

## EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and among FRANK A. INFELISE AND DORA C.C. WANG, Trustees of the 65 WINTER STREET NOMINEE TRUST under Declaration of Trust dated October 26, 2018 and recorded with the Middlesex South Registry of Deeds (the "Registry") at Book 71909, Page 346 (the "Owner"), and the TOWN OF LEXINGTON, acting by and through its Select Board, a Massachusetts municipal corporation, having an address of 1625 Massachusetts Avenue, Lexington, Massachusetts 02420 (the "Town").

WHEREAS, this Agreement is entered into based on the authority granted by two-thirds vote taken under Article 12 of the 2024 Annual Town Meeting, a certified copy of which vote is recorded herewith;

WHEREAS, pursuant to that certain Quitclaim Deed dated October 26, 2018 and recorded with the Registry at Book 71909, Page 353, the Owner is the fee simple owner of that parcel of land in Lexington, Middlesex County, Massachusetts known and numbered as 65 Winter Street, identified as "Lot 1" on that certain plan entitled "Plan of Land in Lexington, Mass. Owned by Iodice, Joseph W. Moore, Inc., Reg. Land Surveyor, Bedford, Mass." dated March 26, 1963 and recorded with the Registry as Plan Number 1003 of 1963 in Book 10309, Page 339 (the "Property");

WHEREAS, the Town desires to acquire from the Owner, and the Owner has agreed to grant to the Town, for the construction, installation, operation, and maintenance of a storm sewer, certain new easements in, over, across, upon, and under certain portions of the Property shown as "10' Construction Easement" (the "Temporary Easement Area") and "20' Sewer Easement" (the "Permanent Easement Area," and together with the Temporary Easement Area, the "Easement Area") on a plan entitled "Plan of Sewer Easement from Bedford Street to Winter Street Lexington, Mass." dated August 4, 1966, prepared by John J. Carroll, Town Engineer, and recorded with the Registry as Plan 382 of 1967, Sheet F of 6 (the "Plan"), pursuant to the terms and conditions of this Agreement.

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

1. Grant of Permanent Easement. The Owner hereby grants to the Town a perpetual, non-exclusive right and easement (the "Permanent Easement") to construct, reconstruct, install,

repair, maintain, operate, use, inspect, and patrol, a storm sewer and all associated lines, connections, and all other equipment and appurtenances, (any of which may be erected and/or constructed at the same or different times) (collectively, the "Facilities"), as may be reasonably necessary for the convenient construction, reconstruction, installation, repair, maintenance, operation, use, inspection and patrolling of the Facilities over, under, through, across, within, and upon the Permanent Easement Area. In addition, the Owner grants the following rights and easements to the Town in connection with the Permanent Easement:

- a. The right and easement from time to time, without further payment therefor, to clear and keep cleared by physical, chemical or other means, the Permanent Easement Area of trees, underbrush, and above and below ground buildings or structures (the first clearing may be for less than the full width and may be widened from time to time to the full width);
- b. The right and easement to renew, replace, add to, and otherwise change the Facilities and each and every part thereof and all appurtenances thereto and the locations thereof within the Permanent Easement Area;
- c. The right and easement to pass and repass on foot and with vehicles and equipment along the Permanent Easement Area and over the Property as reasonably required;
- d. The right to excavate, remove soils from, fill and/or change the grade of the Permanent Easement Area as is reasonable, necessary, and proper in connection with the exercise of the rights and easements taken herein; and
- e. Any and all additional and/or incidental rights needed to construct, reconstruct, install, repair, maintain, operate, use, inspect, patrol, renew, replace, add to, and otherwise change the Facilities, for the purposes of this Agreement, over, under, through, across, within, and upon the Permanent Easement Area.

2. Grant of Temporary Easement. In addition to the Permanent Easement, the Owner hereby grants to the Town a non-exclusive temporary easement (the "Temporary Easement") over, under, through, across, within, and upon the Temporary Easement Area for the purpose of the initial construction of the Facilities in the Permanent Easement Area (the "Construction"). The Temporary Easement shall include the right of the Town and its employees, contractors, licensees, and invitees to enter into the Temporary Easement Area and do all things reasonably necessary or convenient to perform and complete the Construction, including, without limitation, accessing the Easement Area on foot and by vehicle over and through the Temporary Easement Area, and storing of construction trailers, equipment, and material in the Temporary Easement Area in connection with and for the purpose of the Construction. Without further action of the parties to effect termination, the Temporary Easement shall automatically expire upon the earlier of: (a) the Town's completion of the Construction; and (b) June 1, 2025. At the termination of the Temporary Easement, the Town shall remove all of its property from the Temporary Easement Area and restore such area to substantially the condition which existed prior to the Town's use thereof.

3. Prohibited Uses. No acts are permitted within the Easement Area which are inconsistent with the rights and easements hereby conveyed. This Agreement is not intended to prohibit the use of the Easement Area by the Owner and the Owner's employees, licensees, and invitees, provided that such use does not unreasonably interfere with or prohibit the full and reasonable use and enjoyment by the Town of the rights and easements hereby conveyed. The Owner hereby agrees not to grant any other easements, leases, deeds, licensees or any other rights to the Easement Area that will interfere with the Town's rights under this Agreement without the prior written consent of the Town, which consent may be withheld or granted in the Town's sole and absolute discretion.

4. Personal Property; Maintenance and Repair. The Owner agrees for itself and its successors and assigns that the Facilities shall be and remain the personal property and responsibility of the Town, and that the Facilities may not be altered, obstructed, or removed without the express written consent of the Town. The Town shall perform all work, if any, in connection with the maintenance, repair and use of the Facilities at the Town's sole cost and expense. All of said work shall be performed in a good workmanlike manner in compliance with all applicable laws, regulations, codes, bylaws and ordinances.

5. No Relocation. The Owner shall not be entitled to relocate the Permanent Easement Area without the express prior written consent of the Town, which consent may be withheld in the Town's sole and absolute discretion.

6. Additional Provisions.

- a. The rights and easements described herein constitute an easement in gross for the benefit of the Town, its successors and assigns, and these provisions shall run with the land and shall inure to the benefit of and bind the respective legal representatives, successors and assigns of the Owner and others holding rights in the Property and the Town.
- b. The Town shall pay all contractors and/or laborers performing work or providing materials for the Easement Area so as not to cause or permit any liens, including without limitation mechanics' or materialmen's liens, to be recorded against the Property.
- c. In exercising its rights hereunder, the Town shall use reasonable efforts to minimize any interference with the Owner's use of the Property and the Easement Area, and shall promptly repair any damage to the Property caused by the Town's exercise of its rights hereunder. The Town hereby agrees to properly maintain and keep in good order and repair the Facilities. The Owner shall not unreasonably interfere with the Town's use of the Easement Area for the purposes described herein.
- d. The parties hereby agree that the parties may apply to any court, state or federal, for specific performance of this Agreement, or an injunction against any violation of this Agreement, or for such other relief as may be appropriate, since the amount of


damages arising from the default under any terms of this Agreement would be difficult to ascertain and may not be compensable by money alone


- e. The Owner warrants and represents that the person executing this Agreement has authority to do so, and that there are no mortgages or encumbrances of record or otherwise on the Property that will negate or negatively impact this Agreement.
- f. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The terms, provisions and agreements herein contained may be amended only by a duly executed instrument in writing thereafter filed in the Registry. If any term or provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. This Agreement may be executed in one or more counterparts, each of which shall constitute a part of the same instrument. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification only and shall not be deemed to limit, expand or define the contents of the respective sections or paragraphs.
- g. No Massachusetts Deed Excise Stamps have been affixed hereto as the Town is a municipality and none are required by law.

*[Signatures on following pages]*

EXECUTED under seal as of this 14<sup>th</sup> day of June, 2024.

65 WINTER STREET NOMINEE TRUST


  
Frank A. Infelise, not individually but as  
Trustee of the 65 Winter Street Nominee  
Trust

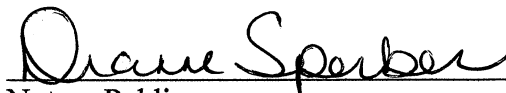
  
Dora C.C. Wang, not individually but as  
Trustee of the 65 Winter Street Nominee  
Trust

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this 14<sup>th</sup> day of June, 2024, before me, the undersigned Notary Public, personally appeared Frank A. Infelise and Dora C.C. Wang, not individually but as Trustees of 65 Winter Street Nominee Trust, proved to me through satisfactory evidence of identification, which was MASS. Drivers Licenses, to be the persons whose names are signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose, as Trustees as aforesaid.

 **DIANNE E. SPERBER**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
December 1, 2028

  
Notary Public  
My Commission Expires: December 1, 2028

ACCEPTANCE AND AGREEMENT  
TOWN OF LEXINGTON

We, the undersigned, being a majority of the Select Board of the Town of Lexington, hereby certify that at a meeting duly held on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, the Select Board voted to accept the foregoing Easement Agreement.

TOWN OF LEXINGTON

By its Select Board

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, members of the Select Board for the Town of Lexington, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: