

**ACCESS EASEMENT AND MAINTENANCE AGREEMENT FOR
PERMANENT PEDESTRIAN GREENWAY TRAIL**

This Permanent Pedestrian Greenway Trail Easement Agreement (“Easement Agreement”) is made and entered into this _____ day of _____, 2017, by and between **BEACON 248 DEVELOPMENT, LLC**, with a principal place of business as 104 Rochelle Avenue, Rochelle Park, NJ 07662, (hereinafter, the “Grantor”) and the **CITY OF BEACON**, a municipal corporation having an office at One Municipal Plaza, Beacon NY, 12508, (hereinafter, the “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the owner of certain property located at Tioronda Avenue in the City of Beacon, Dutchess County New York, presently identified as Tax Parcels 130200-5954-16-993482, such property having been conveyed to Grantor’s by deeds recorded in the Dutchess County Clerk’s Office as Document Nos. 02-2006-4859, and also owner of another parcel, presently identified as Tax Parcel 130200-6054-45-012574, subsequently acquired by Grantor, by virtue of a certain deed recorded in the Dutchess County Clerk’s Office as Document No _____, both such parcels having been consolidated by virtue of a subdivision and lot consolidation map filed in the Dutchess County Clerk’s Office on _____ as Filed Map Number _____, said consolidated site being hereafter identified as “the Development Site” and further described by metes and bounds on **Schedule “A”** annexed hereto; and

WHEREAS, the Grantor has proposed to improve the Development Site with 100 one-and two-bedroom multi-family residential units and accessory amenities (collectively, “the Project”), and has sought appropriate approvals from the City for such Project; and

WHEREAS, the City of Beacon City Council granted Concept Plan and Special Permit approval of the Project to Grantor on August 4, 2014 (“Special Permit Approval Resolution”) and the City of Beacon Planning Board granted Subdivision/Lot Consolidation Approval and Site Plan approval for the Project to Grantor on January 13, 2015, said

resolutions having been signed by the Planning Board chair on January 19, 2015 (“Subdivision Approval Resolution” and “Site Plan Approval Resolution,” respectively); and

WHEREAS, the Project includes a 1,200 SF clubhouse and pool for residents, and related improvements relating to access, parking, lighting, landscaping and other improvements and amenities for the use of the residents of the Project only (the “Private Improvements”), and also contains certain physical improvements to which non-exclusive public access is being provided under the terms of this Easement Agreement (the “Public Improvements”), all as further set forth in this Easement Agreement and referred to in the Approval Resolutions, and in the plans, visual representations and application documents prepared by the Chazen Companies and submitted in support of the application, and as specifically shown on the plan set entitled, “Beacon 248 Development,” the sheets of which are set forth in the Site Plan Approval Resolution and the Subdivision Approval Resolution, such plans being originally dated June 30, 2013, and last revised, in accordance with the Approval Resolutions on August 14, 2017 (“Approved Plans”); and

WHEREAS, Grantee is a municipal corporation, and regulates and operates a public trail system throughout the City, which includes trails on public and private lands; and

WHEREAS, in furtherance of State and Regional policies to encourage Greenway Trails throughout the Hudson Valley, the Grantee has undertaken activities to support the establishment and operation of the Fishkill Creek Greenway & Heritage Trail (the “FCGHT” or “the Trail”) along the Fishkill Creek within the City of Beacon, including: establishing a comprehensive document entitled “Fishkill Creek Greenway & Heritage Trail Master Plan,” (hereafter, “Trail Master Plan”) funded in part by the New York State Hudson River Valley Greenway and adopted by the Beacon City Council by Resolution dated June 17, 2013; and

WHEREAS, pursuant to the Trail Master Plan, the Grantee is acquiring and continues to acquire pedestrian trail easements on properties along the Fishkill Creek,

including those adjacent to the Parcel, for the purpose of establishing connectivity of other existing and future pedestrian trail easements along the Fishkill Creek that together will establish the FCGHT; and

WHEREAS, in furtherance of the above trail policies, the Grantee, in its legislative capacity, has on April 3, 2017, enacted a uniform set of rules and regulations governing the use of all public trails in the City, to wit: Chapter 170 of the Code of the City of Beacon, covering operation and use of trails on publicly owned land, and also trails, including the FCGHT, where a trail is located on private land over which the City has acquired an easement for trail purposes on behalf of the public, and has established supplementary rules and regulations applicable to the FCGHT in Section 170-5 thereof; and

WHEREAS, in furtherance of the above trail policies, and the provisions of the Fishkill Creek Development zoning provisions, as well as the specific terms and conditions of the project approvals granted to the Beacon 248 project, the Grantee has requested the Grantor to establish a pedestrian trail on the Parcel to become part of the FCGHT, and Grantor has consented to establish a portion of such trail on its property; and

WHEREAS, the Subdivision Resolution requires the conveyance of a Greenway Trail Easement to Grantee providing for pedestrian public access along the Trail to be constructed over and across the Development Site, all as more particularly shown on the Approved Plans as “Greenway Trail,” and also provide Pedestrian Access to the Trail from Wolcott Avenue and from Tioronda Avenue. A reduced copy of the Subdivision Plat and Site Plan Sheet SP-2 are attached hereto and made part hereof as **Schedule B**, which show the proposed location of the Trail; and

WHEREAS, the parties intend that the Greenway Trail Easement granted herein shall be used only for passive, non-motorized, pedestrian recreation in the form of walking and hiking, including visual enjoyment of the Fishkill Creek corridor, with non-motorized bicycle riding on segments of the trail which have been specifically designated by the City as appropriate for joint use by bicycles and pedestrians and signed for such dual use, all such

activities being within the ambit of the protections granted under New York State General Obligations Law §9-103 and New York State Environmental Conservation Law §44-0119(7), and within the coverage requirements of the Greenway Trail Insurance Program; and

WHEREAS, the parties further intend that the FCGHT will be open to the public only during daylight hours (dawn to dusk), and is also subject to the further rules and regulations set forth in Chapter 170 of the City Code; and

WHEREAS, the parties recognize that Grantee shall have the continuing authority to establish further terms and limitations on public use of the FCGHT, as it may deem appropriate.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants below, and One dollar (\$1.00) and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

1. Construction and Location of Improvements: Grantor shall construct the Public Improvements as shown on the Approved Plans according to the construction standards set forth on the Approved Plans and according to all applicable accepted industry standards for such construction. The Public Improvements in the Easement Area include the following, all of which are shown in more detail on the Approved Plans:
 - a. The pedestrian Greenway Trail improvements, running in a generally north-south direction generally parallel with the Fishkill Creek, beginning, at the south, at the shared property line with property owned by Sisters Properties LLC identified as Tax Parcel 130200-5954-16-951357, and terminating at its northerly end in a circular cul-de-sac near the northerly boundary of Tax Parcel 130200-5954-16-993482. Such improvements shall include the Trail, benches, signage, concrete walkways, and a wooden bollard at the south end

of the Trail and at the north end of the Trial spur. Grantor shall construct the pedestrian Trail of a variable width of five (5) to eight (8) feet consisting of crushed stone and boardwalk, as shown on the Approved Plans, within the twenty (20) foot wide trail easement, as described in Paragraph 3. The location of the Trail within the Easement Area shall be as shown on the Approved Plans, although the City Building Inspector may authorize variations in the route during construction based on field conditions.

- b. The structure designated as “Pavilion,” a 25 feet by 25 feet covered wooden structure located within the site, just north of the private “Clubhouse,” and just west of the trail, such Pavilion to be accessed from the Trail by means of pavement striping and a concrete sidewalk as shown on the Site Plan; and to be accessed from Wolcott Avenue via the pedestrian walkway described in the next section;
- c. Pedestrian Access to the Trail from Wolcott Avenue: An asphalt pedestrian walkway marked with pavement striping along the easterly side of the emergency access roadway, providing access from Wolcott Avenue to the Pavilion via the pavement striping crosswalk and concrete sidewalk described above, and also providing access to the Trail via a crushed stone gravel walkway leading to the Trail (“Point B” on the Subdivision Plat);
- d. Pedestrian Access to the Trail from Tioronda Avenue: A pedestrian concrete/asphalt path leading from Tioronda Avenue in a generally east-west direction toward the Trail with concrete stairway transition at the southerly end of building 100 to reach the Trail
- e. The Grantor will construct the accessway from the designated publicly accessible Trail parking spaces to the Pavilion in a manner that is handicapped accessible. It is specifically understood that due to topographic conditions relating to the property, the Trail, and walkways to reach the Trail

will not meet ADA standards and will not be handicapped accessible. In the event the location of the easement must be altered to accommodate a handicapped accessible Trail on this Development Site, Grantor agrees to execute an amendment to this Agreement to adjust the location of the easement for such purposes, provided that such adjustment does not require any building, structure, or other improvement on the Site Plan to be relocated.

- f. Parking spaces provided on the site which exceed the number required by the City of Beacon Zoning Code shall be devoted to public parking for the Trail. The Grantor will designate these excess spaces for this purpose. In no event shall less than four (4) spaces be designated for this purpose. These spaces will be located as near as may be practicable to the pavilion. The Grantor will also place two bike racks, one near the pavilion and the other near the south side of building 100. No rights are granted under this agreement for any parking by members of the public in parking spaces designated for use by tenants of the project. The City shall assist Grantor in preventing unauthorized parking in spaces designated for tenants. Without limiting the foregoing, Grantor shall have the right to have cars towed which are improperly parked in tenant spaces.

2. Timing of Construction of Improvements: Prior to the issuance of the first Certificate of Occupancy for Building 100, the Trail construction shall be completed by the Grantor. Prior to the issuance of the first Certificate of Occupancy for Building 400, the Trail, viewing Pavilion and public parking shall be fully operational. Upon completion, and prior to any public use, the construction of the Trail shall be inspected, and approved for purposes of City acceptance of dedication for public use by the City Building Inspector, with written confirmation of such approval provided to Grantor and Grantee. Dedication for public use and public access to the Trail shall be prohibited until such approval and until the issuance of the first Certificate of Occupancy for Building 400, as more fully set forth in Paragraph 3.

Notwithstanding the paragraph immediately above, in the case where construction of the Project ceases, as determined by the City Building Inspector, and three (3) years has passed from the issuance of the Project's first Building Permit, Grantor shall make the Trail fully operational and open to the public, at the City's request, until such time as Project construction resumes. In this case, access shall be along the Trail, and not through the Site from Tioronda Avenue or Wolcott Avenue, and shall not include use of the public parking area or viewing Pavilion in order to ensure that the public does not have access to the partially constructed site. Such temporary access shall in no way limit Grantor's obligation that the Trail, public parking and viewing Pavilion and other Public Improvements with non-exclusive public access, shall be fully operational prior to the issuance of the first Certificate of Occupancy for Building 400. Use of such Public Improvements with non-exclusive public access may be restricted in whole or in part, as necessary to protect public safety, during periods of construction.

Notwithstanding the preceding paragraph, Grantor shall not be required to provide the temporary access to the Trail, as described above, and temporary access previously granted shall cease, if construction ceases or fails to resume due to the City's refusal to extend or renew the Special Permit or Site Plan Approval, unless such refusal is based upon Grantor's failure to timely or properly comply with a provision of the City Code or a condition of the Special Permit or this Site Plan Approval.

3. Grant of Easement: Grantor hereby grants, transfers and conveys to Grantee, for the benefit of the Grantee and the public, to be accepted and exercised under the terms set forth in this agreement, and subject to the further limitations set forth in Chapter 170 of the City Code and any more restrictive amendments thereto adopted after this conveyance is recorded, a non-exclusive easement and right-of-way over, across and upon the Trail, the Pavilion, and the walkways leading to the Trail and Pavilion, as described herein, for passive, non-motorized pedestrian walking and hiking, including visual enjoyment of the Fishkill Creek corridor, during daylight hours (dawn to dusk), under the further limitations set forth in the following paragraphs. The Trail easement

shall be 20 feet wide as shown on the Approved Plans (see, Schedule B) and shall be further described by metes and bounds on an as built survey (“Trail Easement Area”). The Easement granted herein includes the right of access to the Pavilion over the walkways from Wolcott Avenue and Tioronda Avenue leading therefrom to the Trail and to the Pavilion. Additionally, a non-exclusive vehicular easement and right-of-way is hereby granted over, across and upon the paved driveway from Tioronda Avenue for the purpose of accessing the four (4) parking spaces which are designated for vehicular parking for members of the public seeking access to the Pavilion and Trail, and to temporarily park in such designated spaces for the purposes of visiting the trail. The areas of the Trail, the pedestrian access to the Trail, the Pavilion, the pedestrian access to the Pavilion, and the parking spaces and vehicular access to the parking spaces, shall collectively be referred to herein as “the Easement Area.” The designated parking spaces are shown on the Approved Site Plan as the last four (4) parking spaces on the west side of the site immediately before the designated emergency access drive at the northern end of the site. All the easement rights granted herein are non-exclusive, and to be enjoyed subject to the Grantor’s reserved rights, on behalf of itself, its successors, assigns and tenants, to use these improvements jointly with members of the public. Grantor and Grantee agree that public access to the Trail, Pavilion, walkways, driveway and parking area shall not be permitted until the issuance of the first Certificate of Occupancy for Building 400, unless otherwise agreed to in writing by Grantor and Grantee.

4. Limits on Permitted Public Activities on the Property: The pedestrian uses authorized by this easement are for quiet, non-motorized, passive recreational trail hiking and walking use by members of the public who are users of the FCGHT, and subject to the further limitations set forth in Chapter 170 of the Code of the City of Beacon, and any more restrictive amendments thereto adopted after this conveyance is recorded, and may include non-motorized bicycle use in segments of the trail which have been specifically designated by Grantee as appropriate for joint use by bicycles and pedestrians, and signed for such dual use, all of which activities are within the coverage of New York State General Obligations Law §9-103. Without in any way limiting the generality of

the foregoing, authorized uses shall not include running, skiing, snowshoeing, skateboards, roller skates or use of any all-terrain vehicles, snowmobiles, or any other motorized vehicles. Without limiting the foregoing, cross-country skiing is not permitted in this easement. Lawful construction or maintenance activities relating to the trail and the project site are not subject to the prohibition of motorized vehicles. There shall be no dumping of trash, garbage, or other unsightly or hazardous material within the Easement Area. No use of the Trail shall be permitted before dawn or after dusk. Rules and Regulations governing the use of the public trailways in the City, including the Fishkill Creek Greenway and Heritage Trail ("FCGHT") are set forth in Chapter 170 of the Code of the City of Beacon, as it may be amended from time to time. Grantee may make any further restrictions it deems appropriate in managing the public use of the Trail. Public access to the FCGHT does not constitute permission to enter onto private property adjoining the Trail, and entry on private property adjoin the Trail is subject to prosecution as Trespass under the New York State Penal Law, in addition to constituting a violation of Chapter 170 of the Code of the City of Beacon.

5. Operation of Trail: After the Grantee, through the City Building Inspector, inspects, approves and accepts the constructed Trail, it shall have the authority to determine when and whether the Trail shall be open for public use, and may suspend public use of the Trail at any time for any length of time, as it may deem appropriate. Operation of the Trail is further subject to the provisions of Chapter 170 of the Code of the City of Beacon as such may be amended from time to time. In view of the natural and open character of the FCGHT, and the changing character of the natural environment, neither the Grantee nor the Grantor can make any representation that any portion of the Trail is safely passable at all times when the Trail is open. All users shall approach the Trail with caution and use it prudently and safely at the trail users own risk, in light of seasonal, weather, and other natural conditions. Neither the Grantee nor the Grantor are obligated to clear snow and ice from the Trail. Without limiting the general ability of the Grantee to suspend public use of the trail at any time for any length of time, as it may deem appropriate, the FCGHT shall be closed during snow and ice storms.

6. Repair and maintenance obligations: Grantor shall be responsible for construction and maintenance of the Greenway Trail, including the Pavilion, and the parking spaces providing parking for the Pavilion and Greenway Trail, and access to those public improvements across the site. The Greenway Trail shall be maintained with a stone dust surface at the width shown on the Approved Plans. Grantor will maintain the concrete walkways shown on the site plan, including snow removal, but shall not be obligated to clear snow from the Greenway Trail. Unless such obligations are superseded by City enactment of uniform standards for maintenance and repair of the City's Greenway Trail System, the Greenway Trail shall be inspected at least once a year and after significant storm events, and Grantor shall restore the trail to its original condition after significant storm events and flooding (as determined by the Building Inspector) and shall repair any damage to the trail. Notwithstanding the foregoing, Grantee shall also have the right to seek grants for trail improvements and to make any such improvements in its sole discretion, and may assign any portion of day-to-day maintenance responsibilities for the trail to an agency of government or a qualified not-for-profit entity, as the Grantee in its sole discretion may deem appropriate, provided that any such group shall carry liability insurance meeting the standards of this Agreement.

7. Liability and Insurance: Grantee, which already maintains a municipal general liability policy, agrees to include coverage for this Greenway Trail Easement insofar as it is open for public use, in its standard policy of general commercial liability insurance, to include a coverage limit not less than \$1,000,000 for any one occurrence and \$2,000,000 in the aggregate, such limits to be adjusted at least every five (5) years to an amount equivalent to that sum in 2015 dollars. Grantee shall cause the Grantor, as owner of the fee title of the Easement Area to be named as an additional insured on such policy of municipal liability insurance, as its interests may appear. Grantee shall indemnify and hold Grantor harmless for any claims, losses, damages or suits connected with or arising out of the use of the Trail and existence of the Greenway Trail Easement, except to the extent that such claims arise from the gross negligence or willful misconduct of Grantor. Notwithstanding the foregoing, Grantor shall also purchase

liability insurance relating to the Trail, either through the Greenway Trail Program Insurance or otherwise, with the same limits of coverage, and shall name the Grantee as an additional insured on such policy as its interest may appear.

8. Grantor Reserved Rights: Subject to the easement rights granted herein, the Grantors, for themselves, and their successors and assigns, reserve all rights as the owner of their respective properties, including the right to fully use and enjoy the Easement Area herein described, including the rights of ingress and egress to, upon, over, under, through and across the Easement Area, provided same shall not eliminate or obstruct the Easement Area, or unreasonably interfere with Grantee's rights hereunder. Grantors shall not construct anything in or below the Easement Area except as authorized by any required governmental approvals, which shall not be unreasonably denied provided that the proposed use does not unreasonably interfere with Grantee's rights hereunder. In the event that any construction below the Trail is conducted, it shall be performed in a timely manner, and the Easement Area shall be returned as near as possible to its prior condition as soon as the construction is completed. Nothing herein shall be construed as limiting the right of Grantor to sell, give, transfer, or otherwise convey or encumber the Development Site, or any portion or portions of the Development Site, provided that such conveyance is subject to the terms of this Greenway Trail Easement Agreement.

9. Reliance on State Law: Grantor and Grantee agree that in creating this easement for public access, Grantor and Grantee are relying on the protection against liability contained in section 9-103 of the New York State General Obligation Law, as the same may be amended from time to time, and that for such purposes both the Grantor and the Grantee shall be deemed "occupants" of the Easement Area. The limitation of activities permitted within the Easement Area is intended to assure that all activities are within the coverage of this provision of State Law. The parties agree, however, that any repeal or amendment of Section 9-103 that may diminish its protective effect shall not affect the validity of the Easement herein granted. Grantor and Grantee further agree that, given the City's participation as a Trail Manager, they are relying on the New York State

indemnity for participating Greenway Compact Communities contained in the New York State Environmental Conservation Law Section 44-0119(7), as the same may be amended from time to time. Grantor and Grantee further agree that they will limit activities within the Easement Area, including a prohibition on motorized uses, to assure eligibility for participation by Grantor in the Hudson River Valley Greenway Trail Program Insurance program.

10. Binding Effect: The easement granted herein is permanent and non-exclusive. The terms, covenants and agreements herein contained shall inure to the benefit of, and be binding upon the parties hereto, their successors and assigns, and all covenants herein shall run with the land affected thereby and shall be perpetual in duration. Notwithstanding the foregoing, no party shall be liable for a breach of this agreement resulting from acts or conditions occurring prior to or after the period of his or her ownership.

11. Amendment/Modification: This Easement Agreement may be amended upon written consent of Grantor and Grantee by a document duly recorded in the Dutchess County Clerk's Office.

12. Enforcement of Easement Agreement and Resolution of Disputes Concerning the Easement: The parties may enforce this Easement Agreement in law or equity against any and all persons responsible for any violation thereof. Any failure to enforce a provision of this Easement Agreement shall in no event be deemed a waiver of a right to do so thereafter, either as to the same violation or breach or as to any other violation occurring prior or subsequent thereto. The parties agree to attempt to mutually resolve any differences informally prior to enforcement proceedings. Any authorization of activities outside the protection of General Obligations Law 9-103, as amended, shall be subject to immediate injunctive relief, and the parties hereby consent to the issuance of preliminary injunctive relief.

13. Severability: Any invalidation of a provision of this Easement Agreement by court order or judgment, or by statute, or otherwise, shall not affect the validity of any other provision of this agreement, and all such other provisions shall remain in full force and effect.

14. Governing Law: This Easement Agreement and all disputes relating thereto shall be governed by and construed in accordance with the laws of the State of New York.

15. Notices: Any Notices to be provided pursuant to this Easement Agreement shall be in writing and emailed and sent by nationally recognized overnight carrier, addressed as follows:

To: Beacon 248 Development, LLC, c/o Paul Epstein, Esq. (rc.eplaw@aol.com), 621 Route 52, PO Box 2, Beacon NY 12508; and c/o Jennifer Van Tuyl (jvantuyl@cuddyfeder.com) 300 Westage Business Center, Suite 380, Fishkill, NY 12524

To: City of Beacon, c/o Jennifer Gray, Esq. (jgray@kblaw.com), 445 Hamilton Avenue, White Plains, NY 10601

Either party may designate a different person or entity to receive notice on its behalf by sending notice to the other parties pursuant to this paragraph.

IN WITNESS WHEREOF, Grantor has executed this instrument as of the date first set forth above. This conveyance is made and executed pursuant to the consent of the members of the Grantor and is made in the regular course of business of the Grantor, and the property interest conveyed does not constitute all, or substantially all, of the assets of the Grantor.

The signature of this Agreement by the Mayor of the City of Beacon was duly authorized by a Resolution of the City Council adopted at a duly scheduled public meeting held on _____, 2017.

BEACON 248 DEVELOPMENT, LLC

By: _____

CITY OF BEACON

By: _____
Randy Casale, Mayor

ACKNOWLEDGMENTS

STATE OF NEW JERSEY)
)ss.:
COUNTY OF)

On the ____ day of _____, in the year 2015, 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(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the _____ (insert the city/town or political subdivision and the state or country or place of acknowledgement was taken)

Notary Public

STATE OF NEW YORK)
)ss.:
COUNTY OF DUTCHESS)

On the ____ day of _____, in the year 2015, 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(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

RECORD AND RETURN TO:

KEANE & BEANE, LLP
Attorneys at Law
445 Hamilton Avenue
White Plains, NY 10601

9/22/17 edits address CC comments 8/28/17-remove all references to maintenance by city

Att'n: Jennifer Gray, Esq.