

CITY OF BEACON

CITY COUNCIL

RESOLUTION NO. ____ OF 2017

**RESOLUTION AUTHORIZING A PEDESTRIAN ACCESS 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, an Easement Agreement between the City and DMS Consolidators, Ltd. is proposed to establish a public walkway for pedestrian ingress and egress extending from Beekman Street toward Wolcott Avenue from dusk till dawn; and

WHEREAS, it is anticipated that the pedestrian walkway will eventually connect to Wolcott Avenue to create a continuous walkway from Beekman Street to Wolcott Avenue.

NOW THEREFORE, BE IT RESOLVED THAT, the City Council hereby authorizes the Mayor and/or City Administrator to sign the Pedestrian Access 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 | | | | | |

PEDESTRIAN WALKWAY EASEMENT

PEDESTRIAN WALKWAY EASEMENT dated the ____ day of _____, 2017 (the "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. 5954-26-641931 on the Tax Map of the City of Beacon (the "Premises"); 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 described in Schedule A attached hereto (the "Easement Area") upon the terms and conditions contained herein. The Easement Area is shown on the map attached hereto as Schedule B.

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 and right of way for the limited purposes of pedestrian ingress and egress only on, over, across and through the Easement Area. 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 Grantor's housing project.

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; or (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, "The View," prepared by M.A. Day Engineering, P.C. and approved by the City of Beacon Planning Board on August 9, 2016 and on file in the City of Beacon Building Department, 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.

b. Grantor may construct and maintain, at its sole expense, fencing, approved by the Grantee's Building Inspector, along the southern most boundary (running along South 41-16-37 West 25.00 feet) and the northern most boundary (running along North 62-10-00-East 21.18

feet) of the Easement Area. Said fencing will be removed by Grantor at such time as a pedestrian walkway is constructed on the abutting property currently owned by the City of Beacon as described in Liber 1945, Page 119, which would connect to the walkway within the Easement Area and allow pedestrian access to Route 9D (Main Street).

c. Grantor shall at its sole cost and expense repair and maintain the Easement Area so that it can be utilized for the Permitted Use, except as otherwise set forth hereinafter in paragraph 4(d).

4. **Grantee Covenants**. The Grantee covenants that:

a. Grantee shall not use, 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, and

c. Grantee shall not obstruct the Easement Area or in any way block access by residents of the Premises.

d. Grantor shall pay for the capital costs of illumination of the Easement Area as a private improvement. After installation, the Grantor shall offer for dedication the lighting fixtures, the acceptance of which shall not be unreasonably withheld by the Grantee. Subsequent to dedication, this Easement shall include a right of the Grantee, or its agents or contractors, to access the lighting fixtures. After dedication, Grantee shall be solely responsible to maintain, to repair, and to replace the lighting fixtures, and for all costs associated therewith. After dedication, Grantee shall pay the costs of energy for the lighting fixtures.

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, the maintenance and use of dedicated lighting fixtures 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 shall be limited to available liability coverage of the City for the claim. The City shall have no duty to defend 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 Easement shall remain in effect, the Grantee and Grantor shall maintain such insurance coverage, adjusted 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 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, at the same address; (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. **Headings**. The headings 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 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.

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.

[Signature Page Follows]

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: _____
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 ____ day of _____, 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.

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 Anthony Ruggiero, 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

Schedule A

Legal Description of Easement Area
[See Attached]

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

PEDESTRIAN WALKWAY 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, said point being 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 along the easterly line of said lands of DMS Consolidators, running through the former location of Beekman Street, South 47-03-30 East 38.75 feet to the most northerly 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**; thence along the westerly lines of Lot 2 as shown on said map, being now or formerly lands of the City of Beacon (Liber 1945 page 119), South 35-00-00 East 135.06 feet and South 41-16-37 West 25.00 feet; thence running through said Lot 1 on Filed Map 9899 and through lands of DMS Consolidators as described in Document #02-2015-4533, North 48-43-23 West 51.145 feet, North 26-40-00 West 99.56 feet and North 47-03-30 West 34.09 feet to a point in the southerly line of Beekman Street; thence along the same, North 62-10-00 East 21.18 feet to the point of beginning.

Containing 4,962 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, **together with a portion** of the premises conveyed by Beacon Ridge Associates, Inc. to DMS Consolidators LTD by deed dated April 16, 2015 and recorded in the Dutchess County Clerk's Office on April 28, 2015 as Document #02-2015-2498 (Lot 1, Filed Map #9899).



Schedule B

Map of Easement Area
[See Attached]



LANDS OF THE CITY OF BEACON
LIBER PAGE 118

N/E
PROTESTANT REFORMED CHURCH OF FISHKILL LANDING
LIBER 121 PAGE 688

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 # 08-2015-1486"

PROPOSED RECREATION WALK EASEMENT
AREA = 4,962 SQ. FT.

LANDS CONVEYED BY THE CITY OF BEACON TO DMS CONSOLIDATORS LTD BY DEED DATED JULY 6, 2015 AND RECORDED IN THE DUT. CO. CLERK'S OFFICE PG DOC. # 08-2015-1433

EXISTING DRAINAGE EASEMENT RESERVED BY THE CITY OF BEACON IN DUT. CO. CLERK DOCUMENT # 08-2015-1433

FORMER LOCATION OF BEEKMAN ST.
PARCELS R
DOC. # 08-2008-1117

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

BECKMAN STREET

PROPOSED PARK EASEMENT
AREA: 670 SQ. FT.



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

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

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