

**EASEMENT AND MAINTENANCE AGREEMENT
(UTILITIES, DRAINAGE & SEWER)**

THIS EASEMENT AND MAINTENANCE AGREEMENT (the “Agreement”) is made as of the _____ day of March, 2018, by and among **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 “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 Grantor is the record owner of a +/-1.162 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, more particularly described on Exhibit “A” attached hereto (the “Premises”), and shown and designated as “Proposed Lot 2” 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 _____, 2018, as Filed Map No. _____ (the “Subdivision Map”) attached hereto as Exhibit “B”; and

WHEREAS, the parties desire to establish certain utility, drainage and sewer easements for the benefit of the Grantee that are necessary or desirable, and to set forth certain other agreements relating to these easements on the terms and conditions are set forth herein.

NOW, THEREFORE, for and 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 agrees as follows:

1. Permanent Sewer Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns forever, a permanent 20-foot wide easement for the construction, installation, repair, replacement, maintenance and operation of sewer facilities, as designated and shown on the Subdivision Map as “Proposed 20 Foot Wide Sewer Easement in favor of the City of Beacon”, and as more particularly described in Exhibit “C” attached hereto and made a part hereof (the “Sewer Easement”). In the event that the Grantee shall fail to construct, properly maintain, repair or operate the Sewer Easement, the Grantor may undertake such efforts and expenses necessary and appropriate to ensure the proper functioning and operation of the Sewer Easement and the improvements therein, after which the Grantor shall have the right to seek reimbursement from the Grantee for all necessary and related expenses incurred.

2. Permanent Utility Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns forever, a permanent 30-foot wide utility easement for the construction, installation, repair, replacement, maintenance and operation of public utilities, as designated and shown on the Subdivision Map as “Proposed 30 Foot Wide Utility Easement in favor of the City of Beacon”, and as more particularly described in Exhibit “D” attached hereto and made a part hereof (the “Utility Easement”). In the event that the Grantee shall fail to construct, properly maintain, repair or operate the Utility Easement, the Grantor may undertake such efforts and expenses necessary and appropriate to ensure the proper functioning and operation of the Utility

Easement and the improvements therein, after which the Grantor shall have the right to seek reimbursement from the Grantee for all necessary and related expenses incurred.

3. Drainage Easement. Grantor hereby grants and conveys to the Grantee, its successors or assigns forever, a non-exclusive permanent 20-foot wide easement for the construction, installation, repair, replacement, maintenance and operation of such lines, pipes, mains, cleanouts, stormwater detention basin and other necessary or incidental appurtenances thereto, as designated and shown as "Proposed 20 Foot wide Drainage Easement in favor of the City of Beacon" on the Subdivision Map, and as more particularly described in Exhibit "E" attached hereto and made a part hereof (the "Drainage Easement"). In the event that the Grantee shall fail to construct, properly maintain, repair or operate the Drainage Easement, the Grantor may undertake such efforts and expenses necessary and appropriate to ensure the proper functioning and operation of the Drainage Easement, after which the Grantor shall have the right to seek reimbursement from the Grantee for all necessary and related expenses incurred.

4. Compliance. All work caused to be performed pursuant to this Agreement shall be performed in accordance with all required permits, applicable laws and governmental regulations. At the conclusion of all such work, all disturbed areas shall be restored to as good a condition as such areas were found in, or as reasonably close to such condition as possible depending upon the circumstances, including the replacement of all surface and subsurface areas, including, but not limited to, pavement, sod, grass, shrubs and trees.

5. Insurance. Grantee and Grantor shall each furnish to the other a certificate of insurance evidencing commercial general liability coverage 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.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall run with the land and be binding upon and inure to the benefit of the parties and their respective personal representatives, successors and assigns. This Agreement may not be amended or modified except by a written instrument signed by each of the parties, or their successors in interest, and consented to in writing by the holder(s) of any mortgage(s) encumbering the Premises. This Agreement may be executed in counterparts, all of which when taken together shall constitute an entire Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first written above.

GRANTOR:

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

By: _____
Kenneth Kearney, President

STATE OF NEW YORK)
) SS.:
COUNTY OF _____)

On the ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Kearney 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.

Notary Public – State of New York

Signatures continue on following page.

GRANTEE:

CITY OF BEACON

By: _____
Name:
Title:

STATE OF NEW YORK)
) SS.:
COUNTY OF _____)

On the ____ day of _____, 2018, 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.

Notary Public – State of New York

Record & Return:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: Steven S. Heyman, Esq.

Section: 5954
Block: 26
p/o Lots: 688931 and p/o lot 708967
County: Dutchess

EXHIBIT A

Premises

EXHIBIT B

Subdivision Map

EXHIBIT C

Sewer Easement

EXHIBIT D

Utility Easement

EXHIBIT E

Drainage Easement