

CITY OF BEACON

CITY COUNCIL

RESOLUTION NO. ____ OF 2017

**RESOLUTION AUTHORIZING A PASSIVE USE EASEMENT AGREEMENT REGARDING
“THE VIEW” PROJECT ON BEEKMAN STREET**

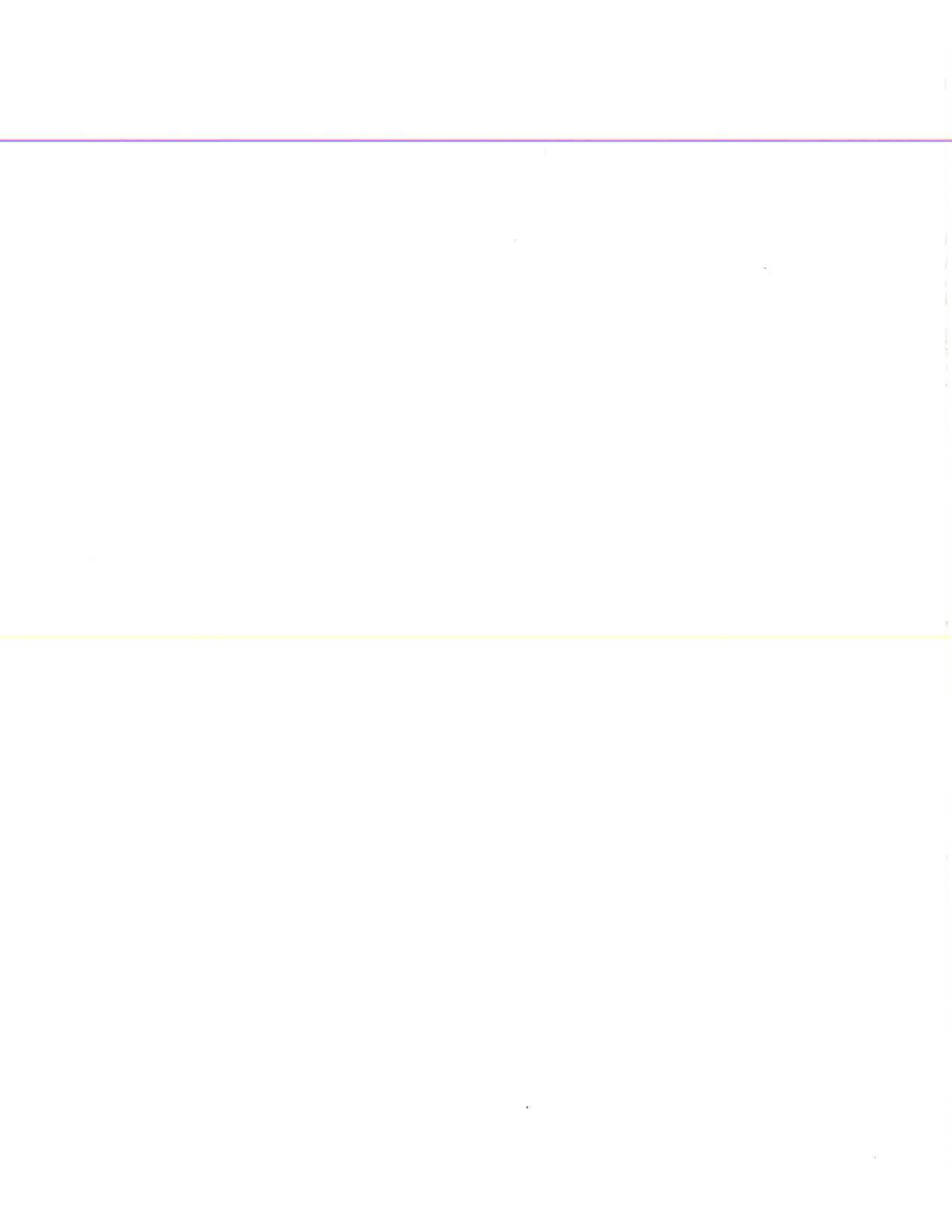
WHEREAS, DMS Consolidators, Ltd., owner of property located at 26 Beekman Street, Beacon New York (Tax Map Parcel No. 5954-26-660924)(the “Property”), has obtain Site Plan and Special Permit approval from the City of Beacon Planning Board for land development activity at 26 Beekman Street pursuant to certain drawings and plans generally entitled “The View” prepared by M.A. Day Engineering, P.C. (the “Project”); and

WHEREAS, the Project consists of the construction of a four-story building containing 42 residential units with basement level indoor parking and a small surface parking area on the north side building; and

WHEREAS, a Passive Use Easement Agreement between the City and DMS Consolidators, Ltd. is proposed to establish a 690 square foot pocket park along Beekman Street near the entrance to the proposed apartment building.

NOW THEREFORE, BE IT RESOLVED THAT, the City Council hereby authorizes the Mayor and/or City Administrator to sign the Passive Use Easement Agreement for said purpose, along with all documents as may be necessary for the recording of such Agreement, subject to review and approval by the City Attorney.

Resolution No. _____ of 2017		Date: <u>August 7, 2017</u>					
<input type="checkbox"/> <input type="checkbox"/> Amendments		<input type="checkbox"/> On roll call				<input type="checkbox"/> 2/3 Required	
<input type="checkbox"/> <input type="checkbox"/> Not on roll call.						<input type="checkbox"/> 3/4 Required	
Motion	Second	Council Member	Yes	No	Abstain	Reason	Absent
		Ali Muhammad					
		Omar Harper					
		Lee Kyriacou					
		George Mansfield					
		Pam Wetherbee					
		Peggy Ross					
		Randy Casale					
		Motion Carried					



EASEMENT FOR PASSIVE PUBLIC USE

EASEMENT dated the ____ day of _____, 2017 (this "Easement"), made by DMS CONSOLIDATORS, LTD, having an address at 108 Village Square, PMB 403, Somers, New York 10589 (the "Grantor"), to the CITY OF BEACON, a municipal corporation having its offices at One Municipal Plaza, Suite One, Beacon, New York 12508 (the "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of the real property known as 26 Beekman Street in the City of Beacon, Dutchess County, New York and designated as Tax Map No. 5954-26-660924 and Tax Map No. 5954-26-651931 on the Tax Map of the City of Beacon (the "Premises") and described in Schedule A annexed hereto; and

WHEREAS, Grantor wishes to grant to Grantee, and Grantee wishes to accept, an easement for the purposes of passive public repose on the portion of the Premises shown on the map and legal description collectively attached hereto as Schedule B (the "Easement Area")

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** The Grantor hereby grants and releases unto the Grantee an easement for the limited purpose of passive public repose within the Easement Area from dawn to dusk.
2. **Prohibited Use/Access.** The Grantee on behalf of the public is granted access to the Easement Area for purposes of passive repose 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) 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; (iii) the consumption of alcohol or carrying of open containers thereupon; (iv) the use of illegal substances or any illegal conduct thereupon; or (v) engaging in any conduct in violation of federal, state or local law or regulation.

3. **Grantor Covenants.** The Grantor covenants that:

a. Grantor shall at its sole cost and expense repair and maintain the Easement Area so that same remains open and usable to the public pursuant to the terms hereof.

5. **Indemnification.** Grantee releases and also shall 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, the use and the public use of the Easement Area or from Grantee's breach of any of the covenants contained herein. Grantee's liability under this Section 5 shall be mitigated to the extent that any of said personal injuries and/or property damage is/are judicially determined to be caused by the negligent acts or omissions of Grantor.

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 shall also provide a minimum of \$5,000,000.00 excess liability coverage, naming Grantor as an additional insured. For so long as this Easement shall remain in effect, the Grantee and Grantor shall

maintain such insurance coverage, adjusted every ten (10) years (beginning on the tenth (10th) anniversary of the date of this Easement) (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 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.** Subject to the terms and conditions hereof, the Easement granted hereby shall be non-exclusive.

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: (1) if intended for the Grantor, either by hand delivery or overnight express mail, or by registered or certified mail with the postage prepaid, in each case addressed to the Grantor, DMS CONSOLIDATORS, LTD., 108 Village Square, PMB 403, Somers, New York 10589, with a copy to Van DeWater & Van DeWater, LLP, 85 Civic Center Plaza, Suite 101, PO Box 112, Poughkeepsie NY 12601-0112,; (2) if intended for the Grantee, either by hand delivery or overnight express mail, or by registered or certified mail with the postage prepaid, in each case addressed to the Grantee, City of Beacon, One Municipal Plaza, Suite One, Beacon, New York 12508, Attention: City

Administrator, with a copy to Keane & Beane, P.C., 445 Hamilton Avenue, Ste 1500, White Plains, NY 10601, Attention: Nicholas M. Ward-Willis, Esq..

(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 Easement is or are declared illegal or invalid, all other portions shall, to the maximum extent possible, remain in full force and effect.

11. **Titles**. The titles used in these provisions are for convenience only and shall not be used in interpreting these provisions.

12. **Entire Agreement**. This Easement 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 executed and acknowledged writing and recorded in the Dutchess County Clerk's Office.

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

14. **Counterparts**. This Easement 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.

5102/11/588471v1 3/7/17

15. Governing Law. This Easement 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 jury trial.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this instrument as of the date first set forth above.

Grantor:

DMS CONSOLIDATORS, LTD

By: Donald E. Strauch, Pres
Name: Donald E. Strauch
Title: President

Grantee:

CITY OF BEACON

By: _____
Name: Anthony Ruggiero
Title: City Administrator

STATE OF NEW YORK)
COUNTY OF) ss:

On the 13 day of April, 2017, before me, the undersigned, a notary public in and for said state, personally appeared Donald E. Strauch, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Anthony Ruggiero

5102/11/588471v1 3/7/17

LINDA JACKSON
Notary Public, State of New York
Registration #01JA6348101
Qualified In Westchester County
Commission Expires Sept. 19, 2020

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss:

On the ____ day of _____, 2017, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

U:\DOCS\14375\00001\DILIGENCE\236321102.DOCX

5102/11/588471v1 3/7/17

Schedule A

Legal Description of Premises
[See Attached]

5102/11/588471v1 3/7/17

Gary R. LaTour
NEW YORK STATE LICENSED LAND SURVEYOR
License No. 049457

273 East Main Street
Beacon, New York 12508-3515
Phone/Fax: 845 831-8556
E-Mail: GARYLALS@aol.com

December 19, 2014

LOT 1 - BEACON RIDGE ASSOCIATES SUBDIVISION

All that certain tract or parcel of land situate in the **City of Beacon**, County of Dutchess and State of New York, being shown and designated as **Lot 1** on a map entitled "**Final Subdivision Plat Prepared for Beacon Ridge Associates, Inc.**" and filed in the Dutchess County Clerk's Office on June 7, 1994 as **Map # 9899**, said lot being more particularly bounded and described as follows:

Beginning at a point in the southeasterly line of Beekman Street in range with a stone wall marking the northeast line of lands of the Protestant Reformed Dutch Church of Fishkill Landing (Liber 121 page 692), said point being the most westerly corner of the herein described premises, and running from thence along the southeasterly line of **Beekman Street, North 63-14-27 East 432.00 feet and North 70-10-07 East 42.87 feet** to a point; thence along the westerly line of Lot 2 as shown on said Filed Map #9899, **South 35-00-00 East 135.06 feet and South 41-16-37 West 235.87 feet** to an angle point in the northerly line of said Reformed Dutch Church; thence along northwesterly line of said lands, **South 41-16-37 West 108.64 feet** to a point in range with a stone wall marking the northeasterly line of said Church; thence to and along said stone wall, **North 59-50-43 West 319.50 feet** to the point of beginning.

Containing 86,785 square feet or 1.992 acres of land.

Being a portion of the premises conveyed by the Beacon Community Development Agency to Beacon Ridge Associates, Inc. by deed dated March 6, 1987 and recorded in the Dutchess County Clerk's Office on April 6, 1987 in Liber 1747 of Deeds at page 1.



Gary R. LaTour
NEW YORK STATE LICENSED LAND SURVEYOR
License No. 049457
273 East Main Street
Beacon, New York 12508-3515
Phone/Fax: 845 831-8556
E-Mail: GARYLALS@aol.com

June 1, 2015

DEED DESCRIPTION - CITY OF BEACON TO DMS CONSOLIDATORS, LTD

All that certain tract or parcel of land situate in the **City of Beacon**, County of Dutchess and State of New York bounded and described as follows:

Beginning at a point in the southerly line of Beekman Street, said point being the most westerly corner of Lot 1 as shown on a map entitled "**Final Subdivision Plat Prepared for Beacon Ridge Associates, Inc.**" and filed in the Dutchess County Clerk's Office on June 7, 1994 as **Map # 9899** and the most northerly corner of lands of the Protestant Reformed Dutch Church of Fishkill Landing (Liber 121 page 692), and running from thence through Beekman Street as it existed prior to the Beacon Urban Renewal Project of the late 1970's, along it's newly created southerly line, easterly along a curve to the right having a radius of 450.00 feet for a distance of 195.125 feet (chord = North 52-48-41 East 193.60 feet), North 65-14-00 East 167.23 feet and North 62-10-00 East 103.60 feet to the most westerly corner of Parcel No. 19 as described in a deed from the People of the State of New York to the City of Beacon by deed dated June 20, 1997 and recorded in the Dutchess County Clerk's Office on February 1, 2002 as Document #02-2002-1117; thence continuing through the former location of Beekman Street, South 47-03-30 East 38.75 feet to the most northerly corner of said Lot 1; thence along the southerly line of the old Beekman Street, South 70-10-07 West 42.87 feet and South 63-14-27 West 432.00 feet to the point of beginning.

Containing 13,484 square feet or 0.310 acres of land.

Being a portion of Beekman Street as it existed prior to the Beacon Urban Renewal Project of the late 1970's.

Reserving to the City of Beacon a drainage easement along the new southerly line of Beekman Street as created above, said easement being more particularly bounded and described as follows:

Beginning at a point in the southerly line of Beekman Street, said point being the most westerly corner of Lot 1 as shown on a map entitled "**Final Subdivision Plat Prepared for Beacon Ridge Associates, Inc.**" and filed in the Dutchess County Clerk's Office on June 7, 1994 as **Map # 9899** and the most northerly corner of lands of the Protestant Reformed Dutch Church of Fishkill Landing (Liber 121 page 692), and running from thence through Beekman Street as it existed prior to the Beacon Urban Renewal Project of the late 1970's, along it's newly created southerly line, easterly along a curve to the right having a radius of 450.00 feet for a distance of 195.125 feet (chord =

North 52-48-41 East 193.60 feet), North 65-14-00 East 167.23 feet and North 62-10-00 East 103.60 feet to the most westerly corner of Parcel No. 19 as described in a deed from the People of the State of New York to the City of Beacon by deed dated June 20, 1997 and recorded in the Dutchess County Clerk's Office on February 1, 2002 as Document #02-2002-1117; thence along the northeasterly line of the above described 0.310 acre parcel of land, South 47-03-30 East 8.00 feet to a point; thence running through the above described 0.310 acre parcel of land, South 54-50-00 West 66.38 feet, South 64-50-00 West 245.00 feet and South 54-10-00 West 131.70 feet to a point in the northerly line of Lot 1 on Filed Map #9899; thence along the same, South 63-14-27 West 23.26 feet to the point of beginning.

Containing 6,436 square feet or 0.148 acres of land.



Schedule B

Map and Legal Description of Easement Area
[See Attached]

5102/11/588471v1 3/7/17

Gary R. LaTour
NEW YORK STATE LICENSED LAND SURVEYOR
License No. 049457
273 East Main Street
Beacon, New York 12508-3515
Phone/Fax: 845 831-8556
E-Mail: GARYLALS@aol.com

August 12, 2016

**POCKET PARK EASEMENT
DMS CONSOLIDATORS LTD TO THE CITY OF BEACON**

All that certain tract or parcel of land situate in the **City of Beacon**, County of Dutchess and State of New York bounded and described as follows:

Beginning at a point in the southerly line of Beekman Street distant South 62-10-00 West 103.60 feet and South 65-14-00 West 89.00 as measured along the southerly line of Beekman Street from the northeast corner of a parcel of land conveyed by Anthony Ruggiero as City Administrator of the City of Beacon to DMS Consolidators LTD as described in Document # 02-2015-4533, and the most westerly corner of Parcel No. 19 as described in a deed from the People of the State of New York to the City of Beacon (Document #02-2002-1117), and running from thence through said lands of DMS Consolidators LTD the following 5 courses and distances: South 24-46-00 East 2.75 feet, southwesterly along a curve to the right having a radius of 10.00 feet for a distance of 15.38 feet, South 63-20-00 West 35.02 feet, northwesterly along a curve to the right having a radius of 10.00 feet for a distance of 16.04 feet and North 24-46-00 West 3.91 feet to a point in the southerly line of Beekman Street; thence along the same, North 65-14-00 East 55.00 feet to the point of beginning.

Containing 690 square feet of land.

Being a portion of the premises conveyed by Anthony Ruggiero as City Administrator of the City of Beacon to DMS Consolidators LTD by deed dated July 6, 2015 and recorded in the Dutchess County Clerk's Office on July 28, 2015 as Document #02-2015-4533.



NORTH
SCALE 1" = 30'

LANDS OF
THE CITY OF BEACON
LIBER 1445 PAGE 119

N/E
PROTESTANT
REFORMED
CHURCH
OF
FISHKILL
LANDING
LIBER 1441 PAGE 649

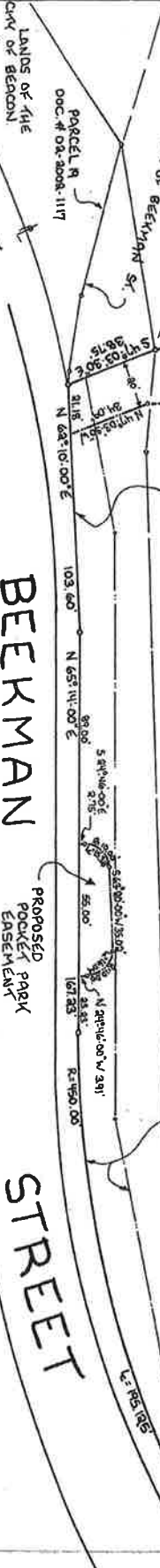
LOT No 2
FILED MAP # 9899

LOT No 1 - FILED MAP # 9899
"FINAL SUBDIVISION PLAN PREPARED FOR BEACON RIDGE ASSOCIATES, INC."
BEACON RIDGE ASSOCIATES, INC. TO DMS CONSOLIDATORS LTD
DOCUMENT # 09-2015-2488

PROPOSED PEDESTRIAN
WALK EASEMENT
AREA - 4,966 SQ. FT.

LANDS CONVEYED BY THE CITY OF BEACON
TO DMS CONSOLIDATORS LTD BY DEED PARCEL JULY 6, 2015
AND RECORDED IN THE DUT. CO. CLERK'S OFFICE AS DOC. # 09-2015-1433

EXISTING DRAINAGE EASEMENT
RESERVED BY THE CITY OF BEACON
IN DUT. CO. CLERK DOCUMENT # 09-2015-1433



BECKMAN STREET
AS RELOCATED IN
THE LATE 1970'S
BY THE URBAN RENEWAL PROJECT

ADDITIONAL EASEMENTS TO BE GRANTED BY DMS CONSOLIDATORS LTD TO THE CITY OF BEACON

PREPARED BY:
GARY R. LAFOUR, L.S.
273 East Main St.
Beacon, New York

CERTIFIED TO:
DMS CONSOLIDATORS LTD
SHELMERDINE TITLE INSURANCE CO.
THE CITY OF BEACON
SALISBURY BANK & TRUST, ITS SUCCESSORS
&/OR HEIRS



CITY OF BEACON, DUTCHESS COUNTY, NEW YORK SCALE 1" = 30' AUGUST 12, 2016

