported by mixed-use development.
11. The City endeavors to redevelop vacant and underutilized parcels in the Urban Renewal Plan Area/UCH-TIF Zone to create green and open gathering spaces, streetscape improvements that ensure a pedestrian- and bike-friendly experience, and affordable housing and commercial development to reduce displacement of Winter Hill's low-income residents and small, independent businesses within the UCH-TIF Zone.
12. As evidenced through the adoption of the Winter Hill Urban Renewal Plan as well as through the publication of the Somerville Affordable Housing Trust Fund Strategic Vision Plan (2014), Winter Hill Neighborhood Plan (2016), and SomerVision 2040 (2021), the City's Comprehensive Plan, increasing a diverse array of housing opportunities is an important public policy objective of the City, specifically the creation of housing within comfortable walking distance of retail, public transportation, schools, and open space. The City has prioritized multifamily and mixed-use development, as demonstrated through its Housing Choice Designation.
13. The proposed Project will redevelop the Property to yield a mix of affordable and market rate housing, including units suitable for varying household sizes. Furthermore, the Project is within close proximity of public transportation, with an MBTA bus stop located in front of the property and the Gilman Square station on the new Green Line Extension located just ½ mile away.

14. The Property and Project are located within the UCH-TIF Zone. The UCH-TIF Zone runs along a portion of the Broadway commercial district which is characterized by a preponderance of commercial land uses and a need for multi-unit residential properties, as described in M.G.L. c. 40 § 60 (a)(i). The Project furthers the mixed-use, commercial, and housing objectives as outlined in the UCH-TIF Plan for Winter Hill. The Project will satisfy the goals of the UCH-TIF Program by creating housing, including affordable housing, and commercial development in commercial centers, including the creation of approximately 15,000 gross square feet of retail space, an arts and community enterprise space, and 132 units of affordable housing in the Broadway commercial district which will be deed restricted in perpetuity in accordance with DHCD requirements. At Project completion, the Property will generate more real estate tax revenues than the existing uses in the UCH-TIF Zone.
15. By the vote of the City Council on February 23, 2023, the City is authorized to enter into this Agreement with the Developer in the form hereof, contingent upon (a) the DHCD's approval of this Agreement; (b) and the DHCD's approval of the City's proposed UCH-TIF Zone and UCH-TIF Plan; and (c) the completion of the purchase of the Property by the Developer expected to occur on or about April 1, 2023.

Section 1 - Agreement

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby acknowledge that any agreement herein and all extensions thereof shall become effective only by express written approval by DHCD, the parties hereby agree as follows:

Section 2 – Effective Date

The Effective Date of this agreement shall be the date first stated above.

Section 3 - Definitions

Unless otherwise stated, terms capitalized but not defined within this Agreement shall have the meanings as set forth in M.G.L c. 40, §60 and c. 59, §5, cl. 51s, (collectively referred to herein as the "Act"), and the regulations found at 760 CMR 58.00 et seq. (referred to herein as the "Regulations"), as of the Effective Date.

Each reference in this Agreement to the following terms shall be deemed to have the following meanings:

Act: M.G.L c. 40 §60.;

Affordable Component: As defined in Section 4.1 below;

Affordable Component Owner: 299 Broadway Affordable LLC, a Massachusetts limited liability company.

AHR: Affordable Housing Restriction, as defined in Section 7.1(c) below;

AHU: Affordable Housing Unit, as governed by the Regulatory and Operating Agreements;

AMI: Area Median Income, as defined and published by the U.S. Department of Housing and Urban Development on an annual basis;

Certificate of Approval: Defined herein as DHCD's formal approval of the City's UCH-TIF Zone, UCH-TIF Plan, and UCH-TIF Agreement(s);

City: City of Somerville, a Massachusetts municipality with an address at 93 Highland Avenue, Somerville, MA 02143;

Comprehensive Permit: Shall mean the Zoning Board of Appeal's Decision attached as Exhibit B hereto, as the same may be amended from time to time;

Developer: 299 Broadway Property Owner LLC a Massachusetts Limited Liability Company with a usual place of business of c/o Mark Development, LLC, 275 Grove Street, Suite 2-150, Newton MA 02466;

DHCD: Department of Housing and Community Development;

Event of Default: As defined in Section 8 below;

Exemption: The UCH-TIF exemption, as defined in Section 6 below;

Exemption Commencement Date: As defined in Section 6.1 below;

Exemption Period: The period defined in Section 6.1 below;

Expiration Date: As defined in Section 6.6 below;

Final Certification: Determination by DHCD that the Developer has completed the substantial redevelopment of the Property, consistent with the UCH-TIF Plan, including the creation of all AHUs;

Fiscal Year: An annual period of July 1st through June 30th;

Increment: The increment for purposes of calculating the exemption in Section 6 shall be as defined in 760 CMR 58.03.

Inflation Factor: Shall have the meaning set forth in M.G.L. c. 40, § 60(a)(iii).

Market Component: As defined in Section 4.1 below;

Market Component Owner: [Mark 299 Broadway LLC], a Massachusetts limited liability company.

Parties: City and Developer, together with their respective successors and assigns;

Property: The certain parcels of land, comprised of Parcel 70-D-5 and Parcel 70-D-27 as they are to be subdivided, and buildings thereon as shown in Exhibit A, "Property Description", but excluding Lots 3 and 4, as reflected on the proposed subdivision plan attached hereto;

Redevelopment Plan: The mixed-income housing plans put forth by the Developer in the Comprehensive Permit application defining and illustrating the proposed substantial improvements to the Property, as approved by the City's Zoning Board of Appeals and DHCD;

Regulations: UCH-TIF regulations, 760 CMR 58.00 et seq.;

Regulatory and Operating Agreement: those certain Regulatory and Operating Agreements to be entered by and among DHCD and the Affordable Component Owner and Market Component Owner, respectively;

Project: The implementation of the Redevelopment Plan by the Developer;

Projected Assessed Value: As defined in Section 8.7 below;

Secured Creditors: As set forth in Exhibit C attached hereto;

Stabilized Occupancy 92% occupancy of all residential units in [the first of either] the Affordable Component and the Market Rate Component as evidenced by rent rolls submitted to the City of Somerville.

Transfer Notice: As defined in Section 7.4(a) below;

Transfer Notice Period: As defined in Section 7.4(a) below;

UCH-TIF Plan: The City's Urban Center Housing Tax Increment Financing Plan, developed in accordance with the Act and Regulations, adopted by the City Council on [February 23, 2023](#), and approved by DHCD as evidenced by a Certificate of Approval dated as of or about the date hereof and recorded with the Middlesex County Registry of Deeds;

UCH-TIF Zone: The City's Urban Center Housing Tax Increment Financing Zone, developed in accordance with the Act and Regulations, established and adopted by the City Council on [February 23, 2023](#), approved by DHCD, as evidenced by a Certificate of Approval dated as of or about the date hereof, and recorded with the UCH-TIF Plan at the Middlesex County Registry of Deeds

Section 4 - Description of the Improvements to be Constructed by Developer

1. The Project will consist of 288 apartments, including 132 AHUs; approximately 15,000 gross square feet of retail space; community and amenity space; and open space improvements. The Developer will own title to the Property at the acquisition. The Property will be subdivided and at the time of the construction financing closing, the two parcels will be distributed to the two members of the sole member of the Developer, respectively. On one parcel, shown as [Lot 1 on Exhibit A], one building will be constructed which will be comprised of approximately 115 affordable residential units (the "Affordable Component"), with retail on the ground floor. On the second parcel, shown as [Lot 2 on Exhibit A], the other building will be constructed which will be comprised of approximately 155 market rate residential units, 17 affordable residential units and ground floor retail (the "Market Component"). The Affordable Component Owner will hold title to the Affordable Component and the Market Component Owner will hold title to the Market Component. Following completion of construction of the respective building, the Affordable Component will be managed by a management agent affiliated with the Affordable Component Owner and the Market Component will be managed by a management agent affiliated with the Market Component Owner.

2. The Developer seeks a UCH-TIF exemption from property taxes (the "Exemption") from the City to benefit the Project.
3. The Developer shall implement and comply with all permit conditions, pursuant to the Zoning Board of Appeal's Decision, attached hereto as Exhibit B.
4. The Developer shall construct on the Property an accessible park that may include tree plantings, lawn, play equipment, rubber surfacing, lighting, landscaping, and site furniture.

Section 5 - Description of Municipal Improvements and Special Assessments

1. The Developer shall, at its expense, replace or reconstruct any existing equipment, including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheelchair ramps, granite curbing, etc., and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity due to this project. All new sidewalks and driveways must be constructed to City of Somerville standards.
2. The City is not proposing and will not be providing any municipal improvements as part of the Project. Accordingly, the City will not be imposing any special assessment or betterments to fund municipal improvements; provided, however, this does not preclude the City from making assessments on properties within the UCH-TIF Zone, including the Project, for qualified public construction projects that could not reasonably be anticipated at the time of approval of the UCH-TIF Plan. The Project will include the creation of a pedestrian pathway through the center of the Project area and two civic spaces, a Pocket Park and a Pocket Plaza (as defined in the Somerville Zoning Ordinance and the Comprehensive Permit). It is understood that the Developer will allow for public access to these areas in accordance with access easements to be negotiated between the Parties as required by the Comprehensive Permit approved by the Zoning Board of Appeals.

Section 6 - Terms of Tax Increment Financing Exemption

1. The Exemption requested by the Developer is hereby granted by the City in accordance with the Act for a period of twenty (20) years (the "Exemption Period"), commencing on the beginning of the fiscal year (July 1) following achievement of Stabilized Occupancy [as defined above] [of the sooner of both the Affordable Component and the Market Component, respectively] ("Exemption Commencement Date") and shall provide an exemption from taxation on the value of all improvements on the Property, as and to the extent more specifically provided below. For any partial year between Stabilized Occupancy [of the sooner of the Affordable Component and the Market Component, respectively] and the Exemption Commencement Date, the Developer shall pay property taxes due without reducing the term of the Exemption Period.
2. The following Exemption percentage and exemption schedule will apply towards the assessed value of the improvements to the Property as determined by the Board of Assessors in accordance with M.G.L. Chapter 59, Section 21C. The Exemption and Inflation Factor shall be calculated in accordance with M.G.L. c. 40, §60(a)(iii)(1)-(2), during the term of this Agreement for each of the years listed below:

Fiscal Year	Exemption Percentage	Percentage of Real Estate Tax Payable on the Increment
1	100%	0%
2	100%	0%
3	100%	0%
4	100%	0%
5	100%	0%
6	100%	0%
7	100%	0%
8	100%	0%
9	100%	0%
10	100%	0%
11	100%	0%
12	100%	0%
13	100%	0%
14	100%	0%
15	100%	0%
16	100%	0%
17	100%	0%
18	100%	0%
19	100%	0%
20	100%	0%

3. For each of the twenty (20) fiscal years listed in Section 6.2, a portion of the assessed value of the Property equal to the (i) Increment times (ii) the Exemption Percentage shall be exempt from taxation, all as more specifically provided in the Act and the Regulations.
4. The parties hereby agree that the Term and Exemption Percentages listed in Section 6.2 will be revisited and finalized prior to the Project receiving the first Building Permit in order to confirm if the assumptions in the financing of the Project made through February 23, 2023 continue to hold and update any of the financing assumptions and Exemption Percentages as needed. At the time of this update, the Somerville City Council will review and approve any changes to this agreement and recertification by DHCD may be required.
5. As provided in the Act and the Regulations, the Base Value shall be the assessed value of the parcel of real property in the fiscal year in which an UCH-TIF Agreement is entered between the Developer and the City with respect to that parcel.
6. The Property's assessed value for the Fiscal Year ending June 30th, 2023, as shown on the records of the City Assessor, is \$2,311,641.64 (The assessed value of the Affordable Component parcel is \$1,049,217.40 and the assessed value for the Market Component parcel is \$1,262,424.24).
7. The Exemption provided by this Agreement shall automatically terminate after the twentieth full Fiscal Year following the Exemption Commencement Date (the "Expiration Date"), except for claims related to defaults under this Agreement occurring prior to the Expiration Date, after which time,

the Developer or its successor in title shall pay the full amount of real estate taxes assessed on the Property.

8. Notwithstanding the Expiration Date of the Exemption stated herein, the Developer, for itself and its successors and assigns, acknowledges that it shall continue to meet the affordability requirements of the affordable housing restriction(s). Revocation or termination of this Agreement shall not nullify any of the Developer's (or its successors and assigns) obligations under the AHRs.
9. This Agreement does not provide any exemption from personal property taxes with respect to the Property, the Developer, and any tenants.
10. This Agreement does not waive the Developer's obligations under any special assessment or betterment that has been or may be levied by the City or any constituent entity thereof against the Property.
11. The parties hereby agree that in the event that the Property or any portion of it becomes subdivided, partitioned into multiple parcels, or combined to form new parcels, this Section shall apply only to the parcel(s) on which the residential buildings (and all commercial or retail spaces within the residential buildings) of the Project are located.

Section 7 - Developer's Covenants and Agreements

1. The Exemption granted by the City is in consideration of the Project, all terms and conditions set forth in this Agreement, and the Developer's covenants and agreements herein, by which the Developer hereby affirms that, if it elects to proceed with the Project, it shall:
 - a. Prior to issuance of a building permit for the Affordable Component, cause the Affordable Component Owner execute an Affordable Housing Restriction in a form acceptable to the City and DHCD ("Affordable Housing Restriction" or "AHR") with respect to 100% of the units in the Affordable Component ensuring that such affordable units shall remain affordable in perpetuity. Prior to issuance of a building permit for the Market Component, cause the Market Component Owner to execute an Affordable Housing Restriction with respect to 17 units in the Market Component ensuring that such affordable units shall remain affordable in perpetuity;
 - b. Commence demolition of the existing buildings located at each of the Affordable Component and Market Component, respectively, substantially in accordance with the Comprehensive Permit within one (1) year after the issuance of a building permit for such Component and pursue completion of the Project in a manner consistent with similar residential developers operating in the Greater Boston area, subject to reasonable delay caused by natural or economic events outside of the Developer's control;
 - c. Keep the Project in good order and repair and maintain the Project in a decent, safe, and sanitary condition, all in accordance with applicable laws and ordinances and all rules, regulations and requirements of governmental authorities having jurisdiction;

- d. Create and operate 115 AHUs in the Affordable Component and 17 AHUs in the Market Component in accordance with each respective Regulatory and Operating Agreement and each respective Affordable Housing Restriction ("AHR") to be executed in connection with the Affordable Component and Market Component, respectively, and maintain, for the duration of the term of the UCH-TIF Exemption as described in Section 6 of this Agreement, all remaining units in the Market Component as Class A residential rental units rented at market rates and managed by Mark Development, LLC, an affiliate of Mark Development, LLC, or an entity that has developed, owned and/or managed at least 1,000 multifamily units during the past five (5) years, or as otherwise required by the City;
 - e. Ensure that the AHUs are occupied by income-eligible households in accordance with the terms of the Regulatory and Operating Agreements and the AHRs executed in connection with the Project;
 - f. Comply with applicable fair housing laws in the selection of tenants for the Project, including without limitation, all AHUs;
 - g. Comply with all income certification requirements with respect to occupants of the AHUs, as set forth in the Regulatory and Operating Agreements and the AHRs executed in connection with the Project;
 - h. Cooperate in the City's administration, monitoring, and enforcement of this Agreement, including such access rights to the Property (subject to any applicable leases) as are reasonably necessary to accomplish the same. The provisions of this Agreement shall not operate to circumscribe in any way, the access rights granted to the City by the Developer pursuant to other agreements that may be being entered into between the Parties relating to the Project; and
 - i. Comply with the City's occupancy limits, set in the State Building Code as enforced by the City's Inspectional Services Department.
2. The Developer shall certify to the City the incomes of the families or occupants prior to the occupancy of the AHUs designated in this Agreement. The Developer shall provide a copy of such certification to the City. If the Developer fails to provide a copy of the certification or otherwise fails to comply with this Agreement within sixty (60) days of receipt of written notices of default by the City, including failing to maintain the affordability of housing units, the City shall have the authority to place a lien [on the Project] [on the parcel that is in default (of the Affordable Component or the Market Component)] (in accordance with M.G.L c. 40, §60 (f)) in the amount of the real estate tax exemptions granted pursuant to the UCH-TIF Agreement for any year in which the Developer, the Market Component Owner or the Affordable Component Owner is not in compliance with M.G.L c. 40, §60 (f).
 3. If the City determines that the Developer is leasing the AHUs in violation of the affordability requirements of M.G.L c. 40, §60 (f) and M.G.L c. 40, §60 (a)(v)(3), and such violation is a default in accordance with the provisions of Section 8 below, the City shall have the authority to place a lien [on the parcel that is in default (of the Affordable Component or the Market Component)](in accordance with M.G.L c. 40, §60 (f)) in the amount of the real estate tax exemptions granted

pursuant to the UCH-TIF Agreement for such Fiscal Year in which the City and DHCD make such determination, and shall record such lien with the Middlesex County Registry of Deeds or Middlesex County Land Court, as applicable.

4. Conveyance of Interests in the Property or the Project

- a. Developer shall have the right to convey an interest in the Property (a "Transfer") provided that Developer gives the City written notice (the "Transfer Notice") of such conveyance no less than thirty (30) days prior thereto (the "Transfer Notice Period") and such entity assumes the obligations of Developer hereunder in writing prior to the Transfer. Notwithstanding the foregoing, a Transfer of the Affordable Component to the Affordable Component Owner and the Market Component to the Market Component Owner is currently contemplated, and such Transfer shall conform to the requirements of this paragraph. Following such Transfer, the Developer, the Market Component Owner and the Affordable Component Owner shall enter into an Assignment and Assumption Agreement, assigning the Developer's rights under this Agreement to the Affordable Component Owner and Market Component Owner (and such parties assuming the Developer's rights and obligations under this Agreement) in the form attached hereto as Exhibit D. This Agreement shall not be transferred to any third party unrelated to the Developer at any time, unless the City approves such action in writing in a good faith basis, provided, however, that any written rejection of a proposed Transfer of the Agreement be accompanied by an explanation of the reasons for such rejection. Notwithstanding the foregoing, no City approval shall be required for the Developer to transfer portions of the Property (and to assign this Agreement in connection with such Transfer) to (i) an entity owned or controlled by the Developer, or (ii) an entity that has developed, owned and/or managed at least 1,000 multifamily units during the past five (5) years; provided, however, that Developer shall provide a Transfer Notice at least ten (10) days prior to such Transfer.

Section 8 - Default

1. In addition to any other grounds for default as to other requirements of this Agreement, the Developer will be in default of its obligations under this Agreement if the City in its reasonable discretion determines that Developer, and/or its successors or assign fail(s) to meet or comply with any of the requirements of Section 7 above, and the City in its sole discretion further determines that such failure or any other default hereunder continues or remains uncured for sixty (60) days (or such longer time as the City may deem may be reasonably needed to effect such cure, provided that the Developer commences to cure within such sixty (60)-day period and continues to diligently pursue such cure) after the date of written notice, provided by the City to Developer and all Secured Creditors with liens on the Property. Any such Secured Creditor shall have the right to cure any default by the Developer. Upon the City 's determination that any default by the Developer has continued or remained uncured for such period after the date of such written notice, the City may take such action as it deems appropriate to enforce the Developer's obligations under this Agreement, including but not limited to any one or a combination of the following:
 - a. Revoke its certification of the Project for eligibility for a Tax Increment Financing Exemption.

- b. Require that the Developer and/or Secured Creditor having cured a default provide a detailed plan to the City within thirty (30) days of the City 's written request explaining in detail how Developer and/or Secured Creditor will achieve compliance with this Agreement.
 - c. Require that the Developer reimburse the City the full amount of the Tax Increment Financing Exemption received under this Agreement during the Fiscal Year in which such default occurred. The parties hereby agree that the City shall be entitled to such reimbursement and that such reimbursement shall be made to the City within thirty (30) days of the City's written request. If such payment is not made in full within such thirty (30) day period, interest shall accrue at the rate of 0.5% per month until such repayment is made.
 - d. If, at any time prior to the expiration of the term on this Agreement, the Developer or its successor or assignee fails to diligently pursue and complete the construction of the Project, subject to reasonable delay caused by natural or economic events outside of the control of the Developer, the City shall be entitled, in the City's total and exclusive discretion, to: (i) terminate this Agreement and all existing and future Exemption benefits; and (ii) revoke the Tax Increment Financing Exemption.
2. After the subdivision of the Property, the Affordable Component Owner and the Market Rate Component Owner shall each be responsible for complying with the terms of this Agreement with respect to the obligations and the remedies set forth in Section 7.2 and 7.3 above. Failure of either the Affordable Component Owner or the Market Component Owner to comply with the provisions of the Regulatory Agreement or the Affordable Housing Restriction applicable to the Affordable Component or the Market Component, respectively, shall subject such Affordable Component and/or Market Component to the remedies for Default set forth in Section 8 above, including the suspension or loss of the Tax Increment Financing Exemption for such respective Affordable Component or Market Component.
3. The parties further agree that if the Property or any portion thereof shall be subdivided, partitioned into multiple parcels, or combined to form new parcels, the tax abatement prohibition set forth in this paragraph shall apply only to the parcel(s) on which residential buildings are located.

Section 9 - Affordable Housing

1. The Project will create 132 AHUs and 156 market rate units. All AHUs shall be maintained, for the duration of the term of the Exemption Period, as Class A residential rental units that shall be rented at rents governed by the respective Regulatory and Operating Agreement and the respective AHR. The Affordable Component, which shall include 115 AHUs, shall be managed by an affiliate of Beacon Communities LLC or an entity that has developed, owned, and/or managed at least 1,000 multifamily units during the past five (5) years, or as otherwise approved by the City. The Market Component, which will include 17 AHUs and 156 market rate units, shall be maintained, for the duration of the Exemption Period, as Class A residential rental units that shall be rented at market rates and/or at rents governed by the respective Regulatory and Operating Agreement and the AHR, respectively, and managed by Mark Development, LLC, an affiliate of Mark Development, LLC, or an entity that has developed, owned, and/or managed at least 1,000 multifamily units during the past

five (5) years, or as otherwise approved by the City. The Act, in Section 60(b), requires as a condition of the granting of a UCH-TIF Exemption, that one of the affordability thresholds, as set forth in such Section 60(b), be satisfied at the property for which an exemption is sought. Section 60(b)(iii) of the Act provides that one such threshold is that "at least 15 percent of the housing units assisted by the UCH-TIF agreement shall be affordable to occupants or families with incomes at or below 80 percent of the area median income where the city of town is located, as defined by the United States Department of Housing and Urban Development". One hundred thirty-two (132 or 45%) of the 288 total units in the Project will be affordable to households earning at or below 80 percent of the area median income, as defined by the United States Department of Housing and Urban Development, in accordance with the Regulatory and Operating Agreements and AHRs executed for the Project. After the expiration of the Exemption Period, the AHUs will continue to be governed by the respective AHRs.

2. The one hundred thirty-two (132) AHUs shall be deed restricted in-perpetuity through AHRs, and affordable for low- and moderate- income households with annual household incomes no greater than 80% of the Area Median Income, as defined by the U.S. Department of Housing and Urban Development's Income Limits for the Boston-Cambridge Quincy MA-NH Fair Market Rent Area, adjusted for utility allowances. HUD Income Limits are subject to change and are periodically updated.
3. All AHUs shall be subject to all applicable federal, state, and local affirmative fair housing regulations.
4. The City may at any time revoke its UCH-TIF Plan. Should the City revoke its UCH-TIF Plan, it shall immediately cease the execution of any additional UCH-TIF Agreements pursuant to 760 CMR 58.07. Such revocation shall not affect existing UCH-TIF Agreements relative to tax increment exemptions, and limitation on special assessments, pursuant to 760 CMR 58.13, provided the UCH-TIF Agreements were executed prior to the revocation.
5. This Agreement contemplates that all of the housing created hereunder shall remain rental units. The Developer understands and agrees that it, or its successors, shall enter into AHRs to effectuate the intent of this Agreement which shall be executed by the City, the DHCD, and other necessary parties. The Developer shall record or file, as appropriate, AHRs, with the Middlesex County Registry of Deeds or Registry District of the Land Court, as applicable, and shall provide a recorded copy thereof to the City. The AHRs shall be forever senior in lien priority to all financing liens encumbering the Property or any portion thereof. The AHRs shall survive foreclosure or sale or transfer of any and all of the Developer's property and development rights as to the Property.
6. In the event of any conflict between the provisions of this Agreement and the AHRs, the AHRs shall be dispositive.
7. In the event that the City terminates this Agreement for any reason, including without limitation pursuant to Section 8.1(d), or revokes the Exemption, the Developer shall have no further obligations under this Agreement; however, such termination shall have no impact on Developer's obligations pursuant to any other agreements between the Developer and the City, or the DHCD, unless explicitly stated otherwise in a written notice of termination.

Section 10 - Miscellaneous

1. Notice. All notices, requests and demands which any party is required or may desire to give to the other party pursuant to this Agreement must be in writing delivered to each party at the addresses set forth below. Secured Creditors entitled to notice are listed on Exhibit C attached hereto and made a part hereof, as the same may be amended from time to time by the Developer's written notice to the City. Any such Secured Creditor shall have the right to cure any default by the Developer.

As to the City:

City of Somerville
93 Highland Avenue
Somerville, MA 02143
Attn: Economic Development Director, Mayor's Office of Strategic Planning and Community Development

With copies to:

City of Somerville Law Department
ATTN: City Solicitor
93 Highland Avenue Somerville, MA 02143

As to the Developer:

299 Broadway Property Owner LLC
c/o Mark Development, LLC
275 Grove Street, Suite 2-150
Newton, MA 02466

and:

299 Broadway Property Owner LLC
c/o Beacon Communities
2 Center Plaza, Suite 700
Boston, MA 02108
Attn: Joshua Cohen

with copies to:

Michael Scott, Esq.
Nutter McClennen & Fish LLP
155 Seaport Boulevard
Boston, MA 02210

and

Julie Hancock Stande, Esq.
Nixon Peabody LLP
Exchange Place
53 State Street
Boston, MA 02109-2835

Copies of all Notices hereunder shall also be provided to the DHCD UCH-TIF Program at:

Department of Housing and Community and Development
100 Cambridge Street, Suite 300
Boston, MA 02114
Attn: UCH-TIF Program Representative

Either party may designate a different address where notice may be given to the other parties as provided herein. Each notice, request and demand hereunder shall be deemed given or made as follows: if sent by hand delivery, upon delivery; or if sent by certified mail, return receipt requested, or by nationally recognized overnight delivery service, upon receipt or refusal.

2. Further Assurances. At the request of either party hereto, the other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party to carry out the purposes of this Agreement, so long as no such document or instrument shall modify the rights and obligations nor increase the liability of the parties set forth herein.
3. Successors and Assigns. Notwithstanding anything contained in this Agreement to the contrary, Developer shall have the right to assign this Agreement to (i) an entity owned or controlled by the Developer, or (ii) an entity that has developed, owned and/or managed at least 1,000 multifamily units during the past five (5) years; provided, however, that Developer shall provide a Transfer Notice at least ten (10) days prior to such Transfer and such entity shall assume all obligations of Developer set forth hereunder in writing. Subject to the terms of this paragraph, this Contract shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City, and of the Developer, including any Secured Creditor taking title pursuant to foreclosure or deed in lieu thereof. The Developer agrees that it shall provide copies of this Agreement to all Secured Creditors listed on Exhibit C hereto, and as the same may be amended from time to time by the Developer's written notice to the City, and to any successor creditor, and shall provide to the City written acknowledgement executed by each secured creditor that it shall assume all of the Developer's obligations hereunder in the event that it is taking title pursuant to foreclosure or deed in lieu thereof.
4. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws. Any

claim or action arising under this Agreement shall be tried in a court of competent jurisdiction sitting in Middlesex County, Massachusetts.

5. Entire Understanding. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior and current understandings and agreements with respect to the same, whether written or oral.
6. Headings. Headings are for convenience and reference only and in no way define or limit the provisions of this Agreement.
7. Severability. All provisions contained in this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement. If any provision of this Agreement shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of this Agreement shall be deemed to be amended to the minimum extent necessary to provide the parties with the benefits and obligations set forth herein.
8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute and be construed as one and the same instrument.
9. Recitals. The Recitals set forth on Pages 1-2 hereof are incorporated herein by reference, as if fully re-stated herein.
10. Estoppel Certificates. Upon written request of either party made upon at least ten business days' notice, the other party shall provide a certificate certifying to the best of its knowledge, that (if true) (i) this Agreement is in full force and effect, (ii) this Agreement has not been amended, except as may be set forth in such certificate, (iii) the requesting party is not in default of this Agreement (or if it is default, specifying the nature of the default), and (iv) such other factual matters as the requesting party may reasonably request.
11. Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of the UCH-TIF Plan, the provisions of this Agreement shall be dispositive.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESSES THEREOF, the Developer has caused this Agreement to be duly executed in Its name and behalf and its seal affixed by its duly authorized representative, and the City has caused this agreement to be executed in its name and behalf and its seal duly affixed by Katjana Ballantyne, Mayor as of the day and the year below written.

Developer:

299 Broadway Property Owner LLC

By: 299 Broadway JV LLC, its Sole Member and Managing Member

By: Mark 299 Broadway LLC, its Member

By: _____

Name:

Title:

By: 299 Broadway Affordable LLC, its Member

By: _____

Name:

Title:

Exhibit A
Property Description

Exhibit B
Comprehensive Permit

Exhibit C

Secured Creditors

Needham Bank
1063 Great Plain Avenue
Needham MA 02492

Exhibit D

Assignment and Assumption Agreement

**ASSIGNMENT AND ASSUMPTION OF URBAN CENTER HOUSING TAX
INCREMENT FINANCING AGREEMENT**

This Assignment and Assumption of Urban Center Housing Tax Increment Financing Agreement (this “Assignment”) is made as of the [] day of [], 202[], by and between **299 BROADWAY PROPERTY OWNER LLC**, a Massachusetts limited liability company (“Assignor”), and **299 BROADWAY AFFORDABLE LLC**, a Massachusetts limited liability company (the “Affordable Component Owner”) and [**MARK 299 BROADWAY LLC**], a Massachusetts limited liability company (the “Market Component Owner”) and collectively with Affordable Component Owner, the “Assignees”).

In connection with that certain Urban Center Housing Tax Increment Financing Agreement between Assignor and the City of Somerville, a Massachusetts municipal corporation dated as of [] (the “Agreement”) related to the property commonly known as 299 Broadway and 15 Temple Street, Somerville, Massachusetts 02145 (the “Property”), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Pursuant to Section 7.4 of the Agreement, Assignor hereby assigns, transfers, conveys and sets over to Assignees, and Assignees hereby accept from Assignor, all of Assignor’s right, title and interest in and to the Agreement with respect to the Property.
2. Affordable Component Owner hereby accepts and assumes any and all of the obligations, liabilities, restrictions, duties and rights created by the Agreement with respect to the Affordable Component. Mark Component Owner hereby accepts and assumes any and all of the obligations, liabilities, restrictions, duties and rights created by the Agreement with respect to the Market Component. From and after the date of this Assignment, Assignor is hereby released from any and all liability with respect to the Agreement.
3. This Assignment may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one agreement, binding all parties hereto, notwithstanding that all the parties have not signed the same counterpart.

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed under seal as of the day and year first written above.

ASSIGNOR:

299 BROADWAY PROPERTY OWNER LLC

By: 299 Broadway JV LLC, its Sole Member and
Managing Member

By: Mark 299 Broadway LLC, its Member

By: _____

Name:

Title:

By: 299 Broadway Affordable LLC, its
Member

By: Beacon Communities Corp., its
Managing Member

By: _____

Name:

Title: