

After recording return to:

City of Somerville Law Department
Somerville City Hall
93 Highland Avenue, 2nd Floor
Somerville, MA 02143
Attn: Eileen McGettigan, Esq.

RECORDING INFORMATION AREA

DEVELOPMENT COVENANT

This **DEVELOPMENT COVENANT** (this “Covenant”) is made as of the ____ day of _____, 2017 (the “Effective Date”) by and between the **CITY OF SOMERVILLE** (the “City”), a municipal corporation with an address of 93 Highland Avenue, Somerville, Massachusetts 02143, and **UNION SQUARE STATION ASSOCIATES LLC** (“US2”), a Delaware limited liability company with an address of 31 Union Square, Somerville, MA 02143.

BACKGROUND

WHEREAS, the residents of Somerville have worked tirelessly to advance their common goals for the future growth and development of the city as fully expressed in the document *SomerVision*, the city’s official comprehensive plan duly adopted by its Planning Board and endorsed by its Board of Aldermen in April 2012, through which the City aspires to promote the common good and improve the quality of life of all residents by enhancing and expanding job creation, open space, housing development, and transportation;

WHEREAS, on November 19, 2012, the Commonwealth of Massachusetts Department of Housing and Community Development approved an urban renewal plan (the “Revitalization Plan”) for the Union Square neighborhood (the “Union Square Area”) located in the City of Somerville, County of Middlesex, Commonwealth of Massachusetts;

WHEREAS, the City authorized the issuance of \$9.5 million of bonds to implement the Revitalization Plan and acquire certain property in the Union Square Area for disposition to and redevelopment by a Master Developer;

WHEREAS, on December 5, 2013, the Somerville Redevelopment Authority (“SRA”) issued a Request for Qualifications for a Master Developer to carry out the redevelopment of Blocks D1 – D7 (“Disposition Parcels”) identified in the Revitalization Plan;

WHEREAS, at a meeting on June 26, 2014, the SRA voted unanimously to designate US2 as the Master Developer of the Disposition Parcels;

WHEREAS, in accordance with that certain Master Developer Designation Agreement (the “MDDA”) (the “MDDA”), by and between the SRA and US2, US2 currently intends to develop one of the Dispositions Parcels, the approximately 185,895 square foot property commonly known as the “D-2 Block” located in Union Square, as more particularly described on Exhibit A attached hereto (the “Property”) as a mixed-use project to include, without limitation, not less than 150,000 gross square feet of commercial office, research and development space, retail, restaurant, and service establishments, approximately 400 residential units (including at grade or above ground structured parking, sidewalks, driveways, plazas and landscaping), in addition to construction of elements of the Massachusetts Bay Transportation Authority (the “MBTA”) station to be located on the Property (the “MBTA Station”) and related improvements, construction of certain open space, and the construction of all onsite infrastructure necessary to support the operation of the improvements located on the Property (collectively, the “Project”);

WHEREAS, the City entered into a Project Participation Agreement with the MBTA and Massachusetts Department of Transportation whereby the City committed to make an unprecedented \$50,000,000 contribution (“City GLX Contribution”) to ensure the construction of the Green Line Extension project, as hereinafter defined;

WHEREAS, US2 has incurred and will incur significant costs in designing and developing the Project in a manner that, among other benefits, greatly increases the publicly accessible open space in Union Square, enhances access to public transit through the construction of the MBTA Station, provides for substantial roadway and utility infrastructure improvements benefiting the Union Square Area, and creates improved pedestrian access to Union Square;

WHEREAS, the Revitalization Plan contains various recommendations, including the creation of new infrastructure and relatively dense, mixed-use development, to guide future development in the Union Square Area;

WHEREAS, in May 2016 the Planning Board adopted a neighborhood plan which was developed through a seventeen (17) month community-driven process (the “USQ Neighborhood Plan”) for the area of the Union Square neighborhood depicted in the USQ Neighborhood Plan, which includes the Disposition Parcels (the “Neighborhood Plan Area”);

WHEREAS, as a follow up to the Revitalization Plan and the USQ Neighborhood Plan, the City is now considering permanent rezoning that applies to the Disposition Parcels and other parcels within a portion of the Neighborhood Plan Area to create a Union Square Overlay District (“USOD”) for the Neighborhood Plan Area (the “USOD Zoning”) to achieve goals and objectives including, encouraging the best use of the Union Square Area physically, economically, environmentally and socially while promoting the best interests of the residents of the City;

WHEREAS, the Board of Aldermen has diligently contemplated the opportunities and challenges that new development will bring to Union Square, exploring issues related to short and long term fiscal impacts of development, evaluating the opportunity for zoning to guide the development of vibrant civic spaces, quality new open space, lively streetscapes, quality

commercial and residential opportunities, and considering approaches to minimizing the displacement of small businesses and residents in Union Square;

WHEREAS, US2, as the SRA's Master Developer, intends to develop the other Disposition Parcels in phases, and may develop parcels in the USOD which are not Disposition Parcels ("USOD Parcels"), all in accordance with the goals of the Revitalization Plan and USOD Zoning (collectively, development of such other Disposition Parcels and USOD Parcels shall be referred to herein as "Future Phases");

WHEREAS, US2 has submitted input on the USOD Zoning, and US2, as the future holder of the fee in the Property, will benefit if the proposed USOD Zoning is adopted, consistent with proper procedures and the goals and objectives mentioned above;

WHEREAS, in conjunction with the USOD Zoning, US2 has agreed to certain undertakings and mitigation, which undertakings and mitigation are directly related to specific aspects and impacts of and public needs associated with the Project and Future Phases, subject to the terms and conditions hereof, including, without limitation (i) the payment of certain public benefit funds, including a contribution towards the City's payment to the MBTA in connection with the extension of the MBTA Green Line to Union Square and construction of the MBTA Station; (ii) a payment to contribute to the City's cost of offsite infrastructure associated with the Project and Future Phases; (iii) the payment of community benefit funds; and (iv) certain other agreements, all as more particularly set forth herein;

WHEREAS, US2 has estimated that it has already made significant investments in public and community benefits, which include neighborhood planning costs, a local small business assistance program, local arts and business promotion or sponsorship, and the establishment of a co-working space in Union Square that serves as an employment activator;

WHEREAS, US2's prior financial contributions, its Project Mitigation Contribution under Article 15 of the Somerville Zoning Ordinance, its proposed private construction of elements necessary for MBTA station operations, and its funding commitments herein, are provided in addition to the public and community benefits that are required by the USOD Zoning, which will result in a Union Square neighborhood with 20% inclusionary housing; housing linkage payments; open space, including high-quality civic space; arts and creative economy space; commercial development; transportation demand management programs; new vehicle and bike parking; new alleys, roadways, sidewalks and public realm improvements that will be open to the public; sustainable building standards; and the mitigation and redevelopment of environmentally challenged sites;

WHEREAS, this Covenant is intended to set forth the understandings and agreements of the parties with respect to the Property, the Project, Future Phases and other matters related thereto; and

WHEREAS, it is the intention of the parties that each be bound by the provisions of this Covenant and that this Covenant be fully enforceable by a court of competent jurisdiction in accordance with its terms.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, US2, for itself, its successors and assigns and affiliated entities, and the City covenant and agree as follows:

1. Contributions Framework. The parties hereto desire to outline a framework for contributions and public benefits to be provided by US2 in connection with the Project and Future Phases, including, without limitation, US2's financial contribution to provide for certain public and community benefits to the City and its residents.

2. Public Benefits Payments

(a) Contribution Towards Green Line Extension. US2 acknowledges that the Project and Future Phases will derive substantial benefit from the MBTA's project to extend the Green Line to Union Square (the "GLX Project"), which benefits derive, in part, from the location of the MBTA Station on a portion of the Property and the proximity of the new MBTA Station to the Future Phases. Without in any way limiting US2's obligations under the MDDA, any superseding Master Land Disposition Agreement ("MLDA") or related land disposition agreement (whether executed by US2 or an affiliate) entered into with the SRA, and in addition to private construction of elements on the D-2 Block necessary for MBTA operations, US2 shall contribute funds in the amount of \$2.40 per gross square foot of development of the Project and Future Phases towards the City's payment to the MBTA in connection with the extension of the MBTA Green Line to Union Square, and construction of the MBTA Station (the "GLX Contribution"). For purposes of calculating the GLX Contribution, the square footage of structured parking permitted as a required part of the Project and Future Phases shall be excluded. The fee per square foot of the GLX Contribution shall be adjusted annually by the change in CPI beginning on the date that is the earlier of: (i) the date on which US2's Coordinated Development Plan Special Permit (as defined in the USOD Zoning) is approved by the City's Planning Board for the Disposition Parcels and US2 has received a certificate from the Secretary of Energy & Environmental Affairs of the Commonwealth of Massachusetts evidencing the successful completion of the Massachusetts Environmental Policy Act process for the Project; or (ii) June 30, 2018 (the "CPI Adjustment Date"), until the date on which the first fifty percent (50%) of the GLX Contribution for the applicable building is due and payable as hereinafter described. Fifty percent (50%) of the GLX Contribution shall be due and payable when the Building Inspector issues the first building permit for each building that is part of the Project or the Future Phases and the remaining fifty percent (50%) shall be payable when the Building Inspector issues the certificate of occupancy for each such building. The portion of the GLX Contribution due upon the issuance of the building permit as described above shall be wired to the City in immediately available federal funds within fifteen (15) days after no appeal to such permit is filed, or if filed, is resolved to US2's satisfaction. If due to the termination or cancellation of the GLX Project the City receives any repayment or refund of any portion of the City GLX Contribution paid by the City, the City shall refund to US2 from such repayment or refund a corresponding proportional amount of the GLX Contributions made by US2 as of the date of such repayment or refund. By way of example, if the City is refunded \$5,000,000 of its \$50,000,000 City GLX Contribution due to termination or cancellation of the GLX, which

sum represents 10% of the total City GLX Contribution, US2 shall be refunded 10% of its total GLX Contribution made as of the date of such refund.

(b) Contribution Towards Offsite Infrastructure. Without in any way limiting US2's obligations under the MDDA, MLDA or any related land disposition agreement (whether executed by US2 or an affiliate) entered into with the SRA, US2 shall contribute funds in the amount of \$2.00 per gross square foot of development of the Project and Future Phases (the "Offsite Infrastructure Contribution") in order to defray the cost of certain offsite infrastructure improvements to be made by the City to support the Project and Future Phases. Such Offsite Infrastructure Contribution shall be in addition to, and not in substitution of, any payment required of US2 for Infiltration and Inflow ("I/I") mitigation. Said I/I mitigation may provide additional resources for resolving infrastructure challenges in Union Square, consistent with the City's I/I policy. For purposes of calculating the Offsite Infrastructure Contribution, the square footage of structured parking permitted as a required part of the Project or Future Phases shall be excluded. The fee per square foot of the Offsite Infrastructure Contribution shall be adjusted annually by the change in CPI beginning on the CPI Adjustment Date until the date on which the first fifty percent (50%) of the Offsite Infrastructure Contribution for the applicable building is due and payable as hereinafter described. Fifty percent (50%) of the Offsite Infrastructure Contribution shall be due and payable when the Building Inspector issues the building permit for each building that is part of the Project or the Future Phases and fifty percent (50%) shall be due and payable when the Building Inspector issues the certificate of occupancy for each such building. The portion of the Offsite Infrastructure Contribution due upon the issuance of a building permit as described above shall be wired to the City in immediately available federal funds within fifteen (15) days after no appeal to such permit is filed, or if filed, is resolved to US2's satisfaction. Notwithstanding the foregoing, the Offsite Infrastructure Contribution may be made in kind in whole or in part if US2 constructs necessary infrastructure or streetscape elements (which may include streetscape improvements within the area between the back of the street curb and the property line ("Streetscape Area") to support the Project or Future Phases); provided, however, that the cost of construction of such improvements shall be verified by an independent construction cost estimator agreed to by the parties, and provided further that the sum of the in kind contributions and monetary contributions shall, at minimum, equal the total Offsite Infrastructure Contribution otherwise due and payable for the Project or Future Phase. Notwithstanding the foregoing, the Offsite Infrastructure Contribution obligation for any part of the Project or Future Phase shall be deemed to have been met if all streetscape improvements set forth in the coordinated development plan applicable to such Streetscape Area in a Project, Future Phase or part thereof have been constructed in accordance with such plan to the satisfaction of the City. US2 may, at its election, opt to reimburse the City for the cost of necessary offsite infrastructure constructed by the City for the Project and Future Phases.

3. Community Benefits. Without in any way limiting US2's obligations under the MDDA, MLDA, or any related land disposition agreement (whether executed by US2 or an affiliate) entered into with the SRA, US2 shall contribute funds in the amount of \$1.60 per gross square foot of development of the Project and Future Phases (the "Community Benefits Contribution") in order to ensure that Union Square's revitalization and redevelopment can address additional community needs. For purposes of calculating the Community Benefits Contribution, the square footage of structured parking permitted as a required part of the

Project and Future Phases shall be excluded. The fee per square foot of the Community Benefits Contribution shall be adjusted annually by the change in CPI beginning on the CPI Adjustment Date until the date on which the Building Inspector issues the first building permit for such building. The Community Benefits Contribution shall be paid as follows:

(a) With respect to the first building that is part of the Project, one-third (33.3%) of the Community Benefits Contribution shall be deposited by US2 in escrow with the City within fifteen (15) days following the adoption of USOD Zoning by favorable vote of the City's Board of Aldermen pursuant to an escrow agreement between US2 and the City and shall be released from such escrow to the City when the Building Inspector issues the first building permit for such building; an additional one-third (33.3%) shall be payable when the Building Inspector issues the first building permit for such building; and the final one-third (33.4%) shall be payable when the Building Inspector issues the certificate of occupancy for such building.

(b) With respect to any other buildings that are part of the Project and Future Phases, fifty percent (50%) of the Community Benefits Contribution shall be due and payable when the Building Inspector issues the first building permit for the applicable building and fifty percent (50%) of the Community Benefits Contribution shall be payable when the Building Inspector issues the certificate of occupancy for each such Building.

The portion of the Community Benefits Contribution due upon the issuance of a building permit as described above shall be wired to the City in immediately available federal funds within fifteen (15) days after no appeal to such permit is filed, or if filed, is resolved to US2's satisfaction. Such Community Benefits Contribution shall be deposited into the stabilization fund to be created for community benefits developer payments, to be disbursed for purposes and in amounts determined by the Community Benefits Committee, as guided by the Neighborhood Council, as hereinafter defined, and approved by the Board of Aldermen. Such purposes may include, but not be limited to: (i) fostering the creation of new jobs in Somerville for Somerville residents; (ii) maintaining and promoting local businesses with a focus on minimizing displacement due to the development; (iii) creating multi-functional civic spaces, (iv) providing open technologies, connectivity, and policies to support a shared civic innovation platform, (v) improving quality of life by bolstering social capital and community resilience; and (vi) preventing displacement of low-income people in Union Square resulting from speculation and development.

4. Future Phase Contribution. Without in any way limiting US2's obligations under the MDDA, MLDA or any related land disposition agreement (whether executed by US2 or an affiliate) entered into with the SRA, US2 shall contribute funds in the amount of \$2.00 per gross square foot of development of a Future Phase (the "Future Phase Contribution"). The Future Phase Contribution shall be in addition to, and not in substitution of, any payment required of US2 for the GLX Contribution, Offsite Infrastructure Contribution, and/or Community Benefits Contribution required hereunder. The City, in its sole discretion, may allocate all or portions of each Future Phase Contribution to the City's required GLX contribution, infrastructure, or community benefits needs. For purposes of calculating the Future Phase Contribution, the square footage of structured parking permitted

as a required part of the Future Phase shall be excluded. The fee per square foot of the Future Phase Contribution shall be adjusted annually by the change in CPI beginning on the CPI Adjustment Date until the date on which the first fifty percent (50%) of the Future Phase Contribution for such building is due and payable as hereinafter described. Fifty percent (50%) of the Future Phase Contribution shall be due and payable when the Building Inspector issues the building permit for each building that is part of the applicable Future Phase and fifty percent (50%) shall be due and payable when the Building Inspector issues the certificate of occupancy for each such building. The portion of the Future Phase Contribution due upon the issuance of a building permit as described above shall be wired to the City in immediately available federal funds within fifteen (15) days after no appeal to such permit is filed, or if filed, is resolved to US2's satisfaction. The Future Phase Contribution may be offset by verified amounts previously paid by US2 to develop the Union Square Neighborhood Plan, and fund a local small business assistance program provided that the amount of such offset shall not exceed \$750,000.

5. Hiring of Somerville Residents and Veterans. When hiring workers for available positions for the various construction trades required to undertake the development and construction of the Project, US2 shall instruct its contractor and subcontractors to use best efforts to hire workers for those positions as follows: first, residents of the City of Somerville who are qualified to perform the work to which the employment relates; second, veterans as defined in M.G.L. c. 4, Section 7 et seq. who are qualified to perform the work to which the employment relates; and third, if workers cannot be obtained in sufficient numbers from the prior two categories, then to other qualified workers. US2 will work cooperatively with public service providers and community based organizations in support of workforce development efforts and local employment initiatives.

6. Jobs Linkage. As a commitment to the working residents of the greater Union Square Area community, US2 agrees to pay a jobs linkage fee of \$1.40 per gross square foot of commercial development for the Project, exclusive of the square footage of structured parking permitted as a required part of the Project, and such jobs linkage fee for the Project shall be payable contemporaneously with the payment of any housing linkage fee for the Project as set forth in the Somerville Zoning Ordinance. For Future Phases, US2 agrees to pay the jobs linkage fee at the rate and within the time frames established by any jobs linkage ordinance that is adopted by the City's Board of Aldermen (a "Jobs Linkage Ordinance"). If a Jobs Linkage Ordinance is enacted that would apply to the Project and would require payments in excess of \$1.40 per square foot for the Project, then upon payment thereof, US2 shall be entitled to a credit against the Future Phase Contribution otherwise due hereunder in the amount of such excess.

7. Community Benefits Agreement Negotiations. US2 agrees to negotiate in good faith a Community Benefits Agreement ("CBA") with the Union Square neighborhood council or interim council, when such council has been duly formed and recognized in accordance with the City's Community Benefits Committee ordinance to be promulgated by the City (the "Neighborhood Council"). The CBA shall set forth the agreements of the parties thereto on matters allowable under applicable law and not otherwise included in USOD Zoning or in this Covenant, which may include, but not be limited to: (i) fostering the creation of new jobs and local hiring programs in Somerville; (ii) maintaining and promoting local businesses with a

focus on minimizing displacement due to the development; (iii) creating multi-functional community spaces, (iv) providing open technologies, connectivity, and policies to support a shared civic innovation platform; (v) improving quality of life by bolstering social capital and community resilience; (vi) preventing displacement of low-income people in Union Square resulting from speculation and development; and (vii) such other matters as the parties may agree upon. The parties agree that if either US2 or the Neighborhood Council (by a majority vote of its membership) reasonably believes that the other party is not negotiating the CBA in good faith, then US2 or the Neighborhood Council, as applicable, may request, by written notice, ~~a meeting of to the Mayor, the president of US2 and the president of the Neighborhood Council to seek resolution of the disputed issues or impasse, which meeting shall be scheduled within fourteen (14) business days after such request. US2 and the City agree that if the City concludes that US2 has not negotiated in good faith as required by this Covenant, the City may immediately exercise the dispute provisions set forth in Section 12.~~ that a mediator be appointed to seek to resolve their dispute in a prompt manner. Within ten (10) days after receipt of such notice, the Mayor shall appoint a mediator reasonably acceptable to both parties.

8. Unencumbered Development Rights. US2 represents, warrants and covenants that the development rights provided in this Covenant are and will remain unencumbered, and shall ensure that any mortgagee of record shall subordinate the lien of its mortgage to any land disposition agreement relating to the Project or the Future Phases and this Covenant.

9. Notice to Mortgagees. If the City gives written notice to US2 of a default under this Covenant, the City simultaneously shall furnish a copy of such notice to each of the mortgagees of record of the Property or Future Phases of which the City has written notice. If US2 has received notice from the City of a default under this Covenant and such breach is not cured by US2 before the expiration of the cure period set forth in Section 8 hereof, the holders of record of mortgages and construction loan agreements on the Property or Future Phases may, but shall not be obligated to, cure any such breach upon giving written notice of their intention to do so to the City within thirty (30) days after such holder receives such notice of breach, and shall thereupon proceed with diligence to continuously cure such breach.

10. Challenges to USOD Zoning. If a lawsuit is filed by a third party challenging the USOD Zoning, the City shall defend any such appeal, and the City shall oppose such lawsuit. US2 shall have the right to join the City in defending and opposing the same and pursuing a prompt judicial determination with respect to such a challenge to the USOD Zoning. As long as US2 remains the SRA's Master Developer, US2 agrees to share in the City's costs of defending any third party challenge to the USOD Zoning.

11. Default/Cure. With respect to US2's obligations hereunder, US2 shall have (a) ten (10) business days to cure any monetary default hereunder following receipt of written notice from the City; and (b) thirty (30) days to cure any non-monetary default following receipt of written notice from the City, provided that if the default is of such a nature that it cannot be cured with thirty (30) days, US2 shall not be in default if it has commenced to cure such default hereunder within said thirty (30) day period and diligently and continuously prosecutes such cure to completion, not to exceed ninety (90) days in the aggregate. A default under this Covenant relating to the Project or Future Phases beyond any applicable cure

periods shall be considered an event of default under the MDDA, MLDA, and any land disposition agreement applicable to the portion of the Project or Future Phases with respect to which such default has occurred. No default hereunder with respect to a particular portion of the Project or Future Phase shall constitute a default with respect to any other portion of the Project or Future Phase, except as otherwise provided in the MLDA.

12. Disputes. If a dispute arises concerning the performance of either party hereunder, prior to resorting to court, the parties first shall provide notice to the other and shall meet and work in good faith either directly or with the assistance of a mutually-agreed third party to attempt to resolve their dispute in a prompt manner. If the dispute has not been resolved as aforesaid within ninety (90) days of its inception, either party shall be free to seek a judicial remedy.

13. Notices. Any notice 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 delivery services; or (c) by hand delivery on the day of actual receipt, to the parties at the addresses set forth below:

The City: Somerville City Hall
93 Highland Avenue
Somerville, MA 02143
Attention: Mayor

and to: Somerville City Hall
93 Highland Avenue
Somerville, MA 02143
Attention: City Solicitor

US2: Union Square Station Associates LLC
31 Union Square
Somerville, MA 02143
Attention: Greg Karczewski

and to: Union Square Station Associates LLC
225 N. Columbus Drive, Suite 100
Chicago, IL 60601
Attention: Richard Stein and James Loewenberg

and to: DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, MA 02110
Attention: John E. Rattigan, Jr., Esq.

Any address or name specified above may be changed by notice given to the addressee by the other party in accordance with this Section 13. The inability to deliver notice because of a changed address of which no notice was given as provided above, or because of rejection

or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by counsel for such party.

14. Certificates. Upon twenty (20) days written request from one party, the other party shall execute a certificate in form appropriate for recording with the Middlesex South Registry of Deeds and filing with the Middlesex South Registry District of the Land Court, as applicable, addressed to such requesting party and/or its lender, title insurance company, prospective purchaser, tenant or other interested party, confirming that this Covenant is in full force and effect (or, if not, that this Covenant has terminated), attaching a complete copy thereof, and certifying that the requesting party is in compliance with its obligations hereunder or, if not, specifying the respects in which the requesting party is not in compliance or that this Covenant has terminated, if applicable. Nothing in this Section 14 shall be deemed to give US2 the unilateral right to amend or terminate this Covenant. Any amendment or termination of this Covenant shall require the execution of an instrument by the City.

15. Successors and Assigns. The provisions of this Covenant shall run with the Property and Future Phases and shall inure to the benefit of and be binding upon US2 and the City, and their respective successors and assigns. All references to US2 shall include its successors and assigns. This Covenant shall not bind or affect the independent powers of any official, authority, agency or board of the City including, without limitation, the Mayor, the Board of Aldermen, the SRA, the Planning Board, the Board of Appeals, the Historic Commission, the Conservation Commission and/or the Building Inspector.

16. Representations, Warranties and Covenants. US2 hereby represents, warrants, covenants and acknowledges to the City that (A) US2 is a Delaware limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware; (B) this Covenant constitutes a valid and legally binding obligation of US2, enforceable against US2 in accordance with its terms; (C) neither the execution, delivery or performance of this Covenant nor compliance herewith conflicts with or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (a) the charter documents or operating agreement of US2, (b) any law or any order, writ, injunction or decree of any court or governmental authority applicable to US2 or (c) any agreement or instrument to which US2 is a party by which it is bound; and (D) no authorization, consent, or approval of any governmental authority (including courts) is required for the execution and delivery by US2 of this Covenant or the performance of its obligations hereunder.

17. Time of the Essence. All times set forth herein shall be of the essence.

18. USOD Zoning. This Covenant is contingent upon the adoption, without material changes by favorable vote of the City's Board of Aldermen by June 8, 2017 (the "USOD Adoption Outside Date") of the USOD Zoning in the folio attached hereto as Exhibit B including amendments or supplements with modifications substantially similar to those recommended by the City's Director of Planning & Zoning as set forth in Exhibit C and Exhibit D. If changes are made to Exhibit B other than those substantially similar to those modifications outlined in Exhibit C or Exhibit D prior to the Board vote and US2 determines that such changes do not materially interfere with its plans for the Property, then, at the City's

request, US2 shall execute and deliver a certificate to the City stating such fact prior to the vote by the Board of Aldermen. If the Board has not so voted by the USOD Adoption Outside Date, either party may terminate this Covenant by written notice to the other. Nothing herein shall be deemed to create an obligation on the part of the City or the Somerville Board of Aldermen to adopt the USOD Zoning or any other zoning or general ordinance or amendment thereto.

19. No Limitation on City's Authority. Nothing contained in this Covenant shall in any way negate, limit or restrict the SRA's or the City's jurisdiction and authority over this Project or Future Phases, including, without limitation, jurisdiction under applicable provisions of the Somerville Zoning Ordinance, the MDDA, MLDA or any land disposition agreement relating to the Project or the Future Phases.

20. Effectiveness and Duration. The obligations of US2 under this Covenant shall become effective upon the date that is the later to occur of (i) the adoption of the USOD Zoning in accordance with Section 18 above or (ii) the full execution of the MLDA. Except as provided in this Section 20 or otherwise in this Covenant, this Covenant shall be enforceable for the maximum period permitted by applicable law.

(a) If a third party timely commences legal proceedings claiming invalidity of the USOD Zoning and as a result of such proceeding the USOD Zoning is finally adjudicated to be invalid by decision of a court of competent jurisdiction (and all appeal periods with respect to such decision have lapsed), then either party may terminate this Covenant upon ten (10) days' prior written notice to the other.

(b) Upon the full performance by US2 of all of its obligations hereunder, the City shall, at US2's request, deliver to US2 a statement in a form appropriate for recording with the Middlesex South Registry of Deeds and filing with the Middlesex South Registry District of the Land Court, as applicable, stating that all of the terms of this Covenant have been satisfied and that this Covenant is of no further force and effect.

21. Force Majeure. The performance of US2's obligations hereunder and the timeframes applicable to US2 hereunder shall be tolled during the continuance of any event of force majeure. As used herein, force majeure shall mean any cause beyond US2's reasonable control including, without limitation, (a) permitting and regulatory delays caused by public authority or third parties, (b) litigation or administrative appeals, (c) strikes or labor shortages, (d) shortages of materials not reasonably foreseeable, (e) adverse weather conditions, (f) fire or other casualty, or (g) other like cause; provided, however, that changes in market conditions and the availability of financing shall not be deemed force majeure for purposes hereof and provided further that such event actually must have caused the delay.

22. Termination. In the event that this Covenant is subsequently terminated in accordance with its terms, US2, and the City each agree, promptly upon the request of the other, to execute a Termination of this Covenant in such form as may be necessary for its

recording with the Middlesex South Registry of Deeds and its filing with the Middlesex South Registry District of the Land Court, as applicable

23. Counterparts. This Covenant may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Covenant, binding upon the parties hereto, notwithstanding that all of the parties may not be signatories to the same counterpart.

24. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

25. Other Projects. The City agrees that this Covenant and the contributions expected to be paid hereunder are intended to be applied fairly to all development projects in the Neighborhood Plan Area, so that all such projects are contributing similarly toward the City GLX Contribution, infrastructure improvements and other community benefits contemplated hereunder. As part of reviewing any application for a Coordinated Development Plan Special Permit under the USOD Zoning, the City agrees that its Director of Planning & Zoning will recommend to the Planning Board the inclusion of the following language as a condition to the Coordinated Development Plan Special Permit in satisfaction of the requirements of Section 6.7.5.C.6.c of the USOD Zoning:

The issuance of a building permit for any development project permitted pursuant to this Coordinated Development Plan Special Permit shall be conditioned upon a letter of certification by the Director of Planning and Zoning to the Superintendent of Inspectional Services stating that (i) the applicant is a party to or otherwise subject to that certain Development Covenant between Union Square Station Associates LLC and the City of Somerville dated _____, as amended, and (ii) the applicant is proceeding in accordance and in compliance with all provisions of such Development Covenant applicable to the development project for which a permit is being requested.

26. Definition of CPI. As used in this Covenant, “CPI” means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, Boston-Brockton-Nashua, MA-NH-ME-CT, All Items (1982-84 = 100), or any successor index thereto, appropriately adjusted and most recently published as of the date of any determination hereunder. In the event that the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of adjustments provided for herein shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or any other nationally recognized publisher of similar statistical information. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other index as the City and US2 shall agree upon in writing shall be substituted for the Consumer Price Index.

27. Development Phasing. Notwithstanding anything to the contrary in the MLDA or this Covenant, and subject to the MLDA, US2 hereby agrees and covenants to the following additional requirements: neither US2 nor any Parcel Developer (as defined in the MLDA) will commence construction of any residential buildings on any Disposition Parcel except (i) the Project and (ii) the Warren Block (as defined in the MLDA) if the Warren Block (or a portion thereof) will provide a portion of the affordable housing component of the Project, until after US2 or a Parcel Developer has completed construction of the office/lab phase of the Project and commenced construction on another commercial building on another Disposition Parcel that is not a parcel described on Schedule 1 to the MLDA as “Parcel “NEW” – 35 Prospect Street,” “Parcel S - 237 Washington Street,” “Parcel BB - 231 Washington Street,” and “Parcel H – 49-51 Allen Street.” Each Parcel Developer shall agree and covenant to diligently and continuously prosecute all of its construction contemplated herein.

28. Neighborhood Park and Civic Space.

(a) Following completion of the Neighborhood Park required by Section 6.7.6.A.1.a of the USOD Zoning, US2 shall convey in fee said Neighborhood Park (together with all improvements thereon and an assignment of all construction and equipment warranties, to the extent assignable) to the City at no cost to the City. From and after the date of such conveyance, the City shall have full ownership of and responsibility for the Neighborhood Park, including without limitation responsibility for repairs and maintenance thereof.

(b) Following completion of all development proposed for Parcels D1 and D2 and the Civic Spaces to be provided on said parcels pursuant to the USOD Zoning, US2 shall convey such Civic Spaces (together with all improvements thereon and an assignment of all construction and equipment warranties, to the extent assignable) in fee to the City at no cost to the City subject to reserved easements for the following purposes on such terms and conditions to be mutually agreed upon by the parties in writing: (1) maintenance and repair by US2 or its designee of such Civic Spaces, (2) control by US2 or its designee over programming within such Civic Spaces, subject to receipt of any applicable licenses or permits, and (3) provision of seating and outdoor space accessory to adjacent retail uses as determined by US2 or its designee, subject to receipt of any applicable licenses or permits.

29. City Requirements. If after the date of the Coordinated Development Plan Special Permit, the City Requirements applicable to any portion of the Project or Future Phase result in ~~an~~ a material increase in costs as compared to the City Requirements in effect on the date of the CDSP (an “Increased Obligation”), then the parties agree to negotiate an amendment to this covenant to reduce the amounts of other contributions remaining to be paid by US2 under this Covenant or, if applicable, to reduce the purchase price of any City-owned Disposition Parcels, to account for the Increased Obligation. “City Requirements” means the provisions of those articles and sections of the Somerville Zoning Ordinance referenced in Sections 6.7.5.C.7(a) and (b) of the USOD Zoning applicable to the Project and Future Phases (or in each case, any provisions enacted as a substitution thereof). Any amendments negotiated by the parties pursuant to this paragraph 29 shall not be deemed a material change and shall not be subject to the requirements of paragraph 30.

30. Amendment. Except as otherwise provided herein, any material changes to the terms and conditions of this Covenant shall be set forth in writing and shall not be binding upon the parties until it has been approved by vote of the Board of Aldermen, and executed by the Mayor.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, US2 and the City have executed this Covenant under seal as of the day and year first above written.

CITY:

CITY OF SOMERVILLE

By: _____
Joseph A. Curtatone, Mayor

Approved as to form:

By: _____
Francis X. Wright, Jr., City Solicitor

COMMONWEALTH OF MASSACHUSETTS
Middlesex, ss.

On this ___ day of _____, 2017, before me personally appeared the above-named Joseph A. Curtatone, 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:

US2:

**UNION SQUARE STATION
ASSOCIATES LLC**

By: _____
Name: Gregory M. Karczewski
Title: President

COMMONWEALTH OF MASSACHUSETTS
Suffolk, ss.

On this ___ day of _____, 2017, before me personally appeared the above-named Gregory M. Karczewski, the President of Union Square Station Associates 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:

EXHIBIT A

PROPERTY DESCRIPTION

Block D-2 (D-2 Block)	
Parcel G – 42 Prospect Street	This parcel is currently owned by the City of Somerville pursuant to eminent domain Taking in fee simple for layout of State Highway dated February 11, 1981 and recorded with the Registry in Book 14224, Page 180.
Parcel J – Vacant Lot at corner of Somerville Ave & Prospect Street	The City of Somerville has owned this parcel since at least 1874. NOTE: According to recorded plans and atlases, the examiner is unable to determine how the City acquired title.
Parcel A – 4 Milk Place	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to Order of Taking in fee simple by eminent domain for Urban Renewal Plan dated May 29, 2013 and recorded with the Registry in Book 61890, Page 47.
Parcel B – 20-22 Prospect Street	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to a Deed dated February 28, 2002 and recorded with the Registry in Book 34934, Page 102.
Parcel C – 26 Prospect Street	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to Order of Taking in fee simple by eminent domain for Urban Renewal Plan dated May 29, 2013 and recorded with the Registry in Book 61890, Page 47.
Parcel D – 27 Bennett Street	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to Order of Taking in fee simple by eminent domain for Urban Renewal Plan dated May 29, 2013 and recorded with the Registry in Book 61890, Page 47.
Parcel E – 30 Prospect Street	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to Order of Taking in fee simple by eminent domain for Urban Renewal Plan dated May 29, 2013 and recorded with the Registry in Book 61890, Page 47.
Parcel F – 40-44 Bennett Street	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to Order of Taking in fee simple by eminent domain for Urban Renewal Plan dated May 29, 2013 and recorded with the Registry in Book 61890, Page 47.
Parcel H – 49-51 Allen Street	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to Order of Taking in fee simple by eminent domain for Urban Renewal Plan dated May 29, 2013 and recorded with the Registry in Book 61890, Page 47.
Parcel I – 258 Somerville	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to a Deed dated May 3, 2012 and recorded with the

Avenue	Registry in Book 59656, Page 226.
Parcel EE – 50 Prospect Street	This parcel is currently owned by the Somerville Redevelopment Authority pursuant to Order of Taking in fee simple by eminent domain for Urban Renewal Plan dated May 29, 2013 and recorded with the Registry in Book 61890, Page 47.

EXHIBIT B
USOD ZONING
[ATTACHED]

EXHIBIT C

RECOMMENDATIONS OF CITY DIRECTOR OF PLANNING & ZONING

The covenant is based upon the expectation of approval of the proposed Union Square zoning ordinance, as introduced at the March 7, 2017 public hearing, subject to the following:

1. Increase open space requirements with revisions as follows:
 - At full build out of development subject to a Coordinated Development Plan Special Permit (CDSP), at least twenty-five percent (25%) of the land area of a development site, excluding alleys and land occupied by the MBTA's Union Square Green Line Station, must be improved as follows:
 - At least seventy percent (70%) must be provided in the form of two or more civic spaces of differing types, sizes, and locations; including at least one (1) neighborhood park and one (1) plaza.
 - Up to thirty percent (30%) may be provided in the form of public realm improvements within the land area of the Union Square Overlay District boundaries.
 - To offset the impact on planned development from increasing the above percentage from previous zoning proposals, the maximum height limit of the Mid-Rise Podium Tower building type (excluding any bonus stories for affordable 3-bedroom units) is increased to twenty-four (24) stories.
2. Clarify how a "hypothetical" lot line works such that a building that crosses a hypothetical lot line, as already defined in the zoning, can be reviewed for building code as necessary, while still ensuring each building is reviewed and designed as two buildings for zoning purposes. To address this issue, buildings on either side of a hypothetical lot line will have:
 - Separate principal entrances with separate addresses for each building.
 - Separate lobbies with separate mailboxes for upper story residential uses.
 - Separate stairwells and means of circulation for upper story uses (although access requirements only need to be met for the combined structure)
 - Hallways on either side may align and connect, subject to any fire or building code requirements.
 - No commercial spaces, dwelling units (including balconies), rooming units, or rooms, that cross the hypothetical lot line.
 - For structured parking, parking spaces and drive aisles may cross the hypothetical lot line and ramps/separate means of vehicular access are not required on both sides.
3. Establish a use exemption for the General Building type as follows: Any General Building on a corner lot in the Mid-Rise 4 or Mid-Rise 5 districts may be designed according to the standards of the Apartment Building type along the secondary frontage in the following circumstances:
 - The corner lot has a secondary front lot line over one hundred and fifty (150) feet in width; and

- The building has ground story commercial space along the primary frontage and for at least the first sixty (60) feet of the secondary frontage, measured from the intersection of the front lot lines.
4. Add the following: “The Planning Board shall establish in its Decision criteria and procedures for applicants to provide support for infrastructure, community impact mitigation and the extension of the MBTA’s Green Line.”
 5. Add the following: “The Planning Board may approve a Coordinated Development Plan Special Permit only upon making a finding that the provisions of 6.7.6 have been met.”
 6. Allow access for loading / parking for D6 (off a frontage that is not on Somerville Avenue).
 7. Remove remaining references to ‘pedestrian circulation space’ from building form standards.
 8. Remove the statement about ‘14 additional floors’ from the point tower height standard.
 9. Add “Floor Plate” to 6.7.10.A.5.a (thereby allowing up to 5% additional floor area to a point tower by Special Permit).
 10. Replace “subject to any height restrictions found elsewhere in this Section” with “subject to the contextual massing and design requirements of 6.7.10.G.1”.
 11. Clarify the boundary of the overlay district with a map that is inclusive of all of the land currently shown on the “Underlying Zoning District Changes” map (which are inclusive of all the lots in the overlay as well as all the adjacent right of ways).
 12. Correct the incomplete sentence in 6.7.10.A.2.

EXHIBIT D

SUPPLEMENTAL ZONING PROVISIONS

Exhibit D: Zoning Edits to Address Vested Rights and Future Zoning Amendments

5.8.1 C:

Remove the current purpose statement for CDSP and replace with this:

- A. To allow for the review of a multi-lot development proposal that:
 1. establishes general development phasing parameters;
 2. provides analysis of impacts related to the build out of all phases; and
 3. identifies subsequent development review necessary as multi-phased development proceeds across the various lots.
- B. To allow for the submittal of a plan illustrating a vision for future development across multiple sites, without requiring detailed site plans or architectural and engineering drawings for thoroughfares, civic spaces, and buildings that can be approved separately, at a later date, in subsequent Design & Site Plan Review applications as project phases and individual lots are built out.
- C. To authorize applicants subject to an approved CDSP to move forward with subsequent development review required elsewhere in this Ordinance.

Add 6.7.5.C.7 (renumber subsequent sections):

7. Vested Rights
 - a. Amendments to the Somerville Zoning Ordinance are not applicable to development subject to a previously approved Coordinated Development Plan Special Permit, except for the following:
 - i. Article 13: Inclusionary Housing
 - ii. Article 15: Linkage
 - iii. Outdoor lighting/dark sky regulations
 - b. Amendments to Section 6.7 Union Square Overlay District are not applicable to development subject to a previously approved Coordinated Development Special Permit, except for the following:
 - i. Section 6.7.14 Mobility Management
 - ii. ~~Sustainability provisions for buildings including §6.7.10.G.4 Environmental Performance and §6.7.10.G.5 Green Buildings~~
 - iii. Section 6.7.10.I.. Sustainable development

Amend 6.7.5.D.4.b and 6.7.5.D.6.a.i.(a):

Limit language permitting residential SP granted at the same time as CDSP to projects to be built in early phase (D2 and D7 residential only, based upon limits on pursuing other residential at this time):

The following Special Permits required elsewhere in this Section may be simultaneously requested as part of a Coordinated Development Special Permit application:

- Payment in lieu of Civic Space (§6.7.6.A.3)
- The siting and orientation of Civic Spaces (§6.7.9.B.2)
- The size of a proposed Dog Park (§6.7.9.B.1)
- Residential principal uses (§6.7.11.A.1)

Amend 6.7.6.D.3:

Remove language that vests rights in inclusionary housing and linkage that becomes unnecessary due to changes above:

Except as noted in §6.7.6.C and §6.7.6.D and subject to §6.7.5.C.7, development subject to an approved Coordinated Development Special Permit must comply with the provisions of Article 13: Inclusionary Housing and Article 15: Linkage. ~~in effect as of the date of the approved COORDINATED DEVELOPMENT PLAN.~~

Summary report: Litéra® Change-Pro TDC 7.5.0.155 Document comparison done on 6/7/2017 7:10:12 PM	
Style name: DLAPiper	
Intelligent Table Comparison: Active	
Original DMS: iw://EASTDMS/EAST/136606395/18	
Modified DMS: iw://EASTDMS/EAST/136606395/21	
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<u>Add</u>	16
Delete	9
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	25