

**Prepared by and return to:**

**ROSS WEISS, ESQUIRE  
COZEN O'CONNOR  
200 Four Falls Corporate Center  
Suite 400  
West Conshohocken, PA 19428-0800**

Parcel ID Nos.:        47 Cricket – Parcel #40-00-13812-00-8, Map #40-005B-144  
                              55 Cricket – Parcel #40-00-13816-00-4, Map #40-005B-143  
                              59 Cricket – Parcel #40-00-13820-00-9, Map #40-005B-142  
                              65 Cricket – Parcel #40-00-13824-00-5, Map #40-005B-141

### **EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the TOWNSHIP OF LOWER MERION, a Pennsylvania First-Class Township ("Grantor" or "Township") and CRICKET COURT PARTNERS, L.P., a Pennsylvania Limited Partnership ("Grantee").

#### **BACKGROUND:**

WHEREAS, Grantor is the fee owner of certain real property located along East Athens Avenue, Lower Merion Township, Montgomery County, Pennsylvania (sometimes referred to as the "Trolley Way"), as is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Burdened Property"); and

WHEREAS, Grantee is the fee owner of certain real property located adjacent to the Burdened Property and known as 47-65 Cricket Avenue, Lower Merion Township, Montgomery County, Pennsylvania, as more particularly described on Exhibit "B" attached hereto and made a part hereof (the "Benefitted Property"); and

WHEREAS, Grantee has presented to the Grantor plans for redeveloping the Benefitted Property requiring the easements outlined in this Agreement; and

WHEREAS, as more particularly set forth in an April 29, 2016 letter from Christopher Leswing to Grantee ("Sketch Plan Approval Letter"), a copy of which is attached hereto as Exhibit "C," on April 20, 2016, the Township Board of Commissioners approved (subject to 33 conditions) Grantee's Sketch Plan prepared by Site Engineering Concepts dated November 16, 2015, last revised March 17, 2016 ("Sketch Plan"), showing the proposed redevelopment of the Benefitted Property, including the construction of a five-story mixed use building, with an approximately 27,791 square feet footprint containing 77 apartments and approximately 10,738 square feet of retail space at 47-65 Cricket Avenue (the "Project"); and

WHEREAS, as more particularly set forth in a \_\_\_\_\_ letter from Christopher Leswing to Grantee (“Preliminary Plan Approval Letter”), a copy of which is attached hereto as Exhibit “D” on \_\_\_\_\_, the Township Board of Commissioners approved (subject to \_\_\_\_\_ conditions) a Preliminary Plan for the Project; and

WHEREAS, as required by the Township’s Approval Letters referenced above, Grantee desires and Grantor is willing to grant to Grantee such easements on, over, upon, across and in the Burdened Property as are necessary for the Project including: (i) a temporary construction easement; (ii) a permanent pedestrian and vehicular egress, ingress and regress easement; and, (iii) a permanent stormwater easement, all in accordance with and subject to the terms hereof.

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Grantor and Grantee agree as follows:

1. Background. The background section hereof is incorporated herein by reference and made apart hereof.

2. Temporary Construction Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns, a temporary right and easement for demolition and construction purposes through that portion of the Burdened Property which is identified as the “Temporary Construction Easement Area” on the plan attached hereto as Exhibit “E.” The temporary construction easement shall be of such duration as is necessary for Grantee to complete its intended redevelopment of the Benefitted Property but in no event longer than a total of 18 months in the aggregate. Grantee shall have the right to use and enjoy such easement from time to time as long as the duration does not exceed 18 months. During such times (if any) that Grantee has not elected to use such temporary construction easement, Grantee shall provide written notice thereof to Grantor and Grantee shall clear the Temporary Construction Easement Area of any and all fencing and other obstructions installed by Grantee. Grantee anticipates that not all of the Temporary Construction Easement Area will be required throughout the entire construction process and may use less than the entire Temporary Construction Easement Area during certain phases of the Project. Grantee shall be required, at its sole cost and expense, to erect and maintain temporary fencing or other similar barriers around the Temporary Construction Easement Area. Grantee shall provide at least 30 days prior written notice to Grantor of the anticipated date on which the temporary construction easement shall begin and shall keep Grantee reasonably advised as construction progresses. As required by Grantor, parking permits for all spaces lost on the Burdened Property during the construction phase of the Project shall be purchased by Grantee.

3. Trolley Way Access Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns, a perpetual right and easement for vehicular and pedestrian access, egress, ingress and regress on, upon, over and across the Burdened Property for Grantee and its successors and assigns and its and their guests, licensees and invitees (“Access Easement Area”). Except for such driveway aprons and other improvements which may be shown on the plan attached hereto as Exhibit “F” or any improvements which may be required by Grantor pursuant to Final Land Development Approval or otherwise mandated by Grantor during construction, Grantee shall not install any improvements within the Access Easement Area without obtaining

the prior written consent of Grantor. Grantee shall perpetually maintain all improvements installed by Grantee (such as the curbing, sidewalk and driveway apron, striping, signage and stormwater system) in good and safe condition as required by Code. Grantee may not use the easement granted herein in a manner which would interfere with Grantor's perpetual and unencumbered use of the Burdened Property.

4. Term. The easement granted in paragraph 3 hereof shall extend only for the benefit of the Project. If the Project is not constructed pursuant to the development plan approved by the Township, or if the Project is hereafter abandoned (if another project were applied for, approved and constructed – or if permits to construct the Project were not issued within five years from the date of this easement) or reconfigured so that the easement is no longer reasonably necessary, or if without cost to Grantee suitable access to the parking areas serviced by the easement is available or can be provided by the Grantee, its successors or assigns in the future without use of the easement, then in each case the easement granted in paragraph 3 hereinabove shall be extinguished.

5. Temporary Parking Restrictions on Trolley Way During Installation of Stormwater Facilities. Parking will be restricted on Trolley way for 30 days from the date of commencement of the construction of the stormwater facilities. Grantor will not unreasonably withhold a request for an extension of time to install the stormwater facilities.

6. Stormwater Easement.

(a) Grantor hereby grants and conveys to Grantee, its successors and assigns, a right and easement to continue to connect into an existing stormwater pipe and related appurtenances and/or to install, use, maintain, repair and replace as necessary said stormwater pipe and related appurtenances, and any other stormwater facilities, including inlets, as and where such are more particularly shown and described on Exhibit "F" as the "Stormwater Easement Area." Except for the improvements as shown on Exhibit "F" or any improvements which may be required by Grantor pursuant to Final Land Development Approval or otherwise mandated by Grantor during construction, Grantee shall not install any other improvements in the Stormwater Easement Area without the prior written consent of Grantor.

(b) Grantee shall have the perpetual responsibility for the continued operation and maintenance of all stormwater improvements installed by Grantee including the detention basin and storm sewer in accordance with the Stormwater Management Facilities Operations and Maintenance Plan as approved by the Township (hereinafter the "Plan") for the Property, which is attached hereto as Exhibit "G" and made part hereof, providing for the management of stormwater facilities and best management practices (hereinafter "BMPs") within the confines of Trolley Way as follows:

(1) Definitions:

a) BMP – "Best Management Practice;" activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Township Stormwater Management Code, including but not limited to infiltration

trenches, seepage pits, filter strips, bio-retention, wet ponds, permeable paving, rain gardens, grassed swales, forested buffers, sand filters and detention basins.

b) Seepage Pit – An underground BMP structure designed, constructed, and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer,

(2) The stormwater management facilities and BMPs shall be constructed by the Grantee in accordance with the plans and specifications identified in the Plan.

(3) The Grantee shall operate and maintain the stormwater management facilities and BMPs as shown on the Plan in good working order acceptable to the Township and in accordance with the specific maintenance requirements noted on the Plan.

(4) The Township reserves the right for its authorized agents and employees, to enter upon the Property, at reasonable times and upon presentation of proper identification, to inspect the facilities and BMP(s) whenever it deems necessary.

(5) In the event the Grantee fails to operate and maintain the facilities and BMP(s) as shown on the Plan in good working order acceptable to the Township, the Township or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said facilities and BMP(s). It is expressly understood and agreed that the Township is under no obligation to maintain or repair said facilities, and in no event shall this be construed to impose any such obligation on the Township.

(6) In the event the Township performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Grantee shall reimburse the Township for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Township.

(7) This Easement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.

(8) The Grantee, for its executors, administrators, assigns, and other successors in interests, hereby releases the Township, its employees and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Township, its employees and representatives from the construction, presence, existence, or maintenance of the facilities and BMP(s) by the Grantee or Township. In the event that a claim is asserted against the Township, its designated representatives or employees, the Township shall promptly notify the Grantee and the Grantee shall defend, at his own expense, any suit based on the claim. If any judgment or claims against the Township's employees or designated representatives shall be allowed, the Grantee shall pay all costs and expenses regarding said judgment or claim.

(9) It is understood and agreed that the Township shall be permitted to connect into Stormwater Management Facilities constructed and maintained by Grantee for the purpose of draining water from Trolley Way.

7. Mechanics' Liens. Grantee shall defend, indemnify and hold Grantor harmless from and against any and all damages, actions, suits, demands, costs, expenses, judgements, claims, causes of action, liabilities and indebtedness of any kind or nature whatsoever, including attorney's fees and court costs, arising out of or in connection with any mechanics' liens or similar liens or claims which arises or is alleged to arise out of any work performed by or at the request of Grantee.

8. Indemnification; Insurance. Grantee shall indemnify, protect and save harmless Grantor (and Grantor's engineer, Pennoni Associates, Inc.) from any and all claims, damages, suits, costs and expenses (including, without limitation, attorney's fees and court costs) resulting from loss of life or property or from injury or damage to person or property (the foregoing, "Claims"), to the extent caused by or arising out of the actions of Grantee, its guests, invitees, employees, agents or contractors in or about the Benefitted Property or the Burdened Property, or arising out of or related to the exercise or enjoyment of the easement rights granted herein or the installation, use, repair, replacement or maintenance of any improvements permitted or required hereunder. During the course of construction, Grantor shall maintain commercial general liability insurance in the amount of \_\_\_\_\_ and name Grantor as an additional insured.

9. Covenants Run with Land. It is intended that the rights, easements, covenants, restrictions, agreements and promises set forth in this Agreement shall be construed as both covenants and conditions and that they shall run with the land and be affirmatively enforceable against and binding upon Grantor and Grantee and their respective successors and assigns and shall continue to be easements, servitudes, charges, restrictions and encumbrances appertaining to and upon, and covenants benefitting, binding and running with the land, buildings and improvements now or later existing upon or within the Benefitted Property and the Burdened Property.

10. Miscellaneous.

(a) Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their executors, administrators, personal representatives, successors and assigns.

(b) Recording. This Agreement shall be recorded at Grantee's expense in the office of the Recorder of Deeds in and for Montgomery County, Pennsylvania.

(c) Captions. The captions of the sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction.

(d) Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws of the Commonwealth of Pennsylvania.

(e) Amendment; Integration. This Agreement may not be altered, modified, amended or terminated unless by an instrument in writing duly executed by each of the parties then bound by this Agreement. This Agreement contains all of the agreements and understandings of the parties concerning the subject matter contained herein and supersedes all

prior oral or written agreements or understandings relating to the subject matter contained herein.

(f) Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or unenforceability of any portion or portions thereof shall not affect the enforceability or validity of any other provision or portion thereof.

(g) Private Easements. Neither the grant of the easements hereunder, nor the use and enjoyment thereof pursuant to this Agreement, shall be deemed a dedication of any area or to any public use or in any way create or confer on any member of the public any right to use or enjoy the same, or any estate therein

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

GRANTOR:

Witness/Attest:

TOWNSHIP OF LOWER MERION

\_\_\_\_\_  
Jody L. Kelley, Secretary

By: \_\_\_\_\_  
Paul A. McElhaney, President  
Board of Commissioners

Witness/Attest:

GRANTEE:

CRICKET COURT PARTNERS, L.P.

Approved as to form:

\_\_\_\_\_  
Gilbert P. High, Jr.  
Solicitor for Lower Merion Township

By: \_\_\_\_\_  
Title: General Partner

COMMONWEALTH OF PENNSYLVANIA :

: ss

COUNTY OF MONTGOMERY :

On this, the \_\_\_\_ day of \_\_\_\_\_, 2016 before the undersigned officer, personally appeared Paul A. McElhaney, known to be or satisfactorily proven to be the President of the Board of Commissioners of the Township of Lower Merion, and as such President, being duly authorized to do so, executed the within instrument on behalf of the Township of Lower Merion for the purposes therein contained, and that it might be recorded as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary

COMMONWEALTH OF PENNSYLVANIA :

: ss

COUNTY OF MONTGOMERY :

On this, the \_\_\_\_ day of \_\_\_\_\_, 2016 before the undersigned officer, personally appeared \_\_\_\_\_, known to be or satisfactorily proven to be the \_\_\_\_\_ of Cricket Court Partners, L.P., and as such \_\_\_\_\_, being duly authorized to do so, executed the within instrument on behalf of Cricket Court Partners, L.P., for the purposes therein contained, and that it might be recorded as such.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary



## **EXHIBITS**

Exhibit A – The Burdened Property

Exhibit B – The Benefitted Property

Exhibit C – The April 29, 2016 Approval Letter

Exhibit D – The Preliminary Plan Approval Letter

Exhibit E – The Temporary Construction Easement Area

Exhibit F – The Stormwater Easement Area

Exhibit G – The Stormwater Management Facilities Operations and Maintenance Plan