

TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT (the “Agreement”) is made as of this ____ day of March, 2018, by and among the **CITY OF BEACON**, a municipal corporation, having its principal office located at 1 Municipal Plaza, Beacon, New York 12508 (the “Grantor”), **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 collectively with the HDFC, the “Lot 1 Owner”), and **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 “Grantee”). Grantor and Grantee may individually be referred to herein as a “party” and collectively, as the “parties”.

WITNESSETH:

WHEREAS, the Grantor is the owner of a parcel of real property located in the City of Beacon, Dutchess County, State of New York, more particularly described on Exhibit “A” attached hereto (the “City Parcel”), and shown and designated as “n/f City of Beacon (City Hall Parcel) 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 Lot 1 Owner is the record and beneficial owner of a parcel of real property located in the City of Beacon, Dutchess County, State of New York, shown and designated as “Proposed Lot 1” on the Subdivision Map, and more particularly described in Exhibit “C” attached hereto; and

WHEREAS, the Lot 2 Owner is the owner of a parcel of real property located in the City of Beacon, Dutchess County, State of New York, shown and designated as “Proposed Lot 2” on the Subdivision Map, and more particularly described in Exhibit “D” attached hereto; and

WHEREAS, the Grantor desires to grant and convey to the Grantee and the Grantee desires to accept from the Grantor (i) a temporary right of way and access easement, together with a temporary construction easement allowing for the construction of certain improvements on Lot 1 and Lot 2 along the lot line with the City Parcel, and (ii) a temporary right of way and access easement for the purpose of relocating a memorial tree on the City Parcel;

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 agrees as follows:

1. Construction Easement. Grantor hereby grants and conveys unto Grantee (including, for such purposes, Grantee and its successors, assigns, tenants, invitees, licensees, guests, agents, affiliates, representatives, employees and contractors) a non-exclusive temporary access and construction easement for the purpose of constructing certain improvements on Lot 1 and Lot 2 along the lot line with the City Parcel, as designated and shown on the Subdivision Map as “Proposed Temporary Construction Easement”, and as more particularly described in Exhibit “E” attached hereto and made a part hereof (the “Construction Easement”).

2. Tree Relocation Easement. Grantor hereby grants and conveys unto Grantee (including, for such purposes, Grantee and its successors, assigns, tenants, invitees, licensees, guests, agents, affiliates, representatives, employees and contractors) a temporary access easement upon, across, over and under the City Parcel for the purpose of the attempted relocation of a memorial tree from its current location to its new proposed location as depicted on the map attached hereto as Exhibit “F” (the “Tree Relocation Easement” and together with the Construction Easement, the “Easements”). Notwithstanding the foregoing, the parties hereto agree that, if the attempt to relocate the memorial tree is not successful for any reason whatsoever, the Grantee shall have no liability hereunder for such failure.

3. Term. The term of the Easements shall commence as of the date hereof and shall end on the later of (i) the date on which the City of Beacon has issued temporary certificates of occupancy for the improvements approved by the Planning Board of the City of Beacon to be constructed on Lot 1 and Lot 2, commonly known as “West End Lofts”, and (ii) the date the memorial tree has been relocated or the relocation plan abandoned.

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, Grantee shall restore, at its sole cost and expense, all disturbed areas 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. Said restoration shall be to the satisfaction of the City Engineer. Any dispute as to such restoration shall be submitted to arbitration pursuant to the Rules of the American Arbitration Association.

5. Insurance. Grantee shall furnish Grantor with 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 Grantor as an additional insured. Grantee shall also provide a minimum of \$5,000,000.00 excess liability coverage, naming Grantor as an additional insured which shall also be evidenced on the certificate of insurance.

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 parties hereto have executed this Agreement as of the day and year first above written.

GRANTOR:

CITY OF BEACON

By: _____
Name:
Title:

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

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

Signatures continue on following page.

GRANTEE:

THE KEARNEY REALTY & DEVELOPMENT GROUP INC.

By: _____
Kenneth Kearney, President

WEST END LOFTS LIMITED PARTNERSHIP

By: West End Lofts Associates, LLC, its Managing General Partner

By: _____
Kenneth Kearney, Manager

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.

WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.

By: _____
Christa Hines, Treasurer

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

On the ____ day of March in the year 2018, before me, the undersigned, personally appeared Christa Hines, 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
CITY PARCEL

EXHIBIT B
SUBDIVISION MAP

EXHIBIT C

LOT 1

EXHIBIT D

LOT 2

EXHIBIT E
TEMPORARY CONSTRUCTION EASEMENT

EXHIBIT E
PROPOSED TREE RELOCATION