

TOWNSHIP OF LOWER MERION

**ECONOMIC REVITALIZATION
COMMITTEE**

Wednesday, December 14, 2016
7:10 PM (Approximately)

Chairperson: Tiffany O'Neill
Vice Chairperson: Cheryl B. Gelber, Steven K. Lindner

AGENDA

1. RESOLUTION - HAWS TERRACE DEED OF DEDICATION

Consider for recommendation to the Board of Commissioners a Resolution to accept a Deed of Dedication for a widened portion of a public street known as Haws Terrace.

PUBLIC COMMENT

2. PARKING LOT LEASE - LANCASTER WESTERN PROPERTIES, 104-124 W. LANCASTER AVENUE

Consider for recommendation to the Board of Commissioners entering into a lease with Lancaster Western Properties for temporary public parking spaces at the open lot at the intersection of Ardmore and Lancaster Avenues for the nominal rate of \$1.00 per year.

PUBLIC COMMENT

3. SUBORDINATION AGREEMENT WITH FIRSTRUST BANK FOR ONE ARDMORE ASSOCIATES

Consider for recommendation to the Board of Commissioners entering into a Subordination Agreement with One Ardmore Associates for the benefit of Firstrust Bank as the mortgage lender for the One Ardmore Place project.

PUBLIC COMMENT



AGENDA ITEM INFORMATION

ITEM: RESOLUTION - HAWS TERRACE DEED OF DEDICATION

Consider for recommendation to the Board of Commissioners a Resolution to accept a Deed of Dedication for a widened portion of a public street known as Haws Terrace.

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Issue Briefing	Issue Briefing
<input type="checkbox"/> Resolution	Resolution

TOWNSHIP OF LOWER MERION

Economic Revitalization Committee

Issue Briefing

Topic: Resolution for Haws Terrace Deed of Dedication

Prepared by: Angela Murray, Assistant Director, Building & Planning

Date: December 9, 2016

I. Action To Be Considered By The Board:

The Board is requested to authorize a Resolution for a Deed of Dedication to accept a widened portion of a public street known as Haws Terrace on the Cricket Lot on Cricket Avenue, Ardmore.

II. Why This Issue Requires Board Consideration:

Approval from the Board of Commissioners is required for the Township to accept the Deed of Dedication for the widened portion of Haws Terrace resulting from the development of the One Ardmore Place project on the Cricket Lot.

III. Current Policy Or Practice (If Applicable):

Current policy is for the Board of Commissioners to determine if it is in the public interest to accept a Deed of Dedication for the widened portion of a public street.

IV. Other Relevant Background Information:

The Board of Commissioners have approved a Land Development Plan for the redevelopment of the Cricket Lot for the One Ardmore Place project to be developed by Dranoff Properties. The project will result in a portion of Haws Terrace to be widened to allow for two-way ingress and egress from the public parking garage to Cricket Avenue.

V. Impact On Township Finances: n/a

VI. Staff Recommendation:

Staff recommends that the Board of Commissioners approve the Deed of Dedication accepting a widened portion of Haws Terrace on the Cricket Lot.

TOWNSHIP OF LOWER MERION

RESOLUTION NO. _____

**RESOLUTION TO ACCEPT DEED OF DEDICATION FOR A
WIDENED PORTION OF A PUBLIC STREET KNOWN AS
HAWES TERRACE**

WHEREAS, the Board of Commissioners of the Township of Lower Merion (“Township”) anticipates receiving from the REDEVELOPMENT AUTHORITY OF MONTGOMERY COUNTY (hereinafter "Grantor") a Deed of Dedication for a widened portion of a public street known as Haws Terrace (the “Street”), a description of the widened portion being more fully set forth and described in Exhibit "A" attached hereto; and

WHEREAS, the Board of Commissioners has heretofore approved a Land Development Plan (the “Plan”), intended to be forthwith recorded, prepared on behalf of ONE ARDMORE ASSOCIATES, L.P. (“Developer”) for property fronting on Cricket Avenue and Haws Terrace, public streets, near the intersection of Lancaster Avenue, being Parcel # 40-00-13624-00-7, (the “Property”); and

WHEREAS, in order to facilitate the development of the Property by the Developer, Grantor anticipates receiving title to the Property pursuant to a Development Agreement between the Township and the Grantor and, once vested in title, intends to dedicate the widened portion of Haws Terrace to the Township; and

WHEREAS, the Street has heretofore been improved and the widened portion thereof is intended to be improved by the Developer according to Township specifications; and

WHEREAS, the Board of Commissioners deems it to be in the public interest to accept this Deed of Dedication conditioned upon Grantor receiving title to the Property and thereafter offering the Deed of Dedication to the Township so that the widened portion of the Street will be opened and dedicated for public use.

NOW, THEREFORE, in consideration of the above, the Board of Commissioners of the Township of Lower Merion does hereby resolve as follows:

1. The Deed of Dedication to be offered by Grantor to the Township for the widened portion of Haws Terrace, more fully described as set forth on Exhibit “A” attached, is hereby accepted, conditioned upon Grantor then being vested in ownership of the Property. .

2. The proper officers of the Township are authorized to reference this Resolution in the Deed of Dedication and to record the same in the Office for the Recording of Deeds, Norristown, Montgomery County, Pennsylvania.

3. The widened portion of this public street as described in the attached Exhibit "A" shall hereafter be designated on the official map of streets in the Township.

RESOLVED, this _____ day of _____, 2016.

BOARD OF COMMISSIONERS
TOWNSHIP OF LOWER MERION

By: _____
Paul A. McElhaney, President

ATTEST:

Jody L. Kelley, Secretary

Exhibit "A"
to Deed of Dedication
of a widened portion of Haws Terrace

All that certain parcel or tract of land situate in the Township of Lower Merion, Montgomery County and the Commonwealth of Pennsylvania, as shown on an ALTA/NSPS LAND TITLE SURVEY for One Ardmore Associates., LP prepared by Stantec Consulting Services Inc., project # 174811398, dated October 13, 2016, and being bounded and described as follows:

Beginning at a point on the northerly side of Cricket Avenue (40' wide), said point also being the westerly side of a 20 foot wide Right of Way of Haws Terrace (Public Street) as shown on said plan; thence continuing along the said northerly side of Cricket Avenue South 64°08'00" West a distance of 12.75 feet, more or less, to a point on the westerly side of a proposed curb line as shown on HAWS TERRACE EXHIBIT prepared by Bohler Engineering project No.: PH130573.01 Dated August 11, 2016 , and the following 3 (three) calls being partially along said proposed curb line:

- 1) North 25° 51' 00" West a distance of 97.05 feet to a point;
- 2) North 52° 23' 38" West a distance of 130.15 feet to a point;
- 3) South 64° 08' 00" West a distance of 133.84 feet, more or less, to a point on the Northerly line of Premises A-1 as shown on said ALTA/NSPS LAND TITLE SURVEY;

Thence North 37° 35' 00" East along said Northerly line a distance of 35.77 feet, more or less, to a point on the westerly side of said 20 foot wide Right of Way of Haws Terrace (Public Street), and the following 5 (five) calls being on said westerly side:

- 1) South 25° 51' 00" East a distance of 5.88 feet, more or less, to the northerly terminus of Haws Terrace (vacated by ordinance) ;
- 2) North 64° 08' 00" East a distance of 33.00 feet , crossing the northerly terminus of Haws Terrace (vacated by ordinance);
- 3) North 37° 35' 00" East a distance of 69.00 feet;
- 4) South 52° 22' 00" East a distance of 174.84 feet;
- 5) South 25° 51' 00" East a distance of 97.98 feet to the POINT OF BEGINNING.



AGENDA ITEM INFORMATION

ITEM: PARKING LOT LEASE - LANCASTER WESTERN PROPERTIES, 104-124 W. LANCASTER AVENUE

Consider for recommendation to the Board of Commissioners entering into a lease with Lancaster Western Properties for temporary public parking spaces at the open lot at the intersection of Ardmore and Lancaster Avenues for the nominal rate of \$1.00 per year.

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Issue Briefing	Issue Briefing
<input type="checkbox"/> Proposed Agreement	Backup Material

TOWNSHIP OF LOWER MERION
Building and Planning Committee

Issue Briefing

Topic: Parking Lease with Lancaster Western Properties, Ardmore

Prepared by: Angela Murray, Assistant Director Building & Planning

Date: December 9, 2016

I. Action to Be Considered by The Board:

The Board is being asked to consider approving a lease with Lancaster Western Properties for temporary public parking spaces on the vacant lot at 104-124 W. Lancaster Avenue at the corner of Lancaster Avenue and Ardmore Avenue in Ardmore.

II. Why This Issue Requires Board Consideration:

Approval from the Board of Commissioners is required to approve lease agreements between the Township and private property owners.

III. Current Policy or Practice (If Applicable):

The Board of Commissioners approves lease agreements to be entered into by the Township with private property owners.

IV. Other Relevant Background Information:

The Township has been focused for the last two years on identifying sources of temporary parking in anticipation of construction on the Cricket Lot. To that end, staff has worked with Lancaster Western Properties who have been utilizing the vacant lot at this intersection from time to time for limited parking and for seasonal holiday tree sales. The site has been vacant since the land was cleared initially during the redevelopment of the Ardmore Avenue/Lancaster Avenue intersection that introduced turning lanes, improved the signalization and provided for safe pedestrian crosswalks.

Lancaster Western Properties has been meeting with staff to develop a code compliant land development plan for the property and has recently submitted a development application for this site.

In the interim period, the car wash will be demolished to allow for additional parking spaces. In addition to the lease with the Township, Lancaster Western has parking agreements with Greenfield Avenue property owners and starting in January 2017, also with Harkin Builders who are the contractors for the One Ardmore Place project on the Cricket Lot. The Township would use the balance of the lot as a permit parking lot for municipal public parking,

Staff anticipates the addition of between 30 and 40 additional permit spaces on our section of this lot.

V. Impact On Township Finances:

There is limited impact on Township finances since the lease has a nominal charge of \$1. The Township will have the responsibility for routine maintenance, trash removal and snow clearance on the same schedule as other Township parking lots in Ardmore. This maintenance obligation could have a small financial impact, depending on the number of winter storms requiring snow removal. The Township will realize additional permit parking revenue from the additional spaces.

VI. Staff Recommendation:

Staff recommends that the Board of Commissioners grant approval to the Township Manager to enter into the parking lease with Lancaster Western Properties.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made as of this ____ day of _____, 2016, by and between LANCASTER WESTERN PROPERTIES, L.P., 11 Bala Avenue, Bala Cynwyd, PA 19003 (the "Lessor") and the TOWNSHIP OF LOWER MERION, 75 E. Lancaster Avenue, Ardmore, PA 19001 ("Township" or "Lessee").

WHEREAS, Lessor is the owner of certain real property located at 104-108-114-120-124 W. Lancaster Avenue, Ardmore, Lower Merion Township, Montgomery County, Pennsylvania (the "Property"), being respectively Parcel Nos: 40-00-30008-005, 40-00-30004-007, 40-00-30000-002; 40-00-29996-006, and 40-00-29992-001; and

WHEREAS, the Property consists of a total of 38,076 square feet (.875 acres) as shown on the Plan attached hereto as Exhibit "A"; and

WHEREAS, the Property is vacant except for a building presently used as an automobile car wash; and

WHEREAS, Lessee desires to lease the Property from Lessor after the existing structure(s) are demolished and the Premises is graded for the installation by Lessee of a public motor vehicle parking lot.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the parties hereto covenant and agree as follows:

ARTICLE I.
LEASE OF PREMISES

1.1 Lease of Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property, to be used as a public motor vehicle parking lot, and no other use, subject to the rights of Lessor's Licensees (as hereinafter defined). Lessee shall not have any right to assign this Lease or to sublet the Premises without permission from Lessor, which permission will not be unreasonably withheld. Lessee accepts the Property in its "as-is" "where-is" condition, with all faults, and Lessor makes no warranties, express or implied with respect to the Property, the fitness of the same for Lessee's uses or the condition thereof, and Lessee waives and releases any such warranties. Lessee acknowledges that Lessor intends to develop the Property after this Lease terminates and that Lessor would not enter into this Lease if doing so would adversely affect, in any way, Lessor's ability or right to develop the Property, so Lessee agrees that the execution of this

Lease by Lessor and the performance by Lessor of any obligations under this Lease, or the exercise by Lessee of any rights under this Lease, will not adversely affect Lessor's right to develop the Property.

1.2 Removal of Structures. Prior to commencement of the lease, Lessor will enforce the obligation of Harkins Buildings, Inc. ("Harkins"), one of Lessor's Licensees, to remove the structures on the Property and to cause the Property to be level graded and compacted suitable for use as a parking lot. Lessor shall have no liability to Lessee if Harkins fails to perform such obligations and Lessor shall not be obligated to do so in such event. Notwithstanding anything herein to the contrary, Lessee agrees that removal of the structures on the Property will not cause Lessor to lose any current or future right to continue to allow the existing free standing sign to remain on the Property, as the same may be modified pursuant to Lessee's sign ordinance. The foregoing shall survive the termination of this Lease.

1.3 Lessee Improvements. Lessee will improve the property as necessary for use by the public as a motor vehicle parking lot, but any improvements shall be subject to Lessor's prior written consent.

1.4 Use of Property. It is understood and agreed that Lessor has heretofore permitted daily parking by third parties ("Lessor's Licensees") of sixty-five (65) motor vehicles on the Property. Lessee understands and agrees that such third party parking is permitted to continue, and that Lessee's use of the Property is under and subject to the parking privileges heretofore granted to Lessor's Licensees. Lessee further understands and agrees that Harkins has the exclusive right to use the parking spaces on 124 W. Lancaster Avenue. Lessee reserves the right to charge the public for the use of the Property in such manner and at such rates as Lessee shall determine, but acknowledges that no charges will be levied by Lessee for use by Lessor's Licensees. In addition, if either of the agreements with Lessor's Licensees is terminated for any reason, Lessor shall have the right to re-lease those spaces on any terms approved by Lessor, and such replacement tenant or tenants shall be included in the term "Lessor's Licensees", so long as Lessor's Licensees have rights to not more than sixty-five (65) spaces in the aggregate.

ARTICLE II.

TERM

2.1 Term of Lease. The term ("Term") of this Lease shall commence upon the date on which Harkins has demolished the existing structures and graded the Property suitable for the Lessee's installation of a public motor vehicle parking lot, as certified by the Township Engineer, which date shall not be later than _____.

2.2 Termination of Lease. This Lease shall remain in force until terminated by Lessor or Lessee. Lessee or Lessor may terminate this Lease at any time upon no less than 30 days' written notice to the other. Lessor reserves the right to do geotechnical, environmental and other studies and surveying the Property during the term of this Lease for the development of the Premises at its termination, but not in such manner that will materially disturb Lessee's use of the Property.

ARTICLE III.

RENT

3.1 Rent for Term. Lessee agrees to and shall pay to Lessor nominal rent for the Premises in the amount of One Dollar (\$1.00) per year. Lessee shall be solely responsible for the payment of all utilities consumed by Lessee in connection with its use of the Property.

ARTICLE IV.

INDEMNIFICATION AND INSURANCE

4.1 Indemnification. To the extent permitted by law, Lessee shall indemnify, defend and hold Lessor, its agents, officers, and employees harmless from and against any and all liability, damage, cost and expense (including, but not limited to, reasonable attorneys' fees and expenses) arising out of or in connection with Lessee's or its agents', contractors' or employees' use of or activities at the Property in furtherance of this Lease (excluding those arising solely out of the negligence of Lessor, its agents, servants, contractors and employees) including: (i) any accident or occurrence in, at, or on the Property or any accident or occurrence in, at, or on the Property which arise out of Lessee's presence at the Property or the use by the public of the parking lot to be constructed on the Premises; (ii) any act or omission of Lessee, its agents, contractors or employees; (iii) any claim arising in connection with any work done by, or

on behalf of Lessee, and/or (iv) the breach by Lessee of any other provision of this Lease Agreement. The provisions of this paragraph shall survive the expiration or termination of this Lease Agreement.

4.2 Required Insurance Coverages. Lessee agrees to maintain in full force during the term of this Lease a policy or policies of commercial general liability insurance or group self-insurance in the amount of at least Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury (including death) and property damage in any one occurrence, and business auto liability insurance with a minimum combined single limit of liability of not less than \$2,000,000.00 for each accident for bodily injury and property damage. Lessor and its mortgagees shall be named as additional insureds or additional covered parties under Lessee's commercial general liability coverage as respects the Premises. Evidence of the coverages herein required shall be provided to Lessor at inception of this Lease and upon request at annual renewals of such coverage. Lessor hereby grants specific approval for Lessee to purchase and maintain, in lieu of insurance, group self-insurance with Delaware Valley Insurance Trust or any other municipal group self-insurer established and operating under the authority of the Pennsylvania Intergovernmental Cooperation Act – 53 Pa C.S.A. Section 481 et seq. and the Pennsylvania Political Subdivision Tort Claims Act – 42 Pa. C.S.A. Section 8541 et seq..

4.3 Mutual Waiver of Subrogation. To the fullest extent permitted by law, Lessor and Lessee specifically waive any right of recovery from the other for any loss or damage to property (or any resulting loss of income or extra expense incurred to continue operations) of the other, to the extent that such loss or damage is covered by any property insurance, group self-insurance or other form of indemnity. This waiver shall apply regardless of the cause of origin, including the negligence of either party. To the fullest extent permitted by law, no property insurer or group self-insurer shall hold any right of subrogation against the other as respects loss or damage occurring on or at the leased Premises.

ARTICLE V

LESSEE'S INSTALLATION, STRIPING, MAINTENANCE AND REPAIRS OF THE PARKING LOT

5.1 Installation, Striping, Maintenance and Repairs. Lessee at its sole cost and expense shall design and delineate parking spaces for use as a public motor vehicle parking lot. All costs shall be the responsibility of the Lessee, including, but not limited to, the services of the Township Engineer. Lessor shall not require land development approval for the design and installation of the public motor vehicle parking lot by the Lessee. However, the design and delineation of the public motor vehicle parking lot is subject to the approval of the Lessor which shall not be unreasonably delayed or denied. To the extent not the responsibility of Lessor's Licensees, Lessee shall perform all necessary maintenance and repairs on the Premises, including snow and ice removal, sweeping, patching potholes and keeping lines suitably painted. All improvements made by Lessee shall be removed at the expiration of the term of this Lease and all damage caused by such removal shall be repaired by Lessee. Subject to the foregoing, Lessee agrees to surrender the Premises in the same condition in which the Lessee accepted it. Should Lessee fail to do so, Lessor may do so and Lessee shall reimburse Lessor for Lessor's expenses for same on demand, with interest at the rate of ten percent (10%) until paid.

(a) The term "repairs" shall include all necessary replacements and substitutions which shall be done in a good and workmanlike manner.

(b) To the extent not the responsibility of Lessor's Licensees, Lessee, at its sole expense, shall keep and maintain all portions of the Premises in a clean and orderly condition, free trash, garbage, refuse, and rubbish. Lessee will perform snow plowing services on the Premises. The priority for snow plowing will follow the Township's normal parking lot priorities after first plowing the Township's streets and highways. Notwithstanding the foregoing, Lessor shall have the right, but not the obligation, to perform snow plowing on the Premises, should Lessor deem it necessary or appropriate to do so. Lessee shall be obligated to delineate parking spaces on the Premises. Subject to Lessee's obligations in this Section 5.1, Lessee, at Lessee's expense, may maintain parking meters or other parking management system and lighting sufficient to illuminate the Premises during all twilight and evening hours and in compliance with illumination standards set forth in the Township Code. Lessee shall be entitled to all revenue from the parking management system, except that paid by Lessors' Licensees, as stated above.

ARTICLE VI

RIGHTS, DUTIES AND OBLIGATIONS OF LESSOR AND LESSEE

6.1 Rights, Duties and Obligations. In addition to the rights, duties and obligations of Lessor and Lessee otherwise set forth herein, Lessor and Lessee agree as follows:

(a) Lessee shall have full authority and obligation to police the Premises and all activities on such Premises shall be subject to all ordinances and regulations of the Township;

(b) Lessee agrees not to obstruct or in any way damage the existing drainage or water courses on the Premises as they presently exist.

ARTICLE VII

TERMINATION

7.1 Surrender of Premises. Upon the expiration of or sooner termination of this Lease, Lessee shall peaceably surrender the Premises in the same condition of cleanliness, repair and good order as the Premises was in upon the commencement of the term, reasonable wear and tear excepted, and excepting that the parking space delineation may remain. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement.

7.2 No Waiver. No failure by Lessor or Lessee to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Lessee and no breach thereof, shall be waived, altered or modified except by written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

ARTICLE VIII

EMINENT DOMAIN

8.1 Total or Partial Condemnation. If the Premises shall be wholly or partially taken by any public or quasi-public authority under the power of eminent domain, condemnation or expropriation in the event of a conveyance in lieu thereof, then this Lease shall terminate as of the

date on which possession of the Premises is required to be surrendered to the condemning authority, and Lessee shall have no claim against Lessor or the condemning authority for the value of the unexpired term of this Lease.

8.2 Lessor's Damages. In the event of any condemnation or taking as hereinbefore provided, whether whole or partial, Lessee shall not be entitled to any part of the award as damages or otherwise for such condemnation and Lessor is to receive the full amount of such award. Lessee hereby expressly waives any right or claim to any part thereof and assigns to Lessor any such right or claim to which Lessee might become entitled.

8.3 Lessee's Damages. Although all damages in the event of any condemnation are to belong to the Lessor, whether such damages are awarded as full compensation for diminution in value of the leasehold or to the fee of the Premises, Lessee shall have the right, but only to the extent that the same shall not diminish the award to Lessor, to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee under the applicable eminent domain code in effect in Lessee's own right for or on account of, and limited solely to, any cost to which Lessee might be put in removing fixtures and equipment of Lessee from the Premises.

ARTICLE IX

MISCELLANEOUS

9.1 Access by Lessor. Lessor may at all reasonable times during the term of this Lease enter to inspect the Premises and/or may show the Premises to others.

9.2 Successors. All rights, obligations and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, trustees, receivers, legal representatives, successors and assigns of the said parties.

9.3 Quiet Enjoyment. So long as Lessee observes and performs all the covenants, terms and conditions on Lessee's part to be observed and performed, the public shall peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully claiming by, through and under Lessor, subject nevertheless, to the terms and conditions of this Lease.

9.4 Custom and Usage. Any law, usage or custom to the contrary notwithstanding, Lessor shall have the right at all times to enforce the covenants and conditions of this Lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of the Lessor in refraining from so doing at any time or times with respect to the Lessee hereunder. The failure of Lessor at any time or times to enforce its rights under said covenants and provisions strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions and covenants of this Lease or as having in any way or manner modified the same.

9.5 Entire Agreement. The Lease Agreement and the exhibits hereto set forth all the covenants, promises, agreements, conditions, representations, promises and understandings between Lessor and Lessee concerning the Premises and there are no covenants, agreements, conditions, representations, promises or understandings, either oral or written, between them other than as herein set forth and as may be contained in the conditions of approval of the demolition permit issued by the Township for structures on the Premises. All prior communications, negotiations, arrangements, representations, agreements and understandings, whether oral, written or both, between the parties hereto, and their representatives, are terminated herein and extinguished, this Lease superseding and canceling the same. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and executed by the party against which such subsequent alteration, amendment, change or modification is to be enforced.

9.6 Notices. All notices given to Lessor hereunder shall be in writing and forwarded to the attention of Joseph Hopkins, 11 Bala Avenue, Bala Cynwyd, PA 19003, postage prepaid, by registered or certified mail, return receipt requested or by expedited delivery services such as Federal Express, until Lessee is notified otherwise in writing. All notices to Lessee shall be forwarded to it at Township of Lower Merion, 75 East Lancaster Avenue, Ardmore, Pennsylvania, 19003` Attention: Township Manager, by postage prepaid, registered or certified mail, return receipt requested or by expedited delivery services such as Federal Express or by delivery in person and in the event of delivery in person, the affidavit of the person making such delivery shall be conclusive proof of the delivery and of the date and time of such delivery. All changes of notice address requested by Lessee shall only be valid and binding on Lessor if executed by a duly authorized officer, partner or owner of Lessee and acknowledged in writing by Lessor. All notices shall be deemed to have been given on the date when deposited in the mail receptacles maintained by the corporation which has been chartered by the United States Government to operate and deliver

the mail as aforesaid or, in the case of notices delivered by expedited delivery service, when received or in the case of notices delivered in person to Lessee, when so delivered.

9.7 Captions. The captions appearing in this lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

9.8 Default. In the event of any default by Lessee under the terms or provisions of this Lease, Lessor may avail itself of any and all legal and equitable remedies under the law, and, in such event, Lessee shall reimburse Lessor for all costs and expenses, including attorney's fees, incurred by Lessor in connection therewith.

9.9 Partial Invalidity; Separate Covenants. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each covenant, agreement, obligation and other provision contained in this Lease is, and shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, and not dependent on any other provision of this Lease unless expressly so provided.

9.10 Recording. This Lease shall not be recorded in the Montgomery County Recorder of Deeds Office.

9.11 Subordination. This Lease is and shall be subject and subordinate to all the terms and conditions of all underlying mortgages which may now or hereafter encumber the Property, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be necessary. Notwithstanding the automatic subordination of this Lease, Lessee shall execute, within five (5) days after request, any certificate that Lessor may reasonably require acknowledging such subordination.

9.12 Liability. Lessee agrees that Lessor and its officers, employees and agents shall not be liable to Lessee, and Lessee hereby releases said parties, for any personal injury or damage to or loss of personal property in the Property from any cause whatsoever unless such damage, loss or injury is the result of the negligence of Lessor, Lessor's Licensees or its or their agents or employees.

9.13 Exculpation. Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed by Lessee that none of Lessor's covenants, undertakings or agreements are made or intended as personal covenants, undertakings or agreements by Lessor's members, partners, shareholders or trustees, or any of their respective members, partners, shareholders or trustees, and any liability for damage or breach or nonperformance by Lessor shall be collectible only from Lessor and no personal liability is assumed by, nor at any time may be asserted against, Lessor's partners, shareholders or trustees or any of its or their partners, shareholders, trustees, officers, agents, employees, legal representatives, successors or assigns, if any; all such liability, if any, being expressly waived and released by Lessee.

9.14 Estoppel. Lessee shall, within ten (10) days after Lessor's request, execute and deliver to Lessor an estoppel certificate certifying as to such factual matters regarding this Lease as may be reasonably requested by Lessor.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound have executed this Lease the ___ day of _____ 2016, to be effective as of the day and date first above written.

ATTEST:

ATTEST

Jody L. Kelley, Secretary

LESSOR:
LANCASTER WESTERN PROPERTIES, LP

By: _____
General Partner

LESSEE:
TOWNSHIP OF LOWER MERION

By: _____
Ernie McNeely, Township Manager



AGENDA ITEM INFORMATION

ITEM: SUBORDINATION AGREEMENT WITH FIRSTRUST BANK FOR ONE ARDMORE ASSOCIATES

Consider for recommendation to the Board of Commissioners entering into a Subordination Agreement with One Ardmore Associates for the benefit of Firstrust Bank as the mortgage lender for the One Ardmore Place project.

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Issue Briefing	Issue Briefing
<input type="checkbox"/> Proposed Subordination Agreement	Backup Material
<input type="checkbox"/> Proposed Contingent Assignment - For Informational Purposes Only. No Action Needed By Board Of Commissioners	Backup Material

TOWNSHIP OF LOWER MERION

Economic Revitalization Committee

Issue Briefing

Topic: Subordination Agreement with Firstrust Bank for One Ardmore Associates

Prepared by: Angela N. Murray, Assistant Director Building & Planning

Date: December 9, 2016

I. Action to Be Considered by the Board:

The Board is being asked to consider approving a Subordination Agreement between the Township and One Ardmore Associates, L.P., in favor Firstrust Bank.

II. Why This Issue Requires Board Consideration:

Approval from the Board of Commissioners is required to approve a Subordination Agreement between the Township and One Ardmore Associates acknowledging that Firstrust Bank is a third party beneficiary of the Contingent Assignment of Licenses, Contracts, and Development Documents between the Township and One Ardmore.

III. Current Policy or Practice (If Applicable):

N/A

IV. Other Relevant Background Information:

The Township has entered into the Amended and Restated Development Agreement (“Development Agreement”) with Dranoff Properties to develop the Cricket Lot for a mixed-use residential/retail development with public parking to replace existing spaces. The Township has approved a land development plan proposed by One Ardmore Associates, L.P., for the One Ardmore Place project.

To finance the construction, One Ardmore has entered into a Loan Agreement with Firstrust Bank to provide financing to develop the project. One Ardmore is requesting that the Township enter into the proposed Subordination Agreement to facilitate the advance of the loan for construction of the One Ardmore Place project.

One Ardmore must provide the Township with a Contingent Assignment of Licenses, Contracts, and Development Documents subordinating to the rights and remedies of

the developer's mortgage lender. The proposed Subordination Agreement is intended to confirm that subordination for the benefit of Firsttrust Bank as the mortgage lender.

This Subordination Agreement allows Firsttrust Bank to step in to complete the project before the Township could exercise its right to do so which is a positive benefit of this agreement.

V. Impact On Township Finances:

Should the Township choose not to enter into the Subordination Agreement, Firsttrust Bank may not advance the loan proceeds to allow construction to commence. Such a decision could lead to default by One Ardmore Associates which would prevent the Township from receiving payment for the Cricket Lot pursuant to the Development Agreement. Further exposure to legal expenses could be an additional impact to Township finances.

VI. Staff Recommendation:

Staff recommends that the Board of Commissioners grant approval for the Township to enter into the Subordination Agreement with One Ardmore Associates in favor of Firsttrust Bank.

SUBORDINATION AGREEMENT

(Subordination of Contingent Assignment)

THIS SUBORDINATION AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 201_, by and between **TOWNSHIP OF LOWER MERION**, a Township of the First Class organized and existing under the laws of the Commonwealth of Pennsylvania (“**Township**”), and **ONE ARDMORE ASSOCIATES, L.P.** a Pennsylvania limited partnership (“**One Ardmore**”), in favor of **FIRSTRUST BANK**, a Pennsylvania banking corporation (“**Agent**”), as administrative agent for itself and the Lenders under the Loan Agreement (as hereinafter defined).

RECITALS:

A. One Ardmore is or is about to become the owner of certain 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 “**Land**”) and the buildings and improvements now or hereafter existing thereon, including, without limitation, the to-be-constructed mixed-use residential, commercial and public parking facility for parking of approximately 210 cars (the “**Public Parking**”) incorporated into a mixed use development plus parking for more than 100 cars of residents of the residential portion of the facility (collectively, the “**Project**”). The portion of the Project that includes, or is reasonably necessary for, the Public Parking is hereinafter referred to as the “**Improvements.**”

B. The Township and One Ardmore are parties to an Amended and Restated Development Agreement, dated January 4, 2013, which has been amended several times (such agreement, as so amended, the “**Development Agreement**”).

C. In connection with the construction of the Project, One Ardmore has entered into the following agreements: (1) that certain Standard Form of Agreement Between Owner and Architect dated October 1, 2015 but effective as of February 10, 2014 (the “**Architect’s Agreement**”) with Cope Linder Architects LLC (the “**Architect**”) for the design of the Project; (2) that certain civil engineer dated February 27, 2014 (the “**Engineer Contract**”) with Bohler Engineering, PA, LLC (the “**Engineer**”) as engineering of the Project; and (3) that certain _____ dated _____ (the “**Construction Contract**”) with Harkins Builders (the “**General Contractor**”) as general contractor for the construction of the Project. The Project will be constructed by the General Contractor pursuant to plans and specifications designed by the Architect and approved by the Township (the “**Plans**”).

D. Pursuant to the Development Agreement, One Ardmore is required to execute and deliver a certain Contingent Assignment of Licenses, Contracts, and Development Documents dated _____, 2016 (“**Contingent Assignment**”), which assigns such contracts and plans to the Township.

E. To finance the construction of the Project and the Improvements, One Ardmore, Agent, as administrative agent, and the Lenders named therein (“**Lenders**”) as lenders shall or have entered into a Loan and Security Agreement (as the same may be amended, modified, supplemented or replaced from time to time, the “**Loan Agreement**”), pursuant to which the Lenders agreed to make loans to One Ardmore in the aggregate principal amount of Forty-Four Million Five Hundred

Thousand Dollars (\$44,500,000) (collectively, the “**Loan**”) on the terms and conditions specified in the Loan Agreement. The Loan is to be secured by, among other things, an Open-End Mortgage and Security Agreement of even date with the Loan Agreement, executed by One Ardmore in favor of Agent, for the benefit of the Lenders (as the same may be amended, modified, supplemented or replaced from time to time, the “**Mortgage**”). The Loan Agreement, Note, Mortgage, and all other documents executed by One Ardmore in connection with the Loan are referred to herein as the “Loan Documents.”

F. Agent is unwilling to make the Loan to One Ardmore unless the Township subordinates its rights under the Contingent Assignment to Agent’s rights under Loan Documents. Agent, for the benefit of Lenders, has required, as a condition to disbursement of the Loan, that the Township and One Ardmore deliver this Agreement. Except as provided for herein, all terms used in this Agreement with their initial letters capitalized shall have the respective meanings ascribed to such terms in the Loan Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Subordination; Exercise of Township Rights and Remedies. The Township hereby unconditionally subordinates and subjects its rights and remedies under the Contingent Assignment to Agent’s rights and remedies under the Loan Documents. If, prior to the date which is ten (10) days after the Township notifies One Ardmore and Agent of its intent to exercise its rights under Section 6 of the Contingent Assignment, Agent notifies the Township of its intent to complete the Improvements, the Township shall not exercise its rights under Section 6 of the Contingent Assignment provided Agent takes substantial steps in furtherance of its rights within thirty (30) days and so long as Agent is diligently continuing to cause the Improvements to be completed in accordance with the Plans. Notwithstanding anything to the contrary contained herein, upon failure of Agent to comply with the preceding sentence, Township shall have the full rights and remedies set forth in 6 of the Contingent Assignment.
2. Third Party Beneficiary. The Township and One Ardmore hereby acknowledge and agree that Agent shall be an express third party beneficiary of the Contingent Assignment. Accordingly, Township and One Ardmore shall not modify or amend or terminate the Contingent Assignment, or waive any rights thereunder, in each case in a manner which materially and adversely affects Agent’s rights, without Agent’s prior written consent.
3. Attorneys’ Fees. If any legal action is brought by any party to enforce or defend any provision of this Agreement, or as a consequence of any default under this Agreement, the prevailing party in such legal action shall be entitled to recover its reasonable attorneys’ fees and costs of the proceeding.
4. Amendments; Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given.

5. Notices. All notices and other communications required or permitted under this Agreement must be in writing and must be personally delivered; mailed by U.S. registered or certified mail, return receipt requested, postage prepaid; sent by nationally recognized private courier service; or transmitted by electronic mail (provided that a copy of such notice or other communication is also delivered by another permitted means of delivery), delivered or addressed to the appropriate party at its respective address set forth below:

If to Township: Township of Lower Merion
75 East Lancaster Avenue
Ardmore, PA 19003-2323
Attention: Township Manager
Telephone: (610) 649-4000

With a copy to: Township Solicitor
75 East Lancaster Avenue
Ardmore, PA 19003-2323
Telephone: (610) 649-4000

And to: High, Swartz, Roberts & Seidel LLP
Attn: Gilbert P. High, Junior, Esquire
40 East Airy Street
Norristown, PA 19404
Telephone: (610) 275-0700

With a copy to: Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, PA 19103
Attention: David M. Scolnic, Esq.
Telephone No.: (215) 496-7046

If to One Ardmore: c/o Dranoff Properties, Inc.
755 South Broad Street
Philadelphia, PA 19147
Attention: David Lebor, Esq.
Telephone No.: (215)-222-3300

and

c/o Dranoff Properties, Inc.
755 South Broad Street
Philadelphia, PA 19147
Attention: Carl E. Dranoff
Telephone No.: (215)-222-3300

If to Agent: Firstrust Bank

15 E. Ridge Pike
Conshohocken, Pennsylvania 19428
Attention: Seth Mackler
Telephone No.: (610) 238-5022

with a copy to: Drinker Biddle LLP

One Logan Square, Suite 2000
Philadelphia, PA 19103
Attention: Ralph Rodak, Esq.
Telephone No.: (215) 988-2710

Any party may change its address by giving written notice to the other party in accordance with this Section 5. If any notice or other communication is given by registered or certified mail it will be deemed effective five (5) Business Days after it is deposited in the U.S. mail, postage prepaid; or if given by any other permitted means, when received at the address listed above. Notices given to One Ardmore or the Township under this Subordination Agreement shall be deemed to be good and sufficient notices to such parties under the Contingent Assignment.

8. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania.

9. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered will be deemed to be an original and all of which, taken together, will be deemed to be but one and the same instrument.

10. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party. All covenants, promises and agreements in this Agreement contained, by or on behalf of the Township and/or One Ardmore shall inure to the benefit of the respective successors and assigns of Agent and the Lenders.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

TOWNSHIP:

TOWNSHIP OF LOWER MERION, a Township of the First Class organized and existing under the laws of the Commonwealth of Pennsylvania

By: _____

ONE ARDMORE:

ONE ARDMORE ASSOCIATES, L.P., a Pennsylvania limited partnership

By: One Ardmere GP Corp., its general partner

By: _____
Carl E. Dranoff, President

AGENT:

FIRSTTRUST BANK, a Pennsylvania banking corporation

By: _____
Seth Mackler,
Executive Vice President – Real Estate Finance

Exhibit "A"

DRAFT 12/13/16

**CONTINGENT ASSIGNMENT OF
LICENSES, CONTRACTS AND DEVELOPMENT DOCUMENTS**

THIS CONTINGENT ASSIGNMENT OF LICENSES, CONTRACTS AND DEVELOPMENT DOCUMENTS (this “Assignment”), made this ___ day of _____, 201___, by ~~and between~~ ONE ARDMORE ASSOCIATES, L.P., a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania (“One Ardmore”) 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 ONE ARDMORE ASSOCIATES, L.P., a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania (“One Ardmore”).~~

RECITALS

A. One Ardmore is or is about to become the owner of certain 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 “**Land**”) and the buildings and improvements now or hereafter existing thereon, including, without limitation, the to-be-constructed mixed-use residential, commercial and public parking facility for parking of approximately 210 cars (the “**Public Parking**”) incorporated into a mixed use development plus parking for more than 100 cars of residents of the residential portion of the facility (collectively, the “**Project**”). The portion of the Project that includes, or is reasonably necessary for, the Public Parking is hereinafter referred to as the “**Improvements.**”

B. The Township and One Ardmore are parties to an Amended and Restated Development Agreement, which has been amended several times (such agreement, as so amended, the “**Development Agreement**”).

C. In connection with the construction of the Project, One Ardmore has entered into the following agreements: (1) that certain Standard Form of Agreement Between Owner and Architect dated October 1, 2015 but effective as of February 10, 2014 (the “**Architect’s Agreement**”) with Cope Linder Architects LLC (the “**Architect**”) for the design of the Project; (2) that certain civil engineer dated February 27, 2014 (the “**Engineer Contract**”) with Bohler Engineering, PA, LLC (the “**Engineer**”) as engineering of the Project; and (3) that certain _____ dated _____ (the “**Construction Contract**”) with Harkins Builders (the “**General Contractor**”) as general contractor for the construction of the Project. The Project will be constructed by the General Contractor pursuant to plans and specifications designed by the Architect and approved by the Township (the “**Plans**”).

D. The Development Agreement requires One Ardmore to execute and deliver this Assignment.

AGREEMENT

NOW, THEREFORE, in consideration of the Township’s extension of the Loan and for other good and valuable consideration, and intending to be legally bound, One Ardmore hereby agrees in favor of the Township as follows:

1. One Ardmore assigns, sets over and transfers to the Township from and after such date, if ever, of the occurrence of an Event of Default, as defined herein (a “Trigger Event”), and Township’s written election to exercise its rights under this ~~Agreement~~Assignment as set forth in Section 6 hereof, all of One Ardmore’s right, title and interest in and to the Development Rights (as hereinafter defined). The items assigned pursuant to this Assignment, and which are sometimes collectively referred herein to as the “**Development Rights**,” are as follows, and, to the extent of any duplication of any rights herein or in any other agreement given to the Township, the provisions shall be deemed complementary and supplemental:

- (a) The Plans;
- (b) The Construction Contract;
- (c) The Engineer Contract;
- (d) The Architect’s Agreement;

(e) All other construction contracts, subcontracts, architect’s agreements, plans, specifications, bonds, service agreements, maintenance contracts, water and/or sewer reservation agreements, utility agreements, and environmental remediation contracts, as well as all contracts for the purchase of furniture, fixtures and equipment (collectively with the Construction Contract, the Engineer’s Contract and the Architect’s Agreement and all amendments, modifications or supplements thereto, the “**Contracts**”) which have heretofore been or will hereafter be executed by or on behalf of One Ardmore, or which have been or will hereafter be assigned to One Ardmore, in connection with the construction or completion of the Improvements (the parties with whom or to whom such Contracts have been or are given are hereinafter collectively with the Architect, General Contractor, Engineer, referred to as the “**Contractors**”); and

(f) All consents, licenses, permits, approvals, authorizations, certificates, rights and agreements of every type and nature with or from all boards, agencies and departments, governmental or otherwise, relating directly or indirectly to the construction of the Improvements, whether heretofore or hereafter issued or executed, (collectively, the “**Licenses**”) (such boards, agencies and departments (governmental or otherwise) are hereinafter collectively referred to as the “**Licensing Authorities**”).

2. One Ardmore hereby assigns, transfers and sets over unto the Township all right, title and interest in and to the Development Rights and all rights and benefits therefrom including: (i) any warranties and guaranties related to any of them; (ii) any deposits and payments made on account of or pursuant to the terms of any of them; (iii) all cash and non-cash proceeds, and proceeds of proceeds of any of them; and (iv) any and all rights of One Ardmore to reject any License or Contract under the United States Bankruptcy Code. One Ardmore covenants and agrees to execute such further and additional instruments and assignments as may be requested by the Township to vest in the Township all rights of One Ardmore under any of the Development Rights.

3. Until the occurrence of an Event of Default (as hereinafter defined), One Ardmore may retain, use and enjoy the benefits of the Development Rights. The affidavit or written

statement of an officer, agent or attorney of the Township stating that there has been an Event of Default shall constitute conclusive evidence thereof, and all persons are authorized and directed to rely thereon.

4. One Ardmore agrees faithfully to observe and perform each and every of the obligations and agreements imposed upon One Ardmore under the Licenses and Contracts.

5. The Township shall not be obligated to perform or discharge, nor shall it by acceptance of this Assignment be deemed in any manner to have assumed any of the Development Rights or to be under any obligation to perform or discharge any of the obligations applicable to any of the Development Rights.

6. Upon the occurrence of a Trigger Event, as hereinafter defined, upon giving written notice to One Ardmore in accordance with the Development Agreement of the Township's election to exercise its rights herein within ten (10) days after such notice, the Township may, at the Township's option, with or without entry upon the Land and Improvements and without prejudice to any other available rights or remedies under the Development Agreement but otherwise at Township's own risk: (i) take over and enjoy the benefits of the Development Rights; (ii) exercise One Ardmore's rights and remedies under the Development Rights without any interference or objection from One Ardmore; (iii) cancel, surrender, alter, amend or renew existing Contracts and Licenses; (iv) make concessions to Licensing Authorities and Contractors; (v) enter into new Contracts for the performance of all services provided for therein or perform such services itself; (vi) exclude One Ardmore and its agents and employees from the Land and Improvements; (vii) take possession of all furniture, fixtures and equipment delivered or to be delivered pursuant to the Contracts; or (viii) require One Ardmore to deliver all books, documents, records, licenses, permits and contracts required by the Township in order to permit it to assume management of the Land and Improvements. One Ardmore hereby releases any and all claims which it has or might have against the Township arising out of the performance by the Township of any of the foregoing actions. One Ardmore shall cooperate in causing the Contractors and Licensing Authorities to comply with all the terms and conditions of their respective undertakings under the Development Rights. Notwithstanding anything to the contrary contained herein, if, prior to the date which is ten (10) days after the Township notifies One Ardmore of its intent to exercise its rights under this Section 6, Firstrust Bank notifies the Township of its intent to complete the Improvements, the Township shall not exercise its rights under this Section 6 provided Firstrust takes substantial steps in furtherance of its rights within thirty (30) days and so long as Firstrust is diligently continuing to cause the Improvements to be completed in accordance with the Plans.

7. One Ardmore shall, within thirty (30) days of any written request by the Township, furnish the Township with a complete list of any material Development Rights which have not previously been provided. In addition, One Ardmore shall, within thirty (30) days of any written request by the Township, deliver to the Township executed copies of all Contracts and other written agreements, correspondence and memoranda between One Ardmore (and its predecessors in title) and Contractors setting forth the contractual and other arrangements between them.

8. The Township shall not be construed as the agent, partner or joint venturer of either One Ardmore or of any of the Contractors.

9. The Township may exercise its rights and remedies under this Assignment from time to time in its discretion, with or without order of any court and with or without appointment of a receiver, as the Township shall determine from and after a Trigger Event, provided an Event of Default has occurred and is continuing. Nothing contained herein shall preclude Developer's right to contest, by appropriate legal proceedings, the Township's exercise of its rights under this ~~Agreement~~Assignment. The Township may also at any time cease to exercise its rights and remedies under this Assignment. Any failure on the part of the Township promptly to exercise any option or right hereby given or reserved shall not prevent the exercise of any such option or right at any time thereafter. The Township may pursue and exercise any remedy or remedies accorded it herein independently of, in conjunction or concurrently with, or subsequent to its pursuit and exercise of any remedy or remedies which it may have under the Development Agreement.

10. It shall be an event of default hereunder (an "**Event of Default**") if: (a) One Ardmore shall default in the performance of any covenant or agreement of One Ardmore hereunder which continues for five (5) days after written notice from the Township with respect to a monetary default or thirty (30) days after written notice from the Township with respect to a non-monetary default and such period shall be extended for such longer period as is reasonably necessary to effect a cure; or (b) there shall be an Event of Default under the Development Agreement. Any Event of Default hereunder shall constitute an Event of Default under the Development Agreement.

11. One Ardmore warrants and represents to the Township that:

(a) One Ardmore has the full and complete right, power and authority to execute and deliver this Assignment free and clear of the rights of all third parties;

(b) One Ardmore has made no prior assignment, pledge or hypothecation of any of the Development Rights except to the Townships and Firsttrust Bank;

(c) All amounts due from One Ardmore to date under the Development Rights have been paid in full;

(d) All Development Rights are in full force and effect on the date hereof, and the performance of the other parties thereto is subject to no defenses, setoffs or counterclaims whatsoever;

(e) To One Ardmore's actual knowledge, there is no Event of Default as of the date hereof which is continuing; and

(f) Except for documents executed in connection with the loan from Firsttrust Bank, One Ardmore has not knowingly done and shall not perform any acts which might destroy or impair the rights of the Township under this Assignment, or which might prevent the Township from exercising its rights under this Assignment or limit the Township in such exercise.

12. **Waiver of Jury Trial. ONE ARDMORE IRREVOCABLY WAIVES JURY TRIAL AND THE RIGHT THERETO IN ANY AND ALL DISPUTES INVOLVING THE TOWNSHIP OR THE TOWNSHIP'S PARENT, AFFILIATES OR RELATED ENTITIES OR ANY OFFICER, EMPLOYEE, DIRECTOR, SHAREHOLDER, ATTORNEY OR PARTNER OF ANY OF THEM, WHETHER HEREUNDER OR UNDER ANY OTHER AGREEMENTS, NOTES, PAPERS, INSTRUMENTS OR DOCUMENTS HERETOFORE OR HEREAFTER EXECUTED OR ANY OTHER CONTRACT WHETHER SIMILAR OR DISSIMILAR. THIS SHALL BE DEEMED A COVENANT ENFORCEABLE INDEPENDENTLY OF ALL OTHER PROVISIONS OF THIS ASSIGNMENT.**

13. When the context so requires, the singular shall include the plural and the use of any gender shall include all genders.

14. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Assignment cannot be amended or terminated except by an instrument in writing executed by One Ardmore and the Township.

15. This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (without regard to the principles of conflicts or choice of law).

16. Neither the existence of this Assignment nor the exercise of the privileges granted to the Township shall be construed as a waiver or suspension by the Township of its rights pursuant to the Development Agreement in strict accordance with the terms and provisions of the Development Agreement.

17. This Contract is not intended to and does not create any third party beneficiary rights whatsoever, except that Firstrust Bank ~~may rely upon Sections 6 and 11(f)~~ is a third party beneficiary as set forth in that certain Subordination Agreement (Contingent Assignment) between the Township and One Ardmore in favor of Firstrust Bank anticipated to be executed on or about the date hereof.

18. Nothing contained herein is intended to modify or limit any rights of Township under the Guaranty of Completion executed by _____ in favor of Township in connection with the Project.

19. This ~~Agreement~~ Assignment shall terminate automatically and in all respects upon the last to occur of the following: (a) issuance of certificate of occupancy by the Township for the Improvements; (b) issuance of a certificate of substantial completion for the Improvements from the Architect; and (c) receipt of a release of liens with respect to the Project evidencing final payment from the General Contractor.

WITNESS the due execution hereof as a document under seal, as of the date first written above, with the intent to be legally bound hereby.

ONE ARDMORE ASSOCIATES, L.P.

By: ONE ARDMORE GP CORP., its general partner

By: _____
Name:
Title:

For Informational Purposes Only.
No Action Required By
Board Of Commissioners.

EXHIBIT A

LEGAL DESCRIPTION

[TO BE INSERTED]

For Informational Purposes Only.
No Action Required By
Board Of Commissioners.

Document comparison by Workshare Compare on Tuesday, December 13, 2016
2:56:27 PM

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Rendering set	Standard

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Style change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	12
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Moved to	1
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Format changed	0
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