



April 21, 2020

**VIA EMAIL**

Nicholas M. Ward-Willis, Esq.  
Keane & Beane, P.C.  
445 Hamilton Avenue  
White Plains, New York 10601

Re: West End Lofts Apartments Pedestrian Easement

Dear Nick:

I am writing to request that the City of Beacon join our clients, West End Lofts Housing Development Fund Company, Inc., West End Lofts Limited Partnership and The Kearney Realty & Development Group Inc., in executing and recording an amendment to the Pedestrian Walkway Easement and Maintenance Agreement entered into among the City of Beacon and our clients and recorded in the Dutchess County Clerk's Office as Document #02-2018-2648, a copy of which is attached hereto for your convenience (the "Easement").

An amendment to the Easement is required to correct the location of the pedestrian walkway, as constructed. As the drawings that are attached to this letter show, our client found it necessary to extend the length of the pedestrian walkway on the West End Lofts site in order to line the walkway up with the walkway that was constructed on the adjoining property of DMS Consolidators (the walkway on the DMS property was not constructed within the original planned easement area).

The amendment we are preparing will only amend the location of the City's easement as described in the schedules to the Easement. The body of the Easement will remain unchanged. We will provide you with a draft of the amendment as soon as the surveyor has prepared the revised metes and bounds easement description. We expect to receive the description later this week.

Thank you for your assistance with this matter, and please contact me if you or your client have any questions.

Very truly yours,

Cannon Heyman & Weiss, LLP

Melissa M. Beskid

Attachments

CC: Kenneth Kearney  
Sean Kearney



Dutchess County Clerk Recording Page

Record & Return To:

Date Recorded: 4/11/2018  
Time Recorded: 2:30 PM

CANNON HEYMAN & WEISS LLP  
54 STATE ST  
5TH FL  
ALBANY, NY 12207

Document #: 02 2018 2648

Received From: ALL NEW YORK TITLE AGENCY INC

Grantor: WEST END LOFTS HOUSING DEVELOPMENT FUND CO  
INC  
Grantee: BEACON CITY

Recorded In: Deed Tax District: City of Beacon  
Instrument Type: EASE

Examined and Charged As Follows :

Recording Charge: \$100.00  
Transfer Tax Amount: \$0.00  
Includes Mansion Tax: \$0.00  
Transfer Tax Number: 5628

Number of Pages: 11

\*\*\* Do Not Detach This Page  
\*\*\* This is Not A Bill

Red Hook Transfer Tax:

RP5217: N  
TP-584: Y

County Clerk By: cba  
Receipt #: 12115  
Batch Record: 134

Bradford Kendall  
County Clerk



0220182648

EASE 10. CIB 100 95 5 100

**PEDESTRIAN WALKWAY EASEMENT AND MAINTENANCE AGREEMENT**

**THIS PEDESTRIAN WALKWAY EASEMENT AND MAINTENANCE AGREEMENT** (the "Agreement") is made as of the 28<sup>th</sup> day of March, 2018, by and among **WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.**, a not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having an address c/o Hudson River Housing, Inc., 313 Mill Street, Poughkeepsie, New York 12601 (the "HDFC"), **WEST END LOFTS LIMITED PARTNERSHIP**, a New York limited partnership having an address c/o The Kearney Realty & Development Group Inc., 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the "Partnership" and together with the HDFC and their respective successors and assigns, the "Lot 1 Owner"), **THE KEARNEY REALTY & DEVELOPMENT GROUP INC.**, a New York corporation having an address at 34 Clayton Boulevard, Suite A, Baldwin Place, New York 10505 (the "Lot 2 Owner" and together with the Lot 1 Owner and their respective successors and assigns, the "Grantor"), and the **CITY OF BEACON**, a municipal corporation, having its principal office located at 1 Municipal Plaza, Beacon, New York 12508 (the "Grantee" or the "City"). Grantor and Grantee may individually be referred to herein as a "party" and collectively, as the "parties".

**WITNESSETH:**

**WHEREAS**, the Lot 1 Owner is the record and beneficial owner of a +/-1.929 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, shown and designated as "Proposed Lot 1" ("Lot 1") on a certain subdivision map prepared by Insite Engineering, Surveying & Landscape Architecture, P.C. entitled "West End Lofts", filed in the Office of the Dutchess County Clerk on March 27, 2018, as Filed Map No. 9899A (the "Subdivision Map), and more particularly described on Schedule "A" attached hereto, upon which it intends to construct a seventy-three (73) unit affordable housing project (the "Affordable Project"); and

**WHEREAS**, the Lot 2 Owner is the fee owner of a +/-1.162 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, shown and designated as "Proposed Lot 2" on the Subdivision Map and more particularly described on Schedule "B" attached hereto ("Lot 2" and together with Lot 1, the "Premises"), upon which it intends to construct a twenty-five (25) unit market rate housing project (together with the Affordable Project, the "Apartment Complex"); and

**WHEREAS**, Grantor wishes to grant to Grantee, and Grantee wishes to accept, an easement and right-of-way for pedestrian ingress and egress only on, over, across and through the portion of the Premises depicted on the map attached hereto as Schedule "C-1" and described on Schedule "C-2", including the proposed improvements shown thereon (the "Easement Area"); notwithstanding the foregoing, the parties hereto understand and agree that the metes and bounds description attached as Schedule "C-2" hereto reflects the best estimate of the surveyor at the time of this Agreement, and an amendment to this Agreement replacing Schedule "C-2" with an updated metes and bounds description based on the as-built survey of the Premises will be filed following the completion of construction;

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and in further consideration of the mutual covenants contained herein, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Grant of Easement. The Grantor hereby grants and releases unto the Grantee a public easement and right of way, for the people of the City of Beacon, its visitors, employees and the general public, for the limited purposes of pedestrian ingress and egress only on, over, across and through the Easement Area (the "Easement"). The pedestrian walkway shall be illuminated by lighting fixtures and equipment to be designated by the Building Inspector after consultation with the Grantor whose consent shall not be unreasonably withheld if the means of illumination do not adversely impact the Apartment Complex.

2. Prohibited Use/Access. Uses permitted pursuant to this Easement shall be limited to pedestrian ingress and egress on, over, across and through the Easement Area only (the "Permitted Use"). Uses other than the Permitted Use shall be prohibited. Prohibited uses of the Easement Area shall include, without limitation, the following: (i) loitering; (ii) use or riding of bicycles or skateboards; (iii) dumping or storage of any items including but not limited to trash, cigarettes, ashes, waste, sewage, garbage or other refuse, hazardous, toxic or offensive materials; (iv) the consumption of alcohol or carrying of open containers thereupon; (v) the use of illegal substances or any illegal conduct thereupon; and (vi) engaging in any conduct in violation of any federal, state or local law or regulation.

3. Grantor Covenants. The Grantor covenants that:

(a) Grantor shall not construct any improvements in the Easement Area other than what is shown on the approved plans entitled "West End Lofts", prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., approved by the City of Beacon Planning Board on February 14, 2018, and on file in the City of Beacon Building Department (with the exception of (i) any amendments to the plans that may be required by the New York State Housing Trust Fund Corporation, or amendments made by the City Planning Board at the request of property owner, and (ii) field changes authorized by the City Building Inspector), or otherwise obstruct or interfere with the Grantee's rights conferred herein; provided, however, that Grantor shall have the right, in its sole discretion, to widen or otherwise modify the pedestrian walkway (including the Easement Area) without Grantee's consent, subject to the issuance of all applicable permits from the City of Beacon, so long as the Permitted Use is not materially adversely affected and amendments to the Site Plan shall remain subject to all applicable requirements of the Code of the City of Beacon.

(b) Grantor shall at its sole cost and expense repair and maintain the Easement Area so that it can be utilized for the Permitted Use, including snow removal, resurfacing, lighting infrastructure and other improvements necessary to keep the walkway in good repair and available to the public at all times.

4. Grantee Covenants. The Grantee covenants that:

(a) Grantee shall not use, except in the performance of Grantee's governmental duties, or permit the public to use, the Easement Area for any purpose other than the Permitted Use.

(b) Grantee shall not use, or permit the public to use, any portion of the Premises outside of the Easement Area for any purpose whatsoever, including, without limitation, parking.

(c) Grantee shall not obstruct the Easement Area or in any way block access by residents of the Apartment Complex or the building located, or to be located, on Lot 2 as shown on the Subdivision Map, except in the performance of Grantee's governmental duties.

(d) In the event it is determined that use of the Easement Area by the public is causing disturbances to, or safety concerns for, the residents of the Apartment Complex, Grantee agrees to work with Grantor to remedy such disturbances and/or safety issues.

5. Indemnification. Grantee releases and also shall defend, indemnify and hold Grantor harmless, from and against all claims, damages, demands, losses, expenses, fines, causes of action, lawsuits, judgments or any other liabilities (including all reasonable attorneys' fees, consequential and punitive damages) for personal injuries and/or property damages arising out of, or resulting from, any use of the Easement Area or from Grantee's breach of any of the covenants contained herein, to the extent not caused by Grantor's negligence or willful misconduct. The duty to defend and indemnify shall be limited to available liability coverage of the City for the claim for which the City's insurer agrees to defend and indemnify the City. The City shall have no duty to defend or indemnify claims excluded by standard insurance endorsements, such as intentional torts. Limitations on defense shall not be triggered by disclaimer due to late notice by the City to the insurer or by cancellation of liability insurance coverage due to fault of the City including, but not limited to non-payment of premiums.

6. Insurance. Grantee and Grantor shall each furnish to the other a certificate of insurance evidencing commercial general liability coverage (including coverage of the City's contractual defense and indemnity set forth in Section 5) of at least \$1,000,000.00 combined single limit per occurrence, and not less than \$2,000,000.00 general aggregate coverage for bodily injury and property damage, naming the other party hereto as an additional insured. Grantee and Grantor shall also provide a minimum of \$5,000,000.00 excess liability coverage, naming the other party hereto as an additional insured which shall also be evidenced on the certificate of insurance. For so long as this Agreement shall remain in effect, the Grantee and Grantor shall maintain such insurance coverage, adjusted on every ten (10) year anniversary of the date hereof (each, an "Adjustment Date") based on the Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; all items, not seasonally adjusted, 1982-1984=100 reference base, published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U used for such adjustments shall be the CPI-U last officially published prior to the last day of the month immediately preceding the Adjustment Date, as applicable, whether such CPI-U has been published on a quarterly, semi-annual, annual, monthly or other basis.

7. Run with the Land. This Easement granted herein shall run with the land and shall be binding upon the Grantor and the Grantee and their respective successors, heirs and assigns.

8. Non-Exclusive; Noninterference.

(a) Subject to the terms and conditions hereof, the Easement granted herein shall be non-exclusive.

(b) Notwithstanding anything herein contained to the contrary, for clarification, the Easement granted herein does not confer any rights with respect to ingress and egress from, over, across or through the residential buildings located or to be located on the Premises, or any other portions of the Premises located outside the Easement Area.

9. Notices.

(a) Any notice, approval, consent, bill, statement or other communication required or permitted to be given, answered or made by either party hereto to the other shall be in writing and shall be deemed to have been properly given or sent if provided to the parties, at their respective addresses recited in the opening paragraph of this Agreement, either by hand delivery or overnight express mail, or by registered or certified mail with the postage prepaid.

(b) Each party may designate a different address to which any notice, demand, request or communication may hereafter be so given, served or sent, by notice to the other party. Each notice, demand, request or communication to be delivered to the Grantor or the Grantee, in the manner aforesaid, shall be deemed sufficiently given, served or sent for all purposes hereunder at the time such notice, demand, request or communication is mailed or hand delivered as described in paragraph (a) above.

10. Severability. If any portion or portions of this Agreement is or are declared illegal or invalid, all other portions shall, to the maximum extent possible, remain in full force and effect.

11. Headings. The headings used in these provisions are for convenience only and shall not be used in interpreting these provisions.

12. Entire Agreement. This Agreement contains the entire agreement between the parties hereto as to the matters set forth herein and may not be changed, modified, altered or in any way amended, except by agreement amongst the parties (their successors and/or assigns) in a duly acknowledged writing and recorded in the office of the Dutchess County Clerk.

13. Non-Waiver. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

14. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each complete set of which, when so executed and delivered by all parties, shall be an original, but all such counterparts shall together constitute one and the same instrument.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of laws principles thereof. Disputes shall be venued in Supreme Court, Dutchess County. The parties waive any right to trial by jury.

16. Lot Owner Responsibilities. Notwithstanding anything contained herein to the contrary or otherwise, the Lot 1 Owner and the Lot 2 Owner shall each be responsible to the Grantee hereunder solely for the obligations and liabilities in this Agreement pertaining to the parcel of real property owned by such Lot Owner.

*Signature pages follow.*





## SCHEDULE A

### Lot 1

ALL that certain plot, piece or parcel of land situate, lying and being in the City of Beacon, County of Dutchess and State of New York, being known and designated as Proposed Lot Number 1 on a certain subdivision map entitled "Final Plat prepared for The West End Lofts, etc.," dated March 21, 2018, filed in the office of the Dutchess county Clerk on March 27, 2018 as Map Number 9899A, said Lot being more particularly bounded and described as follows:

BEGINNING at a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out at the intersection of the division line between lands of Grantee herein on the south and lands of the City of Beacon on the north, said point being located S 51°15'26" E a distance of 89.60' from the most easterly corner of Lot 2 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

THENCE along said line of Wolcott Avenue the following bearings and distances:

South 42°01'30" West a distance of 143.00';

South 44°14'19" West a distance of 133.01' and

South 42°17'27" West a distance of 221.65' to lands now or formerly of the Reformed Church of Beacon;

THENCE along same North 50°07'23" West a distance of 198.84' to a point in the line of Lot 1 as shown on said map no. 9899;

THENCE along the line of said Lot 1 of filed map no. 9899 North 41°16'37" East a distance of 235.87' to point;

THENCE through lands of the grantor herein South 58°46'49" East a distance of 36.99' and North 53°41'50" East a distance of 220.31' to the line of other lands of the Grantor herein being the easterly line of the herein described parcel;

THENCE along said lands South 82°17'55" East a distance of 75.86' and South 51°15'26" East a distance of 64.50' to the point and place of beginning

## SCHEDULE B

### **Lot 2**

ALL that certain plot, piece or parcel of land situate, lying and being in the City of Beacon, County of Dutchess and State of New York, being known and designated as Proposed Lot Number 2 on a certain subdivision map entitled "Final Plat prepared for The West End Lofts, etc.," dated March 21, 2018, filed in the office of the Dutchess county Clerk on March 27, 2018 as Map Number 9899A, said Lot being more particularly bounded and described as follows:

BEGINNING at a point in the southeasterly line of Beekman Street as presently laid out at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north.

THENCE along said lands now or formerly of Central Hudson Electric and Gas North  $88^{\circ}24'31''$  East a distance of 99.97'; to lands of the City of Beacon;

THENCE along said lands the following bearings and distances:

South  $27^{\circ}05'43''$  West a distance of 128.53';  
South  $06^{\circ}28'35''$  West a distance of 56.01';  
South  $35^{\circ}00'00''$  East a distance of 34.67' and  
South  $82^{\circ}17'55''$  East a distance of 88.68' to a point

THENCE through lands of the grantor herein South  $53^{\circ}41'50''$  West a distance of; 220.31' and North  $58^{\circ}46'49''$  West a distance of 36.99' to an angle point in Lot 1 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

THENCE along same North  $35^{\circ}00'00''$  West a distance of 135.07' to lands now or formerly of DMS Consolidators, Ltd. formerly being a portion of Beekman Street;

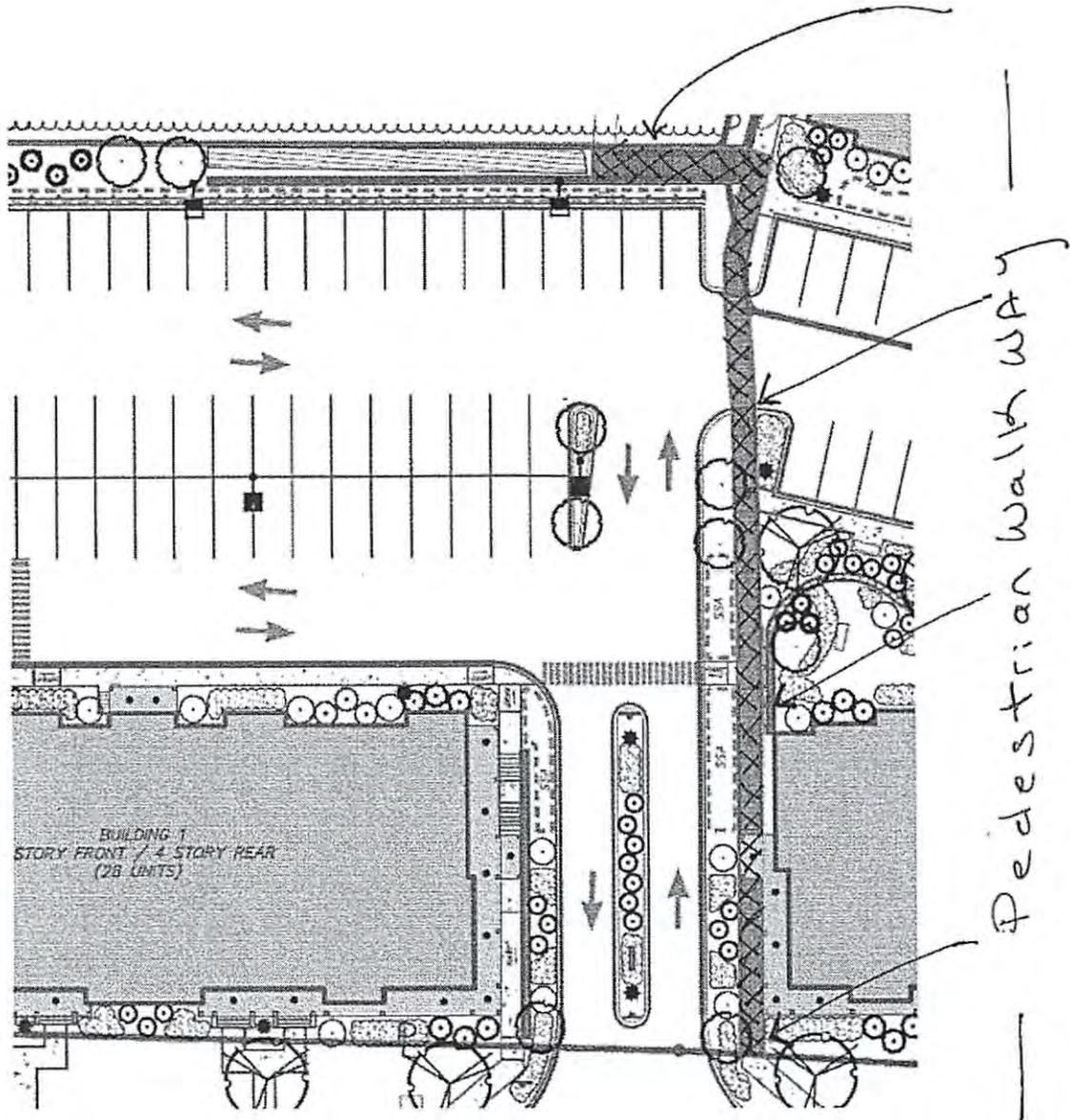
THENCE along same North  $47^{\circ}03'30''$  West a distance of 38.75' to a point on a curve in said southeasterly line of Beekman Street through which point a radial bears South  $35^{\circ}56'48''$  East;

THENCE along a curve to the left having a radius of 493.37', a central angle of  $12^{\circ}15'54''$ , an arc length of 105.61' to a point of tangency;

THENCE continuing along said southeasterly line of Beekman Street as currently laid out North  $41^{\circ}47'18''$  East a distance of 81.95' and North  $38^{\circ}09'31''$  East a distance of 63.67' to the point and place of BEGINNING.

Schedule C-1

Easement Area Depiction



## Schedule C-2

### Easement Area Metes and Bounds Description

Beginning at a point in the northwesterly line of Wolcott Avenue as currently laid out, said point being located N 42°17'27" E a distance of 221.65' and N 44°14'19" E a distance of 14.10' from a point at the intersection of the division line between Lot 2 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899 on the north and lands now or formerly of the Reformed Church of Beacon on the south with the northwesterly line of said Wolcott Avenue;

Thence from said point of beginning through lands of the Grantor herein the following courses and distances:

N 49°33'47" W a distance of 144.84',

N 51°45'29" W a distance of 34.30',

N 35°00'00" W a distance of 16.87',

S 40°47'12" W a distance of 33.92' and

N 48°43'23" W a distance of 8.25' to a point in the line of Lot 1 as shown said filed map no. 9899;

thence along same N 41°16'37" E a distance of 29.17' to a corner of said Lot 1;

thence through lands of the Grantor herein the following courses and distances:

N 41°16'37" E a distance of 11.76',

S 35°00'00" E a distance of 25.33',

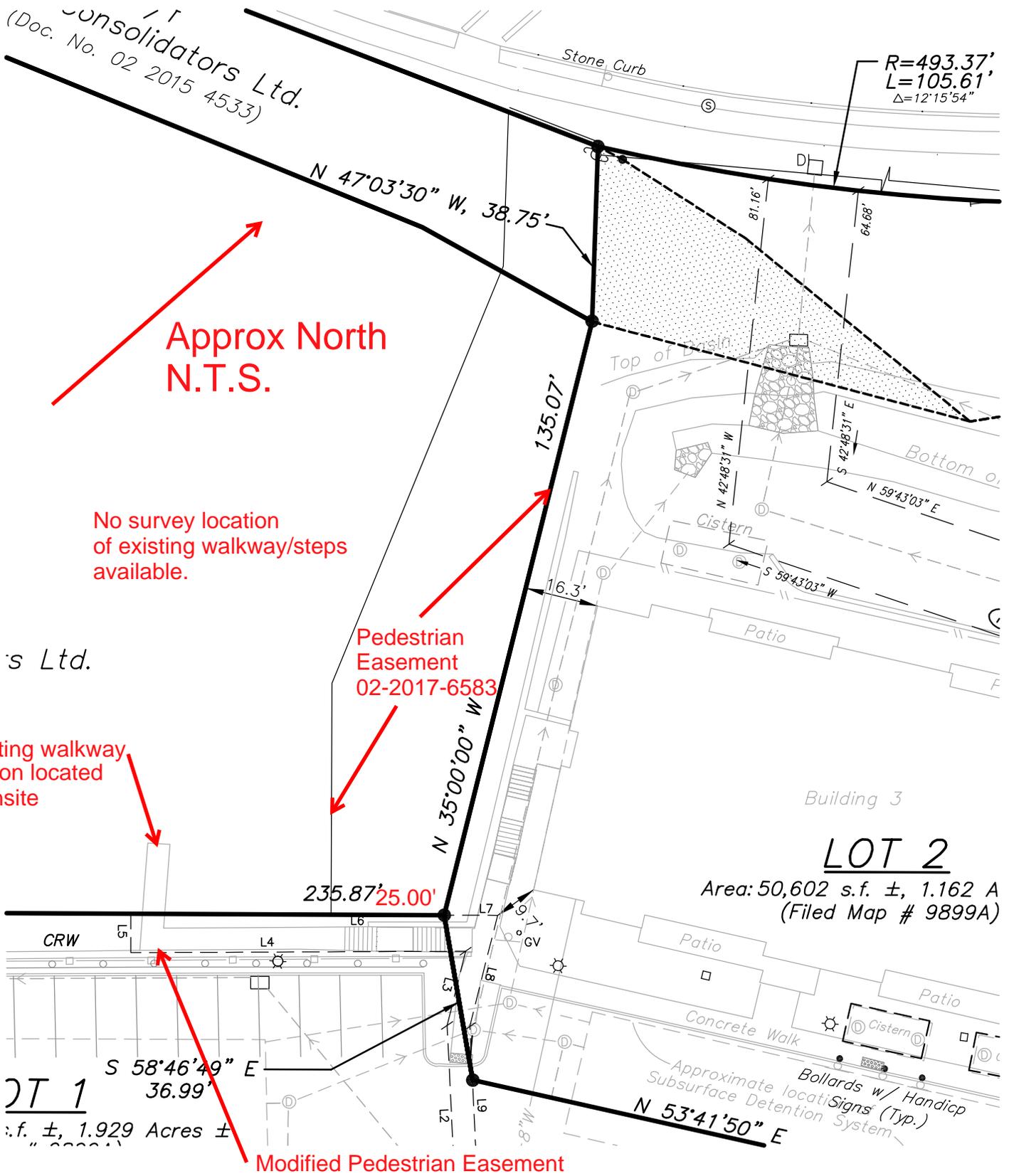
S 51°45'29" E a distance of 34.30' and

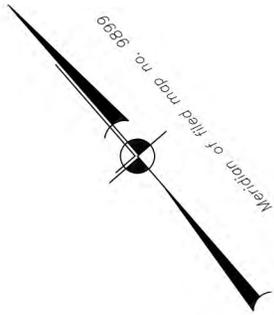
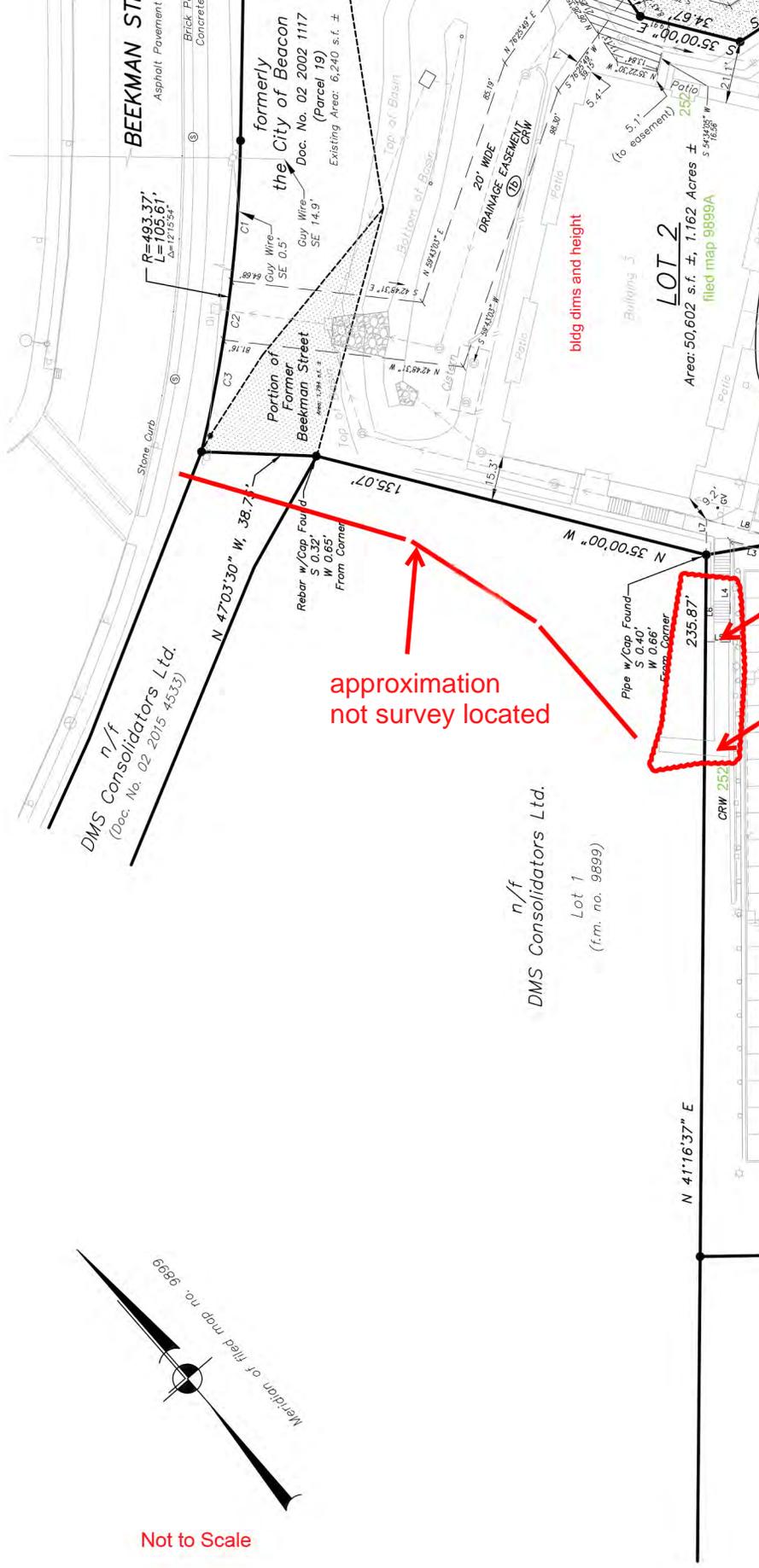
S 49°33'47" E a distance of 144.84' to a point in said northwesterly line of Wolcott Avenue;

Thence along same S 44°14'19" W a distance of 5.01' to the point and place of beginning.

DMS Consolidators, Ltd.  
Pedestrian Easement  
Doc# 02-2017-6583

April 17, 2020





Not to Scale

blgd dims and height

LOT 2  
Area: 50,602 s.f. ±, 1.162 Acres ±  
filed map 9899A

approximation  
not survey located

end of current Pedestrian  
easement

walk was extended to  
meet new walk installed  
by adjoier