

**PEDESTRIAN WALKWAY EASEMENT
AND MAINTENANCE AGREEMENT**

THIS PEDESTRIAN WALKWAY EASEMENT AND MAINTENANCE AGREEMENT (the “Agreement”) is made as of the ____ day of March, 2018, by and among **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 together with the HDFC and their respective successors and assigns, the “Lot 1 Owner”), **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 “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 Lot 1 Owner is the record and beneficial owner of a +/-1.929 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, shown and designated as “Proposed Lot 1” (“Lot 1”) 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 more particularly described on Schedule “A” attached hereto, upon which it intends to construct a seventy-three (73) unit affordable housing project (the “Affordable Project”); and

WHEREAS, the Lot 2 Owner is the fee owner of a +/-1.162 acre parcel of real property, located in the City of Beacon, Dutchess County, New York, shown and designated as “Proposed Lot 2” on the Subdivision Map and more particularly described on Schedule “B” attached hereto (“Lot 2” and together with Lot 1, the “Premises”), upon which it intends to construct a twenty-five (25) unit market rate housing project (together with the Affordable Project, the “Apartment Complex”); 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 depicted on the map attached hereto as Schedule “C-1” and described on Schedule “C-2”, including the proposed improvements shown thereon (the “Easement Area”); notwithstanding the foregoing, the parties hereto understand and agree that the metes and bounds description attached as Schedule “C-2” hereto reflects the best estimate of the surveyor at the time of this Agreement, and an amendment to this Agreement replacing Schedule “C-2” with an updated metes and bounds description based on the as-built survey of the Premises will be filed following the completion of construction;

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. Grant of Easement. The Grantor hereby grants and releases unto the Grantee a public easement and right of way, for the people of the City of Beacon, its visitors, employees and the general public, for the limited purposes of pedestrian ingress and egress only on, over, across and through the Easement Area (the "Easement"). 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 the Apartment Complex.

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; and (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 "West End Lofts", prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., approved by the City of Beacon Planning Board on February 14, 2018, and on file in the City of Beacon Building Department (with the exception of (i) any amendments to the plans that may be required by the New York State Housing Trust Fund Corporation, or amendments made by the City Planning Board at the request of property owner, and (ii) field changes authorized by the City Building Inspector), 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 and amendments to the Site Plan shall remain subject to all applicable requirements of the Code of the City of Beacon.

(b) Grantor shall at its sole cost and expense repair and maintain the Easement Area so that it can be utilized for the Permitted Use, including snow removal, resurfacing, lighting infrastructure and other improvements necessary to keep the walkway in good repair and available to the public at all times.

4. Grantee Covenants. The Grantee covenants that:

(a) Grantee shall not use, except in the performance of Grantee's governmental duties, 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, including, without limitation, parking.

(c) Grantee shall not obstruct the Easement Area or in any way block access by residents of the Apartment Complex or the building located, or to be located, on Lot 2 as shown on the Subdivision Map, except in the performance of Grantee's governmental duties.

(d) In the event it is determined that use of the Easement Area by the public is causing disturbances to, or safety concerns for, the residents of the Apartment Complex, Grantee agrees to work with Grantor to remedy such disturbances and/or safety issues.

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 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 and indemnify shall be limited to available liability coverage of the City for the claim for which the City's insurer agrees to defend and indemnify the City. The City shall have no duty to defend or indemnify 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 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.

7. Run with the Land. This Easement granted herein 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; Noninterference.

(a) Subject to the terms and conditions hereof, the Easement granted herein shall be non-exclusive.

(b) Notwithstanding anything herein contained to the contrary, for clarification, the Easement granted herein does not confer any rights with respect to ingress and egress from, over, across or through the residential buildings located or to be located on the Premises, or any other portions of the Premises located outside the Easement Area.

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 if provided to the parties, at their respective addresses recited in the opening paragraph of this Agreement, either by hand delivery or overnight express mail, or by registered or certified mail with the postage prepaid.

(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 Agreement 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 Agreement 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 office of the Dutchess County Clerk.

13. Non-Waiver. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

14. Counterparts. This Agreement 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 Agreement 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 trial by jury.

Signature pages follow.

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

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 ALBANY)

On the ____ day of March in the year 2018, before me, the undersigned, 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 continued on next page.

WEST END LOFTS HOUSING DEVELOPMENT FUND COMPANY, INC.

By: _____
Christa Hines, Treasurer

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

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

GRANTEE:

THE CITY OF BEACON

By: _____

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

On the ____ day of March in the year 2018, before me, the undersigned, 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**

Schedule A

Lot 1

Beginning at a point in the northwesterly line of Wolcott Avenue (aka Route 9D) as presently laid out at the intersection of the division line between lands of Grantee herein on the south and lands of the City of Beacon on the north, said point being located S 51°15'26" E a distance of 89.60' from the most easterly corner of Lot 2 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 said line of Wolcott Avenue the following bearings and distances:

S 42°01'30" W a distance of 143.00';

S 44°14'19" W a distance of 133.01' and

S 42°17'27" W a distance of 221.65' to lands now or formerly of the Reformed Church of Beacon;

thence along same N 50°07'23" W a distance of 198.84' to a point in the line of Lot 1 as shown on said filed map no. 9899;

thence along the line of said Lot 1 of filed map no. 9899 N 41°16'37" E a distance of 235.87' to point;

thence through lands of the grantor herein S 58°46'49" E a distance of 36.99' and N 53°41'50" E a distance of 220.31' to the line of other lands of the Grantor herein being the easterly line of the herein described parcel;

thence along said lands S 82°17'55" E a distance of 75.86' and S 51°15'26" E a distance of 64.50' to the point and place of beginning

Containing 84,047 square feet or 1.929 acres being the same more or less

Schedule B

Lot 2

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;

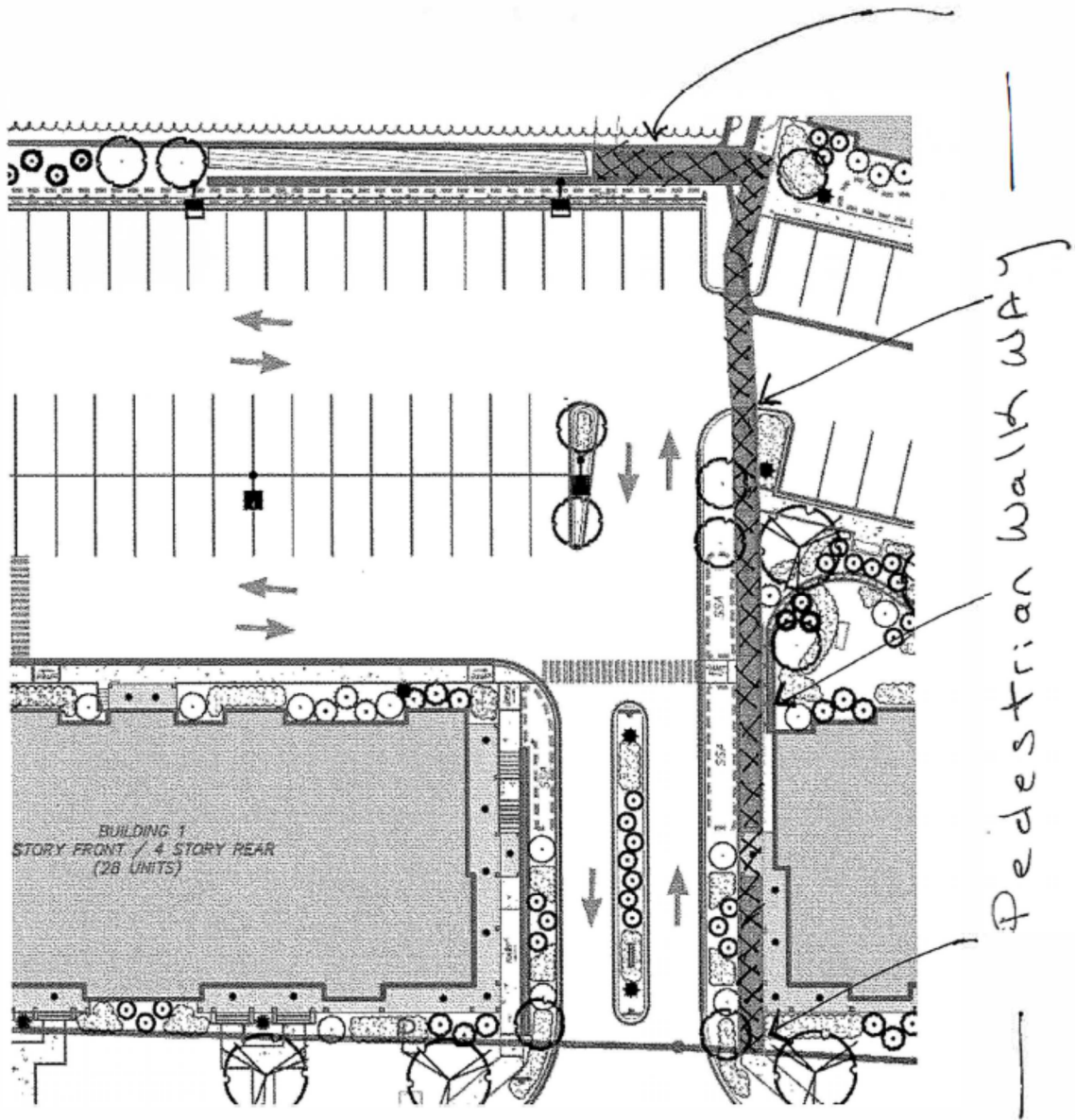
thence along a curve to the left having a radius of 493.37', a central angle of 12°15'54", an arc length of 105.61' to a point of tangency;

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.

Schedule C-1

Easement Area Depiction



Schedule C-2

Easement Area Metes and Bounds Description

[To be provided]