

**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”); 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 “B” attached hereto and made a part hereof (the “Sewer Easement”).

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 “C” attached hereto and made a part hereof (the “Utility Easement”).

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 “D” 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 representative.s, 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.

*Remainder of page intentionally left blank.*

**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 ALBANY                )

On the \_\_\_\_ day of March, 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                    )  
  )  
COUNTY OF \_\_\_\_\_ )       SS.:

On the \_\_\_\_ day of March, 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, 5<sup>th</sup> 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**

Beginning at a point in the southeasterly line of Beekman Street as presently laid out at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north. thence along said lands now or formerly of Central Hudson Electric and Gas N 88°24'31" E a distance of 99.97'; to lands of the City of Beacon;

thence along said lands the following bearings and distances:

S 27°05'43" W a distance of 128.53';

S 06°28'35" W a distance of 56.01';

S 35°00'00" E a distance of 34.67' and

S 82°17'55" E a distance of 88.68' to a point

thence through lands of the grantor herein S 53°41'50" W a distance of; 220.31' and N 58°46'49" W a distance of 36.99' to an angle point in Lot 1 as shown on a map entitled, "Final Subdivision Plat prepared for Beacon Ridge Associates, Inc., etc...."; filed in the Office of the Dutchess County Clerk on June 7, 1994 as map no. 9899;

thence along same N 35°00'00" W a distance of 135.07' to lands now or formerly of DMS Consolidators, Ltd. formerly being a portion of Beekman Street;

thence along same N 47°03'30" W a distance of 38.75' to a point on a curve in said southeasterly line of Beekman Street through which point a radial bears S 35°56'48" E;

thence along a curve to the left having a radius of 493.37', a central angle of 12°15'54", an arc length of 105.61' to a point of tangency;

thence continuing along said southeasterly line of Beekman Street as currently laid out N 41°47'18" E a distance of 81.95' and N 38°09'31" E a distance of 63.67' to the point and place of beginning.

Containing 50,602 square feet or 1.162 acres being the same more or less.

**EXHIBIT B**  
**Sewer Easement**  
**[to be provided]**

## **EXHIBIT C**

### **Utility Easement**

Beginning at a point in the southeasterly line of Beekman Street as presently laid out, at the intersection of the division line between lands of the Grantor herein formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north;

thence along said lands now or formerly of Central Hudson Electric and Gas N 88°24'31" E a distance of 99.97'; to lands of the City of Beacon;

thence along said lands S 27°05'43" W a distance of 34.20' to a point;

thence through lands of the grantor herein S 88°24'31" W a distance of 108.50' to a point in said southeasterly line of Beekman Street;

thence along same N 38°09'31" E a distance of 39.02' to the point and place of beginning

## **EXHIBIT D**

### **Drainage Easement**

Beginning at a point on a curve in the southeasterly line of Beekman Street as presently laid out, located the following courses and distances from a point in said southerly line of Beekman Street at the intersection of the division line between lands of the Grantor herein, formerly lands of the City of Beacon known formerly as Main Street on the south and lands now or formerly of Central Hudson Electric and Gas on the north:

S 38°09'31" W a distance of 63.67',

S 41°47'18" W a distance of 81.95' to a point of curve;

thence along a curve to the right having a radius of 493.37', a central angle of 05°29'34" an arc length of 47.30;

thence from said point of beginning through lands of the Grantor herein the following bearings and distances:

S 42°48'31" E a distance of 64.68';

N 59°43'03" E a distance of 85.19' and

N 76°25'49" E a distance of 49.38' to a point in the line of lands conveyed from the Grantor herein to the City of Beacon;

thence along said lands S 06°28'35" W a distance of 21.29' to a point;

thence through lands of the Grantor herein the following bearings and distances:

S 76°25'49" W a distance of 39.15'

S 59°43'03" W a distance of 98.30' and

N 42°48'31" W a distance of 81.16' to a point on a curve in said southeasterly line of Beekman Street, through which point a radial bears S 40°23'44" E;

thence along a curve to the left having a radius of 493.37', a central angle of 02°19'24", an arc length of 20.01' to the point and place of beginning