TOWNSHIP OF LOWER MERION

Building & Planning Department

MEMORANDUM

TO:

Douglas S. Cleland, Township Manager

FROM:

Angela N. Murray, AICP Assistant Director Q. n.m.

SUBJECT:

Ardmore Revitalization Update

Development Agreement with Dranoff Properties

Ardmore Transit Center

DATE:

December 7, 2012

<u>Amended and Restated Development Agreement between Lower Merion Township and</u> **Dranoff Properties**

In June 2012, the Board of Commissioners approved an extension of the Development Agreement ("DA") between Lower Merion Township and Dranoff Properties through December 31, 2012. The purpose of the extension was to allow time for the Township Negotiating Committee ("TNC") and Dranoff Properties to negotiate modifications to certain terms and elements of the DA to reflect changes in project scope and schedule. These revisions to the Development Agreement divide the projects into separate public and private redevelopments. Dranoff Properties and the TNC have been working on revising the Development Agreement to reflect the potential planned development of the two portions of the proposed Ardmore Station Project separated as follows: one portion at the existing train station and immediately adjacent parking areas owned by Amtrak and the Township (the "ATC Site"), and the other at the nearby Cricket Avenue parking lot on the south side of Lancaster Avenue (the "Cricket Site").

Cricket Site

The attached (Attachment "A") Amended and Restated Development Agreement reflects several months of negotiations and discussions between Dranoff Properties and the TNC to reach agreement on the various terms and conditions that would guide the redevelopment of the Cricket Site over the next few years. Some terms are updated from the original, extended DA while modified terms reflect the location and definition of the mixed-use project on the Cricket Site and provides for terms that govern the future use and redevelopment of the site. The proposed amended agreement outlines the scope of the redevelopment of the Cricket Site, the obligations and responsibilities of each party, financial terms and the recommended use of the PA Redevelopment Assistance Capital Project ("RACP") grant funds, zoning approvals and land development compliance and a schedule of performance and project completion dates. A summary of the document prepared by the Township Special Counsel is included as an attachment (Attachment "B") to this memorandum.

Ardmore Transit Center Site

The Township has been advised that PennDOT identified funding to be programmed onto the state Transportation Improvement Program, ("TIP"), in early 2013. The state's funding for the Ardmore Transit Center ("ATC") would be added to the current 2013 TIP and enable the project to progress forward with design engineering as well as with engineering review by SEPTA and Amtrak, and finally to development review and construction. The amount identified by PennDOT is \$12,750,000 as a new source of funding for Phase One of the ATC project.

Over the last year, the Township has worked with PennDOT and their engineering consultants to analyze costs for the various transit related components of the Ardmore Transit Center. This analysis resulted in the determination by PennDOT that the project should be advanced in two phases given current funding limitations. The first phase would include high level platforms, canopies, accessibility improvements, tunnel renovations, the foundations for the parking garage and other transit amenities. The second phase would include completion of the multi-purpose parking garage on the Amtrak/SEPTA and Township parking lots and include an interior waiting room.

SEPTA staff is working with the Delaware Valley Regional Planning Commission ("DVRPC") to identify additional funds for accessibility improvements to address a gap in the overall Phase 1 estimated cost of \$22,250,000. Remaining funds will come from the balance of the 2006 Federal Transit Administration appropriation and the Township 20% match that is already identified in the Township's Capital Improvement Program ("CIP" # 4021). Amtrak has been requested to provide in-kind services for engineering review of the revised design engineering plans estimated to cost \$200,000.

Township staff will continue to work with SEPTA and PennDOT staff to identify funding for construction of the transit improvements and the adjacent parking garage. Every effort will be made to identify these funds so that both the transit improvements and the parking garage can be constructed as quickly and efficiently as possible.

CC: President and members of the Township Board of Commissioners Patricia Ryan, Assistant Township Manager
Bob Duncan, Director, Building & Planning Department
Carl Dranoff, President and CEO, Dranoff Properties
David Scolnic, Esq., Hangley Aronchick Segal Pudlin & Schiller
David Lebor, Esq., Dranoff Properties

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPME	ENT AGREEMENT (this
"Agreement") is executed as of this day of	, 2012 (the "Effective Date"),
by and between TOWNSHIP OF LOWER MERION, a Tow	nship of the First Class organized
and existing under the laws of the Commonwealth of Pennsylva	ania (the "Township") and
DRANOFF PROPERTIES, INC., a corporation organized an	d existing under the laws of the
Commonwealth of Pennsylvania ("Dranoff").	

RECITALS:

- A. The Township is the owner of that certain parcel of real property located in Ardmore, Lower Merion Township, Montgomery County, Pennsylvania and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Cricket Lot").
- B. Pursuant to a Request for Proposal (the "RFP") dated June 22, 2007, the Township solicited proposals for redevelopment of several parcels in Ardmore, Pennsylvania, including, without limitation, the Cricket Lot.
- C. Dranoff presented the winning proposal and became the successful bidder in response to the RFP, as the result of which the Township and Dranoff entered into a letter of intent dated July 2, 2008 (the "Letter of Intent") outlining major features of the proposed overall redevelopment. The Township and Dranoff then entered into that certain Development Agreement dated December 14, 2009, effective as of September 30, 2009, as previously amended by that certain Amendment to Development Agreement dated June 30, 2010, that certain Second Amendment to Development Agreement dated June 16, 2011, that certain Third Amendment to Development Agreement dated October 27, 2011, that certain Fourth Amendment to Development Agreement dated January 31, 2012, that certain Fifth Amendment to Development Agreement dated March 31, 2012, and that certain Sixth Amendment to Development Agreement dated June 30, 2012 (such Development Agreement, as so amended, the "Development Agreement"). This Amended and Restated Development Agreement replaces and supersedes in all respects the Letter of Intent and the Development Agreement.
- D. The Development Agreement initially contemplated that the redevelopment described therein (the "Ardmore Station Project") would be located entirely on properties owned by the Township and by the National Railroad Passenger Corporation ("Amtrak") adjacent to the existing train station and the Township's Public Safety Building (the "Ardmore Transit Center Properties"). Because of site restrictions, cost constraints and physical limitations, the parties concluded that it would be preferable for a portion of the Ardmore Station Project to be moved to the Cricket Lot as generally described herein.

- E. The portion of the Ardmore Station Project to be located on the Cricket Lot (the "Cricket Portion of the Project") is currently anticipated to be (i) a mixed use building (the "Building") with 9,500 square feet of ground level retail, 121 residential units above the retail, below-ground level parking for the residential units, (ii) above-ground parking for the public (the "Cricket Public Parking Facility"), and (iii) 4,500 square feet of public open space.
- F. The Township is willing to request that the Redevelopment Authority of the County of Montgomery (the "RDA") ask the Commonwealth of Pennsylvania to allocate to Dranoff, for the construction of the Cricket Portion of the Project, a portion of the Pennsylvania Redevelopment Assistance Capital Program Grants (the "RACP Grants") allocated for the Project, subject to the conditions set forth herein, as more fully set forth in Section 2.2 of this Agreement.
- G. The Township has entered into or is about to enter into that certain Agreement by and between the Township and the RDA of even date herewith (the "RDA-Township Agreement"), pursuant to which the Township has agreed to transfer the Cricket Lot to the RDA in accordance with and subject to the terms and conditions contained therein.
- H. Dranoff has entered into or is about to enter into that certain Agreement of Sale and Redevelopment Agreement by and between Dranoff and the RDA of even date herewith (the "RDA-Dranoff Agreement") pursuant to which the RDA has agreed to transfer the Cricket Lot to Dranoff, and Dranoff has agreed to develop the Cricket Portion of the Project, in accordance with and subject to the terms and conditions contained therein.
- I. The Township desires to engage Dranoff to be a "turn-key" developer for the Cricket Public Parking Facility, and Dranoff is willing to perform such role on the terms and provisions set forth herein. The term "turn-key," as used herein, means that Dranoff shall develop and construct the facility in accordance with the plans and specifications approved by the Township without financial contribution from the Township except for the allocation of the RACP Grants as provided in Section 2.2 of this Agreement such other grants as may become available directly or indirectly through the Township and designated for the Cricket Portion of the Project, or as otherwise expressly set forth herein..
- J. The Township and Dranoff desire to set forth their agreements regarding the planning, design, development, construction and operation of the Cricket Portion of the Project.
- **NOW, THEREFORE**, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree that the Development Agreement is hereby amended and restated in its entirety as follows:

ARTICLE 1. THE CRICKET PUBLIC PARKING FACILITY.

1.1 Right to Inspect.

(a) The Township agrees to give Dranoff access to all files in the Township's possession or control and of which the Township Manager, the Director of Building and Planning or the Assistant Director of Building and Planning have knowledge relating to the

Cricket Lot (the "Township Records"), the Township representing that the Township Manager, the Director of Building and Planning and the Assistant Director of Building and Planning, collectively, have access to all of the files relating to the Cricket Lot. Additionally, Dranoff or its designees may enter the Cricket Lot at all reasonable times while this Agreement remains in full force and effect for the purposes of making inspections, measurements, surveys, engineering studies, environment audits, utilities investigations, architectural and construction investigations, soil and sub-surface tests and analyses and other investigations as Dranoff deems appropriate (the "Investigations") at Dranoff's sole cost and expense. All such action taken by or on behalf of Dranoff pursuant to this Section 1.1 shall be in accordance with all applicable laws, rules and regulations of the appropriate governmental authorities having jurisdiction ("Laws"). Any invasive testing or any boring for Phase 2 environmental or geotechnical testing or review, if performed by reputable companies experienced in performing such testing or reviews, with insurance as required in subsection (b), below (which insurance may be provided by Dranoff), shall be permitted provided that the same do not materially interfere with the use and operation of the Cricket Lot for public parking purposes. All other invasive testing or borings shall require the prior written consent of the Township, not to be unreasonably withheld, conditioned or delayed. Any entry upon the Cricket Lot by Dranoff or Dranoff's representatives for the purpose of conducting such Investigations shall be upon not less than twenty-four (24) hours prior notice to the Township and shall be subject, in any event, to prior scheduling and coordination with the Township. The Township shall reasonably cooperate with scheduling requests from Dranoff, including, without limitation, scheduling of Phase 2 testing and at the Township's election, a representative of the Township may be present during any entry by Dranoff or Dranoff's representatives upon the Cricket Lot to conduct the Investigations. All Investigations shall be performed in a manner that will endeavor to minimize any disturbance to the ongoing operations of the Cricket Lot and any damage, loss, disturbance to business, cost or expense to the Township.

- (b) Dranoff shall indemnify, defend and hold the Township harmless of, from and against all claims, causes of action and losses of whatsoever kind or nature, including, but not limited to, all liability by reason of injury (including death) to persons and damage to any property and mechanics' liens or similar charges which may affect the Cricket Lot, to the extent arising from the entry onto the Cricket Lot or work conducted thereon by or on behalf of Dranoff, which indemnity shall survive termination of this Agreement. Prior to Dranoff or its agents accessing the Cricket Lot and conducting tests thereon, Dranoff shall provide the Township with a certificate of insurance naming the Township as an additional insured and evidencing liability coverage in form and substance acceptable to the Township in an amount not less than \$1,000,000.00 per occurrence with an aggregate limit of not less than \$2,000,000.00. Dranoff shall promptly repair any damage to the Cricket Lot resulting from the Investigations and replace, refill and regrade any holes made in, or excavations of, any portion of the Cricket Lot used for such Investigations so that the Cricket Lot shall be in the same condition that it existed in prior to such Investigations.
- (c) If Dranoff in its sole discretion is not satisfied with the results of its Investigations within one hundred eighty (180) days, time being of the essence, after the date hereof, then Dranoff may, upon written notice delivered to the Township, elect to terminate this Agreement, whereupon this Agreement shall become null and void, except for those provisions which survive termination of this Agreement, including, without limitation, Dranoff's

reimbursement obligations set forth in Article 3 hereof. If Dranoff does not terminate this Agreement within such 180 days, this Agreement shall remain in full force and effect, subject to the remaining terms and conditions hereof, and Dranoff shall have no further right to terminate this Agreement under this Section 1.1.

1.2 Design and Development; Temporary Parking and Construction Staging.

- (a) Dranoff shall design, develop and construct the Cricket Public Parking Facility, containing the number of parking spaces directed by the Township in accordance with subsection 2.2(a) below, on a turn-key basis as an integrated part of the Cricket Portion of the Project, at no cost to the Township, in accordance with the provisions of this Agreement. Following completion of construction, Dranoff shall arrange the warranties to permit either Dranoff or the Township to enforce warranties relating to the Cricket Public Parking Facility.
- (b) Dranoff and the Township acknowledge that construction of the Cricket Portion of the Project will temporarily substantially diminish the availability of public parking in the area of the Cricket Lot. Therefore, in the event that the Township does not anticipate completing the construction of a new public parking garage to be located adjacent to the Township's Public Safety Building (the "Transit Center Garage") prior to transfer of the Cricket Lot by the Township to the RDA, then during construction of the Cricket Portion of the Project Dranoff, without out of pocket expense to Dranoff, shall work with the Township to provide temporary public parking in an amount sufficient to replace the public parking spaces existing on the Cricket Lot as of the date hereof. Contemporaneously with its submission of an application for land development approval, Dranoff shall submit a plan for such parking to the Township (the "Temporary Parking Plan"). Prior to and as a condition of transfer of the Cricket Lot by the Township to the RDA, the Temporary Parking Plan shall have been approved by the Township, in its sole discretion.
- (c) Dranoff shall work with the Township to develop plans for construction vehicle and worker parking, construction vehicle access and construction staging during the construction of the Cricket Portion of the Project. Contemporaneously with its submission of an application for land development approval, Dranoff shall submit a plan for such parking and construction staging to the Township (the "Construction Staging Plan"). Prior to and as a condition of transfer of the Cricket Lot by the Township to the RDA, the Staging Plan shall have been approved by the Township, in its sole discretion. Dranoff shall pay for any costs of additional parking for construction vehicle and worker parking or staging area required by Dranoff and not capable of being provided on site.

1.3 Design of the Project.

(a) The parties acknowledge that the conceptual designs for the Cricket Portion of the Project set forth on Exhibit "B" attached hereto and made a part hereof, including alternate options for the Cricket Public Parking Facility of (i) at least eighty-six (92) public parking spaces (the "Base Parking Option"); (ii) at least one hundred forty-two (147) public parking spaces (the "Intermediate Expanded Parking Option") and (iii) at least two hundred five (210) public parking spaces (the "Fully Expanded Parking Option"), are consistent with their expectations as of the date of this Agreement. As more fully described in Section 2.2 hereof, the

Township will select one of these options on or before July 31, 2013. Without limiting the Township's ability to approve the plans and specifications for the land development approvals consistent with the Pennsylvania Municipalities Planning Code, Lower Merion Township Zoning Code and all other Laws (none of which shall be deemed to occur under this Agreement but rather in the ordinary course according to the Township's practice and procedure), the Township shall have the right to approve final plans for the Cricket Portion of the Project (the "Approved Plans"); provided, however, that the Township shall not unreasonably withhold, delay or condition its consent under this subsection (a) so long as the design reflected in the plans is consistent with the conceptual design attached hereto as Exhibit "B." No approval of the design, construction documents or any other aspect of the Cricket Portion of the Project shall be deemed to impose any liability upon the Township, it being understood that such review is for the Township's own purposes and not to be construed as a representation or warranty that the Cricket Portion of the Project has been designed or constructed in conformance with applicable Laws. Dranoff shall remain solely responsible to review and approve, or cause qualified professionals to review and approve, the design and construction of the Cricket Portion of the Project. Further, no approvals under this Section 1.3(a) or otherwise under this Agreement shall in any way be construed to constitute an approval of the plans and specifications for any purpose whatsoever except for compliance with this Agreement.

- (b) In addition to all other Township approvals, the Township shall have the right to approve, in its reasonable discretion, the design of any material elements of the Cricket Portion of the Project visible from the exterior of the Cricket Portion of the Project, including, but not limited to, building exteriors, landscaping, pedestrian walkways, driveways, accessways and public spaces ("Exterior Elements"); provided, however, that the Township's approval shall not be unreasonably withheld, conditioned or delayed so long as the exterior design is substantially consistent with Exhibit "B" attached hereto.
- (c) Dranoff shall consult with the Township regarding the selection of all architects, engineers and general contractor to be engaged in connection with the Cricket Portion of the Project; provided, however, that the Township shall only have a right to approve the general contractor, such approval not to be unreasonably withheld, conditioned or delayed.
- (d) Unless otherwise approved by the Township, all new development and redevelopment shall comply with zoning and all other applicable Township ordinances, land development procedures, and future amendments thereto. The Cricket Portion of the Project and all plans and designs must complement the existing architecture within the Ardmore Commercial Historic District, comply substantially with the Ardmore Storefront Design Guidelines and the Development Design Standards of the MUST zoning overlay. The parties anticipate that if the Cricket Portion of the Project is to be constructed as contemplated by this Agreement, amendments to the Township zoning ordinance will be required. The Township recognizes that Dranoff may request amendments to the Township's current ordinances or waivers in order to make the Cricket Portion of the Project feasible, and Dranoff shall have the right to terminate this Agreement as provided in Section 2.4 in the event that amendments to the Township's current ordinances which are reasonably necessary for the construction of the Project are not obtained by the date set forth in Exhibit "D".
 - (e) Dranoff shall incorporate "walkability" into its planning and design.

- (f) Dranoff shall make presentations to the Township's Historical Architectural Review Board ("HARB") to obtain non-binding feedback on how best to integrate and to complement the existing architecture and historic district.
- (g) Use of walking, bicycling and car-sharing, including, without limitation, bicycle parking and designated car-sharing spaces, shall be encouraged.
- 1.4 <u>Guaranty</u>. At Settlement, Dranoff shall have delivered an absolute and unconditional guaranty in favor of the RDA and the Township in the form attached hereto and made a part hereof as Exhibit "C" (the "Guaranty"). Dranoff has provided the Township with financial statements of Dranoff prior to the date hereof. Notwithstanding the foregoing, if the bank providing construction financing for the Cricket Portion of the Project requires a guaranty of completion from a person or entity other than Dranoff, Dranoff shall, at the Township's request, deliver the Guaranty to the Township from such other person or entity. Notwithstanding the foregoing, Carl E. Dranoff shall not be required to provide a Guaranty.
- 1.5 <u>Easement</u>. At Settlement, Dranoff shall grant to the Township or to such other entity as the Township shall designate a perpetual easement (the "Parking Easement") in form and substance reasonably acceptable to Dranoff which among other things does not interfere with the quiet enjoyment of the residential tenants of the Cricket Portion of the Project (A) for parking, associated ingress and egress, collection and repair of meters (or other mechanism for collecting parking fees) and related utilities, over, under, across and upon (i) the Cricket Public Parking Facility and (ii) the parking spaces and drive aisle (the "Retained Area") existing as of the date hereof and located on the Cricket Lot outside the footprint of the Building, as shown on Exhibit "B," and (B) for exercise of the rights set forth in Section 1.6(t) of this Agreement, over, under, across and upon the entire Cricket Lot, containing the following terms:
- (a) The Township or its designee shall have the right to determine the charges, if any, for parking on the Cricket Public Parking Facility and the Township or its designee shall receive the revenue, if any, from such parking.
- (b) Dranoff will perform all maintenance, repairs and replacements, including removal of snow and ice in covered and uncovered areas, but Township will reimburse Dranoff only for actual maintenance, repair and replacement expenses directly related or allocable to the Cricket Public Parking Facility. In the event that Dranoff does not perform such obligations in a timely, good and workmanlike manner, the Township shall have the right to perform any needed maintenance, repairs and replacements and Dranoff shall promptly reimburse the Township for any costs of such work which are not the Township's responsibility hereunder. Notwithstanding the foregoing, Dranoff shall be obligated, at Dranoff's sole cost and expense, to re-pave and restripe the Retained Area promptly following the completion of construction of the Cricket Portion of the Project.
- (c) Dranoff will have an obligation to maintain and repair, at its expense, any structures which support or cover the Cricket Public Parking Facility.
- (d) The Township and Dranoff will negotiate the Parking Easement in good faith within 180 days after the date of this Agreement. The Township reserves the right to

modify the Parking Easement to be the functional (but not necessarily legal) equivalent of the easement described above, subject to satisfaction of the requirements set forth in this Section 1.5, including, without limitation, that the form and substance of the resulting documents are reasonably acceptable to Dranoff.

1.6 Construction.

- (a) Representatives.
- (i) Dranoff shall appoint an individual who shall act as "Dranoff's Construction Representative" who Dranoff agrees shall be available to meet and consult with the Township on a continuing basis and who shall have the power legally to bind Dranoff respecting the Work. Dranoff shall have the right, by written notice to the Township, to designate one or more additional or substitute individuals as Dranoff's Construction Representative from time to time. If Dranoff designates more than one Construction Representative, each designated person or entity shall have all of the powers of Dranoff's Construction Representative set forth in this Agreement.
- (ii) The Township shall appoint an individual who shall act as the "Township's Construction Representative" who the Township agrees shall be available to meet and consult with Dranoff on a continuing basis. The Township shall have the right, by written notice to Dranoff, to designate one or more additional or substitute individuals as the Township's Construction Representative from time to time. Dranoff recognizes that the Township has a limited ability to delegate approval rights and the Township's Construction Representative may not have the power to approve items reserved to Township Commissioners, the Township Manager, or to others under applicable legal requirements, including, without limitation, the First Class Township Code and the Township's ordinances. To the extent that any decision requested by Dranoff from the Township (A) is not in the ordinary course of the Township's role in the development process (the "ordinary course" being, by way of example and not limitation, applications to the Township for building permits and inspections of construction by the Township's Building and Planning Department), (B) does not involve the number of residential units, commercial units or parking spaces, Exterior Elements; a material element of the Cricket Public Parking Facility, including, without limitation, the configuration of the Cricket Public Parking Facility; height; access; loading; any impact on surrounding properties, and (C) does not otherwise require approval by the Board of Commissioners or by a specified Township official (collectively, a "Major Scope Decision"), the Township shall have no right under this Agreement (as opposed to Township's rights in its code enforcement, zoning, and similar permitting capacity) to approve changes during construction following the initial approval of the Plans and Specifications. Any decisions made by the Township under this Section shall apply only to the specific subject matter and issues presented in the request from Dranoff, and shall in no way limit or modify Dranoff's obligations under this Agreement.
- (b) Dranoff shall provide, or cause to be provided, to Township all documents and information reasonably necessary for the Township to decide whether to approve the items subject to its approval under subsection (a). Dranoff shall share all information with the Township's Construction Representative with respect to drawings, mechanical systems, and field measurements with regard to the Cricket Portion of the Project.

- (c) Dranoff and the Township shall schedule periodic construction meetings as needed and at such periodic times as mutually agreed upon (but not less often than monthly and more frequently at the Township's or Dranoff's reasonable request), which meetings shall be attended by appropriate representatives of Dranoff, the Township, the Township's invitees and such parties' respective contractors and engineering and design professionals, to discuss the progress of construction, materials procurement and implementation of the Cricket Public Parking Facility.
- (d) The Township shall have the right, but not the obligation (except to the extent required by law), to inspect the construction of the Cricket Portion of the Project for the purpose of determining material conformity with the Approved Plans. Dranoff shall provide the Township access to the Cricket Lot at all times during the construction of the Cricket Portion of the Project. In the event that the Township discovers construction that is not substantially in accordance with the Approved Plans, Dranoff shall correct the same upon notice from the Township.
- (e) Dranoff acknowledges that the review, inspection and monitoring of the construction of the Cricket Portion of the Project by the Township's Construction Representative or by any architects, engineers, contractors, building managers and other consultants engaged from time to time by the Township (the "Township's Consultants") is solely to protect the interests of the Township and neither the Township, the Township's Construction Representative nor the Township's Consultants shall have any responsibility of any nature whatsoever to Dranoff with respect to the review, inspection and monitoring of the construction of the Cricket Portion of the Project by the Township's Construction Representative or the Township's Consultants. The review, inspection and monitoring of the construction of the Cricket Portion of the Project by the Township, the Township's Construction Representative and Township's Consultants shall in no way abrogate the duty of Dranoff to construct the Cricket Portion of the Project in accordance with the terms of this Agreement and the RDA-Dranoff Agreement; provided, however, that if the Township shall consent in writing to a change in the Approved Plans, such consent shall be binding upon the Township for purposes of this Agreement.
- (f) Subsequent to conveyance of the Cricket Lot or any part thereof to Dranoff, and until construction of the Cricket Portion of the Project has been completed, Dranoff shall make, in such detail as may reasonably be required upon request by the Township, a report in writing to the Township every month as to the actual progress of Dranoff with respect to such construction. Such report shall include, but not be limited to, a statement of the current status of construction, an estimate of the remaining Schedule, and a statement of any material delays that have been encountered.
- (g) Dranoff shall secure and pay for all zoning and land use approvals, building permits and any other permits, fees, licenses, and inspections by government agencies necessary for the development and construction of the Cricket Portion of the Project, including, but not limited to, any approvals required from the Township.
- (h) The Township shall have the right to approve the items requiring the "Owner's" approval under any construction contracts relating to the Cricket Public Parking Facility to the extent the same impact the items referenced in Subsection 1.6(a)(ii), clause (B);

provided, however, that this approval right does not include the right to approve items that do not materially concern the Cricket Public Parking Facility (e.g., the water pipes that pass through the Cricket Public Parking Facility but do not serve it) and do not involve changes from the plans and specifications approved under this Agreement in the number of residential units, commercial units, parking spaces intended to serve the public, Exterior Elements, the configuration of the Cricket Public Parking Facility, height, access, loading, or impact on the surrounding properties. The Township shall respond to requests for approval of such items shall be prompt and in a reasonable period of time given the totality of the circumstances.

- (i) Dranoff shall, and shall require its general contractor to, include in every contract into which Dranoff enters for construction, installations, alterations, repairs or additions to the Cricket Public Parking Facility, where the estimated cost shall exceed Five Hundred and no/100 Dollars (\$500.00), a provision obligating the contractor to the prompt payment of all material furnished, labor supplied or performed, rental for equipment employed, and services rendered by public utilities in or in connection with the prosecution of the work, whether or not the said material, labor, equipment and services enter into or become component parts of the Cricket Public Parking Facility. This provision shall be included for the benefit of every person, co-partnership, association or corporation who, as subcontractor or otherwise, has furnished material, supplied or performed labor, rented equipment or supplied services in or in connection with the prosecution of the work as aforesaid, and shall, to the extent permitted by law, preclude the filing of any mechanic's lien claim for such material, labor or rental of equipment.
- (j) No change in the Cricket Portion of the Project which is subject to the Township's approval under Section 1.3 above may be commenced without the Township's written approval, which approval shall not be unreasonably withheld or delayed.
 - (k) Intentionally omitted.
- (l) Dranoff shall obtain bonds naming the Township as an obligee covering faithful performance of all construction contracts and payment of obligations arising thereunder, and of all "prime" contracts, if any, and major subcontracts designated by the Township in connection with the construction of the Cricket Public Parking Facility and payment of obligations arising thereunder. Each such bond shall be in an amount equal to one hundred percent (100%) of the contract sum or guaranteed maximum price under such contracts. Each bond shall also name such others as the Township shall designate as additional obligees.
- (m) Should any claim or lien whatsoever be filed or maintained against the Cricket Lot prior to the completion of construction of the project, Dranoff shall promptly and at its own expense cause the immediate satisfaction or removal thereof, and shall indemnify, defend and hold harmless the Township from all claims, liabilities, costs and expenses in connection therewith (including attorney's fees and costs). If Dranoff shall fail to cause such lien to be so discharged or bonded within a reasonable period of time (not to exceed thirty (30) days) after being notified of the filing thereof, then, in addition to any other right of the Township, the Township may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by the Township, including reasonable attorney's fees incurred by the Township, shall be immediately due and payable by Dranoff to the Township.

- As used in this Agreement, the term "Punch List Items" shall mean minor or insubstantial details of construction, or mechanical adjustment, the need to accomplish which does not render any space or facility unusable for its intended purpose or require material interference with customary business activities in order to complete and which are capable of being corrected within thirty (30) days. Dranoff shall give the Township notice at least thirty (30) but not more than sixty (60) days prior to the date on which Dranoff anticipates Substantial Completion (as defined in the RDA-Dranoff Agreement) will occur, and on or about the date of Substantial Completion, Dranoff and the Township shall jointly inspect the Cricket Public Parking Facility and jointly prepare a punch list, to be initialed by representatives of both parties, on which all Punch List Items shall be set forth. Dranoff shall use commercially reasonable efforts to cause all Punch List Items to be completed, corrected or replaced within sixty (60) days after the date of Substantial Completion, subject to extension for Events of Force Majeure as set forth in this Agreement. If such inspection reveals items other than Punch List Items remaining to be completed, corrected or replaced within the Cricket Public Parking Facility, the parties shall likewise confirm such items in writing at the time of inspection, and Dranoff shall complete, correct or replace the same within the same period referred to in the preceding sentence. If any of such items are part of the definition of Substantial Completion above, then Substantial Completion shall not be deemed to have occurred until such items have been completed, corrected or replaced.
- (o) Dranoff shall use its commercially reasonable best efforts to cause its contracts to contain the following provision, in substance (with defined terms to be appropriately modified):

"If the is a Latent Defect in construction or any component of the Cricket Public Parking Facility whether or not within the period of any applicable warranty, but within the applicable statute of limitation, then Contractor will cause its contractors to repair such Latent Defect or if repair fails to cure the defect, replace the defect construction or component promptly and as soon as practicable, but in any event with sufficient speed to avoid any potential harm or injury to any persons. As used herein, a "Latent Defect" is a defect in the condition of the Premises caused by Contractor's failure to construct the Cricket Public Parking Facility in a good and skillful manner, which defect would not ordinarily be observed during a walk-through inspection. The Township of Lower Merion shall have the right to enforce this provision directly as a third party beneficiary of this Contract."

As part of Dranoff's use of its commercially reasonable best efforts, Dranoff shall allow the Township to participate in the negotiation of this warranty.

(p) In the event any specified materials or components shall not be reasonably or readily available, Dranoff shall have the right to propose substitutions of materials or components of substantially equivalent grade and quality, consistent with prudent construction practices and without materially affecting the utility, efficiency or visual impact of the Project, provided that Dranoff shall not make any substitutions of materials or components which are

subject to the Township's approval under Section 1.3 above or which are intended for the Cricket Public Parking Facility without first obtaining the Township's prior written consent, which consent shall not be unreasonably withheld or delayed by the Township.

(q) Dranoff shall use its commercially reasonable best efforts to cause its contracts to contain the following provision in substance (with defined terms to be appropriately modified):

"The materials and equipment furnished for the Cricket Public Parking Facility under this Agreement by the Contractor, its subcontractors, agents and consultants will be of good quality and new unless the Approved Plans require or permit otherwise. The Cricket Public Parking Facility will conform to the requirements of this Agreement and the Approved Plans and will be free from defects, except for those inherent in the quality of the project that the Approved Plans require or permit. Contractor represents and warrants to Owner and the Township of Lower Merion that the materials and workmanship used in the Cricket Public Parking Facility, including without limitation, construction means, methods, procedures and techniques necessary to perform the construction work, use of materials, selection of equipment and requirements of product manufacturers are and shall be consistent with: (1) requirements of any warranties applicable to the Cricket Public Parking Facility; and (2) all laws, ordinances, regulations, rules and orders which bear upon Owner's development of the Cricket Public Parking Facility. Work, materials, or equipment not conforming to these requirements, including substitutions not properly authorized and approved, shall be considered defective, and promptly after notification of non-conformance shall be repaired or replaced by Contractor with work conforming to this warranty. Contractor's warranty shall exclude remedy for damage or defect caused by abuse, alterations to the Cricket Public Parking Facility not executed by the contractor or anyone under the contractor's control, improper operation by parties other than the contractor, or normal wear and tear and normal usage. If required by the Township of Lower Merion, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Nothing herein shall be deemed to exclude or modify warranties, expressed or implied, provided by law, or liability or liabilities of any contractors or subcontractors as provided by law. The Township of Lower Merion shall have the right to enforce this provision directly as a third party beneficiary of this Contract."

As part of Dranoff's use of its commercially reasonable best efforts, Dranoff shall allow the Township to participate in the negotiation of this warranty.

The Township shall have the right to review the contractor selected by Dranoff, and in the event that such contractor is not acceptable to the Township, in its reasonable discretion, Dranoff shall obtain an alternative contractor reasonably acceptable to the Township.

(r) Dranoff, the Township and any other person reasonably necessary in the opinion of either of them shall participate in a walk-through of the Cricket Public Parking

Facility approximately eleven months after the date of Substantial Completion, with the goal of efficiently identifying Latent Defects and other items covered by warranty.

- (s) Notwithstanding anything in this Agreement to the contrary, and without limiting any of the other remedies available to the Township, Dranoff shall be responsible for all damages to the Township due to Dranoff's delay or failure to perform its obligations under this Section 1.6.
- Notwithstanding anything in this Agreement to the contrary, without (t) limiting any of the other remedies available to the Township, but subject to the rights of the holder of an authorized mortgage under Article 3 of the RDA-Dranoff Agreement, if an Event of Default that is recited in Section 4.3(c) occurs, the Township shall have the right to take over and itself manage the construction or completion of the construction of the Cricket Portion of the Project, or any part thereof. All construction under this subsection (t) which the Township is entitled to manage shall be at no cost to the Township. If the Township elects to take over construction or completion of the construction of the Cricket Portion of the Project as permitted by this Agreement, Dranoff shall, upon the Township's request, sign such additional documents as the Township shall reasonably require to enable the Township to take over management of such construction using Dranoff's contractors and architects. Without limiting the generality of the previous sentence, the parties agree to execute, prior to the start of construction of the Cricket Portion of the Project, a contingent Assignment of Construction and Development Documents assigning, subject to the construction lender's rights, of all of Dranoff's construction and development documents to the Township in the event that the Township takes over construction or completion of the Cricket Portion of the Project in accordance with this Section 1.6(t). No such assignment or the exercise thereof shall be deemed to terminate this Agreement, release any guarantor, or release Dranoff or the Township from their other respective obligations under this Agreement nor shall it be deemed to be an assumption of liabilities except as expressly agreed to by the Township in writing.

ARTICLE 2. SCHEDULE AND FINANCING.

2.1 Development Schedule. In consultation with the Township Dranoff shall prepare and update, as required or permitted hereunder, a development, permitting, financing, design and general construction schedule for the Cricket Public Parking Facility, including milestone dates (the "Schedule"). Dranoff shall monitor and make oral reports and written reports to the Township, as reasonably required or as is reasonably necessary, but in any event not more frequently than once a month, as to the progress of the Cricket Public Parking Facility compared to the Schedule. The initial Schedule is attached hereto as Exhibit "D" and made a part hereof. If Dranoff believes that revisions to the Schedule are necessary as the Cricket Public Parking Facility progresses, Dranoff shall provide a written proposal to the Township, which proposal shall include an explanation of the justification for the proposed changes. The Township shall review and shall not unreasonably withhold or delay its approval of such proposal, given the totality of the circumstances. In the event of any event which Dranoff, despite its best efforts, is not able to prevent, including acts of God, terrorism, war, strikes, inclement weather, or labor disputes unrelated to Dranoff's activities, fire or other major casualty (such event, an "Event of Force Majeure"), but not including the loss of or failure to obtain tenants, failure to reach agreement with third parties, unavailability of funds, or any other foreseeable event, the Schedule shall be extended for the number of days of the delay caused by the Event of Force Majeure. Notwithstanding the foregoing, Dranoff represents and warrants that its construction contract schedule will allow for a reasonable amount and timing of inclement weather.

2.2 <u>Financing and Funding</u>.

- (a) Provided that the Commonwealth of Pennsylvania agrees that the RACP Grants may be used on the Cricket Portion of the Project, the Township agrees to request that the RDA make a portion of the RACP Grants available to Dranoff for the Cricket Portion of the Project. Such portion will depend on the amount of public parking to be constructed on the Cricket Public Lot. If the Township directs Dranoff to construct the Base Parking Option, the Township is willing to request that the RDA ask the Commonwealth of Pennsylvania to make Eight Million Dollars (\$8,000,000.00) of the RACP Grants (the "Base RACP Allocation") available to Dranoff for the Cricket Portion of the Project. If the Township directs Dranoff to construct the Intermediate Expanded Parking Option, the Township is willing to request that the RDA ask the Commonwealth of Pennsylvania to make Ten Million Dollars (\$10,000,000.00) of the RACP Grants (the "Intermediate Expanded RACP Allocation") available to Dranoff for the Cricket Portion of the Project. If the Township directs Dranoff to construct the Full Expanded Parking Option, the Township is willing to request that the RDA ask the Commonwealth of Pennsylvania to make Twelve Million Dollars (\$12,000,000.00) of the RACP Grants (the "Full Expanded RACP Allocation") available to Dranoff for the Cricket Portion of the Project. (The Base RACP Allocation, the Intermediate Expanded RACP Allocation and the Full Expanded RACP Allocation are alternatively referred to herein as the "RACP Cricket Allocation," depending upon which allocation the Township elects.) The Township agrees to provide written direction to Dranoff regarding which parking option the Township has selected no later than July 31, 2013 (the "Township RACP Notice"). No such commitment shall be deemed to constitute assurances by the Township or the RDA that the nature of Dranoff's expenditures will qualify for use of RACP Grant funds, and Dranoff shall in all events be solely responsible for compliance with all agreements, policies and procedures necessary to actually obtain RACP Grant funds.
- (b) In the event that any RACP Grant funds are available to the Cricket Portion of the Project only as reimbursement for amounts already paid, Dranoff shall be solely responsible for providing interim or "gap" financing of amounts pending reimbursement.
- (c) Dranoff acknowledges that, as a condition to receiving RACP Cricket Allocation funds, it will need to satisfy all requirements applicable to the receipt of those funds. Dranoff agrees to indemnify, defend and hold harmless the Township and the RDA from and against any liability arising from Dranoff's failure to comply with this Section 2.2(c). If the Township administers the RACP Grants, the Township will make the RACP Cricket Allocation funds which are under the control of the Township available to Dranoff upon receipt of written applications therefor from Dranoff and compliance with the requirements of the RACP Grants and disbursement conditions generally required by lending and grant sources for such draw. Nothing contained in this subsection (c) or elsewhere in this Agreement shall be construed to require the Township to advance its own funds.

- 2.3 <u>Land Payment</u>. Prior to transferring the Cricket Lot to the RDA, the Township intends to place of record with the Montgomery County Recorder of Deeds a Declaration (the "Declaration") containing the following burdens on the entity which takes title to the Cricket Lot from the RDA (the "Initial Cricket Owner"):
- (a) If the Initial Cricket Owner conveys the Cricket Lot to a third-party purchaser prior to the occurrence of either of the events described in subsections (b) and (c) below, then upon the closing of such conveyance the Initial Cricket Owner shall pay to the Township Two Million Dollars (\$2,000,000.00) (the "Land Payment").
- (b) If the Initial Cricket Owner converts the Cricket Portion of the Project to include residential condominiums, the Initial Cricket Owner shall pay to the Township Two Million Dollars (\$2,000,000.00), which amount shall be apportioned on a pro-rata basis based upon the percentage unit interests of the units in the condominium and paid on a per unit basis as such condominiums are sold. Such document will provide for recordation of the sums received and reducing the outstanding amount owed under this Section 2.3(b) and for the release of the applicable condominium unit from the lien and effect of the Declaration upon the payment of the portion of the Land Payment apportioned to such unit.
- (c) If there is a Refinancing of the Cricket Portion of the Project or an Equity Recapitalization occurs, in either case which results, together with amounts previously paid to Equity Owners, in an Internal Rate of Return of at least 15% on all of the cash contributed to the Cricket Portion of the Project by the Equity Owners (whether as debt or equity), then the Initial Cricket Owner shall pay fifty (50%) percent of any amounts over the 15% Internal Rate of Return attained on all cash contributed to the Cricket Portion of the Project by the Equity Owners (whether as debt or equity), up to Two Million Dollars (\$2,000,000.00)(or so much thereof as has not been previously repaid) [subject to increase as hereinafter set forth][bracketed language open]. If the total outstanding balance of the Land Payment is not paid as the result of the initial Refinancing or Equity Recapitalization, any balance not paid shall continue to be payable from subsequent Refinancings or Equity Recapitalizations.
- (d) If the Land Payment has not been completely repaid on or before the date which is twenty (20) years after the date of commencement of construction, the balance of the unpaid Land Payment shall be paid at that time. Dranoff may prepay the Land Payment at any time, in whole or in part.
- (e) Notwithstanding anything to the contrary contained herein, the calculations set forth in subsection (c) hereof shall be performed so as to avoid double counting of contributions and distributions. By way of amplification and not limitation, if the amount of a contribution by or distribution to any Equity Owner has already been factored into any calculation, then the further contribution by or distribution to an Equity Owner with a direct or indirect interest in such Equity Owner of the same amount already factored into the calculation shall not be further taken into account in such calculation. By way of illustration and not limitation, if (i) Partnership A owns 80% of Partnership B which, in turn, owns 100% of the Initial Cricket Owner, (ii) Partnership A contributes \$800,000 to Partnership B which contributes an additional \$200,000 for a total of \$1,000,000 to the Initial Cricket Owner, (iii) one year later a Refinancing occurs pursuant to which \$200,000 is distributed to Partnership B which distributes

\$160,000 to Partnership A, the total amounts taken into account for purposes of calculations in subsection (c) are a contribution of \$1,000,000 and a distribution of \$200,000.

- (f) The following capitalized terms have the following definitions:
- (g) "Equity Owner" means any person or Cricket Purpose Entity owning a direct or indirect interest in Initial Cricket Owner. The term "Cricket Purpose Entity" is an entity which has, as at least 50% of its assets, interests in the Cricket Portion of the Project or direct or indirect interests in Initial Cricket Owner.
- (h) "Equity Recapitalization" means the contribution of equity to, or the sale of equity interests in, the Initial Cricket Owner following the date of commencement of construction of the Cricket Portion of the Project in connection with which one or more Equity Owners also receives a distribution of funds which is more than such Equity Owners' return of its equity contribution. The term "equity" shall include debt which is made by or paid to an Equity Owner or an affiliate thereof.
- (i) "Internal Rate of Return" means the discount rate at which the net present value of the Equity Owners' cash contributions to and distributions from the Cricket Portion of the Project, whether characterized as debt or equity, plus the Residual Value, if any, of the Cricket Portion of the Project, equals zero, calculated from the date the cash contribution was made.
- (j) "Refinancing" means any borrowing of money following substantial completion of construction of the Cricket Portion of the Project in connection with which net proceeds are distributed to the Initial Cricket Owner after payment of all third-party loans.
- (k) "Residual Value" shall mean the appraised fair market value of the Cricket Portion of the Project pursuant to the appraisal obtained in connection with the Refinancing or Equity Recapitalization, if any, net of the amount of the debt to which the Cricket Portion of the Project is subject. If no appraisal is obtained in connection with the Refinancing or Equity Recapitalization, Dranoff shall have the right to obtain one from an MAI appraiser reasonably selected and ordered to proceed by Dranoff within 30 days after notice from the Township requesting Dranoff to do so; if Dranoff does not select the appraiser or order the appraiser to proceed within such 30 days, the Township shall have the right to select the appraiser.
- (l) Notwithstanding anything to the contrary contained herein, if Dranoff is required to pay any sum under subsection 2.3(b) or 2.3(c), and if Dranoff also has not previously paid the entire amount of Reimbursable Expenses to the extent required by this Agreement, then Dranoff shall pay to Township the entire amount of Reimbursable Expenses prior to payment of the amounts in due in subsection 2.3(b) or 2.3(c).
- (m) Dranoff shall give the Township at least 30 days' prior written notice of any of the events pursuant to which any Land Payment will be payable to the Township, but in any event payment of the Land Payment payable under this Section 2.3, with an explanation of such payment, shall be made within 30 days after the event giving rise to the requirement of payment.

2.4 Conditions Precedent.

- (a) In addition to compliance by each party with all of the other terms and conditions of this Agreement and the performance by each party of all of its obligations hereunder, the following shall be conditions precedent to each party's performance of its obligations under this Agreement.
- (i) Dranoff shall, by the date set forth on Exhibit D, complete settlement on all construction financing and other financing necessary, in Dranoff's reasonable opinion, to complete the Cricket Portion of the Project, and shall demonstrate to the RDA's and the Township's reasonable satisfaction its ability, together with the RACP Cricket Allocation and such financing, to fully fund the development and construction of the Project.
- (ii) Dranoff shall, by the date set forth on Exhibit D, have received all zoning and land development approvals, permits and all other approvals necessary for the development of the Cricket Portion of Project, including, but not limited to, the parking plan referenced in Section 1.2(b) hereof, the approvals referenced in Section 1.3(a) hereof, and a building permit for the construction of the Cricket Portion of Project. If a zoning or any other approval is denied, nothing contained herein shall require either party to appeal such denial, and if any zoning or other approval is denied, Dranoff may terminate this Agreement even though the deadline set forth in Exhibit D has not yet arrived.
- (iii) Dranoff and the Township shall, by the date set forth on Exhibit D, have received a written commitment from the RDA that the Commonwealth of Pennsylvania will allocate to the Cricket Portion of the Project either the Base RACP Allocation or the Expanded RACP Allocation, in accordance with Section 2.2 above, as elected by the Township.
- (b) In the event that any of the conditions set forth in this Section 2.4 are not satisfied by the dates set forth in Exhibit D, then either party (the "Electing Party") may, upon written notice delivered to the other party, notify the other party of the failure of such condition and of the Electing Party's election to terminate this Agreement, whereupon this Agreement shall become null and void, except for those provisions which survive termination of this Agreement, including, without limitation, Dranoff's reimbursement obligations set forth in Article 3 hereof.
- (c) The termination rights contained herein are in addition to the right of Dranoff to terminate this Agreement as set forth in Section 1.1 hereof.

ARTICLE 3. EXPENSES.

3.1 Expenses.

(a) Subject to the provisions of subsection 3.1(e) below, Dranoff shall reimburse the Township on the Reimbursement Date, as defined below, for the Township's third-party professional service costs reasonably and actually incurred in connection with the Ardmore Station Project ("Reimbursable Expenses"), including but not limited to costs incurred to negotiate agreements with Dranoff, including without limitation, negotiations with Amtrak and the Southeastern Pennsylvania Transportation Authority ("SEPTA"), the RDA-Dranoff Agreement, the RDA-Township Agreement and this Agreement, incurred after March 1, 2008

(but excluding costs incurred after the date of this agreement in connection with that portion of the Ardmore Station Project which is planned for the Ardmore Transit Center Properties), in an amount not to exceed \$1,200,000. Additionally, if Dranoff shall not have paid all Reimbursable Expenses prior to payment of the amounts due under subsections 2.3(b) and 2.3(c) hereof, Dranoff shall pay such Reimbursable Expenses prior to paying amounts due under subsections 2.3(b) or 2.3(c).

- (b) Dranoff shall not be required to reimburse the Township for expenses that are reimbursed under that certain FTA Grant No. PA-03-0385 or that are the responsibility of the Township to provide "matching" funds under such FTA grant, but Dranoff acknowledges that the Township does not anticipate using any portion of such FTA grant in connection with the Cricket Portion of the Project.
- (c) Dranoff shall be entitled to the benefit of any special rates or fee arrangements obtained by the Township. Subject to the provisions of subsection 3.1(e) below, Dranoff shall pay amounts due at the earlier of (a) Settlement under the RDA-Dranoff Agreement (the "Reimbursement Date"), or (b) termination of this Agreement, and Dranoff shall reimburse the Township for any Reimbursable Expenses incurred after the Reimbursement Date within thirty (30) days after receipt of invoices from the Township. Notwithstanding anything to the contrary contained herein, (A) Dranoff shall not be liable for any such costs, expenses or fees if this Agreement is terminated (whether Dranoff or the Township is the terminating party) for any of the following reasons: (i) by reason of Dranoff's unwillingness to grant or agree to a request or demand of the Township which is unreasonable in the context of this Agreement, (ii) because the Township unreasonably takes an action or refuses to take an action reasonably required for fulfillment of this Agreement or for performance or construction of the Cricket Portion of the Project; or (iii) because the Township is in default. Except as otherwise specifically set forth herein Dranoff shall be responsible for all expenses incurred by Dranoff in connection with the performance of its obligations hereunder; (B) if this Agreement is terminated prior to conveyance of the Cricket Lot by the RDA to Dranoff by reason of the failure of the Commonwealth of Pennsylvania to make the RACP Cricket Allocation available to Dranoff for the Cricket Portion of the Project, Dranoff shall only be liable for Reimbursable Expenses incurred between March 1, 2008 and September 30, 2009; provided, however, that this subsection 3.1(c)(B) shall not apply if Dranoff's projected expenditures do not qualify for use of RACP Grant funds or if Dranoff otherwise fails to comply with all agreements, policies and procedures necessary to obtain RACP Grant funds; and (C) if this Agreement is terminated prior to conveyance of the Cricket Lot by the RDA to Dranoff by reason of a termination of the Agreement (I) within 180 days after the date hereof pursuant to Section 1.1(c)(Investigations), or (II) by reason of a failure of the zoning, land development approval or any other approvals pursuant to Section 2.4(ii), Dranoff shall only be liable for Reimbursable Expenses incurred between March 1, 2008 and September 30, 2009, which are equal to \$615,000.
- (d) Dranoff and the Township agree that, as set forth in a certain letter agreement dated ______, 2009, the Township received a \$75,000 Community Action Team Predevelopment grant under Contract # C000045081, \$50,000 of which was previously used by the Township to pay engineering and design and \$25,000 shall be used to pay Dranoff's architectural expenses. Such \$25,000 remains available and shall be applied to Dranoff's architectural expenses related to the Cricket Portion of the Project upon request by Dranoff

together with copies of invoices. If the Cricket Portion of the Project is completed, Dranoff shall have the obligation to refund such \$25,000 from the first Refinancing.

- (e) The Township shall periodically provide copies of invoices regarding fees and expenses that are or may become Dranoff's responsibility under this Agreement, and if Dranoff promptly and reasonably objects to the invoices, the Township shall review such invoices with Dranoff.
- (f) In connection with a request for RACP Cricket Allocation funds under Section 2.2 above, and where permitted by the applicable funding requirements, Dranoff may request that such funds be used to pay the Reimbursable Expenses. Such use may require approval by the Commonwealth of Pennsylvania Office of the Budget; no failure of Dranoff to obtain such approval shall limit Dranoff's obligation to pay Reimbursable Expenses from other sources.
 - (g) This Section 3.1 shall survive termination or expiration of this Agreement.

ARTICLE 4. TERM AND TERMINATION.

- 4.1 <u>Term.</u> The term of this Agreement shall continue from the date hereof until performance of all the obligations of Dranoff hereunder has been completed, until the earlier termination by either party in accordance with the terms hereof, or until termination of the RDA-Township Agreement. Performance of Dranoff's obligations under this Agreement shall not be considered completed until such time as (a) all permits, including final certificates of occupancy, have been issued for the Cricket Portion of the Project, and (b) the Parking Easement has been recorded. Where specifically stated herein, certain provisions of this Agreement shall survive the expiration of the term of this Agreement.
- 4.2 <u>Dranoff Default</u>. The following shall be deemed to be events of default (each, an "Event of Default"):
- (a) Dranoff fails to observe or perform any of its obligations under this Agreement, and such failure is not cured within thirty (30) days after the date of a notice from the Township (provided, however, with respect to any matter which is not the default in the payment of money and which is not reasonably capable of being cured within such thirty (30) day period, the time period for curing will be extended so long as Dranoff promptly commences to cure the failure and thereafter diligently prosecutes such cure to completion within a reasonable period of time needed for such cure);
- (b) Following conveyance of the Property to Dranoff, Dranoff suspends the construction of the Cricket Portion of the Project in accordance with this Agreement and fails within a sixty (60) day period after receipt of written notice from the Township to re-commence and continue reconstruction with diligence and promptness; provided, however, that the phrase "re-commence and continue" shall mean that Dranoff is taking such steps as are reasonably necessary to lead to the result required by this Agreement.
- (c) An Event of Default has occurred under the RDA-Dranoff Agreement pursuant to which (i) the RDA has terminated the RDA-Dranoff Agreement or (ii) the RDA is

entitled to terminate the RDA-Dranoff Agreement and has in the case of (ii) in good faith commenced, with a reasonable basis to do so, an action to terminate such agreement and obtain re-conveyance of the Cricket Lot;

- (d) Dranoff fails to commence and diligently continue to make any necessary changes in accounting procedures required by any governmental entities providing funding for the Cricket Portion of the Project or correct any material errors or discrepancies described in a notice delivered by the Authority or the Township within sixty (60) days after the date of such notice:
 - (e) Dranoff abandons the Cricket Portion of the Project;
- (f) Dranoff, pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or any other present or future federal, state or other common law, case law, statute or regulation relating to bankruptcy, insolvency, appointment of receivers or custodians, dissolution, or other relief for debtors (i) commences a voluntary case, or (ii) consents to or is subject to the entry of any order for relief against it in an involuntary case, or (iii) remains a debtor in an involuntary case for more than sixty (60) days after the commencement of such case, or (iv) consents to or is subject to the appointment of a receiver, trustee, liquidator, custodian or other party serving a similar function, or (v) makes a general assignment for the benefit of creditors, or (vi) becomes insolvent, or (vii) is subject to the entry of an order for the liquidation of Dranoff (collectively, a "Bankruptcy Default");
 - (g) Any fraud against the Township is perpetrated by Dranoff; or
- (h) Any of the milestones on the Schedule for (i) submission of the Sketch Plan, Preliminary Land Development Plans or Final Land Development Plans or (ii) commencement of construction has not been completed as set forth in the Schedule and such milestone continues to be material to the progress of the Project, as the same may be extended hereunder, and such failure is not cured within one hundred eighty (180) days after the date of a notice from the Township (or in the case of submission of Preliminary Land Development plans, within 365 days after the date of a notice from the Township), subject to extension for delays caused by the Township or delays of up to three hundred sixty five (365) days by reason of Events of Force Majeure.

4.3 Township Remedies.

- (a) If an Event of Default shall have occurred, then, in addition to all other rights and remedies specified under this Agreement, the Township shall have the right to:
 - (i) Obtain monetary damages;
 - (ii) Exercise the remedy of specific performance;
- (iii) Obtain monetary satisfaction of its rights to any indemnities and rights to reimbursement, if any, set forth herein; and

- (iv) Cure such default at Dranoff's cost and expense, such costs and expenses to be due and payable to the Township immediately upon demand.
- (b) If an Event of Default occurs prior to conveyance of the Cricket Lot by the RDA to Dranoff, then the Township shall have the right to terminate this Agreement by sending written notice thereof to Dranoff, and thereafter neither party shall have any further obligations or liabilities to the other hereunder except with respect to the obligations hereunder which expressly survive termination of this Agreement, including, without limitation Dranoff's reimbursement obligations set forth in Article 3 hereof.
- (c) If an Event of Default occurs after conveyance of the Cricket Lot by the RDA to Dranoff that is (i) an Event of Default under Section 4.2(b) and extends for a period of one (1) year (subject to Force Majeure); (ii) an Event of Default under Section 4.2(h); (iii) an Event of Default under Section 4.2(c) of the RDA-Dranoff Agreement, (iv) an Event of Default under Section 4.2(e) or (v) a Bankruptcy Default; then, subject to the rights of the holder of an authorized mortgage under Article 3 of the RDA-Dranoff Agreement, the Township shall have the right to exercise the remedies set forth in Section 1.6(t) of this Agreement.
- (d) If an Event of Default occurs after conveyance of the Cricket Lot by the RDA to Dranoff that is (i) an Event of Default of the RDA-Dranoff Agreement referenced in 4.2(c) above; (ii) an Event of Default under Section 4.2(e) or (iii) a Bankruptcy Default; then, subject to the rights of the holder of an authorized mortgage under Article 3 of the RDA-Dranoff Agreement, the Township shall have the right to terminate this Agreement by sending written notice thereof to Dranoff. If the Township shall terminate this Agreement, neither party shall have any further obligations or liabilities to the other hereunder except with respect to the obligations hereunder which expressly survive termination of this Agreement, including, without limitation, Dranoff's reimbursement obligations set forth in Article 3 hereof.

The exercise by the Township of any one or more of the remedies allowed under this Agreement shall not preclude the simultaneous or later exercise by the Township of any or all other remedies allowed under this Agreement, the RDA-Dranoff Agreement or the RDA-Township Agreement. No other action against Dranoff, for damages or otherwise, shall be permitted hereunder, and the Township's remedies against Dranoff shall be strictly limited to the remedies provided in this Section 4.3.

4.4 Township Default and Dranoff's Remedies. In the event that the Township fails to perform any of its obligations under this Agreement and such failure is not cured within thirty (30) days after the date of a notice from Dranoff (provided, however, with respect to any matter which is not reasonably capable of being cured within such thirty (30) day period, the time period for curing shall be extended to one hundred twenty (120) days (three hundred sixty five (365) days for Events of Force Majeure) so long as the Township promptly commences to cure the failure and thereafter diligently prosecutes such cure), then Dranoff shall have, as its exclusive remedies, the right to either (a) terminate this Agreement by sending written notice thereof to the Township, and thereafter neither party shall have any further obligations or liabilities to the other hereunder except with respect to those obligations hereunder which expressly survive termination of this Agreement, or (b) specifically enforce this Agreement; provided, however, that Dranoff shall not have the right to terminate this Agreement following

Settlement under the RDA-Dranoff Agreement. No other action against the Township, for damages or otherwise, shall be permitted hereunder, and Dranoff's remedies against the Township shall be strictly limited to the remedies provided in this clause 4.4.

4.5 <u>Termination</u>.

- (a) Upon proper termination of this Agreement for any reason, Dranoff shall deliver to the Township, to the extent in Dranoff's possession or control, all agreements and guarantees from contractors and suppliers and other documents relating to the construction and development of the Cricket Public Parking Facility, all books, records, accounts and files for the Cricket Public Parking Facility, all operating and maintenance agreements relating to the Cricket Public Parking Facility, all other property of the Township in Dranoff's possession, and such other of Dranoff's operating records and ancillary documents related to the development, construction or management of the Cricket Public Parking Facility, together with a quitclaim assignment to the Township, with no right of reliance, of all right, title and interest of Dranoff, if any, in and to such items, and an assignment of all contracts relating to the Cricket Public Parking Facility.
- (b) Upon termination of this Agreement due to a default by Dranoff, Dranoff shall deliver to the Township, to the extent in Dranoff's possession or control, all agreements and guarantees from contractors and suppliers and other documents relating to the construction and development of the Cricket Portion of the Project, all books, records, accounts and files for the Cricket Portion of the Project, all operating and maintenance agreements relating to the Cricket Portion of the Project, all permits relating to the Cricket Portion of the Project, and such other of Dranoff's operating records and ancillary documents related to the development, construction or management of the Cricket Portion of the Project, together with a quitclaim assignment to the Township, with no right of reliance, of all right, title and interest of Dranoff, if any, in and to such items, and an assignment of all contracts relating to the Cricket Portion of the Project.
- 4.6 This Agreement contains various rights of termination, some by reason of a party's default and some without regard to a default by a party. No right of termination, whether because of default or otherwise, is intended to limit any other right of termination expressly provided herein.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND LIABILITY.

5.1 <u>Insurance</u>.

- (a) From the date of Settlement under the RDA-Dranoff Agreement through the completion of construction of the Cricket Portion of the Project, Dranoff shall take out and carry, property damage and general public liability insurance with respect to the Project, with required limits to protect both Dranoff and the Township from liability. Dranoff shall ensure payment of compensation to its employees in accordance with the Worker's Compensation Laws of the Commonwealth of Pennsylvania.
- (b) No less than ten (10) days prior to commencement of construction, Dranoff shall furnish the Township and the RDA with certificates of insurance, declaration pages for each policy of insurance, and any other documents which the Township may require, such as

copies of policies or endorsements, as evidence of compliance with these insurance requirements in the amounts as specified below. Carrier Rating shall be Best's Rating of A-VII or better or its equivalent. All insurance companies must be licensed to do business in the Commonwealth of Pennsylvania.

- (c) Such Certificates or other documents must be received by the Township before Settlement under the RDA-Dranoff Agreement.
- (d) All policies shall provide for a minimum of ten (10) days prior written notice to the Township Finance Department, Purchasing Division, before cancellation or material change by the insurance company writing the policy. If such notice is not provided for within the basic terms of the policy, it shall be provided by endorsement or notation in the certificate.
- (e) Dranoff shall have all liability policies other than Worker's Compensation and Professional Liability designated "additional insured required" written or endorsed to include the following as additional insureds: the Township and the RDA.
- (f) All policies wherein the parties designated in subparagraph (f) above are included as additional named insureds shall contain a waiver of liability for the payment of premiums covering these additional insureds.
- (g) Dranoff shall provide and maintain at its own cost and expense, the following kinds and amounts of insurance, with minimum limits of liability, not less than those specified below:
- (i) Builder's Risk Insurance. Property insurance written on a builder's risk, "all risk" or equivalent policy form in the amount of the total value of the Project on a replacement cost basis, including, without limitation, insurance against "special causes of loss" perils.
- (ii) Workers Compensation Insurance. As required by the applicable laws of the Commonwealth of Pennsylvania. Dranoff shall maintain during the life of this Agreement Workers' Compensation Insurance for their employees. Coverage must be in accordance with statutory requirements and include Employer's Liability.
- (iii) General Commercial Liability Insurance (excluding vehicles). \$10,000,000 Combined Single Limit (Bodily Injury and Property Damage) per occurrence. The General Commercial Liability Policy shall include Broad Form Contractual Liability Coverage. The certificate or policy will state the coverage applies to the Agreement.
- (iv) Vehicle Liability. \$1,000,000 Combined Single Limit (Bodily Injury and Property Damage) per occurrence.
- (h) Dranoff shall either require its general contractor to procure and maintain for itself and each of its subcontractors, or require each of its subcontractors to maintain, the required insurance during the life of its contract or insure the activities of their subcontractors in its own policy.

(i) If Dranoff fails to maintain any of the insurance required under this Agreement, then the Township may purchase such insurance, on behalf of Dranoff, in which event Dranoff shall reimburse the Township for the cost of such insurance, upon demand.

5.2 <u>Indemnity</u>.

- (a) To the fullest extent permitted by law, Dranoff shall indemnify and hold harmless the Township, the members of the Township's Board of Commissioners, and the Township's agents and employees from and against any and all claims, demands, actions, fines, penalties, liabilities, losses, taxes, damages, injuries and expenses (including, without limitation, reasonable attorneys' fees and costs at the pretrial, trial, and appellate levels) in any manner related to, arising out of or resulting from any failure of Dranoff to perform its obligations under this Agreement, provided such failure was not caused by events beyond the reasonable control of Dranoff or Dranoff's affiliates, or by any fraud, bad faith or misconduct of the Township; or
- (b) Dranoff shall cause its general contractor, to the fullest extent permitted by law, to indemnify and hold harmless the Township, the members of the Township's Board of Commissioners, the RDA, the RDA's board of directors and officers, and the Township's and RDA's respective agents and employees from and against any and all claims, demands, actions, fines, penalties, liabilities, losses, taxes, damages, injuries and expenses (including, without limitation, reasonable attorneys' fees and costs at the pretrial, trial, and appellate levels) in any manner related to, arising out of or resulting from the performance of the general contractor's work, to the extent caused by the general contractor's breach of the agreement between Dranoff and its general contractor or by the negligent acts or omissions of the general contractor, its subcontractors, anyone directly or indirectly employed by them or anyone whose acts they may be liable.

Such obligations of Dranoff shall not be impaired by reason that a party indemnified hereunder is found to have contributed in part to such claim, loss, liability, damage, cost or expense.

The rights and obligations of indemnity described in this Section 5.2 shall not be exclusive and shall be in addition to such other rights and obligations as may be otherwise available at law or in equity.

This Section 5.2 shall survive termination or expiration of this Agreement.

ARTICLE 6. FUTURE DEVELOPMENT IN ARDMORE.

6.1 The Township recognizes that the RFP solicited development proposals for property in Ardmore that is not the subject of this Agreement, and that Dranoff's response to the RFP included redevelopment proposals for the Township parking lot known as "Ardmore West" (redevelopment of the Ardmore West Lot, or portions thereof, is referred to herein as the "Future Phase"), and that Dranoff was selected the developer with whom the Township would commence negotiations to be the master developer of the Ardmore Station Project and the Future Phase. Provided that Dranoff is not in default under this Agreement following the giving of all applicable notices, if any, and the expiration of all applicable grace periods, the Township in good faith agrees to negotiate exclusively with Dranoff with the goal of entering into a

development agreement for the Future Phase for a period expiring five (5) years after the date of commencement of construction on the Cricket Portion of the Project (the "Exclusive Negotiating Period"). Such development agreement, if any, would contain such terms and conditions as are acceptable to Dranoff and the Township. In the event that, following negotiations, the Township and Dranoff are unable to reach agreement within the Exclusive Negotiating Period, neither the Township nor Dranoff shall have any further obligations in connection with the Future Phase. In the event that construction on the Cricket Portion of the Project has not commenced by the deadline set forth in Exhibit "D," neither the Township nor Dranoff shall have any further obligations in connection with the Future Phase. This Article 6 shall survive termination of this Agreement following completion of Dranoff's obligations hereunder.

ARTICLE 7. REPRESENTATIONS.

The Township represents to Dranoff that, as of the date of this Agreement:

- (a) The Township Records do not contain notices of any violations of federal, state, county or municipal laws, ordinances or requirements affecting the Cricket Lot;
- (b) Except for the RDA-Township Agreement, the Township has not entered into any rights or options to sell or lease all or any part of the Cricket Lot;
- (c) Except as set forth on Schedule 7 attached hereto, there are no actions, suits, or proceedings pending against or affecting the Cricket Lot before any governmental authority, except actions, suits, and proceedings that are fully covered by insurance;
- (d) The Township has not entered into any leases or licenses permitting use of the Cricket Lot which will not be terminated by the date of Settlement; and
- (e) The Township has given Dranoff a true, correct and complete copy of the RDA-Township Agreement.

The Township shall notify Dranoff if any of the items under sections 7(b) through (e) change.

ARTICLE 8. MISCELLANEOUS.

- 8.1 This Agreement shall supersede and replace the Development Agreement.
- 8.2 It is understood and agreed that nothing contained in this Agreement or the performance hereof shall be construed as creating any employment relationship whatsoever between the Township and employees of Dranoff. Therefore, none of Dranoff or any of its respective employees is or shall be deemed to be employees of the Township.
- 8.3 Dranoff agrees to reimburse Township all costs and expenses (including, without limitation, all court costs and reasonable attorney's fees) properly incurred or paid by the Township in enforcing this Agreement against Dranoff to the extent Township prevails in such matter, or in appearing in any bankruptcy, reorganization receivership or similar proceeding of Dranoff as permitted hereunder. Township agrees to reimburse Dranoff for all costs and

expenses (including, without limitation, all court costs and reasonable attorney's fees) properly incurred or paid by Dranoff in enforcing this Agreement against the Township to the extent Dranoff prevails in such matter.

8.4 All communications, notices and exchanges of information contemplated herein or required or permitted to be given in connection with this Agreement shall be in writing, and shall be deemed to have been given and to be effective (i) when delivered personally (including delivery by express or courier services), (ii) if sent by the United States Postal Service as registered or certified mail, postage prepaid, return receipt requested, on the date received, or (iii) if sent by facsimile transmission, when transmitted, with confirmation, but not later than 5:00 p.m. local time of addressee (with request for assurance of receipt in a manner customary for communications of such type), provided that such communications, notices and exchanges are addressed or transmitted to the other party as follows:

If to the Township: Township Manager

Township of Lower Merion 75 East Lancaster Avenue Ardmore, PA 19003-2323 Attention: Douglas S. Cleland Telephone: (610) 645-6102 Facsimile: (610) 649-0777

With a copy to: Township Solicitor

75 East Lancaster Avenue Ardmore, PA 19003-2323

Attention: Gilbert High, Esquire Telephone: (610) 649-4000 Facsimile: (610) 649-0777

And to: High, Swartz, Roberts & Seidel LLP

Attn: Gilbert P. High, Junior, Esquire

40 East Airy Street Norristown, PA 19404

Telephone: (610) 275-0700 Facsimile: (610) 275-5290

And to: Hangley Aronchick Segal Pudlin & Schiller

One Logan Square, 27th Floor Philadelphia, PA 19103-6933

Attention: David M. Scolnic, Esquire

Telephone: (215) 496-7046 Facsimile: (215) 568-0300

If to Dranoff: Dranoff Properties, Inc.

3180 Chestnut Street

Philadelphia, PA 19104 Attention: Carl E. Dranoff Telephone: (215) 222-3300 Facsimile: (215) 222-0764

With a copy to: Dranoff Properties, Inc.

3180 Chestnut Street Philadelphia, PA 19104

Attention: David Lebor, Esquire Telephone: (215) 222-3300 Facsimile: (215) 222-0764

Each party hereto shall have the right, by giving not less than five (5) days prior written notice to the other parties hereto, to change any address of such party for the purpose of notices under this Section.

- 8.5 This Agreement and the exhibits attached to it contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior agreements and understandings with respect thereto, including, without limitation, the Letter of Intent and the Development Agreement. There have been no representations made by either party or understandings made between the parties with respect to the subject matter of this Agreement other than those set forth in this Agreement and the exhibits attached to it.
- 8.6 This Agreement may not be modified except by a written instrument duly executed by the parties hereto.
- 8.7 Failure by either party to enforce any of the provisions of this Agreement for any length of time shall not be deemed a waiver of its rights set forth in this Agreement. Such a waiver may be made only by an instrument in writing signed by the party sought to be charged with the waiver.
- 8.8 If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to any Person or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be in force to the fullest extent permitted by law.
- 8.9 This Agreement may be executed in a number of identical counterparts, each of which constitutes an original, and all of which constitute, collectively, one agreement; <u>provided</u>, <u>however</u>, that in making proof of this Agreement, it shall not be necessary for any party to produce or account for more than one such counterpart.
- 8.10 This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns.
- 8.11 This Agreement may not be assigned by either party hereto without the prior written consent of the other party; provided, however, that Dranoff shall have the right to assign

this Agreement, with prior written notice to the Township, to an entity that assumes this Agreement of which Dranoff or Carl Dranoff has Control. If this Agreement is assigned, Dranoff shall be released of all liability hereunder except (i) liability for expenses under Section 3.1, (ii) solely for claims for events that occurred prior to the date of assignment, the indemnity in Section 5.2, and (iii) the obligation to provide the Guaranty under Section 1.4. The term "Control" shall mean that Dranoff or Carl Dranoff, or an entity Controlled by Dranoff, shall be a general partner of a partnership or managing member of a limited liability company, shall own at least 25% of a partnership or other entity and shall have day-to-day responsibility for construction and development activities.

- 8.12 The Township shall not unreasonably delay acting upon written requests requested to the extent such requests are capable of being granted by Township administrative staff and do not require the approval of the Board of Commissioners, any committee thereof, or any other administrative body of the Township other than Township staff consisting of, or under the control of, the Township Manager.
- 8.13 If any date for the performance of any obligation by the parties or for the delivery of any instrument or notice falls on a Saturday, Sunday, or federal holiday, then compliance with such obligation or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday, or federal holiday.
- 8.14 This Agreement shall be governed, interpreted, construed, and enforced under the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws rules the United States District Court for the Eastern District of Pennsylvania and the Court of Common Pleas in and for Montgomery County, Pennsylvania shall have exclusive jurisdiction in any action, suit or other proceeding instituted to enforce this Agreement. The parties hereby waive (a) any objections to the jurisdiction of such courts, (b) any objections to venue in Montgomery County, Pennsylvania or the Eastern District of Pennsylvania, and (c) its right to a trial by jury in any action or proceeding under this Agreement.
- 8.15 The individuals executing this Agreement on behalf of each of the respective parties represent and warrant that the execution and performance of this Agreement by such party has been duly authorized by all applicable laws and regulations and all necessary corporate action, and that this Agreement constitutes the valid and binding obligation of such party, enforceable in accordance with its terms.

8.16 Dranoff acknowledges and agrees that the Township does not have any authority to bind any third party, including, without limitation, the RDA. Dranoff shall not have a right to bring a claim against the RDA under this Agreement. The Township shall have no liability for any action or inaction of the RDA, and the RDA shall not have any liability for any action or inaction of the Township.

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

TOWNSHIP OF LOWER MERION

By:			
Name:			
Title:			
DRANOFF	PROPERTIES	, INC.	
Ву:			
Name:			
Title:			

Exhibit A

Legal Description of Cricket Lot

Exhibit B

Plans

Exhibit C

COMPLETION GUARANTY

THIS COMPLETION GUARANTY (this "Guaranty"), dated as of the _____ day of _____, 2012, is executed by **DRANOFF PROPERTIES, INC.** ("Guarantor") in favor of **TOWNSHIP OF LOWER MERION**, a Township of the First Class organized and existing under the laws of the Commonwealth of Pennsylvania (the "Township") and **REDEVELOPMENT AUTHORITY OF THE COUNTY OF MONTGOMERY**, a Redevelopment Authority established and existing under the Urban Redevelopment Law of the Commonwealth of Pennsylvania, Act of May 24, 1945, PL 991, as amended for the County of Montgomery and Commonwealth of Pennsylvania (the "Authority").

BACKGROUND:

Under that certain Agreement of Sale and Redevelopment Agreement by and between Guarantor and the Authority dated ____ (the "Authority Agreement"), the Authority has agreed to transfer certain real property located in Ardmore, Pennsylvania and known as the Cricket Lot to Guarantor, and Guarantor has agreed to redevelop the Cricket Lot as a mixed use building with ground level retail, residential units above the retail, below ground parking for the residential units and ground level parking for the public (the "Cricket Project").

Under that certain Amended and Restated Development Agreement by and between Guarantor and the Township dated _____ (the "Township Agreement"), the Township has agreed to ask the Authority to request that the Commonwealth of Pennsylvania make available to Guarantor, for the construction of the Cricket Project, a portion of the Pennsylvania Redevelopment Assistance Capital Program Grants ("RACP Grants") previously granted to the Authority for the Ardmore Transit Center Project, and Guarantor has agreed to develop certain parking for the public on the Cricket Lot.

Guarantor has assigned its rights and obligations under the Authority Agreement and the Township Agreement to _____ (the "Developer"), an affiliate of Guarantor has not been released from such obligations.

Guarantor will earn development and management fees and otherwise directly benefit from the development of the Cricket Project.

A condition precedent to the Authority's obligation to transfer the Cricket Lot to the Developer and to the Township's obligation to ask the Authority to request that the Commonwealth of Pennsylvania make available to the Developer a portion of the RACP Grants, is Guarantor's execution and delivery to the Authority and the Township of this Guaranty.

NOW, THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, and intending to be bound hereby, Guarantor hereby agrees as follows:

1. Preambles. The foregoing preambles are incorporated herein by reference.

2. <u>Definitions</u>. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Township Agreement.

3. <u>Guarantor' Obligations</u>.

- (a) Guarantor hereby absolutely, irrevocably and unconditionally guarantees to the Township and the Authority the completion of the Cricket Project substantially in accordance with the Authority Agreement and the Township Agreement and free and clear of all liens or claims against the Cricket Project by any person providing labor or materials to the Cricket Project other than those being disputed in good faith (collectively, "Impermissible Liens"). The obligations described in this Section 3(a) are collectively referred to herein as the "Guaranteed Obligations."
- (b) Guarantor shall be liable for the Guaranteed Obligations as a primary obligor. Guarantor shall, immediately upon demand by the Township and the Authority and without protest or any other notice whatsoever: (a) commence to complete the construction of the Cricket Project and thereafter diligently and continuously pursue such construction and timely complete the Cricket Project in accordance with the Authority Agreement and the Township Agreement; (b) perform all other obligations of the Developer under the Authority Agreement and the Township Agreement that relate to the completion of the Cricket Project; and (c) pay or discharge all Impermissible Liens.
- 4. <u>Continuing Obligation</u>. Guarantor shall have no right of subrogation, reimbursement or indemnity until all of the obligations of the Developer under the Authority Agreement and the Township Agreement have been satisfied in full. This Guaranty is, as to Guarantor, a continuing guaranty of completion which shall remain effective until satisfaction in full of all of the obligations of Guarantor hereunder. Nothing shall discharge or satisfy the liability of Guarantor hereunder except the full performance of all of the obligations of Guarantor hereunder. No expiration or earlier termination of this Guaranty shall in any way extinguish, diminish, or impair any of Guarantor's obligations which may arise by virtue of any bond or other security furnished by Guarantor with reference to any lien placed upon the Cricket Lot during the construction thereof.
- 5. <u>Guarantor's Waivers</u>. Guarantor hereby waives notice of acceptance of this Guaranty by the Township and the Authority and any and all notices and demands of every kind which may be required to be given by any statute or rule of law and agrees that Guarantor's liability hereunder in no way shall be affected, diminished or released by:
- (a) any extension of time or forbearance which may be granted to the Developer (or any successor of the Developer which shall have assumed the Developer's obligations under the Authority Agreement and the Township Agreement);
- (b) any waiver under the Authority Agreement and the Township Agreement by the Township or the Authority;
- (c) reason of any change or modification in the Authority Agreement or the Township Agreement;

- (d) any limitation of liability or recourse in the Township Agreement or the Authority Agreement or arising under any law;
- (e) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;
- (f) the accepting or taking of any other security or guaranty for the Guaranteed Obligations;
- (g) any neglect, lack or diligence, delay, omission, failure or refusal of the Township or the Authority to take or prosecute (or in taking or prosecuting) any action for the enforcement of the Guaranteed Obligations, the Authority Agreement or the Township Agreement; or
- (h) reason of the unenforceability of the Guaranteed Obligations against the Developer by reason of (i) the nature or status of the Developer or (ii) a procedural inability to proceed against the Developer, as opposed the unenforceability of the Guaranteed Obligations against the Developer by reason of valid substantive defenses of the Developer on the merits of the underlying claim
- Remedies. The exercise by the Township and the Authority of any right or 6. remedy under this Guaranty, the Township Agreement, the Authority Agreement, at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Guarantor agrees that this Guaranty may be enforced by the Township and the Authority without the necessity at any time or resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Authority Agreement or the Township Agreement, and Guarantor hereby waives the right to require the Township or the Authority to proceed against Developer or to require the Authority or the Township to pursue any other remedy or enforce any other right. Guarantor further agrees that nothing contained herein shall prevent the Authority or the Township from exercising any rights or remedies available under the Authority Agreement and the Township Agreement, it being the purpose and intent of Guarantor that Guarantor's obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Neither Guarantor's obligations under this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Developer by reason of the bankruptcy or insolvency of Developer.
- 7. <u>Attorneys' Fees</u>. If it becomes necessary for the Township and the Authority to employ counsel to enforce the obligations of Guarantor hereunder, Guarantor agrees to pay, on demand, the Township and the Authority's reasonable attorneys' fees and expenses in connection therewith, to the extent the Township and the Authority prevail in such matter.
- 8. <u>Notices</u>. All communications, notices and exchanges of information contemplated herein or required or permitted to be given in connection with this Agreement shall be in writing, and shall be deemed to have been given and to be effective (i) when delivered personally (including delivery by express or courier services), (ii) if sent by the United States Postal Service as registered or certified mail, postage prepaid, return receipt requested, on the date received, or

(iii) if sent by facsimile transmission, when transmitted, with confirmation, but not later than 5:00 p.m. local time of addressee (with request for assurance of receipt in a manner customary for communications of such type), provided that such communications, notices and exchanges are addressed or transmitted to the other party as follows:

If to the Authority: Redevelopment Authority of the County of Montgomery

104 W. Main Street, Suite 2 Norristown, PA 19401 Attn: Executive Director

With a copy to: Bruce A. Nicholson, Esquire

Duffy, North, Wilson, Thomas and Nicholson

104 N. York Road P.O. Box 726 Hatboro, PA 19004

If to the Township: Township Manager

Township of Lower Merion 75 East Lancaster Avenue Ardmore, PA 19003-2323 Attention: Douglas S. Cleland Telephone: (610) 645-6102 Facsimile: (610) 649-0777

With a copy to: Township Solicitor

75 East Lancaster Avenue Ardmore, PA 19003-2323

Attention: Gilbert High, Esquire Telephone: (610) 649-4000 Facsimile: (610) 649-0777

And to: High, Swartz, Roberts & Seidel LLP

Attn: Gilbert P. High, Junior, Esquire

40 East Airy Street Norristown, PA 19404 Telephone: (610) 275-0700 Facsimile: (610) 275-5290

And to: Hangley Aronchick Segal Pudlin & Schiller

One Logan Square, 27th Floor Philadelphia, PA 19103-6933

Attention: David M. Scolnic, Esquire

Telephone: (215) 496-7046 Facsimile: (215) 568-0300

If to Guarantor: Dranoff Properties, Inc.

3180 Chestnut Street

Philadelphia, PA 19104 Attention: Carl E. Dranoff Telephone: (215) 222-3300 Facsimile: (215) 222-0764

With a copy to: Dranoff Properties, Inc.

3180 Chestnut Street Philadelphia, PA 19104

Attention: David Lebor, Esquire Telephone: (215) 222-3300 Facsimile: (215) 222-0764

Each party hereto shall have the right, by giving not less than five (5) days prior written notice to the other parties hereto, to change any address of such party for the purpose of notices under this Section.

- 9. <u>Governing Law.</u> This Guaranty shall be governed in all respects, including validity, interpretation and effect, by, and shall be enforceable in accordance with, the laws of the Commonwealth of Pennsylvania. If any provision of this Guaranty shall be held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall be affect any of the remaining provisions.
- 10. <u>Successors and Assigns</u>. This Guaranty shall be binding upon Guarantor, its successors and assigns and shall inure to the benefit of the Township and the Authority, its successors and assigns.
- 11. <u>Full Force and Effect</u>. Notwithstanding anything contained herein to the contrary, this Guaranty shall not limit, waive or modify any of the Township and the Authority's rights or any of the Developer's or Guarantor's obligations under the Authority Agreement and the Township Agreement.
- 12. <u>General Provisions</u>. This Guaranty (a) constitutes the entire guaranty and supersedes all prior guaranties and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; and (c) may be modified only by an instrument signed by the duly authorized representatives of the parties and only if the modification is made for the purpose of curing any ambiguities or formal defects or making any other change which, in the opinion of the Township and the Authority, does not adversely affect the interests of the Township and the Authority.
- 13. WAIVER OF TRIAL BY JURY. GUARANTOR WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON OR RELATED OF THE SUBJECT MATTER OF THIS GUARANTY, THE AUTHORITY AGREEMENT OR THE TOWNSHIP AGREEMENT. GUARANTOR ACKNOWLEDGES THAT GUARANTOR HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL

COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT GUARANTOR HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

- 14. SURETYSHIP WAIVERS. BY SIGNING THIS GUARANTY, GUARANTOR WAIVES EACH AND EVERY RIGHT TO WHICH IT MAY BE ENTITLED BY VIRTUE OF ANY SURETYSHIP LAW, ICLUDING ANY RIGHT OR PRIVILEGE, WHETHER EXISTNG UNDER STATUTE, AT LAW OR IN EQUITY, TO REQUIRE LENDER TO TAKE PRIOR RECOURSE OR PROCEEDINGS AGAINST ANY COLLATERAL, SECURITY, PERSON OR ENTITY WHATSOEVER.
- Guarantor is reasonably worth at least as much as the liability and obligation of Guarantor incurred or arising under this Guaranty and all related papers and arrangements. Guarantor has determined that such liability and obligation may reasonably be expected to substantially benefit Guarantor directly or indirectly. Guarantor has had full and complete access to the underlying papers relating to the Authority Agreement and the Township Agreement and all other papers executed by the Developer in connection with the Authority Agreement and the Township Agreement. Guarantor is fully informed of all circumstances which bear upon the risks of executing this Guaranty and which a diligent inquiry would reveal. Guarantor agrees that the Township and the Authority shall have no obligation to advise or notify Guarantor or to provide Guarantor with any data or information.
- 16. <u>Representations, Warranties and Covenants of Guarantor</u>. Guarantor hereby represents, warrants and covenants that:
- (a) Guarantor has a financial interest in Developer and will derive a material and substantial benefit, directly or indirectly, from the Cricket Project and from the making of this Guaranty;
- (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor;
- (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or under any agreement or restriction by which Guarantor is bound or affected: and
- (d) there is no written notice of litigation pending, or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor.
- 17. <u>Further Assurances</u>. Guarantor, at Guarantor's expense, will promptly execute and deliver to the Township and the Authority, upon request, any and all documents that may be reasonably necessary or expedient to effectuate this Guaranty and to achieve its purposes.

IN WITNESS WHEREOF, Guarantor has c day and year first above written.	aused this Guaranty to be executed as of the
WITNESS:	Dranoff Properties, Inc.
	By:Name: Title:

Exhibit D

Schedule

Milestone:	<u>Deadline:</u>
Due Diligence Period	180 days from date of Development Agreement
Confirmation of Cricket Project compliance with zoning requirements	July 1, 2013
Confirmation that RACP Funds can be allocated to Cricket	July 31, 2013
Commitment by Township re amount of RACP Funds to be allocated to Cricket Portion of the Project	September 18, 2013
Dranoff submission of Tentative Sketch Plan	October 1, 2013
Dranoff submission of Preliminary Plan	April 1, 2014
Dranoff submission of Final Plan (administrative review)	July 1, 2014
Receipt of all land development approvals	September 1, 2014
Commitments for all financing necessary for Cricket Portion of the Project	October 1, 2014
Receipt of Building Permit	November 1, 2014
Settlement on Cricket Lot and Financing	November 1, 2014
Commencement of Construction	December 1, 2014

<u>Summary of Amended and Restated Development Agreement:</u> December 7, 2012

In general, the Amended and Restated Development Agreement follows the outline of the Term Sheet between the Township and Dranoff Properties, Inc. ("Dranoff") approved by the Board of Commissioners in October of 2011, with some important modifications.

As the Commissioners will recall, the October, 2011 Term Sheet divided the Ardmore Station Project into two segments, the first consisting of certain transit, garage and possibly retail improvements to be located on Amtrak's property and on the Township's property adjacent to the Public Safety Building (collectively, the "ATC Portion of the Project"), and the other consisting of the mixed use residential, retail and parking improvements to be located on the Cricket parking lot (the "Cricket Portion of the Project"). Because of the welcome participation of PennDOT in the ATC Portion of the Project, continuing Dranoff's involvement in that portion of the project was no longer necessary. Dranoff will now focus exclusively on the Cricket Portion of the Project.

This structure will enable the Township to proceed with both portions of the overall Ardmore Station Project on independent paths.

Other important changes are as follows:

• The amount of public parking to be constructed on the Cricket Lot will be determined by the Township, rather than set at replacement levels. The Township will now have the option to require the construction of public parking spaces as described in the chart below to replace the 175 existing public parking spaces on the Cricket Lot. The Township will have the flexibility to decide which option it elects to be constructed. it is anticipated, however, that the amount of parking that will be created as part of the ATC Portion of the Project is likely to influence how much parking is required as part of the Cricket Portion of the Project.

Minimum Public Parking Required for Each Option			
No Added Ded	k 1 Deck	2 Decks	
92	147	210	

- The residential units will not include any below market rate housing and Dranoff shall have no obligation to make any contribution into a fund for the development of below market rate housing in the Township;
- The schedule has been updated; and
- There will now be a cap on Dranoff's reimbursement requirement, which will be \$1,200,000. The expenditures through the third quarter of 2012 total approximately \$1,100,000.

The following chart summarizes the major business points of the proposed Amended and Restated Development Agreement:

Project Definition and Scope:

Dranoff will construct on the Cricket Lot a mixed use building containing approximately 9,500 square feet of ground level retail fronting on Cricket Avenue, 121 residential units, below-ground level parking spaces for the residential units, above-ground level public parking spaces, and public open space (the "Cricket Project").

Mechanism for Transfer of Cricket Lot:

The Township will enter into an agreement with the Montgomery County Redevelopment Authority (the "RDA") to transfer the Cricket Lot to the RDA, and the RDA will enter into a separate Agreement of Sale and Redevelopment Agreement with Dranoff, which agreement is subject to the Township's approval, to transfer the Cricket Lot to Dranoff.

Dranoff's Obligation to Construct Public Parking:

Dranoff will design, develop and construct public parking on the Cricket Lot (the "Public Parking") on a turn-key basis at no cost to the Township. The Township will determine the number of public parking spaces to be constructed, as described above.

Code Compliance:

The Cricket Project must comply with all zoning and applicable Township ordinances. However, the Cricket Project may not be possible unless the MUST Ordinance and/or other zoning is modified.

Township Design Control:

In addition to typical reviews for construction permitting, which will be done in the ordinary course and with no special consideration, the Township has the right to review and approve the design of the Cricket Project, including the building exterior, walkways, driveways and public spaces, and the Township agrees not to unreasonably withhold its consent to these items if they are consistent with the concept plans.

Temporary Parking:

Dranoff will work with the Township to provide temporary public parking during the construction of the Cricket Project.

Dranoff Properties shall be responsible for arranging and paying for any offsite construction vehicle parking.

Dranoff Guaranty:

Dranoff Properties will provide a guaranty that it will complete the Cricket Project.

RACP:

The Township will request that the RDA and the Commonwealth of Pennsylvania make a portion of the RACP grants allocated for the Ardmore Station Project available to Dranoff for the Cricket Project, in an amount which is tied to the size of the Public Parking required by the Township. If the Township directs Dranoff to construct at least 92 public parking spaces, the Township will request that the RDA ask the Commonwealth to make \$8,000,000 of the RACP grants available for the Cricket Project. If the Township directs Dranoff to construct at least 147 public parking spaces, the Township will request that the RDA ask the Commonwealth to make \$10,000,000 of the RACP grants available for the Cricket Project. If the Township directs Dranoff to construct at least 210 public parking spaces, the Township will request that the RDA ask the Commonwealth to make \$12,000,000 of the RACP grants available for the Cricket Project.

Schedule:

Dranoff will meet the deadlines in the schedule attached to the Development Agreement as Exhibit D (the "Schedule").

Conditions to Performance:

The Township's and Dranoff's obligations under the Development Agreement are conditioned on Dranoff obtaining construction financing, zoning and land development approvals and a commitment from the RDA on the RACP grant funds. Either party has the right to terminate the Development Agreement if those conditions are not met by the deadlines set forth in the schedule. Dranoff also has a six month due diligence period within which it may terminate the Development Agreement.

Payment for Cricket Lot:

Dranoff will pay the Township \$2,000,000 for the Cricket Lot (the "Land Payment") when: (i) Dranoff sells the Cricket Lot, (ii) Dranoff converts the Cricket Project into a condominium and sells condominium units, in which event the \$2,000,000 will be divided by the number of residential units and paid on a per unit basis as the units are sold, or (iii) Dranoff refinances (with debt or equity), in which event Dranoff will pay the Township, after Dranoff's investors receive an internal rate of return equal to 15%, half of the net cash generated by the refinance, up to \$2,000,000. If the Land Payment has not been completely repaid on or before the date which is twenty (20) years after the date of commencement of construction, the balance of the unpaid Land Payment shall be paid at that time.

Reimbursement: Dranoff will reimburse the Township for all third-party

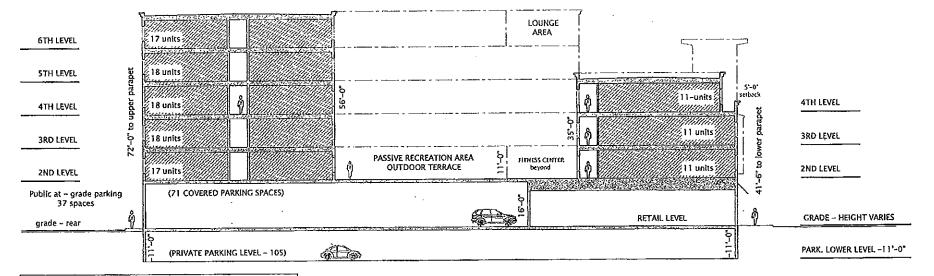
professional service costs ("Reimbursable Expenses") incurred after March 1, 2008, up to \$1,200,000, except that Dranoff shall not be obligated to pay for such costs if the Development Agreement is terminated (i) by reason of Dranoff's unwillingness to grant or agree to a request or demand of the Township which is unreasonable in the context of this Agreement, (ii) because the Township unreasonably takes an action or refuses to take an action reasonably required for fulfillment of the Development Agreement or for performance or construction of the Cricket Project, or (iii) because the Township is in default.

Additionally, (A) if the Agreement is terminated prior to conveyance of the Cricket Lot by the RDA to Dranoff because the Commonwealth of Pennsylvania will not make RACP grant funds available to Dranoff for the Cricket Portion of the Project, and Dranoff has complied with RACP requirements, Dranoff will only be liable for Reimbursable Expenses incurred between March 1, 2008 and September 30, 2009; and (B) if the Agreement is terminated prior to conveyance of the Cricket Lot by the RDA to Dranoff because Dranoff terminated the Agreement during its due diligence period or because Dranoff could not get the need zoning, land development or other approvals, Dranoff will only be liable for Reimbursable Expenses incurred between March 1, 2008 and September 30, 2009, which are equal to \$615,000.

Future Development:

As long as Dranoff is not in default under the Development Agreement, the Township agrees that for five years after the commencement of construction on the Cricket Lot, it will negotiate exclusively with Dranoff for redevelopment of the Ardmore West Lot.

ARDMORE STATION - CRICKET LOT



121 apts. - 176 INTERIOR PARKING SPACE 37 EXTERIOR PARKING SPACE 213 TOTAL PARKING SPACES

CRICKET LOT - SCHEMATIC SITE SECTION

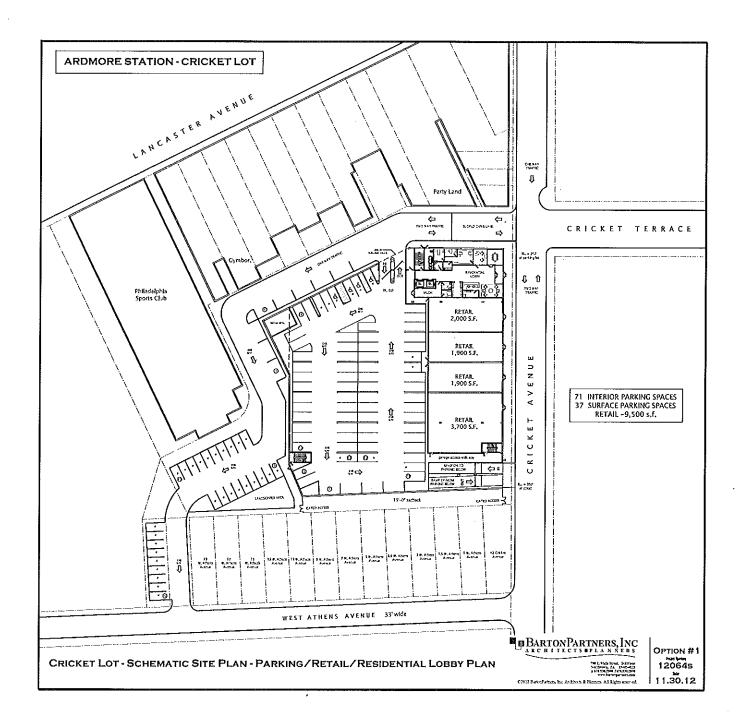
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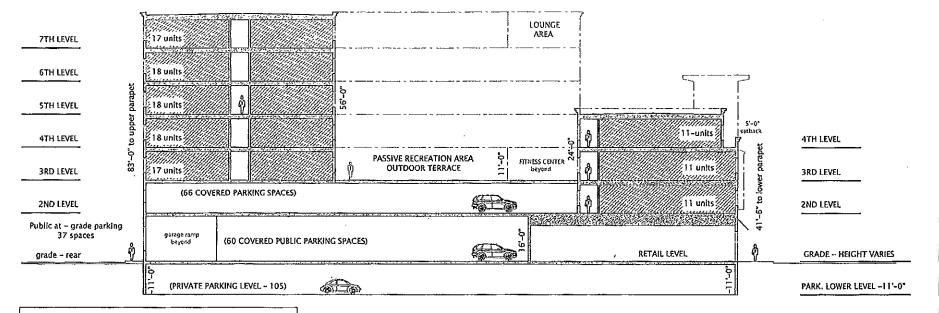
700 E. Main Street, 3rd Floor Norrigows, PA \$491-4122 p.618.930,2800 F618.930,2888 wordertoepertners.com

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OPTION #1 12064s 12.07.12



ARDMORE STATION - CRICKET LOT



121 apts. – 231 INTERIOR PARKING SPACE 37 EXTERIOR PARKING SPACE 268 TOTAL PARKING SPACES

CRICKET LOT - SCHEMATIC SITE SECTION

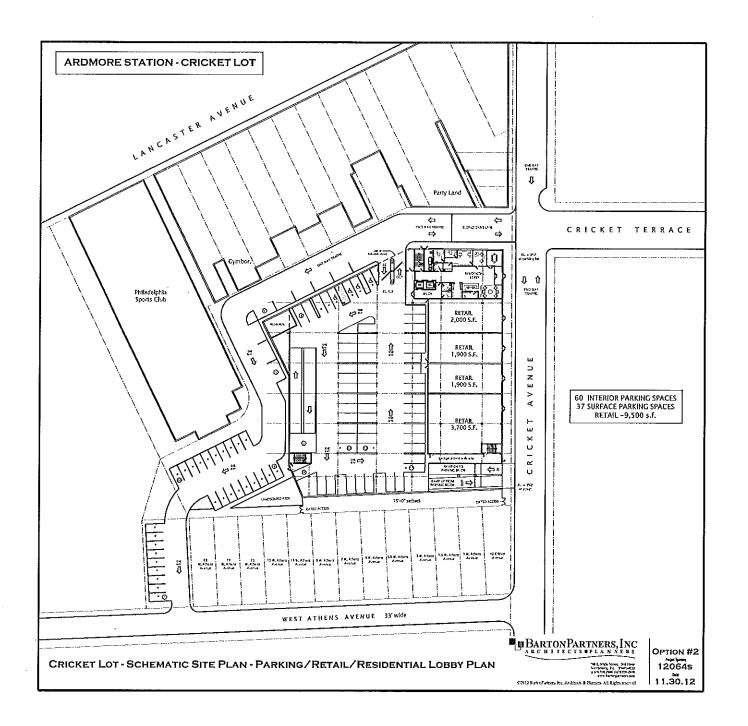
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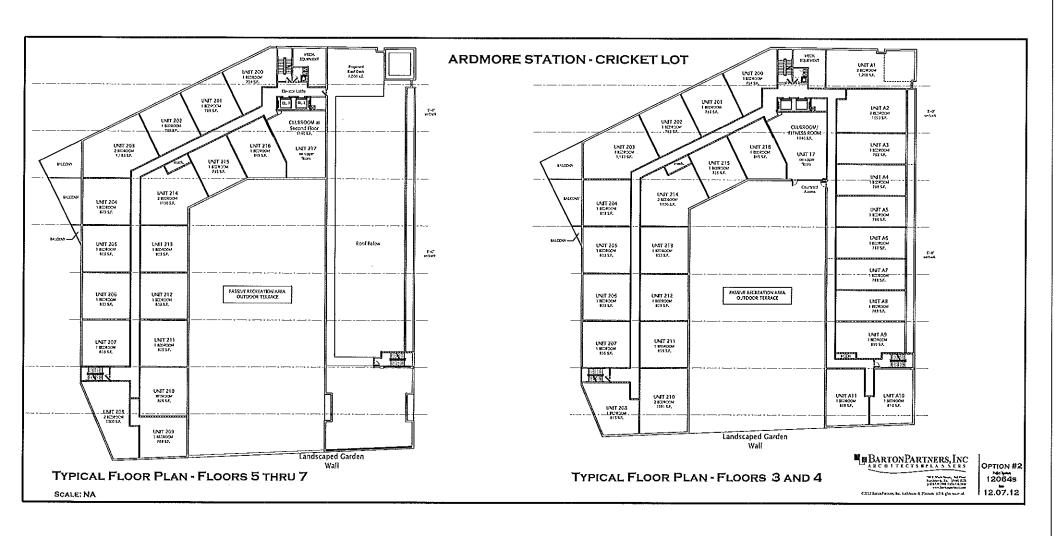


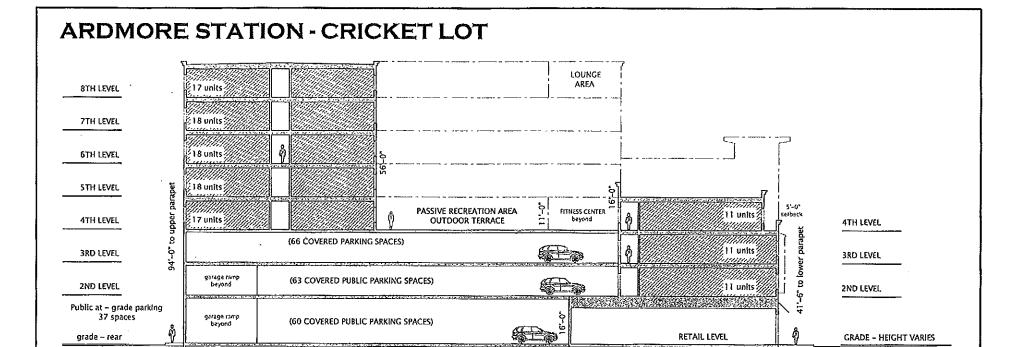
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OPTION #2 12064s 12.07.12







121 apts. - 294 INTERIOR PARKING SPACE 37 EXTERIOR PARKING SPACE 331 TOTAL PARKING SPACES

CRICKET LOT - SCHEMATIC SITE SECTION

(PRIVATE PARKING LEVEL -- 105)

SCALE; NA



700 E. Main Street, 3rd Floor Northtown, PA 19491-4112 p 619.939.2860 1619.939.2868 www.karbopartaeraca

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OPTION #3
12064s
12.07,12

PARK; LOWER LEVEL -11'-0"

