easement and maintenance agreement

This Easement and Maintenance Agreement (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019, by and between:

VILLAGE OF SEWICKLEY HILLS CONDOMINIUM ASSOCIATION, INC., a Pennsylvania Non-Profit Corporation and the Condominium Association formed under the Pennsylvania Uniform Condominium Act by Declaration of Condominium recorded in the Recorder’s Office of Allegheny County, Pennsylvania at Deed Book Volume 12109, Page 469, and duly incorporated by Articles of Incorporation filed with the Pennsylvania Department of State (Entity No. 3234706), (hereinafter the “Association”),

A

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D

SEWICKLEY, LLC, an Illinois limited liability company, (hereinafter “Developer”)

recitals

The Association consists of one hundred (100) condominium Units together with Common Elements situate on land situate along Red Mud Hollow Road in Ohio Township, Franklin Park Borough and Sewickley Hills Borough by way of Declaration of Condominium recorded at Deed Book Volume 12109, Page 469, (hereinafter “Declaration”).

The Association sold and conveyed fee simple title to 43.03 acres of the Common Elements of the Association as more fully defined as Convertible Real Estate at Schedule 1 of the Addendum attached to the Declaration to Developer, by deed dated of even date herewith and to be recorded in the Allegheny County Department of Real Estate Office and also described in Exhibit “A” attached hereto, hereinafter referred to as “The Reserve.”

The Association’s transfer of title to The Reserve was together with and subject to rights of ingress, egress and regress over the Association Common Elements providing access to and from Red Mud Hollow Road.

The land remaining in the Association after the sale of The Reserve, including all existing condominium Units and Common Elements is hereafter referred to as “Association Property.”

The parties desire to set forth the rights, obligations and responsibilities of each party relating to the limits of the easement, and the maintenance, repair and replacement thereof.

NOW THEREFORE, for good and valuable consideration, and intending to be legally bound hereby, the parties agree as follows:

**1. Grant of Easements.** The Association hereby grants and conveys to Developer, for the use and benefit of The Reserve, non-exclusive irrevocable easements over the Common Elements of the Association, situate in Ohio Township and Sewickley Hills Borough, Allegheny County, Pennsylvania, as follows:

A. Easement for vehicular and pedestrian ingress, egress and regress on, over, upon, under and across the area designated as “Access Easement” on Exhibit “B” attached hereto and made a part hereof (“Access Easement”) for the purpose of providing access to and from Red Mud Hollow Road and The Reserve.

B. Easement for all utilities, private or public, including but not limited to, water, sanitary sewer, gas, electric, cable TV, internet service and telephone (“Utility Service”) on, over, upon, under and across the Access Easement for the purpose of providing Utility Service to The Reserve.

C. Easement for storm water discharge and management on, over, upon, under and across the area designated “Storm Water Easement” on Exhibit “C” attached hereto and made a part hereof (“Storm Water Easement”) for the purpose of managing stormwater related to the development of The Reserve.

**2. Ratification of Easement.** To the extent any utility provider or government entity requests that a separate easement be executed and recorded for delivery of Utility Service over the Access Easement, the Association agrees to promptly execute and deliver the easement to the requesting utility provider or government entity using such provider’s or entity’s standard form.

**3. Initial Improvements by Developer.** Developer hereby agrees, at its sole cost and expense, as part of Phase 1 development of The Reserve,

A. To remove the existing guard house on Ascot Drive, near the entrance at Red Mud Hollow Road.

B. To relocate the security cameras and/or any associated equipment, wiring and/or utility service thereto now affixed to the guard house to an area approved by the Association, said approval not to be unreasonably withheld.

C. To widen Ascot Drive as shown on the “Entrance Improvements” exhibit attached hereto as Exhibit “D” and made a part hereof.

D. To install an additional entrance lane, with signage and operating gate, as shown on the Entrance Improvements.

E. To install stop signs at all four corners of the intersection of Ascot Drive and Clubhouse Lane, as shown on the Access Easement.

F. To install standard speed bumps on Clubhouse Lane at the locations designated on the Access Easement.

G. To make required modifications, if any, to the Storm Water Easement.

**4. Joint Improvements.** The Association and Developer shall jointly design and modify the entrance monument(s) near Red Mud Hollow Road. The sign(s) shall clearly identify each community as a separate community. The cost and expense shall be shared based on the specifications, detail and size requested by each party. The parties intend that each party shall bear the cost and expense proportionately based on the proportion of the sign benefitting or requested by that party. After initial modification, the entrance sign(s) shall be maintained as part of the Access Easement.

**5. Use of Common Elements.** Except the non-exclusive easements set forth in this Agreement, the Association shall have exclusive ownership and control of all Common Elements in the Association, including but not limited to the existing clubhouse and swimming pool, and the residents, occupants and/or Unit Owners of the Reserve shall have no right of access or use thereof. Developer shall fully and adequately disclose the same to all future third-party purchasers of Units developed at the Reserve. Developer shall have no right to use the existing clubhouse or swimming pool. Developer shall have exclusive ownership and control of The Reserve.

**6. Maintenance and Repair of the Access Easement.** The Association and Developer shall jointly operate, control, maintain, repair and replace (hereinafter collectively “maintain” or “maintenance”) all improvements within the Access Easement and Storm Water Easement, including but not limited to:

A. Paved road surface;

B. Landscaping;

C. Street lights;

D. Road signs;

E. Entrance/exit gates;

F. Entrance Monument(s);

G. Security cameras;

H. Stormwater conveyance and storage facilities; and

I. Joint Management Agent.

hereinafter referred to as “Joint Obligations.”

**7. Joint Obligations Expenses.** The Joint Obligations Expenses shall mean any and all expenses related to the maintenance of the Access Easement, including but not limited to lawn and landscape, utilities, street lights, snow and ice control, paving, security camera/system, signs, and entrance monument(s), and the Storm Water Easement.

**8. Allocation of Joint Obligations Expenses.** Contribution to the Joint Obligations Expenses shall be determined as follows (“Allocated Share”):

A. Until Developer obtains final approval not subject to further appeal for Phase 1 of The Reserve, and all permits are issued to authorize construction, and construction commences, the Association shall pay all Joint Obligations Expenses.

B. Upon Phase 1 of The Reserve being finally approved not subject to further appeal, all permits being issued to authorize construction to commence, and commencement of construction, the Developer and Association shall share equally all Joint Obligations Expenses until the date on which the 101st building permit is issued for a dwelling unit in The Reserve.

C. Upon the 101st building permit being issued for a dwelling unit in The Reserve, all Joint Obligations Expenses shall be shared on a proportionate basis, recalculated at the conclusion of each calendar year, with the first recalculation occurring and applying to the first full calendar year after the 101st building permit is issued. The calculation shall be as follows:

1) The Developer’s share shall be equal to the percentage determined by dividing the cumulative number of building permits issued in The Reserve as of the close of business on the preceding December 31 (“Cumulative Permits”) by the number of Cumulative Permits, plus 100.

2) The Associations share shall be equal to the percentage determined by dividing 100 by the number of Cumulative Permits, plus 100.

**9. Joint Management.** Developer and The Association shall jointly manage maintenance of the Access Easement, including adoption of an annual budget and establishment of a joint operating account and joint reserve account if necessary at the discretion of and upon approval by both parties. Notwithstanding the foregoing, the parties agree that the day to day oversight of the Access Easement, including negotiation and oversight of contracts with service providers and subcontractors shall be managed by an experienced management company. The parties shall jointly select a joint management company (hereinafter referred to as “joint management agent” and the cost of said joint management agent shall represent Joint Obligations Expenses to be satisfied as determined under this Agreement. The Board of the Association and the Board of the Reserve shall be equally responsible for the operation and control and all decisions related to the maintenance of the Access Easement, with the President of each Board to be the point of contact for the joint management agent. All disputes hereof shall be resolved in the manner provided at Paragraph 12 below.

**10. Payment of Bills.** As expenses are duly incurred for approved maintenance within the Access Easement and Storm Water Easement, each party agrees to promptly approve payment of said expenses by the joint management agent and/or to pay to the joint management agent the sums necessary to satisfy said expenses pursuant to each party’s Allocated Share as determined under this Agreement. Each party shall duly collect contributions from its respective owners/members sufficient to pay its share of Joint Obligations Expenses. Neither party shall have any obligation or right to seek direct collection from an owner/member in the other party’s association.

**11. Sole Obligation Expense.** Developer shall be solely responsible for all cost and expense relating to maintenance of any portion of the Storm Water Easement which solely benefits The Reserve. Any shared portion of the Storm Water Easement shall be maintained in the same manner as the Access Easement. The Association shall be solely responsible for all cost and expense relating to the Common Elements which are not part of the Access Easement, and all utilities which run through the Access Easement which solely benefit the Association.

**12. Disputes Resolution.** If the parties cannot mutually agree on any matter regarding the Access Easement and/or the terms of this Agreement, then the parties must participate in mandatory mediation with a mediator mutually selected. If the parties cannot agree on a mediator, then the incumbent solicitor for Ohio Township, or an individual appointed by the Ohio Township Supervisors if the solicitor declines to serve, shall mediate the dispute.

If the matter is not resolved in mediation, then all unresolved issues, as specifically and carefully framed by the mediator (each issue individually), shall be voted on at a general meeting of all unit owners in the Association and The Reserve. Notice shall be given by the joint management agent at least fifteen (15) days in advance to the address on record with each association for all owners, including the issues to be voted upon. The notice shall set a time and place within Ohio Township or Sewickley Hills Borough for the meeting. Each unit shall have one vote, regardless of the number of owners for each unit and/or the number of units in each association. Unit owners may grant a proxy to be voted on their behalf at the meeting. A simple majority vote of the members attending the duly called meeting shall conclusively decide all issues. Fifteen (15) unit owners, either personally attending, or attending by proxy, shall constitute a quorum for purposes of the meeting.

**13. Non-Interference.** All unit owners or other authorized individuals utilizing the Access Easement shall use the Access Easement in a manner which (a) does not unreasonably disrupt or unreasonably interfere with the rights of the other unit owners or authorized individuals, (b) does not materially detract from the appearance or value of the Access Easement, and (c) complies with all laws, statutes, rules, regulations, codes, ordinances and orders of all governmental bodies.

**14. Condition of Easements.** For purposes of this Agreement, “maintain” or “maintenance” shall include maintenance, repairs and replacements necessary to keep the Access Easement and improvements located therein at all times in a safe, sightly, good and functional condition based on standards for a first-class use in the market area, free of potholes and other defects which effect traffic flow. Maintenance shall include but not be limited to repaving and replacing markings on the surface of the Access Easement from time to time as necessary so as to provide for the orderly movement of vehicles, pothole repair, and resurfacing.

**15. Damage by the Other Party.** The maintenance obligations created in this section do not relieve an Owner from any liability for damages caused by that Owner's or that Owner’s guests or invitee’s Permittees' negligent or willful acts.

**16. Failure to Pay Costs.** In the event any party fails to pay any sum due pursuant to this Agreement, each party expressly agrees to pay any and all costs, fees and expenses, including attorney fees, which may be incurred by the other party to enforce the terms of this Agreement.

**17. Insurance.** Each party shall maintain or cause to be maintained commercial general liability insurance, insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by, the condition, use or occupancy of the Easement Area by that party. The insurance required hereunder shall be carried by a reputable insurance company or companies qualified to do business in the Commonwealth of Pennsylvania and having limits for loss of life or bodily injury in the amounts of not less than $500,000 for each person and $1,000,000 (for each occurrence) and $500,000 for property damage for each occurrence. Each Owner shall provide insurance certificates showing that the required insurance is in force, stating the terms of the policies, and requiring the insured to give each other Owner at least thirty days-notice before coverage under any policy is reduced or canceled. The limits of insurance shall be adjusted every ten (10) years by the increase in the Consumer Price Index for the City of Pittsburgh.

**18. Remedies.**

A. Injunctive and/or Other Remedies. In the event of a breach of any of the terms, covenants and provisions hereof, the aggrieved party hereunder shall be entitled to exercise all available legal and equitable remedies for the consequence of such breach or attempted breach including, but not limited to, injunctive relief and shall further be entitled to reasonable legal fees, costs and expense of any such suit or proceedings.

B. Cumulative Remedies. Each remedy under this Agreement is cumulative with all other remedies available under this Agreement at law or in equity, and the exercise of one remedy does not impair or waive any party’s right to exercise any other remedy.

C. Non-Waiver. No delay or omission of any party in the exercise of any right accruing upon any default of any other party shall impair such right or be construed to be at waiver thereof, and every such right may be exercised at any time during the continuation of such default. A waiver by any party of a breach of, or a default in, any of terms and conditions of this Agreement by any other party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provisions of this Agreement.

D. Non-Terminable Agreement. Except as otherwise set forth herein, no breach of the provisions of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement, but such limitations shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value covering any part of the Property.

E. Force Majeure. If any party or any other party shall be delayed or hindered or prevented from the performance of any act required to be performed by such party by reason of acts of God, strikes, walk-outs, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such parties control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond a control of such party.

**19. Term.** This Agreement and the easements, rights, obligations, conditions, restrictions and liabilities created hereby shall be perpetual to the extent permitted by law.

**20. No Dedication.** Neither this instrument nor the recordation of it are intended to, and neither shall be construed to, create any rights, easements, or privileges in the public generally by dedication or otherwise in and to the land or any portion thereof.

**21. Mortgage Subordination.** Any mortgage or deed of trust affecting or encumbering any portion of any land subject to this Agreement shall at all times be subject and subordinate to the terms of this Agreement, and any Party foreclosing any such mortgage or deed of trust or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Agreement.

**22. Estoppel Certificate.** Any party may, at any time and from time to time deliver written notice to the other party requesting such other party to certify in writing (a) that this Agreement is in full force and effect, (b) that, to the knowledge of the certifying party, the requesting party is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of any and all defaults, and/or (c) with respect to such other reasonable business matters directly related to this Agreement. Each party receiving such request shall use its best efforts to execute and return such certificate within twenty (20) days following the receipt thereof. The failure of either party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that no default exists.

**23. Notices.** Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, with postage prepaid, or by private delivery service (such as local courier or nationally recognized overnight courier) with provisions for acknowledgement of receipt by the recipient, or by hand delivery by the notifying Owner. Delivery shall be deemed effective on the date of delivery as shown on the delivery ticket or receipt evidencing receipt thereof. Notwithstanding the above, in cases of emergency oral notice is sufficient provided that such oral notice is followed by written notice. Notice shall be sent to the address provided by each party to the joint management agent, or in the absence thereof, to the address found in the Allegheny County Assessment Office, or other government office.

**24. Covenant Running with the Land.** This Agreement is binding upon, and inures to the benefit of, the successors and assigns of the parties hereto, and shall be a covenant running with the land. The easements granted under this Agreement are appurtenant to The Reserve and the Association Property. The Developer contemplates that a homeowner’s association will be formed for The Reserve. Rights of the Developer may be assigned to the homeowners association formed for The Reserve. The parties contemplate that this easement will be jointly managed by the Association and the new association created for The Reserve.

**25. Beneficiaries.** The rights established by this Agreement are for the benefit of all owners, occupants, tenants, licensees, guests, agents and invitees of all lots and/or units currently existing within the Association or to be built within The Reserve. All lot owners and/or unit owners shall have the full right of ingress, egress and regress across on, over, under, and upon the Access Easement. This benefit shall run with the land and be binding upon, and inure to the benefit of, the heirs, successors and assigns of the lot owners and unit owners.

**26.** **Miscellaneous.**

A. If any provisions of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof due any other persons or circumstances, shall not be affected thereby; and shall not be deemed at any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

B. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, exclusive of its rules regarding or relating to conflict of laws.

C. The article headings in this Agreement are for convenience only, shall in no way define or limit the content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

D. This Agreement may be amended, modified or terminated at any time by an Agreement in writing, executed and acknowledged by the parties; this Agreement shall not be otherwise amended, modified or terminated during the term hereof.

E. This Agreement is intended to be recorded.

F. The parties hereto for themselves and their respective heirs, successors, and assigns hereby agree, upon request from time to time, to take such actions and to execute and deliver such documents as may be reasonably necessary or appropriate in connection with this Agreement and to establish maintain or protect their rights and remedies hereunder or to effect the intents and purposes hereof.

Intending to be legally bound hereby, the parties have set their hands and seals the day and year first above written.

**ATTEST: VILLAGE OF SEWICKLEY HILLS CONDOMINIUM ASSOCIATION, INC. a Pennsylvania Condominium Association**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, President

**WITNESS: SEWICKLEY, LLC, an Illinois limited liability company (“Developer”)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

Ohannes Korogluyan

COMMONWEALTH OF PENNSYLVANIA )

) ss:

COUNTY OF ALLEGHENY )

This EASEMENT AND MAINTENANCE AGREEMENT was acknowledged before me on this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2019 by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as President who represents that he/she is authorized to act on behalf of VILLAGE OF SEWICKLEY HILLS CONDOMINIUM ASSOCIATION, INC.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

STATE OF ILLINOIS )

) ss:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

This EASEMENT AND MAINTENANCE AGREEMENT was acknowledged before me on this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2019 by OHANNES KOROGLUYAN as Manager who represents that he is authorized to act on behalf of SEWICKLEY, LLC.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires:

certificate of residence

I, the Undersigned, do hereby certify that the precise residence of Sewickley, LLC is: Ohannes Korogluyan, Amos Financial, LLC, 3330 Skokie Valley Road, Suite 301, Highland Park, IL 60034.

Witness my hand this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019.

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