MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE TOWNSHIP OF VERONA

AND

SPECTRUM 360, LLC

REGARDING

THE DEVELOPMENT OF A MULTI-FAMILY PROJECT WITH INCLUSIONARY AFFORDABLE HOUSING IN THE TOWNSHIP OF VERONA COUNTY OF ESSEX, STATE OF NEW JERSEY

WHEREAS, the Township of Verona (the "Township") has historically participated in the administrative affordable housing compliance process overseen by the New Jersey Council on Affordable Housing ("COAH"), and has received substantive certification for the Prior Round (1987-1999); and

WHEREAS, since 1999, COAH has failed to adopt constitutionally compliant Third Round Rules that have withstood judicial scrutiny; and

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued a decision in the case entitled In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), whereby the Court terminated COAH's jurisdiction to administer and approve municipalities' affordable housing plans, determined that trial courts would reassert primary jurisdiction over the same, and directed interested municipalities to petition the Court for immunity while constitutionally compliant housing plans were prepared; and

WHEREAS, in compliance with the New Jersey Supreme Court decision in <u>In re</u> <u>Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing</u>, 221 <u>N.J.</u> 1 (2015), on or about July 7, 2015, the Township filed an action with the Superior Court of New Jersey, entitled <u>In the Matter of the Application of the Township of Verona, a municipal corporation of the State of New Jersey</u>, Docket No. ESX-L-4773-15 (the "Township's DJ Action"), seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs; and

WHEREAS, by Order dated May 12, 2017, SPECTRUM 360, LLC ("Spectrum" and, collectively with the Township, the "Parties"), a non-profit entity that operates schools and serves children, adolescents, young adults, and adults on the autism spectrum and with behavioral and related disabilities, was granted leave to intervene in the DJ Action as an interested party owning certain property located in the Township commonly known as One Sunset Avenue and otherwise designated as Block 13, Lot 4 on the Township's official Tax Map (the "Property"); and

WHEREAS, the Property consists of approximately eight (8) acres, with approximately 5.5 acres situated in the Township and the remaining approximate 2.5 acres located in the Town of Montclair; and

WHEREAS, Spectrum currently utilizes the Property as a campus for its Lower School and has a need to expand the Lower School to develop a career education/vocational wing for older students, but lacks adequate space on the Property for the planned expansion; and

WHEREAS, given Spectrum's inability to expand its existing Lower School on the Property, it desires to sell the Property for a developer who will construct a multifamily inclusionary development on the Property; and

WHEREAS, Spectrum prepared concept plans that are representative of the type of proposed project, depicting a maximum six (6) stories including parking, which accommodates approximately 300 residential units (the "Project"); and

WHEREAS, Spectrum and the Township engaged in amicable negotiations and have agreed upon the general terms for Project, which will have an inclusionary affordable housing component; and

WHEREAS, Spectrum is currently engaged in a competitive selection process with several developers who desire to purchase the Property and construct the Project; and

WHEREAS, to ensure that the Inclusionary Development generates affordable housing units that can be credited to the Township's "Third Round" affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the New Jersey Council on Affordable Housing ("COAH") prior round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), the terms of the Settlement Agreement with Fair Share Housing Center in In the Matter of the Township of Verona, Docket No. ESX-L-4773-15, and any and all other applicable law, and said Inclusionary Development shall be deed restricted as such for a period of at least thirty years and thereafter until the municipality takes action to release the restrictions; and

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Agreement at a "Fairness Hearing" in accordance with the requirements of Morris County Fair

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Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (Law Div. 1984), aff d o.b., 209 N.J. Super. 108 (App. Div. 1986) and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328 (App. Div. 1996), and that, in order to approve this Agreement, the Court must find that it adequately protects the interests of lower-income persons for whom the affordable units proposed by this Agreement are to be built; and

WHEREAS, if the Court approves this Agreement at the Fairness Hearing, the Parties anticipate that the Court will provide a period of time, which they approximate will be 120 days, for the Township to adopt an implementing ordinance (the "Ordinance") and/or the actions necessary for the effectuation of the Inclusionary Development as an "as-of-right" development.

WHEREAS, the Township and Spectrum wish to enter into this Memorandum of Understanding to memorialize general terms for the development of the Project, with additional and more specific terms and conditions of said development to be further negotiated and agreed to in additional agreements, including a formal settlement agreement to be filed with the Court in connection with the Compliance Action.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and obligations hereinafter set forth, the Township and Spectrum hereby set forth in this Memorandum of Understanding (the "MOU") that the following general terms shall apply to the future development of the Project:

1. <u>Solicitation of Interested Developers.</u> Spectrum shall engage in a competitive solicitation process by which it intends to ultimately select a developer that will purchase the Property and construct the Project. Spectrum intends to proceed with due haste but does not have a specific deadline by which it will select a developer.

- 2. <u>Assignment of Rights to Developer</u>. The Township acknowledges that Spectrum intends to assign its rights under this MOU, and other relevant agreements it may have or will have in the future with the Township, to a developer (the "Developer"). The Township shall work cooperatively with the Developer to effectuate the intent of this MOU and facilitate the construction of the Project.
- 3. Inclusion in Housing Element and Fair Share Plan. The Township agrees that it shall include the Project in its Housing Element and Fair Share Plan and settlement agreement, as applicable. If the Township is not able to achieve an omnibus settlement agreement that resolves the entirety of the DJ Action within six (6) months from the date of execution of this MOU, then the Township shall proceed with a separate settlement agreement with Spectrum or the Developer, as the case may be, assuming Spectrum or the Developer are ready to proceed with the same.
- 4. The Project. Spectrum has prepared concept plans that are representative of the Project, depicting a maximum of six (6) stories, including parking, which accommodates approximately 300 residential rental units. The Township agrees that the concept plans are generally acceptable and understands that the final unit count is subject to change depending on a variety of factors, including but not limited to the Developer's preferred design and full site engineering. Regardless, the Township acknowledges the Developer will likely seek to maximize the density of the Property in order to accommodate more units, subject to physical site and design constraints. To this effect, Spectrum acknowledges that the Project must be designed in such a fashion to take into account impacts on the Afterglow neighborhood. To the extent possible, the Developer agrees to construct a LEED certified building, including such features as a "green roof".

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- 5. **Fairness Hearing** This Agreement is subject to Court approval following a duly noticed Fairness Hearing. The Fairness Hearing shall be scheduled by the Court at any time after the execution of this and all other agreements reached in this litigation in accordance with its normal calendaring process.
- 5.1 In the event of any legal challenges to the Court's approval of this Agreement or the Affordable Housing Plan or the Ordinance, the Parties must diligently defend any such challenge. In addition, if any such challenge results in a modification of this Agreement or the Affordable Housing Plan or the Ordinance, the Parties must negotiate in good faith with the intent to draft a mutually-acceptable amended agreement provided that no such modification will require the Township to accept a density for the Inclusionary Development other than as agreed herein and no such modification will require Spectrum to accept a decrease in density for the Inclusionary Development other than as agreed herein.
- 5.2 This Agreement does not purport to resolve entirely the Township's compliance with its entire obligations under the <u>Mount Laurel</u> Doctrine. The Parties anticipate that the Township will amicably satisfy its entire obligations under the <u>Mount Laurel</u> Doctrine by entering into a separate settlement agreement with the Fair Share Housing Center ("FSHC") and other parties to the litigation. All settlement agreements shall be subject to a single Fairness Hearing.

6. Affordable Housing Set-Aside.

- a. Spectrum shall have an obligation to deed-restrict twenty (20%) percent of the residential units in the Inclusionary Development (equivalent to 60 units) as very low, low or moderate income affordable units ("AHUs"), which AHUs shall not be age-restricted.
- b. Any AHUs shall comply with UHAC and other applicable laws, except that a minimum of 13 percent of the affordable rental units shall be very low income units (affordable

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to households earning 30 percent or less of the regional median household income by household size), which very low income units shall be counted as part of the low income housing requirement. The AHUs shall remain as rental units for a period of at least thirty (30) years (the "Deed-Restriction Period") until the Township of Verona takes action to release the controls on affordability. This obligation to comply with UHAC includes, but is not limited to, the obligation to comply with the bedroom distribution requirements, very low/low/moderate income split requirements (subject to the modification of UHAC to reflect the very low income housing requirement set forth above), pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements.

- c. The Township shall enter into a contract with a qualified "Administrative Agent" to administer the affordability controls on the AHUs developed in the Township. Spectrum shall have the obligation to pay all costs associated with the services rendered by the Administrative Agent on behalf of the AHUs produced by the Spectrum and with properly deed restricting the AHUs in accordance with UHAC and other applicable laws for a period of at least 30 years, until the Township of Verona takes action to release the controls on affordability.
 - d. Spectrum shall at least once a year provide detailed information to the Township concerning Spectrum's compliance with UHAC and other applicable laws.
- 7. Obligation Not to Oppose Township's Application for Approval of its Affordable Housing Plan: Spectrum shall not directly or indirectly oppose or undertake any action to interfere with the Court's approval and/or implementation of the Township's Affordable Housing Plan, as it may be amended in any form, unless the Affordable Housing Plan deprives Spectrum of any rights created hereunder or unless the Township undertakes any

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action to obstruct or impede Spectrum from securing such approvals as it needs to develop the Inclusionary Development in accordance herewith.

- 7.1 Obligation to Withdraw as an Intervenor in the Township's Compliance Action. Upon the Court's approval of this Agreement at a duly noticed Fairness Hearing and no litigation or appeal filed from said approval of same and the Township's timely completion of the effectuation of the Ordinance adoption (as set forth in Section 4.1 below) and no litigation or appeal being filed relating to same, Spectrum shall no longer continue to participate in the Compliance Action, except for the limited circumstances described in Section 3.2 of this Agreement, and shall formally be dismissed from the Compliance Action.
- 7.2 Obligation to Pay One-Half of the Special Master's Bills in Conjunction with Application for Approval of this Agreement. Spectrum shall pay one-half of the costs and fees of the Court-appointed Special Master, Elizabeth C. McKenzie, P.P. (the "Special Master"), to review this Agreement and to advise the Court (a) if this settlement is fair and reasonable to lower income households and (b) if the Court should otherwise approve this Agreement.

ARTICLE IV OBLIGATIONS OF TOWNSHIP

8.1 Obligation to Effect Ordinance Adoption. Within one hundred twenty days (120) of the Effective Date, the Township shall effect the adoption of the Ordinance for the Inclusionary Development. The Ordinance shall create a new zoning district for the Property, which shall set forth the zoning standards necessary to obtain the development approvals for the Inclusionary Development, as same is further described in Exhibit A hereof, "as of right" and without the need for any variances, waivers or exceptions. In addition to the above requirements, the Ordinance shall be reasonably satisfactory to both the Township and

Spectrum. In connection with the above actions, the Township shall comply with all applicable procedural requirements set forth in applicable law, including, but not limited to, legal notice requirements. All of the time periods set forth in this Section 4.1 may be subject to an extension of time, which shall be reasonably agreed upon by the Parties, if at no fault of either Party the required actions cannot be completed within the time periods established.

- 8.2 Obligation to Pay One-Half of the Special Master's Bills in Conjunction with Application for Approval of this Agreement. The Township shall pay one-half of the costs and fees of the Special Master to review this Agreement and to advise the Court (a) if this settlement is fair and reasonable to lower income households and (b) if the Court should otherwise approve this Agreement.
- 8.3 Obligation to Preserve the Inclusionary Development. The provisions of the Affordable Housing Plan may be amended or rescinded at any time without the approval of the Spectrum provided, however, the Township shall not undertake any action to obstruct or impede Spectrum from securing such approvals as it needs to develop the Inclusionary Development in accordance herewith until the later of: (i) July 1, 2025 or (ii) any date which may be otherwise applicable under the Mount Laurel Doctrine. In addition, the Township shall keep the Ordinance in place until at least July 1, 2025, with such Ordinance not to be amended thereafter without the consent of the Parties and the permission of the Court.
- **8.4** Representation regarding Sufficiency of Water and Sewer: The Township represents that there is no sanitary sewer or water moratorium in place and that there is sufficient sanitary sewer and water capacity to service the Inclusionary Development.
- **8.5 Obligation to Cooperate:** Spectrum acknowledges and agrees that in order for Spectrum to construct its Inclusionary Development, Spectrum is required to obtain any and all

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necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities; such as, by way of example only, the Township, the Planning Board, the County of Essex, the County of Essex Planning Board, the North Jersey Water District Commission, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, and the like, including the Township's ordinance requirements as to site plan and subdivision (the "Required Approvals"). The Township agrees to use all reasonable efforts to cooperate with and assist the Spectrum in its undertakings to obtain the Required Approvals.

8.6 Obligation to Refrain From Imposing Cost-Generative Requirements. The Township recognizes that this Agreement contemplates the development of an "inclusionary development" within the meaning of the Mount Laurel Doctrine, and Poekel shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. Therefore, the Township shall comply with N.J.A.C. 5:93-10 and will not impose development standards and/or requirements that would be considered to be "cost generative" other than those costs set forth herein or imposed or required by the Planning Board to the extent allowed by law.

ARTICLE V OBLIGATIONS OF THE PLANNING BOARD

Obligation to Process Poekel's Development Application(s) with Reasonable Diligence. The Planning Board shall expedite the processing of Poekel's development application(s) following the Court's approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by New Jersey's Municipal Land Use Law (the "MLUL") unless otherwise agreed to by the Parties. Provided that the Planning Board has declared Poekel's development application(s) complete, and upon Poekel's written request for same, the Planning Board shall schedule a special

hearing(s) on Poekel's development application(s) by ______. In accordance with N.J.A.C. 5:93-10(b), the Planning Board shall cooperate in granting all reasonable waivers and/or variances that are necessary to develop the Inclusionary Development as contemplated by this Agreement. In the event of any appeal of the Affordable Housing Plan or the Court's approval of this Agreement, the Planning Board shall process and take action on any development application by the Poekel for the Inclusionary Development which decision may be conditioned upon the outcome of any pending appeal.

Planning Board recognizes that this Agreement contemplates the development of an "inclusionary development" within the meaning of the Mount Laurel Doctrine, and Poekel shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. Therefore, subject to and in accordance with Section 3.1 and Section 5.1, if Poekel applies to the Planning Board for approval of the Inclusionary Development consistent with the Affordable Housing Plan, the Planning Board shall comply with N.J.A.C. 5:93-10 and will not impose development standards and/or requirements that would be objectively considered to be "cost generative" except those costs set forth herein and those imposed or required by the Planning Board to the extent allowed by law. Nothing shall prevent Poekel from applying for a waiver or variance from any standard imposed by the Township's Land Use and Development Ordinance. The standards set forth in the MLUL shall determine if Poekel is entitled to this relief or from seeking a waiver or de minimus exception to any standard or requirement of the Residential Site Improvement Standards under the applicable regulations.

- 10. Affordable Housing Component. The Project shall have an inclusionary affordable housing component of not less than twenty percent (20%) of the total units being developed as very low, low and moderate income affordable housing units to qualify as such pursuant to the terms of the applicable affordable housing regulations, Court Order, Court Special Master requirements, and the Uniform Housing Affordability Controls ("UHAC") regulations, N.J.A.C. 5:80-26.1, et seq., including that a minimum of 13 percent of the affordable units shall be very low income units (affordable to households earning 30 percent or less of the regional median household income by household size).
- 11. Redevelopment. The Township and Spectrum agree that the Township shall take all necessary steps to enable the proposed residential development of the Property to proceed under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "Redevelopment Law"), including the preparation and adoption of a report addressing whether or not the Property meets the criteria for the Township to declare it a non-condemnation area in need of redevelopment. In the event the Property is deemed a non-condemnation area in need of redevelopment, upon final approval of the redevelopment plan and in connection with the execution of a redevelopment agreement, the Project shall be subject to a thirty (30) year Payment in Lieu of Taxes ("PILOT") agreement between the Township and the Developer and shall require the Developer to remit an annual service charge based initially upon ten percent (10%) of the annual gross revenues generated by the Project.
- <u>12.</u> <u>General Terms</u>. The Parties understand and agree that this Memorandum of Understanding sets forth the general agreed upon terms for the development of the Project.

Nothing herein shall bind or otherwise restrict the parties from negotiating and agreeing to

additional and more specific terms of development. Final approval of the Project is subject to

the Township, its Land Use Board and Spectrum (or the Developer, as applicable) coming to an

agreement on the final terms of the Project, which shall be set forth in a settlement agreement to

be filed with the Court and be subject to the Court's and the Court Special Master's approval.

13. Good Faith Actions. The Township and Spectrum hereby agree to act in good

faith in the negotiation of the final terms of the Project, along with the preparation of a more

formal agreement to set forth all of the agreed upon terms for the development of the Project,

which final agreement shall be filed with the Court, and be subject to the Court's and the Court

Special Master's approval.

14. Miscellaneous. This MOU shall be governed by, and construed and enforced in

accordance with, the laws of the State of New Jersey. This MOU may be modified or amended

only by a written instrument signed by both parties. This is a negotiated agreement wherein

both parties were represented by legal counsel. This MOU shall not be construed against any

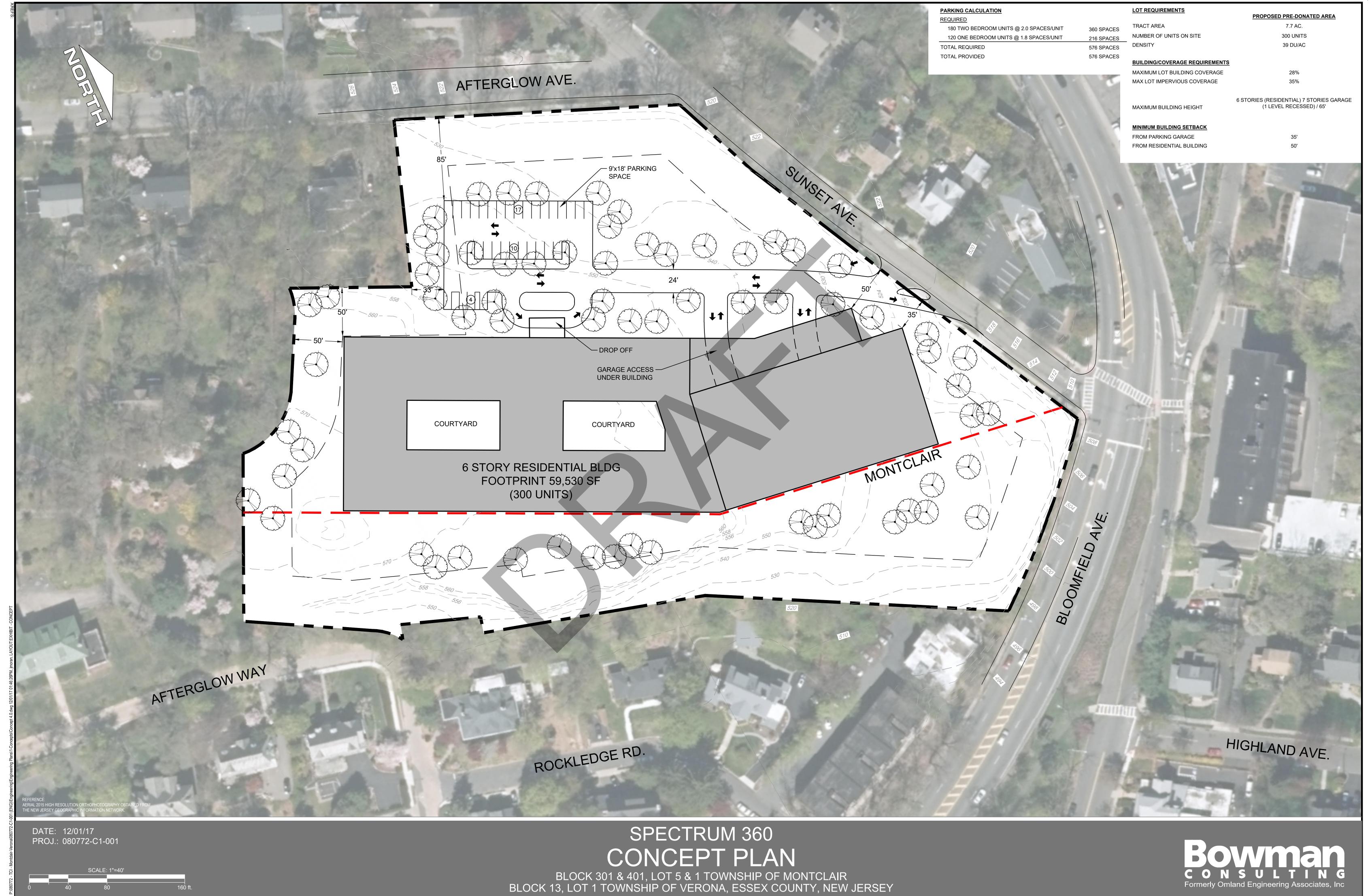
party by virtue of its counsel having prepared same or part thereof. This MOU may be

executed in counterparts, with facsimile signatures shall be deemed original signatures.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Township and Spectrum have executed this Memorandum of Understanding as of the dates set forth below.

TOWNSHIP OF VERONA	SPECTRUM 360, LLC
Ву:	By:
Matthew Cavallo, Township Manager	Bruce Ettinger, Ed.D., Executive Director
Witness/Attest:	Witness/Attest:
Clerk, Jennifer Kiernan, RMC	
Dated:, 2018	Dated:, 2018



BOWMAN CONSULTING Formerly Omland Engineering Associates, Inc



CONCEPT PLAN

BLOCK 301 & 401, LOT 5 & 1 TOWNSHIP OF MONTCLAIR BLOCK 13, LOT 1 TOWNSHIP OF VERONA, ESSEX COUNTY, NEW JERSEY

C O N S U L T I N G
Formerly Omland Engineering Associates, Inc

